

From: "Kelley, William K."
To: "Kavanaugh, Brett M.", <rgarnett@nd.edu>
Subject: Fw: Miami Herald - Roberts had larger 2000 recount role
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To: Kelley, William K. <William_K._Kelley@who.eop.gov>
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Roberts had larger 2000 recount role

The role of U.S. Supreme Court nominee John Roberts in the 2000 election aftermath in Florida was larger than has been reported. Roberts helped prepare the Supreme Court case.

By MARC CAPUTO, Miami Herald

TALLAHASSEE - U.S. Supreme Court nominee John Roberts played a broader behind-the-scenes role for the Republican camp in the aftermath of the 2000 election than previously reported -- as legal consultant, lawsuit editor and prep coach for arguments before the nation's highest court, according to the man who drafted him for the job.

Ted Cruz, a domestic policy advisor for President Bush and who is now Texas' solicitor general, said Roberts was one of the first names he thought of while he and another attorney drafted the Republican legal dream team of litigation "lions" and "800-pound gorillas," which ultimately consisted of 400 attorneys in Florida.

Until now, Gov. Jeb Bush and others involved in the election dispute could recall almost nothing of Roberts' role, except for a half-hour meeting the governor had with Roberts. Cruz said Roberts was in Tallahassee helping the Bush camp for "a week to 10 days," and that his help was important, though Cruz said it is difficult to remember specifics five years after the sleep-depriving frenetic pace of the 2000 recount.

But one thing was certain, Cruz told The Herald: "There was no one better for the job."

"He's one of the best brief writers in the country. Just like a good journalist or a novelist, he can write with clarity, concisely and can paint a picture with words," said Cruz. Roberts, a constitutional-law expert in a top Washington law firm at the time, is now a federal appeals court judge in D.C. Roberts was a no-brainer for the recount effort: His win-loss record at the U.S. Supreme Court was one of the most impressive. And, like Cruz, he was a member of a tight-knit circle of former clerks for the court's chief justice, William Rehnquist -- a group jokingly referred to as "the cabal."

DRESS REHEARSAL

Soon after getting the call from Cruz, Roberts traveled from his Washington office at Hogan & Hartson to Tallahassee to lend advice and help polish legal briefs. Later, Roberts participated in a dress rehearsal to prepare the Bush legal team for the U.S. Supreme Court.

Cruz's account is the first to place Roberts firmly within the Bush vs. Gore battle, filling in substantial blanks in the memories of everyone from Bush's campaign lawyer, Ben Ginsberg, to the governor.

Even before Roberts' more extensive role in the 2000 elections was known, Democrats wanted the issue brought up in his confirmation hearings, during which he appears likely to be confirmed.

Sen. Edward Kennedy, the Massachusetts Democrat who sits on the judiciary committee, has said through a spokeswoman that Roberts is a partisan Republican who needs to show he can hear cases fairly. The chair of Florida's Democratic Party, former U.S. Rep Karen Thurman, said Roberts should be questioned about anything relating to the Constitution -- including the most important constitutional case regarding presidential elections.

Republicans such as Jeb Bush, though, say they've ``moved on."

IN TALLAHASSEE

When it comes to his meeting with Roberts, the governor said Roberts flew down to Tallahassee, on his own dime, to meet for 30 minutes sometime in November or December to discuss the governor's role in certifying the election. Cruz, who had also met with the governor, said he believed that Roberts was already in Tallahassee and simply walked up the hill from the GOP headquarters to meet the governor.

Ted Olson, the lawyer who successfully argued George W. Bush's case before the U.S. Supreme Court, said Roberts helped, but couldn't recall what legal briefs, if any, Roberts reviewed. Olson said he was certain that Roberts participated in a "moot court" hearing to prep him for arguments before the high court in the first of two hearings.

"It was a conference room full of people and John was there. I had known him for 20 years by that point, and I highly respected his opinions," Olson said.

Cruz said there are few candidates as qualified as Roberts for the Supreme Court. Roberts won 25 out of 39 cases he argued before the U.S. Supreme Court. His secret, according to Cruz: ``He does his homework for hundreds of hours."

OTHER CASE

Cruz remembered a case Roberts argued Nov. 29, 2000. The day before, Cruz saw Roberts unexpectedly preparing to depart Tallahassee. When asked why, Roberts said he had to argue before the high court the next day. He won a 9-0 decision on behalf of a small, road-sign company in a trademark case.

In a case Roberts lost, against a prisoner who complained of secondhand-smoke exposure, Cruz said Roberts got a laugh out of the justices in response to a question about whether avoiding smoke exposure was the same as asbestos exposure.

"When we go to a restaurant they don't ask: 'Do you want the asbestos section or the non-asbestos section?' They do ask: 'Do you want smoking or nonsmoking?' Smoking is a matter of personal preference," Roberts responded.

'HORRIFIED'

While working on the recount, neither Roberts nor any of the other attorneys squabbled. They were too focused, Cruz said -- and too worried about what they say were the Democrats' efforts to subvert the voting process through recounts divining voters' wishes on pregnant, hanging and dimpled chads.

"To a person, the Republican lawyers were horrified at what was going on . . . the effort [by Democrats] to, in effect, steal the elections," Cruz said.

About 30 of the 400 Republican lawyers in the election fight were based in Tallahassee, though Washington lawyers such as Olson and Roberts left for home by the end of November and remained in contact with Tallahassee lawyers by e-mail, phone and fax.

Ginsberg, who met with Cruz just after the election to hire the dream team of lawyers, didn't clearly remember Roberts, noting that the number of attorneys made it tough to keep track of everyone.

The Republicans assigned lawyers to one of five teams: the U.S. Supreme Court, the Florida Supreme Court, local county litigation, trial attorneys and military affairs. Though apparently on the federal team, Roberts' name appears on no legal briefs, a fact that Cruz attributes to Roberts' modesty.

"He already had a name. He didn't need the recognition," Cruz said. Plus, Cruz said, the lawsuit-a-day atmosphere was like ``a building on fire. Everyone just grabbed a bucket."

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