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Counsel's Office, White House

Rao, Neomi

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Folder Title:

[Brett Kavanaugh]: TPs (Talking Points)

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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Handwritten Note	[Notes]	1	N.D.	P5;
002	Draft	Brett M. Kavanaugh	17	N.D.	P5;
003	Letter	Nomination of Brett M. Kavanaugh to D.C. Circuit - To: Orrin Hatch - From: Pamela Harris	1	04/27/2004	P6/b6;

COLLECTION TITLE:

Counsel's Office, White House

SERIES:

Rao, Neomi

FOLDER TITLE:

[Brett Kavanaugh]: TPs (Talking Points)

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10166

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

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CHAIR

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New York, NY 10022-3902

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Richmond, VA 23218

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Chicago, IL 60611

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Pierre, SD 57501-0160

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P.O. Box 1301
Dillon, MT 59725-1301
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San Francisco, CA 94111-4067

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Suite 1800
201 S. Main Street
Salt Lake City, UT 84111-2218

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999 Peachtree Street, NE
Atlanta, GA 30309-3996

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Suite 200
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Washington, DC 20036-8103

FEDERAL CIRCUIT

John Payton
2445 M Street, NW
Washington, DC 20037-1435

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202-662-1761
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Portsmouth, NH 03801
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E-mail: stober@toberlaw.com

BY FACSIMILE AND MAIL

Ms. Harriet Miers
Counsel to the President
The White House
Washington, D.C. 20502

Re: Brett M. Kavanaugh, Esq.
United States Court of Appeals for the District of Columbia

Dear Ms. Miers:

The purpose of this letter is to confirm that this Committee has completed a supplemental investigation regarding the renomination of Brett M. Kavanaugh for appointment as Appellate Judge of the United States Court of Appeals for the District of Columbia.

As a result of our investigation, a substantial majority of the Committee is of the opinion that Brett M. Kavanaugh is Qualified for appointment as Appellate Judge of the United States Court of Appeals for the District of Columbia. A minority of the Committee is of the opinion that Brett M. Kavanaugh is Well Qualified for appointment as Appellate Judge of the United States Court of Appeals for the District of Columbia.

Yours very truly,

Stephen L. Tober
Chair

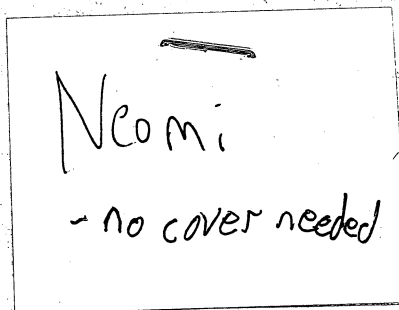
SLT/sst

cc: **Rachel Brand, Esq.**
ABA Standing Committee on Federal Judiciary

436900/C/1

Standing Committee on
Federal Judiciary

740 Fifteenth Street, NW
Washington, DC 20005-1022
Facsimile: (202) 662-1762



April 3, 2006



CHAIR

Stephen L. Tober
P.O. Box 1377
381 Middle Street
Portsmouth, NH 03802-1377

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Banco Popular Bldg.
206 Totuan Street
Old San Juan, P.R. 00902

SECOND CIRCUIT

Lorna C. Schofield
919 Third Avenue
New York, NY 10022-3902

THIRD CIRCUIT

Roberta D. Lichenberg
28th Floor
1635 Market Street
Philadelphia, PA 19103-2966

FOURTH CIRCUIT

D. Alan Rudlin
P.O. Box 1535
Richmond, VA 23218

FIFTH CIRCUIT

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SIXTH CIRCUIT

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6075 Poplar Avenue
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SEVENTH CIRCUIT

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980 N. Michigan Avenue
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EIGHTH CIRCUIT

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P.O. Box 160
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Pierre, SD 57501-0160

NINTH CIRCUIT

Max A. Hansen
P.O. Box 1301
Dillon, MT 59725-1301

TENTH CIRCUIT

Raymond C. Marshall
18th Floor
Three Embarcadero Center
San Francisco, CA 94111-4067

ELEVENTH CIRCUIT

James B. Lee
Suite 1800
201 S. Main Street
Salt Lake City, UT 84111-2218

D.C. CIRCUIT

Teresa Wynn Roseborough
999 Peachtree Street, NE
Atlanta, GA 30309-3996

D.C. CIRCUIT

Marna S. Tucker
Suite 200
2001 I. Street, NW
Washington, DC 20036-8103

FEDERAL CIRCUIT

John Payton
2445 M Street, NW
Washington, DC 20037-1435

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Denise A. Cardman
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AMERICAN BAR ASSOCIATION

Please respond to:

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Standing Committee on
Federal Judiciary

740 Fifteenth Street, NW
Washington, DC 20005-1022
Facsimile: (202) 662-1762

April 3, 2006

BY FACSIMILE AND MAIL

The Honorable Arlen Specter
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

**Re: Brett M. Kavanaugh, Esq.
United States Court of Appeals for the District of Columbia**

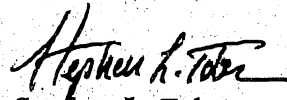
Dear Senator Specter:

The purpose of this letter is to confirm that this Committee has completed a supplemental investigation regarding the renomination of Brett M. Kavanaugh for appointment as Appellate Judge of the United States Court of Appeals for the District of Columbia.

As a result of our investigation, a substantial majority of the Committee is of the opinion that Brett M. Kavanaugh is Qualified for appointment as Appellate Judge of the United States Court of Appeals for the District of Columbia. A minority of the Committee is of the opinion that Brett M. Kavanaugh is Well Qualified for appointment as Appellate Judge of the United States Court of Appeals for the District of Columbia.

A copy of this letter has been sent to Brett M. Kavanaugh for his information.

Yours very truly,


Stephen L. Tober
Chair

SLT/sst

cc: Brett M. Kavanaugh, Esq.
Ms. Harriet Miers
Rachel Brand, Esq.
ABA Standing Committee on Federal Judiciary
Denise A. Cardman, Esq.

The Honorable Arlen Specter

Page 2

April 3, 2006

This letter was sent to the following members of the Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275

Majority:

Hon. Arlen Specter, Chairman
Hon. Orrin G. Hatch
Hon. Charles E. Grassley
Hon. Jon Kyl
Hon. Mike DeWine
Hon. Jeff Sessions
Hon. Lindsey Graham
Hon. John Cornyn
Hon. Sam Brownback
Hon. Tom Coburn

Minority:

Hon. Patrick J. Leahy
Hon. Edward M. Kennedy
Hon. Joseph R. Biden, Jr.
Hon. Herbert H. Kohl
Hon. Dianne Feinstein
Hon. Russell D. Feingold
Hon. Charles E. Schumer
Hon. Richard Durbin

Douglas H. Ginsburg

D.C. CIRCUIT

Chief Judge, D.C. Circuit
5128 United States Courthouse
333 Constitution Avenue, N.W.
Washington, D.C. 20001-2866
(202) 216-7190

Fax: (202) 273-0678

Appointed in 1986 by President Reagan

Born: 1946

Education Cornell Univ., B.S., 1970; Univ. of Chi., J.D., 1973

Clerkships Law Clerk, Hon. Carl McGowan, United States Court of Appeals, District of Columbia, 1973-74; Law Clerk, Justice Thurgood Marshall, United States Supreme Court, 1974-75

Government Positions Deputy Assistant Attorney General **42**
for Regulatory Affairs, Antitrust Division, United States
Department of Justice, 1983-84; Administrator for **30/41?**
Information and Regulatory Affairs, Office of Management
and Budget, 1984-85; Assistant Attorney General, Antitrust **31**
Division, United States Department of Justice, 1985-86

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Harry T. Edwards

D.C. CIRCUIT

Circuit Judge, D.C. Circuit

5400 United States Courthouse

333 Constitution Avenue, N.W.

Washington, D.C. 20001-2866

(202) 216-7380

Fax: (202) 273-0119

Appointed in 1980 by President Carter

Born: 1940

Children: Brent, Michelle

Education Cornell Univ., B.S., 1962; Univ. of Michigan, J.D., 1965; Assistant Editor, Michigan L. Rev., 1963-65

Private Practice Associate, Seyfarth, Shaw, Fairweather & Geraldson, Chicago, 1965-70

Academic Positions Professor, Univ. of Michigan, 1970-75, 1977-80; Visiting Professor of Law, Program for International Legal Cooperation, Free Univ. of Brussels, 1974; Harvard Law School: Visiting Professor, 1975-76; Professor, 1976-77; Faculty (law and higher education), Lecturer, Pa. Law School, 1981-82; Distinguished Lecturer, Duke Law School, 1983-89; Lecturer, Georgetown Law School, 1985-86; Lecturer, Harvard Law School, 1982-88; Lecturer, Univ. of Michigan Law School, 1988-89; Lecturer, New York Univ. Law School

Other Employment Labor Arbitrator (part time), 1970-80

Judicial Committees & Activities Member, Supreme Court Historical Society, 1997-present; Federal Judges Assn.

Professional Associations A.B.A.: Assn. of American Law Schools; American Judicature Society; American Law Institute; American Academy of Arts and Science; Order of the Coif; American Society of International Law; Fellows of the American Bar Foundation

(none)

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Merrick B. Garland

D.C. CIRCUIT

Circuit Judge, D.C. Circuit
5409 United States Courthouse
333 Constitution Avenue, N.W.
Washington, D.C. 20001
(202) 216-7460
Fax: (202) 208-2449
Appointed 1997 by President Clinton
Born: 1952

Education Harvard, A.B., summa cum laude, 1974, J.D., magna summa laude, 1977

Government Positions Special Assistant to the Attorney General, United States Department of Justice, 1979-81; Associate Independent Counsel, 1987-88; Assistant United States Attorney, D. D.C., 1989-92; Deputy Assistant Attorney General, Criminal Division, United States Department of Justice, 1993-94; Principal Associate Deputy Attorney General, United States Department of Justice, 1994-97

Clerkships Law Clerk, Hon. Henry J. Friendly, United States Court of Appeals, Second Circuit, 1977-78; Law Clerk, Justice William J. Brennan, Jr., United States Supreme Court, 1978-79

Private Practice Partner and Associate, Arnold & Porter, 1981-89, 1992-93

Academic Positions Lecturer, Harvard Law School (Advanced Antitrust), 1985-86

Professional Associations American Law Institute; Section of Administrative Law & Regulatory Practice, A.B.A.; Co-chair, Administrative Law Section, District of Columbia Bar

Judicial Committee & Activities United States Judicial

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Almanac of the Federal Judiciary

Karen LeCraft Henderson

D.C. CIRCUIT

Circuit Judge, D.C. Circuit
 3118 United States Courthouse
 333 Constitution Avenue, N.W.
 Washington, DC 20001
 (202) 216-7370
 Fax: (202) 273-0983
 Appointed in 1990 by President Bush
 Born: 1944

Education Duke Univ., B.A., 1966; Univ. of North Carolina, J.D., 1969

Private Practice Partner, Wright & Henderson, Chapel Hill, N.C., 1969-70; Sinkler, Gibbs & Simons, P.A., Columbia, S.C., 1983-86

Government Positions Assistant Attorney General, Columbia, S.C., 1973-78; Senior Assistant Attorney General and Director of Special Litigation Section, Columbia, S.C., 1978-82; Deputy Attorney General and Director of Criminal Division, 1982, Columbia, S.C.

Previous Judicial Positions United States District Judge, District of South Carolina, 1986-90

Professional Associations A.B.A.; South Carolina Bar; American Law Institute; Supreme Court Historical Society

Honors and Awards Univ. of South Carolina, LL.D., 1990

Noteworthy Rulings *Willner v. Thornburgh*, 928 F.2d 1185 (D.C. Cir. 1991), *cert. denied*, 502 U.S. 1020 (1991): Henderson dissented from a court opinion holding that Justice Department requirement that government employment applicant's submit to urine tests did not violate the Fourth Amendment's protections against unreasonable searches. She

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Almanac of the Federal Judiciary

A. Raymond Randolph**D.C. CIRCUIT**

Circuit Judge, D.C. Circuit

3108 E. Barrett Prettyman United States Courthouse

333 Constitution Avenue, N.W.

Washington, D.C. 20001-2866

(202) 216-7425

Fax: (202) 273-0004

Appointed in 1990 by President Bush

Born: 1943

Education Drexel Univ., B.S., 1966; Univ. of Pennsylvania Law School, J.D., summa cum laude, 1969**Clerkships** Law Clerk, Hon. Henry J. Friendly, United States Court of Appeals, Second Circuit, 1969-70**Government Positions** Assistant to the Solicitor General, Washington, D.C., 1970-73; Deputy Solicitor General, Washington, D.C., 1975-77; Special Counsel, Committee on Standards of Official Conduct, United States House of Representatives, 1979-80**Judicial Positions** Member, United States Judicial Conference Committee on Codes of Conduct, 1992-98; Chairman, 1995-98**Private Practice** Miller, Cassidy, Larroca & Lewin, Washington, D.C., 1973-75; Sharp, Randolph & Janis, Washington, D.C., 1977-79; Sharp, Randolph & Green, Washington, D.C., 1979-83; Randolph & Fox, Washington, D.C., 1983-84; Randolph & Truitt, Washington, D.C., 1984-87; Pepper, Hamilton & Scheetz, 1987-90**Academic Positions** Adjunct Professor of Law, Georgetown Law Center, 1974-78; Adjunct Professor of Law, George Mason Law School, 1992; Distinguished Adjunct Professor of Law, George Mason Law School, 1998-present

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Almanac of the Federal Judiciary

John G. Roberts, Jr.

D.C. CIRCUIT

Circuit Judge, D.C. Circuit

3832 E. Barrett Prettyman United States Courthouse

333 Constitution Avenue, N.W.

Washington, D.C. 20001-2866

(202) 216-7321

Appointed in 2003 by President G.W. Bush

Born: 1955

Education Harvard College, A.B., summa cum laude, 1976,
Harvard Law School, J.D., magna cum laude, 1979

Clerkships Law Clerk, Hon. Henry Friendly, United States
Court of Appeals for the Second Circuit, 1979-1980; Law
Clerk, Associate Justice William Rehnquist, Supreme Court of
the United States, 1980-1981

Private Practice Associate then Partner (1987), Hogan &
Hartson, Washington, D.C., 1986-89, 1993-03

Government Positions Special Assistant to the Attorney
General William French Smith, United States Department of
Justice, 1981-1982; Associate Counsel to the President, White
House Counsel's Office, 1982-1986; Principal Deputy
Solicitor General, United States Department of Justice, 1989-
1993

Professional Associations District of Columbia Bar;
American Law Institute; American Academy of Appellate
Lawyers; Edward Coke Appellate Inn of Court; Supreme
Court Historical Society

Other Activities Phi Beta Kappa; Lawyers Club;
Metropolitan Club; Robert Trent Jones Golf Club

Publications *New Rules and Old Pose Stumbling Blocks in
High Court Cases*, The Legal Times, February 26, 1990, co-

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Almanac of the Federal Judiciary

Judith W. Rogers**D.C. CIRCUIT**

Circuit Judge, D.C. Circuit
United States Courthouse
333 Constitution Avenue N.W.
Washington, D.C. 20001
(202) 216-7260
Fax: (202) 482-2546
Appointed in 1994 by President Clinton
Born 1939

Education Radcliffe College, A.B., cum laude, 1961; Harvard Law School, LL.B., 1964; University of Virginia Law School, LL.M., 1988

Clerkships Law Clerk, Juvenile Court of the District of Columbia, 1964-65

Government Positions Assistant United States Attorney, District of Columbia, 1965-68; Trial attorney, Criminal Division, United States Department of Justice, Washington, D.C., 1969-71; General Counsel, Congressional Commission on the Organization of the District Government, 1971-72; Legislative Program Coordinator, Office of the Assistant to the Mayor-Commissioner, and subsequently in the Office of the Mayor, D.C. government, 1972-74; Special Assistant for Legislation to the Mayor, D.C. Government, 1974-79; Assistant City Administrator for Intergovernmental Relations, D.C. Government, 1979; Corporation Counsel for the District of Columbia, 1979-83

Previous Judicial Positions Associate Judge, District of Columbia Court of Appeals, 1983-88; Chief Judge, District of Columbia Court of Appeals, 1988-93

Other Employment Staff attorney, San Francisco Neighborhood Legal Assistance Foundation, 1968-69

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Almanac of the Federal Judiciary

David B. Sentelle

D.C. CIRCUIT

Circuit Judge, D.C. Circuit
5818 United States Courthouse
333 Constitution Avenue, N.W.
Washington, D.C. 20001-2866
(202) 216-7330
Fax: (202) 273-0174

Appointed in 1987 by President Reagan

Born: 1943

Spouse: Jane Oldham

Children: Sharon Rene, Reagan Elaine, Rebecca Grace

Education Univ. of North Carolina, B.A., 1965, J.D., with honors, 1968

Private Practice Uzzell & DuMont, Asheville, N.C., 1968-70 (Specialty: insurance defense); Bryant, Hicks & Sentelle, Charlotte, N.C., 1977-80; Tucker, Hicks, Sentelle, Moon & Hodge, P.A., Charlotte, 1980-85 (Specialty: litigation)

Government Positions Assistant United States Attorney, Charlotte, 1970-74

Academic Positions Visiting Professor, Univ. of North Carolina, Charlotte, 1977, U.N.C. Chapel Hill, 1991-92

Previous Judicial Positions District Judge, North Carolina General Courts of Justice, Charlotte, 1974-77; U.S.D.C., W.D.N.C., 1985-87

Professional Associations A.B.A.; Federal Bar Assn. (Chapter President, 1975); North Carolina Bar Assn.; Edward Bennett Williams American Inn of Court (president)

Political Activities Mecklenburg County Republican Party (Chairman, 1979-80); North Carolina Republican Party (Convention Chairman, 1980-81); National Republican

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Almanac of the Federal Judiciary

David Stephen Tatel

D.C. CIRCUIT

Circuit Judge, D.C. Circuit
3818 United States Courthouse
333 Constitution Avenue, N.W.
Washington, D.C. 20001-2866
(202) 216-7160
Fax: (202) 208-1922
Appointed in 1994 by President Clinton
Born 1942

Education Univ. of Michigan, B.A., 1963; Univ. of Chicago Law School, J.D., 1966

Private Practice Sidley & Austin, Summer 1966, 1967-69, 1970-72; Hogan & Hartson, 1974-77, 1979-94

Government Positions Director Office for Civil Rights, United States Department of Health, Education & Welfare, Washington, D.C., 1977-79 43?

Other Employment Executive Director, Chicago Lawyers' Committee for Civil Rights Under Law, Chicago, Ill., 1969-70; Director, National Lawyers' Committee for Civil Rights Under Law, Washington, D.C., 1972-74

Academic Positions Instructor, Univ. of Michigan Law School, 1966-67; Lecturer, Stanford Law School, 1991-92; Director, Carnegie Foundation for the Advancement of Teaching, 1997-present; Director, National Board for Professional Teaching Standards

Professional Associations A.B.A.; District of Columbia Bar Assn.; Chair, Board of Directors, The Spencer Foundation, 1990-97; Director, Carnegie Foundation for the Advancement of Teaching, 1997-present

Honors & Awards National Legal Aid Defenders Assn.

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Almanac of the Federal Judiciary

Laurence Hirsch Silberman

D.C. CIRCUIT

Senior Judge, D.C. Circuit
 3400 United States Courthouse
 333 Constitution Avenue, N.W.
 Washington, D.C. 20001-2866
 (202) 216-7353
 Fax: (202) 273-0831
 Appointed in 1985 by President Reagan
 Born: 1935
 Spouse: Rosalie Gaull
 Children: Robert, Katherine, Anne

Education Dartmouth College, A.B., 1957; Harvard Univ., LL.B., 1961

Military Service Army Reserve, 1957-58, Pvt.

Private Practice Moore Silberman & Schulze (and predecessor firms), Honolulu, 1961-67 (Specialty: labor law); Steptoe & Johnson, Washington, D.C., 1973-74 (Specialty: administrative law); Morrison & Foerster, Washington, D.C., 1978-79, 1983-85 (Specialties: banking, telecommunications, and administrative law)

Government Positions Attorney, Appellate Division, General Counsel's Office, National Labor Relations Board, 1967-69; Solicitor, United States Department of Labor, Washington, D.C., 1969-70; Under Secretary of Labor, Washington, D.C., 1970-73; Deputy Attorney General of the United States, Washington, D.C., 1974-75; Ambassador to Yugoslavia, 1975-77; President's Special Envoy on ILO Affairs, 1976; Co-chairman, Commission of the Intelligence Capabilities of the United States, 2004-05

Academic Positions Georgetown Univ. (Adjunct Professor of Administration Law, 1987-94, 1997, 1999-01; Adjunct Professor of Labor Law, 2001; Distinguished Visitor from the

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Almanac of the Federal Judiciary

Stephen F. Williams**D.C. CIRCUIT**

Senior Judge, D.C. Circuit
3800 United States Courthouse
333 Constitution Avenue, N.W.
Washington, D.C. 20001-2866
(202) 216-7210
Fax: (202) 273-0976
Appointed in 1986 by President Reagan
Born: 1936

Education Yale Univ., B.A., 1958; Harv. Univ., J.D., 1961

Military Service Army, 1961-62

Private Practice Debevoise, Plimpton, Lyons & Gates,
1962-66

Government Positions Assistant United States Attorney,
S.D.N.Y., 1966-69

Academic Positions Professor, Univ. of Colo. School of Law,
1969-86; Visiting Professor : UCLA School of Law, 1975-76;
Univ. of Chicago. Law School (fellow), 1979-80; SMU
School of Law, 1983-84

Professional Associations American Law Institute; Colorado
Bar Assn.

Other Activities International Assn. of Energy Economists

Publications Books: Cases and Materials on the Law of Oil &
Gas (with Richard C. Maxwell, Patrick H. Martin & Bruce M.
Kramer) (6th ed. 1992); *The Legal Integration of Energy
Markets* (with Terence Daintith) (Vol. 5 of *Integration
Through Law: Europe and the American Federal Experience*)
(1987)

BRETT M. KAVANAUGH
Nominee to the U.S. Court of Appeals for the DC Circuit

- **Brett Kavanaugh is a well-respected attorney and highly qualified candidate for the DC Circuit, with strong bi-partisan support from the legal community.** Mr. Kavanaugh has an extraordinary range of experience in the public and private sectors that makes him well-suited for the D.C. Circuit. **The ABA rated Mr. Kavanaugh “Well Qualified” to serve on the DC Circuit.**
 - ✓ He has practiced law in the private and public sectors, for 14 years. He was a partner at the law firm of Kirkland & Ellis, and has an outstanding reputation in the legal community.
 - ✓ Judge Walter Stapleton said of Mr. Kavanaugh, “He really is a superstar. He is a rare match of talent and personality.” Delaware Law Weekly, May 22, 2002.
 - ✓ After arguing against Mr. Kavanaugh in the Supreme Court, Washington attorney Jim Hamilton stated, “Brett is a lawyer of great competency, and he will be a force in this town for some time to come.” News Conference with James Hamilton, Federal News Service, June 25, 1998.
 - ✓ Mr. Kavanaugh graduated from Yale College and Yale Law School, and served as the Notes Editor on the prestigious Yale Law Journal.

- **Mr. Kavanaugh has extensive experience in the appellate courts, both as a clerk and as counsel.**
 - ✓ Mr. Kavanaugh clerked for Supreme Court Justice Anthony Kennedy, as well as Judge Walter Stapleton of the Third Circuit and Judge Alex Kozinski of the Ninth Circuit.
 - ✓ Prior to his Supreme Court clerkship, Mr. Kavanaugh earned a prestigious fellowship in the Office of the Solicitor General of the United States. The Solicitor General’s office represents the United States before the Supreme Court.
 - ✓ Mr. Kavanaugh has argued both civil and criminal matters before the Supreme Court and appellate courts throughout the country.

- **Mr. Kavanaugh has dedicated the majority of his career to public service in both the Executive and Judicial branches.**
 - ✓ In addition to his service for three appellate judges and his work at the Department of Justice, Mr. Kavanaugh has worked for President Bush since 2001.
 - ✓ He currently serves as Assistant to the President and Staff Secretary. In that capacity, he is responsible for the traditional functions of that office, including

coordinating all documents to and from the President. He previously served as Senior Associate Counsel and Associate Counsel to the President. In that capacity, he worked on the numerous constitutional, legal, and ethical issues traditionally handled by that office.

- ✓ Mr. Kavanaugh served as an Associate Counsel in the Office of Independent Counsel, where he handled a number of the novel constitutional and legal issues presented during that investigation.

➤ **Mr. Kavanaugh believes in giving back to his community.**

- ✓ **While in private practice, Mr. Kavanaugh took on pro bono matters, including** representation of the Adat Shalom congregation in Montgomery County, Maryland against the attempt to stop the construction of a synagogue in the county.
- ✓ In addition to being active in his church, Mr. Kavanaugh has coached youth basketball and participated in other community activities.

Withdrawal Marker

The George W. Bush Library

FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Handwritten Note	[Notes]	1	N.D.	P5;

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For a complete list of items withdrawn from this folder, see the
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COLLECTION:

Counsel's Office, White House

SERIES:

Rao, Neomi

FOLDER TITLE:

[Brett Kavanaugh]: TPs (Talking Points)

FRC ID:

10166

OA Num.:

6323

NARA Num.:

6124

FOIA IDs and Segments:

2018-0009-P

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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- B. Closed by statute or by the agency which originated the document.
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Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

Withdrawal Marker

The George W. Bush Library

FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Draft	Brett M. Kavanaugh	17	N.D.	P5;

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UNITED STATES ORDER OF PRECEDENCE PRESIDENT GEORGE W. BUSH ADMINISTRATION

April 2005

1	President of the United States
2	Vice President of the United States
3	Governor of a State (when in own state)
4	Speaker of the House of Representatives Chief Justice of the United States
5	Former Presidents of the United States (by seniority of assuming office) American Ambassadors (at post)
6	Secretary of State
7	President, United Nations General Assembly (when in session) Secretary General of the United Nations President, United Nations General Assembly (when not in session) President, International Court of Justice
8	Ambassadors, E. and P. of foreign governments accredited to the United States (in order of presentation of credentials)
9	Widows of Former Presidents of the United States
10	Associate Justices of the Supreme Court Retired Chief Justices of the United States Retired Associate Justices of the Supreme Court (Note: Associate Justices who resign lose their rank.)
11	Members of the Cabinet (other than the Secretary of State) according to date of establishment of the department, and as added by The President, as follows:
	Secretary of the Treasury
	Secretary of Defense
	Attorney General
	Secretary of the Interior
	Secretary of Agriculture
	Secretary of Commerce
	Secretary of Labor
	Secretary of Health and Human Services
	Secretary of Housing and Urban Development
	Secretary of Transportation
	Secretary of Energy
	Secretary of Education
	Secretary of Veterans Affairs
	Secretary of Homeland Security
	Chief of Staff to the President

	Director, Office of Management and Budget
	United States Trade Representative
	Administrator, Environmental Protection Agency
	Director, National Drug Control Policy
12	President Pro Tempore of the Senate
	Senators (by length of service; when the same, by State's date of admission in the Union, or alphabetically by State)
13	Governors of States - when outside own state (Relative precedence among Governors, all of whom are outside their own state, is determined by their State's date of admission in the Union or alphabetically by State).
14	Acting Heads of Executive Departments
	Former Vice Presidents of the United States or their widows
15	Members of the House of Representatives (by length of service; when the same, by State's date of admission in the Union, or alphabetically by State)
16	Delegates to the House of Representatives (nonvoting members) from Territory of American Samoa, District of Columbia, Territory of Guam, Commonwealth of Puerto Rico, and United States Virgin Islands (by date of election of delegate)
	Governors of Commonwealth of Puerto Rico, Territory of Guam, Territory of American Samoa, United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands (determined by territory's date of entering U.S. jurisdiction, or alphabetically by territory)
17	Assistant to the President for National Security Affairs
	Counselor to the President
	Senior Advisor to the President
	Assistant to the President and Deputy Chief of Staff
	Assistant to the President and Deputy Chief of Staff for Policy
	Assistant to the President and Deputy Chief of Staff for Operations
	Assistants to the President (ranked by seniority)
	Chief of Staff to the Vice President
	Chairman, Council of Economic Advisors
	Chairman, Council on Environmental Quality
	Director, Office of Science and Technology Policy
	Chief of Protocol (when at the White House or accompanying The President)
18	Charge d'Affaires assigned to diplomatic missions in Washington, D.C.
	Charge d'Affaires ad interim assigned to diplomatic missions in Washington, D.C.
19	Former Secretaries of State (by seniority of assuming office)
	Former Cabinet Members (by seniority of assuming office)
20	Deputy to Members of the Cabinet, according to date of establishment of the department, and as added by The President, as follows:
	Deputy Secretary of State
	Deputy Secretary of the Treasury
	Deputy Secretary of Defense

	Deputy Attorney General
	Deputy Secretary of the Interior
	Deputy Secretary of Agriculture
	Deputy Secretary of Commerce
	Deputy Secretary of Labor
	Deputy Secretary of Health and Human Services
	Deputy Secretary of Housing and Urban Development
	Deputy Secretary of Transportation
	Deputy Secretary of Energy
	Deputy Secretary of Education
	Deputy Secretary of Veterans Affairs
	Deputy Secretary of Homeland Security
	Deputy Director, Office of Management and Budget (OMB)
	Deputy United States Trade Representative (USTR)
	Deputy Administrator, Environmental Protection Agency (EPA)
	Deputy Director, National Drug Control Policy
21	Permanent Representative of the United States to the United Nations
	Administrator, Small Business Administration (SBA)
	Director, Central Intelligence Agency (CIA)
	Director, Federal Emergency Management Agency (FEMA)
	Associate Attorney General
	Solicitor General
	Director, Federal Bureau of Investigation (FBI)
	Administrator, Agency for International Development (AID)
	Under Secretaries of State and the Counselor of the Department of State
	Under Secretaries of Executive Departments when third in rank (according to date of establishment of the Department)
	United States Permanent Representative on the Council of the North Atlantic Treaty Organization (USNATO)
	Representative of the United States to the European Union (USEU)
	Ambassadors at Large
	Secretary of the Army
	Secretary of the Navy
	Secretary of the Air Force
	Postmaster General
	Chairman, Board of Governors of the Federal Reserve
	Chairman, Export-Import Bank
22	Chairman, Joint Chiefs of Staff
	Vice Chairman, Joint Chiefs of Staff
	Retired Chairman, Joint Chiefs of Staff
	Chief of Staff of the Air Force, Chief of Staff of the Army, Commandant of the Marine Corps, and Chief of Naval Operations (order based on Chief's date of appointment)
	Commandant of the Coast Guard
23	Lieutenant Governors (when in own State)
24	Permanent Representatives of foreign governments to the United Nations
	Secretary General of the Organization of American States (OAS)
	Chairman, Permanent Council of the Organization of American States (OAS) (new Chairman appointed every three months)

	Permanent Representatives to the Organization of American States (OAS)
	Representative of the United States to the European Office of the United Nations, Geneva
	Representative of the United States to the Vienna Office of the United Nations (UNVIE)
	Permanent Representative of the United States to the Organization of American States (OAS)
	Representative of the United States to the Organization for Economic Cooperation and Development (USOECD)
	Heads of International Organizations, including International Monetary Fund, World Bank (International Bank for Reconstruction and Development), North Atlantic Treaty Organization (NATO)
25	Administrator, General Services Administration (GSA)
	Administrator, National Aeronautics and Space Administration (NASA)
	Chairman, Merit Systems Protection Board
	Director, Office of Personnel Management (OPM)
	Administrator, Federal Aviation Administration (FAA)
	Chairman, Nuclear Regulatory Commission
	Director, Peace Corps
26	Deputy Permanent Representative of the United States to the United Nations
	Deputy Administrator, Small Business Administration (SBA)
	Deputy Director, Central Intelligence Agency (CIA)
	Deputy Director, Federal Emergency Management Agency (FEMA)
27	American Ambassadors (on State and Official Visits to the United States)
	Chief of Protocol (at the Department of State or at events outside the White House)
	American Ambassadors (on State and Official Visits to the United States outside Washington, D.C.)
	Career Ambassadors
28	Chief Judges and Circuit Judges of the United States Courts of Appeals (by length of service)
	Chief Judges and District Judges, United States District Courts (by length of service)
	Chief Judges and Judges of the United States Court of Military Appeals for the Armed Forces
	Chief Judges and Judges of the United States Court of Appeals for Veterans Claims
29	Mayors of U.S. cities and the District of Columbia when in own city
	Acting Chief of Protocol (when at The White House or accompanying The President)
30	Deputy Assistants to the President (ranked alphabetically)
	Deputy Administrator, Agency for International Development (AID)
	American Charge d'Affaires (at post)
31	Assistant Secretaries, Counselors, and Legal Advisers of Executive Departments (by date of appointment)

32	Under Secretaries General of the United Nations
	Administrator, National Oceanographic and Atmospheric Administration (NOAA)
	Deputy Director, General Services Administration (GSA)
	Deputy Director, National Aeronautics and Space Administration (NASA)
	Deputy Director, Office of Personnel Management (OPM)
33	Assistant Administrators, Agency for International Development (AID)
	Assistant United States Trade Representatives
34	United States Comptroller General
	Members of the Council of Environmental Quality
	Members of the Council of Economic Advisers (ranked alphabetically)
35	American Ambassadors-designate (in the United States under normal orders, or on leave)
	Representatives of United States Missions to the European Union (USEU) and the Organization for Economic Cooperation and Development (USOECD)
36	Mayors of U.S. cities and the District of Columbia (when not in own city)
37	Under Secretary of the Army
	Under Secretary of the Navy
	Under Secretary of the Air Force
	Acting Deputy Secretaries of Executive Departments
	Acting Under Secretaries of Executive Departments
38	Four Star Military Officers - General or Admiral (in order of seniority; retired officers rank with but after active officers)
	Officers of the U.S. Senate and U.S. House of Representatives
	Assistant Secretary of the Army (by date of appointment)
	Assistant Secretary of the Navy (by date of appointment)
	Assistant Secretary of the Air Force (by date of appointment)
	Executive Secretary, National Security Council (NSC)
39	General Counsels of Military Departments
	Directors of Defense Agencies (by establishment date of the agency)
	Three Star Military Officers - Lieutenant General, Vice Admiral (in order of seniority; retired officers rank after active members)
	State Senators and Representatives (when in own state)
	Former American Ambassadors/Chiefs of Diplomatic Missions (in order of presentation of credentials at first post)
40	Acting Assistant Secretaries of Executive Departments
	President, Overseas Private Investment Corporation (OPIC)
	Treasurer of the United States
	Director of the Mint
	Chairman, Federal Communications Commission (FCC)
	Director, National Bureau of Standards
	Other Chairman of Bureaus, Boards and Commissions not previously listed
	Librarian of Congress
	Vice Chairmen and Members of the Board of Governors of the Federal

	Reserve System
	Secretary of the Smithsonian Institution
	Chairman, National Endowment for the Humanities
	Chairman, National Endowment for the Arts
	Director, National Science Foundation
	Surgeon General, United States Public Health Service
	Heads of independent agencies not mentioned previously (by date of establishment of the agency)
41	Special Assistants to the President
	Chairman of the American Red Cross
	Ministers of foreign governments assigned to diplomatic missions in Washington, D.C.
	Deputy Chief of Protocol
	Commissioner of the United States Customs Service
	Commissioners (Level IV Executives)
42	Deputy Under Secretaries of Executive Departments
	Deputy Assistant Secretaries of Executive Departments (by date of appointment)
	Deputy Counsels of Executive Departments (by date of appointment)
43	Assistant Chiefs of Protocol
	Directors of Offices of Executive Departments
	Counselors of foreign governments assigned to diplomatic missions in Washington, D.C.
	Consuls General of foreign governments
	Two Star Military - Major General, Rear Admiral (in order of seniority; retired officers rank with but after active officers)
	Deputy Assistant Secretaries of Military Departments (by date of appointment)
44	Chief Judge and Judges, United States (formerly Customs) Court of International Trade
	Chief Judge and Associate Judges, United States Court of Claims
	Chief Judge and Associate Judges, United States Tax Court
45	One Star Military - Brigadier Generals, Rear Admirals (in order of seniority; retired officers rank with but after active officers)
	Desk Officers of executive departments
	First Secretaries of foreign governments assigned to diplomatic missions in Washington, D.C. when there is no Counselor
	Members of Bureaus, Board and Commissions

04/04/05

Setting the Facts Straight on Brett M. Kavanaugh Nominee to the U.S. Court of Appeals for the D.C. Circuit

Brett Kavanaugh is a highly respected attorney with a broad background in both government service and private practice. His legal experience makes him uniquely suited to serve on the D.C. Circuit. Over the course of his career, Mr. Kavanaugh has served as a federal appellate law clerk, a federal prosecutor, an appellate lawyer representing both private clients and the United States, and a senior advisor to the President. While Mr. Kavanaugh's record has been mischaracterized by some, the facts point to a well-qualified nominee who deserves to be confirmed by the Senate.

Myth: Brett Kavanaugh does not have enough experience to be a judge on the D.C. Circuit – he's never tried a case.

Facts on Experience:

- The ABA rated Mr. Kavanaugh "Well Qualified" for a position on the U.S. Court of Appeals for the D.C. Circuit. A rating of Well Qualified means:
 - “To merit a rating of well qualified, the nominee must be at the top of the legal profession in his or her legal community, have outstanding legal ability, breadth of experience, the highest reputation for integrity and either have demonstrated, or exhibited the capacity for, judicial temperament.”
- Mr. Kavanaugh would bring a broad range of experience to the D.C. Circuit. He has substantial experience in the appellate courts, both as an attorney and clerk. From his work in the executive branch, he brings a wealth of knowledge about the inner workings of the federal government.
 - ✓ Mr. Kavanaugh served as a law clerk to Judge Walter Stapleton of the U.S. Court of Appeals for the Third Circuit; Ninth Circuit Judge Alex Kozinski of the U.S. Court of Appeals; and, U.S. Supreme Court Justice Anthony Kennedy.
 - ✓ Mr. Kavanaugh's legal work ranges from service as associate counsel to the President, to appellate lawyer in private practice, to experience as a prosecutor.
- Mr. Kavanaugh has specialized in appellate law, as opposed to trial practice. He has excelled in his field, arguing before the Supreme Court and state and federal appellate courts throughout the country.
- Mr. Kavanaugh's legal experience is substantially similar to that of many Democrat appointees to the D.C. Circuit, including Harry Edwards, who was appointed to the court at the same age as Mr. Kavanaugh is now.

Myth: Mr. Kavanaugh's legal career has consisted largely of partisan activities, making him unsuited to the federal bench.

Facts on Suitability for the Bench:

- Mark Tuohey, a Democrat and former President of the D.C. Bar, worked with Mr. Kavanaugh in the Office of Independent Counsel. He wrote: "Mr. Kavanaugh exhibited the highest qualities of integrity and professionalism in his work. These traits consistently exemplify Mr. Kavanaugh's approach to the practice of law, and will exemplify his tenure as a federal appellate judge. His approach to important questions of law will be professional, not partisan." Letter to Chairman Hatch, April 26, 2004.
- Prior to his appointment to the 1st Circuit, Justice Stephen Breyer held positions that were similar to Mr. Kavanaugh's service.
 - ✓ Justice Breyer served as a counsel for the Watergate Special Prosecution Force.
 - ✓ Justice Breyer served as Chief Counsel of the Senate Judiciary Committee, for then-Chairman Edward Kennedy.
- As every lawyer is required to do, Mr. Kavanaugh has zealously represented his clients' positions and made the best arguments on their behalf. Such arguments do not necessarily reflect the personal views of Mr. Kavanaugh.

Myth: Mr. Kavanaugh was deeply involved in the Bush Administration's selection of highly controversial judicial nominees. A look at the candidates Mr. Kavanaugh has helped select and support for lifetime appointments to the federal judiciary speaks volumes about his own legal philosophy.

Facts on the Judicial Nominations Process:

- The President selects judicial nominees. Prior to the President's final decision, the judicial selection process is a collaborative one.
 - ✓ The White House Counsel's Office consults with home state senators on both district and circuit court nominees. The Department of Justice and the White House Counsel's Office participate in interviews of judicial candidates. A consensus is reached on the best candidate for the position, and a recommendation is made to the President.
- Over 99% of President Bush's nominees to the federal district and circuit courts have received "well-qualified" or "qualified" ratings from the ABA – the Democrats' "Gold Standard." One non-partisan study conducted early last year concluded, based on a review of American Bar Association ratings, that President Bush's nominees are "the most qualified appointees" of any recent Administration.

- The President has made clear that he has no “litmus tests” for nominees to the federal courts. No candidate is ever asked for his or her personal opinion on any specific legal or policy issue. The President nominates individuals who are committed to applying the law, not their personal policy preferences.

Myth: Mr. Kavanaugh is out of the mainstream because he publicly praised Miguel Estrada and Priscilla Owen, along with the rest of President Bush’s first 11 nominees to the U.S. Courts of Appeal.

Facts about President Bush’s Nominees:

- At the time of their nomination, Democrat senators had positive things to say about President Bush’s first group of nominees.
 - ✓ Senator Leahy said that he was encouraged by the President’s efforts to balance his nominees: “Had I not been encouraged, I would not have been here today. Some have said that he might get more of a gridlock with a 50-50 Senate. I think it’s just the opposite. I think this calls upon us to do the best to cooperate and make it work.” *NPR: All Things Considered* (Radio Broadcast May 9, 2001).
 - ✓ Senator Daschle stated: “If I might just say, as leader, I’m pleased that the White House has chosen to work with us on the first group of nominations.” Amy Goldstein and Helen Dewar, *11 Judicial Nominees Named*, *Wash. Post*, May 10, 2001, at A2.
- Miguel Estrada and Priscilla Owen, both unanimously rated “Well Qualified” by the ABA, enjoyed widespread bipartisan support and would have been confirmed if given an up-or-down vote by the full Senate.
- Each of the first 11 nominees was rated “Well Qualified” or “Qualified” by the ABA – the Democrats’ “Gold Standard.”

Myth: Brett Kavanaugh was a co-author of Independent Counsel Ken Starr’s report to the House of Representatives, in which Starr alleged that there were grounds for impeaching President Clinton. Kavanaugh’s participation in Starr’s investigation of the Monica Lewinsky affair evidences his partisan, right-wing agenda.

Facts about the Starr Report:

- The section of the Independent Counsel’s report Mr. Kavanaugh co-authored – grounds for impeachment – was required by law.
 - ✓ Federal law required Independent Counsel Starr to advise the House of Representatives of “any substantial and credible information” uncovered during the course of his investigation that may constitute grounds for impeachment. *See* 28 U.S.C. § 595(c).

- The Independent Counsel's report did not conclude that President Clinton should have been impeached. Rather, it simply indicated that the Office of Independent Counsel had uncovered substantial and credible information that may constitute grounds for impeachment. This conclusion was clearly borne out by subsequent events.
 - ✓ The House of Representatives determined that the evidence presented by the Independent Counsel constituted grounds for impeachment. By a vote of 228-206, the House voted to impeach President Clinton for perjuring himself before a grand jury. And by a vote of 221-212, the House voted to impeach President Clinton for obstructing justice.
 - ✓ After a trial in the U.S. Senate, fifty Senators voted to remove President Clinton from office for obstructing justice.
- Democrat senators agreed with the Independent Counsel that President Clinton gave false or misleading testimony.
 - ✓ Senator Feinstein introduced a censure resolution that stated President Clinton "gave false or misleading testimony and his actions [] had the effect of impeding discovery of evidence in judicial proceedings." Senators Durbin, Kennedy, Kohl, Schumer, Daschle, and Kerry co-sponsored the resolution. S.Res. 44, 106th Cong. (1999).
 - ✓ Then-Congressman Schumer, as Senator-elect stated that "it is clear that the President lied when he testified before the grand jury."
- U.S. District Court Judge Susan Webber Wright later held President Clinton in contempt for "giving false, misleading, and evasive answers that were designed to obstruct the judicial process" in Paula Jones's sexual harassment lawsuit and ordered him to pay a fine of \$90,000.
 - ✓ In January 2001, President Clinton admitted to giving "evasive and misleading answers, in violation of Judge Wright's discovery's orders" during his deposition in Paula Jones's sexual harassment lawsuit. As a result, he agreed to pay a \$25,000 fine and give up his law license for five years.
- The U.S. Senate already has confirmed judicial and executive branch nominees who worked for Independent Counsel Ken Starr. If the work these nominees performed for the Office of Independent Counsel was not disqualifying, then there is no reason why Brett Kavanaugh should not be confirmed because of his work for the Office of Independent Counsel.
 - ✓ Individuals confirmed to judicial positions include: Steven Colloton – 8th Circuit; John Bates – D.C. District Court; Amy St. Eve – Northern District of Illinois.

Myth: Mr. Kavanaugh returned to the Office of Independent Counsel ("OIC") when the Monica Lewinsky scandal broke because he wanted to participate in the investigation.

Facts about Mr. Kavanaugh's Return to the OIC:

- Mr. Kavanaugh came back to the OIC to handle a Supreme Court argument regarding privilege, which he had worked on before returning to private practice.
- ✓ From the May 8, 1998 Washington Post: Washington lawyer Brett M. Kavanaugh has left private practice at Kirkland & Ellis for another temporary stint at the office of Whitewater independent counsel Kenneth W. Starr, also a Kirkland & Ellis lawyer. Kavanaugh is working on the Vincent Foster attorney-client privilege case to be argued at the Supreme Court June 8.

Myth: Brett Kavanaugh has praised Independent Counsel Starr despite Starr's partisan tactics, including his release of the entire report on President Clinton with a description of wide array of questionable facts that were highly offensive.

Facts about the Release of the Report and Support of Judge Starr:

- The House of Representatives, not the OIC, publicly released the Independent Counsel's Report.
- Mr. Kavanaugh criticized the House of Representatives for releasing the report to the public before reviewing it. See Brett M. Kavanaugh, "First Let Congress Do Its Job," *The Washington Post*, Feb. 26, 1999, at A27.
- Judge Starr was unfairly criticized for his work as independent counsel. Even the Washington Post editorial page acknowledged that much of the criticism was unwarranted:
 - "Yet the sum of Mr. Starr's faults constituted a mere shadow of the villainy of which he was regularly accused. The larger picture is that Mr. Starr pursued his mandates in the face of a relentless and dishonorable smear campaign directed against him by the White House. He delivered factually rigorous answers to the questions posed him and, for the most part, brought credible indictments and obtained appropriate convictions. For all the criticism of the style of his report on the Monica Lewinsky ordeal, the White House never laid a glove on its factual contentions. The various ethical allegations against him have mostly melted away on close inspection. At the end of the day, Mr. Starr got a lot of things right." Editorial, *Wash. Post*, Oct. 20, 1999, at A28.

Myth: Mr. Kavanaugh is willing to twist legal theories to best serve his own partisan interests. The best example of this is his flip-flop on executive branch privilege from his arguments against the Clinton Administration's assertions of privilege to his drafting of the Bush Administration's Executive Order 13233, which gives both sitting and former presidents authority to claim privilege over records.

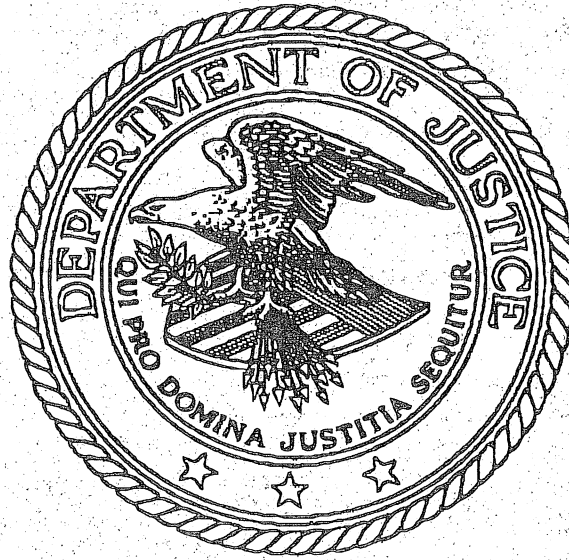
Facts about Mr. Kavanaugh's Work on Executive Branch Privilege:

- Mr. Kavanaugh's work on privilege issues for the Office of the Independent Counsel was consistent with his work on Executive Order 13233.
 - ✓ Mr. Kavanaugh argued on behalf of the Office of the Independent Counsel that government attorneys in the Clinton Administration could not invoke the attorney-client privilege to block the production of information relevant to a federal criminal investigation. The federal courts of appeal agreed with Mr. Kavanaugh's position.
 - ✓ Mr. Kavanaugh also argued on behalf of the Office of Independent Counsel that federal courts should not recognize a new "protective function privilege" for Secret Service Agents in federal criminal proceedings. The federal court of appeals agreed with Mr. Kavanaugh's position.
 - ✓ Mr. Kavanaugh argued before the Supreme Court that the attorney-client privilege, once a client was deceased, did not apply with full force in federal criminal proceedings.
 - ✓ Nothing in Executive Order 13233 purports to block prosecutors or grand juries from gaining access to presidential records in a criminal investigation.
- Executive Order 13233 simply establishes policies and procedures to govern requests for presidential records and the assertion of constitutionally-based privileges. It does not address when an assertion of executive privilege should be made or would be successful.
 - ✓ Executive Order 13233 specifically recognizes that there are situations where a party seeking access to presidential records may overcome the assertion of constitutionally based privileges. *See* Section 2(b).
- While working in the White House Counsel's Office, Mr. Kavanaugh's work on privilege issues was consistent and evenhanded, whether Bush or Clinton Administration records were at issue.
 - ✓ While Mr. Kavanaugh worked in the Counsel's Office, the Bush Administration asserted executive privilege to shield records regarding the pardons granted by President Clinton at the end of his presidency.
 - ✓ While Mr. Kavanaugh worked in the Counsel's Office, the Bush Administration asserted executive privilege in response to a Congressional request for Justice Department documents related to the investigation of alleged campaign fundraising abuses by the Clinton Administration.

Myth: Mr. Kavanaugh has argued extreme right wing positions on behalf of clients. For instance, he submitted an amicus brief in a school prayer case.

Facts about Mr. Kavanaugh's Work on First Amendment Issues:

- In the amicus brief Mr. Kavanaugh filed on behalf of his clients in *Santa Fe Independent School District*, he acknowledged that the Establishment Clause prohibits government-composed, government-delivered, or government-required prayers in classes or at school events.
- However, Mr. Kavanaugh argued that a school district's policy that permitted high school students to choose whether a statement would be delivered before football games and who would give that statement did not run afoul of the First Amendment simply because a student speaker might choose to invoke God's name or say a "prayer" in his or her pre-game statement.
- Mr. Kavanaugh's brief pointed out: "The Constitution protects the . . . student speaker who chooses to mention God just as much as it protects the . . . student speaker who chooses not to mention God."
- Mr. Kavanaugh's arguments were based upon well-established Supreme Court precedent holding that the government does not violate the Establishment Clause when private speakers avail themselves of a neutrally available school forum to engage in religious speech. See *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819 (1995); *Lamb's Chapel v. Center Moriches Union Free School Dist.*, 508 U.S. 384 (1993); *Board of Ed. of Westside Community Schools v. Mergens*, 496 U.S. 226 (1990); *Widmar v. Vincent*, 454 U.S. 263 (1981).
- Three Democratic State Attorneys General joined an amicus brief in *Santa Fe Independent School District* taking the same position that Mr. Kavanaugh took on behalf of his clients.
- As an attorney, Mr. Kavanaugh had a duty to zealously represent his clients' position and make the best argument on their behalf.



Office of Legal Policy
United States Department of Justice
10th and Constitution Ave. NW
Washington, D. C. 20530

TO: Dabney Friedrich

FAX: 202-456-7528

FROM: David Best

VOICE: (202) 514-2061

FAX: (202) 616-3180

Total Pages (including this cover): 10

Additional Message:

William P. Barr
Executive Vice President and General Counsel



May 10, 2005

The Honorable Arlen Specter
United States Senate
711 Hart Senate Office Building
Washington, D.C. 20510-3802

1095 Avenue of the Americas
New York, NY 10036

Phone 212.396.1889
Fax 212.597.2587

Dear Chairman Specter:

I am writing to give my strongest recommendation on behalf of Mr. Brett Kavanaugh to serve on the U.S. Court of Appeals of the District of Columbia Circuit. I have known him both professionally and as a friend for almost a decade and, I can attest that he is exceptionally well qualified to serve on that court.

As general counsel of GTE and subsequently Verizon, I was fortunate to have Brett work on a number of matters for me while he was at the Kirkland & Ellis law firm. Brett quickly established himself as one of the key outside lawyers I went to on some of my toughest legal issues. He has a keen intellect, exceptional analytical skills, and sound judgment. His writing is fluid and precise. I found that he was able to see all sides of an issue and appreciate the strengths and weaknesses of competing approaches. He was particularly effective in dealing with novel issues which required some original thinking. I use a team approach, by which we combine outside lawyers and in-house lawyers into teams to work on various issues. In this regard, we at Verizon found Brett to be extremely collegial and a delight to work with.

Over the years I have come to know Brett as a friend, as well as a professional colleague. In addition to his powerful legal skills, I can say unequivocally that he possesses precisely the temperament we seek in our federal judges. He has a profound sense of humility and the intellectual curiosity and honesty to explore and consider contending positions. He is patient and highly considerate of others. Above all, he is blessed with a delightful sense of humor.

Finally, I can assure you that Brett is a man of the highest character and personal integrity. In my many years of experience with him, I have never seen a situation in which he has cut corners or allowed expediency to override "doing the right thing."

In short, Brett possesses all the characteristics which we should want in our jurists. I urge the Committee to recommend him to the full Senate. Please let me know if I can assist you with any additional information.

Sincerely,

A handwritten signature in dark ink, appearing to read "WP Barr", written in a cursive style.

William P. Barr

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WRITER'S DIRECT NUMBER
202-736-8971

WRITER'S E-MAIL ADDRESS
bborenson@sidley.com

May 10, 2005

By Facsimile

Honorable Arlen Specter
Chairman
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Specter:

I am writing to support President Bush's nomination of Brett Kavanaugh to be a judge on the United States Court of Appeals for the District of Columbia Circuit. I have known Mr. Kavanaugh for a long time. We attended college at Yale together, we both clerked for Justice Kennedy at the Supreme Court, and, most recently, we spent two years working closely together in the White House Counsel's Office during the first two years of President George W. Bush's first term. I have thus had an opportunity to observe Mr. Kavanaugh in a variety of settings, personal and professional, and feel well-qualified to help inform the views of open-minded Senators concerning Mr. Kavanaugh's fitness for office.

Brett Kavanaugh is one of the finest lawyers of my generation. He has a keen intellect, a deep appreciation for our institutions of government and for the role of the judiciary within it, and a judicious and moderate temperament. He is legendarily hard-working and always committed to the highest ideals of public service. I represent clients in all manner of civil and criminal disputes, and I would be relieved and gratified to find Mr. Kavanaugh on a panel in any case in which I was involved, no matter who my client was or what the issue was: he can absolutely be relied upon to be fair and impartial and to bring to the task a clear and thorough understanding of the law.

I understand that some Senators are inclined to doubt his fair-mindedness based on his association over the years with prominent Republican political figures, such as Judge Kenneth Starr and President Bush. However, as Senators no doubt understand, those who steer completely clear of contact with the political world -- which I am sure you and your colleagues would agree is an honorable and worthy field of endeavor -- are unlikely ever to find themselves appointed to a federal judgeship. That an individual has been allied with politicians or political

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WASHINGTON, D.C.

Honorable Arlen Specter

May 10, 2005

Page 2

causes in one party or the other is not a fair or wise basis for disqualifying an individual for a judgeship; rather, the important question is how the individual has fulfilled his responsibilities in those matters.

In this regard, it is my firm opinion that Mr. Kavanaugh has always adhered to the highest ideals of his profession. In my observation, he has never acted as a raw partisan; he always articulates all relevant considerations on both sides of an issue for his clients, and his ultimate legal judgment has always been sound and based on the merits. Although I am disabled from discussing specifics, I can assure you that he has often been a voice of moderation and reason within the councils of government. I know that there are those who dealt with him as adversaries when he was working for Independent Counsel Starr who would confirm that among the Starr prosecutors, he had a consistent and well-deserved reputation for courtesy, professionalism, and fair-mindedness.

The country is fortunate that Mr. Kavanaugh is willing at his age to enter upon a lifetime of public service as a member of the third branch. It would be a great shame if reflexive or narrow-minded opposition were permitted to deny the nation his services. I sincerely hope the Senate will vote to confirm him.

Sincerely,


Bradford A. Berenson

cc: Honorable Patrick Leahy

SIDLEY AUSTIN BROWN & WOOD LLP

WASHINGTON, D.C.

Honorable Arlen Specter
May 10, 2005
Page 3

bcc: David Best (202-616-3180)

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EDWARD BENNETT WILLIAMS (1920-1999)
PAUL R. CONNOLLY (1921-1978)CAROLYN H. WILLIAMS
(202) 434-5830
cwilliams@wc.com

May 11, 2005

Via Facsimile (202.228.1698)Senator Arlen Specter
Chairman, Senate Judiciary Committee
711 Hart Building
Washington, D.C. 20510Re: Brett Kavanaugh

Dear Senator Specter:

I am a partner in the law firm of Williams & Connolly LLP, and I respectfully submit this letter in enthusiastic support of the nomination of Brett Kavanaugh to the United States Court of Appeals for the District of Columbia Circuit. It is a great honor to support the candidacy of a person who has all the qualities lawyers and litigants would hope to find in a judge — superb intellect, fundamental decency and impartial respect for the rights and dignity of all people.

I have been following Brett's career since 1990, when he was a student at Yale Law School and I was chair of Williams & Connolly's hiring committee. Brett did come to work for us, as a summer associate, and quickly showed that he had the potential to become a superb lawyer. He did such spectacular work that we have been trying to hire him back ever since.

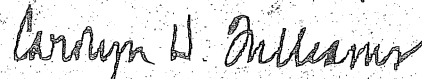
Throughout his career, Brett Kavanaugh has performed at the highest level of professional excellence. Your Committee has his curriculum vitae before you, and I do not need to summarize it. He is universally respected for his comprehensive knowledge of the law, his brilliant analytical abilities and his ability to listen, to reflect and to make difficult decisions

WILLIAMS & CONNOLLY LLP
Senator Arlen Specter
May 11, 2005
Page 2

based on the law and the facts. Despite his extraordinary intellect and talent, Brett Kavanaugh never exhibits a trace of arrogance. He is always professional in his dealings with others. His calm demeanor and unquestionable integrity compel even his adversaries to like and respect him.

Brett Kavanaugh would make an ideal judge. Indeed, the judicial system and the citizens whose lives are affected by it will be greatly enriched by his willingness to serve. He will uphold the law with honor, probity and common sense. I have no doubt that those whose cases he decides will feel that they received justice from a judge who followed the law without bias or predilection.

Respectfully submitted,


Carolyn H. Williams

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Thomas D. Yannucci, P.C.
To Call Writer Directly:
202 879-5055
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May 12, 2005

Via Facsimile and Hand DeliverySenator Arlen Specter
Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510Re: *Nomination of Brett Kavanaugh for Appointment to the United States
Court of Appeals for the District of Columbia Circuit*

Dear Senator Specter:

I am writing to support the nomination of Brett Kavanaugh to become a judge on the United States Court of Appeals for the District of Columbia Circuit. By way of background, I clerked on the D.C. Circuit in 1976-77 for the Honorable John A. Danaher. After my clerkship, I worked in the United States Department of Justice, Civil Rights Division from 1977-80. I joined Kirkland & Ellis LLP in 1980 and I am currently serving as Chair of the Firm's Management Committee, a position I have held since 2001.

During my years at Kirkland, I worked with Brett Kavanaugh on a number of matters. I can say, without qualification, that Brett Kavanaugh is eminently qualified to be a judge on the DC Circuit. He possesses a first-rate intellect and exceptional analytical skills. He possesses superior writing skills and is a very persuasive oral advocate as well. He brings sound judgment and nuance to difficult and complex legal matters. In short, his skills as a lawyer are among the best I have ever seen.

On a personal level, Brett Kavanaugh was well liked by people who worked with him, whether they were more senior or junior in experience. He has a great sense of humor and prides himself on getting along with everyone. He is also unflappable even when working under difficult and stressful circumstances. He is a balanced person with interests outside work. My experience with Brett convinces me that he has the strength of character, compassion and judgment to be an excellent judge, especially when coupled with his outstanding legal abilities.

Chicago

London

Los Angeles

Munich

New York

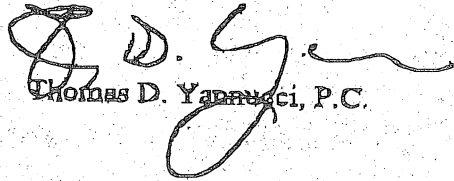
San Francisco

KIRKLAND & ELLIS LLP

Senator Arlen Specter
May 12, 2005
Page 2

I would be happy to provide you with further information on Brett Kavanaugh at your convenience. Please feel free to call me if I can be of any further service to you or the Committee with regard to this nomination.

Very truly yours,



Thomas D. Yannauci, P.C.

TDY/mmc

Senator Arlen Specter
May 12, 2005
Page 3

bcc: Brett Kavanaugh, Esq.
David Best, Esq. ✓

Ms. Pamela Harris

(b)(6)

April 27, 2004

Via Facsimile and First Class Mail
The Honorable Orrin Hatch
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: *Nomination of Brett M. Kavanaugh to D.C. Circuit*

Dear Chairman Hatch:

I have known Brett well for over fifteen years, since we were students together at Yale Law School. I am a liberal Democrat, and during the time we have been friends, Brett and I have disagreed on most political questions we have discussed, and on many legal issues, as well. But not once in that time has Brett been anything less than fully respectful of my views, or unwilling to hear and take seriously what I have to say.

One of Brett's most notable characteristics is what is sometimes referred to as his "affability." That doesn't quite do it justice. Brett is, of course, friendly and pleasant, but there is more to it. At a time when politics and law have become so deeply divisive, Brett stands out as someone who refuses to personalize policy disagreements. He never belittles or condescends to those with whom he disagrees. His long-standing friendships with those outside his political circle attest to the fact that he continues to command the respect and affection of political adversaries.

At another political moment, this might have seemed faint praise; good manners and a separation of the political from the personal ought to be something we can take for granted. Today, though, the traits Brett exemplifies seem to be in short supply, and it does not strike me that all potential judicial nominees could lay claim to the same characteristics. I am confident that Brett would bring to the bench the same personal attributes he has displayed so consistently for so many years, and that he would contribute significantly to the collegiality and civility of the court.

Sincerely,



Pamela Harris

cc: The Honorable Patrick J. Leahy
Office of Legal Policy (*via facsimile only*)



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April 23, 2004

VIA FACSIMILE

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Brett M. Kavanaugh to the District of Columbia Circuit

Dear Mr. Chairman:

I am writing to recommend the prompt confirmation of Brett M. Kavanaugh, whom the President has nominated to the United States Court of Appeals for the District of Columbia Circuit. I have known Brett for more than a decade in both professional and personal capacities. He would make a wonderful addition to the D.C. Circuit.

Brett is obviously one of the most distinguished lawyers of his generation. He clerked for three federal judges, including Justice Anthony M. Kennedy of the Supreme Court; he served in the Solicitor General's Office of the Department of Justice in both the first Bush Administration and the Clinton Administration; he has held two important positions in the White House; he was a partner at an elite national law firm; and he has argued at the Supreme Court on behalf of an independent counsel. Such a resume is rare among lawyers with twice his years of legal practice. It is to Brett's immense credit that so many prominent lawyers have recognized Brett's abilities and talents throughout his career. This includes the American Bar Association, which has given Brett its highest rating, "well qualified."

Brett also has extensive experience in the area of appellate litigation—experience that would directly benefit him as a circuit judge. Brett has argued cases in both the Supreme Court and the federal courts of appeals. His clerkships for not one but two federal circuit judges as well as Justice Kennedy provide him with unparalleled background for a judgeship on the D.C. Circuit. Brett's experience with a wide variety of legal issues provides a firm foundation for service on the D.C. Circuit.

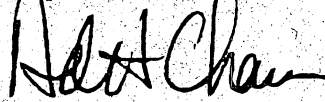
The Honorable Orrin G. Hatch
April 23, 2004
Page 2

Brett has repeatedly demonstrated his dedication to public service. Despite the healthy salary he can command in the private sector, he has been a public servant for the great majority of his career. And even when in private practice, he has devoted substantial time to pro bono clients and non-legal community activities.

Finally, Brett is also well within the legal mainstream. Everyone who has met Brett—Democrats and Republicans alike—knows that he is thoughtful, considerate, and fair. Brett is not an “extremist” on legal issues or anything else. In fact, he would be the consummate judge—listening carefully to both sides, considering all aspects of a case without preconceived notions, respecting the limitations inherent on judges, and deferring appropriately to the policy decisions of the Congress and the Executive. Brett Kavanaugh is precisely the type of lawyer who should serve on the federal appellate courts.

Thank you for this opportunity to comment on Brett's nomination.

Respectfully yours,



Adam H. Charnes

cc: The Honorable Patrick J. Leahy (via facsimile)
Ranking Member, Committee on the Judiciary

The Honorable Daniel J. Bryant (via facsimile)
Assistant Attorney General for Legal Policy
United States Department of Justice

Robert M. Chesney
Assistant Professor of Law
Wake Forest University School of Law
P.O. Box 7206
Winston-Salem, NC 27109

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

April 26, 2004

Dear Mr. Chairman,

I write in support of the nomination of Brett Kavanaugh to become a judge of the United States Court of Appeals for the D.C. Circuit.

As a former law clerk to judges on the United States District Court for the Southern District of New York and the United States Court of Appeals for the Second Circuit, and in my current capacity as a law professor, I have had occasion to consider the qualities that make for a good judge. Brett Kavanaugh has such qualities in abundance.

My comments about Mr. Kavanaugh's qualifications are based on having known him in a personal capacity for a number of years. Through that contact, I have come to learn that he is an immensely bright lawyer who combines intellect and experience with a tremendous work ethic. Equally significant, moreover, through all of my conversations with him on a wide variety of subjects I have found him to be a very reasonable and open-minded thinker. He is not an ideologue; on the contrary, he is intellectually open and moderate. It may be a cliché, but it is fair to say that he has a judicial temperament. Because he combines these essential judicial qualities – intelligence, experience, diligence, and open-mindedness – I wholeheartedly support his nomination.

I hope that these brief remarks help to shed some useful light. Please do not hesitate to contact me for further information.

Very truly yours,



Professor Robert M. Chesney

cc by fax: The Honorable Patrick J. Leahy
Ranking Member, Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, D.C. 20510

Office of Legal Policy
Department of Justice



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Mark H. Tuohy III
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Direct Fax 202/639-6604
mtuohy@velaw.com

April 26, 2004

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Brett Kavanaugh

Dear Mr. Chairman:

I write in support of Brett Kavanaugh's nomination to the District of Columbia Circuit.

I have known Mr. Kavanaugh since 1994 and have worked with him on numerous legal and professional matters over the last ten years. He is exceptionally well qualified to serve on one of the nation's most important appellate courts, as he possesses keen intellectual prowess, superior analytical skills and a strong commitment to applying the role of law in a fair and impartial manner. As well, Mr. Kavanaugh's interpersonal skills will enable him to become a strong collegial member of a court where personal relationships lend themselves to a better administration of justice. Mr. Kavanaugh's work at the Office of Independent Counsel (Whitewater), his service as Deputy Counsel to the President, as well as his prior work in the Solicitor General's Office, and his private practice at Kirkland & Ellis, all reflect a blend of superior legal abilities and a cautious application of the principles of justice and fairness to legal disputes.

In 1995, after completing a year of service as President of the District of Columbia Bar, I was asked by Ken Starr (and encouraged by Robert Fiske) to assume the position of Principal Deputy Independent Counsel, a position which I held for one year, and in that capacity, I was responsible for the hiring and supervision of Mr. Kavanaugh. In every respect during our relationship, Mr. Kavanaugh exhibited the highest qualities of integrity and professionalism in his work. These traits consistently exemplify Mr. Kavanaugh's approach to the practice of law, and will exemplify his tenure as a federal appellate judge. His approach to important questions of law will be professional, not partisan.

I respectfully urge favorable consideration. The administration of justice will be well served by his appointment. Thank you for your consideration.

Sincerely,

Mark H. Tuohy III



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April 26, 2004

The Honorable Patrick J. Leahy
 Ranking Member, Committee on the Judiciary
 United States Senate
 152 Dirksen Senate Senate Office Building
 Washington, DC 20510

Re: Brett Kavanaugh

Dear Senator Leahy:

I write in support of Brett Kavanaugh's nomination to the District of Columbia Circuit.

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I respectfully urge favorable consideration. The administration of justice will be well served by his appointment. Thank you for your consideration.

Sincerely,

Mark H. Tuohy III

Brett Kavanaugh – Vince Foster Investigation

Allegation: Brett Kavanaugh's work for Independent Counsel Kenneth Starr while he investigated the Clinton Administration demonstrates Mr. Kavanaugh's partisan, right wing agenda. In particular, Mr. Kavanaugh investigated the circumstances surrounding former Deputy White House Counsel Vince Foster's death for three years after four separate investigations already had concluded that Mr. Foster committed suicide.

Facts:

- **Mr. Kavanaugh's work on the investigation of Vince Foster's death demonstrates his fairness and impartiality.**
 - ✓ While working for Independent Counsel Kenneth Starr, Mr. Kavanaugh was the line attorney responsible for the Office of Independent Counsel's investigation into Vince Foster's death. Mr. Kavanaugh also prepared the Office of Independent Counsel's report on Vince Foster's death.
 - ✓ **In the report prepared by Mr. Kavanaugh, the Office of Independent Counsel concluded that Vince Foster had committed suicide, thus debunking alternative conspiracy theories advanced by critics of the Clinton Administration.**
 - ✓ Mr. Kavanaugh's role in the Vince Foster investigation evidences his ability to assess evidence impartially and refutes any allegation that his decision-making is driven by ideological or partisan considerations.
- **Mr. Kavanaugh's work on the investigation of Vince Foster's death was careful and thorough and demonstrates his outstanding skills as a lawyer.**
 - ✓ In investigating Vince Foster's death, Mr. Kavanaugh was required to manage and review the work of numerous FBI agents and investigators, FBI laboratory officials, and leading national experts on forensic and psychological issues.
 - ✓ Mr. Kavanaugh conducted interviews with a wide variety of witnesses concerning both the cause of Vince Foster's death and his state of mind.
 - ✓ While some have complained that the Independent Counsel's investigation of Vince Foster's death took too long and was unnecessary, a careful, thorough, and detailed investigation was necessary under the Independent Counsel's mandate.
- **The report prepared by Mr. Kavanaugh demonstrated sensitivity to Vince Foster's family.**
 - ✓ Although photographs taken of Vince Foster's body after his death were relevant to the investigation, they were excluded from the report prepared by Mr.

Kavanaugh because “[t]he potential for misuse and exploitation of such photographs [was] both substantial and obvious.” See *Report on the Death of Vincent W. Foster Jr., By the Office of Independent Counsel, In re: Madison Guaranty Savings & Loan Ass'n, to the Special Division of the United States Court of Appeals for the District of Columbia Circuit* (filed July 15, 1997), Section III.D.

➤ **The Office of the Independent Counsel’s investigation into the death of Vince Foster was compelled by its court-assigned jurisdiction.**

- ✓ The Special Division of the United States Court of Appeals for the District of Columbia Circuit asked the Office of the Independent Counsel to investigate and prosecute matters “relating in any way to James B. McDougal's, President William Jefferson Clinton's, or Mrs. Hillary Rodham Clinton's relationships with Madison Guaranty Savings & Loan Association, Whitewater Development Corporation, or Capital Management Services, Inc.”
- ✓ The death of Vince Foster fell within the Office of the Independent Counsel’s jurisdiction both because of the way Whitewater-related documents from Mr. Foster's office were handled after his death, and because of Mr. Foster's possible role or involvement in Whitewater-related events under investigation by the Office of Independent Counsel.

➤ **The U.S. Senate has confirmed judicial and other nominees who worked for Independent Counsel Ken Starr. If these nominees’ work for the Independent Counsel was not disqualifying, then there is no reason why Brett Kavanaugh should be disqualified because of his work for Independent Counsel Starr.**

- ✓ Steven Colloton served as Associate Independent Counsel from 1995 to 1996 and was confirmed for a seat on the Eighth Circuit Court of Appeals on September 4, 2003 by a vote of 94 to 1. He was confirmed to be the U.S. Attorney for the Southern District of Iowa on September 5, 2001, by a voice vote.
- ✓ John Bates served as Deputy Independent Counsel from 1995 to 1997 and was confirmed for a seat on the U.S. District Court for the District of Columbia on December 11, 2001 by a vote of 97 to 0.
- ✓ Amy St. Eve served as Associate Independent Counsel from 1994 to 1996 and was confirmed for a seat on the U.S. District Court for the Northern District of Illinois on August 1, 2002 by a voice vote.
- ✓ William Duffey served as Associate Independent Counsel from 1994 to 1995 and was confirmed to be the U.S. Attorney for the Northern District of Georgia on November 6, 2001, by a voice vote. Mr. Duffey recently was nominated for a seat on the United States District Court for Northern District of Georgia and was voted out of the Senate Judiciary Committee on February 5, 2004, by unanimous consent.

- ✓ Karin Immergut served as Associate Independent Counsel in 1998 and was confirmed to be the U.S. Attorney for the District of Oregon on October 3, 2003 by a voice vote.
- ✓ Alex Azar served as Associate Independent Counsel from 1994 to 1996 and was confirmed to be the General Counsel of the Department of Health and Human Services on August 3, 2001, by a voice vote.
- ✓ Eric Dreiband served as Associate Independent Counsel from 1997 to 2000 and was confirmed to be General Counsel of the Equal Employment Opportunity Commission on July 31, 2003, by a voice vote.
- ✓ Julie Myers served as Associate Independent Counsel from 1998 to 1999 and was confirmed to be an Assistant Secretary of Commerce on October 17, 2003, by a voice vote.

Brett Kavanaugh and Executive Privilege

Allegation: When he worked for Independent Counsel Ken Starr, Brett Kavanaugh repeatedly challenged assertions of privilege by Clinton administration officials. Now that he works for President Bush, however, he defends the same assertions of privilege.

Facts:

- The Independent Counsel challenged assertions of privilege by the Clinton Administration because it was part of a criminal investigation. In his capacity as an attorney for the Bush administration, Mr. Kavanaugh has not defended any assertion of executive privilege or attorney-client privilege in connection with a criminal investigation.
- While working for the Independent Counsel's office, Mr. Kavanaugh argued a case before the U.S. Supreme Court seeking notes taken by Vince Foster's attorney during a conversation nine days before Foster's suicide. The notes were sought in connection with whether presidential aides covered up Mrs. Clinton's role in the dismissal of White House travel office personnel. *See Swidler & Berlin v. United States*, 118 S. Ct. 2081 (1998).
 - ✓ The federal appeals court had ruled that the attorney's notes could be produced to the Independent Counsel if "they bear on a significant aspect of the crimes at issue." *Swidler & Berlin v. United States*, 124 F.3d 230 (1998).
 - ✓ The Supreme Court reversed the decision of the appellate court. In dissent, Justice O'Connor wrote that, "Where the exoneration of an innocent criminal defendant or a compelling law enforcement interest is at stake, the harm of precluding critical evidence that is unavailable by any other means outweighs the potential disincentive to forthright communication." *Swidler*, 118 S. Ct. 2081, 2090.
- With respect to the role that Mr. Kavanaugh may or may not have played in the GAO's lawsuit against Vice President Cheney's energy task force, it is the President who decides whether to challenge a lawsuit. Mr. Kavanaugh's duty as his attorney, which is the duty of all lawyers, is to make the best legal arguments possible for his client in every circumstance.
 - ✓ As Vice President Cheney stated contesting the merits of the GAO lawsuit, "What I object to, and what the President's objected to, and what we've told the GAO we won't do, is make it impossible for me or future vice presidents to ever have a conversation in confidence with anybody without having, ultimately, to tell a member of Congress what we talked about and what was said."

- ✓ As the U.S. Supreme Court has stated, "Unless [the President] can give his advisors some assurance of confidentiality, a President could not expect to receive the full and frank submissions of facts and opinions upon which effective discharge of his duties depends." *Nixon v. Administrator of General Services*, 433 U.S. 425, 448 (1977)
- ✓ The case against Vice President Cheney's energy task force was dismissed by a federal judge. The court held that the Comptroller General did not have standing to pursue an action seeking to compel the Vice President to disclose documents relating to meetings of the energy task force over which he presided." See *Walker v. Cheney*, 230 F. Supp.2d 51 (2002). GAO chose not to appeal the decision.
- With respect to the issuance of Executive Order 13233 concerning executive privilege, the President makes the decision on all matters regarding the scope and exercise of executive privilege. The decision is not made by his staff or anyone else in his Administration.
- Whether working as an attorney for the Independent Counsel or for the President of the United States, Mr. Kavanaugh makes the best legal arguments possible on behalf of his client. Such arguments do not necessarily reflect his personal views.
 - ✓ Lawyers have an ethical obligation to make all reasonable arguments that will advance their clients' interests. According to Rule 3.1 of the ABA's Model Rules of Professional Conduct, a lawyer may make any argument if "there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law." Lawyers would violate their ethical duties to their client if they made only arguments with which they would agree were they a judge.

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Brett Kavanaugh – *Santa Fe Independent School District v. Doe*

Allegation: In *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000), Brett Kavanaugh once again demonstrated his hostility to the separation of church and state by defending a high school's broadcasting of prayers over its public address system before football games. The U.S. Supreme Court decisively rejected Mr. Kavanaugh's radical argument, holding that the pre-game prayers in question violated the First Amendment's Establishment Clause.

Facts:

- **In *Santa Fe Independent School District*, Mr. Kavanaugh filed an amicus brief on behalf of his clients with the U.S. Supreme Court and argued for the principle that a public school is not required to discriminate against a student's religious speech.**
 - ✓ The school district permitted high school students to choose whether a statement would be delivered before football games and, if so, who would deliver that message.
 - ✓ A speaker chosen to deliver a pre-game message **was allowed to choose the content of his or her statement.**
 - ✓ As Mr. Kavanaugh's brief pointed out, **the school district's policy did "not require or even encourage the student speaker to invoke God's name, to utter religious words, or to say a 'prayer' of any kind. Nor, on the other hand [did] the school policy prevent the student from doing so.** The policy [was] thus entirely neutral toward religion and religious speech."
 - ✓ Mr. Kavanaugh therefore argued on behalf of his clients that the school district's policy did not run afoul of the First Amendment simply because a student speaker might choose to invoke God's name or say a "prayer" in his or her pre-game statement. **His brief pointed out: "The Constitution protects the . . . student speaker who chooses to mention God just as much as it protects the . . . student speaker who chooses not to mention God."**
- **Mr. Kavanaugh's arguments were based upon well-established Supreme Court precedent** holding that the government does not violate the Establishment Clause when private speakers avail themselves of a neutrally available school forum to engage in religious speech. See *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819 (1995); *Lamb's Chapel v. Center Moriches Union Free School Dist.*, 508 U.S. 384 (1993); *Board of Ed. of Westside Community Schools v. Mergens*, 496 U.S. 226 (1990); *Widmar v. Vincent*, 454 U.S. 263 (1981).
- **In the amicus brief that Mr. Kavanaugh filed on behalf of his clients, he carefully distinguished between individual religious speech in schools, which is protected by the Constitution, and government-required religious speech in schools, which is prohibited by the Constitution.**

- ✓ **Mr. Kavanaugh's brief acknowledged that the Establishment Clause prohibits government-composed, government-delivered, or government-required prayers in classes or at school events.**

- **Three Democratic State Attorneys General joined an amicus brief in *Santa Fe Independent School District* taking the same position that Mr. Kavanaugh took on behalf of his clients.**
 - ✓ Democratic Attorneys General Richard Ieyoub of Louisiana, Mike Moore of Mississippi, and Paul Summers of Tennessee joined an amicus brief on behalf of their respective states urging the U.S. Supreme Court to uphold the constitutionality of the school district's policy regarding pre-game messages.

- **Mr. Kavanaugh submitted an amicus brief on behalf of his clients, Congressman Steve Largent and Congressman J.C. Watts in *Santa Fe Independent School District*. As their attorney, Mr. Kavanaugh had a duty to zealously represent his clients' position and make the best argument on their behalf. Such arguments do not necessarily reflect the personal views of Mr. Kavanaugh.** }

- ✓ Lawyers have an ethical obligation to make all reasonable arguments that will advance their clients' interests. According to Rule 3.1 of the ABA's Model Rules of Professional Conduct, a lawyer may make any argument if "there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law." Lawyers would violate their ethical duties to their client if they made only arguments with which they would agree were they a judge.

Brett Kavanaugh – Florida School Vouchers

Allegation: Brett Kavanaugh demonstrated his hostility both to the separation of church and state and to public education when he defended the constitutionality of a Florida school voucher program that drains taxpayers' money from public schools to pay for students to attend religious schools. *Bush v. Holmes*, 767 So. 2d 668 (2000).

Facts:

- **While an attorney in private practice, Mr. Kavanaugh was part of a large team of lawyers representing Florida state officials in defending Florida's opportunity scholarship program, which provided children in failing public schools with access to a high-quality education and has improved the quality of Florida's public schools.**
 - ✓ The opportunity scholarship program is a **limited program** that allows **students at failing public schools to transfer to a better public school or a private school at public expense.**
 - ✓ The **opportunity scholarship program is carefully tailored** to give choice to those parents who need it and to spur public school improvement through competition.
 - ✓ **Religious and non-religious private schools** are allowed to participate in the program on an equal basis and all public funds **are directed by the private and independent choices of parents.**
 - ✓ In two separate evaluations, researchers have found that **Florida's opportunity scholarship program has raised student achievement in Florida's worst public schools.** A 2003 study specifically found that "**voucher competition in Florida is leading to significant improvement in public schools**" and that "Florida's low-performing schools are improving in direct proportion to the challenge they face from voucher competition."
- **A three-judge panel of Florida's Court of Appeal for the First District unanimously agreed with the position taken by Florida officials. All three of these judges were appointees of Lawton Chiles, the former Democratic Governor of Florida. The Florida Supreme Court refused to review the Court of Appeal's decision.** *See Bush v. Holmes*, 767 So. 2d 668 (2000).
- **The Florida officials were not arguing for an extension in the law. For decades Florida's K-12 system made use of contracts with private schools to educate tens of thousands of students in private schools.**
- **During Mr. Kavanaugh's involvement in this litigation, the main issue was whether the Florida Constitution prohibited the use of state funds to pay for the K-12 education of students attending private schools, regardless of whether they were religious or nonsectarian.**

- ✓ The team of lawyers representing Florida officials, including Mr. Kavanaugh, argued that the Florida Constitution's affirmative mandate for the State to provide for "a uniform, efficient, safe, secure, and high quality system of free public schools" did not preclude the use of public funds for private school education, particularly where the Legislature found such use was necessary.
- ✓ The Florida program has specific safeguards to protect against discrimination and coerced religious activity. Participating private schools must agree to comply with Federal anti-discrimination laws and not compel any opportunity scholarship student to profess a specific ideological belief, to pray, or to worship.
- **Florida's opportunity scholarship program enjoys substantial support among Florida's African-American population. The Urban League of Greater Miami, for example, intervened in court proceedings to defend the constitutionality of the program.**
- **The U.S. Supreme Court has upheld the constitutionality of a school voucher program in Cleveland that is similar to Florida's opportunity scholarship program. See *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002).**
- ✓ The U.S. Supreme Court held in 2002 that Cleveland's school voucher program was consistent with the First Amendment's Establishment Clause because it treated religious and non-religious private schools equally and all funds were guided by the private and independent choices of parents.
- ✓ The *Zelman* decision vindicated the position that Mr. Kavanaugh had advocated on behalf of his client.
- **In this litigation Mr. Kavanaugh was defending the constitutionality of the opportunity scholarship program on behalf of his clients. As their attorney, Mr. Kavanaugh had a duty to zealously represent his clients' position and make the best argument on their behalf.**
- ✓ Lawyers have an ethical obligation to make all reasonable arguments that will advance their clients' interests. According to Rule 3.1 of the ABA's Model Rules of Professional Conduct, a lawyer may make any argument if "there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law." Lawyers would violate their ethical duties to their client if they made only arguments with which they would agree were they a judge.

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Brett Kavanaugh – *Good News Club v. Milford Central School*

Allegation: In *Good News Club v. Milford Central School*, 533 U.S. 98 (2001), Brett Kavanaugh demonstrated his hostility to the separation of church and state and religious freedom when he argued that the U.S. Constitution required a New York public school district to allow a Christian organization to hold an evangelical worship service after school hours in an elementary school's cafeteria.

Facts:

- **The U.S. Supreme Court, including Clinton appointee Justice Stephen Breyer, agreed with the position taken by Mr. Kavanaugh on behalf of his client.**
- **In *Good News Club*, Mr. Kavanaugh filed an amicus brief on behalf of his client with the U.S. Supreme Court and argued for the principle that religious perspectives should be given equal, but not favored, treatment in the public sphere.**
 - ✓ Although the school district allowed members of the public to use school facilities for artistic, social, civil, recreational, and educational purposes as well as “other uses pertaining to the welfare of the community,” **it specifically forbade school premises from being used for “religious purposes.”**
 - ✓ Mr. Kavanaugh’s brief argued that the school district’s policy was unconstitutional because it targeted “religious speech for a distinctive burden.”
- **Looking to past U.S. Supreme Court precedent, Mr. Kavanaugh’s brief merely argued for the equal treatment of religious organizations.** It pointed out that the school district “would not be favoring (and thereby endorsing) religion over non-religion simply by opening its doors on a neutral basis and allowing the Good News Club, among many others, to enter.”
 - ✓ The U.S. Supreme Court concluded that the New York School District’s “exclusion of the [Good News] Club from use of the school . . . constitute[d] impermissible viewpoint discrimination.” *Good News Club*, 533 U.S. at 112.
 - ✓ The U.S. Supreme Court also held that permitting the Good News Club to meet on school premises, just as a variety of other clubs were allowed to use school facilities after school hours, would not violate the Establishment Clause. See *Good News Club*, 533 U.S. at 119.
- **Five Democratic State Attorneys General joined an amicus brief in *Good News Club* taking the same position that Mr. Kavanaugh took on behalf of his client.**
 - ✓ Democratic Attorneys General Tom Miller of Iowa, Richard Ieyoub of Louisiana, Mike Moore of Mississippi, Paul Summers of Tennessee, and Jan Graham of Utah joined a brief on behalf of their respective states arguing that the New York school district’s discrimination against religious speech was unconstitutional.

➤ **A diverse range of religious organizations advocated the same position in their amicus briefs as Mr. Kavanaugh did on behalf of his client.**

- ✓ The National Council of Churches, Baptist Joint Committee on Public Affairs, American Muslim Council, General Conference of Seventh-Day Adventists, Reorganized Church of Jesus Christ of Latter Day Saints, First Church of Christ, Scientist, General Assembly of the Presbyterian Church (U.S.A.), General Board of Church & Society of the United Methodist Church, Union of Orthodox Jewish Congregations of America, and A.M.E. Zion Church all agreed that the New York school district's decision to discriminate against religious organizations violated the First Amendment.

➤ Mr. Kavanaugh submitted an amicus brief on behalf of his client Sally Campbell in *Good News Club*. As Ms. Campbell's attorney, Mr. Kavanaugh had a duty to zealously represent his client's position and make the best argument on her behalf. Such arguments do not necessarily reflect the personal views of Mr. Kavanaugh.

- ✓ Lawyers have an ethical obligation to make all reasonable arguments that will advance their clients' interests. According to Rule 3.1 of the ABA's Model Rules of Professional Conduct, a lawyer may make any argument if "there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law." Lawyers would violate their ethical duties to their client if they made only arguments with which they would agree were they a judge.

Brett Kavanaugh – Judicial Nominees

Allegation: While working in the White House Counsel's office, Brett Kavanaugh played a key role in selecting many of President Bush's right wing judicial nominees, and he coordinated the unsuccessful nominations of Miguel Estrada and Priscilla Owen.

Facts:

- Judicial nominees are selected by the President. Whatever one thinks of President Bush's prior judicial nominees, their selection cannot be attributed to an associate counsel to the President.
- Prior to the President's final decision, the judicial selection process is a collaborative one.
 - ✓ The White House Counsel's Office consults with home state senators on both district and circuit court nominees. The Department of Justice and the White House Counsel's Office participate in interviews of judicial candidates. A consensus is reached on the best candidate for the position, and a recommendation is made to the President.
- Over 99% of President Bush's nominees to the federal district and circuit courts have received "well-qualified" or "qualified" ratings from the ABA – the Democrats "Gold Standard."
- One non-partisan study conducted early last year concluded, based on a review of American Bar Association ratings, that President Bush's nominees are "the most qualified appointees" of any recent Administration.
- Miguel Estrada and Priscilla Owen would have been confirmed if given an up-or-down vote by the full Senate.

Brett Kavanaugh – Products Liability

Allegation: In *Geier v. American Honda Motor Company*, Mr. Kavanaugh filed an amicus brief on behalf of the Alliance of Automobile Manufacturers to preclude a woman who received serious injuries in a car accident from recovering damages from the car manufacturer. The car manufacturer had not installed airbags in the car even though Washington, D.C. law required such airbags. 529 U.S. 861 (2000).

Facts:

- **In an opinion written by Justice Breyer, the U.S. Supreme Court agreed with a position taken by Mr. Kavanaugh's client in its brief.**
 - ✓ The Supreme Court held that safety standards promulgated by the Department of Transportation, pursuant to an Act of Congress, preempted the D.C. law requiring airbags, and that therefore the plaintiff could not bring an action under the D.C. law. *Geier v. American Honda Motor Company*, 529 U.S. 861, 875 (2000).
 - ✓ Federal Motor Vehicle Safety Standard (FMVSS) 208 required that auto manufacturers equip some but not all of their 1987 vehicles with passive restraints.
 - ✓ Because a universal airbag requirement like that in place in D.C. would directly conflict with the safety purposes behind enactment of FMVSS 208, the long-standing principle of preemption applied and the D.C. requirement could not be enforced.
 - ✓ The plaintiff's car in this case contained a restraint system explicitly authorized by Standard 208, and thus was in full compliance with the Federal regulation.
- **All of the circuit courts to consider the issue, including the 9th Circuit, agreed with either the implied or express preemption arguments set forth in the brief Mr. Kavanaugh filed on behalf of his client.**
 - ✓ District Judge William Bryant, appointed by President Johnson, granted American Honda summary judgment in this case based on the express preemption argument later set forth in the brief.
 - ✓ The D.C. Court of Appeals affirmed the lower court decision on implied preemption grounds in a unanimous opinion written by Clinton appointee Judge Judith Rogers.
 - ✓ Four other circuits came to the same conclusion as the D.C. Circuit.

- ✓ The 9th Circuit adopted the express preemption argument set forth in the brief submitted by Mr. Kavanaugh, that the Motor Vehicle Safety Act expressly preempted state tort suits brought on the basis of a lack of an airbag.
- **The Clinton Administration, through the office of Solicitor General, also argued in its brief that the state law claims were impliedly preempted by the federal standards promulgated by the Department of Transportation.**

Brett Kavanaugh – Product Liability

Allegation: Mr. Kavanaugh took the side of big business by filing an amicus brief before the Supreme Court in *Lewis v. Brunswick Corp.*, 107 F.3d 1494 (11th Cir. 1998), in an attempt to deny recovery to a family who lost its daughter when she fell off a boat and was killed by the propeller.

Facts:

- **The amicus brief filed by Mr. Kavanaugh’s client, General Motors Corporation, was consistent with the unanimous opinion of the court below – the Eleventh Circuit – and with the decisions of many other courts across the country.**
 - ✓ The Eleventh Circuit held that the Georgia law was impliedly preempted because the Coast Guard – which had exclusive authority in boat and equipment safety standards – determined that propeller guards should not be required because their use could actually increase the danger to boaters.
- **Numerous courts, both state and federal, already had adopted the position taken by Mr. Kavanaugh in the amicus brief – that state common law claims for negligence or product liability were either expressly or impliedly preempted by the Federal Boat Safety Act.**
 - ✓ At the time the amicus brief was submitted, courts in California, Georgia, Connecticut, Ohio, Illinois, and Michigan had come to the conclusion argued in the brief filed by Mr. Kavanaugh.
 - ✓ The district court judge in *Lewis v. Brunswick*, Carter appointee Judge Dudley Bowen, also came to the conclusion that the plaintiff’s negligence and strict liability claims based on the lack of a propeller guard were preempted by the Boat Safety Act.
 - ✓ The U.S. Supreme Court did not decide the case because the parties settled the claims before a decision was issued.
- Mr. Kavanaugh’s client was interested in the case only because it manufactured vehicles subject to the Motor Vehicle Safety Act, which included language identical to the Boat Safety Act preemption language at issue in *Lewis v. Brunswick*.
 - ✓ Congress, in the legislative history of the Boat Safety Act, explained that the preemption provision “also assures that manufacture for the domestic trade will not involve compliance with widely varying local requirements.” *Id.* at 1503 (citing S.Rep. No. 92-248).
- Although nearly four years later the Supreme Court did effectively overrule this Eleventh Circuit decision in another case, *Sprietsma v. Mercury Marine*, 537 U.S. 52 (2002), the Court did state that the arguments made by Mr. Kavanaugh’s clients in the *Lewis* case - that such claims are implicitly preempted by the statute and by the Coast Guard decision not to regulate propeller guards - “[b]oth are viable pre-emption theories.” *Id.* at 64.

✓ Brett Kavanaugh – Product Liability

Allegation: In *Green v. General Motors Corp.*, Mr. Kavanaugh once again represented big business attempting to overturn a jury verdict in favor of a 24-year-old who became a quadriplegic due to the defective design of the car manufactured by defendant. 310 N.J. Super. 507 (1998).

Facts:

➤ **Mr. Kavanaugh relied on Third Circuit precedent that supported his client's position on appeal, that the judge had made an improper jury instruction.**

- ✓ The defendant argued that the jury should have been able to consider the plaintiff's own negligence in speeding, which was conceded by the defendant.
- ✓ The defense urged the Superior Court of New Jersey to accept a Third Circuit holding that juries had to be allowed to consider factors such as speed and the plaintiff's driving. *Huddell v. Levin*, 537 F.2d 726, 741 (3rd Cir. 1976).
- ✓ Ultimately, the Superior Court of New Jersey "respectfully disagreed" with the Third Circuit's speed analysis. *Green v. General Motors Corp.*, 310 N.J. Super. 507, 523 (1998).

➤ **The court ruled in favor of Mr. Kavanaugh's clients, General Motors, on a number of issues that were argued on appeal.**

- ✓ The appellate court agreed with Mr. Kavanaugh's client's position that the trial court had wrongly awarded prejudgment interest on future medical expenses and lost earnings. This amount had exceeded \$8.5 million. *Id.* at 533.

➤ **As a member of the appellate team, Mr. Kavanaugh had a duty to zealously advance his client's positions. He did so by making reasonable arguments that relied on established precedent.**

- ✓ Lawyers have an ethical obligation to make all reasonable arguments that will advance their clients' interests. According to Rule 3.1 of the ABA's Model Rules of Professional Conduct, a lawyer may make any argument if "there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law." Lawyers would violate their ethical duties to their client if they made only arguments with which they would agree were they a judge.

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Brett Kavanaugh – Elian Gonzalez

Allegation: Mr. Kavanaugh challenged the Clinton administration's decision to return Elian Gonzalez, a Cuban citizen, to his legal guardian – his father in Cuba.

Facts:

- Mr. Kavanaugh was asked to represent, on a pro bono basis, six-year-old Elian and his American relatives after the Eleventh Circuit had ruled against Elian. Mr. Kavanaugh was involved in filing a petition for rehearing *en banc* by the Eleventh Circuit, as well as an application for a stay and a petition for writ of certiorari from the U.S. Supreme Court.
- The narrow question before the court was not whether or not Elian should be returned to Cuba, but whether it was proper for the INS to make a decision to return Elian without even considering the merits of his case – without a hearing of any kind.
 - ✓ After his mother died at sea while attempting to bring Elian to the United States, Elian filed for political asylum through his “next friend” on several grounds, including that he feared persecution at the hands of the communist-totalitarian Cuban government if he were returned.
 - ✓ Under 8 U.S.C. 1158, “[a]ny alien who is physically present in the United States... may apply for asylum.” However, the INS determined that because of Elian’s age, the application had no legal effect and it therefore did not have to consider the merits of the application or reach the question of whether Elian’s fears of persecution were well founded.
 - ✓ The Lawyers’ Committee for Human Rights explained in its amicus brief before the 11th Circuit, “the implications” of the INS’s no-hearing, no-interview procedure for minor asylum applicants are “quite serious.” Amicus brief of Lawyers’ Committee for Human Rights, at 19.
- The Eleventh Circuit recognized the merits of the arguments set forth by Mr. Kavanaugh on behalf of his clients. Nevertheless, the court upheld the INS’s authority to interpret the law because of the great deference that it had to grant an executive branch agency. In rendering its opinion, the court expressed serious concerns with the action taken by the agency:

“We have not the slightest illusion about the INS’s choices: the choices—about policy and about application of the policy—that the INS made in this case are choices about which reasonable people can disagree.” *Gonzalez v. Reno*, 212 F.3d 1338, 1356 (2000) (emphasis added).

“The final aspect of the INS policy also worries us some. According to the INS policy, that a parent lives in a communist-totalitarian state is no special circumstance. . . . to justify the consideration of a six-year-old child’s asylum We acknowledge, as a widely-accepted truth, that Cuba does violate

human rights and fundamental freedoms and does not guarantee the rule of law to people living in Cuba.” *Id.* at 1353.

“But whatever we personally might think about the decisions made by the Government, we cannot properly conclude that the INS acted arbitrarily or abused its discretion here.” *Id.* at 1354.

- The representation of Elian Gonzalez and his American relatives was nonpartisan. In fact, lawyers who brought Mr. Kavanaugh into the case included Manny Diaz, currently the Democrat Mayor of Miami, and Kendall Coffey, a prominent Miami Democrat and former U.S. Attorney in the Clinton Justice Department.

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Brett Kavanaugh – Race

Allegation: In a friend of the court brief, Kavanaugh joined Robert Bork in opposing a voting scheme that was intended to assist native Hawaiians by ensuring that only they could vote for board members overseeing a trust for the benefit of native Hawaiians. *Rice v. Cayetano*, 528 U.S. 495 (2000). Before the case was heard, he was quoted as saying that “this case is one more step along the way in what I see as an inevitable conclusion within the next 10 to 20 years when the court says we are all one race in the eyes of the government.” Warren Richey, *New Case May Clarify Court’s Stand on Race*, THE CHRISTIAN SCIENCE MONITOR (Oct. 6, 1999).

Facts:

- **The Supreme Court agreed with the position taken by Mr. Kavanaugh’s client, that limiting voting for candidates to a statewide office that disbursed state and federal funds based on racial ancestry violated the Constitution. The Fifteenth Amendment guarantees that “[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any other State on account of race, color, or previous condition of servitude.” U.S. CONST. Amend. XV § 1.**
 - ✓ **In a 7 to 2 decision, with the majority including Justices Breyer, Souter, and O’Connor**, the Court reaffirmed the basic premise upon which the brief was based: that “[t]he National Government and the States may not violate a fundamental principle: They may not deny or abridge the right to vote on account of race.” *Rice*, 120 S. Ct. at 1054.
 - ✓ The Court explained, “The State’s position rests, in the end, on the demeaning premise that citizens of a particular race are somehow more qualified than others to vote on certain matters. That reasoning attacks the central meaning of the Fifteenth Amendment.” *Id.* at 523.
 - ✓ The Court added, “Race cannot qualify some and disqualify others from full participation in our democracy. All citizens, regardless of race, have an interest in selecting officials who make policies on their behalf, even if those policies will affect some groups more than others.” *Id.*
 - The brief submitted by Mr. Kavanaugh on behalf of his clients sought to enforce the Fifteenth Amendment against a state law that prohibited citizens from voting in a statewide election based on their race.
 - ✓ When Hawaii was admitted as the 50th State of the Union in 1959, the state adopted the Hawaiian Homes Commission Act, passed by Congress, as part of its Constitution. The Act set aside 200,000 acres of public lands and granted the state over 1.2 million additional acres of land to be held “as a public trust.”
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- The proceeds and income from the lands were to be used for one or more of five purposes: (1) support of public schools and other public educational institutions, (2) betterment of native Hawaiians, (3) development of farm and home ownership, (4) public improvements, and (5) provisions of land for public use.
- ✓ In 1978, Hawaii established the Office of Hawaiian Affairs (OHA) to administer special trust revenues “for the betterment of the conditions of native Hawaiians,” and any appropriations that were made for the benefit of “native Hawaiians” and/or “Hawaiians.”
 - The term “native Hawaiian” and “Hawaiian” are defined as descendants of aboriginal peoples or races inhabiting the Hawaiian Islands previous to 1778.
 - ✓ The Hawaii Constitution limited membership on the OHA board of trustees to “Hawaiians,” and explicitly provided that the trustees shall be “elected by ... Hawaiians.”
 - ✓ Although petitioner was a citizen of Hawaii, and his ancestors were residents of the Hawaiian Islands prior to U.S. annexation in 1959, he did not meet the statutory definitions and was thus precluded from voting.
- The racial qualification in the Hawaiian law categorically excluded members of certain racial minorities, such as African-Americans and Japanese-Americans, who were members of groups historically discriminated against in the U.S.
 - One of Mr. Kavanaugh’s clients on the brief was the New York Civil Rights Coalition, a non-profit organization seeking to achieve a society where the individual enjoys the blessings of liberty free from racial prejudice, stigma, caste or discrimination.
 - Mr. Kavanaugh’s statement regarding the Rice case was consistent with statements made by Justice O’Connor in *Grutter v. Bollinger*, 123 S.Ct. 2325 (2003), where the Supreme Court upheld the University of Michigan Law School’s race-conscious admissions policy. Justice O’Connor stated: “We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.”

BRETT M. KAVANAUGH
Nominee to the U.S. Court of Appeals for the DC Circuit

- **Brett Kavanaugh is a well-respected attorney and highly qualified candidate for the DC Circuit, with strong bi-partisan support from the legal community.** Mr. Kavanaugh has an extraordinary range of experience in the public and private sectors that makes him well-suited for the D.C. Circuit. **The ABA rated Mr. Kavanaugh “Well Qualified” to serve on the DC Circuit.**
 - ✓ He has practiced law in the private and public sectors, for 14 years. He was a partner at the law firm of Kirkland & Ellis, and has an outstanding reputation in the legal community.
 - ✓ Judge Walter Stapleton said of Mr. Kavanaugh, “He really is a superstar. He is a rare match of talent and personality.” Delaware Law Weekly, May 22, 2002.
 - ✓ After arguing against Mr. Kavanaugh in the Supreme Court, Washington attorney Jim Hamilton stated, “Brett is a lawyer of great competency, and he will be a force in this town for some time to come.” News Conference with James Hamilton, Federal News Service, June 25, 1998.
 - ✓ Mr. Kavanaugh graduated from Yale College and Yale Law School, and served as the Notes Editor on the prestigious Yale Law Journal.

- **Mr. Kavanaugh has extensive experience in the appellate courts, both as a clerk and as counsel.**
 - ✓ Mr. Kavanaugh clerked for Supreme Court Justice Anthony Kennedy, as well as Judge Walter Stapleton of the Third Circuit and Judge Alex Kozinski of the Ninth Circuit.
 - ✓ Prior to his Supreme Court clerkship, Mr. Kavanaugh earned a prestigious fellowship in the Office of the Solicitor General of the United States. The Solicitor General’s office represents the United States before the Supreme Court.
 - ✓ Mr. Kavanaugh has argued both civil and criminal matters before the Supreme Court and appellate courts throughout the country.

- **Mr. Kavanaugh has dedicated the majority of his career to public service in both the Executive and Judicial branches.**
 - ✓ In addition to his service for three appellate judges and his work at the Department of Justice, Mr. Kavanaugh has worked for President Bush since 2001.
 - ✓ He currently serves as Assistant to the President and Staff Secretary. In that capacity, he is responsible for the traditional functions of that office, including

coordinating all documents to and from the President. He previously served as Senior Associate Counsel and Associate Counsel to the President. In that capacity, he worked on the numerous constitutional, legal, and ethical issues traditionally handled by that office.

- ✓ Mr. Kavanaugh served as an Associate Counsel in the Office of Independent Counsel, where he handled a number of the novel constitutional and legal issues presented during that investigation.

➤ **Mr. Kavanaugh believes in giving back to his community.**

While in private practice, Mr. Kavanaugh took on pro bono matters, including representation of the Adat Shalom congregation in Montgomery County, Maryland against the attempt to stop the construction of a synagogue in the county.

- ✓ In addition to being active in his church, Mr. Kavanaugh has coached youth basketball and participated in other community activities.

Brett Kavanaugh – Privilege Arguments v. Work on E.O. 13233

Allegation: While working for Independent Counsel Kenneth Starr, Brett Kavanaugh fought the Clinton Administration for access to confidential communications. As Associate White House Counsel in the Bush Administration, however, Mr. Kavanaugh helped to draft Executive Order 13233, which dramatically limits public access to presidential records. Such a stark inconsistency demonstrates Mr. Kavanaugh's ideological and partisan agenda.

Facts:

- **Mr. Kavanaugh's work on privilege issues for the Office of the Independent Counsel was consistent with his work on Executive Order 13233.**
 - ✓ Mr. Kavanaugh argued on behalf of the Office of the Independent Counsel that government attorneys in the Clinton Administration could not invoke the attorney-client privilege to block the production of information **relevant to a federal criminal investigation.**
 - ✓ Mr. Kavanaugh also argued on behalf of the Office of Independent Counsel that the attorney-client privilege, once a client was deceased, did not apply with full force in **federal criminal proceedings**, and that federal courts should not recognize a new "protective function privilege" for Secret Service Agents in **federal criminal proceedings.**
 - ✓ The federal courts of appeals agreed with Mr. Kavanaugh's position in those cases.
 - ✓ **Nothing in Executive Order 13233 purports to block prosecutors or grand juries from gaining access to presidential records in a criminal investigation.**
- Executive Order 13233 simply **establishes policies and procedures** to govern requests for presidential records and the assertion of constitutionally-based privileges. **It does not purport to set forth those circumstances under which an assertion of executive privilege should be made and/or would be successful.**
 - ✓ **Executive Order 13233 specifically recognizes that there are situations where a party seeking access to presidential records may overcome the assertion of constitutionally based privileges.** See Section 2(b).
 - ✓ In his *Georgetown Law Journal* article, which was authored during the Clinton Administration, Mr. Kavanaugh specifically recognized the difference between asserting executive privilege in a criminal context and outside of a criminal context.
 - ✓ He argued that a presumptive privilege for Presidential communications existed and that "it may well be absolute in civil, congressional, and FOIA proceedings."

Mr. Kavanaugh wrote: "it is only in the discrete realm of criminal proceedings where the privilege may be overcome." See Brett M. Kavanaugh, *The President and the Independent Counsel*, Geo. L.J. 2133, 2171 (1998).

- **While working in the White House Counsel's Office, Mr. Kavanaugh's work on privilege issues has been consistent and evenhanded, whether the issue at hand involved the Bush Administration or the Clinton Administration.**
 - ✓ For example, Mr. Kavanaugh worked in the Counsel's Office when the Bush Administration asserted executive privilege to shield the records regarding the pardons issued by Bill Clinton at the end of his presidency.
 - ✓ Mr. Kavanaugh likewise was involved in the Bush Administration's assertion of executive privilege to withhold from Congress Justice Department documents related to the investigation of alleged campaign fundraising abuses by the Clinton Administration.

Brett Kavanaugh – *Georgetown Law Journal* Article

Allegation: In a 1998 article for the *Georgetown Law Journal*, Brett Kavanaugh argued for a narrow interpretation of executive privilege and specifically stated that courts could only enforce executive privilege claims with respect to national security and foreign affairs information. As Associate White House Counsel, however, Mr. Kavanaugh was involved with asserting executive privilege in a variety of other contexts, including documents relating to Vice President Cheney’s energy policy task force, the Enron investigation, and the Marc Rich pardon.

Facts:

➤ **Mr. Kavanaugh’s *Georgetown Law Journal* article demonstrates his impartiality and ability to analyze issues without respect to ideological or partisan concerns.**

✓ While President Clinton was in office and thus subject to possible criminal indictment for perjury and obstruction of justice, Mr. Kavanaugh called on Congress in his article to clarify that a sitting President is not subject to criminal indictment while in office. See Brett M. Kavanaugh, *The President and the Independent Counsel*, Geo. L.J. 2133, 2157 (1998).

➤ **The positions taken by Mr. Kavanaugh as Associate White House Counsel are consistent with the views regarding executive privileges that he expressed in his *Georgetown Law Journal* article.**

✓ In his *Georgetown Law Journal* article, Mr. Kavanaugh was addressing only claims of executive privilege **in response to grand jury subpoenas or criminal trial subpoenas** when he stated that courts would only enforce such claims in the context of national security or foreign affairs information. *Id.* at 2162.

✓ Mr. Kavanaugh also argued, however, that a presumptive privilege for Presidential communications existed, not limited to the areas of national security and foreign affairs, and that “it may well be absolute in civil, congressional, and FOIA proceedings.” Mr. Kavanaugh clarified that “it is only in the discrete realm of criminal proceedings where the privilege may be overcome.” *Id.* at 2171.

✓ As Associate White House Counsel, **Mr. Kavanaugh has never worked on a matter where the President invoked or threatened to invoke executive privilege in responding to a grand jury subpoena or a criminal trial subpoena.** There is thus no contradiction between the views expressed in his *Georgetown Law Journal* article and his actions while working at the White House.

➤ **Mr. Kavanaugh’s article presented a thoughtful examination of the problems associated with the independent counsel statute and offered a moderate and sensible set of recommendations for reform.**

- ✓ Among the difficulties Mr. Kavanaugh identified with the independent counsel system existing at the time were the length and politicization of independent counsel investigations. *Id.* at 2135.
- ✓ He also argued that the appointment and removal provisions pertaining to independent counsels, both in theory and in fact, led to unaccountable independent counsels. *Id.*
- ✓ To solve these problems, Mr. Kavanaugh set forth several proposals. For example, Mr. Kavanaugh suggested that independent counsels should be nominated by the President and confirmed by the Senate, and that the President should have absolute discretion over whether and when to appoint an independent counsel. *Id.* at 2135-36.
- ✓ Jerome Shestack, the President of the American Bar Association at the time that Mr. Kavanaugh's article was published, **complimented his "well-reasoned and objectively presented recommendations"** and noted his **"most scholarly and comprehensive review of the issues of executive privilege."** Jerome J. Shestack, *The Independent Counsel Act Revisited*, 86 Geo. L.J. 2011, 2019 (1998).

BRETT M. KAVANAUGH
Nominee to the U.S. Court of Appeals for the DC Circuit

- **Brett Kavanaugh is a well-respected attorney and highly qualified candidate for the DC Circuit, with strong bi-partisan support from the legal community.** Mr. Kavanaugh has an extraordinary range of experience in the public and private sectors that makes him well-suited for the D.C. Circuit. **The ABA rated Mr. Kavanaugh “Well Qualified” to serve on the DC Circuit.**
 - ✓ He has practiced law in the private and public sectors, for 14 years. He was a partner at the law firm of Kirkland & Ellis, and has an outstanding reputation in the legal community.
 - ✓ Judge Walter Stapleton said of Mr. Kavanaugh, “He really is a superstar. He is a rare match of talent and personality.” Delaware Law Weekly, May 22, 2002.
 - ✓ After arguing against Mr. Kavanaugh in the Supreme Court, Washington attorney Jim Hamilton stated, “Brett is a lawyer of great competency, and he will be a force in this town for some time to come.” News Conference with James Hamilton, Federal News Service, June 25, 1998.
 - ✓ Mr. Kavanaugh graduated from Yale College and Yale Law School, and served as the Notes Editor on the prestigious Yale Law Journal.

- **Mr. Kavanaugh has extensive experience in the appellate courts, both as a clerk and as counsel.**
 - ✓ Mr. Kavanaugh clerked for Supreme Court Justice Anthony Kennedy, as well as Judge Walter Stapleton of the Third Circuit and Judge Alex Kozinski of the Ninth Circuit.
 - ✓ Prior to his Supreme Court clerkship, Mr. Kavanaugh earned a prestigious fellowship in the Office of the Solicitor General of the United States. The Solicitor General’s office represents the United States before the Supreme Court.
 - ✓ Mr. Kavanaugh has argued both civil and criminal matters before the Supreme Court and appellate courts throughout the country.

- **Mr. Kavanaugh has dedicated the majority of his career to public service in both the Executive and Judicial branches.**
 - ✓ In addition to his service for three appellate judges and his work at the Department of Justice, Mr. Kavanaugh has worked for President Bush since 2001.
 - ✓ He currently serves as Assistant to the President and Staff Secretary. In that capacity, he is responsible for the traditional functions of that office, including

coordinating all documents to and from the President. He previously served as Senior Associate Counsel and Associate Counsel to the President. In that capacity, he worked on the numerous constitutional, legal, and ethical issues traditionally handled by that office.

- ✓ Mr. Kavanaugh served as an Associate Counsel in the Office of Independent Counsel, where he handled a number of the novel constitutional and legal issues presented during that investigation.

➤ **Mr. Kavanaugh believes in giving back to his community.**

- ✓ **While in private practice, Mr. Kavanaugh took on pro bono matters, including** representation of the Adat Shalom congregation in Montgomery County, Maryland against the attempt to stop the construction of a synagogue in the county.
- ✓ In addition to being active in his church, Mr. Kavanaugh has coached youth basketball and participated in other community activities.

Brett Kavanaugh – Age

Allegation: Brett Kavanaugh is too young to be a federal appellate judge – he’s only 39 years old.

Facts:

- Mr. Kavanaugh would bring a broad range of experience to the court.
 - ✓ Mr. Kavanaugh’s legal work ranges from service as associate counsel to the President, to appellate lawyer in private practice, to experience as a prosecutor.
 - ✓ Mr. Kavanaugh has clerked at two of the U.S. Courts of Appeal, the Third and Ninth Circuits, and at the Supreme Court. He would bring to the D.C. Circuit his experience with those courts.
 - ✓ In private practice and during his service as a prosecutor, Mr. Kavanaugh participated in appellate matters in a number of the federal courts of appeal.
- All three of the judges for whom Mr. Kavanaugh clerked were appointed to the bench before they were 39. All have been recognized as distinguished jurists.
 - ✓ Justice Kennedy was appointed to the 9th Circuit when he was 38 years old.
 - ✓ Judge Kozinski was appointed to the 9th Circuit when he was 35 years old.
 - ✓ Judge Stapleton was appointed to the district court at 35 and later elevated to the 3rd Circuit.
- There are many examples of judges who were appointed to the bench at a young age and have had illustrious careers.

Name	Circuit	Age
Judge Harry Edwards	DC	39
Judge Douglas Ginsburg	DC	40
Judge Kenneth Starr	DC	37
Judge Samuel Alito	3 rd	40
Judge J. Michael Luttig	4 th	37
Judge Karen Williams	4 th	40
Judge J. Harvie Wilkinson	4 th	39
Judge Edith Jones	5 th	35
Judge Frank Easterbrook	7 th	36
Judge Donald Lay	8 th	40
Judge Steven Colloton	8 th	40
Judge Anthony Kennedy (later	9 th	38

appointed to the Supreme Court)		
Judge Mary Schroeder	9 th	38
Judge Alex Kozinski	9 th	35
Judge Deanell Tacha	10 th	39
Judge Stephanie Seymour	10 th	39
Judge J.L. Edmondson	11 th	39

- Age should not be a measure of a person's experience. Many distinguished senators began their service at a young age.
 - ✓ Senators Biden and Kennedy were elected to the Senate at the age of 30, and Senator Leahy was elected at 34.

Setting the Facts Straight on Brett M. Kavanaugh Nominee to the U.S. Court of Appeals for the D.C. Circuit

Brett Kavanaugh is a highly respected attorney with a broad background in both government service and private practice. His legal experience makes him uniquely suited to serve on the D.C. Circuit. Over the course of his career, Mr. Kavanaugh has served as a federal appellate law clerk, a federal prosecutor, an appellate lawyer representing both private clients and the United States, and a senior advisor to the President. While Mr. Kavanaugh's record has been mischaracterized by some, the facts point to a well-qualified nominee who deserves to be confirmed by the Senate.

Myth: Brett Kavanaugh does not have enough experience to be a judge on the D.C. Circuit – he's never tried a case.

Facts on Experience:

- The ABA rated Mr. Kavanaugh "Well Qualified" for a position on the U.S. Court of Appeals for the D.C. Circuit. A rating of Well Qualified means:
 - “To merit a rating of well qualified, the nominee must be at the top of the legal profession in his or her legal community, have outstanding legal ability, breadth of experience, the highest reputation for integrity and either have demonstrated, or exhibited the capacity for, judicial temperament.”
- Mr. Kavanaugh would bring a broad range of experience to the D.C. Circuit. He has substantial experience in the appellate courts, both as an attorney and clerk. From his work in the executive branch, he brings a wealth of knowledge about the inner workings of the federal government.
 - ✓ Mr. Kavanaugh served as a law clerk to Judge Walter Stapleton of the U.S. Court of Appeals for the Third Circuit; Ninth Circuit Judge Alex Kozinski of the U.S. Court of Appeals; and, U.S. Supreme Court Justice Anthony Kennedy.
 - ✓ Mr. Kavanaugh's legal work ranges from service as associate counsel to the President, to appellate lawyer in private practice, to experience as a prosecutor.
- Mr. Kavanaugh has specialized in appellate law, as opposed to trial practice. He has excelled in his field, arguing before the Supreme Court and state and federal appellate courts throughout the country.
- Mr. Kavanaugh's legal experience is substantially similar to that of many Democrat appointees to the D.C. Circuit, including Harry Edwards, who was appointed to the court at the same age as Mr. Kavanaugh is now.

Myth: Mr. Kavanaugh's legal career has consisted largely of partisan activities, making him unsuited to the federal bench.

Facts on Suitability for the Bench:

- Mark Tuohey, a Democrat and former President of the D.C. Bar, worked with Mr. Kavanaugh in the Office of Independent Counsel. He wrote: "Mr. Kavanaugh exhibited the highest qualities of integrity and professionalism in his work. These traits consistently exemplify Mr. Kavanaugh's approach to the practice of law, and will exemplify his tenure as a federal appellate judge. His approach to important questions of law will be professional, not partisan." Letter to Chairman Hatch, April 26, 2004.
- Prior to his appointment to the 1st Circuit, Justice Stephen Breyer held positions that were similar to Mr. Kavanaugh's service.
 - ✓ Justice Breyer served as a counsel for the Watergate Special Prosecution Force.
 - ✓ Justice Breyer served as Chief Counsel of the Senate Judiciary Committee, for then-Chairman Edward Kennedy
- As every lawyer is required to do, Mr. Kavanaugh has zealously represented his clients' positions and made the best arguments on their behalf. Such arguments do not necessarily reflect the personal views of Mr. Kavanaugh.

Myth: Mr. Kavanaugh was deeply involved in the Bush Administration's selection of highly controversial judicial nominees. A look at the candidates Mr. Kavanaugh has helped select and support for lifetime appointments to the federal judiciary speaks volumes about his own legal philosophy.

Facts on the Judicial Nominations Process:

- The President selects judicial nominees. Prior to the President's final decision, the judicial selection process is a collaborative one.
 - ✓ The White House Counsel's Office consults with home state senators on both district and circuit court nominees. The Department of Justice and the White House Counsel's Office participate in interviews of judicial candidates. A consensus is reached on the best candidate for the position, and a recommendation is made to the President.
- Over 99% of President Bush's nominees to the federal district and circuit courts have received "well-qualified" or "qualified" ratings from the ABA – the Democrats' "Gold Standard." One non-partisan study conducted early last year concluded, based on a review of American Bar Association ratings, that President Bush's nominees are "the most qualified appointees" of any recent Administration.

- The President has made clear that he has no “litmus tests” for nominees to the federal courts. No candidate is ever asked for his or her personal opinion on any specific legal or policy issue. The President nominates individuals who are committed to applying the law, not their personal policy preferences.

Myth: Mr. Kavanaugh is out of the mainstream because he publicly praised Miguel Estrada and Priscilla Owen, along with the rest of President Bush’s first 11 nominees to the U.S. Courts of Appeal.

Facts about President Bush’s Nominees:

- At the time of their nomination, Democrat senators had positive things to say about President Bush’s first group of nominees.
 - ✓ Senator Leahy said that he was encouraged by the President’s efforts to balance his nominees: “Had I not been encouraged, I would not have been here today. Some have said that he might get more of a gridlock with a 50-50 Senate. I think it’s just the opposite. I think this calls upon us to do the best to cooperate and make it work.” *NPR: All Things Considered* (Radio Broadcast May 9, 2001).
 - ✓ Senator Daschle stated: “If I might just say, as leader, I’m pleased that the White House has chosen to work with us on the first group of nominations.” Amy Goldstein and Helen Dewar, *11 Judicial Nominees Named*, *Wash. Post*, May 10, 2001, at A2.
- Miguel Estrada and Priscilla Owen, both unanimously rated “Well Qualified” by the ABA, enjoyed widespread bipartisan support and would have been confirmed if given an up-or-down vote by the full Senate.
- Each of the first 11 nominees was rated “Well Qualified” or “Qualified” by the ABA – the Democrats’ “Gold Standard.”

Myth: Brett Kavanaugh was a co-author of Independent Counsel Ken Starr’s report to the House of Representatives, in which Starr alleged that there were grounds for impeaching President Clinton. Kavanaugh’s participation in Starr’s investigation of the Monica Lewinsky affair evidences his partisan, right-wing agenda.

Facts about the Starr Report:

- The section of the Independent Counsel’s report Mr. Kavanaugh co-authored – grounds for impeachment – was required by law.
 - ✓ Federal law required Independent Counsel Starr to advise the House of Representatives of “any substantial and credible information” uncovered during the course of his investigation that may constitute grounds for impeachment. *See* 28 U.S.C. § 595(c).

- The Independent Counsel's report did not conclude that President Clinton should have been impeached. Rather, it simply indicated that the Office of Independent Counsel had uncovered substantial and credible information that may constitute grounds for impeachment. This conclusion was clearly borne out by subsequent events.
 - ✓ The House of Representatives determined that the evidence presented by the Independent Counsel constituted grounds for impeachment. By a vote of 228-206, the House voted to impeach President Clinton for perjuring himself before a grand jury. And by a vote of 221-212, the House voted to impeach President Clinton for obstructing justice.
 - ✓ After a trial in the U.S. Senate, fifty Senators voted to remove President Clinton from office for obstructing justice.
- Democrat senators agreed with the Independent Counsel that President Clinton gave false or misleading testimony.
 - ✓ Senator Feinstein introduced a censure resolution that stated President Clinton "gave false or misleading testimony and his actions [] had the effect of impeding discovery of evidence in judicial proceedings." Senators Durbin, Kennedy, Kohl, Schumer, Daschle, and Kerry co-sponsored the resolution. S.Res. 44, 106th Cong. (1999).
 - ✓ Then-Congressman Schumer, as Senator-elect stated that "it is clear that the President lied when he testified before the grand jury."
- U.S. District Court Judge Susan Webber Wright later held President Clinton in contempt for "giving false, misleading, and evasive answers that were designed to obstruct the judicial process" in Paula Jones's sexual harassment lawsuit and ordered him to pay a fine of \$90,000.
 - ✓ In January 2001, President Clinton admitted to giving "evasive and misleading answers, in violation of Judge Wright's discovery's orders" during his deposition in Paula Jones's sexual harassment lawsuit. As a result, he agreed to pay a \$25,000 fine and give up his law license for five years.
- The U.S. Senate already has confirmed judicial and executive branch nominees who worked for Independent Counsel Ken Starr. If the work these nominees performed for the Office of Independent Counsel was not disqualifying, then there is no reason why Brett Kavanaugh should not be confirmed because of his work for the Office of Independent Counsel.
 - ✓ Individuals confirmed to judicial positions include: Steven Colloton – 8th Circuit; John Bates – D.C. District Court; Amy St. Eve – Northern District of Illinois.

Myth: Mr. Kavanaugh returned to the Office of Independent Counsel (“OIC”) when the Monica Lewinsky scandal broke because he wanted to participate in the investigation.

Facts about Mr. Kavanaugh’s Return to the OIC:

- Mr. Kavanaugh came back to the OIC to handle a Supreme Court argument regarding privilege, which he had worked on before returning to private practice.
- ✓ From the May 8, 1998 Washington Post: Washington lawyer Brett M. Kavanaugh has left private practice at Kirkland & Ellis for another temporary stint at the office of Whitewater independent counsel Kenneth W. Starr, also a Kirkland & Ellis lawyer. Kavanaugh is working on the Vincent Foster attorney-client privilege case to be argued at the Supreme Court June 8.

Myth: Brett Kavanaugh has praised Independent Counsel Starr despite Starr’s partisan tactics, including his release of the entire report on President Clinton with a description of wide array of questionable facts that were highly offensive.

Facts about the Release of the Report and Support of Judge Starr:

- The House of Representatives, not the OIC, publicly released the Independent Counsel’s Report.
- Mr. Kavanaugh criticized the House of Representatives for releasing the report to the public before reviewing it. See Brett M. Kavanaugh, “First Let Congress Do Its Job,” *The Washington Post*, Feb. 26, 1999, at A27.
- Judge Starr was unfairly criticized for his work as independent counsel. Even the Washington Post editorial page acknowledged that much of the criticism was unwarranted:
 - “Yet the sum of Mr. Starr’s faults constituted a mere shadow of the villainy of which he was regularly accused. The larger picture is that Mr. Starr pursued his mandates in the face of a relentless and dishonorable smear campaign directed against him by the White House. He delivered factually rigorous answers to the questions posed him and, for the most part, brought credible indictments and obtained appropriate convictions. For all the criticism of the style of his report on the Monica Lewinsky ordeal, the White House never laid a glove on its factual contentions. The various ethical allegations against him have mostly melted away on close inspection. At the end of the day, Mr. Starr got a lot of things right.” Editorial, Wash. Post, Oct. 20, 1999, at A28.

Myth: Mr. Kavanaugh is willing to twist legal theories to best serve his own partisan interests. The best example of this is his flip-flop on executive branch privilege from his arguments against the Clinton Administration’s assertions of privilege to his drafting of the Bush Administration’s Executive Order 13233, which gives both sitting and former presidents authority to claim privilege over records.

Facts about Mr. Kavanaugh's Work on Executive Branch Privilege:

- Mr. Kavanaugh's work on privilege issues for the Office of the Independent Counsel was consistent with his work on Executive Order 13233.
 - ✓ Mr. Kavanaugh argued on behalf of the Office of the Independent Counsel that government attorneys in the Clinton Administration could not invoke the attorney-client privilege to block the production of information relevant to a federal criminal investigation. The federal courts of appeal agreed with Mr. Kavanaugh's position.
 - ✓ Mr. Kavanaugh also argued on behalf of the Office of Independent Counsel that federal courts should not recognize a new "protective function privilege" for Secret Service Agents in federal criminal proceedings. The federal court of appeals agreed with Mr. Kavanaugh's position.
 - ✓ Mr. Kavanaugh argued before the Supreme Court that the attorney-client privilege, once a client was deceased, did not apply with full force in federal criminal proceedings.
 - ✓ Nothing in Executive Order 13233 purports to block prosecutors or grand juries from gaining access to presidential records in a criminal investigation.
- Executive Order 13233 simply establishes policies and procedures to govern requests for presidential records and the assertion of constitutionally-based privileges. It does not address when an assertion of executive privilege should be made or would be successful.
 - ✓ Executive Order 13233 specifically recognizes that there are situations where a party seeking access to presidential records may overcome the assertion of constitutionally based privileges. *See* Section 2(b).
- While working in the White House Counsel's Office, Mr. Kavanaugh's work on privilege issues was consistent and evenhanded, whether Bush or Clinton Administration records were at issue.
 - ✓ While Mr. Kavanaugh worked in the Counsel's Office, the Bush Administration asserted executive privilege to shield records regarding the pardons granted by President Clinton at the end of his presidency.
 - ✓ While Mr. Kavanaugh worked in the Counsel's Office, the Bush Administration asserted executive privilege in response to a Congressional request for Justice Department documents related to the investigation of alleged campaign fundraising abuses by the Clinton Administration.

Myth: Mr. Kavanaugh has argued extreme right wing positions on behalf of clients. For instance, he submitted an amicus brief in a school prayer case.

Facts about Mr. Kavanaugh's Work on First Amendment Issues:

- In the amicus brief Mr. Kavanaugh filed on behalf of his clients in *Santa Fe Independent School District*, he acknowledged that the Establishment Clause prohibits government-composed, government-delivered, or government-required prayers in classes or at school events.
- However, Mr. Kavanaugh argued that a school district's policy that permitted high school students to choose whether a statement would be delivered before football games and who would give that statement did not run afoul of the First Amendment simply because a student speaker might choose to invoke God's name or say a "prayer" in his or her pre-game statement.
- Mr. Kavanaugh's brief pointed out: "The Constitution protects the . . . student speaker who chooses to mention God just as much as it protects the . . . student speaker who chooses not to mention God."
- Mr. Kavanaugh's arguments were based upon well-established Supreme Court precedent holding that the government does not violate the Establishment Clause when private speakers avail themselves of a neutrally available school forum to engage in religious speech. See *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819 (1995); *Lamb's Chapel v. Center Moriches Union Free School Dist.*, 508 U.S. 384 (1993); *Board of Ed. of Westside Community Schools v. Mergens*, 496 U.S. 226 (1990); *Widmar v. Vincent*, 454 U.S. 263 (1981).
- Three Democratic State Attorneys General joined an amicus brief in *Santa Fe Independent School District* taking the same position that Mr. Kavanaugh took on behalf of his clients.
- As an attorney, Mr. Kavanaugh had a duty to zealously represent his clients' position and make the best argument on their behalf.

Brett Kavanaugh – Defense of Ken Starr

Allegation: Brett Kavanaugh has vocally defended his former boss, Independent Counsel Kenneth Starr. He has called Starr “an American hero,” written that Starr’s “record is one of extraordinary accomplishment and integrity,” and praised Starr for “consistently perform[ing] with the highest skill and integrity.” This staunch defense of the overzealous Independent Counsel constitutes compelling evidence of Kavanaugh’s right-wing views.

Facts:

- **Many have expressed that the public criticism directed at Independent Counsel Kenneth Starr was vicious and unwarranted.**
 - ✓ The Washington Post editorial page said of Judge Starr:
 - “Yet the sum of Mr. Starr's faults constituted a mere shadow of the villainy of which he was regularly accused. The larger picture is that Mr. Starr pursued his mandates in the face of a relentless and dishonorable smear campaign directed against him by the White House. He delivered factually rigorous answers to the questions posed him and, for the most part, brought credible indictments and obtained appropriate convictions. For all the criticism of the style of his report on the Monica Lewinsky ordeal, the White House never laid a glove on its factual contentions. The various ethical allegations against him have mostly melted away on close inspection. At the end of the day, Mr. Starr got a lot of things right.” Editorial, Wash. Post, Oct. 20, 1999, at A28.
 - “The temptation to make Mr. Starr into an emblem of something flows out of the need to make a neat story out of a complex and messy history. But it is exactly the complexity of Mr. Starr's investigation that belies any attempt to make it stand simply for any set of virtues or vices in the legal system. Mr. Starr, in our view, should be remembered as a man who--hampered alike by intensely adverse conditions and by his own missteps--managed to perform a significant public service.” Editorial, Wash. Post, Oct. 20, 1999, at A28.
 - ✓ Ronald Rotunda, professor at George Mason University School of Law and assistant counsel for Democrats on the Senate Watergate Committee, explained in December 1996 that the attacks on Judge Starr’s integrity were belied by the fact that President Clinton’s attorney General continued to assign him new matters to investigate and had the power to fire Judge Starr if he acted unethically. Peter Baker, *Did President Order Attack on Investigator?*, Seattle Times, Dec. 4, 1996, at A3.
 - Rotunda stated: “This is basically a blatantly political attack on Starr that is inconsistent within the administration itself.” *Id.*
 - ✓ In a prescient editorial published shortly after Judge Starr’s appointment, law professor Garrett Epps – a self-described liberal and supporter of President Clinton – wrote: “If Starr’s investigation turns up no evidence of wrongdoing, he

may blight his own career prospects, which would be a loss to the nation. But if he does produce indictments, many Democrats will believe that he is the agent of a partisan conspiracy. If he obtains convictions, the defendants can claim to be victims of political persecution." Garrett Epps, Editorial, *Take My Word, Starr Will Be Fair*, PORTLAND OREGONIAN, Aug. 17, 1994, at C7.

➤ **Kenneth Starr was a fair and impartial Independent Counsel with a substantial record of accomplishment.** (2)

- ✓ The Washington Post editorial page said, upon Judge Starr's appointment, "he is also a respected practitioner precisely because of his performance as judge and solicitor general, and he was on Clinton Attorney General Janet Reno's own short list of likely candidates for independent counsel when she picked Mr. Fiske." Editorial, *Kenneth Starr for Robert Fiske*, WASH. POST, Aug. 7, 1994, at C8.
- ✓ Upon Judge Starr's appointment as Independent Counsel, Mark Gitenstein, former chief Democratic counsel to the Senate Judiciary Committee, said: "Starr was a good, fair judge, and I think he will be fair in this proceeding." Nancy Roman, *Starr Hailed as Fair, Moderate*, WASH. TIMES, Aug. 6, 1994, at A6.
- ✓ Carter judicial appointee, Judge Patricia Wald said of Judge Starr: "Ken is definitely a conservative ... but he's wholly undeviating and never tries to slip anything by." *National Briefing Whitewater I: Delay Seen as Biggest Danger*, THE HOTLINE, Aug. 8, 1994.
- ✓ Time magazine's chief political correspondent, Michael Kramer, wrote about Judge Starr's appointment in his column: "[Ken Starr's] integrity and honesty have never been seriously questioned. When even a dues-paying liberal like the legal director of the American Civil Liberties Union says, 'I'd rather have Starr investigate me than almost anyone I can think of,' the case for bias is virtually closed." Michael Kramer, *Fade Away, Starr*, TIME, Aug. 29, 1994, at 37.

➤ **Kenneth Starr initiated criminal prosecutions only where he uncovered strong evidence of criminal wrongdoing. Where he did not find overwhelming evidence of illegal behavior, he appropriately exercised prosecutorial restraint.**

- ✓ In his investigations of the death of Vince Foster, the firing of White House travel office employees, the Clinton White House's potential misuse of FBI files, and the Clintons' involvement in Whitewater and Madison Guaranty Savings and Loan, Kenneth Starr did not bring any criminal charges.
- ✓ In those areas, however, where he did find persuasive evidence of wrongdoing, Starr brought charges against and successfully obtained convictions of 14 individuals, including Jim and Susan McDougal, Arkansas Governor Jim Guy Tucker, and former Associate Attorney General Webster Hubbell.

➤ **Independent Counsel Starr prevailed in court in nearly every dispute between the Office of the Independent Counsel and those seeking to withhold evidence by asserting various privileges.**

- ✓ Federal appellate courts sided with Independent Counsel Starr in rejecting:
 - The creation of a “protective function privilege” that would authorize Secret Service agents to refuse to testify before a federal grand jury. *In re Sealed Case*, 148 F.3d 1073 (D.C. Cir. 1998).
 - The claim that government lawyers may rely on attorney-client or work-product privilege to withhold information subpoenaed by a federal grand jury. *In re Grand Jury Subpoena Duces Tecum*, 112 F.3d 910 (8th Cir. 1997).
 - The claim that government attorneys could invoke the attorney-client privilege in response to grand jury questions seeking information relating to the possible commission of a federal crime. *In re Lindsey*, 158 F.3d 1263 (D.C. Cir. 1998).

➤ **Independent Counsel Starr was required by law to refer to the House of Representatives any substantial and credible information that may have constituted grounds for impeachment, and his referral was clearly justified as demonstrated by subsequent events.**

- ✓ Federal law required Independent Counsel Starr to advise the House of Representatives of “any substantial and credible information” uncovered during the course of his investigation that might constitute grounds for impeachment. *See* 28 U.S.C. § 595(c).
- ✓ The Independent Counsel’s report detailed substantial and credible information that may have constituted grounds for impeachment. It summarized specific evidence supporting the charges that President Clinton lied under oath and attempted to obstruct justice.

➤ **The Independent Counsel’s report never stated that President Clinton should have been impeached. Rather, it only explained that the Office of Independent Counsel had uncovered substantial and credible information that may constitute grounds for impeachment. This conclusion was clearly borne out by subsequent events.**

- ✓ The House of Representatives determined that the information presented by the Independent Counsel constituted grounds for impeachment. By a vote of 228-206, the House voted to impeach President Clinton for perjuring himself before a grand jury. And by a vote of 221-212, the House voted to impeach President Clinton for obstructing justice.
- ✓ After a trial in the U.S. Senate, fifty Senators voted to remove President Clinton from office for obstructing justice.
- ✓ U.S. District Court Judge Susan Webber Wright later held President Clinton in contempt for “giving false, misleading, and evasive answers that were designed to obstruct the judicial process” in Paula Jones’s sexual harassment lawsuit and ordered him to pay a fine of \$90,000.

- ✓ In January 2001, President Clinton admitted to giving “evasive and misleading answers, in violation of Judge Wright’s discovery’s orders” during his deposition in Paula Jones’s sexual harassment lawsuit. As a result, he agreed to pay a \$25,000 fine and give up his law license for five years.

➤ **Numerous Democrats co-sponsored a censure resolution introduced by Senator Feinstein that stated that President Clinton “gave false or misleading testimony and his actions [] had the effect of impeding discovery of evidence in judicial proceedings.”** S.Res. 44, 106th Cong. (1999).

- ✓ Members of the Senate who co-sponsored the censure resolution included: Senator Durbin (D-IL), Senator Kennedy (D-MA), Senator Kohl (D-WI), Senator Schumer (D-NY), Minority Leader Tom Daschle (D-SD), and Senator John Kerry (D-MA).
- ✓ Then-Congressman Schumer, as Senator-elect stated that “it is clear that the President lied when he testified before the grand jury.”

Brett Kavanaugh – Starr Report

Allegation: Brett Kavanaugh was a co-author of Independent Counsel Ken Starr's report to the House of Representatives, in which Starr alleged that there were grounds for impeaching President Clinton. Kavanaugh's participation in Starr's investigation of the Monica Lewinsky affair evidences his partisan, right-wing agenda.

Facts:

- **According to numerous press reports, Mr. Kavanaugh did not author the narrative section of the Independent Counsel's report that chronicled in detail President Clinton's sexual encounters with Monica Lewinsky.**
- **Mr. Kavanaugh has since criticized the House of Representatives for releasing the report to the public before reviewing it.** See Brett M. Kavanaugh, "First Let Congress Do Its Job," *The Washington Post*, Feb. 26, 1999, at A27.
- **The section of the Independent Counsel's report co-authored by Mr. Kavanaugh – grounds for impeachment – was required by law, and the allegations contained in that section were confirmed by subsequent events.**
 - ✓ Federal law required Independent Counsel Starr to advise the House of Representatives of "any substantial and credible information" uncovered during the course of his investigation that may constitute grounds for impeachment. See 28 U.S.C. § 595(c).
 - ✓ According to press reports, Mr. Kavanaugh co-authored the section of the Independent Counsel's report that explained the substantial and credible information that may constitute grounds for impeachment. This section summarized the specific evidence supporting the allegations that President Clinton made false statements under oath and attempted to obstruct justice.] ①
- **The Independent Counsel's report never stated that President Clinton should have been impeached. Rather, it only explained that the Office of Independent Counsel had uncovered substantial and credible information that may constitute grounds for impeachment. This conclusion was clearly borne out by subsequent events.**
 - ✓ The House of Representatives determined that the information presented by the Independent Counsel constituted grounds for impeachment. By a vote of 228-206, the House voted to impeach President Clinton for perjuring himself before a grand jury. And by a vote of 221-212, the House voted to impeach President Clinton for obstructing justice.
 - ✓ After a trial in the U.S. Senate, fifty Senators voted to remove President Clinton from office for obstructing justice.

✓ **Numerous Democrats co-sponsored a censure resolution introduced by Senator Feinstein that stated that President Clinton “gave false or misleading testimony and his actions [] had the effect of impeding discovery of evidence in judicial proceedings.” S.Res. 44, 106th Cong. (1999).**

▪ Members of the Senate who co-sponsored the censure resolution included: Senator Durbin (D-IL), Senator Kennedy (D-MA), Senator Kohl (D-WI), Senator Schumer (D-NY), Minority Leader Tom Daschle (D-SD), and Senator John Kerry (D-MA).

▪ Then-Congressman Schumer, as Senator-elect stated that “it is clear that the President lied when he testified before the grand jury.”

✓ U.S. District Court Judge Susan Webber Wright later held President Clinton in contempt for “giving false, misleading, and evasive answers that were designed to obstruct the judicial process” in Paula Jones’s sexual harassment lawsuit and ordered him to pay a fine of \$90,000.

✓ In January 2001, President Clinton admitted to giving “evasive and misleading answers, in violation of Judge Wright’s discovery’s orders” during his deposition in Paula Jones’s sexual harassment lawsuit. As a result, he agreed to pay a \$25,000 fine and give up his law license for five years.

➤ **The U.S. Senate already has confirmed judicial and other nominees who worked for Independent Counsel Ken Starr. If these nominees’ work for the Independent Counsel was not disqualifying, then there is no reason why Brett Kavanaugh should not be confirmed because of his work for the Office of Independent Counsel.**

✓ Steven Colloton served as Associate Independent Counsel from 1995 to 1996 and was confirmed for a seat on the Eighth Circuit Court of Appeals on September 4, 2003 by a vote of 94 to 1. He was confirmed to be the U.S. Attorney for the Southern District of Iowa on September 5, 2001, by a voice vote.

✓ John Bates served as Deputy Independent Counsel from 1995 to 1997 and was confirmed for a seat on the U.S. District Court for the District of Columbia on December 11, 2001 by a vote of 97 to 0.

✓ Amy St. Eve served as Associate Independent Counsel from 1994 to 1996 and was confirmed for a seat on the U.S. District Court for the Northern District of Illinois on August 1, 2002 by a voice vote.

✓ William Duffey served as Associate Independent Counsel from 1994 to 1995 and was confirmed to be the U.S. Attorney for the Northern District of Georgia on November 6, 2001, by a voice vote. Mr. Duffey recently was nominated for a seat on the United States District Court for Northern District of Georgia and was voted out of the Senate Judiciary Committee on February 5, 2004, by unanimous consent.

- ✓ Karin Immergut served as Associate Independent Counsel in 1998 and was confirmed to be the U.S. Attorney for the District of Oregon on October 3, 2003 by a voice vote.
- ✓ Alex Azar served as Associate Independent Counsel from 1994 to 1996 and was confirmed to be the General Counsel of the Department of Health and Human Services on August 3, 2001, by a voice vote.
- ✓ Eric Dreiband served as Associate Independent Counsel from 1997 to 2000 and was confirmed to be General Counsel of the Equal Employment Opportunity Commission on July 31, 2003, by a voice vote.
- ✓ ~~Julie Myers served~~ as Associate Independent Counsel from 1998 to 1999 and was confirmed to be an Assistant Secretary of Commerce on October 17, 2003, by a voice vote.

Brett Kavanaugh – Experience

Allegation: Brett Kavanaugh is not qualified to be a federal appellate judge because he lacks the necessary experience.

Facts:

① ➤ **Brett Kavanaugh has all of the qualities necessary to be an outstanding appellate judge. He has impeccable academic credentials and significant legal experience in the federal courts.**

② ➤ **The ABA, the Democrat’s “Gold Standard,” has rated him “Well Qualified” to serve as a judge on the DC Circuit.**

✓ He has practiced law in the private and public sectors for 14 years. He was a partner at the law firm of Kirkland & Ellis, specializing in appellate litigation, and has an outstanding reputation in the legal community.

✓ Mr. Kavanaugh has dedicated a substantial portion of his career, 11 years, to public service.

➤ **Mr. Kavanaugh has argued both civil and criminal matters before the Supreme Court and appellate courts throughout the country.**

✓ While serving as an Associate Counsel in the Office of Independent Counsel, Mr. Kavanaugh handled a number of the novel constitutional and legal issues presented during that investigation.

✓ In private practice Mr. Kavanaugh focused on appellate matters and as part of his practice, he filed amicus briefs on behalf of clients with the U.S. Supreme Court.

③ ➤ **Mr. Kavanaugh has extensive experience in the appellate courts, both as a clerk and as counsel.**

✓ Mr. Kavanaugh served as a law clerk to Judge Walter Stapleton of the U.S. Court of Appeals for the Third Circuit.

✓ He clerked on the Ninth Circuit for Judge Alex Kozinski of the U.S. Court of Appeals.

✓ Mr. Kavanaugh was a law clerk to U.S. Supreme Court Justice Anthony Kennedy.

✓ Prior to his Supreme Court clerkship, Mr. Kavanaugh earned a prestigious fellowship in the Office of the Solicitor General of the United States. The Solicitor General’s office represents the United States before the Supreme Court.

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- **Only 3 of the 19 judges confirmed to the D.C. Circuit since President Carter's term began in 1977 previously had served as judges.**
 - ✓ Democrat-appointed D.C. Circuit judges with no prior judicial experience include: **Harry Edwards, Merrick Garland, Ruth Bader Ginsburg, Abner Mikva, David Tatel, and Patricia Wald.**

- In his 2001 *Year-End Report on the Federal Judiciary*, Chief Justice Rehnquist argued that "we must not drastically shrink the number of judicial nominees who have substantial experience in private practice." The Chief Justice also noted in his Report that "the federal Judiciary has traditionally drawn from a wide diversity of professional backgrounds, with many of our most well-respected judges coming from private practice."
 - ✓ Supreme Court Justice **Louis Brandeis** spent his whole career in private practice before he was named to the Supreme Court in 1916.
 - ✓ Supreme Court Justice **Byron White** spent fourteen years in private practice and two years at the Justice Department before his appointment to the Court by President Kennedy in 1962.
 - ✓ Supreme Court Justice **Thurgood Marshall** had no judicial experience when President Kennedy recess appointed him to the Second Circuit in 1961. Marshall had served in private practice and as Special Counsel and Director of the NAACP prior to his appointment.

- **President Clinton nominated, and the Senate confirmed, a total of 32 lawyers without any prior judicial experience to the U.S. Court of Appeals, including Judges David Tatel and Merrick Garland to the DC Circuit.**

Confirmed Clinton Appeals Court Judges Without Prior Judicial Experience

Name	Circuit	Confirmed
M. Blane Michael	Fourth	September 30, 1993
Robert Henry	Tenth	May 6, 1994
Guido Calabresi	Second	July 18, 1994
Michael Hawkins	Ninth	September 14, 1994
William Bryson	Federal	September 28, 1994
David Tatel	DC	October 6, 1994
Sandra Lynch	First	March 17, 1995
Karen Moore	Sixth	March 24, 1995
Carlos Lucero	Tenth	June 30, 1995
Diane Wood	Seventh	June 30, 1995
Sidney Thomas	Ninth	January 2, 1996

Merrick Garland	DC	March 19, 1997
Eric Clay	Sixth	July 31, 1997
Arthur Gajarsa	Federal	July 31, 1997
Ronald Gilman	Sixth	November 6, 1997
Margaret McKeown	Ninth	March 27, 1998
Chester Straub	Second	June 1, 1998
Robert Sack	Second	June 15, 1998
John Kelly	Eighth	July 31, 1998
William Fletcher	Ninth	October 8, 1998
Robert King	Fourth	October 9, 1998
Robert Katzmann	Second	July 14, 1999
Raymond Fisher	Ninth	October 5, 1999
Ronald Gould	Ninth	November 17, 1999
Richard Linn	Federal	November 19, 1999
Thomas Ambro	Third	February 10, 2000
Kermit Bye	Eighth	February 24, 2000
Marsha Berzon	Ninth	March 9, 2000
Timothy Dyk	Federal	May 24, 2000
Robert Tallman	Ninth	May 24, 2000
Johnnie Rawlinson	Ninth	July 21, 2000
Roger Gregory	Fourth	May 9, 2001