

Judicial Appointments

NOMINATION MEMO

To: Interested Parties
From: Thomas L. Jipping, J.D.
Re: Nomination of Priscilla Owen to the U.S. Court of Appeals for the Fifth Circuit
Date: March 11, 2003

President Bush first nominated Priscilla Owen, currently a justice on the Texas Supreme Court, to the U.S. Court of Appeals for the Fifth Circuit on May 9, 2001. The Senate Judiciary Committee, then led by Democrats, waited 440 days to hold a hearing and, on September 5, 2002, voted along party lines against sending the nomination to the full Senate at all. This was only the sixth time in 60 years that the Judiciary Committee voted down a judicial nominee, a step Republicans never took with President Clinton in office.

The current 62 judicial vacancies¹ exceed the level former Judiciary Committee Chairman Patrick Leahy (D-Vermont) condemned in July 2000.² The current 25 appeals court vacancies are 25 percent higher than the level Sen. Leahy warned in May 2000 would undermine the courts' "ability to administer justice."³ Four of the Fifth Circuit's 17 seats remain vacant and the seat to which Justice Owen has been nominated is in *judicial emergency* status because it has been open for nearly 1900 days. The Judiciary Committee will hold a second hearing on March 13, 2003.

Support for Justice Owen

Justice Owen was re-elected to the Texas Supreme Court in 2000 with 84 percent of the vote, no major party opposition, and the endorsement of every major Texas newspaper.

- The *Houston Chronicle* praised her "proper balance of judicial experience, solid legal scholarship and real-world know-how."⁴
- *The Dallas Morning News* said Justice Owen "has brought impressive legal scope to the bench and has provided thoughtful opinions."⁵

Fifteen presidents of the State Bar of Texas wrote Sen. Leahy on July 15, 2002, that "we stand united in affirming that Justice Owen is a truly unique and outstanding candidate for appointment to the Fifth Circuit." Lawyers who have practiced before Justice Owen, or litigated against her, have endorsed her nomination.

- Attorney Jon David Ivey, a litigation opponent, wrote on May 23, 2001: Justice Owen is an "excellent choice and it is the sincere hope of many of my fellow trial lawyers in Texas that Justice Owen will be promptly confirmed."
- E. Thomas Bishop, president of the **Texas Association of Defense Counsel**, wrote on July 19, 2002, that "I cannot imagine a more qualified, ethical, and knowledgeable person to sit on the [Fifth Circuit]."

CONCERNED WOMEN FOR AMERICA

1015 Fifteenth Street, N.W. ★ Suite 1100 ★ Washington, D.C. 20005 ★ (202) 488-7000 ★ Fax: (202) 488-0806 ★ www.cwfa.org

- Hector De Leon, immediate past president of **Legal Aid of Central Texas**, wrote on June 26, 2002, praising the “insight and empathy that Justice Owen will bring to the Fifth Circuit.”

The American Bar Association unanimously rated Justice Owen “well qualified” for her nomination to the Fifth Circuit. The ABA says it examines a nominee’s “integrity, professional competence and judicial temperament.”⁶ The “well qualified” rating means that Justice Owen:

- is “at the top of the legal profession”⁷
- has “outstanding legal ability, breadth of experience, the highest reputation for integrity”⁸
- has “demonstrated...the capacity for judicial temperament,”⁹ which includes:
 - “compassion,
 - decisiveness,
 - open-mindedness,
 - courtesy,
 - patience,
 - freedom from bias, and
 - commitment to equal justice under law.”¹⁰

The Proper Standard for Evaluating Judges and Nominees

The debate over judicial appointments is a debate over judicial power, over the kind of judge America needs. When President Bush nominated Justice Owen, he correctly said America needs judges who understand that their role is to “**interpret the law, not to legislate from the bench.**”¹¹ The proper standard, then, is whether a judge or a nominee would take the law as it is and fairly apply it. It is whether the means are judicially correct, not whether the results are politically correct.

Leftists want activist judges likely to deliver politically correct results, even through judicially incorrect means. As a result, **Justice Owen’s opponents focus only on the political interests served by her judicial votes and written opinions.** During her Judiciary Committee hearing on July 23, 2002, for example, Sen. Edward Kennedy (D-Massachusetts) asked for decisions in which Justice Owen “stood up for a consumer.”¹² Sen. Leahy said Justice Owen’s opinions “favor big business interests.”¹³ Texans for Public Justice highlight what they claim are “anti-consumer”¹⁴ decisions.

This approach is very dangerous, politicizing the judiciary and undermining its independence. Judges take an oath to “administer justice without respect to persons” and to rule “impartially.”¹⁵ To “stand up for” certain parties or political interests, as Sen. Kennedy and others demand, violates the judicial oath. Evaluating decisions by judges, or anticipated decisions by judicial nominees, by tallying winners and losers is similarly inconsistent with that oath.

White House Counsel Alberto Gonzalez, who served with Justice Owen on the Texas Supreme Court, explained the better view. In a letter dated April 5, 2002, he stated that “**a judge’s decisions are properly assessed by examining their legal reasoning, not by conducting any kind of numerical or statistical calculations.**”

Leftist Attacks on Justice Owen

1. She is “unable to follow the law”

Leftists’ radical view of an aggressive, politicized judiciary is, of course, impossible to defend, at least honestly. So leftists and Senate Democrats have recently created new gimmicks for cloaking their position. They have, for example, tried to redefine “judicial activism” to mean any position or decision unfavorable to their political interests. Again, they define the judicial function solely in terms of political results, not judicial means.

Abortion advocates, for example, oppose Justice Owen because a few of her votes in cases before the Texas Supreme Court do not sufficiently promote the pro-abortion agenda. **Some accusations are so extreme they fail to meet any standard of legitimate debate.** Kate Michelman, president of the National Abortion and Reproductive Rights Action League, says that Justice Owen’s “strong personal bias against the right to choose ... renders her unable to follow the law.” This bizarre accusation is completely divorced from reality.

There exists not a shred of evidence of Justice Owen’s personal views about abortion or the so-called “right to choose.” At her July 23, 2002, Judiciary Committee hearing, Sen. Richard Durbin (D-Illinois) asked her: “[W]hat is your position on abortion?”¹⁶ She answered: “My position is that Roe v. Wade has been the law of the land for many, many years ... [and] none of my personal beliefs would get in the way of me applying” it.¹⁷ Earlier, Sen. Orrin Hatch (R-Utah) asked whether, in writing opinions in abortion-related cases, Justice Owen was “motivated simply by a desire to achieve a particular policy result, or was your objective to ascertain and enforce the intent of the Texas legislature?”¹⁸ Justice Owen responded: “My personal beliefs don’t enter into any of my decisions.”¹⁹

The law that abortion extremists say Justice Owen is “unable to follow” is a Texas statute requiring abortionists to notify at least one parent at least 48 hours before performing an abortion on a minor girl.²⁰ It allows three exceptions to even this minimal requirement. Girls can bypass their parents if a judge concludes they are “mature and sufficiently well informed” to make the decision on their own; that “notification would not be in [their] best interest”; or that “notification may lead to ... abuse.”²¹

State Sen. Florence Shapiro, a pro-choice Democrat and chief author of the Senate bill, emphasized in a letter dated April 15, 2002, that **“the language of the Act was crafted in order to promote, except in very limited circumstances, parental involvement.”** It appears, however, that lower courts grant bypasses much more often than the legislature intended.

Hundreds of girls have sought to bypass their parents,²² and groups such as Planned Parenthood actually promote “court shopping” to find the most sympathetic judge.²³ Cases reach the Texas Supreme Court only after two lower courts have denied the bypass request, and only 12 cases involving 10 girls (two cases returned a second time) have made it there. **Justice Owen was in the majority in nine cases, three facilitating bypass and six requiring notification.** As even the liberal *Washington Post* has admitted, Justice Owen’s position in the three cases where she dissented from the majority to vote for notification was not “beyond the range of reasonable judicial disagreement.”²⁴

No matter what one's view of abortion, it is ludicrous to claim that three decisions, reasonable even by liberal editorial standards, prove any kind of personal bias. The only personal bias is held by the abortion extremists making such ridiculous arguments against Justice Owen.

2. She is unable to “interpret the law in accordance with its plain language and legislative intent”²⁵

Abortion extremists and other leftists have long rejected interpreting the law by its plain language and legislative intent. This approach, they say, is too cramped, narrow and rigid. It does not allow the law to live, morph, grow, play and adapt. Leftist groups such as the Alliance for Justice have long opposed judicial nominees who believe precisely what they now appear to endorse, that statutes and the Constitution must be interpreted according to “plain language and legislative intent.” This stunning hypocrisy is just another gimmick, another re-definition of terms to cloak their real agenda.

The same groups who applaud the U.S. Supreme Court for creating a new, made-up right to abortion in *Roe v. Wade*²⁶ criticize Justice Owen for supposedly creating a “new, made-up criterion” for allowing young girls to get an abortion without their parents’ knowledge. Either judges have the power to “find” unwritten things in written statutes or constitutional provisions or they don’t. That power does not depend on whether one likes the results.

The Alliance for Justice, which made this accusation against Justice Owen, apparently believes that the following language from the Texas parental notification statute is “plain”:

- “whether the minor is mature and sufficiently well-informed to make the decision to have an abortion performed without notification”
- “whether notification would not be in the best interest of the minor”
- “whether notification may lead to physical, sexual, or emotional abuse of the minor”²⁷

This language is not plain at all.

Legislators have the luxury to write statutes, like this one, containing what Justice Owen correctly described in her hearing as undefined “amorphous concepts.”²⁸ Judges, on the other hand, must apply these statutory terms in real cases involving real people and real facts. Actually applying a statute’s words requires concretely establishing what they mean. As the Texas Supreme Court acknowledged when first applying this statute, however, **the legislature “did not specify”²⁹ the information a minor must show to bypass her parents.**

This “amorphous” statute does not require a judge merely to determine whether a minor girl is generally mature. It requires a judge to determine whether the girl is mature and sufficiently well-informed to make a particular, profound and potentially life-altering decision by herself. To say that a statute merely stating conclusions without any standards, guidelines, or criteria is “plain” is ludicrous.

A judge has two options when the legislature has not defined its own statute's terms. She can either make up the definitions she wants to use, or continue looking for evidence of what the legislature meant. That means looking outside the statute. Justice Owen tried to define the bypass requirements in the statute by going for the definitions to the same place the legislature went for the language, a series of U.S. Supreme Court precedents.

In her July 15 letter, Sen. Shapiro described how Justice Owen approached the statute Sen. Shapiro authored:

Justice Owen's opinions consistently demonstrate that she faithfully interprets the law as it is written, and as the Legislature intended, not based on her subjective idea of what the law should be. I am shocked and saddened to see that partisan and extremist opponents of Justice Owen's nomination have attempted to portray her as an activist judge, as nothing could be further from the truth. Her opinions interpreting the Texas Parental Notification Act serve as prime examples of her judicial restraint. ... I appreciated that Justice Owen's opinions throughout the series of cases looked carefully at the new statute and at the governing U.S. Supreme Court precedent upon which the language of the statute was based, to determine what the Legislature intended the Act to do.

Justice Owen's approach was the opposite of judicial activism. Rather than use the legislature's failure to define its terms as license to create her own, Justice Owen's judicial restraint kept her focused only on determining what the legislature meant.

These leftist groups and Democrat senators must surely understand the difference between adding new statutory provisions and defining existing ones. And yet, Sen. Dianne Feinstein (D-California), who chaired the July 23 hearing, raised it in her opening statement³⁰ and repeated the charge in her first opportunity to ask questions: "So what in the Texas statute itself would justify such an expansion of this statute?"³¹

Sen. Orrin Hatch (R-Utah),³² the committee's ranking Republican, and Justice Owen herself³³ addressed this directly and thoughtfully in their opening statements. Following Sen. Feinstein's opening line of questioning, Sen. Hatch again tried to clarify the point by asking the nominee: "This was not your personal standard that you were imposing, but **an application of the United States Supreme Court standard** – isn't that correct?" She replied: "Yes, Sen. Hatch, that's correct. That came out of one of the U.S. Supreme Court decisions."³⁴

Sen. Edward Kennedy (D-Massachusetts) picked up the drumbeat as if Justice Owen had said nothing at all. He praised the Texas Supreme Court majority for applying "the plain language" of the statute and attacked Justice Owen for "repeatedly tr[ying] to impose new standards, standards not found in the statute."³⁵

His distortion could only have been deliberate because, as Justice Owen herself had pointed out earlier,³⁶ the majority similarly understood that **the statute was written with specific U.S. Supreme Court precedents in mind.** So this was not a case where the majority stayed inside the statute while Justice Owen strayed outside. No, everyone went outside the statute because they had to do so to define its terms. They simply came to different conclusions.

Later, Sen. Mike DeWine (R-Ohio) observed that the majority discussed “a line of U.S. Supreme Court cases on parental bypass. ... So you weren’t alone in your conclusion that the Texas Legislature drafted the parental-notification statute with the Supreme Court case in mind, were you?”³⁷ The obvious answer is no.

Democrat senators were so determined to press this attack and remain undeterred by the truth that Justice Owen later in the hearing said that “maybe I have not done a very good job” of explaining it.³⁸ So she tried one more time, noting first that words such as “mature and sufficiently well informed” can, without concrete definitions, “mean a lot of different things to different judges all across Texas.”³⁹ She described her attempt to solve this obvious problem:

*And so given that that was of a[n amorphous] definition, I thought where did they come up with these words? ... And then when I went and read the Supreme Court cases that they pulled the exact language out of, I looked at how did the U.S. Supreme Court define informed? ... And I believed that the legislature was looking to the cases out of which it picked the words mature and sufficiently well informed, for us to glean what the actual definition was, what the factors that courts were to consider in deciding if someone was making an informed decision.*⁴⁰

As Sen. Jeff Sessions (R-Alabama) put it in response: “That’s exactly what a great jurist does.”⁴¹ Justice Owen looked where she should have looked for the definitions she needed to apply the statute. The fact that she disagreed with some of her colleagues about some of the specific standards to be drawn from the relevant U.S. Supreme Court precedents is irrelevant; judges sometimes disagree. **Even the liberal *Washington Post* concluded that none of Justice Owen’s opinions was “beyond the range of reasonable judicial disagreement.”**⁴²

Perhaps it is not surprising that far-left groups and Democrat senators who have never embraced judicial restraint in the first place failed so miserably to understand how this restrained judge has decided cases. In the end, the main argument of Justice Owen’s opponents is that anyone who has a different opinion than they do, who does anything they do not like, is an “activist” driven by “bias,” blinded by “prejudice,” and unqualified to be a federal judge. **How can anyone, liberal or conservative, Democrat or Republican, take such a position seriously?**

3. “while...you were supposed to be writing that opinion...he died”⁴³

The previous two lines of attack on Justice Owen require some analysis to expose and answer. Another accusation requires no analysis or explanation at all and, for that reason alone, is one of the most egregious. Because the truth is so obvious, the lie is all the more serious.

In *Ford Motor Company v. Miles*,⁴⁴ a product liability suit against Ford, the plaintiffs’ lawyer filed suit in a county 200 miles from the location of the accident that rendered their son a quadriplegic. The forum-shopping paid off at first; a jury awarded \$40 million in actual and punitive damages. The Texas Supreme Court heard arguments on November 21, 1996, and issued its decision, with an opinion written by Justice Owen, on March 19, 1998, requiring a new trial in the proper county. Willie Searcy died on July 3, 2001, when his respirator failed.

In her first question at the July 23 hearing, Sen. Feinstein discussed the *Miles* case and said to Justice Owen: “[W]hile the year-and-a-half dragged by that you were supposed to be writing that opinion, one morning the respirator went out and he died. ... **during the delay, he died.**”⁴⁵

Perhaps Sen. Feinstein does not know that a judge cannot start writing an opinion in a case until the court has decided it, but her staff certainly should. To measure that time from the date a case is argued, rather than the date a case is decided, is simply wrong on its face. Yet that is the only way Sen. Feinstein could make this claim; the “year-and-a-half” was between oral argument and publication of the opinion. The truth is that lawyers continued filing motions and taking other steps which prolonged the proceedings for many months. It took Justice Owen just **a matter of days** to issue the opinion once the court had finally decided the case.

Even worse, however, is Sen. Feinstein’s factual claim that Willie Searcy died while Justice Owen was writing the opinion in this case. She made an evaluative statement that the supposed delay in writing that opinion contributed to the boy’s death. It would be difficult to craft a more stunning, shocking, or serious accusation. **The problem is that it is completely false.**

Justice Owen issued her opinion on March 19, 1998. Willie Searcy died on July 3, 2001. Willie Searcy died 1201 days after Justice Owen issued her opinion.
--

Justice Owen herself corrected the facts: “First of all, we remanded the case to the lower court, and it was three years later that Mr. Searcy unfortunately passed away. ... **[H]e did not pass away while the case was pending in my court.**”⁴⁶ Sen. Feinstein simply moved on to her next accusation.⁴⁷

The Miles’ lawyer waited 11 months, rolled the litigation dice, and filed suit in the wrong county. The Miles’ lawyer spent another nine months trying to manipulate a sympathetic appeals court venue. The appeals court took two years to consider the appeal after the second trial. **Justice Owen was not responsible for wasting those four years.** And she was not responsible for the Miles’ choice to pay the attending nurse until 4:00 a.m. but not to rise themselves until 5:00 a.m.⁴⁸

Concerned Women for America President Sandy Rios attended the July 23 hearing and witnessed this outrage. She wrote Sen. Feinstein on August 1, 2002, **demanding that she “publicly apologize to Justice Owen for what we pray was a gross error and not an intentional act of character assassination.”**⁴⁹ On August 16, Sen. Feinstein wrote: “I asked [Justice Owen] questions on a range of topics including her role in the case of *Ford Motor Co. v. Miles*. Justice Owen responded and provided additional information. This exploration and clarification of a nominee’s record is the precise purpose of a hearing.” On August 27, Mrs. Rios responded: “We all expect senators to ask probing questions. **These were not probing questions. These were false statements, horrible accusations, and demeaning suggestions.** Your behavior in this regard was simply beyond the pale and you should public apologize to Justice Owen.”

The media establishment recognizes the unfair ideological attacks on this nominee.

- **Chicago Tribune:** “But the only real argument against her is that she’s not the sort of choice a Democratic president would make. That’s no reason Bush shouldn’t have picked her, or that the Senate shouldn’t confirm her.”⁵⁰

- **Wisconsin State Journal:** “[Sens. Russ] Feingold and [Herb] Kohl should both vote to confirm Owen, and should try to convince their colleagues to do likewise. She is well qualified, and that’s all that should count.”⁵¹
- **Wall Street Journal:** “Of Mr. Bush’s 32 appeals-court nominees, 17 haven ’t yet received a Senate hearing. Like Judge Owen, they’ll get that privilege only after all the interest groups are lined up to maul them.”⁵²
- **Washington Post:** “Liberals will no doubt disagree with some opinions she would write on the 5th Circuit, but this is not the standard by which a president’s lower-court nominee should be judged. ... In Justice Owen’s case, the long wait has produced no great surprise. She is still a conservative. And that is still not a good reason to vote her down.”⁵³

Evaluating judges by the political correctness of their results is a very dangerous approach that politicizes the judicial process and undermines judicial independence. The arguments against Justice Owen are all based on this illegitimate view of judicial power. These arguments are based not only on false premises, but false facts. Not surprisingly, they come to false conclusions.

Justice Owen is not only superbly qualified for appointment – even the liberal American Bar Association agrees with that – but is exactly the kind of judge America needs. She will take the law as the people and their elected representatives make it, apply it faithfully, and leave the politics to the people. If such judicial restraint does not advance the liberal political agenda, it is because the American people do not support that agenda.

NOTES

¹ <http://www.uscourts.gov/vacancies/judgevacancy.htm>.

² *Congressional Record*, July 25, 2000, at S7531 (“with 60 current and longstanding vacancies ... we cannot afford to stop or slow down the little progress we are making.”).

³ *Congressional Record*, May 24, 2000, at S4366 (“With 20 vacancies on the federal appellate courts across the country...our courts of appeals are being denied the resources that they need, and their ability to administer justice for the American people is being hurt.”).

⁴ Editorial, *Houston Chronicle*, September 24, 2000, at 2.

⁵ Editorial, *The Dallas Morning News*, October 26, 2000, at 18A.

⁶ American Bar Association, *The ABA Standing Committee on Federal Judiciary: What It Is and How It Works*, at 3, available at <http://www.abanet.org/scfedjud/background.pdf>.

⁷ *Id.* at 8.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 4-5.

¹¹ <http://www.whitehouse.gov/news/releases/2001/05/20010509-3.html>.

¹² Transcript, Judiciary Committee Hearing, July 23, 2002, available at www.nexis.com (accessed July 24, 2002), at 33 (hereinafter *Hearing Transcript*).

¹³ *Id.* at 23.

¹⁴ Texans for Public Justice, *Texas Supreme Court Justice Priscilla Owen: An Extremist Jurist – Even by Texas Standards* (June 2002), at 4,16.

¹⁵ See 28 U.S.C. section 453.

¹⁶ *Hearing Transcript*, at 41.

¹⁷ *Id.*

¹⁸ *Id.* at 22-23.

¹⁹ *Id.* at 23.

²⁰ Texas Family Code, section 33.002(1).

²¹ Texas Family Code, section 33.003(i).

²² The Texas Department of Health “pays attorney fees and other court costs when a minor files a bypass petition.” Elliott, “Abortion Detour: Girls Looking to Bypass Parental Notice Avoid Harris County Courts,” *Houston Chronicle*, March 24, 2002, at A1. These payments “are the only source of information about the secretive judicial procedure.” *Id.* The state paid these costs in 579 cases brought in 10 Texas counties through March 8, 2002. *Id.*

²³ *Id.* Girls may file a bypass petition in any county, regardless of their residence. *Id.*

²⁴ Editorial, “The Owen Nomination,” *The Washington Post*, July 24, 2002, at A18.

²⁵ Alliance for Justice, *Texas Supreme Court Justice Priscilla Owen* (July 2002), at 16.

²⁶ 410 U.S. 113 (1973).

²⁷ Texas Family Code, section 33.003(i).

²⁸ *Hearing Transcript*, at 21.

²⁹ *In re Jane Doe*, 19 S.W.2d 249,254 (2000).

³⁰ *Hearing Transcript*, at 2 (“Accusations have been made that Justice Owen too often stretches or even goes beyond the law as written by the Texas legislature to meet her personal beliefs on several core issues, including abortion and consumer rights.”).

³¹ *Id.* at 19.

³² *Id.* at 4 (“Justice Owen...does not substitute her views for the legislature’s, which is precisely the type of judge that the Washington groups who oppose her normally want.”); *id.* at 6 (“Justice Owen’s detractors would have us believe that in these cases, she would have applied standards of her own choosing. Ironically, in each and every example they cite, whether concurring with the majority or dissenting, Justice Owen was applying not her own standards but the standards enunciated in the Roe-versus-Wade line of decisions of the United States Supreme Court, which she followed and recognized as authority.”); *id.* at 7 (“But this standard is not Justice Owen’s invention but rather the words of the Supreme Court’s pro-choice decision in *Casey*.”).

³³ *Id.* at 14 (one of the “basic principles” guiding her work as a judge is that “when it’s a statute that’s before me, I must enforce it as you in the Congress, or a state legislature, as the case may be, has written it, unless it’s unconstitutional”).

³⁴ *Id.*

³⁵ *Hearing Transcript*, at 34. Sen. Kennedy went on to say that Justice Owen was “making, not interpreting, the law. And, in fact, many might call your actions on the court activist.” *Id.*

³⁶ *Id.* at 19 (“And if you look at the backdrop against which this whole statute was enacted, it seemed to me – and a majority of the court agreed on this, it’s in their opinion – that they were looking at all the U.S. Supreme Court precedent on this point”).

³⁷ *Id.* at 36. See *In re Jane Doe*, 19 S.W.2d 249,254 (2000) (“Our Legislature was obviously aware of this jurisprudence when it drafted the statute before us”).

³⁸ *Id.* at 53.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Editorial, “The Owen Nomination,” *The Washington Post*, July 24, 2002, at A18.

⁴³ *Hearing Transcript*, at 16.

⁴⁴ 967 S.W.2d 377 (1998).

⁴⁵ *Hearing Transcript*, at 16 (emphasis added).

⁴⁶ *Id.* at 17.

⁴⁷ *Id.*

⁴⁸ Sen. Feinstein noted that “there was a quiet hour with nobody watching him, and then the parents attended him from 5:00 a.m. in the morning.” *Id.* at 16. See also Pasztor, “Texas Jurist Sailing Into U.S. Senate Storm: Death of Plaintiff Could Haunt Nominee,” *Austin America Statesman*, July 14, 2002, at A1 (“They managed to scrape together enough money to hire a nurse to stay with him until 4 a.m. His mother would rise at 5 a.m. to take over the constant care Searcy required”).

⁴⁹ <http://www.cwfa.org/library/misc/feinstein-letter.shtml>.

⁵⁰ Editorial, “Ideologues vs. Justice Owen,” *Chicago Tribune*, August 20, 2002.

⁵¹ Editorial, “Owen Is Qualified for Federal Bench,” *Wisconsin State Journal*, July 29, 2002, at A8.

⁵² Editorial, “A New Borking Experience,” *The Wall Street Journal*, July 22, 2002, at A14.

⁵³ Editorial, *supra* note 43.