
From: Manuel Miranda) (Manuel_Miranda@judiciary.senate.gov (Manuel Miranda) [UNKNOWN]
To: Dinh; Viet <Viet.Dinh@usdoj.gov>; Willett; Don <Don.Willett@usdoj.gov>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/18/2002 8:34:56 AM
Subject: : Highly confidential

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Manuel_Miranda@judiciary.senate.gov (Manuel Miranda) (Manuel_Miranda@judiciary.senate.gov (Manuel Miranda) [UNKNOWN])

CREATION DATE/TIME:18-JUL-2002 12:34:56.00

SUBJECT:: Highly confidential

TO:"Dinh; Viet" <Viet.Dinh@usdoj.gov> ("Dinh; Viet" <Viet.Dinh@usdoj.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Willett; Don" <Don.Willett@usdoj.gov> ("Willett; Don" <Don.Willett@usdoj.gov> [UNKNOWN])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

Brett,

It looks like Biden's staff is asking him not to attend the hearing. This does not bode well. It means that they will depend on paper since they have refused to meet with her. This increases reliance on Leahy's staff. Think thru what options you all have down there. If we think that it is better for him to be there, perhaps Hatch could call him but Hatch may not want to. Hatch may need a butch from the WH to call Biden. Is any direct pressure on Biden possible...a Gonzales meeting?

On a related note, the Nation article linking Owen to Rove is being distributed by the Leahy staff.

Manny

REV_00217778

From: Kavanaugh, Brett M.
To: <Grubbs, Wendy J.>
Sent: 4/9/2003 1:27:33 PM
Subject: From Manny on Frist's staff

"According to Democrat sources, several Democrat Senators have expressed concern about any filibuster of a judicial nominee that is based on substance, as opposed to process. The Senators that may be wavering or opposed to an extended debate are: Lincoln, Pryor, Carper, Graham, Nelson (FI), Nelson (NE), Bayh, Landrieu, Breaux, Dorgan, Conrad, Baucus, Hollings, Bryd and Miller."

From: Manuel Miranda) (Manuel_Miranda@judiciary.senate.gov (Manuel Miranda) [UNKNOWN]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Sales; Nathan
<Nathan.Sales@usdoj.gov>;Koebele; Steve <Steve.Koebele@usdoj.gov>;Willett; Don
<Don.Willett@usdoj.gov>
Sent: 7/28/2002 2:38:29 PM
Subject: : Help requested

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Manuel_Miranda@judiciary.senate.gov (Manuel Miranda) (
Manuel_Miranda@judiciary.senate.gov (Manuel Miranda) [UNKNOWN])

CREATION DATE/TIME:28-JUL-2002 18:38:29.00

SUBJECT:: Help requested

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:"Sales; Nathan" <Nathan.Sales@usdoj.gov> ("Sales; Nathan" <Nathan.Sales@usdoj.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Koebele; Steve" <Steve.Koebele@usdoj.gov> ("Koebele; Steve" <Steve.Koebele@usdoj.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Willett; Don" <Don.Willett@usdoj.gov> ("Willett; Don" <Don.Willett@usdoj.gov> [UNKNOWN])

READ:UNKNOWN

End Original ARMS Header

I would ask that no action be taken by any of your offices on this for now except as I request. It is important that it be confidential to the recipients of this email and up your chains of authority only.

As I mentioned on Friday, Senator Leahy's staff has distributed a confidential letter to Dem Counsel on Thursday from Collyn Peddie, who served as the attorney for Jane Doe in some or several of the Texas bypass cases. According to either the letter or the Leahy staff Ms. Peddie sent this letter in the strictest confidence because she is up for partner, and believes she will be fired if it is publicized. Several members of her firm are lead supporters of the Owen nomination. Leahy's staff is only sharing with Democratic counsels. However, we might expect this letter to be used like the Brenda Polkey in Pickering at a moment when we are unable to respond.

Ms. Peddie is being portrayed as a small oppressed lawyer fearing repercussions if her name gets out and the brave attorney who represented the girl in trouble in Jane Doe 1. In fact, she is the attorney for Planned Parenthood who argued JD cases and the Buffer Zone case and on the board of Planned Parenthood of Texas, among other things. I will copy you on our research on her.

For now I need priority help early Monday from the A team in briefly commenting on these items (two or three sentences). I have not seen the letter but it strongly criticizes Owen's actions on the Doe cases, especially for her appalling insensitivity to the pregnant minors before her court.

Owen violated the confidentiality of the Jane Does in her written opinions. Specifically, Peddie accuses Owen of publishing dissents and concurrences in which paragraph after paragraph of confidential testimony was quoted in great detail.

Owen sought delay of order granting bypass

Owen sought to stop the entry of Jane Doe 1's bypass until the court had published all its opinions. The court issued the order over Owen's objection, but if the Court had adopted Owen's position, the pregnant minor would have had to wait three more months to get the abortion.

3. Owen's Dissent in Jane Doe 4

Peddie criticized Owen's dissent in Jane Doe 4 which argued that parental rights should trump the risk that parents would throw a minor girl out on the street upon finding out she was pregnant.

REV_00348846

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Manuel Miranda) (Manuel_Miranda@judiciary.senate.gov (Manuel Miranda) [UNKNOWN]
<Manuel_Miranda@judiciary.senate.gov>
CC: sales; nathan <nathan.sales@usdoj.gov>;koebele; steve <steve.koebele@usdoj.gov>;willett; don
<don.willett@usdoj.gov>
Sent: 7/28/2002 3:03:12 PM
Subject: : Re: Help requested

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 28-JUL-2002 19:03:12.00

SUBJECT:: Re: Help requested

TO: Manuel_Miranda@judiciary.senate.gov (Manuel Miranda) (
Manuel_Miranda@judiciary.senate.gov (Manuel Miranda) [UNKNOWN])

READ: UNKNOWN

CC: "sales; nathan" <nathan.sales@usdoj.gov> ("sales; nathan" <nathan.sales@usdoj.gov> [UNKNOWN])

READ: UNKNOWN

CC: "koebele; steve" <steve.koebele@usdoj.gov> ("koebele; steve" <steve.koebele@usdoj.gov> [UNKNOWN])

READ: UNKNOWN

CC: "willett; don" <don.willett@usdoj.gov> ("willett; don" <don.willett@usdoj.gov> [UNKNOWN])

READ: UNKNOWN

End Original ARMS Header

Nathan and Steve should elaborate, but my preliminary take:

1. First, the name Jane Doe is used precisely to protect privacy of the individuals. Second, all Justices in these cases discussed and quoted from the record extensively. See the majority opinion in Doe 2, the Gonzales opinion in Doe 3, the Enoch opinion in Doe 3, the majority opinion in Doe 4, etc. This is simply a bogus charge to direct at Owen.

2. Justice Owen believed that opinions could be written in a few days as courts often do in emergency cases of this nature. She specifically stated that the judgment with opinions should have been issued on March 13 instead of a summary order without opinions on March 10. She did not suggest delaying decision "for months."

3. In this case, the court unanimously agreed that the record did not meet the standard for a bypass. Six Justices concluded that a remand was appropriate. Justice Owen and two others argued, however, that Doe simply failed to make the required showing and that a remand was inappropriate. Justice Owen argued, moreover, that the potentially negative reaction of the parents of a pregnant minor when the minor becomes an adult does not meet the statutory "best interest" standard for a bypass.

Manuel_Miranda@judiciary.senate.gov (Manuel Miranda)

07/28/2002 06:33:10 PM

Record Type: Record

To: "Willett; Don" <Don.Willett@usdoj.gov>, "Sales; Nathan" <Nathan.Sales@usdoj.gov>, "Koebele; Steve" <Steve.Koebele@usdoj.gov>,

REV_00348848

Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: Help requested

I would ask that no action be taken by any of your offices on this for now except as I request. It is important that it be confidential to the recipients of this email and up your chains of authority only.

As I mentioned on Friday, Senator Leahy's staff has distributed a 'confidential' letter to Dem Counsel on Thursday from Collyn Peddie, who served as the attorney for 'Jane Doe' in some or several of the Texas bypass cases. According to either the letter or the Leahy staff Ms. Peddie sent this letter in the strictest confidence because she is up for partner, and believes she will be fired if it is publicized. Several members of her firm are lead supporters of the Owen nomination. Leahy's staff is only sharing with Democratic counsels. However, we might expect this letter to be used like the Brenda Polkey in Pickering at a moment when we are unable to respond.

Ms. Peddie is being portrayed as a small oppressed lawyer fearing repercussions if her name gets out and the brave attorney who represented the 'girl in trouble' in Jane Doe 1. In fact, she is the attorney for Planned Parenthood who argued JD cases and the Buffer Zone case and on the board of Planned Parenthood of Texas, among other things. I will copy you on our research on her.

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3. Owen's Dissent in Jane Doe 4

Peddie criticized Owen's dissent in Jane Doe 4 which argued that parental rights should trump the risk that 'parents would throw a minor girl out on the street upon finding out she was pregnant.'

REV_00348849

From: Manuel Miranda) (Manuel_Miranda@judiciary.senate.gov (Manuel Miranda) [UNKNOWN]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: dinh; viet <viet.dinh@usdoj.gov>; Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>; willett; don <don.willett@usdoj.gov>
Sent: 7/30/2002 8:30:08 AM
Subject: : Re[2]: NEWS
Attachments: P_OGI49003_WHO.TXT_1.pcx

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Manuel_Miranda@judiciary.senate.gov (Manuel Miranda) (Manuel_Miranda@judiciary.senate.gov (Manuel Miranda) [UNKNOWN])

CREATION DATE/TIME:30-JUL-2002 12:30:08.00

SUBJECT:: Re[2]: NEWS

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

CC:"dinh; viet" <viet.dinh@usdoj.gov> ("dinh; viet" <viet.dinh@usdoj.gov> [UNKNOWN])

READ:UNKNOWN

CC:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

CC:"willett; don" <don.willett@usdoj.gov> ("willett; don" <don.willett@usdoj.gov> [UNKNOWN])

READ:UNKNOWN

End Original ARMS Header

They appear not to be worried about Kohl.

Reply Separator

Subject: Re: NEWS

Author: Brett_M._Kavanaugh@who.eop.gov

Date: 7/30/2002 11:45 AM

What about Kohl?

(Embedded

image moved Manuel_Miranda@judiciary.senate.gov (Manuel to file: Miranda)

pic23048.pcx) 07/30/2002 11:43:04 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, "Willett; Don" <Don.Willett@usdoj.gov>, "Dinh; Viet" <Viet.Dinh@usdoj.gov>, Heather Wingate/WHO/EOP@EOP

cc:

Subject: NEWS

I have it on 100% info that Leahy is trying to convene the Dems this afternoon

REV_00349085

after Policy Lunch to check on where they stand on Owen. He is seeking to place Owen on for this Thursday with the view that we would hold over. Feinstein and Feingold are still not saying how they will vote and this bothers them. The bad news is that they are not concerned about Biden. That bothers me.

Suggested action. WH should intervene with Feingold and Feinstein as soon as possible. OLP might write Leahy and remind him that he promised Owen the ample opportunity to respond to questions (Kennedy's came out today. In either case, refer only to rumor, not to me.

Received: from mailsims1.senate.gov ([156.33.203.10]) by mailexch.senate.gov with SMTP (IMA Internet Exchange 3.13) id 004B95E5; Tue, 30 Jul 2002 11:48:34 -0400
Received: from eop1.eop.gov (eop151.eop.gov) by mailsims1.senate.gov (Sun Internet Mail Server sims.3.5.2000.03.23.18.03.p10) with SMTP id <0H0200658JVFBI@mailsims1.senate.gov> for Manuel_Miranda@judiciary.senate.gov; Tue, 30 Jul 2002 11:47:44 -0400 (EDT)
Received: from CONVERSION-DAEMON by EOP.GOV (PMDF V5.2-33 #41062) id <01KKPDRUE11S9PP30Z@EOP.GOV> for Manuel_Miranda@judiciary.senate.gov; Tue, 30 Jul 2002 11:46:39 -0400 (EDT)
Received: from mhub2.eop.gov ([198.137.241.11]) by EOP.GOV (PMDF V5.2-33 #41062) with ESMTMP id <01KKPDRFVRD290FKRE@EOP.GOV>; Tue, 30 Jul 2002 11:46:09 -0400 (EDT)
Received: from sgeop03.eop.gov ([165.119.1.37]) by mhub.eop.gov (PMDF V6.1-1 #41014) with SMTP id <01KKPDR7AALI9D9D1R@mhub.eop.gov>; Tue, 30 Jul 2002 11:45:56 -0400 (EDT)
Received: by sgeop03.eop.gov (Lotus SMTP MTA v4.6.7 (934.1 12-30-1999)) id 85256C06.0056956D ; Tue, 30 Jul 2002 11:45:43 -0400
Date: Tue, 30 Jul 2002 11:45:37 -0400
From: Brett_M._Kavanaugh@who.eop.gov
Subject: Re: NEWS
To: Manuel_Miranda@judiciary.senate.gov (Manuel Miranda)
Cc: "willett; don" <don.willett@usdoj.gov>, "dinh; viet" <viet.dinh@usdoj.gov>, Heather_Wingate@who.eop.gov
Message-id: <85256C06.00569447.00@sgeop03.eop.gov>
MIME-version: 1.0
Content-type: MULTIPART/MIXED;
BOUNDARY="Boundary_(ID_otFiB0RhPTtS2y0ROlJJug)"
X-Lotus-FromDomain: EOP
- pic23048.pcx
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_OGI49003_WHO.TXT_1>

REV_00349086

From: Manuel Miranda) (Manuel_Miranda@judiciary.senate.gov (Manuel Miranda) [UNKNOWN]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Willett; Don
<Don.Willett@usdoj.gov>
Sent: 8/13/2002 2:45:08 PM
Subject: : Sept 5th

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Manuel_Miranda@judiciary.senate.gov (Manuel Miranda) (Manuel_Miranda@judiciary.senate.gov (Manuel Miranda) [UNKNOWN])

CREATION DATE/TIME:13-AUG-2002 18:45:08.00

SUBJECT:: Sept 5th

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:"Willett; Don" <Don.Willett@usdoj.gov> ("Willett; Don" <Don.Willett@usdoj.gov> [UNKNOWN])

READ:UNKNOWN

End Original ARMS Header

Two things about Sept 5th. My info is that it is a go unless, according to the Leahy staff, there is a problem with the Dem vote count. This means that, as of today, they are not certain about their count.

REV_00350167

From: Miranda, Manuel (Frist) <Manuel_Miranda@frist.senate.gov>
BCC: Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO])
Sent: 3/18/2003 10:53:29 AM
Subject: : For use and not distribution.
Attachments: P_2CBSE003_WHO.TXT_1.html

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> ("Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> [UNKNOWN])

CREATION DATE/TIME:18-MAR-2003 15:53:29.00

SUBJECT:: For use and not distribution.

BCC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

Please see information below. Also, Kennedy speech about the precedent for legal memos from the Kleindeinst nomination. Also, precedent based on a Robert Jackson quote from 1941 and Kuhl's memos regarding Bob Jones University which were disclosed by the Justice Department to the Finance Committee in the 1980s.

In response to this morning's letter, Dem staffers say that they have confidential information that you all have reviewed the files.

Points they make:

- Rather than face the facts of past precedent and begin a process of negotiating the terms of the release to the Senate of the memos written by Miguel Estrada, Republicans insist on asserting, without any factual basis, that the appeal memos written by attorneys to the Solicitor General were stolen or leaked. This claim defies the facts and is very, very misleading. They alternatively claim that only a few memos have been disclosed but only in narrow circumstances related to claims of criminal misconduct or malfeasance. Again, that is false. Now the Justice Department claims that not even it has reviewed Estrada's memos, implying that this is how sensitive such documents are. Past Justice Department acted much more responsibly and responsively. Here are just a few examples.

- Here are just five examples that clearly refute the Republicans' incorrect claims. Correspondence from the Senate Judiciary Committee clearly shows that memos by attorneys have been requested and provided by prior Administrations that were far more cooperative with the Senate in nominations.

- Past examples include the nominations of Robert Bork to the Supreme Court, William Rehnquist to the Supreme Court, Bradford Reynolds to a term-appointment as Associate Attorney General, Stephen Trott to the Ninth Circuit, and Ben Civiletti to be Attorney General.

First, it is clear that the Reagan Justice Department provided numerous memos to the Senate in the Bork nomination regarding school desegregation cases.

In a letter dated August 10, 1987, then-Chairman Biden wrote to the Justice Department and requested numerous memos. Included in this request was what was identified as request number 9. That request asked for the Justice Department to provide to the Senate, and I will quote that paragraph in its entirety:

"All documents constituting, describing, referring or relating in whole

REV_00379743

or in part to Robert H. Bork and any study or consideration during the period 1969-1977 by the Executive Branch of the United States Government or any agency or component thereof of school desegregation remedies. (In addition to responsive documents from the entities described at the beginning of this request, please provide any responsive documents in the possession, custody or control of the U.S. Department of Education or its predecessor agency, or any agency, component of document depository thereof.)"

- I think we can all agree that this was a very exhaustive request for all documents on school desegregation cases and deliberations for an 8-year period from 1969 to 1977. It is also apparent that there was no allegation of wrongdoing or malfeasance as the predicate of this request.

? The request for these memos was merely an effort to understand the Department's position on these important issues and Bork's involvement in suggesting or taking litigation positions on this issue in response to recommendations by Department attorneys as well as information from the client agency in school desegregation cases, what was then known as the Health, Education, and Welfare Department (known as HEW).

? What was the Reagan Administration's response?

? Did they say -like this Administration does-- we have never given you such documents in the past? No, because that was not true.

? Did they claim that past document disclosures were based on a claim of wrongdoing? No, because that was not true.

? Did they assert that this would chill Justice Department and HEW attorneys from candidly discussing cases? No.

? Did they assert that the request was too broad or some sort of fishing expedition that it wanted to ignore? No.

? Did they claim that they could not even look at those sensitive legal memos? No!

? Well, what did they say then? They said in a letter of August 24, 1987, "the search for requested documents has required massive expenditures of resources and time by the Executive Branch. We have nonetheless, with a few exceptions discussed below [related to the objections of President Nixon's lawyer to some Watergate documents], completed a thorough review of all sources referenced in your request that were in any way reasonably likely to produce potentially responsive documents."

? That is already far more cooperation than this Senate has received from this Administration.

? Here is what the Justice Department said specifically about the request for information about school desegregation cases, and I will quote it in its entirety so that there can be no mistake:

"Our search for documents responsive to request number 9 has been time-consuming and very difficult, and is not at this time entirely complete. In order to conduct as broad a search as possible, we requested the files of every case handled by the Civil Rights Division or Civil Division, between 1969 and 1977, which concerned desegregation of public education. Although most of these case files have been retrieved, several remain unaccounted for and perhaps have been lost. We expect to have accounted for the remaining files (which may or may not contain responsive documents) in the next few days. We have also assembled responsive documents obtained from other Department files.

The Department of Education is nearing completion of its search of its files, and those of its predecessor agency, HEW."

? So, the Reagan Justice Department conducted an exhaustive review of its litigation files and assembled the documents responsive to the Senate's request. This stands in marked contrast to the stonewalling of the current Justice Department.

? What happened next to the boxes of school desegregation memos assembled by the Reagan Justice Department?

? On September 2, 1987, nine days after reporting to the Senate on its efforts to locate and assemble documents responsive to the Senate's request, the Department of Justice sent Chairman Biden a letter, stating:

"Attached is one set of copies of documents assembled by the Department in response to your August 10, 1987 request for documents relating to the nomination of Robert Bork. . . ."

? So, it is clear that the Justice Department transmitted all of the documents not objected to (specifically, not a handful of Watergate documents objected to be Nixon's lawyer).

? What were those school desegregation documents? I have in my hand a sample of the documents provided by the Justice Department to the Senate during the Bork nomination regarding school desegregation.

? For example, there is a memo from Assistant Solicitor General Frank Easterbrook (then acting in the same capacity as Mr. Estrada, now a judge on the Seventh Circuit). In this memo, Easterbrook analyzes school desegregation efforts in Philadelphia. In this memo to the Solicitor General, Robert Bork, Easterbrook states: "The Civil Rights Division and I recommend AMICUS PARTICIPATION in support of petitioner."

? Easterbrook suggested that the Third Circuit's decision in *Vorcheimer v. School District of Philadelphia*, that the local schools were "separate but equal" in this case involving a female student seeking entry could adversely affect the enforcement of Title IX and amendments prohibiting sex discrimination in education. In the memo, one can see Easterbrook's analysis of whether discrimination based on sex should be reviewed under a strict scrutiny standard or the lowest level of review, which is known as rational basis review.

? Attached to that memo is the memoranda of the Acting Assistant Attorney General for the Civil Rights Division, Stanley Pottinger.

? Another example of a school desegregation memo to the Solicitor General disclosed in the Bork nomination involves the desegregation of Nebraska schools in the case of *United States v. School District of Omaha*. In that case, the memo to Solicitor General Bork argued that the Civil Rights Division should be permitted to appeal an adverse decision by the district court in Nebraska that found erroneously that the school district's segregation was not based on intent to segregate. That memo analyzes why the decision below was wrong and why the law should be corrected to reflect a better understanding of the standards for finding unlawful segregation based on race.

? Specifically, the author of that memo argues that "We believe that an appeal of the district court's decision in this case is essential in order to develop the law on the issue of proof necessary to establish a showing of intent to segregate in a northern school system."

? We believe Mr. Estrada's memos contain similar suggestions about how the law should be developed, which reflect his unscripted views of the state of the law and its direction.

? Yet another memo disclosed in the Bork nomination involves the case of Lee and United States v. Demopolis City School System, relating to desegregation in Alabama. That memo to Solicitor General Robert Bork requests authority to appeal a lower court decision refusing to desegregate elementary schools, one white and one African American, as well as dismantling of the segregation state-wide.

? These are just a few of the memos provided to the Senate by the Justice Department during the Bork nomination relating to school desegregation (with all of those busing cases between 1969 and 1977 enforcing Brown v. Board). They were clearly provided as part of the Justice Department's submission of memos requested by the Senate in document request number 9, which I read in full earlier.

? One would think this would be enough evidence to refute the groundless claims of Republicans that memos from lower level attorneys written to the Solicitor General have never been provided in past nominations or that the above memos were stolen(!), but there is even more evidence.

? A second example also comes from the Bork nomination.

? In a letter dated August 10, 1987, then-Chairman Biden wrote to the Justice Department and requested numerous memos.

? Included in this request was what was identified as request number 10. That request asked for the Justice Department to provide to the Senate, numerous "documents constituting, describing, referring in whole or in part to the participation of Solicitor General Robert H. Bork in the formulation of the position of the United States"

? In the Solicitor General's office, line attorneys (Assistant Solicitors General, in the same role as Estrada) write the recommendations to the Solicitor General analyzing what the law is or should be and whether the case would help move the law in one direction or another.

? In those appeals, a lower level attorney would write a memo making the recommendation, that memo would be reviewed by a direct supervisor and then submitted to the Solicitor General who would then make an oral decision whether to accept the recommendation to appeal (or intervene as amicus) or not. Upon reviewing those attorney memos, a Senate staffer would then examine whether the Solicitor General accepted the recommendation and, if so, whether they took the same position in the publicly filed briefs on appeal as amicus.

? If the recommendation were accepted and appeal or amicus were authorized, then the lower attorney would be asked to write briefs (or even lower, like the Civil Division) consistent with the decision of the SG. Those briefs would be edited by direct supervisors (not the SG) and then would be reviewed by a head of the office (for example, the SG if the brief were going to the Supreme Court, or a Deputy in the Civil Division if the case were going to a circuit court, such as the 9th Circuit).

? Many of the memos relating to appeal requested and provided in Bork's nomination were written to Bork, not by Bork.

? What was the Reagan Administration's response to the request of memos by line attorneys to Solicitor General Bork?

? Did they say -like this Administration does-- we have never given you such documents in the past? No, because that was not true.

? Did they claim that past document disclosures were based on a claim of wrongdoing? No, because that was not true.

? Did they assert that the request was some sort of fishing expedition that it wanted to ignore? No.

? Did they assert that they could not even look at the attorney memos to the Solicitor General? Of course not.

? Well, what did they say then?

? On August 20, 1987, Chairman Biden's staff noted that the Justice Department had created three categories of documents. First, those which they would not release due to executive privilege claims [by Nixon's counsel related to some Watergate documents]. Second, those they would release with limited access by staff, and, third, those to which the Senate would have unlimited access. The current administration has made no such overture to this Senate.

? The Reagan Justice Department also said in a letter of August 24, 1987, "the search for requested documents has required massive expenditures of resources and time by the Executive Branch. We have nonetheless, with a few exceptions discussed below [related to the objections of President Nixon's lawyer to some Watergate documents], completed a thorough review of all sources referenced in your request that were in any way reasonably likely to produce potentially responsive documents."

? Again, that is already far more cooperation than this Senate has received from this Administration.

? Here is what the Justice Department said specifically about request number 10: "We have assembled case files for the cases referred to in question 10, with the exception of Hill v. Stone, for which there is no file." The also said "A few general searches of certain front office files are still underway, and we expect those searches to be concluded in the next few days. We will promptly notify you should any further responsive documents come into our possession."

? Again, this is far more cooperation than this Justice Department has provided.

? The Justice Department did, however, express some concerns about internal deliberations, but it still provided the information requested.

? Here is the complete statement of the Reagan Justice Department on the issue of providing memos involving internal deliberations:

"As you know, the vast majority of the documents you have requested reflect of disclose purely internal deliberations within the Executive Branch, the work product of attorneys in connection with government litigation or confidential legal advice received from or provided to client agencies within the Executive Branch. The disclosure of such sensitive and confidential documents seriously impairs the deliberative process within the Executive Branch, our ability to represent the government in litigation and our relationship with other entities."

? According to that letter, "For these reasons, the Justice Department and other executive agencies have consistently taken the position, in Freedom of Information Act [which, as an aside-from Lisa, expressly does not apply to Congress nor limit Congress' authority to seek information from the Executive Branch in any way whatsoever. 5 U.S.C. 552(d) (stating expressly that FOIA "is not authority to withhold information from Congress")] and other request, that it is not at liberty to disclose materials that would compromise the confidentiality of any such deliberative or otherwise privileged communications."

? Immediately after stating this, the Reagan Justice Department stated:

"On the other hand, we also wish to cooperate to the fullest

extent possible with the Committee and to expedite Judge Bork's confirmation process."

? The Justice Department then indicated that it was providing the documents requested except those specifically objected to (relating to documents regarding Watergate objected to by Nixon's lawyer).

? Then on September 2, 1987, the Justice Department sent the Senate a letter stating here "is one set of copies of documents assembled in response to your August 10, 1987 request for documents relating to the nomination of Robert Bork."

? Then, the next year, the Justice Department asked for the Senate to return the documents requested. Specifically, the Justice Department in a letter by Thomas Boyd on May 10, 1988, reiterated that the documents it provided "reflect or disclose purely internal deliberations within the Executive Branch, the work product of attorneys in connection with government litigation or confidential legal advice received from or provided to client agencies within the Executive Branch." The Justice Department indicated that it provided those memos "to respond fully to the Committee's request and to expedite the confirmation process." The Department then asked for the return of all documents that except those "that are clearly part of the public record (e.g., briefs and judicial opinions) or that were specifically made part of the record of the hearing."

? Let's contrast that with the position of this Justice Department. In a letter dated June 5, 2002, the Bush Justice Department stated that "the Department has a longstanding policy-which has endured across Administrations of both parties-of declining to release publicly or make available to Congress the kinds of documents you have requested."

? In fact, the opposite is true. The long-standing practice of the Justice Department has been to follow a "policy of accommodation." Senator Schumer put a statement of that policy from the Clinton Administration into the hearing record. That policy provides that it is well established that the Department and the Senate typically work together to find an accommodation to avoid an impasse.

? In fact, the D.C. Circuit has noted that: "The framers . . . expect[ed] that where conflicts in scope of authority arose between the coordinate branches, a spirit of dynamic compromise would promote resolution of the dispute The Constitution contemplates such accommodation." United States v. AT&T, 576 U.S. 121, 127, 130 (D.C. Cir. 1977).

? In fact, in 1982, President Reagan issued a memo to Department heads explaining the policy of accommodation: "The policy of this Administration is to comply with Congressional requests for information to the fullest extent consistent with constitutional and statutory obligations of the Executive Branch Historically, good faith negotiations between Congress and the Executive Branch have minimized the need for invoking executive privilege, and this tradition of accommodation should continue as the primary means of resolving the conflicts between the Branches."

? This is what the current administration is denying and ignoring. This was the policy and practice dating from the Carter Administration (which disclosed the legal memos to and from Benjamin Civiletti to the Senate in the course of his nomination to be Attorney General) through the Reagan Administration (which disclosed the legal memos to the Solicitor General and others in the nomination of Brad Reynolds to be Associate AG, the appeal memos to Bork and other memos by Bork in his nomination).

? The Reagan Administration also provided numerous legal memos to and by William Rehnquist about the broad issues "civil rights and civil liberties," and the first Bush Administration also disclosed internal legal memos related to the special prosecutor decisions in

connection with Stephen Trott's nomination to the Ninth Circuit. The Clinton Administration disclosed a broad range on memos in the oversight process. [In addition, the Justice Department encouraged its nominees to be responsive to every request no matter how intrusive, such as the request for how Margaret Morrow voted in the ballot box on California Referenda and how Marsha Berzon voted on ACLU board meeting issues, among others.]

? A third example, also stems from the Bork nomination.

? In a letter dated August 10, 1987, then-Chairman Biden wrote to the Justice Department and requested numerous memos, including all memos from 1973 to 1977 relating to Bork's analysis of the President's pocket veto power, in addition to the memos relating to appealing or petitioning for certiorari in pocket veto cases.

? On August 24, 1987, the Justice Department responded that "[a]ll documents responsive to request number 5, concerning pocket veto, have been assembled."

? On September 1, 1987, Senator Kennedy's counsel wrote that the materials produced had not included one of the memos to the Solicitor General in a pocket veto case. The Justice Department responded by conducting further searches and then producing that memo to the Committee.

? A fourth example comes from the Rehnquist nomination. On July 23, 1986 (before the Department shared the memos requested in the Bork nomination), then-Ranking Member Biden asked Chairman Strom Thurmond to provide copies of "all memoranda, correspondence, and other materials prepared by Mr. Rehnquist or by his staff, for his approval, or on which his name or initials appear" from 1969 to 1971 related to "civil rights," "civil liberties," "national security," "domestic surveillance," "wiretapping," "anti-war demonstrators," "executive privilege," and other issues.

? What was the Reagan Administration's response?

? Did they claim that sharing those documents with the Senate would chill deliberations by attorneys about legal policy in these areas? No.

? Did they claim the request was a fishing expedition? No.

? Did they claim that disclosure of documents was only predicated on wrongdoing? No.

? Did these Justice Department officials claim that they did not and could not look at those sensitive legal memos of the Department? Of course not.

? Instead, they accommodated the Senate's request. In a letter dated August 6, 1986, Senator Biden said:

"I wish to express my appreciation for the manner in which we were able to resolve the issue of access to documents which we requested in connection with Justice Rehnquist's confirmation proceedings. I am delighted that we were able to work out a mutually acceptable accommodation of our respective responsibilities."

? Biden then noted that in reviewing the memos provided, "several of the items refer to other materials, most of which appear to be incoming communications" to Rehnquist. Biden then attaches a list of the 14 additional memos.

? That attachment makes clear that voluminous materials were already provided, and it seeks memos from a number of people like Alexander Haig, John Dean, and William Rucklshaus.

? The very next day, the Justice Department responded to Biden's request noting that it had gone "far beyond its routine process to ensure the comprehensiveness of its response." Based on that review, the Justice Department found three other memos related to May Day arrests prepared by Justice Department attorneys as well as another memo. As noted in that letter, "the staff of the Office of Legal Counsel went to extraordinary lengths to ensure that all responsive materials were located, putting literally hundreds of hours into this request."

? The current administration has made no such efforts.

? Yet a fifth example stems from the Reynolds nomination to a short-term appointment to be Associate Attorney General. In that nomination, the Senate requested a wide range of memos, including appeal memos to the Solicitor General (Rex Lee) relating to civil rights. In fact, some of these memos appear in the hearing record.

? For example, Senators placed a memo to the Solicitor General relating to seeking to intervene as amicus in an employment discrimination case called Hishon v. King & Spaulding (involving a gender discrimination claim) as well as memos relating to redistricting cases. None of the Senators present or Mr. Reynolds claimed that such memos were protected or were stolen or leaked as the current administration has claimed about our document request memos.

? In addition, some memos written by Bork himself to President Nixon about broader legal issues were provided, for example, legal memos assessing the pocket veto power, the scope of executive privilege, and how to structure a special prosecutor or independent prosecutor process.

? As noted earlier, in the case of the pocket veto, the Senate received and reviewed both Bork's memo describing his views on the pocket veto power, as well as memos from Assistant SGs or lower level attorneys recommending for or against appeal in litigation challenging the President Nixon's use of pocket veto.

? As you can see, none of these memos related to allegations of malfeasance or criminal misconduct by Bork or others. They simply reflect a desire of Senators to know how Bork approached those (controversial) issues and whether his views influenced litigation moving the law in one direction or another. (SG memos were also provided in Reynolds nomination (to a short-term appointment as Associate AG-not even a lifetime appointment) about the impact of his views on appealing civil rights cases (discrimination cases and school prayers cases for example). A sample of such memos written to the SG was actually published in the hearing transcript. In addition, legal memos written to or from Rehnquist in the Office of Legal Counsel were also provided in his nomination. These are just a few examples.)

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_2CBSE003_WHO.TXT_1>

From: Miranda, Manuel \ (Frist) <Manuel_Miranda@frist.senate.gov>
To: <Kavanaugh, Brett M.>
CC: <Grubbs, Wendy J.>
Sent: 4/9/2003 1:18:32 PM
Subject: Owen

Brett, sorry for the slow reply to your message. Below is what I know prior to the yesterday's Caucus. My understanding is that they are now trying to keep powder dry while they strong arm those listed below, this suggests that we should file early for cloture rather than letting pressure build on them over Recess ...what do you think? On the other hand, we have orchestrated nothing around Owen. Attention is pretty flat.

The Democrat caucus has not yet decided whether they intend to filibuster Owen's confirmation but will likely do so on Tuesday. Today, Senator Kennedy is seeking a meeting with Democrat leadership to convene a meeting of Democrat leadership with Judiciary Democrats to discuss a filibuster. Owen will be discussed by the Democrat Caucus today. Senator Kennedy is expected to ask Democrats to keep their powder dry until leadership makes a decision.

Yesterday, Senator Feinstein convened Democrat women on Owen. Last week, Nat'l Pro-Choice America notified Democrat Senators that it will score votes on Owen.

According to Democrat sources, several Democrat Senators have expressed concern about any filibuster of a judicial nominee that is based on substance, as opposed to process. The Senators that may be wavering or opposed to an extended debate are: Lincoln, Pryor, Carper, Graham, Nelson (Fl), Nelson (NE), Bayh, Landrieu, Breaux, Dorgan, Conrad, Baucus, Hollings, Bryd and Miller.

Committee Confidential

From: Miranda, Manuel \(\Frist\) <Manuel_Miranda@frist.senate.gov>
To: Brian.A.Benczkowski@usdoj.gov
<Brian.A.Benczkowski@usdoj.gov>; Kristi.L.Remington@usdoj.gov
<Kristi.L.Remington@usdoj.gov>; Viet.Dinh@usdoj.gov
<Viet.Dinh@usdoj.gov>; Monica.Goodling@usdoj.gov
<Monica.Goodling@usdoj.gov>; Monica.Goodling@usdoj.gov <Snee, Ashley>; Ho, James
\(Judiciary\) <James_Ho@Judiciary.senate.gov>; Jacquot, Joe \(\Hutchison\)
<Joe_Jacquot@hutchison.senate.gov>; Ledeen, Barbara \(\Republican-Conf\)
<Barbara_Ledeen@src.senate.gov>; Monica.Goodling@usdoj.gov <Kavanaugh, Brett
M.>; wgrubbs@who.eop.gov <wgrubbs@who.eop.gov>; wgrubbs@who.eop.gov <Goeglein,
Tim>; wgrubbs@who.eop.gov <Smith, Matthew E.>; Higgins, Stephen \(\Judiciary\)
<Stephen_Higgins@Judiciary.senate.gov>; Abegg, John \(\McConnell\)
<John_Abegg@mccconnell.senate.gov>; SRushton [REDACTED]
<SRushton [REDACTED]>; joschal [REDACTED]
<joschal [REDACTED]>; Wichterman, Bill \(\Frist\) <Bill_Wichterman@frist.senate.gov>
Sent: 4/10/2003 9:57:56 AM
Subject: On Owen/ FYI only

Regarding Owen, this is the best info I have. To advance tomorrow's meeting, let me know if there is anyone else who should be on the call and anything we can do prior to it. Please do not distribute this.

Last week, Naral Pro-Choice America notified Democrat Senators that it will score votes on Owen.

On Monday, Senator Feinstein convened Democrat women on Owen. Although she has told GOP Senators that she is troubled and against a filibuster. My info is that she attempted to see if they could be rallied. She discovered she could but for Lincoln.

On Tuesday, the Democrat leadership, together with Cantwell and Kennedy, tried to rally their caucus but left without a decision. Kennedy is asking Democrats to keep their powder dry until leadership makes a decision.

Their hope is that pressure can be brought on the hesitant Democrats over break. We have seen that begin on websites.

Democrat Senators have expressed concern about a filibuster against Owen of a judicial nominee based on substance, rather than process. Wavering or opposed to extended debate on Owen were: Lincoln, Carper, Graham, Nelson (FL), Nelson (NE), Bayh, Landrieu, Breaux, Pryor, Dorgan, Conrad, Baucus, Hollings, Bryd and, of course, Miller. This may change as they succeed in persuasion.

From: Willett, Don <Don.Willett@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: 'manuel_miranda@judiciary.senate.gov' <manuel_miranda@judiciary.senate.gov>
Sent: 7/29/2002 4:28:03 PM
Subject: : Re: Biden and Feinstein, etc.

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Willett, Don" <Don.Willett@usdoj.gov> ("Willett, Don" <Don.Willett@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:29-JUL-2002 20:28:03.00
SUBJECT:: Re: Biden and Feinstein, etc.
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:"manuel_miranda@judiciary.senate.gov'" <manuel_miranda@judiciary.senate.gov> ('manuel_miranda@judiciary.senate.gov'" <manuel_miranda@judiciary.senate.gov> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Let's plan on meeting tomorrow @ 12:15 outside Manhattan Deli @ the Navy Memorial unless Brett says tomorrow he can't make it.
--- Sent from my BlackBerry.

-----Original Message-----

From: Brett M. Kavanaugh@who.eop.gov <Brett_M._Kavanaugh@who.eop.gov>
To: Willett, Don <Don.Willett@USDOJ.gov>
CC: 'manuel_miranda@judiciary.senate.gov' <manuel_miranda@judiciary.senate.gov>
Sent: Mon Jul 29 19:53:18 2002
Subject: Re: Biden and Feinstein, etc.

yes, but I might have a conflict develop tomorrow. thanks.

(Embedded
image moved "Willett, Don" <Don.Willett@usdoj.gov>
to file: 07/29/2002 07:06:08 PM
pic01441.pcx)

Record Type: Record

To: "'Manuel_Miranda@judiciary.senate.gov'" <Manuel_Miranda@judiciary.senate.gov>, Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: Re: Biden and Feinstein, etc.

As of this second, that works. Is Brett on board?
--- Sent from my BlackBerry.

-----Original Message-----

From: Manuel Miranda <Manuel_Miranda@judiciary.senate.gov>
To: Willett, Don <Don.Willett@USDOJ.gov>;
'Brett (u)M. (u)Kavanaugh (a)who.eop.gov' <Brett_M._Kavanaugh@who.eop.gov>
Sent: Mon Jul 29 08:47:00 2002

Subject: Re[2]: Biden and Feinstein, etc.

how about lunch tomorrow at 12:15 (Tuesday), we can buy lunch at Manhattan Deli at Navy Memorial and eat on my terrace and discuss plan of action? that would be the earliest and fastest way.

_____Reply Separator_____

Subject: Re: Biden and Feinstein, etc.
Author: "Willett; Don" <Don.Willett@usdoj.gov>
Date: 7/28/2002 8:53 PM

I'm out of the office until Tues., but can meet then, though not in the morning.
--- Sent from my BlackBerry.

-----Original Message-----

From: Manuel Miranda <Manuel_Miranda@judiciary.senate.gov>
To: Willett, Don <Don.Willett@USDOJ.gov>; Brett M. Kavanaugh@who.eop.gov <Brett.M.Kavanaugh@who.eop.gov>
Sent: Sun Jul 28 20:14:01 2002
Subject: Biden and Feinstein, etc.

I would like to get together with just the two of you Monday or Tuesday, if not on the Hill at your convenience, I can come toward DOJ (I live across the street), maybe Deli lunch at my place or drinks anywhere. By then I can provide useful info to map out Biden and Feinstein, and others. As promised on Friday, below is the Biden-speak . We have a general CRS report on standards used, have not read it yet myself but will get to you tomorrow. Tell me your fax numbers again.
Received: from mailsims1.senate.gov ([156.33.203.10]) by mailexch.senate.gov with SMTP

(IMA Internet Exchange 3.13) id 004A76E4; Sun, 28 Jul 2002 20:55:12 -0400
Received: from wdcsun022.usdoj.gov (wdcsun4.usdoj.gov) by mailsims1.senate.gov (Sun Internet Mail Server sims.3.5.2000.03.23.18.03.p10) with SMTP id <0GZZ00F2FJWDM8@mailsims1.senate.gov> for Manuel_Miranda@judiciary.senate.gov; Sun, 28 Jul 2002 20:55:30 -0400 (EDT)
Received: from wt6.usdoj.gov (localhost [127.0.0.1]) by wdcsun022.usdoj.gov (Netscape Messaging Server 4.15) with ESMTMP id GZZJUS00.00A; Sun, 28 Jul 2002 20:54:28 -0400
Received: (from x400@localhost) by wt6.usdoj.gov (8.9.3 (PHNE_24419)/8.9.3) id UAA04584; Sun, 28 Jul 2002 20:54:28 -0400 (EDT)
Received: by TELEMAIL; Sun, 28 Jul 2002 20:53:51 -0400
Date: Sun, 28 Jul 2002 20:53:51 -0400
From: "Willett, Don" <Don.Willett@usdoj.gov>
Subject: Re: Biden and Feinstein, etc.
To: "'Manuel_Miranda@judiciary.senate.gov'" <Manuel_Miranda@judiciary.senate.gov>; "'Brett M. Kavanaugh@who.eop.gov'" <Brett.M.Kavanaugh@who.eop.gov>
Message-id: <"JMD0081-020729005351Z-506007*/PRMD=USDOJ-JCON/ADMD=/C=US/"@MHS>

Autoforwarded: FALSE
Content-identifier: Re: Biden and Fe
MIME-version: 1.0
X-Mailer: NetJunction (NetJunction 5.1.1-p2)/MIME
Content-type: TEXT/PLAIN; CHARSET=US-ASCII
Importance: Normal
Original-encoded-information-types: IA5-Text
Priority: Normal
Precedence: first-class
UA-content-id: Re: Biden and Fe

X400-MTS-identifier: [/P=USDOJ-JCON/A= /C=US/;JMD0081-020729005351Z-506007]
X-Priority: 3 (Normal)

Committee Confidential

From: Manuel Miranda) (Manuel_Miranda@judiciary.senate.gov (Manuel Miranda) [UNKNOWN]
To: Willett; Don <Don.Willett@usdoj.gov>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/30/2002 8:30:10 AM
Subject: : Re[2]: Biden and Feinstein, etc.

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Manuel_Miranda@judiciary.senate.gov (Manuel Miranda) (Manuel_Miranda@judiciary.senate.gov (Manuel Miranda) [UNKNOWN])
CREATION DATE/TIME:30-JUL-2002 12:30:10.00
SUBJECT:: Re[2]: Biden and Feinstein, etc.
TO:"Willett; Don" <Don.Willett@usdoj.gov> ("Willett; Don" <Don.Willett@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Let me meet with Don and give him some info, then the three of us can speak later. Don, can we do it at 12:30

Reply Separator

Subject: Re: Biden and Feinstein, etc.
Author: Brett M. Kavanaugh@who.eop.gov
Date: 7/30/2002 11:05 AM

I cannot make it at 12:15. Can the three of us get on the phone instead?
I definitely want to talk to both of you. Thanks.

Received: from mailsims1.senate.gov ([156.33.203.10]) by mailexch.senate.gov with SMTP (IMA Internet Exchange 3.13) id 004B8D9A; Tue, 30 Jul 2002 11:08:11 -0400
Received: from eop1.eop.gov (eop151.eop.gov) by mailsims1.senate.gov (Sun Internet Mail Server sims.3.5.2000.03.23.18.03.p10) with SMTP id <0H02003KEI0IET@mailsim1.senate.gov> for manuel_miranda@judiciary.senate.gov; Tue, 30 Jul 2002 11:07:35 -0400 (EDT)
Received: from CONVERSION-DAEMON by EOP.GOV (PMDF V5.2-33 #41062) id <01KKPCE2J4Y89OFJXI@EOP.GOV> for manuel_miranda@judiciary.senate.gov; Tue, 30 Jul 2002 11:06:29 -0400 (EDT)
Received: from mhuh2.eop.gov ([198.137.241.11]) by EOP.GOV (PMDF V5.2-33 #41062) with ESMTTP id <01KKPCDXK9LG9OFLIA@EOP.GOV>; Tue, 30 Jul 2002 11:06:10 -0400 (EDT)
Received: from sgeop03.eop.gov ([165.119.1.37]) by mhuh.eop.gov (PMDF V6.1-1 #41014) with SMTP id <01KKPCDQ6TA09D98Z7@mhuh.eop.gov>; Tue, 30 Jul 2002 11:05:58 -0400 (EDT)
Received: by sgeop03.eop.gov (Lotus SMTP MTA v4.6.7 (934.1 12-30-1999)) id 85256C06.0052EE1D ; Tue, 30 Jul 2002 11:05:49 -0400
Date: Tue, 30 Jul 2002 11:05:42 -0400
From: Brett_M._Kavanaugh@who.eop.gov
Subject: Re: Biden and Feinstein, etc.
To: "Willett, Don" <Don.Willett@usdoj.gov>
Cc: "'manuel_miranda@judiciary.senate.gov'" <manuel_miranda@judiciary.senate.gov>
Message-id: <85256C06.0052EC72.00@sgeop03.eop.gov>
MIME-version: 1.0
Content-type: text/plain; charset=us-ascii
Content-disposition: inline

REV_00349088

X-Lotus-FromDomain: EOP

From: Willett, Don <Don.Willett@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: 'manuel_miranda@judiciary.senate.gov' <manuel_miranda@judiciary.senate.gov>
Sent: 7/30/2002 7:34:19 AM
Subject: : RE: Biden and Feinstein, etc.

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Willett, Don" <Don.Willett@usdoj.gov> ("Willett, Don" <Don.Willett@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:30-JUL-2002 11:34:19.00
SUBJECT:: RE: Biden and Feinstein, etc.
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:''manuel_miranda@judiciary.senate.gov'' <manuel_miranda@judiciary.senate.gov> (Receipt Notification Requested) (''manuel_miranda@judiciary.senate.gov'' <manuel_miranda@judiciary.senate.gov> (Receipt Notification Requested) [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

I can meet Manny @ 12:15 and receive whatever paper he has, and we can talk sometime today.

Manny, what's your pleasure?

DRW

-----Original Message-----

From: Brett M. Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Tuesday, July 30, 2002 11:06 AM
To: Willett, Don
Cc: 'manuel_miranda@judiciary.senate.gov'
Subject: Re: Biden and Feinstein, etc.

I cannot make it at 12:15. Can the three of us get on the phone instead?

I definitely want to talk to both of you. Thanks.

Committee Confidential

From: Willett, Don <Don.Willett@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Koebele, Steve <Steve.Koebele@usdoj.gov>;'Alex_Dahl@judiciary.senate.gov' <Alex_Dahl@judiciary.senate.gov>;'Manuel_Miranda@judiciary.senate.gov' <Manuel_Miranda@judiciary.senate.gov>;Sales, Nathan <Nathan.Sales@usdoj.gov>
Sent: 7/21/2002 9:48:17 AM
Subject: : Re: Owen/Money

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Willett, Don" <Don.Willett@usdoj.gov> ("Willett, Don" <Don.Willett@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:21-JUL-2002 13:48:17.00
SUBJECT:: Re: Owen/Money
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:"Koebele, Steve" <Steve.Koebele@usdoj.gov> ("Koebele, Steve" <Steve.Koebele@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
TO:"'Alex_Dahl@judiciary.senate.gov'" <Alex_Dahl@judiciary.senate.gov> ("'Alex_Dahl@judiciary.senate.gov'" <Alex_Dahl@judiciary.senate.gov> [UNKNOWN])
READ:UNKNOWN
TO:"'Manuel_Miranda@judiciary.senate.gov'" <Manuel_Miranda@judiciary.senate.gov> ("'Manuel_Miranda@judiciary.senate.gov'" <Manuel_Miranda@judiciary.senate.gov> [UNKNOWN])
READ:UNKNOWN
TO:"Sales, Nathan" <Nathan.Sales@usdoj.gov> ("Sales, Nathan" <Nathan.Sales@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

I believe Steve has a copy of the 60 Minutes piece (which aired almost 15 years after an earlier 60 Minutes piece re. how blindly pro-plaintiff the Texas Supreme Court used to be).

DRW
--- Sent from my BlackBerry.

-----Original Message-----

From: Manuel Miranda <Manuel_Miranda@judiciary.senate.gov>
To: Willett, Don <Don.Willett@USDOJ.gov>; Sales, Nathan <Nathan.Sales@USDOJ.gov>; Koebele, Steve <Steve.Koebele@USDOJ.gov>; 'Brett(u)M.(u)Kavanaugh(a)who.eop.gov' <Brett_M._Kavanaugh@who.eop.gov>; Alex Dahl <Alex_Dahl@judiciary.senate.gov>
Sent: Sun Jul 21 12:07:15 2002
Subject: Owen/Money

I suspected that was the answer. Dems are passing around the 60 Minutes tape.
I didn't know what it was until now. Is there a way to get a copy so that Alex and I could see it after the Murder Board.

Intel suggests that Leahy will concentrate on all things Money...and how can Feingold resist. Texans also suggested that Cantwell is keen on election related issues.

Reply Separator

Subject: Re: Owen
Author: "Koebele; Steve" <Steve.Koebele@usdoj.gov>
Date: 7/19/2002 7:28 PM

Manny -- research will certainly reveal (1) a clear correlation between Owen,

TLR and TCJL donors, and (2) many similarities in specific donors among the three.

Leahy will be looking at it in order to show the extent of the tort reform movement in Texas. Exhibit A will be a 60 Minutes profile of "how far the Court has moved in favor of business interests and against consumers, workers, etc (insert case cites).

I have a copy of the 60 Minutes piece if you would like to dub.

Thank you, Steve.

-----Original Message-----

From: Manuel Miranda <Manuel_Miranda@judiciary.senate.gov>
To: Willett, Don <Don.Willett@USDOJ.gov>; Sales, Nathan <Nathan.Sales@USDOJ.gov>; Koebele, Steve <Steve.Koebele@USDOJ.gov>; Brett_M._Kavanaugh@who.eop.gov <Brett_M._Kavanaugh@who.eop.gov>
Sent: Fri Jul 19 19:15:18 2002
Subject: Owen

Any answer to this below? And why the Leahy people are looking into it?

What is the connection between Owen and Texans for Lawsuit Reform (larger issue) and the Texas Civil Justice League (smaller)? Is there any coincidence in her donors and theirs?

From: Miranda, Manuel (Judiciary) <Manuel_Miranda@Judiciary.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 1/13/2003 1:37:44 PM
Subject: : RE: Judiciary Dems obstruct on reorganization

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Miranda, Manuel (Judiciary)" <Manuel_Miranda@Judiciary.senate.gov> ("Miranda, Manuel (Judiciary)" <Manuel_Miranda@Judiciary.senate.gov> [UNKNOWN])
CREATION DATE/TIME:13-JAN-2003 18:37:44.00
SUBJECT:: RE: Judiciary Dems obstruct on reorganization
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I am told that all Dems on JC.

-----Original Message-----

From: Brett M. Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Monday, January 13, 2003 5:08 PM
To: Miranda, Manuel (Judiciary)
Subject: Re: Judiciary Dems obstruct on reorganization

Who signed this?

(Embedded
image moved "Miranda, Manuel (Judiciary)"
to file: <Manuel_Miranda@Judiciary.senate.gov>
pic03873.pcx) 01/13/2003 03:45:56 PM

Record Type: Record

To:
cc:
Subject: Judiciary Dems obstruct on reorganization

Dear Senator Daschle:

We members of the Senate Judiciary Committee write to request that you include negotiations over blue slip practices and a fair and measured protocol on judicial nomination hearings in your discussions with the Republican leadership regarding reorganization of the Senate.

As you know, when Senator Hatch chaired the Judiciary Committee during six years of President Clinton's tenure, he had a firm blue slip practice and did not schedule a hearing on any nominee who did not have both blue slips returned positively from both home-state Senators. Every failure of a Republican Senator to return a positive blue slip on a judicial nominee was honored. In addition, of course, Senator Hatch delayed and refused to

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schedule hearings and votes on a number of additional nominees because anonymous Senators in the Republican Caucus or on the Judiciary Committee had concerns.

When Senator Leahy became Chairman of the Committee, he maintained Senator Hatch's blue slip practices and respected the views of the home-state Senators. Under Senator Leahy, for the first time the Judiciary Committee made public blue slips including the fact that a Senator had yet to return a blue slip and the fact that a Senator returned a negative blue slip. This helped ensure that blue slips were not being abused by home-state Senators.

Senator Hatch has made several comments suggesting he is no longer going to give deference to the objections of home-state Senators. The changes he has hinted that he will unilaterally make will undercut what incentive the White House has for thorough and meaningful consultation with home-state Senators and, in particular, Democratic home-state Senators before the President decides on judicial nominations. Meanwhile, Republicans would reap a reward for having blocked so many of President Clinton's judicial nominees and the White House has indicated that without some check from the Senate it will seek to fill judicial vacancies with nominees committed to advancing a right-wing ideological agenda.

This shift in blue slip practices would weaken what democratic [small "d" in original] check there is to moderate the President's choices and likely shift the balance on a number of circuit courts across the country. It could also lead to extended debate before the Senate over the lack of consultation and advice sought by the White House regarding particular judicial nominees.

We take seriously the Framers' balancing of powers in the nomination process. The Constitution provides that the Senate not only has the power of consent, it has the right to advise, as well. Especially now, when effective checks and balances are being lost among our branches of government, Democratic Senators need to be consulted on important judicial nominations.

Likewise, Senator Hatch, Senator Kyl and others have been talking about unilaterally establishing hearing schedules on important judicial nominations that are unprecedented and unreasonable. That is another important topic to be discussed and on which bipartisan agreement should be obtained before the Senate's reorganization. Recent precedent for such a discussion and agreement is the document signed by the parties' leaders and the Judiciary Chairman and Ranking Member in 1985 when the White House and Senate were both controlled by republicans. Building upon that precedent and our recent experience we would urge that the following be included in any agreement on an organizing resolution: that hearings not be

scheduled
until the ABA has submitted its peer review and the Committee has had
three
weeks to review the nomination; that each hearing contain only one
controversial nominee; that each hearing include only one circuit court
nominee; that hearings not be held more frequently than every three or
four
weeks. [Emphasis added] This is the only effective means of enforcing
Senators' rights under the Constitution to advise the President on
judicial
nominations, and will allow members of the Committee to discharge their
duty
responsibly.

Thank you for considering these concerns. We look forward to discussing
them with you in the near future.

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From: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
Sent: Saturday, March 08, 2003 6:31 PM
To: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO]);
Manuel_Miranda@frist.senate.gov [UNKNOWN]
Subject: : Re: Kuhl / For your prep

Begin Original ARMS Header ##### RECORD TYPE: PRESIDENTIAL (NOTES MAIL) CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]) CREATION DATE/TIME: 8-MAR-2003 19:30:31.00
SUBJECT:: Re: Kuhl / For your prep
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO]) READ:UNKNOWN
TO:Manuel_Miranda@frist.senate.gov (Manuel_Miranda@frist.senate.gov [UNKNOWN]) READ:UNKNOWN
End Original ARMS Header

I will get them for you. She did not go through commission because that is only for dct but we had extensive consultation with boxer and feinstein over kuhl including kuhl meeting with them individually before nomination and answering written questions. At the time sens were much more concerned about chris cox.

----- Original Message -----

From:<Manuel_Miranda@frist.senate.gov>
To:Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 03/08/2003 07:24:36 PM
Subject: RE: Kuhl / For your prep

Can one get the answers she gave on this? From the Commission?

-----Original Message-----

From: [Brett M. Kavanaugh@who.eop.gov](mailto:Brett_M._Kavanaugh@who.eop.gov)
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Saturday, March 08, 2003 7:09 PM
To: Miranda, Manuel (Frist); brian.a.benczkowski@usdoj.gov; Nathan.Sales@usdoj.gov; Kristi.L.Remington@usdoj.gov;
[Brett M. Kavanaugh@who.eop.gov](mailto:Brett_M._Kavanaugh@who.eop.gov)
Subject: Re: Kuhl / For your prep

Kuhl has dealt with this in her answers to boxer and feinsteins written questions that she did before she was ever nominated. Note that she is catholic so any attempt to accuse her of pro bob jones sympathy can be countered.

This
case and roe are 2 big issues with her.

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----- Original Message -----

From:<Manuel_Miranda@frist.senate.gov>
To:brian.a.benczkowski@usdoj.gov,
<Nathan.Sales@usdoj.gov>,
Kristi.L.Remington@usdoj.gov,
Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 03/08/2003 04:33:37 PM

REV_00230675

Subject: Kuhl / For your prep

As you may know, the Dems were expecting Kuhl to come up this coming week and are surprised by Owen.

Dem JC counsel have all received copies of 2 news articles from 1982 (one NYT article by Stuart Taylor and one Washington Post article by Charles Babcock). These articles refer to the change in the Reagan Administration's policy that led to the reversal of the 11-year old policy of denying tax exemptions to racially discriminatory private schools, and discuss Kuhl's role in the decision. According to Dems, these articles mention:

1) That more than 200 lawyers in the Justice Department's civil rights division signed a letter expressing serious concerns about the change in policy. They stated that "the extension of tax-exempt status to these institutions violates existing federal civil rights law, as expressed in the Constitution, acts of Congress, and Federal court interpretations thereof."

2) That, the Senate Finance Committee held hearings after that decision, in 1982, on whether to pass a law making it illegal to grant such exemptions. According to the news accounts, documents released to the Finance Committee included "internal memorandums between high Justice and Treasury officials and correspondence with members of Congress." There was also Testimony by William Bradford Reynolds, then head of the Civil rights division, and Deputy AG Edward Schmults.

According to the news articles, the documents show that "Mr. Reynolds and his allies, Bruce Fein, an aide to Mr. Schmults, and Carolyn Kuhl, an aide to Attorney General Smith, began to argue in early December, the documents and testimony . . . show, that the Administration should reverse its position. . . "

The documents also apparently show that Mr. Reynolds was one of the chief advocates of the view that even segregationist schools are legally entitled to tax exemptions, and that he and his allies (Schmults and AG Smith) prevailed over objections by the head of the IRS (Roscoe Egger), and other career Justice Department lawyers, including then-OLC head Ted Olson, and Lawrence Wallace, the Deputy SG in charge of the pending Supreme Court case involving the issue.

Dems are trying to track down testimony and the related documents from that Finance Committee hearing.

- att1.htm

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