

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

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

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

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

Who signed this?

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

Record Type: Record

To:
cc:
Subject: Judiciary Dems obstruct on reorganization

Dear Senator Daschle:

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

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

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

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

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

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

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

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

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

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