

**From:** Ho, James (Judiciary) <James\_Ho@Judiciary.senate.gov>  
**To:** Brett M. Kavanaugh/WHO/EOP@EOP [ WHO ] <Brett M. Kavanaugh>  
**CC:** Ledeen, Barbara (Republican-Conf) <Barbara\_Ledeen@src.senate.gov>  
**Sent:** 3/24/2003 7:15:36 AM  
**Subject:** : RE: Pro-choice op-eds in support of Justice Owen?

##### Begin Original ARMS Header #####

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Ho, James (Judiciary)" <James\_Ho@Judiciary.senate.gov> ( "Ho, James (Judiciary)" <James\_Ho@Judiciary.senate.gov> [ UNKNOWN ] )

CREATION DATE/TIME:24-MAR-2003 12:15:36.00

SUBJECT:: RE: Pro-choice op-eds in support of Justice Owen?

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

READ:UNKNOWN

CC:"Ledeen, Barbara (Republican-Conf)" <Barbara\_Ledeen@src.senate.gov> ( "Ledeen, Barbara (Republican-Conf)" <Barbara\_Ledeen@src.senate.gov> [ UNKNOWN ] )

READ:UNKNOWN

##### End Original ARMS Header #####

Great points all -- I was struggling with trying to figure out what she would say (as opposed to what I would say). The Souter comparison, for example, is what Stone said last year. But I will be sure to incorporate all of your other suggestions. Thanks!

James C. Ho  
Chief Counsel  
Senate Subcommittee on the Constitution, Civil Rights & Property Rights  
Chairman, Senator John Cornyn  
James\_Ho@judiciary.senate.gov  
(202) 224-9614 (direct line)  
(202) 224-2934 (general office number)

**PRA 6**

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

From: Brett M. Kavanaugh@who.eop.gov  
[mailto:Brett\_M.\_Kavanaugh@who.eop.gov]  
Sent: Monday, March 24, 2003 11:39 AM  
To: Ho, James (Judiciary)  
Cc: Ledeen, Barbara (Republican-Conf)  
Subject: RE: Pro-choice op-eds in support of Justice Owen?

On substance, I had a few thoughts.  
-- I think it very odd to compare Owen to Souter and thereby imply that she is another Souter or would be another Souter on the US Supreme Court.  
-- I am not sure the women appointee point works all that well, and I actually doubt that is the D's "real motivation" here as you say in last paragraph. Indeed, that strikes me as odd given that Clement, Raggi, and others were confirmed without a problem (and the King being a Republican point seems quite obscure). It seems to me that double standard is a better theme and to compare her to McConnell.  
-- I am not sure that all legal scholars refer to Roe as the settled law of the land at the Supreme Court level since Court can always overrule its precedent, and three current Justices on the Court would do so. The point there is in the inferior court point.  
-- It is hundreds not thousands, I believe, who have obtained bypasses.

REV\_00381149

My 2 cents. Thanks.

(Embedded  
image moved "Ho, James (Judiciary)"  
to file: <James\_Ho@Judiciary.senate.gov>  
pic12126.pcx) 03/24/2003 10:14:55 AM

Record Type: Record

To: "Ledeen, Barbara (Republican-Conf)"  
<Barbara\_Ledeen@src.senate.gov>, Brett  
M. Kavanaugh/WHO/EOP@EOP

cc:  
Subject: RE: Pro-choice op-eds in support of Justice Owen?

Thanks, Brett. I assume that you didn't find anything substantively  
problematic  
with the op-ed draft, then? I don't expect any problems, but just  
wanted to  
make absolutely certain in case you had a chance to read it.

Barbara, I called you earlier this morning and left a message. If I  
don't hear  
back from you soon, I will just go ahead and contact Ann Stone. I won't  
proceed  
on the others, however. Let's talk whenever you get the chance.  
Thanks!

James C. Ho  
Chief Counsel  
Senate Subcommittee on the Constitution, Civil Rights & Property Rights  
Chairman, Senator John Cornyn  
James\_Ho@judiciary.senate.gov  
(202) 224-9614 (direct line)  
(202) 224-2934 (general office number)

**PRA 6**

Brett\_M.\_Kavanaugh@who.eop.gov wrote:  
> Her e-mail is **PRA 6** I alerted her this morning that someone  
may  
contact  
> her about activity this week. I am good with her doing an op-ed.  
>  
>  
> Record Type: Record  
> To: Brett M. Kavanaugh/WHO/EOP@EOP  
> cc: barbara\_ledeen@src.senate.gov  
> Subject: Re: Pro-choice op-eds in support of Justice Owen?  
>  
> I have a one page press release from Ann Stone, dated 7/23/2002, and  
her  
> two-page letter to Leahy and Hatch. Manny Miranda confirmed that  
neither  
was

REV\_00381150

> submitted into the committee record, so at a minimum we should do that.  
>  
> Barbara, should the three of us coordinate this morning on how to proceed on  
> getting Stone to do the op-ed?  
>  
> James C. Ho  
> 901 North Wayne Street #302  
> Arlington, VA 22201  
> (202) 224-9614 (direct line)  
> (202) 224-2934 (general office line)  
> **PRA 6**  
> <JamesCHo@stanfordalumni.org>  
>  
> At 08:28 a.m. 3/24/2003, Brett\_M.\_Kavanaugh@who.eop.gov wrote:  
> >Do you have the letter from last summer? Barbara, have you talked to Ann?  
I  
> am  
> >happy to do so again if need be, but you all may have done so.  
> >  
> > (Embedded  
> > image moved "James C. Ho" <JamesCHo@stanfordalumni.org>  
> > to file: 03/23/2003 01:20:29 PM  
> > pic07668.pcx)  
> >  
> >Record Type: Record  
> >To: See the distribution list at the bottom of this message  
> >cc:  
> >Subject: Re: Pro-choice op-eds in support of Justice Owen?  
> >  
> >I have a copy of that, which I'd be happy to provide to anyone who's  
> >interested.  
> >I don't know if it was in the committee record last time, but we should  
> >certainly put it in (again) this time.  
> >  
> >At 12:15 p.m. 3/23/2003, Brett\_M.\_Kavanaugh@who.eop.gov wrote:  
> >>Ann Stone was helpful and did letter/release last summer that should be  
in  
> >>committee record and can be used thursday.  
> >>  
> >>.br/>> >>  
> >>----- Original Message -----  
> >>From:<JamesCHo@stanfordalumni.org>  
> >>To:Makan\_Delrahim@Judiciary.senate.gov,  
> >> Rena\_Johnson\_Comisac@Judiciary.senate.gov,  
> >> Alex\_Dahl@Judiciary.senate.gov,  
> >> Manuel\_Miranda@frist.senate.gov,  
> >> Barbara\_Ledeem@src.senate.gov,  
> >> viet.dinh@usdoj.gov,  
> >> Steve.Koebele@usdoj.gov,  
> >> Kristi.L.Remington@usdoj.gov,  
> >> Jamie.E.Brown@usdoj.gov,  
> >> Brett M. Kavanaugh/WHO/EOP@EOP,  
> >> Wendy J. Grubbs/WHO/EOP@EOP  
> >>Cc:  
> >>Date: 03/22/2003 08:55:30 PM  
> >>Subject: Pro-choice op-eds in support of Justice Owen?  
> >>  
> >>I learned late Friday that, although high-profile, pro-choice women such  
as

> Ann  
> >>Stone, Victoria Toensing, and former members of Congress Susan  
Molinari  
and  
> >>Tillie Fowler may be willing to publish op-eds supporting Justice  
Owen's  
> >>confirmation, apparently no one has yet signed up to help write  
them.  
> >>  
> >>I presume that such op-eds would be very helpful as this Thursday's  
executive  
> >>business meeting on Justice Owen approaches. Accordingly, please  
find  
below  
> >two  
> >>op-eds I drafted \*relatively quickly\*. The first draft is a more  
political  
> >>piece perhaps more appropriate to someone like Toensing, Molinari,  
or  
Fowler;  
> >>the second draft is geared more specifically for someone like Ann  
Stone.  
> >>  
> >>In order to ensure proper coordination, I don't plan to do anything  
with  
these  
> >>until Monday morning. If, however, there are no expressions of  
concern  
or  
> >>objection by Monday morning, I will work with Barbara Ledeen on  
Monday to  
try  
> >to  
> >>get these to appropriate authors to get them placed in time for  
Thursday.  
> >>  
> >>Thanks, everyone!  
> >>  
> >>-----  
> >>  
> >>DRAFT #1  
> >>  
> >>Democrats Talk About Diversity, But Practice Only Obstruction  
> >>  
> >> President Bush named two of the nation's top jurists to the  
federal  
> courts  
> >>of appeals, when he announced the nominations of D.C. attorney  
Miguel  
Estrada  
> >>and Texas Supreme Court Justice Priscilla Owen nearly two years ago.  
> >>Unfortunately, however, both nominees still await confirmation by  
the  
United  
> >>States Senate.  
> >>  
> >> Amazingly, Senate Democrats, who repeatedly claimed the mantle  
of  
> >diversity  
> >>when President Clinton was in the White House, have seen fit to  
obstruct  
both  
> >>nominees. They have done so even though, if confirmed, Estrada  
would be  
the  
> >>first Hispanic ever to serve on the D.C. Circuit, while Owen would  
increase  
> the

> >>diversity on the Fifth Circuit, which represents Texas, Mississippi  
and  
> >>Louisiana.  
> >>  
> >> The reason for the Democrats' apparent reversal is simple, if  
> disturbingly  
> >>crass and partisan. As the Dallas Morning News recently noted,  
"Democrats  
> >>don't  
> >>relish giving President Bush one more thing to brag about when he  
goes  
into  
> >>Hispanic neighborhoods during his re-election campaign next year."  
Nor  
do  
> >>Democrats want to give President Bush credit for placing his second  
woman  
on  
> >>the  
> >>Fifth Circuit.  
> >>  
> >> Owen's confirmation would give that court four female judges -  
all  
of  
> whom  
> >>happen to be Republican or appointed by Republican Presidents.  
[FYI:  
King, a  
> >>Republican, was appointed by Carter.] By contrast, President  
Clinton,  
who  
> >>appointed four judges to the Fifth Circuit, didn't nominate a single  
woman  
to  
> >>that court - a notable record for a party that claims to emphasize  
diversity.  
> >>  
> >> In light of this record, Democrats simply cannot afford to see  
President  
> >>Bush succeed in confirming Estrada and Owen, for that would  
significantly  
> >>discredit their claims that the Democratic Party is for some reason  
the  
party  
> >>of  
> >>women and minorities.  
> >>  
> >> Of course, Senate Democrats do not, and cannot, admit that this  
is  
their  
> >>real reason for objecting to Estrada and Owen. Yet they have no  
real  
grounds  
> >>on  
> >>which to object to either candidate. Both are exceptionally  
talented and  
> >>deserving of confirmation. Indeed, the ABA unanimously rated both  
candidates  
> >>well-qualified, its highest rating, and what some Senate Democrats  
used  
to  
> call  
> >>the "gold standard."  
> >>  
> >> Thus, instead of arguing the merits of either nominee,  
Democrats  
have  
> >>concocted reasons to object to their confirmation. With respect to

Estrada,  
> >for  
> >>example, Democrats complain that Estrada has no prior judicial  
experience,  
> even  
> >>though that describes a majority of the current court for which he  
has  
been  
> >>nominated.  
> >>  
> >> The invented charge against Owen is similarly groundless. Some  
Democrats  
> >>claim that confirming Owen would somehow threaten a woman's right to  
choose an  
> >>abortion. As a fervently pro-choice woman who has studied the law  
and  
Owen's  
> >>nine-year record on the Texas Supreme Court, I find the claim  
patently  
absurd.  
> >>  
> >> First of all, it is widely understood accepted by legal  
scholars  
across  
> >the  
> >>board that Roe v. Wade and its progeny are the settled law of the  
land.  
> >>Moreover, federal courts of appeals, which are inferior to the  
Supreme  
Court,  
> >>have no power to overturn Supreme Court precedents like Roe v. Wade.  
That's  
> >why  
> >>the Democrat-controlled Senate last year confirmed Professor Michael  
McConnell  
> >>to the federal court of appeals with unanimous consent, even though  
McConnell  
> >>(unlike either Owen or Estrada, and like numerous liberal law  
professors  
and  
> >>commentators) has publicly stated that Roe v. Wade was incorrectly  
decided.  
> >>  
> >> Second of all, there is no evidence that Owen is in fact  
opposed to  
Roe  
> v.  
> >>Wade. Quite the contrary, she has cited and applied Roe v. Wade and  
its  
> >progeny  
> >>on a number of occasions as a sitting justice of the Texas Supreme  
Court.  
> >>  
> >> The only thing that Owen's opponents have been able to cite, in  
their  
> >>reckless crusade to transform Justice Owen from a scholarly and  
dispassionate  
> >>jurist to a lawless, pro-life zealot, are a series of Texas Supreme  
Court  
> >>decisions involving that state's parental notification statute. But  
here  
is  
> >the  
> >>truth about that statute and those rulings:  
> >>  
> >>  
> >>  
> >

> >

>

> -----

> Attachment: