

April 6, 2001

P_QYFF1004_WHO.TXT.eml

Kavanaugh highlights "2 Clinton appointees... and a Carter appointee" serving on a panel that upheld affirmative action in CA

● CN=Brett M. Kavanaugh/OU=WHO/O=EOP [W... April 6, 2001 at 9:27 AM

[Details](#)



: CA6

To: & 10 more

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: 6-APR-2001 09:27:34.00
SUBJECT: CA6
TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

CA6 has stayed pending appeal the Michigan district court ruling striking down the Michigan Law School's race-based admissions program. The panel on the stay order consisted of 2 Clinton appointees (Daughtrey and Moore) and a Carter appointee, Boyce Martin. If this panel stays intact for the appeal itself, that almost certainly will mean the law school's race-based admissions program will be upheld by the CA6 panel, although there is the possibility of en banc review, especially given that there is another CA6 case pending on the college admissions program at Michigan.

The panel in its stay order specifically stated that the correctness of the district court's decision rests on the proper interpretation of the Supreme Court's decision in Bakke.

June 22, 2001

P_6KCI2004_WHO.TXT.eml

Kavanaugh reluctantly agrees to engage with "the libs"



: Re: Yale LS dinner Monday

[Details](#)

To: & 1 more



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:22-JUN-2001 09:23:28.00
 SUBJECT:: Re: Yale LS dinner Monday
 TO: Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 ##### End Original ARMS Header #####

I generally think it is good when working in a high-profile office like this to socially engage (rather than avoid) the critics. In this instance, I tend to think it's good for the libs to know that 2 normal people (or at least one normal person, you) work here in this office for the President. Even if the upshot is only a very tiny modulation in tone by someone who happens to be there (e.g., Betsy Cavendish '89 of NARAL, Harold Koh), I still think it's a good idea. Could be entirely fruitless, but you never know . . .

Courtney S. Elwood
 06/22/2001 07:48:12 AM
 Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
 cc:
 bcc:
 Subject: Re: Yale LS dinner Monday

John and I had not planned on going because the thought of listening to Guido for an hour -- and paying for the pleasure -- was more than we could stomach. BUT, if you think it is a good idea (and by your email, I guess you do), I will reconsider.

Brett M. Kavanaugh
 06/21/2001 10:25:10 PM
 Record Type: Record

To: Courtney S. Elwood/WHO/EOP@EOP
 cc:
 Subject: Yale LS dinner Monday

Any interest in heading over with me to the Yale LS dinner at Natl Press Club on Monday? I think it would be good for two of us to show the Bush flag there . . .

May 31, 2001

P_9BK62004_WHO.TXT.eml

Brett wants someone to "rein in" a reporter, and soon

● CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]

May 31, 2001 at 12:47 PM

CK

: Re: Frader/National Journal

[Details](#)

To: CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO] <Brett M. Kavanaugh> Cc: & 11 more

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: 31-MAY-2001 12:47:53.00
SUBJECT: Re: Frader/National Journal
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
CC: alberto r. gonzales (CN=alberto r. gonzales/OU=who/O=eop@eop [WHO])
READ: UNKNOWN
CC: timothy e. flanagan (CN=timothy e. flanagan/OU=who/O=eop@eop [WHO])
READ: UNKNOWN
CC: bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ: UNKNOWN
CC: heigard c. walker (CN=heigard c. walker/OU=who/O=eop@eop [WHO])
READ: UNKNOWN
CC: courtney s. elwood (CN=courtney s. elwood/OU=who/O=eop@eop [WHO])
READ: UNKNOWN
CC: stuart w. bowen (CN=stuart w. bowen/OU=who/O=eop@eop [WHO])
READ: UNKNOWN
CC: h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ: UNKNOWN
CC: rachel l. brand (CN=rachel l. brand/OU=who/O=eop@eop [WHO])
READ: UNKNOWN
CC: noel j. francisco (CN=noel j. francisco/OU=who/O=eop@eop [WHO])
READ: UNKNOWN
CC: robert w. cobb (CN=robert w. cobb/OU=who/O=eop@eop [WHO])
READ: UNKNOWN
CC: elizabeth n. camp (CN=elizabeth n. camp/OU=who/O=eop@eop [WHO])
READ: UNKNOWN
End Original ARMS Header

Clarification: She has been saying this to people outside the office whom she calls.

Brett M. Kavanaugh
05/31/2001 12:45:59 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Elizabeth N. Camp/WHO/EOP@EOP
Subject: Frader/National Journal

This National Journal reporter is apparently calling around to people and saying "Judge Gonzales knows of and approves this article, so you can talk to me." Needless to say, this has caught some people who have been called by her quite off guard. Should someone rein her in? [My vote: YES.] Soon? [Yes.]

May 8, 2001

P_JPNU1004_WHO.TXT.eml

Kavanaugh schedules a call with Matt Schlapp – “judges/Catholics”

● CN=Brett M. Kavanaugh/OU=WHO/O=EOP [W... May 8, 2001 at 9:26 AM

May 8, 2001 at 9:26 AM

CK

: Re: judges/Catholics

[Details](#)

To: & 3 more

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-MAY-2001 09:26:00.00
SUBJECT: Re: judges/Catholics
TO: Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
CC: bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ: UNKNOWN
End Original ARMS Header

9:00 is good for me

Matthew A. Schlapp
05/08/2001 09:24:13 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Bradford A. Berenson/WHO/EOP@EOP
cc:
Subject: judges/Catholics

How about scheduling a call with our leadership of Cath leaders tomorrow morning? Can you tell me a time that works ASAP so we can get this announced (unless this won't work). Need to do this before Weyrich/Grover if possible.

July 16, 2001

P_BY1U2004_WHO.TXT.eml

Kavanaugh asks friend to “grab a drink (or 2)” with him

● **CN=Brett M. Kavanaugh/OU=WHO/O=EOP [W...** July 16, 2001 at 3:36 PM

[Details](#)



: Re: Thank You!

To: & 1 more

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: 16-JUL-2001 15:36:10.00

SUBJECT: Re: Thank You!

TO: Stephanie.Buchanan@mckinsey.com (Stephanie.Buchanan@mckinsey.com [UNKNOWN])

READ: UNKNOWN

End Original ARMS Header

Thanks for the e-mail. It was fun to catch up with you, Rachel, and Jim. (And their daughter is incredibly cute.) Be sure to let me know when you are coming to the DC area again, and we can grab a drink (or 2). Take care.

ARMS EMAILS: January 20, 2001 – March 31, 2001 (don't have the numbers but I can find them if need be)

Kavanaugh believes the “reality” is that FedSoc is not perceived as “innocuous” by the press and public

● **CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]**

: Re: Press

To: CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO] <Bradford A. Berenson>

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: 18-MAR-2001 15:17:22.00

SUBJECT: Re: Press

TO: Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

CC: alberto r. gonzales (CN=alberto r. gonzales/OU=who/O=eop@eop [WHO])

READ: UNKNOWN

CC: bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])

READ: UNKNOWN

CC: timothy e. flanigan (CN=timothy e. flanigan/OU=who/O=eop@eop [WHO])

READ: UNKNOWN

End Original ARMS Header

True, but the stories are still factually inaccurate to the extent they express or imply an ongoing relationship (which I read them to imply at least) rather than mere past association. The reason I (and others) resigned from Fed Society was precisely because I did not want anyone to be able to say that I had an ongoing relationship with any group that has a strong interest in the work of this Office.

On a different point, the now-constant Fed Society references in the press really lack balance. After all, in the past, I and others in this Office also have been members of the ABA. Why don't they write that? Why don't we aggressively point that out to the reporters?

Also, it seems clear that press (and thus a large segment of the public) do not perceive the Fed Soc as totally innocuous. We probably cannot ignore that that is the political reality.

Kavanaugh may have attended event of male-only group, the Friendly Sons of St. Patrick, in Mar. 2001

● **CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]**

: Appropriateness Question

To: CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO] <Robert W. Cobb> & 1 more

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: 27-FEB-2001 11:22:39.00

SUBJECT: Appropriateness Question

TO: Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

End Original ARMS Header

There is a dinner on March 17 for a large group known as the Friendly Sons of St. Patrick. It is an annual dinner of several hundred to celebrate St. Patrick's Day and has guest speakers each year (Justices Scalia and Kennedy in the past few years). No problem so far, but dinner is all-male. What is the appropriateness of attending this event given that fact?

Kavanaugh finds his old boss, Justice Kennedy, a bit pedantic:

● **CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]**

: Re:

To: CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO] <Bradford A. Berenson>

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: 21-FEB-2001 13:34:34.00

SUBJECT: Re:

TO: Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

End Original ARMS Header

yes, the whole concurrence is a classic, esp the reference to law as a teacher

Bradford A. Berenson
02/21/2001 01:30:49 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re:

Uh-oh. What did he say? Are you referring to the classic AMK rhetoric on the first page about the law as a teacher?

Kavanaugh states he's recused from federal tobacco litigation but doesn't say why:

● CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]

: Recusal

To: CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO] <Alberto R. Gonzales>

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: 9-FEB-2001 09:19:47.00
SUBJECT:: Recusal
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard G. Walker (CN=Helgard G. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Rachel R. Brand (CN=Rachel R. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I am recused from the litigation now pending in federal district court in the District of Columbia between the United States and the major tobacco companies.

Kavanaugh states he's recused from other matters: Judicial Watch, the Clintons and cosmetics:

● CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]

: Recusals

To: CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO] <Alberto R. Gonzales> [& 12 more](#)

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:15-MAR-2001 20:42:53.00
SUBJECT:: Recusals
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Ansley C. Tillman (CN=Ansley C. Tillman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I will recuse myself on three additional matters/issues:

- (i) Judicial Watch suits against the government, including document requests to the Archives arising out of those matters;
- (ii) the federal grand jury investigation of Bill Clinton and others in New York, including document requests to the Archives arising out of that matter; and
- (iii) matters involving the cosmetics industry (I will seek the advice of Moose Cobb regarding when recusal is required or appropriate in such matters).

Kavanaugh worked on a bill that would add circuit judgeships to the federal judiciary (an issue being discussed again now):

● **CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]**

: Bill on judges

To: CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO] <Kyle Sampson> Cc: & 3 more

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: 20-FEB-2001 15:02:22.00
SUBJECT: Bill on judges
TO: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
CC: Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
CC: Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
CC: Helgard G. Walker (CN=Helgard G. Walker/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

Kyle:

What do you know about a pending bill on adding circuit judges?
In particular, do you have a copy of it? Also, what are its prospects for success, based on your understanding and experience?

Brett

Kavanaugh makes fun of the Clintons or their lawyers – hard to say because the interesting part was redacted:

Received(Date): 27 JAN 2001 14:57:35
From: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
To: Rachel R. Brand (CN=Rachel R. Brand/OU=WHO/O=EOP@EOP [WHO])
Subject: : Re: Clinton Counsel's Office memo

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: 27-JAN-2001 14:57:35.00
SUBJECT: : Re: Clinton Counsel's Office memo
TO: Rachel R. Brand (CN=Rachel R. Brand/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

[P6/b6]

Rachel R. Brand
01/27/2001 02:56:11 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Clinton Counsel's Office memo

Those memos make it sound like they had 20 lawyers in the office.

Brett M. Kavanaugh
01/27/2001 02:21:27 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Clinton Counsel's Office memo

The Counsel's Office memo left by the Clinton Administration, while short, contains some helpful information on a variety of issues. It has been circulated to each of you.

Kavanaugh misstates by three years when the articles of impeachment against President Clinton were filed but seems pretty happy about them regardless:

● **CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]**

:

To: CN=Helgard G. Walker/OU=WHO/O=EOP@EOP [WHO] <Helgard G. Walker>

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: 22-FEB-2001 13:58:00.00
SUBJECT: :
TO: Helgard G. Walker (CN=Helgard G. Walker/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

Articles II and III (Dec. 20, 2001):

"In doing this, William Jefferson Clinton has undermined the integrity of his office, has brought disrepute on the Presidency, has betrayed his trust as President, and has acted in a manner subversive of the rule of law and justice, to the manifest injury of the people of the United States."

Exactly.

This e-mail presumes that White House staff may have been deleting e-mails the first four weeks President Bush was in office:

● **CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]** @

: Re: Draft Re: Resoution of E-mail Problem

To: CN=Adam F. Greenstone/OU=OA/O=EOP@EOP [OA] <Adam F. Greenstone>

Begin Original ARMS Header

RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 16-FEB-2001 15:56:46.00
SUBJECT: : Re: Draft Re: Resoution of E-mail Problem
TO: Adam F. Greenstone (CN=Adam F. Greenstone/OU=OA/O=EOP@EOP [OA])
READ: UNKNOWN
End Original ARMS Header

Judge Gonzales has signed off, but he and I both have concerns that this memo may cause concern to those who started on January 20 and have been deleting e-mails since they started. By negative implication, the memo may be read to say that such people should have been preserving their e-mails. Is there any way to clarify -- or to send this memo by e-mail only to those who fall into the relevant category?

Kavanaugh makes fun of Bob Dole's Viagra commercials:

● **CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]**

: Re: WWII Memorial

To: CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO] <Courtney S. Elwood> Cc: & 11 more

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: 9-MAR-2001 10:59:06.00
SUBJECT: Re: WWII Memorial
TO: Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
CC: alberto r. gonzales (CN=alberto r. gonzales/OU=who/O=eop@eop [WHO])
READ: UNKNOWN
CC: timothy e. flanigan (CN=timothy e. flanigan/OU=who/O=eop@eop [WHO])
READ: UNKNOWN
CC: h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ: UNKNOWN
CC: bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ: UNKNOWN
CC: stuart w. bowen (CN=stuart w. bowen/OU=who/O=eop@eop [WHO])
READ: UNKNOWN
CC: robert w. cobb (CN=robert w. cobb/OU=who/O=eop@eop [WHO])
READ: UNKNOWN
CC: courtney s. elwood (CN=courtney s. elwood/OU=who/O=eop@eop [WHO])
READ: UNKNOWN
CC: noel j. francisco (CN=noel j. francisco/OU=who/O=eop@eop [WHO])
READ: UNKNOWN
CC: helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
READ: UNKNOWN
CC: rachel r. brand (CN=rachel r. brand/OU=who/O=eop@eop [WHO])
READ: UNKNOWN
CC: david s. addington (CN=david s. addington/OU=ovp/O=eop@eop [OVP])
READ: UNKNOWN
End Original ARMS Header

As Rachel notes, Bob Dole leads the commission that supports the memorial. Notwithstanding his recent commercials, Bob Dole is an American hero, and memorials to veterans sure seem like a good patriotic idea. I thus guess I would be surprised if President Bush wanted to oppose Bob Dole on an apple-pie issue like this. (Not that we will be in the loop, but my 2 cents.)

Something fishy and unclear about Alex Kozinski. Unclear who "Parsky" is either:

● **CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]**

: Parsky's phone #

To: CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO] <Bradford A. Berenson>

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: 23-MAR-2001 13:02:42.00
SUBJECT: Parsky's phone #
TO: Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

Can I have number. I wanted to touch base with him to alert him about Kozinski. (They know each other.)

Kavanaugh confused about recusal rules for some reason:

● **CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]**

:

To: CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO] <Robert W. Cobb>

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-FEB-2001 20:26:27.00
SUBJECT::
TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

What are our recusal rules?

Kavanaugh considering whether to be “butter[ed] up” by Ruth Marcus

● **CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]**

: event policy question

To: CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO] <Alberto R. Gonzales>

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: 5-MAR-2001 23:04:27.00
SUBJECT:: event policy question
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Ruth Marcus of the Washington Post called and left me a voice mail inviting me to the White House Correspondents Dinner. I have NOT talked to her (or any other reporter) since taking this job, but I had been assigned to deal with her quite a bit and got to know her in Whitewater/Lewinsky. In any event, can we go? (I left her a voicemail saying yes tentatively, but just as a placeholder.) I assume many in WH will go to this, but the question is whether we in the Counsel's office can and should go. (By the way, were I to go, I would pay reimbursement to Post because I would not want to take a gift, even though I assume this will qualify as an "interest of the agency" event.)

Feel free to say no; I obviously am under no illusions about her intent (buttering me up), which is one of the reasons I would insist on paying.

EXCHANGE EMAILS: January 20, 2001 – January 31, 2003

00000000C086E22B3FC6CF46A50284DC1B292D9E84BD2A00_1

Worked on the famous affirmative action cases for which Justice O'Connor offered a 25-year timeframe, during which Kavanaugh will likely still be on the Supreme Court:

● **"Kavanaugh, Brett M."**

estimated time for next drafts

To: "Gonzales, Alberto R.", "Francisco, Noel J.", "Leitch, David G.", "Lefkowitz, Jay P."

7:15 for Grutter [the main one]

8:15 for Gratz

00000000C086E22B3FC6CF46A50284DC1B292D9EC4012400

"Pro-Pickering article" belies his lack of involvement in his nomination:

● **"Kavanaugh, Brett M."**

Stuart Taylor

To: "Gonzales, Alberto R.", "Leitch, David G.", "Snee, Ashley", "Wingate, Heather"

left voice mail that he is writing a pro-Pickering article.

00000000DCC84F399415E6498C8988F3CCE009A444932900_1

Owens and Pickering packets (same as above):

● **"Kavanaugh, Brett M."**

fyi

To: "Wingate, Heather "

Anne Hickey should have received a 38-page FAXed packet last night or first thing this a.m. Includes both Owen and Pickering

0000000093B9F9D9F1002A429C22BE4AA307B22BE41F2500.eml

His line about giving all federal judicial nominees "a hearing and a vote" was apparently left on the cutting room floor for the 2003 State of the Union address, as it did not make it into the final delivery:

● "Kavanaugh, Brett M."

January 24, 2003 at 12:01 PM



State of the Union

[Hide](#)

To: "Gonzales, Alberto R";

Cc: "Leitch, David G."

"It is long past time to change the tone of the judicial confirmation process. I want to work together with both Republicans and Democrats to ensure that every judicial nominee gets a hearing and a vote, now and in the future, matter who is President or which party controls the Senate."

000000093CC97A4270AD24294489DAC3A87D75784A32100.eml

Kavanaugh asks to draft an op-ed supporting Texas' "race neutral" affirmative action policy

● "Kavanaugh, Brett M."

January 21, 2003 at 9:34 AM



possible op-ed

To: "Leitch, David G.", "Francisco, Noel J."

Judge e-mailed back in response to my e-mail below and said that I should go ahead and draft something like this. I will circulate something to you two later today and then we can discuss.

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 01/21/2003 09:42 AM -----

Brett M. Kavanaugh

01/20/2003 06:10:58 PM

Record Type: Record

To: Alberto R. Gonzales/WHO/EOP@Exchange@EOP

cc:

Subject: possible op-ed

In response to the Post editorial, the Fred Hiatt op-ed in the Post Sunday, and some other quotes, I think it might be useful for you to author a short op-ed that would explain, among other things, that the Texas plan is not only successful and innovative, but also is plainly constitutional, even if motivated simply to ensure that sufficient minorities have access to and are represented in the university system. The reason why it is obviously constitutional is simple: Justices from Brennan in Bakke to Scalia in Croson have recognized that the government may employ race-neutral means such as the Texas plan for the specific purpose of remedying the effects of past *societal* discrimination (not just identified discrimination) against African-Americans, American Indians, Hispanics, and others. I think this point needs to be stated publicly and succinctly, and I am confident that the Post would run an op-ed by you on this as a "Taking Exception" piece. Let me know what you think.

EXCHANGE EMAILS: March 1, 2003 – March 15, 2003

00000000ABE9D34525A04B45B96A2AFFA4C53DB964D92400.eml

Kavanaugh notes the Nixon primetime addresses introducing his Supreme Court nominees:

● "Kavanaugh, Brett M."

March 4, 2003 at 3:06 PM



prime-time announcements of Supreme Court nominees

To: "Gonzales, Alberto R.", "Leitch, David G."

President Nixon announced nomination of Warren Burger as Chief Justice at 7:00 p.m. in East Room on May 21, 1969, apparently so that it would be on prime time news on the television networks.

President Nixon announced the nominations of Lewis Powell and William Rehnquist in a prime time address at 7:30 p.m. on October 21, 1971, in the Oval Office. It was broadcast on national tv and radio live.

0000000020B477389D80DA46AF68996BFA92192EA45B2400.eml

Someone is getting a little ahead of himself on SCOTUS:

● "Kavanaugh, Brett M."

March 4, 2003 at 2:12 PM

fyi

To: "Gonzales, Alberto R.", "Leitch, David G."

I have collected (i) all remarks of Presidents in announcing Supreme Court Justices for last 50 years and (ii) time lines from announcement to confirmation for all Supreme Court Justices since 1950.

ARMS EMAILS: August 1, 2001 – September 30, 2001

This is the committee confidential e-mail sent to the NYT in September:

● CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]

: 4A issue

To: Yoo, John C ("Yoo, John C" <John.C.Yoo@usdoj.gov> [UNKNOWN]) <John.C.Yoo@usdoj.gov>, Bcc: timothy flanigan [WHO]

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:17-SEP-2001 07:28:35.00

SUBJECT: 4A issue

TO:"Yoo, John C" <John.C.Yoo@usdoj.gov> ("Yoo, John C" <John.C.Yoo@usdoj.gov> [UNKNOWN])

READ:UNKNOWN

BCC:timothy flanigan (timothy flanigan [WHO])

READ:UNKNOWN

End Original ARMS Header

Any results yet on the 4A implications of random/constant surveillance of phone and e-mail conversations of non-citizens who are in the United States when the purpose of the surveillance is to prevent terrorist/criminal violence?

Doing something with Yoo on FISA:

● CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]

: FISA Letter

To: CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO] <Courtney S. Elwood>

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-SEP-2001 09:41:51.00

SUBJECT: FISA Letter

TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

I assume Tim will have John Yoo over here today. I am checking now. I think both of us will need to be there to explain the rationale behind Tim's dictate to DOJ of this morning.

Unclear "fax to Yoo" on Sept. 12:

● **CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]**

: John Yoo fax

To: CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO] <Allison L. Riepenhoff> & 2 more

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: 12-SEP-2001 11:14:36.00

SUBJECT: John Yoo fax

TO: Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: A. Morgan Middlemas (CN=A. Morgan Middlemas/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

End Original ARMS Header

As soon as you receive FAX from Yoo to Tim, please both call me
AND fax it to me. Thanks

Working with Yoo on FTCA:

● **CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]**

:

To: Yoo, John C ("Yoo, John C" <John.C.Yoo@usdoj.gov> [UNKNOWN]) <John.C.Yoo@usdoj.gov>

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: 16-SEP-2001 17:35:40.00

SUBJECT:

TO: "Yoo, John C" <John.C.Yoo@usdoj.gov> ("Yoo, John C" <John.C.Yoo@usdoj.gov> [UNKNOWN])

READ: UNKNOWN

End Original ARMS Header

Please e-mail those FTCA cites when you get a chance.

Poking fun at Justice O'Connor's jurisprudence:

● **CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]**

: Re: FTCA

To: CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO] <Joel D. Kaplan>

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: 16-SEP-2001 20:16:34.00
SUBJECT: Re: FTCA
TO: Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

trying to predict SOC's breakfast leads one to analyses like this

Joel D. Kaplan
09/16/2001 08:14:03 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: FTCA

could you please make up your mind on whether this is const'l or not?

Review of Justice Kavanaugh's White House Email
October 1, 2001 – November 30, 2001
December 1, 2001 – December 31, 2001
May 1, 2002 – June 30, 2002

Kavanaugh annoyed that the PRA only has a 12-year limit

CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]

June 17, 2002 at 5:56:24 PM EDT

To: Whelan, M Edward III ("Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> [UNKNOWN])

Cc: colborn, paul p ("colborn, paul p" <paul.p.colborn@usdoj.gov> [UNKNOWN])

:

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: 17-JUN-2002 17:56:24.00
SUBJECT:
TO: "Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> ("Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> [UNKNOWN])
READ: UNKNOWN
CC: "colborn, paul p" <paul.p.colborn@usdoj.gov> ("colborn, paul p" <paul.p.colborn@usdoj.gov> [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

Why is that historians seem to accept Woodward and Bernstein protecting Deep Throat's identity some 30 years later, but they complain about the President of the United States protecting his confidential advice/appointments process for even a mere 12 years?

. . . no response necessary

Obscure Knowledge

Kavanaugh shares several e-mails on Priscilla Owen's nomination

CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]

May 1, 2002 at 6:39:04 PM EDT

To: teastland@weeklystandard.com @ inet [UNKNOWN]

:

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: 1-MAY-2002 18:39:04.00

SUBJECT::

TO: teastland@weeklystandard.com (teastland@weeklystandard.com @ inet [UNKNOWN])

READ: UNKNOWN

End Original ARMS Header

This contains the Owen documents. Note that some of the specific numbers in the general documents at beginning are slightly off given confirmations this week and nomination today.

CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]

December 10, 2001 at 8:06:06 PM EST

To: CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO]

: Priscilla Owen/Karl

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: 10-DEC-2001 20:06:06.00

SUBJECT:: Priscilla Owen/Karl

TO: Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

End Original ARMS Header

we should talk about this in morning . . .

CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]

June 19, 2002 at 2:31:45 PM EDT

To: CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO], CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO]

: FYI on Owen

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: 19-JUN-2002 14:31:45.00

SUBJECT:: FYI on Owen

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

READ: UNKNOWN

TO: Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

End Original ARMS Header

Tim: Below is Senator Hutchison's floor speech from March. I thought this might be useful given our discussion the other day.

CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]

December 12, 2001 at 9:48:40 PM EST

To: CN=Karl C. Rove/OU=WHO/O=EOP@EOP [WHO], CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [WI

Cc: CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO]

: Priscilla Owen

THIS RECORD IS A WITHDRAWAL SHEET

Date created: Tue Jul 31 14:47:19 EDT 2018

Other emails about nominations seem to refute the conservative talking point that the Democratic Party is the party of identity politics.

CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]

October 3, 2001 at 10:52:28 PM EDT

To: CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [WHO]

: Re: update on nominations

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: 3-OCT-2001 22:52:28.00

SUBJECT: Re: update on nominations

TO: Jason B. Torchinsky (CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

End Original ARMS Header

when were Crane and Land nominated? to what courts? ethnicities?

Another e-mail decrying the slow-walking on judicial nominees.

Brett_M.
_Kavanaugh@who.eop. To:
wittesb@washpost.com
gov cc:
Subject: reminder
12/21/2001 10:18 AM

It is nothing short of astonishing that 8 of the President's first 11 nominees made on May 9 now have managed to go the entire calendar year without so much as a hearing, especially when the President's first group of 11, as you will recall, achieved three principles: unprecedented bipartisanship (Gregory and Parker); superb experience and quality across the board (7 of 11 are experienced judges; other 4 were Supreme Court clerks and are nationally reknowned practitioners/scholars); and several truly extraordinary nominees by any measure (for example, Roberts, Owen, McConnell, Estrada). Something is seriously wrong here.

Kavanaugh opined that CJ Rehnquist would retire at the end of June 2002.

● **CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]**

: Re: Rehnquist retirement rumors

To: CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO], Cc: CN=noel j. francisco/OU=who/O=eop@eop [WHO] & 6 more

```
##### 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: 5-JUN-2002 11:19:12.00
SUBJECT: Re: Rehnquist retirement rumors
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:jennifer g. newstead ( CN=jennifer g. newstead/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:timothy e. flanagan ( CN=timothy e. flanagan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:kyle sampson ( CN=kyle sampson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:alberto r. gonzales ( CN=alberto r. gonzales/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
##### End Original ARMS Header #####
```

For the record (and lunch), I predict he is retiring this month.

In another email Kavanaugh discusses the dissent in the case *Atkins v. Virginia*, where the Court held that executions of the mentally retarded were cruel and unusual under the 8th Amendment.

● **CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]**

: Re: Supreme Court rules that the mentally retarded may not be executed

To: CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO], Cc: CN=david s. addington/OU=ovp/O=eop@eop [OVP] & 7 more

```
##### 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:20-JUN-2002 13:08:28.00
SUBJECT: Re: Supreme Court rules that the mentally retarded may not be executed
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:david s. addington ( CN=david s. addington/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
CC:jennifer g. newstead ( CN=jennifer g. newstead/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:timothy e. flanagan ( CN=timothy e. flanagan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:alberto r. gonzales ( CN=alberto r. gonzales/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
##### End Original ARMS Header #####
```

dissents are interesting. e.g., "Seldom has an opinion of this Court rested so obviously upon nothing but the personal views of its members." Scalia, joined by Rehnquist and Thomas, dissenting.

New Kavanaugh ARMS emails:

September 1, 2002 – September 30, 2002:

Seems to have been a legitimate (read: not stolen) mix-up here, where Dem SJC staffers were accidentally sent an internal GOP SJC e-mail about the Hispanic National Bar Association

File Name: P_OKFDA003_WHO.TXT.eml

Date: September 23, 2002

★ CN=Brett M. Kavanaugh/OU=WHO/...

September 23, 2002 at 8:43 PM



: Fw: HNBA Status

To: AGonzale@who.eop.gov [WHO]

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: 23-SEP-2002 20:43:58.00
SUBJECT: Fw: HNBA Status
TO: AGonzale@who.eop.gov (AGonzale@who.eop.gov [WHO])
READ: UNKNOWN
End Original ARMS Header

Judge. Hatch staff asked Kennedy staff not to distribute. Seems to have worked.

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

From: [Olati Johnson](mailto:Olati_Johnson@judiciary.senate.gov) (Olati Johnson)
To: [Alex Dahl](mailto:Alex_Dahl@judiciary.senate.gov),
[Ed Haden](mailto:Ed_Haden@judiciary.senate.gov),
<Brian.A.Benczkowski@usdoj.gov>,
Leonard B. Rodriguez/WHO/EOP@EOP,
Brett M. Kavanaugh/WHO/EOP@EOP,
[Manuel Miranda](mailto:Manuel_Miranda@judiciary.senate.gov),
[Lisa Graves](mailto:Lisa_Graves@judiciary.senate.gov)

Cc:
Date: 09/23/2002 07:33:04 PM
Subject: Re[4]:RE: HNBA Status

Alex--No need to hold dear Lisa up as hostage in this affair. :-)
No really, I showed it to one person (b/c I really did think it was funny), but he will not distribute it, and I have no intention of distributing it or making "partisan use" of this. I know these mistakes happen.
Enjoy your evening. ---Olati

Reply Separator

Subject: Re[3]:RE: HNBA Status
Author: Alex Dahl
Date: 9/23/2002 7:25 PM

Olati,

As you contemplate whether it would be appropriate to make partisan use of this e-mail, I'd suggest you call Lisa Graves and ask her what I did when one of her e-mails containing sensitive information was accidentally sent to our staff. It seems to me that some reciprocal courtesy would not only be polite but also mutually beneficial considering that mistakes are made in both directions.

Alex

Kavanaugh on President's statement on Pickering, which he seemed to have had a hand in drafting

File Name: P_56NU9003_WHO.TXT

Date: September 4, 2002

★ CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]

: President's statements on Pickering

To: CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO] & 1 more

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: 4-SEP-2002 13:15:33.00
SUBJECT: President's statements on Pickering
TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
CC: Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

We could adapt variations of these two:

President's written statement after vote on Pickering

I am deeply disappointed that Judge Charles Pickering, a distinguished judge who was unanimously confirmed by the Senate in the past, is being denied the opportunity to further serve his country. The action of the Senate Judiciary Committee to refuse Judge Pickering a vote by the full Senate leaves another empty seat in the federal judiciary at a time when we face a vacancy crisis. It was unfortunate for democracy and unfortunate for America.

Judge Pickering has earned the praise and support of those who know him and know his record best -- both Democrats and Republicans from his home state of Mississippi. They know him to be a fair and measured judge, an advocate of civil rights and a dedicated member of his community. He has served with distinction, and deserves better than to be blocked by a party line vote of ten Senators on one Committee. The voice of the entire Senate deserves to be heard.

President's remarks the day before the vote on Pickering

Tomorrow the Senate Judiciary Committee will vote on the nomination of Charles Pickering to serve on the United States Court of Appeals for the 5th Circuit. Judge Pickering is a respected and well-qualified nominee who was unanimously confirmed 12 years ago to the District bench. His nomination deserves a full vote, a vote in a full Senate. I strongly urge his confirmation.

While tomorrow's vote is about one man, a much larger principle is also at stake. Under our Constitution, the President has the right and responsibility to nominate qualified judges, and the Legislative Branch has the responsibility to vote on them in a fair and timely manner. This process determines the quality of justice in America, and it demands that both the President and Senate act with care and integrity, with wisdom and deep respect for the Constitution.

Unfortunately, we are seeing a disturbing pattern, where too often judicial confirmations are being turned into ideological battles that delay justice and hurt our democracy. We now face a situation in which a handful of United States senators on one committee have made it clear that they will block nominees, even highly-qualified, well-respected nominees, who do not share the senators' view of the bench, of the federal courts. They seek to undermine the nominations of candidates who agree with my philosophy that judges should interpret the law, not try to make law from the bench.

And because these senators fear the outcome of a fair vote in the full Senate, they're using tactics of delay. As a result, America is facing a vacancy crisis in the federal judiciary. Working with both Republicans and Democrats, I have nominated 92 highly-qualified, highly-respected individuals to serve as federal judges. These are men and women who will respect and follow the law. Yet the Senate has confirmed only 40 of these 92 nominees, and only 7 of the 29 nominees to the circuit courts, the courts of last resort in a vast majority of cases.

This is unacceptable. It is a bad record for the Senate. The Senate has an obligation to provide fair hearings and prompt votes to all nominees, no matter who controls the Senate or who controls the White House. By failing to allow full Senate votes on judicial nominees, a few senators are standing in the way of justice. This is wrong, and the American people deserve better.

Kavanaugh on presidential statement on Owen; the "Leonard" who seemed "upset" would seem to be Leonard Leo

File Name: P_42NW9003_WHO.TXT.eml

Date: September 5, 2002

★ CN=Brett M. Kavanaugh/OU=WHO/O=EOP...

September 5, 2002 at 7:39 PM

[Details](#)



: Re: President's statement at Kentucky event on Owen

To: CN=matthew e. smith/OU=who/O=eop@eop [WHO] & 1 more

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: 5-SEP-2002 19:39:31.00

SUBJECT: Re: President's statement at Kentucky event on Owen

TO: matthew e. smith (CN=matthew e. smith/OU=who/O=eop@eop [WHO])

READ: UNKNOWN

TO: tim goeglein (CN=tim goeglein/OU=who/O=eop@eop [WHO])

READ: UNKNOWN

End Original ARMS Header

Tim: It is very important that everyone understand that the President spoke to this today orally as well. Leonard said people are very upset that he did not do so -- not realizing that he did in fact do so.

Brett M. Kavanaugh
09/05/2002 05:12:48 PM
Record Type: Record

To: Tim Goeglein/WHO/EOP@EOP, Matthew E. Smith/WHO/EOP@EOP
cc:
Subject: President's statement at Kentucky event on Owen

Kavanaugh on Merrick Garland

File Name: P_DIDEA003_WHO.TXT.eml

Date: September 24, 2002

: Re: Info for major garrett

[Details](#)

To: CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO] & 1 more

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: 24-SEP-2002 15:26:58.00
SUBJECT: Re: Info for major garrett
TO: Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
CC: anne womack (CN=anne womack/OU=who/O=eop@eop [WHO])
READ: UNKNOWN
End Original ARMS Header

Edwards, Tatel, and Garland are 3 current Dem appointees on DC Circuit. They are all incredibly well respected by all sides. None had prior judicial service.

Heather Wingate
09/24/2002 03:20:23 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Anne Womack/WHO/EOP@EOP
cc:
Subject: Re: Info for major garrett

Also, are they all currently sitting judges?

----- Original Message -----
From: Brett M. Kavanaugh/WHO/EOP
To: Heather Wingate/WHO/EOP@EOP,
Anne Womack/WHO/EOP@EOP,
Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 09/24/2002 03:17:13 PM
Subject: Re: Info for major garrett

Best examples are merrick garland, david tatel, harry edwards, byron white, william rehnquist, and lewis powell. The first 2 are highly respected clinton noms to dc circuit. Edwards is black carter nom to dc circuit who was nominated at age 39 (comparison?) who is a great great judge. The latter 3 were nominated to the supreme court and are all legends.

----- Original Message -----
From: Heather Wingate/WHO/EOP
To: Anne Womack/WHO/EOP@EOP,
Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 09/24/2002 03:00:35 PM
Subject: Info for major garrett

Major is doing a story on miguel estrada. He says the dems are saying he's not qualified b/c he's never sat on a bench before. I'd like to be able to get him any info re: any dc cir. Judges who had never sat on the bench before. Current judges and former judges from recent times.

Kavanaugh on presidential comments on Pickering, Owen, Estrada

File Name: P_CO2GA003_WHO.TXT.eml

Date: September 25, 2002

★ CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]

September 25, 2002 at 8:17 PM



: President's comments tonight on judges at NRSC dinner

[Details](#)

To: thungar@gibsondunn.com @ inet [UNKNOWN] & 1 more

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:25-SEP-2002 20:17:54.00
SUBJECT:: President's comments tonight on judges at NRSC dinner
TO:thungar@gibsondunn.com @ inet (thungar@gibsondunn.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:mestrada@gibsondunn.com @ inet (mestrada@gibsondunn.com @ inet [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

And for a stronger America, we need good judges. We need people who will not write the law from the benches, but people who strictly interpret the Constitution. I have been appalled at what has taken place in the United States Senate recently. I named two good judges, one from Mississippi and one from my home state of Texas -- Charles Pickering, Pricilla Owen. Their records were distorted. I don't think they were given a fair hearing. Special interests got a hold of the committee. It is not right that these two fine, fine people were denied the bench.

Soon the Senate will take up the nomination of Miguel Estrada. Miguel Estrada is an excellent lawyer. He's a fine man. He's an American success story. The Senate should not play politics with this nomination, for he will be an outstanding judge. One of the reasons to change the United States Senate is to make sure the good judges I nominate get a fair hearing, a swift vote, and approval. (Applause.)

Kavanaugh on re-nominating Owen

File Name: P_IA1W9003_WHO.TXT.eml

Date: September 5, 2002

★ CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]

September 5, 2002 at 1:40 PM



: Senator KBH

To: CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [WHO], CN=Harriet Miers/OU=WHO/O=EOP@EOP [WHO]

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: 5-SEP-2002 13:40:17.00
SUBJECT:: Senator KBH
TO:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Harriet Miers (CN=Harriet Miers/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Senator KBH just said on the floor that she believes President Bush will re-nominate Justice Owen if Republicans re-take the Senate and that Justice Owen then would be confirmed. Senator KBH said she told Owen today that she may have lost the battle but she will win the war.

Kavanaugh draft on political activities for White House office staff

File Name: P_J3PW9003_WHO.TXT.eml

Date: September 5, 2002

★ CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]

September 5, 2002 at 10:40 PM

CK

To: CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP]

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: 5-SEP-2002 22:40:41.00
SUBJECT:
TO: David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ: UNKNOWN
End Original ARMS Header

draft; thoughts invited

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_J3PW9003_WHO.TXT_1>



P_J3PW9003_W
HO.TXT_1.doc

DRAFT

September __, 2002

MEMORANDUM FOR WHITE HOUSE OFFICE STAFF
 OFFICE OF POLICY DEVELOPMENT STAFF

FROM: ALBERTO R. GONZALES
 BRETT M. KAVANAUGH

SUBJECT: REMINDER ON POLITICAL ACTIVITY

This memorandum is to remind you of the rules with respect to political activity. At all times, you should contact us if you have any questions about appropriate political activity. You also should keep in mind, as always, that appearance issues can occasionally arise even with respect to lawful activity. Finally, all commissioned officers should inform the Counsel's Office or the Office of Political Affairs of any intended public political activity on behalf of a candidate for elected office.

Basic Rule

The basic rule is straightforward. You are legally permitted to engage in a wide variety of political activity, as detailed more fully below, subject to certain important restrictions:

- First, you may not use your official authority for the purpose of interfering with or affecting the result of an election. That means, for example, that you may not knowingly permit your official title to be used on invitations to political fundraisers. You also may not use your authority to coerce any person to engage in political activity.
- Second, you may not solicit, receive, or accept political contributions, and you may not host or sponsor political fundraisers. However, you *may* speak at, attend, and be the featured guest at political fundraisers.

On-Duty Activity

Most employees in the Cabinet departments and agencies can engage in permitted political activity only when they are off duty and not in a government building. However, a different rule applies to: (i) PAS officials and (ii) those employees in the Executive Office of the President whose duties can continue after normal duty hours and away from the normal duty post. Officials in these two categories *may* engage in political activity -- such as meetings and telephone calls related to elections, campaigns, or political parties -- while on duty and in the office. However, any such activity should be limited so that it is not inconsistent with official duties or otherwise inappropriate. Political fundraising events may *not* occur on government property.

"Betsey" DeVos is "upset" that Karl Rove won't fly on her private plane

File Name: P_KHP3A003_WHO.TXT.eml

Date: September 12, 2002

★ CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]

: Re: Betsey DeVos

To: CN=Sara M. Taylor/OU=WHO/O=EOP@EOP [WHO] Cc: CN=ken mehlman/

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:12-SEP-2002 22:33:50.00
SUBJECT:: Re: Betsey DeVos
TO:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:ken mehlman (CN=ken mehlman/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

This strikes me as bizarre.

Sara M. Taylor
09/12/2002 03:56:15 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Ken Mehlman/WHO/EOP@EOP
Subject: Betsey DeVos

She is apparently very upset that we are not using her plane for Karl on Oct. 24th. She claims they have no business before the federal gov't. and Dick resigned as Chairman of Amway over 2 month ago. This may cause us a political problem with her..... How critical is it that we don't fly on her plane??

★ CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]

: Re: karl rove event

To: CN=Sara M. Taylor/OU=WHO/O=EOP@EOP [WHO]

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: 4-SEP-2002 09:07:45.00
SUBJECT:: Re: karl rove event
TO:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Sara M. Taylor
09/04/2002 08:37:35 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: karl rove event

It's the DeVos family personal plane. No business interest that I'm aware of. She works on education choice (non-profit) and her husband just retired as the head of Amway. (The DeVos' started Amway Corp. many years ago). They do have extensive business interests around the country, but in my year and a half here, I've never heard of them lobbying anyone on anything.

She's the former state GOP Chair and her interest with us is simply political.

Brett M. Kavanaugh
09/04/2002 08:32:19 AM
Record Type: Record

To: Sara M. Taylor/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: karl rove event

Who owns the plane? Does she have any business interest?

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

From: Sara M. Taylor/WHO/EOP
To: Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 09/04/2002 07:18:10 AM
Subject: karl rove event

Karl is heading to Michigan on Aug. 24th for an event. Betsey DeVos would like to fly Karl on her private plane. Betsey is the former Chair of the MI GOP and the plane ride would be listed as an inkind contribution to Michigan Victory 2002. Itinerary is below if that is helpful.

----- Forwarded by Sara M. Taylor/WHO/EOP on 09/04/2002
07:18 AM -----

katie packer <katie@dickposthumus.com>
09/03/2002 07:46:29 PM

Record Type: Record

To: Sara M. Taylor/WHO/EOP@EOP
cc:
Subject: karl rove event

Attached is the proposed itinerary. The would REALLY like it if Karl would stay until 8:00, they thought that he would still get back to DC pretty close to 9:30.

Betsy is out of pocket so I don't have the draft invite yet or the ticket prices. But as these details get filled in, I'll send them on.

Katie Packer, Campaign Manager
Posthumus for Governor
517.337.2002
katie@dickposthumus.com

Kavanaugh and Manuel Miranda on SJC; seems like a stolen draft from Dem SJC staff to ML Daschle on nominations

File Name: P_9E2YC003_WHO.TXT.eml

Date: January 13, 2003

★ CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO] 

January 13, 2003 at 5:11 PM

: Re: Judiciary Dems obstruct on reorganization

[Details](#)

1 recipient

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: 13-JAN-2003 17:11:49.00

SUBJECT: Re: Judiciary Dems obstruct on reorganization

TO: "Miranda, Manuel (Judiciary)" <Manuel_Miranda@Judiciary.senate.gov> ("Miranda, Manuel (Judiciary)" <Manuel_Miranda@Judiciary.senate.gov> | UNKNOWN])

READ: UNKNOWN

End Original ARMS Header

Who signed this?

"Miranda, Manuel (Judiciary)" <Manuel_Miranda@Judiciary.senate.gov>

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

seniority-based 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

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.

- att1.htm

Kavanaugh and Pickering materials
File Name: P_J2IUC003_WHO.TXT.eml
Date: January 9, 2003

★ CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
: Pickering
To: CN=Ashley Snee/OU=WHO/O=EOP@EOP [WHO]

January 9, 2003 at 1:18 PM



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: 9-JAN-2003 13:18:54.00
SUBJECT: Pickering
TO: Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

per my request of last night -- they should send more today.
----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
01/09/2003 01:22 PM -----

"Charnes, Adam" <Adam.Charnes@usdoj.gov>
01/09/2003 10:00:52 AM
Record Type: Record

To: "Benedi, Lizette D" <Lizette.D.Benedi@usdoj.gov>, "Benczkowski, Brian
A" <Brian.A.Benczkowski@usdoj.gov>
cc: Brett M. Kavanaugh/WHO/EOP@EOP
Subject: Pickering

Can one of you call Brett to get the WH some materials? Thanks.

Kavanaugh op-ed draft on Bush and affirmative action programs
File Name: P_OE46D003_WHO.TXT.eml
Date: January 21, 2003

★ CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]

: DRAFT op-ed

To: CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO]

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: 21-JAN-2003 17:38:14.00

SUBJECT: DRAFT op-ed

TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ: UNKNOWN

CC: Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

CC: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ: UNKNOWN

End Original ARMS Header

This is a draft (with a few tweaks to reflect a comment Noel made to me). To be discussed at your convenience, both on specifics and the broader question whether something like this is a good idea.

DRAFT (1/21/03)

Last week, President Bush reiterated his strong and long-standing commitment to educational admissions programs that remedy the effects of past discrimination and ensure that African-Americans, Hispanics, Asian-Americans, and Native Americans have access to and are represented in American universities (a result often described as diversity). He also stated that the appropriate way to remedy such past societal discrimination and ensure minority access and representation is a race-neutral admissions program that does not treat individual applicants differently solely because of their race. The President cited the Texas plan (which guarantees state university admission to the top 10% of all state high-school classes) as an example of a program that results in minority access to and representation in institutions of higher education while also maintaining the basic constitutional principle that, absent a compelling justification, all Americans should be treated equally and without regard to race.

In response to the President's statement last week, some have questioned whether race-neutral programs will work. Others have questioned whether there is a meaningful constitutional distinction between race-based programs (such as the critical-mass and bonus-point quota systems employed by the University of Michigan) and race-neutral programs such as the Texas plan.

These two questions are critically important, yet the answers are straightforward. Race-neutral programs to remedy past societal

straightforward. Race-neutral programs to remedy past societal discrimination will work and, indeed, have worked in states such as Texas, Florida, and California. And such race-neutral programs are plainly constitutional under existing Supreme Court precedent.

First, the Texas plan, like similar plans instituted in Florida and California, demonstrates convincingly that race-neutral programs to remedy past discrimination will result in minority access to and representation in institutions of higher education. In Texas, 1996 was the last year that race was used as an admissions criterion. At the time, 4% of enrolled freshmen were African-American, 14% were Hispanic, and less than 1% were Native Americans. In 2002, under the new race-neutral program, 3% were African-American (the number has been between 3% and 4% since 1997), 14% were Hispanic, and less than 1% were Native American. Since Florida adopted its Talented Twenty program (which guarantees admission to the top 20% of all state high-school classes), the Florida state university system similarly has maintained or increased the number of enrolled minorities. And in California, the same kind of result has occurred. In 1997, the last year that race was a factor in admissions, African-American, Hispanic, and Native American students were 3.7%, 14.3%, and 0.8% of the freshmen classes. In 2002, these figures were 3.3%, 16.6%, and 0.7%. As demonstrated by these results in three of America's largest States, race-neutral programs to remedy past discrimination can and will result in minority access to and representation in American universities.

Second, as the Supreme Court has repeatedly recognized, the Constitution permits and prefers efficacious race-neutral programs as a means to remedy the effects of past societal discrimination and ensure minority access to and representation in fields such as higher education, employment, and contracting. All of the Justices have agreed that race-neutral programs must be at least the primary means employed to achieve this objective (the Justices have disagreed, of course, about whether, for what purposes, and under what circumstances race can be considered if race-neutral programs are not efficacious).

The Justices have expressly recognized, moreover, that race-neutral programs designed to remedy the effects of past societal discrimination are constitutional. In a 1989 case involving minority businesses, Justice O'Connor, joined by the Chief Justice, Justice White, and Justice Kennedy, wrote that the government had "at its disposal a whole array of race-neutral devices to increase the accessibility of city contracting entrepreneurs of all races" and "to increase the opportunities available to minority business without classifying individuals on the basis of race." In that same case, Justice Scalia added: "A State can, of course, act to undo the effects of past discrimination in many permissible ways that do not involve classification by race. In the particular field of state contracting, for example, it may adopt a preference for small businesses, or even for new businesses Such programs may well have racially disproportionate impact, but they are not based on race." And Justices Brennan, White, Marshall, and Blackmun concluded in the 1978 Bakke case that admissions programs expressly designed to remedy past discrimination and ensure minority access to and representation in universities were constitutional. In short, Justices with varying constitutional approaches have expressly agreed on one core point:

that race was used as an admissions criterion. At the time, 4% of enrolled freshmen were African-American, 14% were Hispanic, and less than 1% were Native Americans. In 2002, under the new race-neutral program, 3% were African-American (the number has been between 3% and 4% since 1997), 14% were Hispanic, and less than 1% were Native American. Since Florida adopted its Talented Twenty program (which guarantees admission to the top 20% of all state high-school classes), the Florida state university system similarly has maintained or increased the number of enrolled minorities. And in California, the same kind of result has occurred. In 1997, the last year that race was a factor in admissions, African-American, Hispanic, and Native American students were 3.7%, 14.3%, and 0.8% of the freshmen classes. In 2002, these figures were 3.3%, 16.6%, and 0.7%. As demonstrated by these results in three of America's largest States, race-neutral programs to remedy past discrimination can and will result in minority access to and representation in American universities.

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The Justices have expressly recognized, moreover, that race-neutral programs designed to remedy the effects of past societal discrimination are constitutional. In a 1989 case involving minority businesses, Justice O'Connor, joined by the Chief Justice, Justice White, and Justice Kennedy, wrote that the government had &at its disposal a whole array of race-neutral devices to increase the accessibility of city contracting entrepreneurs of all races⁸ and &to increase the opportunities available to minority business without classifying individuals on the basis of race.⁸ In that same case, Justice Scalia added: &A State can, of course, act to undo the effects of past discrimination in many permissible ways that do not involve classification by race. In the particular field of state contracting, for example, it may adopt a preference for small businesses, or even for new businesses Such programs may well have racially disproportionate impact, but they are not based on race.⁸ And Justices Brennan, White, Marshall, and Blackmun concluded in the 1978 Bakke case that admissions programs expressly designed to remedy past discrimination and ensure minority access to and representation in universities were constitutional. In short, Justices with varying constitutional approaches have expressly agreed on one core point: Race-neutral programs to remedy past societal discrimination and thereby ensure minority access and representation are plainly constitutional.

In sum, President Bush has charted a principled course in which government can and should remedy the effects of past societal discrimination in a race-neutral way. His approach will both ensure minority access and representation and uphold the basic constitutional principle that all Americans should be treated equally.

Kavanaugh on Owen, Wendy Grubbs re: Manny Miranda (?)

File Name: P_2IRJF003_WHO.TXT.eml

Date: April 11, 2003

★ CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]

April 11, 2003 at 12:44 PM



: Re: ConfCall, Fri 11:30 am

To: CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO]

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: 11-APR-2003 12:44:50.00

SUBJECT: Re: ConfCall, Fri 11:30 am

TO: Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])

READ: UNKNOWN

End Original ARMS Header

classic; there is another Owen sister story that we should discuss

From: Wendy J. Grubbs/WHO/EOP@Exchange on 04/11/2003 12:42:19 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: Re: ConfCall, Fri 11:30 am

I love many.

Kavanaugh and information for Owen

File Name: P_39QEF003_WHO.TXT.eml

Date: April 7, 2003

★ CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]

April 7, 2003 at 8:50 PM



: Re: Owen

[Details](#)

1 recipient



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: 7-APR-2003 20:50:19.00

SUBJECT: Re: Owen

TO: "Benczkowski, Brian A" <Brian.A.Benczkowski@usdoj.gov> ("Benczkowski, Brian A" <Brian.A.Benczkowski@usdoj.gov> [

UNKNOWN])

READ: UNKNOWN

End Original ARMS Header

yes, think I am set for the night. Will talk to you in a.m. May need help with some PDF'ing. Thanks

"Benczkowski, Brian A" <Brian.A.Benczkowski@usdoj.gov>
04/07/2003 09:47:53 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: Owen

Did you get everything you needed re: Owen tonight? If not, let me know...

Citations to Owen cases re: bypass of parental notification for teenagers seeking abortions

File Name: P_89EEF003_WHO.TXT.eml

Date: April 7, 2003

★ CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]

April 7, 2003 at 3:47 PM



: Re: FW: Owen cites

To: CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO]

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: 7-APR-2003 15:47:51.00

SUBJECT: Re: FW: Owen cites

TO: Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])

READ: UNKNOWN

End Original ARMS Header

Those were the published decisions. There are 5 additional cases that were decided without opinion where the Court affirmed the lower court's denial of a bypass.

From: Wendy J. Grubbs/WHO/EOP@Exchange on 04/07/2003 03:22:00 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: FW: Owen cites

Have there been more decisions since this list was compiled?

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

From: "Morgenstern, David (Chafee)"
[mailto:David_Morgenstern@chafee.senate.gov]
Sent: Monday, April 07, 2003 3:04 PM
To: Grubbs, Wendy J.
Subject: RE: Owen cites

So it's only 8 cases and not 12?

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

From: "Grubbs, Wendy J." [mailto:Wendy_J_Grubbs@who.eop.gov]
Sent: Monday, April 07, 2003 2:53 PM
To: david-morgenstern@chafee.senate.gov
Subject: Fw: Owen cites

Let me know if you need anything else...thanks.

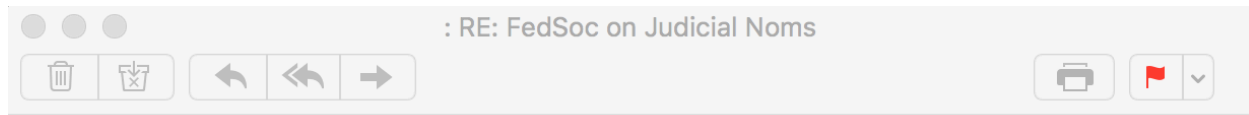
...

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

From: Kavanaugh, Brett M. <bkavanau@WHO.eop.gov>
To: Grubbs, Wendy J. <Wendy_J_Grubbs@who.eop.gov>
Sent: Mon Apr 07 10:23:30 2003
Subject: Owen cites

In re Jane Doe, 19 S.W.3d 249 (Tex. 2000)
In re Jane Doe 2, 19 S.W.3d 278 (Tex. 2000)
In re Jane Doe 3, 19 S.W.3d 300 (Tex. 2000)
In re Jane Doe 4, 19 S.W.3d 322 (Tex. 2000)
In re Jane Doe 4, 19 S.W.3d 337 (Tex. 2000)
In re Jane Doe, 19 S.W.3d 346 (Tex. 2000)
In re Jane Doe 10, 78 S.W.3d 338 (Tex. 2002)
In re Jane Doe 11, 92 S.W.3d 511 (Tex. 2002)

Kavanaugh attending FedSoc with Viet Dinh
File Name: P_TRERF003_WHO.TXT.eml
Date: April 21, 2003



★ **CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]**

April 21, 2003 at 11:03 AM



[Details](#)

: RE: FedSoc on Judicial Noms

1 recipient

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: 21-APR-2003 11:03:36.00
SUBJECT: RE: FedSoc on Judicial Noms
TO: "Brian.A.Benczkowski@usdoj.gov" <Brian.A.Benczkowski@usdoj.gov> (
"Brian.A.Benczkowski@usdoj.gov" <Brian.A.Benczkowski@usdoj.gov> [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

Where is this thing?

["Brian.A.Benczkowski@usdoj.gov"](mailto:Brian.A.Benczkowski@usdoj.gov) <Brian.A.Benczkowski@usdoj.gov>
04/17/2003 11:23:38 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE: FedSoc on Judicial Noms

Am sure he will be, but will double check.

Any word on Pickering?

-----Original Message-----
From: Brett M. Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Thursday, April 17, 2003 11:18 AM
To: Benczkowski, Brian A



To: Benczkowski, Brian A
Subject: Re: FedSoc on Judicial Noms

sure, sounds good; assume Leonard L. ok with that?

(Embedded
image moved "Brian.A.Benczkowski@usdoj.gov"
to file: <Brian.A.Benczkowski
pic21216.pcx) 04/17/2003 11:17:11 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: FedSoc on Judicial Noms

Brett-

Viet is scheduled to do a Federalist Society/Capitol Hill chapter talk on the judicial confirmation crisis on Monday from noon to 1 pm. He wanted to know whether you would accompany him to the talk, and do it in the same manner as the Hill staff briefing we did in the Mansfield Room a few months ago.

Can you attend?

Brian A. Benczkowski
Staff Director and Senior Counsel
Office of Legal Policy
United States Department of Justice