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From: "Koebele, Steve" <Steve.Koebele@usdoj.gov> ("Koebele, Steve"
<Steve.Koebele@usdoj.gov> [UNKNOWN])

To: [REDACTED] (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN]), "Barbara_Ledeen@src.senate.gov" <Barbara_Ledeen@src.senate.gov> (Receipt Notification Requested) (IPM Return Requested) ("Barbara_Ledeen@src.senate.gov" <Barbara_Ledeen@src.senate.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN]), "Charnes, Adam" <Adam.Charnes@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Charnes, Adam" <Adam.Charnes@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN]), "Remington, Kristi L" <Kristi.L.Remington@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Remington, Kristi L" <Kristi.L.Remington@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN]), [REDACTED] (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN]), [REDACTED] (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN]), "Manuel_Miranda@judiciary.senate.gov" <Manuel_Miranda@judiciary.senate.gov> (Receipt Notification Requested) (IPM Return Requested) ("Manuel_Miranda@judiciary.senate.gov" <Manuel_Miranda@judiciary.senate.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN]), "Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN]), "Willett, Don" <Don.Willett@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Willett, Don" <Don.Willett@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])

Cc: Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO]), Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO]), Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO]), "Ed_Haden@judiciary.senate.gov" <Ed_Haden@judiciary.senate.gov> (Receipt Notification Requested) (IPM Return Requested) ("Ed_Haden@judiciary.senate.gov" <Ed_Haden@judiciary.senate.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])

Subject: : Wall Street Journal - Owen Editorial

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<Steve.Koebele@usdoj.gov> [UNKNOWN])

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READ:UNKNOWN

TO:"Remington, Kristi L" <Kristi.L.Remington@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Remington, Kristi L" <Kristi.L.Remington@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])

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READ:UNKNOWN
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READ:UNKNOWN
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Attached in PDF form is today's WSJ editorial. Thank you, Steve.

- Editorial-WSJ 09-05-02.pdf
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Too Smart for the Senate

Priscilla Owen isn't exactly a household name. But what happens to her today in the Senate Judiciary Committee will say a lot about President Bush's legacy in the federal courts—to wit, whether the 10 liberal Democrats who form the majority will allow him to have one.

The Gang of Ten is scheduled to vote on Judge Owen's nomination to the Fifth Circuit Court of Appeals, and she ought to be an easy sale. Currently on the Texas Supreme Court, she is one of the best legal minds of her generation and at age 47 is potential Supreme Court material. She's a conservative, but the liberal American Bar Association gave her its highest rating—a unanimous well-qualified.

There was a time that jurists of her intellectual caliber were welcomed by Senators of both parties, but no more. Barring a last-minute bout of conscience, Democrats seem ready to pull a Pickering—that is, kill Judge Owen's nomination in committee and deny her a vote of the full Senate. This was the treatment meted out to Charles Pickering Sr. last March, when the Mississippi judge's nomination was stopped before moderate Democrats got a chance to vote for him. If Judge Owen were to reach the Senate floor, she too would be confirmed with Democratic support.

Political war over judges isn't new, but the Judiciary Democrats are taking it to an entirely new level. Chairman Pat Leahy won't even schedule hearing dates for the best appeals-court nominees; six of Mr. Bush's first 11 picks are still waiting, 16 months after being

nominated. That includes legal luminaries Miguel Estrada, Jeff Sutton, John Roberts and Michael McConnell, who, like Judge Owen, are potential Supreme Court candidates—which is their real sin in liberal Democratic eyes.

But maybe they're the lucky ones. Judge Pickering had to endure race-baiting that African-Americans in his home state deplored. D. Brooks Smith was confirmed, amid phony charges of sexism, only because Senator Arlen Specter called in chits for his fellow Pennsylvanian.

Judge Owen's fate is to be called "anti-abortion" because she's upheld Texas's parental-notification law—a view supported by more than two-thirds of Americans and the U.S. Supreme Court. Her critics also make the dishonest charge that even the President's own lawyer, Alberto Gonzales, who served with her on the Texas Supreme Court, thinks she's a judicial "activist." Mr. Gonzales has denied this repeatedly, and as White House counsel had a big say in her nomination.

There's more at stake here than the fate of one accomplished jurist. There's also the Constitutional "advise and consent" process that throughout U.S. history has meant that the entire Senate should work its will. The liberal Judiciary 10 are denying to this President a Constitutional right that Presidents Reagan, Clinton and George H.W. Bush were all granted by Senates controlled by the opposite party. We hope those Senate Democrats who want to be President understand that the same thing could happen to them.

Senate Democrats prepare to kill one more judicial nomination.