

Analysis: As Obama and Coburn clash over judicial nominee Arvo Mikkanen, supporters defend him

Written by Capitol Editor Patrick B. McGuigan
Wednesday, 09 February 2011 17:43



Arvo Mikkanen, an assistant U.S. Attorney in Oklahoma City, is President Barack Obama's first federal judicial nominee for the Sooner State. The choice is potentially historic in light of Mikkanen's membership in the Kiowa Tribe of Oklahoma.

Daniel G. Webber, a respected former U.S. Attorney considered a moderate conservative among Oklahoma Democrats, has endorsed the nomination, but confirmation prospects are murky due to the manner in which Mikkanen's name was advanced in the process, and the consequent statements of opposition from the state's two Republican members of the U.S. Senate.

Presidents normally consult with home state senators and/or representatives about lower court nominations, and often touch base with senators about appeals court choices, as well. Senators generally defer to one another's prerogatives, hoping to preserve the same involvement for themselves.

In the case of Mikkanen, however, the White House nominated him for the district judgeship in Tulsa (the northern district) without touching base with the state's two U.S. Senators, Tom Coburn of Muskogee and Jim Inhofe of Tulsa.

The lack of consultation with Coburn, with whom the president has a mutually-acknowledged and widely-reported cordial relationship, is mystifying, particularly in light of his position on the Senate Judiciary Committee. The White House staff apparently did not consult the sole

Written by Capitol Editor Patrick B. McGuigan
Wednesday, 09 February 2011 17:43

Democrat in the Oklahoma delegation, U.S. Rep. Dan Boren.

When the nomination was announced a few days ago, Coburn quickly said Mikkanen was “unacceptable for the position.” He also characterized the choice as “another example of how politics in Washington neglect to take into account what is best for the people of Oklahoma.”

While the Obama administration faces heat for avoiding customary process, Mikkanen has several ardent defenders who have spoken out since his name surfaced a few days ago. One is Kirke Kickingbird, a lawyer and former professor at Oklahoma City University. In *The Oklahoman* today (Wednesday, February 9), Chickasaw Nation Lt. Gov. Jefferson Keel called Mikkanen “an outstanding attorney” who has “the background and experience” for the trial judge post.

Like many of his other defenders, Keel acknowledged there may have been what reporter Chris Casteel called “a breach of protocol” in the nomination. Lael Echo-Hawk, a member of the Pawnee Nation who is president of the National Native American Bar Association, also stated strong support for the nominee. Many observers note that there are no “enrolled Indians” (registered tribal members) serving on the federal bench.

Webber, who works at Ryan Whaley Coldiron Shandy, an Oklahoma City law firm, is passionate in support of Mikkanen, who worked under his supervision for three years in the 1990s. Webber was U.S. Attorney for two years in Oklahoma City. He delivered a strong defense of Mikkanen in an interview with CapitolBeatOK. He said:

“I don’t see how anyone could question Arvo’s qualifications for the federal bench. He has a distinguished 25-year career as an Oklahoma lawyer. He started by clerking for two different federal judges. He worked in private practice at a well-known Oklahoma firm. He has represented the United States in both civil and criminal cases. In fact, Arvo has been an advocate in over 475 federal court cases. He has been recognized by the Oklahoma Bar Association for his 'pro bono' service and by the FBI for his prosecutorial skills -- not many lawyers can say that.

“I personally worked with Arvo for seven years. ... He was known throughout the Justice Department as an expert on federal criminal jurisdiction in Indian Country. He helped develop a memorandum of understanding between law enforcement and state, tribal, and federal government officials regarding the investigation of child abuse crimes in order to hold abuser accountable. He also started our district’s use of specially trained forensic interviewers and pediatricians in the process of interviewing preteen victims of sexual abuse. This process was designed to help obtain reliable testimony without further traumatizing the child. Arvo prosecuted some of the hardest cases brought to our office. Arvo prosecuted fairly and played by the rules.”

Like other observers, Webber acknowledges Mikkanen's nomination was advanced outside of customary procedures. Webber, who worked for former U.S. Sen. David Boren, also a Democrat, took strong issue with assertions that Mikkanen is not qualified for the post. He told CapitolBeatOK:

Written by Capitol Editor Patrick B. McGuigan
Wednesday, 09 February 2011 17:43

"I know of no reason Arvo's qualifications could be legitimately questioned. In fact, his qualifications are very much like those of another Oklahoman nominated to an even higher court, Tenth Circuit Judge Jerome Holmes. I also worked with Judge Holmes for seven years. He too served as a law clerk for two different federal judges, worked as a federal prosecutor, and practiced in a prestigious Oklahoma City law firm. Governor [Brad] Henry and I both wrote letters in support of the Holmes nomination and Senator Coburn put both letters in the Congressional Record the day Judge Holmes was confirmed. Now, however, Arvo is called unacceptable by the Senator within hours of his nomination? Arvo arguably has even stronger qualifications in one respect. He has actually been a judge, both at the trial level and at the appellate level, in tribal courts throughout Oklahoma."

Concerning possible philosophical concerns about the role of judges in the federal system, Webber commented, "If Arvo holds some view that would trigger ideological opposition, I don't know what it is. I don't even know if he's a registered Democrat and I don't care."

He continued, "Is Arvo's participation in the tribal court system a mark against him? I have never known Arvo to do anything but try to follow the law as the framers, the Congress and the federal courts have written it. Part of that law, going back to the beginning of our nation and obviously our state, recognizes the unique legal status of tribal governments. Still, I have never seen Arvo play favorites with the law."

"I specifically recall a case where a non-Indian tried to open a casino in Oklahoma City, arguing in was considered Indian land by relying on some alleged action or inaction by former tribal officials. Then [Oklahoma County] District Attorney Wes Lane, a Republican, asked the U.S. Attorney's Office to lend him Arvo's expertise. Arvo testified as an expert witness in Oklahoma County court at the District Attorney's request and demonstrated how the supposed Indian status of the land was bogus and against federal law. He did so by fairly and appropriately applying the existing law to the facts. I have no reason to believe Arvo would approach his duties as a federal judge any differently."

Jim Myers of the Tulsa World sketched Mikkanen's career outside of his Justice Department hitch as a local prosecutor: "While in private practice, he served as a judge for a number of tribal courts in Oklahoma and as the chief justice of the Cheyenne-Arapaho Supreme Court from 1991 to 1994. He received a bachelor's degree from Dartmouth College in 1983 and a law degree from Yale Law School in 1986."

Addressing what may be the pivotal issue in the process thus far, Webber told CapitolBeatOK, "If Senator Coburn was not properly consulted by White House staff, it shouldn't be held against the nominee. The day after Arvo's nomination, President Obama singled Senator Coburn out of the crowd at the national prayer breakfast as someone with whom he wanted to find common ground."

"Arvo's nomination should provide such an opportunity. Any staff errors, no matter which side may have made them, should not overshadow Arvo's stellar qualifications. I hope the nomination will be considered on its merits. If it is, I am confident Arvo will be confirmed to the

Analysis: As Obama and Coburn clash over judicial nominee Arvo Mikkanen, supporters defend him

Written by Capitol Editor Patrick B. McGuigan

Wednesday, 09 February 2011 17:43

federal bench.”

Mikkanen declined CapitolBeatOK's request for an interview. Judicial nominees generally, but not universally, avoid news media interviews during confirmation processes.