

Politics Swirl Around Latest Bush Judicial Nominee

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Date: April 28, 2004

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WASHINGTON, DC, April 28, 2004 (ENS) - The nomination of White House lawyer Brett Kavanaugh to serve on the D.C. Court of Appeals was never likely to quell the partisan divide caused by the Bush administration's choice of judicial nominees.

But when Kavanaugh told the Senate Judiciary Committee Tuesday that the administration does not consider ideology when selecting its nominees, he appeared to escalate the politics of the controversy.

"It defies belief for anyone who looks at the nominees ... to think ideology did not play any role," said New York Senator Charles Schumer, a Democrat.

"It is plain as the nose on your face, sir, that the nominees ... come from one side of the political spectrum," Schumer said. "You are denying the obvious."

Kavanaugh is in a unique position to know - the 39 year old lawyer served as White House associate counsel and played a key role in helping choose and vet potential nominees.

Many of those nominees have drawn the ire of Democrats who accuse the Bush administration of trying to pack the appeals courts with right wing ideologues.

But Kavanaugh, who now serves as special assistant and staff secretary to President George W. Bush, said the White House did not "ask questions about one's personal views."

"President Bush is looking for nominees who have a respect for the law," he told the committee.

Schumer noted that several of the Bush nominees have shown a fundamental lack of respect for the law.

For example, Ninth Circuit nominee Carolyn Kuhl has challenged the Supreme Court's precedent on associational standing, a longstanding legal interpretation that enables organizations to protect the rights of their members in court.

William Pryor, who was granted a spot on the 11th Circuit Court of Appeals by recess appointment, has challenged the constitutionality of two major federal environmental statutes - the Clean Water Act and the Endangered Species Act.

But Kavanaugh, who said it was safe to assume that the records of all nominees were "fully vetted," declined to criticize such positions.

"As a judge it is not your personal views or past affiliations that are relevant," Kavanaugh said. "It is important to follow the law and the precedents of the Supreme Court."

Committee Chairman Orrin Hatch, a Utah Republican, led the Republican chorus of praise for Kavanaugh and said he has "a sterling resume and record of distinguished public service."

Kavanaugh graduated from Yale Law School, has clerked for Supreme Court Justice Anthony Kennedy as well as for two federal appellate court judges, and worked in the Office of Solicitor General.

He also served as an aide to former independent counsel Kenneth Starr and helped produce the Starr report, which called for President Bill Clinton's impeachment in 1998.

"I can think of few attorneys at any age who can boast this experience at the federal level," said Senator John Cornyn, a Texas Republican. "Under normal circumstances, he would be confirmed quickly ... but we are not living under ordinary circumstances today."

The opposition is not because of his record or character, Cornyn said, but "because he has ably and consistently served his president, his party and his country."

But Democrats say Kavanaugh is too inexperienced and political for a position on what many regard as the nation's second most important court.

The D.C. Circuit is focused on challenges to the actions and regulations of federal agencies - it is of particular concern to environmentalists.

Seldom does an environmental rule or regulation move forward without a lawsuit by environmental groups or by affected industries, and the D.C. Circuit very often provides the final decision on these legal challenges.

Earthjustice senior legislative counsel Glenn Sugameli said his organization - a nonprofit environmental law firm - has "very serious concerns" about Kavanaugh's qualifications and suitability to serve on the D.C. Circuit.

Massachusetts Democrat Senator Ted Kennedy reminded Kavanaugh that the D.C. Circuit is a key venue for those who have problems with the administration's environmental and labor policies.

Kennedy said he would demand that any nominee show "some sensitivity to these kinds of concerns."

Kavanaugh responded that he "will follow the laws passed and enacted by the Congress and signed by the president faithfully and independently," but Democrats clearly are not convinced.

"Thus far the indicators at that you are not willing to separate yourself from your ideology," said Senator Dianne Feinstein, a California Democrat.

Kavanaugh's resume, Schumer said, indicates he would ""probably win first prize as the hard right's political lawyer."

Schumer refuted the claim that Democrats were solely to blame for making the issue of judicial nominees political.

"If Bush wanted to truly unite us and not divide us, this is the last nominee he would send us," Schumer said. "The President makes the most political of picks and then my colleagues tell me not to be political. Tell the President."

Hatch asked Kavanaugh if he knew of the intrusion by Republican staffers into Democratic Judiciary Committee staff computers from 2001 to 2003.

On Monday the Justice Department said it would investigate the allegations - Senate Sergeant-at-Arms William Pickle announced last month that at least two Republican staffers had stolen more than 4,600 internal documents.

"I was not aware of that matter until it was reported in the media," Kavanaugh told the committee.

Originally posted at: <http://www.ens-newswire.com/ens/apr2004/2004-04-28-10.asp>