

P6/(b)(6)

Received(Date): 26 JUL 2002 09:12:36

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

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

Cc: margarita_tapia@judiciary.senate.gov (margarita tapia) (margarita_tapia@judiciary.senate.gov (margarita tapia) [UNKNOWN]), rena_johnson@judiciary.senate.gov (rena johnson) (rena_johnson@judiciary.senate.gov (rena johnson) [UNKNOWN]), "tipping@cwfa.org" <tipping@cwfa.org> ("tipping@cwfa.org" <tipping@cwfa.org> [UNKNOWN]), [REDACTED], joe_jacquot@hutchison.senate.gov (joe_jacquot@hutchison.senate.gov [UNKNOWN]), pat o'brien <pat.o'brien@usdoj.gov> (pat o'brien <pat.o'brien@usdoj.gov> [UNKNOWN]), kristi remington <kristi.l.remington@usdoj.gov> (kristi remington <kristi.l.remington@usdoj.gov> [UNKNOWN]), alex_dahl@judiciary.senate.gov (alex dahl) (alex_dahl@judiciary.senate.gov (alex dahl) [UNKNOWN]), pete_olson@gramm.senate.gov (pete olson) (pete_olson@gramm.senate.gov (pete olson) [UNKNOWN]), neil.bradley@mail.house.gov (neil.bradley@mail.house.gov [UNKNOWN]), [REDACTED]

[REDACTED], barbara_ledeen@src.senate.gov (barbara_ledeen@src.senate.gov [UNKNOWN]), mark corallo <mark.corallo@usdoj.gov> (mark corallo <mark.corallo@usdoj.gov> [UNKNOWN]), don willett <don.willett@usdoj.gov> (don willett <don.willett@usdoj.gov> [UNKNOWN]), "washington; tracy t" <tracy.t.washington@usdoj.gov> ("washington; tracy t" <tracy.t.washington@usdoj.gov> [UNKNOWN])

Subject: : Milwaukee Journal Sentinel article on Sens. Kohl and Feingold

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: 26-JUL-2002 09:12:36.00

SUBJECT: : Milwaukee Journal Sentinel article on Sens. Kohl and Feingold

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

READ: UNKNOWN

CC: margarita_tapia@judiciary.senate.gov (margarita tapia) (margarita_tapia@judiciary.senate.gov (margarita tapia) [UNKNOWN])

READ: UNKNOWN

CC: rena_johnson@judiciary.senate.gov (rena johnson) (rena_johnson@judiciary.senate.gov (rena johnson) [UNKNOWN])

READ: UNKNOWN

CC: "tipping@cwfa.org" <tipping@cwfa.org> ("tipping@cwfa.org" <tipping@cwfa.org> [UNKNOWN])

READ: UNKNOWN

CC: [REDACTED]

READ: UNKNOWN

CC: joe_jacquot@hutchison.senate.gov (joe_jacquot@hutchison.senate.gov [UNKNOWN])

READ: UNKNOWN

CC: pat o'brien <pat.o'brien@usdoj.gov> (pat o'brien <pat.o'brien@usdoj.gov> [UNKNOWN])

READ: UNKNOWN

CC: kristi remington <kristi.l.remington@usdoj.gov> (kristi remington <kristi.l.remington@usdoj.gov> [UNKNOWN])

READ: UNKNOWN

CC: alex_dahl@judiciary.senate.gov (alex dahl) (alex_dahl@judiciary.senate.gov (alex dahl) [UNKNOWN])

READ: UNKNOWN

CC: pete_olson@gramm.senate.gov (pete olson) (pete_olson@gramm.senate.gov (pete olson) [UNKNOWN])

READ: UNKNOWN

CC: neil.bradley@mail.house.gov (neil.bradley@mail.house.gov [UNKNOWN])

READ: UNKNOWN

CC: [REDACTED] [UNKNOWN])

READ:UNKNOWN

CC:

READ:UNKNOWN

CC:barbara_ledeen@src.senate.gov (barbara_ledeen@src.senate.gov [UNKNOWN])

READ:UNKNOWN

CC:mark corallo <mark.corallo@usdoj.gov> (mark corallo <mark.corallo@usdoj.gov> [UNKNOWN])

READ:UNKNOWN

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

READ:UNKNOWN

CC:"washington; tracy t" <tracy.t.washington@usdoj.gov> ("washington; tracy t" <tracy.t.washington@usdoj.gov> [UNKNOWN])

READ:UNKNOWN

End Original ARMS Header

HEADLINE: Kohl ;

Kohl, Feingold not revealing judicial vote;
Wisconsin senators may play key role

BYLINE: CRAIG GILBERT of the Journal Sentinel staff

BODY:

Washington -- In the latest skirmish over a Bush judicial nominee, Senate Democrats Herb Kohl and Russ Feingold could be key swing votes.

But in interviews this week, neither gave strong hints of how he is leaning.

"My Democratic colleagues on this committee, they have no idea how I may vote," Kohl said.

Texas Judge Priscilla Owen defended herself at a Senate hearing Tuesday against charges by liberal activists and Democratic lawmakers that her decisions from the bench had been dictated by conservative political views. Owen is President Bush's pick for the 5th Circuit U.S. Court of Appeals in New Orleans. The battle over her nomination is mainly about abortion. But it is the latest in a series of ideological collisions over the federal judiciary.

Democrats and their interest-group allies say Bush is trying to stock the bench with conservative activists. The White House and its allies on the right say that it's liberals who are politicizing the process, imposing a litmus test on qualified nominees.

Kohl and Feingold both sit on the Judiciary Committee, which considers judicial picks. And both have come to be seen as potential pivots in nomination fights. Kohl is more moderate than some Democrats on the panel, and Feingold is known for breaking party ranks. Feingold was the only committee Democrat to vote yes when John Ashcroft

was nominated
for attorney general.

In interviews, the two Wisconsin senators declined to assess the Owen nomination in detail, saying they wanted to review her record, review what she said in the hearing and let the process play out.

But they spoke more generally about how they would approach her case and what standards they were using in the judicial battles that are now a fixture of national politics.

"I'm just trying to figure out where she is," Kohl said. "Is she a person who is likely to become, number one, an activist, and then along with that a very conservative activist? That's not a place where I think I want to go right now in terms of voting for nominees. Or is she a person who's more what I consider to be in the broad mainstream?"

After Kohl heard Owen say she followed the law and not her personal views, he said, "I'm always a little suspect" of such assertions.

Said Kohl: "People have opinions. They're not blank slates. We all do come with our own philosophical opinions. And we apply that to what it is we (do), whether it's legislators or judges."

Kohl, who met with Owen a couple of months ago, said the key question for him was whether Owen's political views were "so conservative that in my opinion she's not close enough to what I consider to be the broad mainstream."

Asked whether holding nominees to that standard disqualifies judges who are not political centrists, Kohl said his definition of mainstream is "pretty broad."

Feingold met with Owen last week. While Feingold's vote last year for Ashcroft -- a man with a starkly different ideology -- drew a lot of attention, he said then and again this week that presidents are due less deference with their judicial picks than with their cabinet picks.

Level of scrutiny

In fact, Feingold said he viewed presidential nominations according to a "very clear progression on how tough the scrutiny should be."

Said Feingold: "I think the least scrutiny goes to the cabinet because

it's (the president's) choice
of who sits at the table."

He said appointments to independent agencies, such as the Federal Election Commission, deserve less automatic deference. Nominees for federal trial judge deserve less still, he argued, followed by picks for federal appellate judge and, finally, nominees for the Supreme Court.

"The higher up the ladder you go, the more legitimate it is to ask a question about whether the person will be fair . . . are they impartial or do they have a political agenda that's inflexible?" Feingold said.

By that logic, a nominee's politics and personal views are much more relevant in the case of a court of appeals nominee like Owen than a cabinet pick like Ashcroft.

Feingold's questions of Owen at Tuesday's hearing did not relate to politics but to ethical issues that critics had raised regarding her tenure on the Texas Supreme Court.

Owen's critics have focused above all on the issue of abortion, contending that her rulings on parental consent for minors having abortions were driven by politics.

At the hearing, she told lawmakers that she would follow the laws "as you have written them. . . . The picture that some special-interest groups have painted of me is wrong."

Owen, who has received a unanimous "well-qualified" rating from the American Bar Association, is a friend of Bush and was first elected to the Texas Supreme Court in 1994.

Hers is the most contentious judicial nomination since Senate Democrats rejected Charles Pickering of Mississippi for the same court in March. Both Kohl and Feingold voted against that pick. The 5th U.S. Circuit covers Texas, Louisiana and Mississippi.

A Judiciary Committee vote on Owen is expected sometime after the August recess.