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Folder Title:

Brett M. Kavanaugh, Nominee to the D.C. Circuit [5]

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| 001 | Letter | Nomination of Brett M. Kavanaugh [page 1] - To: Arlen Specter - From: John McAuliffe | 1 | 05/31/2005 | P6/b6; |
| 002 | Letter | Nomination of Brett M. Kavanaugh to D.C. Circuit - To: Orrin Hatch - From: Pamela Harris | 1 | 04/27/2004 | P6/b6; |
| 003 | Letter | Nomination of Brett M. Kavanaugh [page 1] - To: Arlen Specter - From: John McAuliffe | 1 | 05/31/2005 | P6/b6; |
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Brett M. Kavanaugh, Nominee to the D.C. Circuit [5]

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BRETT M. KAVANAUGH
NOMINEE TO THE D.C. CIRCUIT

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TABLE OF CONTENTS: BRETT M. KAVANAUGH

| | |
|--|-----------|
| Summary and Biographical Points for Brett M. Kavanaugh | 1 |
| Statements by Select Supporters of Brett M. Kavanaugh | 4 |
| Responses to False Allegations against Brett M. Kavanaugh | 9 |
| Select Editorials and Letters of Support for Brett M. Kavanaugh | 21 |
| “A Tale of Two Judges,” <i>The Washington Post</i> , May 9, 2006 | 21 |
| “Girded for Battle,” <i>The New York Sun</i> , April 27, 2006 | 22 |
| “The Next Generation,” <i>The Legal Times</i> , May 6, 2006 | 23 |
| Letter from Judge Walter K. Stapleton, U.S. Court of Appeals for the Third Circuit | 29 |
| Letter from Judge Edward R. Becker, U.S. Court of Appeals for the Third Circuit | 31 |
| Letter from former Attorneys General of the United States | 32 |
| Letter from former Counsels and Deputy Counsels to the President | 34 |
| Letter from former Solicitors General of the United States | 36 |
| Letter from William P. Barr, former Attorney General | 38 |
| Letter from David G. Leitch, former Deputy Counsel to the President | 39 |
| Letter from Bradford A. Berenson, former Associate Counsel to the President | 41 |
| Letter from Helgi C. Walker, former Associate Counsel to the President | 43 |
| Letter from bipartisan group of former classmates at Yale Law School | 45 |
| Letter from Mark H. Tuohey, III, former President of the D.C. Bar | 47 |
| Letter from John F. McAuliffe, Retired Judge of the Court of Appeals of Maryland | 48 |
| Letter from Neal Katyal, Professor of Law at Georgetown University | 50 |
| Letter from Robert M. Chesney, Professor of Law at Wake Forest University | 52 |
| Letter from Eugene Volokh, Professor of Law at University of California, Los Angeles | 53 |
| Letter from Pamela Harris, Washington, D.C. attorney and Yale Law School classmate | 54 |
| Letter from Thomas D. Yannucci, Partner, Kirkland & Ellis LLP | 55 |
| Letter from Paul F. Kemp, Partner, Venable LLP | 57 |
| Letter from Carolyn H. Williams, Partner, Williams & Connolly LLP | 59 |
| Letter from Scott M. McCaleb, Partner, Wiley Rein & Fielding LLP | 61 |
| Letter from Kate Comerford Todd, Partner, Wiley Rein & Fielding LLP | 63 |
| Letter from Adam H. Charnes, Partner, Kilpatrick Stockton LLP | 65 |
| Letter from Robert H. Michel, Senior Advisor, Hogan & Hartson LLP | 67 |

BRETT M. KAVANAUGH

Nominee to the U.S. Court of Appeals for the District of Columbia Circuit

- Throughout his career as an appellate lawyer, a government lawyer, and a member of the senior staff of the White House, Brett Kavanaugh has demonstrated legal excellence and the fair-minded temperament to serve as a federal appellate judge.
- Mr. Kavanaugh has an extraordinary range of experience in the public and private sectors that makes him superbly qualified for the D.C. Circuit. He has dedicated the vast majority of his 16 years of practice to public service.
 - At present, Mr. Kavanaugh serves as Assistant to the President and Staff Secretary. In that capacity, he is responsible for coordinating virtually all documents to and from the President and ensuring that all relevant views are presented. He previously served as Senior Associate Counsel and Associate Counsel to the President, during which time he worked on the numerous constitutional, legal, and ethical issues handled by that office.
 - Prior to his service in this Administration, Mr. Kavanaugh was a partner at the law firm of Kirkland & Ellis, where his practice focused on appellate matters.
 - Mr. Kavanaugh served as an Associate Counsel in the Office of Independent Counsel, where he handled a number of novel constitutional issues presented during that investigation.
- Mr. Kavanaugh specialized in appellate law and has extensive experience in the federal appellate courts, both as a law clerk and as counsel.
 - Mr. Kavanaugh has argued both civil and criminal matters before the U.S. Supreme Court and appeals and trial courts throughout the country.
 - Mr. Kavanaugh clerked for Supreme Court Justice Anthony Kennedy, as well as Judge Alex Kozinski of the Ninth Circuit and Judge Walter Stapleton of the Third Circuit.
 - Prior to his Supreme Court clerkship, Mr. Kavanaugh worked for one year in the Office of the Solicitor General of the United States. The Solicitor General's office represents the United States before the Supreme Court.
- The American Bar Association has consistently rated Mr. Kavanaugh either "Well Qualified" or "Qualified" to serve on the D.C. Circuit. In three reviews by the ABA, all 42 individual ratings by the members of the committee have been "Well Qualified" or "Qualified" ratings.
- Mr. Kavanaugh has impeccable academic credentials. He received his B.A. from Yale College and his law degree from Yale Law School, where he served as Notes Editor of the Yale Law Journal.

- In addition to devoting most of his career to public service, Mr. Kavanaugh has regularly offered his legal expertise and personal time to serving 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 construction of a synagogue in the county.
 - Mr. Kavanaugh represented, on a pro bono basis, six-year-old Elian Gonzalez after the Immigration and Naturalization Service decided to return him to Cuba. Mr. Kavanaugh filed briefs in the Eleventh Circuit and Supreme Court in this case.
- People from across the political spectrum support Mr. Kavanaugh's nomination to the D.C. Circuit and have expressed their admiration for his professional acumen and his personal integrity and fairness.
 - Judge Walter Stapleton of the U.S. Court of Appeals for the Third Circuit said of Mr. Kavanaugh, "I am confident that Mr. Kavanaugh's perspectives on both life and the law will result in his becoming what I regard as a 'judge's judge.' His personal confidence is matched by his humility and his legal acuity by his good, common sense judgment. ... He is firmly committed to the proposition that there must be equal justice for all and that this can be a reality only if all of our courts faithfully and objectively apply the statutory declarations of Congress and the teachings of the Supreme Court."
 - A group of former Solicitors Generals of the United States wrote, "Each of us has practiced extensively in the federal courts of appeals and the Supreme Court of the United States. Our experience has given us invaluable insight into the essential qualities of a good federal appellate judge. A federal judge must be completely impartial and dedicated to the rule of law, intelligent, reflective, and even tempered. Mr. Kavanaugh thoroughly embodies these qualities, and we would welcome the opportunity to practice before him. ... Perhaps most importantly of all, he is rightly known for his absolute integrity and sustained dedication to public service."
 - A bi-partisan group of 25 of Mr. Kavanaugh's classmates from the Yale Law School Class of 1990, wrote that he is "extraordinarily bright, yet modest and humble about his intellect. His temperament is extremely well-suited to the federal bench. Many of us disagree—occasionally strongly—with policy views Mr. Kavanaugh holds. But those disagreements do not diminish our conviction that Mr. Kavanaugh is a fair-minded and reasonable man who would, as a judge, interpret and apply the law fairly. Based on our years of knowing Mr. Kavanaugh, we are firmly convinced that his allegiance as a federal judge would be only to the Constitution and laws of the United States and not to any partisan interests."

- According to Mark H. Tuohey III, former President of the District of Columbia Bar, “[Mr. Kavanaugh] 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 rule 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.”

STATEMENTS BY SELECT SUPPORTERS OF BRETT M. KAVANAUGH

Letter from a group of former Attorneys General (William P. Barr on behalf of Griffin B. Bell, Edwin Meese, III, Dick Thornburgh, and John Ashcroft)

“As former Attorneys General of the United States, we write in strong support of Brett Kavanaugh’s nomination to the United States Court of Appeals for the D.C. Circuit. ... Mr. Kavanaugh is particularly known for his intelligence, commitment to public service, and integrity. Throughout his career, Mr. Kavanaugh has shown a dedication to the legal profession and the rule of law, and his professional accomplishments speak volumes to his ability to serve as a federal judge. ... Mr. Kavanaugh brings a wealth of broad experiences to this nomination, ranging from private practice as [a] partner at a prestigious law firm to years as a close advisor to the President of the United States. During that time, he has practiced in each level of our judicial system, from trial, to appellate, to the Supreme Court, working on both criminal and civil matters. Mr. Kavanaugh also brings other qualities to the table – namely a warm personality, a strong work ethic, and a good character.” (*Letter to Chairman Specter*, May 5, 2006)

Letter from a group of former Solicitors Generals of the United States (Theodore B. Olson on behalf of Kenneth W. Starr and Charles Fried)

“Each of us has practiced extensively in the federal courts of appeals and the Supreme Court of the United States. Our experience has given us invaluable insight into the essential qualities of a good federal appellate judge. A federal judge must be completely impartial and dedicated to the rule of law, intelligent, reflective, and even tempered. Mr. Kavanaugh thoroughly embodies these qualities, and we would welcome the opportunity to practice before him. ... Perhaps most importantly of all, he is rightly known for his absolute integrity and sustained dedication to public service.” (*Letter to Chairman Specter*, May 3, 2006)

Letter from a group of former Counsels and Deputy Counsels to the President (Fred Fielding on behalf of Arthur B. Culvahouse, Jr., Peter J. Wallison, Phillip D. Brady, Richard A. Hauser, Timothy E. Flanigan, David G. Leitch, John P. Schmitz, and Jay B. Stephens)

“In our view, Mr. Kavanaugh possesses all of the requisite qualifications for such an appointment, including outstanding academic credentials, keen intellect, a calm and thoughtful demeanor, and exceptional analytical skills. ... We would also like to emphasize the critical nature of the position that Mr. Kavanaugh currently holds as Staff Secretary. The importance of this position, as well as its substantive nature, is not always well known or understood outside the White House. As Staff Secretary, Mr. Kavanaugh is responsible for ensuring that all relevant views are concisely and accurately presented to the President. The ability to assess presentations of differing arguments on a wide range of topic areas is a skill that would serve him well on the D.C. Circuit. Mr. Kavanaugh would be a fair and impartial judge, dedicated to the rule of law. He possesses the highest personal integrity and is exactly the type of individual this country needs on the federal appellate bench.” (*Letter to Chairman Specter*, May 5, 2006)

Professor Neal Katyal, Georgetown University Law Center and former National Security Advisor to the Deputy Attorney General

“Mr. Kavanaugh would be a welcome, terrific addition to the United States Court of Appeals. Six years ago, I invited him to speak in a two-hour class I was teaching about the Clinton impeachment. I, and the 75-person class, found him open-minded, smart, and principled. In fact, after the class, I wound up sending one of my best students, who happened to be quite liberal, to work with him for a time. I recall her telling me that he was principled in his fealty to the law to a fault, and never let ideology get in the way of judgment. ... It is undoubtedly true that Mr. Kavanaugh has been in the center of many legal disputes over the past fifteen years. That strikes me as an unqualified good—he has an enormous breadth of experience that will serve him well. I have watched his career for many years, and it strikes me as one of almost unmatched distinction. I would strongly caution any who might read into his service for the Administration a lack of judicial independence. That is not what I have seen in Mr. Kavanaugh, and not what one should expect. As you reminded people in today’s hearing, Justice Jackson handily showed his independence from the President despite his service as Attorney General.”
(Letter to Chairman Specter, May 9, 2006)

Judge Walter Stapleton, U.S. Court of Appeals for the Third Circuit

“I am confident that Mr. Kavanaugh’s perspectives on both life and the law will result in his becoming what I regard as a ‘judge’s judge.’ His personal confidence is matched by his humility and his legal acuity by his good, common sense judgment. When he served as my clerk, no case was too small to deserve his rapt attention and, without exception, he initiated his evaluation of a case with no predilections. His ultimate recommendation resulted from a careful case-by-case analysis of the facts and an objective application of the relevant precedents. He is firmly committed to the proposition that there must be equal justice for all and that this can be a reality only if all of our courts faithfully and objectively apply the statutory declarations of Congress and the teachings of the Supreme Court.” *(Letter to Chairman Specter, May 3, 2006)*

William P. Barr, Executive Vice President and General Counsel of Verizon and former Attorney General

“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 weakness of competing approaches. He was particularly effective in dealing with novel issues which required some original thinking. ...

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.” *(Letter to Chairman Specter, May 10, 2005)*

Letter from a bi-partisan group of 25 classmates from Yale Law School Class of 1990

“Brett Kavanaugh is a man anyone would be proud to have as a friend. He is extraordinarily bright, yet modest and humble about his intellect. His temperament is extremely well-suited to the federal bench. Many of us disagree—occasionally strongly—with policy views Mr. Kavanaugh holds. But those disagreements do not diminish our conviction that Mr. Kavanaugh is a fair-minded and reasonable man who would, as a judge, interpret and apply the law fairly. Based on our years of knowing Mr. Kavanaugh, we are firmly convinced that his allegiance as a federal judge would be only to the Constitution and laws of the United States and not to any partisan interests. ... [W]e firmly believe that Mr. Kavanaugh would, through hard work, diligence and thoughtfulness, reach [his] decisions in a well-reasoned, honest and impartial manner that would bring credit to the distinguished court to which he has been nominated.”
(Letter to Senators Specter and Leahy, May 3, 2006)

Pamela Harris, Washington, D.C. attorney and Yale Class of 1990

“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 issues 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. ...

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.” *(Letter to Chairman Hatch, April 27, 2004)*

Mark H. Tuohey III, Vinson & Elkins LLP and former President of the District of Columbia Bar

“[Mr. Kavanaugh] 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 rule 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.

In 1995, ... 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.” *(Letter to Chairman Hatch, April 26, 2004)*

Professor Robert M. Chesney, Wake Forest University School of Law

“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 whole-heartedly support his nomination.” (*Letter to Chairman Hatch*, April 26, 2004)

Adam H. Charnes, Kilpatrick Stockton LLP

“Brett is obviously one of the most distinguished lawyers of his generation. ... 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 Congress and the Executive. Brett Kavanaugh is precisely the type of lawyer who should serve on the federal appellate court.” (*Letter to Chairman Hatch*, April 23, 2004)

Bradford A. Berenson, Sidley Austin Brown & Wood LLP and former Associate Counsel to the President

“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. ...

That an individual has been allied with politicians or political 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.” (*Letter to Chairman Specter*, May 10, 2005)

Carolyn Williams, Williams & Connolly LLP

“Throughout his career, Brett Kavanaugh has performed at the highest level of professional excellence. . . . 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 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.” (*Letter to Chairman Specter*, May 11, 2005)

Thomas Yannucci, Kirkland & Ellis LLP

“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. . . . 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.” (*Letter to Chairman Specter*, May 12, 2005)

BRETT M. KAVANAUGH RESPONSES TO FALSE ALLEGATIONS

ALLEGATION: At 41 years old, Brett Kavanaugh is too young and lacks the necessary experience to be a federal appellate court judge.

RESPONSES:

- Mr. Kavanaugh has all of the qualities necessary to be an outstanding appellate judge. He has impeccable academic credentials, significant legal experience in the federal courts, and a proven commitment to public service.
- The American Bar Association (ABA), has rated Mr. Kavanaugh three times, twice as “Well Qualified” and once as “Qualified.” In those three reviews, all 42 of the individual ratings by the members of the committee have been “Well Qualified” or “Qualified” ratings.
- Mr. Kavanaugh’s illustrious and varied legal career allows him to bring a wealth of different experiences to the federal bench.
 - Mr. Kavanaugh has served as Staff Secretary to the President, as Senior Associate Counsel to the President, and as an assistant special prosecutor.
 - Mr. Kavanaugh also practiced as a partner at the law firm of Kirkland & Ellis where he specialized in appellate law.
 - Mr. Kavanaugh has extensive experience in the appellate courts, both as a law clerk and as counsel. He was a law clerk to Justice Anthony Kennedy, and to U.S. Court of Appeals Judges Kozinski and Stapleton.
- Federal judges are appointed from diverse backgrounds in private practice and public service. Prior judicial experience is not a requirement for appointment to the federal bench.
 - Only 4 of the 21 judges confirmed to the D.C. Circuit since President Carter’s term began in 1977 had previously served as judges.
 - President Clinton nominated and the Senate confirmed 32 lawyers without any prior judicial experience to the U.S. Court of Appeals, including Judges David Tatel and Merrick Garland to the D.C. Circuit.
- Given his peerless credentials and extensive appellate experience, Mr. Kavanaugh’s age should pose no impediment to his confirmation. Indeed, all three judges for whom Mr. Kavanaugh clerked were appointed to the bench before they were 39.
 - Then-Judge (now Justice) Anthony Kennedy was appointed to the Ninth Circuit when he was 38 years old.

- Judge Alex Kozinski was appointed to the Ninth Circuit when he was 35 years old.
- Judge Stapleton was appointed to the district court at 35 and was later elevated to the Third Circuit.
- Some of the most highly-regarded federal appellate judges have been appointed at a young age. These are just a few examples:
 - Judge Frank Easterbrook, Seventh Circuit, appointed at age 36
 - Judge Harry Edwards, D.C. Circuit, appointed at age 39
 - Judge Douglas Ginsburg, D.C. Circuit, appointed at age 40
 - Judge J. Harvie Wilkinson III, Fourth Circuit, appointed at age 39

ALLEGATION: Brett Kavanaugh is not qualified to serve on the Court of Appeals because the American Bar Association (ABA) downgraded his rating.

RESPONSES:

- The ABA has rated Mr. Kavanaugh three times, twice as “Well Qualified” and once as “Qualified.” In those three reviews, all 42 individual ratings by the members of the committee have been “Well Qualified” or “Qualified” ratings.
- On behalf of the ABA, Stephen Tober explained a “Qualified” rating means that “the nominee meets the Committee’s very high standards with respect to integrity, professional competence and judicial temperament and that the Committee believes that the nominee will be able to perform satisfactorily all of the duties and responsibilities required by the high office of a federal judge.”
- Mr. Tober also stated that Mr. Kavanaugh “enjoys a solid reputation for integrity, intellectual capacity, and writing and analytical ability.” He explained to the Senate Judiciary Committee that “a lot of people refer to him as brilliant.”
 - Mr. Tober stated: “Let me underscore ... that we didn’t find him not qualified. There’s not a breath of that in this report or any earlier report. We found him qualified/minority well qualified. What I said at the end is what, in fact, many people said, that he has a solid reputation for integrity, intellectual capacity--a lot of people refer to him as brilliant--and an excellent writing and analytical ability. Those are great skills to bring to the court of appeals. There is just no question about that.”
 - He added: “He is found to have high integrity. He is found to be brilliant. He is a very skilled writer and legal analyst. He has those components, and I have said this before ... he has those skills that will serve him well, certainly, on a Federal court.”
- Mr. Kavanaugh has support from across the political spectrum.
 - *The Washington Post*: “Mr. Kavanaugh is a talented attorney. He has been involved in controversies, but he does not appear to be an ideologue. While Democrats complain that his experience is thin, it is no more so than others who have won confirmation and served on that court. Senate Judiciary Committee Chairman Arlen Specter (R-Pa.) is holding a second hearing on Mr. Kavanaugh’s nomination today. If it produces nothing new, he should be confirmed.” (Editorial, “A Tale of Two Judges,” May 9, 2006)
 - A bi-partisan group of former Attorneys General: “Mr. Kavanaugh brings a wealth of broad experiences to this nomination, ranging from private practice as an associate and partner at a prestigious law firm to years as a close advisor to the President of the United States. During that time, he has practiced in each level of our judicial system, from trial, to appellate, to the Supreme Court, working on

both criminal and civil matters. Mr. Kavanaugh also brings other qualities to the table – namely a warm personality, a strong work ethic, and a good character.”
(*Letter to Chairman Specter*, May 5, 2006)

- A bi-partisan group of 25 classmates from Yale Law School Class of 1990:
“Based on our years of knowing Mr. Kavanaugh, we are firmly convinced that his allegiance as a federal judge would be only to the Constitution and laws of the United States and not to any partisan interests. ...[W]e firmly believe that Mr. Kavanaugh would, through hard work, diligence and thoughtfulness, reach [his] decisions in a well-reasoned, honest and impartial manner that would bring credit to the distinguished court to which he has been nominated.” (*Letter to Senators Specter and Leahy*, May 3, 2006)

ALLEGATION: Brett Kavanaugh is unsuitable for appointment to the federal bench because his legal career has included partisan activities.

RESPONSES:

- It is widely acknowledged that Mr. Kavanaugh is a professional who, as a judge, would address matters before him without regard to his personal views. *The Washington Post* wrote in an editorial: “Mr. Kavanaugh is a talented attorney. He has been involved in controversies, but he does not appear to be an ideologue.” (Editorial, “A Tale of Two Judges,” May 9, 2006)
- 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.”
- Bradford Berenson, who worked with Mr. Kavanaugh in the White House Counsel’s Office wrote, “In my observation, [Mr. Kavanaugh] 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.”
- Mr. Kavanaugh has served the public, not as a “partisan,” but as a prosecutor, as Senior Associate Counsel to the President, and finally as Staff Secretary to the President.
- Mr. Kavanaugh has clerked for three federal judges, including Supreme Court Justice Anthony Kennedy. He has worked in the Solicitor General’s office and has been a partner in a major law firm.
- Mr. Kavanaugh’s government service has given him a wealth of experience in preparation for the federal bench. For example, prior to his appointment to the First Circuit Court of Appeals, now-Justice Stephen Breyer held positions that were similar to Mr. Kavanaugh’s service. Likewise, now-Chief Justice John G. Roberts, Jr., held several positions that could be considered political.
 - Justice Breyer served as a counsel for the Watergate Special Prosecution Force and as Chief Counsel of the Senate Judiciary Committee, for then-Chairman Edward Kennedy.
 - Chief Justice Roberts served as a Special Assistant to Attorney General William French Smith, Associate Counsel to President Ronald Reagan, and as Principal Deputy Solicitor General – the “political deputy” in the office.

ALLEGATION: Mr. Kavanaugh was deeply involved in the Bush Administration's selection of highly controversial judicial nominees, which reflects upon his own suitability for the federal bench.

RESPONSES:

- The vast majority of President Bush's nominees have been confirmed by the Senate.
- The President selects judicial nominees, as advised primarily by the 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 conclusion is reached on the best candidate for the position, and a recommendation is made to the President.
- 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.
- At his hearing, Mr. Kavanaugh clearly stated his own judicial philosophy and emphasized that he would adhere to the rule of law: "I revere the rule of law. I know first-hand the central role of the courts in protecting the rights and liberties of the people. And I pledge to each member of this Committee, and I pledge to each member of the Senate, that, if confirmed, I will interpret the law as written and not impose personal policy preferences; that I will exercise judicial power prudently and with restraint; that I will follow precedent in all cases fully and fairly; and above all, that I will at all times maintain the absolute independence of the judiciary, which in my judgment is the crown jewel of our constitutional democracy."

ALLEGATION: Brett Kavanaugh was a co-author of a section of Independent Counsel Ken Starr's report to the House of Representatives, in which Starr alleged that there may be grounds for impeaching President Clinton. Mr. Kavanaugh's participation in the investigation of the Monica Lewinsky matter and his defense of Judge Starr demonstrate Mr. Kavanaugh's partisanship.

RESPONSES:

- Mr. Kavanaugh's involvement with the Office of the Independent Counsel (OIC) demonstrates his service as a prosecutor in accordance with the requirements of the law. The report formed the basis of the House of Representatives' decision to impeach President Clinton. Moreover, numerous Democratic senators as well as a federal judge concluded that President Clinton was not truthful in his testimony.
- The section of the Independent Counsel's report Mr. Kavanaugh co-authored – the “substantial and credible information” serving as grounds for impeachment – was required by federal law (28 U.S.C. 595(c)).
- The Independent Counsel's report did not conclude that President Clinton should be impeached. Rather, it simply indicated that the Office of Independent Counsel had uncovered substantial and credible information that *may* constitute grounds for impeachment.
 - In fact, 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. An additional 32 senators offered a resolution to censure President Clinton.
- 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' sexual harassment lawsuit. Judge Wright ordered President Clinton 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' 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 11 judicial and executive branch nominees who worked for Independent Counsel Ken Starr. The Senate has not disqualified other judicial nominees because of their service in the Office of the Independent Counsel; nor should it disqualify Mr. Kavanaugh because of his service.

- For example, the Senate confirmed as judges Steven Colloton (Eighth Circuit), John Bates (D.C. District Court), Amy St. Eve (Northern District of Illinois), and William Duffey (Northern District of Georgia), all of whom served in the OIC.
- Mr. Kavanaugh initially left the OIC in 1997. In April 1998, the OIC requested Mr. Kavanaugh to handle a Supreme Court argument regarding an attorney-client privilege case arising out of the Vince Foster investigation. Mr. Kavanaugh did not return to the OIC in order to work on the Lewinsky matter.
- Mr. Kavanaugh praised and supported Judge Starr when Judge Starr was unfairly criticized for his work. 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.”

ALLEGATION: Brett Kavanaugh took seven months to respond to written questions from Senators, which demonstrates that he does not respect the Senate confirmation process.

RESPONSES:

- This is a non-issue. After his first hearing in April 2004, Mr. Kavanaugh correctly understood that no further action would occur on his nomination that year. He further understood that he was required to submit answers to any written follow-up questions before the end of the Congressional session so that the record of his 2004 hearing would be complete were he to be re-nominated in 2005.
- Mr. Kavanaugh did, in fact, fully comply with that deadline and provided responses to all written questions prior to the end of the session.
- Mr. Kavanaugh participated in a second hearing before the Committee in 2006 and was available to respond to all additional questions from senators. Mr. Kavanaugh also made clear that he took responsibility if there had been any misunderstanding regarding the deadline in 2004.
- Mr. Kavanaugh has fully cooperated with the Senate. In fact, he has responded to more Senate hearing questions and more written and follow-up questions from Senators than any of the 56 D.C. Circuit judges appointed since that court's creation in 1893.
- Mr. Kavanaugh has also undergone three separate ABA investigations, in which all 42 individual reviews concluded that he was "Well-Qualified" or "Qualified."

ALLEGATION: Brett Kavanaugh has repeatedly demonstrated his hostility to the separation of church and state in several cases involving religion and education. For instance, in *Good News Club v. Milford Central School*, 533 U.S. 98 (2001), Mr. Kavanaugh 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. Mr. Kavanaugh also showed his hostility 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.

RESPONSES:

- In these cases, Mr. Kavanaugh argued on behalf of his clients that the U.S. Constitution required equal treatment of religious viewpoints, religious organizations, and religious schools.
- In *Good News Club*, the U.S. Supreme Court, in a 6-3 decision, agreed with the position taken by Mr. Kavanaugh on behalf of his client.
 - In an amicus brief in that case, Mr. Kavanaugh simply argued on behalf of his client for the principle that religious perspectives should be given equal treatment in the public sphere.
 - The school district allowed members of the public to use school facilities for artistic, social, civil, recreational, and educational purposes; however, it specifically forbade school premises being used for "religious purposes."
 - Mr. Kavanaugh's brief on behalf of his client argued that the school district's policy was unconstitutional because it targeted "religious speech for a distinctive burden."
 - 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, arguing that the school district's discrimination against religious speech was unconstitutional.
- In the Florida school voucher litigation, Mr. Kavanaugh was part of a team of lawyers representing Florida state officials who were defending Florida's opportunity scholarship program. The program sought to provide children in failing public schools with access to higher quality private education and also to improve the quality of Florida's public schools through competition.
 - The opportunity scholarship program allowed students at failing public schools to transfer to a better public school or to a private school at public expense.
 - The program was limited and carefully tailored to provide choice to those parents with the greatest need, and to spur public school improvement through competition.

- Religious and non-religious private schools can participate in the program on an equal basis. Moreover, parents directed public funds to these private schools through their independent choices.
- 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.

ALLEGATION: Brett Kavanaugh has changed his position on executive privilege. While working for Independent Counsel Kenneth Starr during the Clinton Administration, Mr. Kavanaugh argued for a narrow interpretation of the privilege. As Associate White House Counsel, however, he asserted executive privilege for the Bush Administration in a variety of cases, including in his work drafting Executive Order 13233, which limits public access to presidential records.

RESPONSES:

- While serving in the White House Counsel's Office, Mr. Kavanaugh's work on executive privilege has been consistent and evenhanded.
 - Mr. Kavanaugh worked in the Counsel's Office when the Bush Administration asserted executive privilege to protect records regarding the pardons issued by President Clinton at the end of his presidency and to protect certain Justice Department documents related to the investigation of alleged campaign fundraising abuses by officials in the Clinton Administration.
- Mr. Kavanaugh's work on government privilege issues for the Office of the Independent Counsel (OIC) was consistent with Supreme Court precedent and prevailed in the courts.
 - On behalf of the OIC, Mr. Kavanaugh argued that government attorneys in the Clinton Administration could not invoke a government attorney-client privilege to block the production of information relevant to a federal criminal investigation.
 - Both federal courts of appeals to consider the question agreed with the Independent Counsel's position in those cases. In both cases, the Supreme Court denied review.
- 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 or would be successful. Nothing in Executive Order 13233 purports to block prosecutors or grand juries from gaining access to presidential records in a criminal investigation.
- In a 1998 article for the *Georgetown Law Journal*, Mr. Kavanaugh argued that executive privilege may exist only with respect to national security and foreign affairs information in the context of grand jury and criminal trial subpoenas.
 - This article demonstrates Mr. Kavanaugh's impartiality and ability to analyze complex legal issues without respect to partisan concerns. It is not inconsistent with any of his other work on executive privilege.

The President of the American Bar Association in another article on the subject, complimented Mr. Kavanaugh's "well-reasoned and objectively presented recommendations" and noted his "most scholarly and comprehensive review of the issues of executive privilege."

A Tale of Two Judges

New skirmishes in the judicial nomination wars are brewing. But their merits aren't the same.

SENATE REPUBLICAN leaders have decided to reignite the judicial nomination wars. The reason is politics. Majority Leader Bill Frist's strategy, with elections coming, is to schedule votes on the most controversial of the president's remaining appeals court nominees, forcing Democrats to capitulate or filibuster — either of which works for him. The first will be Brett M. Kavanaugh, the president's staff secretary and long-standing nominee to the U.S. Court of Appeals for the D.C. Circuit. Next is Judge Terrence W. Boyle, whose nomination to the 4th Circuit has languished since the beginning of President Bush's tenure. Both nominations are provocative, but their merits are different. The Senate should confirm Mr. Kavanaugh but not Judge Boyle.

Judge Boyle has served as a district judge in North Carolina for many years; his elevation to the 4th Circuit was a particular goal of former senator Jesse Helms (R), who blocked a string of President Bill Clinton's nominees to the court to keep the seat open for his man. Judge Boyle has written some impressive environmental opinions. But he has a high rate of reversal, some of his work is surprisingly sloppy, and some of his civil rights opinions are terrible.

Moreover, in recent weeks it has emerged that Judge Boyle has been careless about ethics.

The law forbids judges to rule in cases in which they own stock in one of the parties. Judge Boyle has done this repeatedly, even in the years since his nomination to the 4th Circuit. His pattern of disregard for clear legal obligations is exceptional. The Senate should not condone it.

Mr. Kavanaugh's nomination is more complicated. A wise president would have chosen someone utterly above partisan objection. Instead, Mr. Bush chose a young lawyer whose career has placed him at the vortex of numerous ideological controversies. During the Clinton administration, Mr. Kavanaugh worked for Whitewater independent counsel Kenneth W. Starr, whose impeachment report he helped write. He has also worked in the White House counsel's office on, among other controversial subjects, judicial nominations. Democrats can perhaps be forgiven for balking.

Yet Mr. Kavanaugh is a talented attorney. He has been involved in controversies, but he does not appear to be an ideologue. While Democrats complain that his experience is thin, it is no more so than others who have won confirmation and served on that court. Senate Judiciary Committee Chairman Arlen Specter (R-Pa.) is holding a second hearing on Mr. Kavanaugh's nomination today. If it produces nothing new, he should be confirmed.

The New York Sun

April 27, 2006

Girded for Battle

Editorial

If you thought the accession of Justice Alito to the Supreme Court marked the end of the judicial confirmation battles that roiled the Senate earlier in President Bush's tenure, you were wrong. After taking a breather, Senate Republicans are gearing up to enter the fray again, and hope to notch up their first victory of the new campaign before the Senate adjourns for its Memorial Day recess at the end of May.

In a recent conversation with reporters, an aide to Majority Leader Frist made clear that the senator intends to bring one high profile nominee to the floor before the holiday. That nominee will be Brett Kavanaugh, who has been named to serve on the U.S. Court of Appeals for the District of Columbia, the circuit court responsible for many suits involving the federal government and its powers. Mr. Kavanaugh has spent much of his career in public service, including as an associate counsel in Kenneth Starr's Office of the Independent Counsel. He currently holds the post of staff secretary to the president, in which capacity he coordinates the flow of documents across Mr. Bush's desk. He has also served as an appellate lawyer in private practice at Kirkland & Ellis, where he was a partner. The American Bar Association has rated him "well qualified."

Yet the Democrats can't stand him. Although after only one low profile hearing it's hard to say exactly what ammunition they will fire his way as his confirmation gathers steam in the next few weeks, discontent is likely to focus on three areas. They will object to his youth (he turned 41 in February) and his service in Mr. Starr's office. Neither of these is likely to get far. In particular, his record from the Independent Counsel's office shows nothing so much as that he's an exemplary lawyer with a commitment to public service and experience at that hazy nexus where government officials meet accountability, terrain frequently tread by the circuit-riders whose ranks he has been appointed to join.

More damaging might be an attempt, already being ventured about in some circles, to tarnish him with the torture issue. In particular, the allegation would run that as the staff secretary to Mr. Bush's cabinet, he was somehow involved in the decision to employ some physical interrogation methods against terror suspects. But the Democrats are themselves treading perilous ground if they elect to take this path. The charges won't hold up - Mr. Kavanaugh's post, prestigious though it is, is an administrative one and he has not been responsible for making any decisions himself. But they will turn attention again on the Democrats and the avidity - or lack of it - with which they would prosecute the war on terror.

In this respect, the decision to focus on pushing Mr. Kavanaugh through the Senate could prove a particularly savvy one. Not only do Republicans think that judicial confirmation is a winning issue for them in 2006, but a debate over Mr. Kavanaugh's nomination, if the debate focuses on torture and the war on terror, will only focus the public on national security, a weak spot for Democrats.

However the debate ultimately plays out, however, one thing is for sure: Another judicial debate is coming. That news will hearten any American with an interest in constitutional principles. Already, more than 50% of judges on the bench today were appointed either by President Reagan or by the first or second President Bush, presidents who, by and large, have understood the importance of judicial restraint. If Mr. Frist has his way, that percentage will increase before the summer is out.

Legal Times **NATIONAL**

March 6, 2006

The Next Generation

By Emma Schwartz, Legal Times

Most nights a line snakes out the door at Lauriol Plaza, the trendy Mexican restaurant on 18th Street in Dupont Circle that draws a cross section of the Washington cognoscenti, many of whom come as much to make the scene as to sample the cuisine.

On one such evening about two years ago, James Brochin, a New York lawyer, was waiting to be seated with a few buddies from Yale Law School, including Brett Kavanaugh, staff secretary for President George W. Bush.

Nearby, Jeff Berman, then counsel to Sen. Charles Schumer (D-N.Y.) on the Senate Judiciary Committee, caught Kavanaugh's eye and walked over. Kavanaugh was in the midst of a bitter confirmation battle over his nomination to the U.S. Court of Appeals for the D.C. Circuit, but the staffer still wanted to trade a few friendly words before heading out the door.

"I was struck at the time by the irony that this guy's boss was spending a great deal of energy trying to shoot Brett down, yet he was still good friends with this staffer," recalls Brochin, a partner at Paul, Weiss, Rifkind, Wharton & Garrison.

It might seem unusual, but the story is emblematic of the complex politics and loyalties often just behind the scenes of the judicial nomination process. It also illustrates the challenge Democrats have facing off against this 41-year-old Maryland native, whose stalled nomination is expected to come before the Senate Judiciary Committee again as early as next month.

Kavanaugh's conservative credentials are etched indelibly into his résumé. In fact, he's something of the Zelig of young Republican lawyers. A protégé of independent counsel Kenneth Starr, he was a key figure in the Whitewater investigation. In the recount fight after the 2000 election, he served as a foot soldier in the legal army that descended on Florida and gave Bush his presidency. As a lawyer for Bush in the White House counsel's office, he shepherded most of the administration's contentious federal court nominees, including Miguel Estrada and Priscilla Owen.

But whether his right-wing bona fides will incite enough Democratic opposition to keep him off the bench remains an open question.

THE LONG AND WINDING ROAD

Kavanaugh was first nominated to the D.C. Circuit in July 2003, but faced sharp opposition at his hearing the following April, where Senate Democrats lambasted him for his youth, lack of judicial experience, and partisanship. Although the American Bar Association rated him “well qualified,” Schumer bluntly labeled Kavanaugh’s nomination “payment for political services rendered.”

Attention shifted, however, to the 2004 presidential election, and Kavanaugh’s nomination was marooned in committee. He was then left out of the “Gang of 14” deal last summer, which allowed three previously controversial nominees to be voted on in the Senate and that seemed to signal nobody was interested in a brawl over him. Then came more than six months of bruising Supreme Court confirmation fights, during which Kavanaugh remained buried.

But when the Senate moved to hold over all nominees at the end of the last congressional session, Kavanaugh was again left out because of Democratic opposition. So the White House renominated him in January, sending the message that it won’t allow Kavanaugh to be forgotten.

Now he’s back at the front of the confirmation line. And while Sen. Arlen Specter (R-Pa.), chairman of the Judiciary Committee, has made Kavanaugh a priority this session, his path looks just as rocky as it did two years ago. Just last Friday, Senate Democrats renewed their call for another hearing on Kavanaugh. The D.C. Circuit — often called the second-most-important court in the country because of its jurisdiction over federal government agencies — has been fertile ground for past confirmation fights. Exhibit A: the controversy over Miguel Estrada, so nasty that it led him to withdraw in September 2003.

Senate Democrats are girding for a similar knock-down, drag-out fight over Kavanaugh, which looms as the latest test of their clout on future federal court confirmations.

“If the Democrats weren’t able to stop [Samuel] Alito,” says Sheldon Goldman, a political science professor at the University of Massachusetts at Amherst, “the question that is being asked now is, How can they stop anyone who is as professionally qualified as Brett Kavanaugh?”

MAKING A MODEL CONSERVATIVE

Politics have always threaded through Kavanaugh’s life. Raised in Bethesda, Md., he was the only child in a tight-knit family of lawyers. His mother, Martha, was a prosecutor in the state attorney’s office and later worked as a criminal defense lawyer. She was nominated to the Montgomery County Circuit Court in 1995, where she served until retiring, nearly five years ago.

Kavanaugh’s father, Edward, was a prominent figure inside the Beltway. As head of the Cosmetic, Toiletry and Fragrance Association for 22 years, he was friends with congressional heavyweights including the late Speaker of the House Thomas “Tip” O’Neill (D-Mass.) and Sen. Orrin Hatch (R-Utah). (Indeed, Hatch gave him a special welcome at his son’s nomination hearing.)

Bright, hard-working, and unflappable, Kavanaugh attended all-boys Catholic schools, first at Mater Dei and then at Georgetown Preparatory High School, where he excelled both in class and in sports, playing on the basketball and football teams. Friends also recall him being infused with a sense of religious faith that remains important to him today.

From an early age, Kavanaugh seems to have been drawn to the law. Growing up, he sat in on some of his mother's cases and spent a few summers interning on the Hill. But unlike many children of well-connected Washingtonians, Kavanaugh didn't come off to others as arrogant or transparently ambitious. "Brett's a chess player," says Steve Ochs, Kavanaugh's high school history teacher. "He always sees moves ahead without having guile."

That sense of reserve carried over to Yale University, where friends recall him as more of a sports guy than a campus partisan involved in student politics. Kavanaugh's more liberal friends certainly knew he was conservative but say he based friendships on shared interests, rather than shared politics.

Kavanaugh went directly to Yale Law School, graduating in 1990. While there he wrote an article in the Yale Law Journal analyzing the 1986 Supreme Court case *Batson v. Kentucky*, which restricted the use of peremptory challenges to strike jurors on the basis of race. Kavanaugh argued that the decision still left the exact enforcement procedures to the lower courts, but advocated a defendant's right to be present during any hearing on the proper use of peremptory challenges.

After law school, Kavanaugh spent two years clerking in federal appeals courts, first for Judge Walter Stapleton on the U.S. Court of Appeals for the 3rd Circuit and then for Judge Alex Kozinski on the U.S. Court of Appeals for the 9th Circuit (an icon for many legal conservatives, but something of an iconoclast himself).

Kozinski's clerkships are notoriously demanding, a kind of boot camp for young lawyers with Federalist Society credentials. A perfectionist and an outspoken conservative on a liberal court, Kozinski routinely cycles through dozens of drafts on opinions. To meet the workload, Kavanaugh and his fellow clerks worked in shifts. Mark Perry, now co-chair of Gibson, Dunn & Crutcher's D.C. office, recalls that when he clerked alongside Kavanaugh, he took the early shift, which started at 6 a.m., while Kavanaugh had the "late" one, which began at 8 a.m. — and ran until 9 or 10 at night, six days a week.

In Kozinski, Kavanaugh found a mentor and an intellectual sparring partner. "He's not one to sort of jump to conclusions. He weighs and he considers and goes back and forth," Kozinski recalls of their legal debates. "I think we sort of reinforce each other." Kozinski likens Kavanaugh's legal philosophy to that of Chief Justice John Roberts Jr. and Alito. "The question is what he would do in close cases," he says. "I think in close cases he would offer the conservative-libertarian result."

From Kozinski's chambers, Kavanaugh moved to a yearlong fellowship in the solicitor general's office under Starr. There he worked alongside conservative luminaries such as Roberts and

Maureen Mahoney and had a chance to argue his first appeals court case. In 1993, Kavanaugh moved up the clerkship ladder again, this time into the chambers of Justice Anthony Kennedy on the Supreme Court.

PLUNGING INTO WHITEWATER

As Kavanaugh's Kennedy clerkship was ending in the summer of 1994, Starr was tapped to replace Robert Fiske as independent counsel in the Whitewater investigation. One of his first moves was to bring Kavanaugh on board.

It was a watershed moment for the 29-year-old lawyer, one that would earn him both acclaim and lasting enemies. One of his initial duties was to lead the probe into the apparent suicide of White House counsel Vincent Foster, a close personal friend of President Bill Clinton and first lady Hillary and a former colleague of Hillary's at the Rose Law Firm in Arkansas — which Kavanaugh also investigated. Though Starr closed these investigations without prosecuting, Kavanaugh did not make any friends in the Clinton White House. Now-Sen. Clinton (D-N.Y.) in particular took bitter exception to Kavanaugh's investigatory tactics, which she viewed as a partisan witch hunt meant to destroy her and her husband.

In 1997, Kavanaugh briefly retreated into private practice, joining Kirkland & Ellis, Starr's old firm. But after less than a year, Starr asked him to return to the independent counsel's office to argue a case stemming from the Foster investigation that had been granted certiorari by the Supreme Court.

The case, *Swidler & Berlin v. United States*, led to an important decision on the scope of attorney-client privilege — but not one in Kavanaugh's favor. The issue was whether attorney James Hamilton was required to turn over notes to Starr on a conversation he had with his now-deceased client, Foster. Kavanaugh argued that lower court precedent, particularly in criminal cases, suggested that the attorney-client privilege did not survive the death of the client. Many attorneys found the position controversial because it encroached on a well-established privilege.

Hamilton, who argued the case himself, says despite the loss, Kavanaugh was impressive. "Brett is obviously a very talented lawyer. Although he lost the Swidler case — to the benefit of both clients and the profession — he did well with a most difficult position."

According to Bob Woodward's book *Shadow: Five Presidents and the Legacy of Watergate*, Kavanaugh was also something of a moderating force in the office. He was among those who encouraged Starr to seek direct testimony from White House intern Monica Lewinsky and Clinton about their affair, rather than simply write the report based on secondhand accounts. He questioned whether Starr needed to hand over the narrative section of the final report to Congress. And though he helped assemble the 11 possible legal violations laid out in the report, he was opposed to Congress' decision to release the report to the public.

Even after he left Starr's office, Kavanaugh continued to express concerns over the power afforded the independent counsel, going so far as to write an article for the *Georgetown Law*

Journal arguing that Congress should change the statute to limit the politicization of the independent counsel position.

Yet Kavanaugh's tenure with Starr continues to enrage Democrats, who note that he has defended the former independent counsel's work in newspaper editorials. In one such piece for The Washington Post, Kavanaugh said that subsequent congressional action, such as the vote by the House of Representatives to impeach Clinton, fully vindicated Starr's investigation.

THE PRESIDENT'S LAW FIRM

In 1999, Kavanaugh returned to Kirkland, where he mostly handled appellate cases for corporate clients such as Verizon Communications Inc., America Online Inc., and General Motors Corp.

Even in private practice, Kavanaugh managed to get involved in charged cases. For instance, he and a colleague joined the last-ditch appeal of Elian Gonzalez's deportation back to Cuba after a panel on the U.S. Court of Appeals for the 11th Circuit ruled that it did not have jurisdiction to overturn the Department of Justice's decision. The Supreme Court denied cert.

Kavanaugh also filed an amicus brief in the 1999 case *Santa Fe School District v. Jane Doe*, in which he represented two Republican congressmen who were supporting a school district's policy that allowed student-initiated prayer at football games. The Supreme Court ruled that the policy violated the Constitution's establishment clause.

But Kavanaugh's true return to politics came in 2000, when he joined the Bush recount team in Florida, overseeing Volusia County. After the election he was offered a spot in the White House counsel's office, then headed by Alberto Gonzales, where he joined an A list of top conservative lawyers, including Rachel Brand, now assistant attorney general for the Office of Legal Counsel; Stuart Bowen, now special inspector general for Iraq reconstruction; and Courtney Elwood, the current deputy chief of staff for Gonzales.

That office, however, has come under scrutiny recently for its role in drafting memos justifying the use of torture in questioning terrorism suspects and validating the National Security Agency's domestic eavesdropping program. Although he worked in the office at the time, Kavanaugh hasn't been directly tied to those controversial policies.

He was, however, at the forefront of other divisive issues, most notably serving as a chief architect of the administration's judicial selection process. He helped vet candidates and worked as a liaison between the White House and Capitol Hill, coordinating hearings with Republican staffers.

Along with judicial nominations, Kavanaugh pushed tort reform legislation on issues including asbestos, class actions, and terrorism risk insurance. He was also the main author of a controversial executive memo that allows presidents and their families to limit the release of presidential documents.

Once again in a place known for grueling hours, Kavanaugh stood out. He became a fast favorite of Gonzales, who put him forward as a candidate for a seat on the U.S. Court of Appeals for the 4th Circuit. Maryland senators objected because they wanted a nominee who had practiced in their home state.

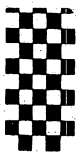
Meanwhile, Kavanaugh replaced Harriet Miers as staff secretary, a little-known but powerful post in the Executive Office of the President. It's more a political than a policy job, but lawyers often hold it because it requires reviewing every piece of paper before it lands on the president's desk. Kavanaugh's position has brought him close to Bush, with whom he has traveled around the globe. The president even made a special appearance at Kavanaugh's 2004 wedding to Bush's personal secretary, Ashley Estes, held at Georgetown's Christ Episcopal Church.

The close association with the president has only fanned Democratic furor over Kavanaugh's nomination. Democrats especially want to question him on whether he had a role in approving the NSA wiretapping program. "He doesn't have the legal philosophy that ought to be had for that position," says Elliot Minberg, legal director of the liberal People For the American Way. "Most of his career has been spent as a far-right advocate." Maybe so, but Democrats have few options to derail Kavanaugh, without resorting to a filibuster.

In the meantime, in his West Wing office, Kavanaugh remains busy serving the president he helped put in the White House. In that office three large photographs adorn the front wall.

In the first, the president appears at his Oval Office desk with Kavanaugh and now-Chief Justice Roberts. To the right is a picture of Bush greeting the late Pope John Paul II at the Vatican. The third shot shows the president, behind a wooden podium, introducing his first crop of judicial nominees from the spring of 2001, a group that included Roberts, Estrada, and Owen.

It's a display befitting of a presidential aide, no doubt. But nervous Democrats might wonder how they would look in a judge's chambers.



UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

FEDERAL BUILDING, 844 KING STREET

WILMINGTON, DE 19801

WALTER K. STAPLETON
CIRCUIT JUDGE

May 3, 2006

Hon. Arlen Specter
United States Senate
711 Hart Building
Washington, D.C. 20510

Re: Brett M. Kavanaugh

Dear Chairman Specter:

I write to share my assessment of the qualifications of Brett Kavanaugh for service as a United States Circuit Judge.

It has been my privilege to serve as a federal judge for thirty-five years. For the last twenty of those thirty-five years, I have served as a United States Circuit Judge and am intimately familiar with the demands of that position. Mr. Kavanaugh worked closely with me as my law clerk, and I am also intimately familiar with his talents, experience and character. In my opinion, Mr. Kavanaugh is superbly qualified to serve as a United States Circuit Judge, and I have no reservations whatever in predicting that he would make an extraordinary contribution to the administration of justice in any Court of Appeals.

Mr. Kavanaugh's legal skills are impressive. As evidenced by his academic record as well as his subsequent professional performance, he has a powerful and creative mind. Indeed, "brilliant," an adjective I rarely use, is entirely appropriate for use in describing Mr. Kavanaugh. In addition, when it comes to written expression, Mr. Kavanaugh has extraordinary talent. He writes clearly, concisely, and with precision. I have had over a hundred well qualified law clerks, and none were more gifted in the skills needed by a Circuit Judge.

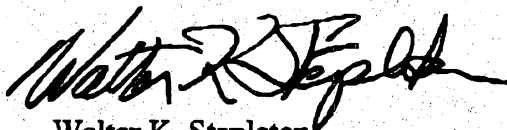
In addition to his impressive legal skills, Mr. Kavanaugh has the sophistication, insight and maturity that come from having served in a variety of professional positions noteworthy not only because of their diversity but also because of the grave responsibilities they imposed. While all of his professional experience will serve him well as a judge, a substantial portion of it renders Mr. Kavanaugh exceptionally well qualified in terms of experience. I refer, of course, to the fact that, in addition to his exposure to private practice and service to the President, Mr. Kavanaugh has had substantial litigation experience on

both sides of the bench. As you are aware, he has worked in a "one-to-one" relationship with two Court of Appeals judges, a Justice of the Supreme Court, and the Solicitor General of the United States. As you are also aware, Mr. Kavanaugh's litigation experience has included appearances before all levels of our federal courts.

Finally, I am confident that Mr. Kavanaugh's perspectives on both life and the law will result in his becoming what I regard as a "judge's judge." His personal confidence is matched by his humility, and his legal acuity by his good, common sense judgment. When he served as my clerk, no case was too small to deserve his rapt attention and, without exception, he initiated his evaluation of a case with no predelictions. His ultimate recommendation resulted from a careful case-by-case analysis of the facts and an objective application of the relevant precedents. He is firmly committed to the proposition that there must be equal justice for all and that this can be a reality only if all of our courts faithfully and objectively apply the statutory declarations of Congress and the teachings of the Supreme Court.

In short, my assessment is that Brett Kavanaugh is extraordinarily well qualified to be a United States Circuit Judge. I can commend him to you without reservation.

Sincerely,



Walter K. Stapleton
United States Circuit Judge - 3d

WKS:fw

United States Court of Appeals
For The Third Circuit

Chambers of
Edward R. Becker
Circuit Judge

19613 United States Courthouse
Independence Mall West
Philadelphia, PA 19106-1782
Phone: (215)-597-9642
Fax: (215)-597-7217

May 2, 2006

Honorable Arlen Specter
711 Hart Senate Office Building
Washington, DC 20510

Dear Senator Specter:

When in the course of a recent conversation I mentioned to you that I have known Brett Kavanaugh since his days as a law clerk to my colleague Judge Walter Stapleton, you inquired as to my views as to his suitability for appointment to the DC Circuit, and I am pleased to respond. I do so on the basis of my acquaintance with Brett during his clerkship days, my conversations about him with Judge Stapleton, my knowledge of his subsequent career, and my frequent dealings with him over the matter of Court of Appeals appointments when I was Chief Judge of this Court and he was employed in the Office of White House Counsel.

I consider Mr. Kavanaugh to be an extraordinarily able lawyer, based upon his stewardship as reported to me by Judge Stapleton, his clerkship with Justice Kennedy, and his record of achievement, including argument of important cases before the Supreme Court when he was in the Solicitor General's Office. During my discussions with him over the matter of appointments to the Third Circuit, I found him extraordinarily insightful and helpful. I can also report that the matter of ideology of putative nominees never entered into our discussion, which is consistent with what Judge Stapleton has told me – that Brett was not ideologically driven. I add as a postscript that a Judge is a very good arbiter of the ideological bent of his or her law clerks.

While my personal contact with Brett has been sporadic, my sense that he is enormously competent and highly professional impels me to the view that he would be an excellent appointee to the DC Circuit who would, in the model of his mentor, Judge Stapleton, always follow the law and not any personal agenda (if indeed he has one).

Sincerely,

/s/Edward R. Becker

May 5, 2006

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

Dear Chairman Specter:

As former Attorneys General of the United States, we write in strong support of Brett Kavanaugh's nomination to the United States Court of Appeals for the D.C. Circuit. Our past experiences as Attorneys General include extensive involvement in the selection of judges combined with a comprehensive knowledge of and familiarity with our federal court system. From that vantage point, we can each state with certainty that Mr. Kavanaugh is an outstanding nominee to the federal bench.

Mr. Kavanaugh is particularly known for his intelligence, commitment to public service, and integrity. Throughout his career, Mr. Kavanaugh has shown a dedication to the legal profession and the rule of law, and his professional accomplishments speak volumes to his ability to serve as a federal judge. His academic credentials are superlative, having graduated from Yale University and from Yale Law School. He followed these achievements by clerking for Supreme Court Justice Anthony Kennedy. Mr. Kavanaugh brings a wealth of broad experiences to this nomination, ranging from private practice as an associate and partner at a prestigious law firm to years as a close advisor to the President of the United States. During that time, he has practiced in each level of our judicial system, from trial, to appellate, to the Supreme Court, working on both criminal and civil matters. Mr. Kavanaugh also brings other qualities to the table—namely a warm personality, a strong work ethic, and a good character.

We believe that Mr. Kavanaugh possesses each characteristic of an outstanding nominee to the U.S. Court of Appeals for the D.C. Circuit, including academic and professional credentials and integrity. We therefore urge this Committee and the Senate to move quickly to confirm Mr. Kavanaugh to the federal bench. America would be well served by Mr. Kavanaugh's prompt confirmation.

Sincerely,



William P. Barr, Attorney General under
President George H.W. Bush, 1991-1993

On behalf of:

Griffin B. Bell, Attorney General under
President Carter, 1977-1979

Edwin Meese, III, Attorney General under
President Reagan, 1985-1988

Dick Thornburgh, Attorney General under
Presidents Ronald Reagan and George H. W. Bush,
1988-1991

John Ashcroft, Attorney General under
President George W. Bush, 2001-2005

cc: The Honorable Patrick J. Leahy



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Fred F. Fielding
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May 5, 2006

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

Dear Chairman Specter:

We are writing to offer our strong support for the confirmation of Brett Kavanaugh to the United States Court of Appeals for the D.C. Circuit. We have each served as Counsel or Deputy Counsel to the President, and believe that Mr. Kavanaugh has the qualifications and experience necessary for the D.C. Circuit.

As former Counsel and Deputy Counsel to the President, we understand the importance of judicial appointments, particularly those to the federal courts of appeals. In our view, Mr. Kavanaugh possesses all of the requisite qualifications for such an appointment, including outstanding academic credentials, keen intellect, a calm and thoughtful demeanor, and exceptional analytical skills. He has extensive relevant professional experience, including arguments before the Supreme Court of the United States and the federal courts of appeals.

We would also like to emphasize the critical nature of the position that Mr. Kavanaugh currently holds as Staff Secretary. The importance of this position, as well as its substantive nature, is not always well known or understood outside the White House. As Staff Secretary, Mr. Kavanaugh is responsible for ensuring that all relevant views are concisely and accurately presented to the President. The ability to assess presentations of differing arguments on a wide range of topic areas is a skill that would serve him well on the D.C. Circuit.

The Honorable Arlen Specter
May 5, 2006
Page 2

Mr. Kavanaugh would be a fair and impartial judge, dedicated to the rule of law. He possesses the highest personal integrity and is exactly the type of individual this country needs on the federal appellate bench. We urge the Senate to act promptly to confirm him to the U.S. Court of Appeals for the D.C. Circuit.

Sincerely,



Fred F. Fielding

On behalf of:

Arthur B. Culvahouse, Jr.
Peter J. Wallison
Phillip D. Brady
Richard A. Hauser
Timothy E. Flanigan
David G. Leitch
John P. Schmitz
Jay B. Stephens

cc: The Honorable Patrick J. Leahy

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May 3, 2006

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(202) 530-9575

Client No.

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

Dear Chairman Specter:

As former Solicitors General of the United States, we write to urge this Committee and the Senate to vote to confirm Brett Kavanaugh to the United States Court of Appeals for the D.C. Circuit. Mr. Kavanaugh embodies all of the characteristics that make an outstanding federal court of appeals judge: exceptional appellate experience, stellar academic credentials, and unquestioned integrity.

Each of us has practiced extensively in the federal courts of appeals and the Supreme Court of the United States. Our experience has given us invaluable insight into the essential qualities of a good federal appellate judge. A federal judge must be completely impartial and dedicated to the rule of law, intelligent, reflective, and even tempered.

Mr. Kavanaugh thoroughly embodies these qualities, and we would welcome the opportunity to practice before him. His academic credentials are impeccable, and his professional accomplishments great and varied. Mr. Kavanaugh has extensive appellate experience, including both civil and criminal matters, in the courts of appeals and the Supreme Court of the United States. Perhaps most importantly of all, he is rightly known for his absolute integrity and sustained dedication to public service.

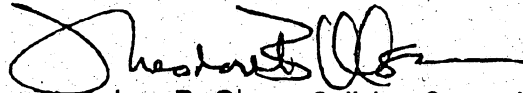
LOS ANGELES NEW YORK WASHINGTON, D.C. SAN FRANCISCO PALO ALTO
LONDON PARIS MUNICH BRUSSELS ORANGE COUNTY CENTURY CITY DALLAS DENVER

GIBSON, DUNN & CRUTCHER LLP

The Honorable Arlen Specter
May 3, 2006
Page 2

We have absolutely no hesitation endorsing Mr. Kavanaugh. He is exceptionally well qualified to serve on the Court of Appeals for the District of Columbia and would be a great credit to the judiciary. We therefore urge this Committee, and the Senate as a whole, to act promptly to confirm him.

Very truly yours,



Theodore B. Olson, Solicitor General, 2001-2004

On behalf of:

Kenneth W. Starr, Solicitor General, 1989-1993
Charles Fried, Solicitor General, 1985-1989

cc: The Honorable Patrick J. Leahy
Office of Legal Policy, U. S. Department of Justice

70348512_1.DOC

William P. Barr
Executive Vice President and General Counsel



1005 Avenue of the Americas
New York, NY 10036

Phone 212.395.1689
Fax 212.597.2587

May 10, 2005

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

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 that reads "WP Barr".

William P. Barr



David G. Leitch
Senior Vice President
General Counsel

World Headquarters
One American Road
Dearborn, MI 48126-2798 USA

May 25, 2005

Via Facsimile

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

Dear Mr. Chairman:

I am writing to offer my strong personal support for the confirmation of Brett Kavanaugh to the United States Court of Appeals for the D.C. Circuit.

During my service as Deputy Counsel to the President from 2002-2005, I had the privilege of working with Mr. Kavanaugh first when he was Senior Associate Counsel to the President and then when he became Staff Secretary. In all of his responsibilities at the White House, Mr. Kavanaugh acted with skill, dedication, integrity, and good humor. He treated everyone with respect and dignity, and was highly admired by staff and colleagues alike. His tenure in the White House preceded mine, and I was especially gratified by his tireless dedication to assisting me as I began my service in that new environment; it speaks volumes about the quality of the individual.

Of particular relevance to the Committee's consideration is the fact that Mr. Kavanaugh -- despite portrayals in the press and by partisan interest groups -- is not an ideologue but is first and foremost faithful to the law. There is of course no secret about Mr. Kavanaugh's political affiliation, but the fact that he has served his country in political posts should not differentiate him from many other distinguished members of the D.C. Circuit, such as Patricia Wald and Abner Mikva. Like these distinguished jurists, Mr. Kavanaugh would apply the law to the best of his ability without regard to his personal views. I can attest from personal knowledge and repeated observation that Mr. Kavanaugh's dedication to and respect for the rule of law is far too deep to permit political considerations to infect his rulings from the bench.

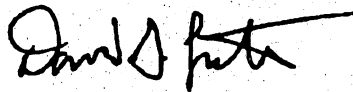


I am confident that, if confirmed, Mr. Kavanaugh will be an outstanding member of the D.C. Circuit, both as a judge and as a colleague, and that both the President who nominated him and Senators that supported him would look back with great pride at their role in placing another accomplished jurist on the D.C. Circuit. I urge you and the Committee to move swiftly to confirm Mr. Kavanaugh.

I am of course available to discuss Mr. Kavanaugh personally with you or others on the Committee if it would be helpful. Thank you for considering my views, and for your tireless leadership of the Judiciary Committee in its important work for our country.

With all best wishes,

Sincerely yours,



David G. Leitch

cc: The Honorable Patrick J. Leahy

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WRITER'S DIRECT NUMBER
202-736-8971

WRITER'S E-MAIL ADDRESS
bberenson@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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Honorable Arlen Specter

May 10, 2005

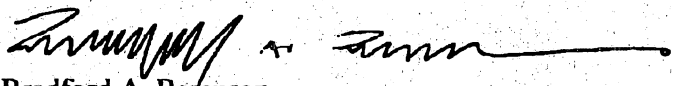
Page 2

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. Bejenson

cc: Honorable Patrick Leahy



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May 9, 2006

Heigl C. Walker
202.719.7349
hwalker@wrf.com

VIA FACSIMILE

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

Dear Mr. Chairman:

I would like to respectfully submit, for your consideration and that of the distinguished members of your Committee, my views regarding the nomination of Brett M. Kavanaugh to the United States Court of Appeals for the District of Columbia Circuit. I believe that Mr. Kavanaugh is exceptionally well-qualified to serve on the D.C. Circuit, and I hope that the Senate will confirm him expeditiously.

I have known Brett both personally and professionally for over a decade. Based on that experience, I can attest to his legal brilliance, strong personal character, and open-minded and intellectually honest approach to the law.

In particular, I worked with Brett in the White House Counsel's Office from 2001-2003, when I was fortunate to serve as Associate Counsel to the President. In our relatively small office, I was able to observe on a daily basis both the quality of his legal work and his professional demeanor. As you likely have heard from many others, Brett's work ethic and dedication to the task at hand, whatever it may be, are unparalleled. Moreover, his legal skills are among the finest I have ever seen, and I have been privileged to work with a great many talented attorneys over the years; Brett is truly a lawyer's lawyer. His impressive and diverse professional experiences and sheer ability surely place him in the top echelon of attorneys nationwide. I also know him to be unfailingly honest and forthright, striving always to do the right thing.

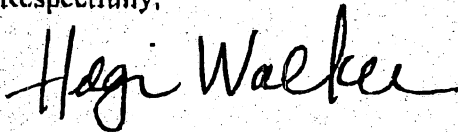
Finally, I would like to emphasize that in all the time that I have known Brett he was always deeply interested in understanding the many sides of an issue. In our office, he would spend hours hearing out others who might have a different view and analyzing a question until he was sure he got it right. If he and I happened to disagree on a matter, he was always respectful and courteous of my views, and any difference of opinion was always taken in the very best of humor.

Wiley Rein & Fielding LLP

The Honorable Arlen Specter
May 9, 2006
Page 2

In short, Brett's talent and experience as a truly first-rate lawyer make him exceedingly well-qualified to serve on the D.C. Circuit. And his temperament -- courteous, open to other viewpoints, considerate, intellectually honest, collegial, and good-humored -- make him even better suited to the federal appellate bench. We would all be fortunate, as lawyers and as citizens, to have a person of his ability and integrity on the D.C. Circuit.

Respectfully,



Helgi C. Walker

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

May 3, 2006

By Facsimile and U.S. Mail

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

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

Re Nomination of Brett M. Kavanaugh for United States Circuit Judge

Dear Chairman Specter and Senator Leahy:

We are a bipartisan group who were classmates with Brett Kavanaugh at Yale Law School in the Class of 1990. Many of us have kept in touch with him ever since and value his friendship greatly. We write in support of his confirmation to the United States Court of Appeals for the District of Columbia Circuit.

We understand that some have questioned whether Mr. Kavanaugh would make a fair and impartial judge, given his political experience in the executive branch. We have known Brett Kavanaugh for almost two decades and we are convinced that he would be fair and impartial on the bench. He has the integrity, intelligence, honesty, good sense and temperament to apply the law fairly and with intellectual honesty as a judge on the United States Court of Appeals.

From the time we first met him as a classmate, Mr. Kavanaugh has impressed us with his considerable intellect, friendly manner, good sense of humor and humility. His contributions to class discussions as a law student were perceptive, fair-minded, rational and calm. His service as a Notes Editor of the *Yale Law Journal* demonstrated his capacity for hard work, thoroughness, thoughtfulness and collegiality. Mr. Kavanaugh was, and remains, well-liked and respected by those who know him, regardless of their political party affiliations or stands on political issues. In the passionate intellectual atmosphere of Yale Law School, none of us can say that Mr. Kavanaugh stood out as ideological at all. He was not a young man with an agenda. Rather, he was a thoughtful classmate and loyal friend who obviously loved the intellectual challenges of the law and the good company of his peers.

We remember Mr. Kavanaugh from our law school days not just for his hard work on the *Journal* or his wisdom in the classroom, but also for his competitiveness in intramural basketball and his enthusiasm in organizing pre-graduation activities, such as a bus trip to Fenway Park. Brett Kavanaugh is a man anyone would be proud to have as a friend. He is extraordinarily

Senators Specter and Leahy
May 3, 2006
Page 2

bright, yet modest and humble about his intellect. His temperament is extremely well-suited to the federal bench.

Many of us disagree—occasionally strongly—with policy views Mr. Kavanaugh holds. But those disagreements do not diminish our conviction that Mr. Kavanaugh is a fair-minded and reasonable man who would, as a judge, interpret and apply the law fairly. Based on our years of knowing Mr. Kavanaugh, we are firmly convinced that his allegiance as a federal judge would be only to the Constitution and laws of the United States and not to any partisan interests. Many of us served as law clerks to federal judges across America, in chambers for United States District Court and Court of Appeals judges and United States Supreme Court justices. In that experience and in our subsequent legal careers, we have seen many models of outstanding judges, who treat every litigant before them with respect and who work hard to apply the law to reach the correct and just result in every case before them. We believe Mr. Kavanaugh would become such a judge. We doubt that we will agree with every decision Mr. Kavanaugh may make as a judge (and we doubt that the 100 Senators of the United States will, either), but we firmly believe that Mr. Kavanaugh would, through hard work, diligence and thoughtfulness, reach those decisions in a well-reasoned, honest and impartial manner that would bring credit to the distinguished court to which he has been nominated.

We appreciate the opportunity to submit this letter in support of Brett Kavanaugh's nomination and we urge the Senate to confirm him to serve as a judge on the United States Court of Appeals for the District of Columbia Circuit.

Respectfully,

James L. Brochin
Trevor A. Brown
Edmund C. Burns
Whit Cobb
Robert E. Easton
Jonathan S. Franklin
Robert H. Griffen
Vernon C. Grigg III
Steven H. Hartmann
C. Corley Holt
John P. Irwin
Paul E. Kalb
Zeb Landsman

Barr Linton
Kyle D. Logue
Mark W. Osler
Michael J. Proctor
Robert Rivera, Jr.
Douglas Rutzen
Austin C. Schlick
Michael A. Schwartz
Floyd G. Short
Jeff Shumway
Kent Sinclair
Richard J. Sullivan

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 lead 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

JOHN F. McAULIFFE

(b)(6)

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240-777-9105 Courthouse

FAX: 301-972-0786

E-Mail: (b)(6)

May 31, 2005

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

Re: Nomination of Brett M. Kavanaugh

Dear Chairman Specter:

I write to wholeheartedly support the nomination of Brett M. Kavanaugh to be a Judge of the United States Court of Appeals for the District of Columbia Circuit.

I have served in the Maryland State Judiciary for twenty-three years, as a Judge of the Circuit Court for Montgomery County, an Associate Judge of the Court of Appeals of Maryland and, since 1993 as an active-retired judge of the state. And, so that you will know, I am a life-long Democrat. Over the years I have formed definite impressions about the qualities that most often produce an excellent judge, and I strongly believe that Brett Kavanaugh possesses those qualities in abundance.

I have known Brett for more than twenty years, and I had the pleasure of working with him when he interned with me for a summer when I served on the Court of Appeals. I have stayed close to Brett and his family in the intervening years, and have followed his career with great interest. Brett is, without a doubt, one of the finest and brightest persons with whom I have worked or associated. He has a genuine and deep love of the law, an absolutely tireless capacity for work, and a friendly and sincere personality. Brett is totally without pretense and to put it quite simply, he is one of the warmest and nicest people you will ever wish to meet. Like his Dad, Brett is fiercely competitive on the golf course or tennis court, but your best friend when the game is over.

Brett Kavanaugh is blessed with a tremendous amount of common sense and a fine sense of humor – two attributes I consider important for judges at any level. Although it has been my experience that judicial demeanor is one of the most difficult traits to predict, I am absolutely certain that Brett will represent the

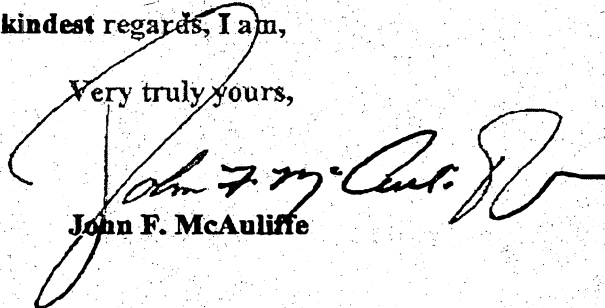
epitome of good judicial demeanor, and will be courteous, attentive and fair to all who appear before the Court.

I recognize the critical importance of the particular position for which Brett has been nominated, and I hope I have some idea of the significant demands of that position. It is my honest belief that if confirmed, Brett will serve every litigant and decide every issue fairly, without bias, prejudice, or partisanship. As a lover of Constitutional Law he will savor every difficult issue presented, but he will judge fairly and according to the law. Additionally, his intimate knowledge of the operation of government will be an added value in this Court. Brett has packed more intellectual, valuable, and practical knowledge and experience into his adult years than anyone I have ever known, yet he remains unassuming and very much with the common touch.

As the President recognized by his nomination, we have a wonderful opportunity to move onto a critically important Court a man of highest moral character, excellent legal and practical knowledge, demonstrated fairness and pleasant demeanor, who will likely prove to be one of our finest jurists. Please do not allow this opportunity to be lost.

Respectfully, and with kindest regards, I am,

Very truly yours,

A handwritten signature in black ink, appearing to read "John F. McAuliffe". The signature is fluid and cursive, with a large initial "J" and "M".

John F. McAuliffe

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

5/9/2006

Senator Arlen Specter
Chairman, United States Senate Judiciary Committee
Washington, DC

Dear Senator Specter:

I write in support of the nomination of Brett Kavanaugh to the United States Court of Appeals for the District of Columbia Circuit. This is an entirely unsolicited letter, I have not spoken with Mr. Kavanaugh for approximately four years, nor have I spoken with anyone else at the White House, U.S. Department of Justice, or U.S. Senate, in conjunction with this nomination.

I have watched this nomination with strong interest for the past two years, but have stayed silent because I was not sure whether Mr. Kavanaugh had any role in a *pro bono* case in which I am lead counsel, *Hamdan v. Rumsfeld* (currently pending at the United States Supreme Court). Because of my uncertainty as to his involvement, I felt it improper to comment on the nomination given my status as counsel for a party. In the hearing before your committee today, however, Mr. Kavanaugh stated that he had no role with respect to Guantanamo Bay policy. I am very grateful for the hearing today, for it has allowed me to write to you.

Accordingly, I feel free to say that Mr. Kavanaugh would be a welcome, terrific addition to the United States Court of Appeals. Six years ago, I invited him to speak in a two-hour class I was teaching about the Clinton impeachment. I, and the 75-person class, found him open-minded, smart, and principled. In fact, after the class, I wound up sending one of my best students, who happened to be quite liberal, to work with him for a time. I recall her telling me that he was principled in his fealty to the law to a fault, and never let ideology get in the way of judgment.

I think the *Washington Post* today, in its editorial urging Mr. Kavanaugh's confirmation, hit the nail on the head when it said that the Democrats have understandable concerns with Mr. Kavanaugh that necessitated this second hearing given his position in the Administration. But now that the hearing has taken place, it is high time to confirm him.

It is undoubtedly true that Mr. Kavanaugh has been in the center of many legal disputes over the past fifteen years. That strikes me as an unqualified good – he has an enormous breadth of experience that will serve him well. I have watched his career for many years, and it strikes me as one of almost unmatched distinction. I would strongly caution any who might read into his service for the Administration a lack of judicial independence. That is not what I have seen in Mr. Kavanaugh, and not what one should

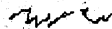
expect. As you reminded people in today's hearing, Justice Jackson handily showed his independence from the President despite his service as Attorney General.

I have only written one letter in support of a judicial confirmation before, for a nominee of either political party, and that was for then-John Roberts to serve on the D.C. Circuit. (As *Hamdan* was pending at the Supreme Court, I stayed silent with respect to the high-court nominations.) I do not believe it appropriate to write to you unless I feel strongly about a particular nominee. I feel strongly now: Brett Kavanaugh should be confirmed to the United States Court of Appeals for the D.C. Circuit.

At the same time, I also have strong concerns about the need for balance on this Court. At present, six of the nine sitting Judges on the D.C. Circuit were nominated by Republican Presidents, and only three by Democrats. Some of that imbalance is the unfortunate result of not providing up-or-down confirmation votes on President Clinton's nominees in the 1990s. I note that the Senate has done a much better job of confirming judges in recent years (including two Judges recently to the D.C. Circuit). Senators from both parties, and your stewardship of the Committee in conjunction with Senator Leahy, have done so much to move past the acrimonious 1990s. In the future, it is my fervent hope that the Administration, and the Senate, strive toward a bench in D.C. that mirrors the heartland of the American people.

I hope this helps as your committee evaluates Mr. Kavanaugh's nomination.

Sincerely,



Neal Katyal
Professor of Law
Georgetown University

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,

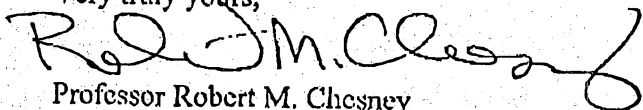
I write in support of the nomination of Brett Kavanaugh to become a judge of the United States Court of Appeals for the D.C. Circuit.

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 whole-heartedly 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



EUGENE VOLOKH
Professor of Law
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SCHOOL OF LAW
405 HILGARD AVENUE
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June 1, 2005

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

Dear Chairman Specter:

I'm writing to express my strong support for the confirmation of Brett Kavanaugh, who has been nominated to the U.S. Court of Appeals for the D.C. Circuit.

I had the honor of clerking at the Supreme Court the same Term that Brett clerked, and got to know Brett well, and admire him greatly. He is brilliant, careful, and thoughtful, a first-rate lawyer and legal thinker. His stellar academic record and his professional achievements reflect this clearly.

Brett also has a temperament that is perfectly suited to the federal bench. He listens well, considers all arguments seriously, and presents his views calmly and persuasively. I have disagreed with him on many occasions, but these occasions have only reinforced my admiration for him. He will both be a highly effective judge and a valuable example to the bar.

Finally, I am particularly impressed by Brett's commitment to public service, especially in a time when we could have made, and still can make, far more money in private practice than in a government job. Brett cares about his country, about people, and about the legal system more than he cares about money. (I have nothing against people who care about money, but someone who will at every oral argument be one of the lowest-paid lawyers in the room—sometimes by a factor of five or ten—had better have other priorities.)

In any event, I am positive that Brett will do an excellent job in this latest phase of his public service. I urge you to pass his name along to the floor, and to vote to confirm him.

Sincerely Yours,

A handwritten signature in cursive script that reads "Eugene Volokh".

Eugene Volokh

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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Thomas D. Yannucci, P.C.
To Call Writer Directly:
202 879-5055
tyannucci@kirkland.com

May 12, 2005

Via Facsimile and Hand Delivery

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

Re: *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

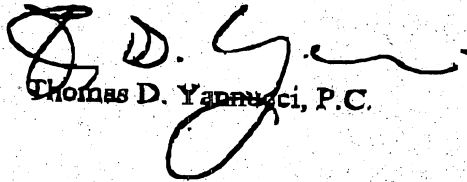
San Francisco

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. Yannuzzi, P.C.

TDY/mmc

May 9, 2005

VIA FACSIMILE & FIRST CLASS MAIL

The Honorable Arlen Specter
Chairman, Senate Judiciary Committee
Washington, D.C. 20510

RE: Nomination of Brett Kavanaugh to the
U.S. Court of Appeals for the District of Columbia

Dear Chairman Specter:

I am pleased to write in enthusiastic support of the nomination of Brett Kavanaugh, Esq., to the D.C. Circuit. Brett's legal background at Yale, Yale Law School, two federal circuit clerkships, and a clerkship with Justice Kennedy, needs no further comment. His career at Kirkland and Ellis, at the Whitewater Special Prosecutor's Office, and at the White House, all bespeak the highest integrity and professional accomplishment. I am a Fellow of the American College of Trial Attorneys, a former prosecutor and former Deputy Federal Defender, the current President of the Bar Association of Montgomery County, Maryland, and a lifelong Democrat. I consider myself a moderate, and cannot conceive of a more highly qualified candidate than Brett.

Several personal notes about Mr. Kavanaugh. For years as a prosecutor and in private practice in Washington and Montgomery County, Maryland, I worked with Brett's mother, Martha Kavanaugh. Her first career had been as a teacher at McKinley Tech High School in Northeast Washington. Martha later became a lawyer, and then a judge in Montgomery County, but has remained devoted to the inner city of Washington. She instilled in her son, Brett, the same devotion to our hometown, Washington, D.C., and its residents, which exists in him to this day.

Despite coming to Venable recently, I have remained active on the Criminal Justice Act panel in the federal courts in Maryland and the Fourth Circuit because of my love for the work. Recently, about four years ago, I had to withdraw from representing a criminal appellant in that Circuit, and called Mr. Kavanaugh to see if he could undertake this case on a *pro bono* basis. He readily agreed, without any regard to compensation or personal gain. His later White House appointment necessitated him giving the case to other counsel, but that episode exemplifies Mr. Kavanaugh's hunger for fairness, justice, and moderation, regardless of economic status of the client.

The Honorable Arlen Specter

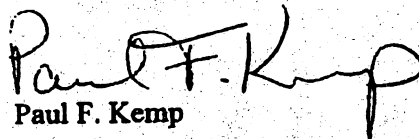
May 9, 2005

Page 2

In sum, like Justice Kennedy, Mr. Kavanaugh works at the highest intellectual level and is interested in the resolution of cases only on the merits, and in accordance with the established rule of law. Mr. Kavanaugh will be a judge of whom all Washingtonians, and all Americans, can be proud.

I would be pleased to supply any further information which your Committee might desire in support of Mr. Kavanaugh's nomination. Thank you for your review of this letter.

Very truly yours,


Paul F. Kemp

PFK:csl

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CAROLYN H. WILLIAMS
(202) 434-5630
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May 11, 2005

Via Facsimile (202.228.1698)

Senator Arlen Specter
Chairman, Senate Judiciary Committee
711 Hart Building
Washington, D.C. 20510

Re: 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
Carolyn H. Williams



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May 26, 2005

Scott M. McCaleb
202.719.3193
smccaleb@wrf.com

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

Re: Nomination of Brett M. Kavanaugh

Dear Mr. Chairman:

I write in enthusiastic and unqualified support of the nomination of Brett Kavanaugh to the U.S. Court of Appeals for the D.C. Circuit. Brett, whom I have known since high school, is precisely the type of person this country needs on the federal bench: he has been blessed with an extraordinary intellect; he enjoys a thoughtful and even-keeled temperament that is perfectly suited for the judiciary; and he is a man of tremendous integrity. The Senate should act in the nation's best interest and confirm Brett immediately.

Unlike many letters concerning Brett that you likely receive, I write from a unique perspective—I have known Brett since he was in his early teens and have personally witnessed his maturation. Though we began as rivals from opposing high schools, my admiration for Brett developed into a friendship that has endured high school, college, law school, clerkships, and D.C. legal careers. It is on this basis that I can speak with great (if not singular) conviction about the intellectual gifts that have been bestowed on Brett, his innately deliberate and reasoned manner, and his unimpeachable character.

Not even Brett's most ardent critics question his intellect. And, for good reason—his record (which I will not belabor) speaks for itself. Since he was a boy, Brett excelled academically. Yet, he never engendered the envy or scorn of his contemporaries because (while his superior intellect was readily apparent to all) he was never aloof, was always approachable, and he interacted with the least gifted students as easily as with the best students. Brett has brought that same ability to communicate at virtually any level to his legal career. He can address the most complex statutory or constitutional question to the satisfaction of the nation's finest jurists, while maintaining the ability to explain the same issue in its simplest terms to less learned folks. Brett's ability to dissect the most intricate legal question, find the correct answer, and explain his reasoning in a manner that is easily understandable is rare and will serve him and the nation well on the bench.

Wiley Rein & Fielding LLP

The Honorable Arlen Specter
May 26, 2005
Page 2

Brett likewise enjoys a thoughtful demeanor and deliberate logic that are well-suited to an appellate court. In the 25 years that I have known Brett, I cannot recall a single instance where he raised his voice in anger or demeaned a person who held views with which he may not have agreed. Instead, Brett is far more interested in understanding the logic underlying a particular position. This temperament, coupled with Brett's deep appreciation of the respective roles of our co-equal branches of government, will serve us all well. Just yesterday, I heard a Democratic senator on your committee say that he wants judges who will interpret the laws that Congress enacts, not make new laws by judicial fiat. There are few, if any, safer bets to fulfill that goal than Brett.

Finally, Brett has always comported himself with the highest integrity. Since our youth, he has done "the right thing," even when the majority chose a different route. This trait, too, will serve Brett well on the bench; indeed, he will not hesitate to dissent from majority opinions with which he disagrees, explaining the bases for his disagreement with great clarity. The Senate and American people can rest assured that Brett will adhere faithfully to the highest standards of the great jurists who preceded him on the D.C. Circuit.

In short, we are lucky that someone of Brett Kavanaugh's intellect, temperament, and integrity wants to serve the American people on the bench. Please act immediately to place him there; we will all be better for it.

Sincerely,



Scott M. McCaleb

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



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May 12, 2006

Kate Comerford Todd
202.719.3583
kcomerford@wrf.com

VIA FACSIMILE

The Honorable Arlen Specter
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510
Facsimile: (202) 228-1698

Dear Mr. Chairman:

I would like to respectfully submit my views regarding the nomination of Brett M. Kavanaugh to the United States Court of Appeals for the District of Columbia Circuit. I urge the Senate to confirm Mr. Kavanaugh as soon as possible.

I am confident that you have received myriad letters from Mr. Kavanaugh's colleagues and peers, as well as from a host of legal luminaries, speaking to his qualifications as a legal scholar, an advocate, and a counselor. As a young legal practitioner whose name does not carry any weight of its own, I am equally confident that my recommendation of Mr. Kavanaugh on these fronts would do very little to embellish this body of praise and support. I write to you, therefore, to focus on two other facets of Mr. Kavanaugh's legal and professional career—that of a role model and of a mentor. In the seven years I have known Mr. Kavanaugh, he has been, and continues to be, both a role model and mentor to me and to numerous other young attorneys who have had the good fortune to know him.

First, there can be no doubt that Mr. Kavanaugh is a role model in the legal profession. His resume reads like that of someone who is driven and pushes himself to excellence in any task he chooses—as he is clearly such a person—but his demeanor bespeaks a man who does not crave personal success at the expense of others' failures or shortcomings. He is unassuming, deliberative, and receptive to ideas and input from all corners. He takes criticism and welcomes advice easily, and he strives, at all times, to get to the right answer and to the truth, without presuming either. In short, he *listens* in a way that underscores that his commitment to public service is just that—a commitment to serve the public and not to serve himself or any particular agenda or ideology.

In a profession that does not always lend itself to positive role models, young attorneys often search for someone whom they can admire and look up to as a

Wiley Rein & Fielding LLP

The Honorable Arlen Specter
May 12, 2006
Page 2

vision of where they would like to be in a decade or beyond. Brett M. Kavanaugh meets this need by embodying the best of what the legal profession has to offer in a public servant who promotes the rule of law, without losing sight of the public that it serves or his place under it.

Second, Mr. Kavanaugh does not merely serve as a role model from afar; he actively takes an interest in and promotes the careers of those who compose the next generation of the legal profession. He is approachable, he is likeable, and he does not take himself too seriously—this is the perfect recipe for a man who acts as a mentor to those younger attorneys and professionals that cross his path. I have been fortunate enough to know Mr. Kavanaugh since I was a law student, and he has never, in the more than seven years that have followed, been too busy or too occupied to offer sound advice and encouraging thoughts. I am most certainly better off for having known Mr. Kavanaugh, and the country will be better off for having him in a position of the highest service for a lawyer—serving as an Article III judge on the U.S. Court of Appeals for the D.C. Circuit.

Sincerely,



Kate Comerford Todd

cc: The Honorable Patrick J. Leahy
Ranking Member, Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, D.C. 20510
Facsimile: (202) 224-9516

April 23, 2004

Adam H. Charnes
direct dial 336 607 7382
direct fax 336 734 2602
ACharnes@KilpatrickStockton.com

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.

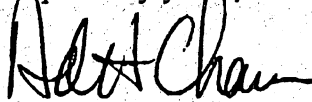
The Honorable Orrin G. Hatch
April 23, 2004
Page 2

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

HOGAN & HARTSON
L.L.P.

ROBERT H. MICHEL
SENIOR ADVISOR FOR CORPORATE
AND GOVERNMENTAL AFFAIRS
(202) 637-5804
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June 2, 2005

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

Dear Pat:

This is just a short note to let you know of my personal friendship with Brett Kavanaugh, whom the President has nominated for the Circuit Court of Appeals. I have known his mother and father for better than thirty years and his mother, Martha, has served on the bench in the Maryland court system. Yes, he is basically conservative, as you know I am, but I have spent enough time in his company to know that he will be exercising good sound judgment if confirmed for the bench.

He also happens to be a good friend of our sons and we were privileged to be invited to his wedding, so we don't speak lightly of our personal relationship with him over the years. I would surely hope when the time comes for the Committee to consider his appointment formally that you would take my assessment of his character into account.

I appreciate the opportunity to express my thoughts to you in this note.

Sincerely,



RHM:sy



BRETT M. KAVANAUGH
NOMINEE TO THE D.C. CIRCUIT

PROVIDED BY THE WHITE HOUSE
OFFICE OF LEGISLATIVE AFFAIRS

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BRETT M. KAVANAUGH

TABLE OF CONTENTS: BRETT M. KAVANAUGH

| | |
|--|-----------|
| Summary and Biographical Points for Brett M. Kavanaugh | 1 |
| Statements by Select Supporters of Brett M. Kavanaugh | 4 |
| Responses to False Allegations against Brett M. Kavanaugh | 9 |
| Select Editorials and Letters of Support for Brett M. Kavanaugh | 21 |
| “A Tale of Two Judges,” <i>The Washington Post</i> , May 9, 2006 | 21 |
| “Girded for Battle,” <i>The New York Sun</i> , April 27, 2006 | 22 |
| “The Next Generation,” <i>The Legal Times</i> , May 6, 2006 | 23 |
| Letter from Judge Walter K. Stapleton, U.S. Court of Appeals for the Third Circuit | 29 |
| Letter from Judge Edward R. Becker, U.S. Court of Appeals for the Third Circuit | 31 |
| Letter from former Attorneys General of the United States | 32 |
| Letter from former Counsels and Deputy Counsels to the President | 34 |
| Letter from former Solicitors General of the United States | 36 |
| Letter from William P. Barr, former Attorney General | 38 |
| Letter from David G. Leitch, former Deputy Counsel to the President | 39 |
| Letter from Bradford A. Berenson, former Associate Counsel to the President | 41 |
| Letter from Helgi C. Walker, former Associate Counsel to the President | 43 |
| Letter from bipartisan group of former classmates at Yale Law School | 45 |
| Letter from Mark H. Tuohey, III, former President of the D.C. Bar | 47 |
| Letter from John F. McAuliffe, Retired Judge of the Court of Appeals of Maryland | 48 |
| Letter from Neal Katyal, Professor of Law at Georgetown University | 50 |
| Letter from Robert M. Chesney, Professor of Law at Wake Forest University | 52 |
| Letter from Eugene Volokh, Professor of Law at University of California, Los Angeles | 53 |
| Letter from Pamela Harris, Washington, D.C. attorney and Yale Law School classmate | 54 |
| Letter from Thomas D. Yannucci, Partner, Kirkland & Ellis LLP | 55 |
| Letter from Paul F. Kemp, Partner, Venable LLP | 57 |
| Letter from Carolyn H. Williams, Partner, Williams & Connolly LLP | 59 |
| Letter from Scott M. McCaleb, Partner, Wiley Rein & Fielding LLP | 61 |
| Letter from Kate Comerford Todd, Partner, Wiley Rein & Fielding LLP | 63 |
| Letter from Adam H. Charnes, Partner, Kilpatrick Stockton LLP | 65 |
| Letter from Robert H. Michel, Senior Advisor, Hogan & Hartson LLP | 67 |

BRETT M. KAVANAUGH

Nominee to the U.S. Court of Appeals for the District of Columbia Circuit

- Throughout his career as an appellate lawyer, a government lawyer, and a member of the senior staff of the White House, Brett Kavanaugh has demonstrated legal excellence and the fair-minded temperament to serve as a federal appellate judge.
- Mr. Kavanaugh has an extraordinary range of experience in the public and private sectors that makes him superbly qualified for the D.C. Circuit. He has dedicated the vast majority of his 16 years of practice to public service.
 - At present, Mr. Kavanaugh serves as Assistant to the President and Staff Secretary. In that capacity, he is responsible for coordinating virtually all documents to and from the President and ensuring that all relevant views are presented. He previously served as Senior Associate Counsel and Associate Counsel to the President, during which time he worked on the numerous constitutional, legal, and ethical issues handled by that office.
 - Prior to his service in this Administration, Mr. Kavanaugh was a partner at the law firm of Kirkland & Ellis, where his practice focused on appellate matters.
 - Mr. Kavanaugh served as an Associate Counsel in the Office of Independent Counsel, where he handled a number of novel constitutional issues presented during that investigation.
- Mr. Kavanaugh specialized in appellate law and has extensive experience in the federal appellate courts, both as a law clerk and as counsel.
 - Mr. Kavanaugh has argued both civil and criminal matters before the U.S. Supreme Court and appeals and trial courts throughout the country.
 - Mr. Kavanaugh clerked for Supreme Court Justice Anthony Kennedy, as well as Judge Alex Kozinski of the Ninth Circuit and Judge Walter Stapleton of the Third Circuit.
 - Prior to his Supreme Court clerkship, Mr. Kavanaugh worked for one year in the Office of the Solicitor General of the United States. The Solicitor General's office represents the United States before the Supreme Court.
- The American Bar Association has consistently rated Mr. Kavanaugh either "Well Qualified" or "Qualified" to serve on the D.C. Circuit. In three reviews by the ABA, all 42 individual ratings by the members of the committee have been "Well Qualified" or "Qualified" ratings.
- Mr. Kavanaugh has impeccable academic credentials. He received his B.A. from Yale College and his law degree from Yale Law School, where he served as Notes Editor of the Yale Law Journal.

- In addition to devoting most of his career to public service, Mr. Kavanaugh has regularly offered his legal expertise and personal time to serving 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 construction of a synagogue in the county.
 - Mr. Kavanaugh represented, on a pro bono basis, six-year-old Elian Gonzalez after the Immigration and Naturalization Service decided to return him to Cuba. Mr. Kavanaugh filed briefs in the Eleventh Circuit and Supreme Court in this case.
- People from across the political spectrum support Mr. Kavanaugh's nomination to the D.C. Circuit and have expressed their admiration for his professional acumen and his personal integrity and fairness.
 - Judge Walter Stapleton of the U.S. Court of Appeals for the Third Circuit said of Mr. Kavanaugh, "I am confident that Mr. Kavanaugh's perspectives on both life and the law will result in his becoming what I regard as a 'judge's judge.' His personal confidence is matched by his humility and his legal acuity by his good, common sense judgment. ... He is firmly committed to the proposition that there must be equal justice for all and that this can be a reality only if all of our courts faithfully and objectively apply the statutory declarations of Congress and the teachings of the Supreme Court."
 - A group of former Solicitors Generals of the United States wrote, "Each of us has practiced extensively in the federal courts of appeals and the Supreme Court of the United States. Our experience has given us invaluable insight into the essential qualities of a good federal appellate judge. A federal judge must be completely impartial and dedicated to the rule of law, intelligent, reflective, and even tempered. Mr. Kavanaugh thoroughly embodies these qualities, and we would welcome the opportunity to practice before him. ... Perhaps most importantly of all, he is rightly known for his absolute integrity and sustained dedication to public service."
 - A bi-partisan group of 25 of Mr. Kavanaugh's classmates from the Yale Law School Class of 1990, wrote that he is "extraordinarily bright, yet modest and humble about his intellect. His temperament is extremely well-suited to the federal bench. Many of us disagree—occasionally strongly—with policy views Mr. Kavanaugh holds. But those disagreements do not diminish our conviction that Mr. Kavanaugh is a fair-minded and reasonable man who would, as a judge, interpret and apply the law fairly. Based on our years of knowing Mr. Kavanaugh, we are firmly convinced that his allegiance as a federal judge would be only to the Constitution and laws of the United States and not to any partisan interests."

- According to Mark H. Tuohey III, former President of the District of Columbia Bar, “[Mr. Kavanaugh] 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 rule 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.”

STATEMENTS BY SELECT SUPPORTERS OF BRETT M. KAVANAUGH

Letter from a group of former Attorneys General (William P. Barr on behalf of Griffin B. Bell, Edwin Meese, III, Dick Thornburgh, and John Ashcroft)

“As former Attorneys General of the United States, we write in strong support of Brett Kavanaugh’s nomination to the United States Court of Appeals for the D.C. Circuit. ... Mr. Kavanaugh is particularly known for his intelligence, commitment to public service, and integrity. Throughout his career, Mr. Kavanaugh has shown a dedication to the legal profession and the rule of law, and his professional accomplishments speak volumes to his ability to serve as a federal judge. ... Mr. Kavanaugh brings a wealth of broad experiences to this nomination, ranging from private practice as [a] partner at a prestigious law firm to years as a close advisor to the President of the United States. During that time, he has practiced in each level of our judicial system, from trial, to appellate, to the Supreme Court, working on both criminal and civil matters. Mr. Kavanaugh also brings other qualities to the table – namely a warm personality, a strong work ethic, and a good character.” (*Letter to Chairman Specter*, May 5, 2006)

Letter from a group of former Solicitors Generals of the United States (Theodore B. Olson on behalf of Kenneth W. Starr and Charles Fried)

“Each of us has practiced extensively in the federal courts of appeals and the Supreme Court of the United States. Our experience has given us invaluable insight into the essential qualities of a good federal appellate judge. A federal judge must be completely impartial and dedicated to the rule of law, intelligent, reflective, and even tempered. Mr. Kavanaugh thoroughly embodies these qualities, and we would welcome the opportunity to practice before him. ... Perhaps most importantly of all, he is rightly known for his absolute integrity and sustained dedication to public service.” (*Letter to Chairman Specter*, May 3, 2006)

Letter from a group of former Counsels and Deputy Counsels to the President (Fred Fielding on behalf of Arthur B. Culvahouse, Jr., Peter J. Wallison, Phillip D. Brady, Richard A. Hauser, Timothy E. Flanigan, David G. Leitch, John P. Schmitz, and Jay B. Stephens)

“In our view, Mr. Kavanaugh possesses all of the requisite qualifications for such an appointment, including outstanding academic credentials, keen intellect, a calm and thoughtful demeanor, and exceptional analytical skills. ... We would also like to emphasize the critical nature of the position that Mr. Kavanaugh currently holds as Staff Secretary. The importance of this position, as well as its substantive nature, is not always well known or understood outside the White House. As Staff Secretary, Mr. Kavanaugh is responsible for ensuring that all relevant views are concisely and accurately presented to the President. The ability to assess presentations of differing arguments on a wide range of topic areas is a skill that would serve him well on the D.C. Circuit. Mr. Kavanaugh would be a fair and impartial judge, dedicated to the rule of law. He possesses the highest personal integrity and is exactly the type of individual this country needs on the federal appellate bench.” (*Letter to Chairman Specter*, May 5, 2006)

Professor Neal Katyal, Georgetown University Law Center and former National Security Advisor to the Deputy Attorney General

“Mr. Kavanaugh would be a welcome, terrific addition to the United States Court of Appeals. Six years ago, I invited him to speak in a two-hour class I was teaching about the Clinton impeachment. I, and the 75-person class, found him open-minded, smart, and principled. In fact, after the class, I wound up sending one of my best students, who happened to be quite liberal, to work with him for a time. I recall her telling me that he was principled in his fealty to the law to a fault, and never let ideology get in the way of judgment. ... It is undoubtedly true that Mr. Kavanaugh has been in the center of many legal disputes over the past fifteen years. That strikes me as an unqualified good—he has an enormous breadth of experience that will serve him well. I have watched his career for many years, and it strikes me as one of almost unmatched distinction. I would strongly caution any who might read into his service for the Administration a lack of judicial independence. That is not what I have seen in Mr. Kavanaugh, and not what one should expect. As you reminded people in today’s hearing, Justice Jackson handily showed his independence from the President despite his service as Attorney General.”
(*Letter to Chairman Specter*, May 9, 2006)

Judge Walter Stapleton, U.S. Court of Appeals for the Third Circuit

“I am confident that Mr. Kavanaugh’s perspectives on both life and the law will result in his becoming what I regard as a ‘judge’s judge.’ His personal confidence is matched by his humility and his legal acuity by his good, common sense judgment. When he served as my clerk, no case was too small to deserve his rapt attention and, without exception, he initiated his evaluation of a case with no predilections. His ultimate recommendation resulted from a careful case-by-case analysis of the facts and an objective application of the relevant precedents. He is firmly committed to the proposition that there must be equal justice for all and that this can be a reality only if all of our courts faithfully and objectively apply the statutory declarations of Congress and the teachings of the Supreme Court.” (*Letter to Chairman Specter*, May 3, 2006)

William P. Barr, Executive Vice President and General Counsel of Verizon and former Attorney General

“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 weakness of competing approaches. He was particularly effective in dealing with novel issues which required some original thinking. ...

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.” (*Letter to Chairman Specter*, May 10, 2005)

Letter from a bi-partisan group of 25 classmates from Yale Law School Class of 1990

“Brett Kavanaugh is a man anyone would be proud to have as a friend. He is extraordinarily bright, yet modest and humble about his intellect. His temperament is extremely well-suited to the federal bench. Many of us disagree—occasionally strongly—with policy views Mr. Kavanaugh holds. But those disagreements do not diminish our conviction that Mr. Kavanaugh is a fair-minded and reasonable man who would, as a judge, interpret and apply the law fairly. Based on our years of knowing Mr. Kavanaugh, we are firmly convinced that his allegiance as a federal judge would be only to the Constitution and laws of the United States and not to any partisan interests. ... [W]e firmly believe that Mr. Kavanaugh would, through hard work, diligence and thoughtfulness, reach [his] decisions in a well-reasoned, honest and impartial manner that would bring credit to the distinguished court to which he has been nominated.”
(Letter to Senators Specter and Leahy, May 3, 2006)

Pamela Harris, Washington, D.C. attorney and Yale Class of 1990

“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 issues 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. ...

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.” *(Letter to Chairman Hatch, April 27, 2004)*

Mark H. Tuohey III, Vinson & Elkins LLP and former President of the District of Columbia Bar

“[Mr. Kavanaugh] 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 rule 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.

In 1995, ... 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.” *(Letter to Chairman Hatch, April 26, 2004)*

Professor Robert M. Chesney, Wake Forest University School of Law

“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 whole-heartedly support his nomination.” (*Letter to Chairman Hatch*, April 26, 2004)

Adam H. Charnes, Kilpatrick Stockton LLP

“Brett is obviously one of the most distinguished lawyers of his generation. ... 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 Congress and the Executive. Brett Kavanaugh is precisely the type of lawyer who should serve on the federal appellate court.” (*Letter to Chairman Hatch*, April 23, 2004)

Bradford A. Berenson, Sidley Austin Brown & Wood LLP and former Associate Counsel to the President

“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. ...

That an individual has been allied with politicians or political 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.” (*Letter to Chairman Specter*, May 10, 2005)

Carolyn Williams, Williams & Connolly LLP

“Throughout his career, Brett Kavanaugh has performed at the highest level of professional excellence. ... 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 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.” (*Letter to Chairman Specter*, May 11, 2005)

Thomas Yannucci, Kirkland & Ellis LLP

“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.... 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.” (*Letter to Chairman Specter*, May 12, 2005)

BRETT M. KAVANAUGH RESPONSES TO FALSE ALLEGATIONS

ALLEGATION: At 41 years old, Brett Kavanaugh is too young and lacks the necessary experience to be a federal appellate court judge.

RESPONSES:

- Mr. Kavanaugh has all of the qualities necessary to be an outstanding appellate judge. He has impeccable academic credentials, significant legal experience in the federal courts, and a proven commitment to public service.
- The American Bar Association (ABA), has rated Mr. Kavanaugh three times, twice as “Well Qualified” and once as “Qualified.” In those three reviews, all 42 of the individual ratings by the members of the committee have been “Well Qualified” or “Qualified” ratings.
- Mr. Kavanaugh’s illustrious and varied legal career allows him to bring a wealth of different experiences to the federal bench.
 - Mr. Kavanaugh has served as Staff Secretary to the President, as Senior Associate Counsel to the President, and as an assistant special prosecutor.
 - Mr. Kavanaugh also practiced as a partner at the law firm of Kirkland & Ellis where he specialized in appellate law.
 - Mr. Kavanaugh has extensive experience in the appellate courts, both as a law clerk and as counsel. He was a law clerk to Justice Anthony Kennedy, and to U.S. Court of Appeals Judges Kozinski and Stapleton.
- Federal judges are appointed from diverse backgrounds in private practice and public service. Prior judicial experience is not a requirement for appointment to the federal bench.
 - Only 4 of the 21 judges confirmed to the D.C. Circuit since President Carter’s term began in 1977 had previously served as judges.
 - President Clinton nominated and the Senate confirmed 32 lawyers without any prior judicial experience to the U.S. Court of Appeals, including Judges David Tatel and Merrick Garland to the D.C. Circuit.
- Given his peerless credentials and extensive appellate experience, Mr. Kavanaugh’s age should pose no impediment to his confirmation. Indeed, all three judges for whom Mr. Kavanaugh clerked were appointed to the bench before they were 39.
 - Then-Judge (now Justice) Anthony Kennedy was appointed to the Ninth Circuit when he was 38 years old.

- Judge Alex Kozinski was appointed to the Ninth Circuit when he was 35 years old.
- Judge Stapleton was appointed to the district court at 35 and was later elevated to the Third Circuit.
- Some of the most highly-regarded federal appellate judges have been appointed at a young age. These are just a few examples:
 - Judge Frank Easterbrook, Seventh Circuit, appointed at age 36
 - Judge Harry Edwards, D.C. Circuit, appointed at age 39
 - Judge Douglas Ginsburg, D.C. Circuit, appointed at age 40
 - Judge J. Harvie Wilkinson III, Fourth Circuit, appointed at age 39

ALLEGATION: Brett Kavanaugh is not qualified to serve on the Court of Appeals because the American Bar Association (ABA) downgraded his rating.

RESPONSES:

- The ABA has rated Mr. Kavanaugh three times, twice as “Well Qualified” and once as “Qualified.” In those three reviews, all 42 individual ratings by the members of the committee have been “Well Qualified” or “Qualified” ratings.
- On behalf of the ABA, Stephen Tober explained a “Qualified” rating means that “the nominee meets the Committee’s very high standards with respect to integrity, professional competence and judicial temperament and that the Committee believes that the nominee will be able to perform satisfactorily all of the duties and responsibilities required by the high office of a federal judge.”
- Mr. Tober also stated that Mr. Kavanaugh “enjoys a solid reputation for integrity, intellectual capacity, and writing and analytical ability.” He explained to the Senate Judiciary Committee that “a lot of people refer to him as brilliant.”
 - Mr. Tober stated: “Let me underscore ... that we didn’t find him not qualified. There’s not a breath of that in this report or any earlier report. We found him qualified/minority well qualified. What I said at the end is what, in fact, many people said, that he has a solid reputation for integrity, intellectual capacity--a lot of people refer to him as brilliant--and an excellent writing and analytical ability. Those are great skills to bring to the court of appeals. There is just no question about that.”
 - He added: “He is found to have high integrity. He is found to be brilliant. He is a very skilled writer and legal analyst. He has those components, and I have said this before ... he has those skills that will serve him well, certainly, on a Federal court.”
- Mr. Kavanaugh has support from across the political spectrum.
 - *The Washington Post*: “Mr. Kavanaugh is a talented attorney. He has been involved in controversies, but he does not appear to be an ideologue. While Democrats complain that his experience is thin, it is no more so than others who have won confirmation and served on that court. Senate Judiciary Committee Chairman Arlen Specter (R-Pa.) is holding a second hearing on Mr. Kavanaugh’s nomination today. If it produces nothing new, he should be confirmed.” (Editorial, “A Tale of Two Judges,” May 9, 2006)
 - A bi-partisan group of former Attorneys General: “Mr. Kavanaugh brings a wealth of broad experiences to this nomination, ranging from private practice as an associate and partner at a prestigious law firm to years as a close advisor to the President of the United States. During that time, he has practiced in each level of our judicial system, from trial, to appellate, to the Supreme Court, working on

both criminal and civil matters. Mr. Kavanaugh also brings other qualities to the table – namely a warm personality, a strong work ethic, and a good character.”
(*Letter to Chairman Specter*, May 5, 2006)

- A bi-partisan group of 25 classmates from Yale Law School Class of 1990:
“Based on our years of knowing Mr. Kavanaugh, we are firmly convinced that his allegiance as a federal judge would be only to the Constitution and laws of the United States and not to any partisan interests. ...[W]e firmly believe that Mr. Kavanaugh would, through hard work, diligence and thoughtfulness, reach [his] decisions in a well-reasoned, honest and impartial manner that would bring credit to the distinguished court to which he has been nominated.” (*Letter to Senators Specter and Leahy*, May 3, 2006)

ALLEGATION: Brett Kavanaugh is unsuitable for appointment to the federal bench because his legal career has included partisan activities.

RESPONSES:

- It is widely acknowledged that Mr. Kavanaugh is a professional who, as a judge, would address matters before him without regard to his personal views. *The Washington Post* wrote in an editorial: “Mr. Kavanaugh is a talented attorney. He has been involved in controversies, but he does not appear to be an ideologue.” (Editorial, “A Tale of Two Judges,” May 9, 2006)
- 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.”
- Bradford Berenson, who worked with Mr. Kavanaugh in the White House Counsel’s Office wrote, “In my observation, [Mr. Kavanaugh] 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.”
- Mr. Kavanaugh has served the public, not as a “partisan,” but as a prosecutor, as Senior Associate Counsel to the President, and finally as Staff Secretary to the President.
- Mr. Kavanaugh has clerked for three federal judges, including Supreme Court Justice Anthony Kennedy. He has worked in the Solicitor General’s office and has been a partner in a major law firm.
- Mr. Kavanaugh’s government service has given him a wealth of experience in preparation for the federal bench. For example, prior to his appointment to the First Circuit Court of Appeals, now-Justice Stephen Breyer held positions that were similar to Mr. Kavanaugh’s service. Likewise, now-Chief Justice John G. Roberts, Jr., held several positions that could be considered political.
 - Justice Breyer served as a counsel for the Watergate Special Prosecution Force and as Chief Counsel of the Senate Judiciary Committee, for then-Chairman Edward Kennedy.
 - Chief Justice Roberts served as a Special Assistant to Attorney General William French Smith, Associate Counsel to President Ronald Reagan, and as Principal Deputy Solicitor General – the “political deputy” in the office.

ALLEGATION: Mr. Kavanaugh was deeply involved in the Bush Administration's selection of highly controversial judicial nominees, which reflects upon his own suitability for the federal bench.

RESPONSES:

- The vast majority of President Bush's nominees have been confirmed by the Senate.
- The President selects judicial nominees, as advised primarily by the 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 conclusion is reached on the best candidate for the position, and a recommendation is made to the President.
- 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.
- At his hearing, Mr. Kavanaugh clearly stated his own judicial philosophy and emphasized that he would adhere to the rule of law: "I revere the rule of law. I know first-hand the central role of the courts in protecting the rights and liberties of the people. And I pledge to each member of this Committee, and I pledge to each member of the Senate, that, if confirmed, I will interpret the law as written and not impose personal policy preferences; that I will exercise judicial power prudently and with restraint; that I will follow precedent in all cases fully and fairly; and above all, that I will at all times maintain the absolute independence of the judiciary, which in my judgment is the crown jewel of our constitutional democracy."

ALLEGATION: Brett Kavanaugh was a co-author of a section of Independent Counsel Ken Starr's report to the House of Representatives, in which Starr alleged that there may be grounds for impeaching President Clinton. Mr. Kavanaugh's participation in the investigation of the Monica Lewinsky matter and his defense of Judge Starr demonstrate Mr. Kavanaugh's partisanship.

RESPONSES:

- Mr. Kavanaugh's involvement with the Office of the Independent Counsel (OIC) demonstrates his service as a prosecutor in accordance with the requirements of the law. The report formed the basis of the House of Representatives' decision to impeach President Clinton. Moreover, numerous Democratic senators as well as a federal judge concluded that President Clinton was not truthful in his testimony.
- The section of the Independent Counsel's report Mr. Kavanaugh co-authored – the “substantial and credible information” serving as grounds for impeachment – was required by federal law (28 U.S.C. 595(c)).
- The Independent Counsel's report did not conclude that President Clinton should be impeached. Rather, it simply indicated that the Office of Independent Counsel had uncovered substantial and credible information that *may* constitute grounds for impeachment.
 - In fact, 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. An additional 32 senators offered a resolution to censure President Clinton.
- 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' sexual harassment lawsuit. Judge Wright ordered President Clinton 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' 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 11 judicial and executive branch nominees who worked for Independent Counsel Ken Starr. The Senate has not disqualified other judicial nominees because of their service in the Office of the Independent Counsel; nor should it disqualify Mr. Kavanaugh because of his service.

- For example, the Senate confirmed as judges Steven Colloton (Eighth Circuit), John Bates (D.C. District Court), Amy St. Eve (Northern District of Illinois), and William Duffey (Northern District of Georgia), all of whom served in the OIC.
- Mr. Kavanaugh initially left the OIC in 1997. In April 1998, the OIC requested Mr. Kavanaugh to handle a Supreme Court argument regarding an attorney-client privilege case arising out of the Vince Foster investigation. Mr. Kavanaugh did not return to the OIC in order to work on the Lewinsky matter.
- Mr. Kavanaugh praised and supported Judge Starr when Judge Starr was unfairly criticized for his work. 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.”

ALLEGATION: Brett Kavanaugh took seven months to respond to written questions from Senators, which demonstrates that he does not respect the Senate confirmation process.

RESPONSES:

- This is a non-issue. After his first hearing in April 2004, Mr. Kavanaugh correctly understood that no further action would occur on his nomination that year. He further understood that he was required to submit answers to any written follow-up questions before the end of the Congressional session so that the record of his 2004 hearing would be complete were he to be re-nominated in 2005.
- Mr. Kavanaugh did, in fact, fully comply with that deadline and provided responses to all written questions prior to the end of the session.
- Mr. Kavanaugh participated in a second hearing before the Committee in 2006 and was available to respond to all additional questions from senators. Mr. Kavanaugh also made clear that he took responsibility if there had been any misunderstanding regarding the deadline in 2004.
- Mr. Kavanaugh has fully cooperated with the Senate. In fact, he has responded to more Senate hearing questions and more written and follow-up questions from Senators than any of the 56 D.C. Circuit judges appointed since that court's creation in 1893.
- Mr. Kavanaugh has also undergone three separate ABA investigations, in which all 42 individual reviews concluded that he was "Well-Qualified" or "Qualified."

ALLEGATION: Brett Kavanaugh has repeatedly demonstrated his hostility to the separation of church and state in several cases involving religion and education. For instance, in *Good News Club v. Milford Central School*, 533 U.S. 98 (2001), Mr. Kavanaugh 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. Mr. Kavanaugh also showed his hostility 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.

RESPONSES:

- In these cases, Mr. Kavanaugh argued on behalf of his clients that the U.S. Constitution required equal treatment of religious viewpoints, religious organizations, and religious schools.
- In *Good News Club*, the U.S. Supreme Court, in a 6-3 decision, agreed with the position taken by Mr. Kavanaugh on behalf of his client.
 - In an amicus brief in that case, Mr. Kavanaugh simply argued on behalf of his client for the principle that religious perspectives should be given equal treatment in the public sphere.
 - The school district allowed members of the public to use school facilities for artistic, social, civil, recreational, and educational purposes; however, it specifically forbade school premises being used for "religious purposes."
 - Mr. Kavanaugh's brief on behalf of his client argued that the school district's policy was unconstitutional because it targeted "religious speech for a distinctive burden."
 - 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, arguing that the school district's discrimination against religious speech was unconstitutional.
- In the Florida school voucher litigation, Mr. Kavanaugh was part of a team of lawyers representing Florida state officials who were defending Florida's opportunity scholarship program. The program sought to provide children in failing public schools with access to higher quality private education and also to improve the quality of Florida's public schools through competition.
 - The opportunity scholarship program allowed students at failing public schools to transfer to a better public school or to a private school at public expense.
 - The program was limited and carefully tailored to provide choice to those parents with the greatest need, and to spur public school improvement through competition.

- Religious and non-religious private schools can participate in the program on an equal basis. Moreover, parents directed public funds to these private schools through their independent choices.
- 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.

ALLEGATION: Brett Kavanaugh has changed his position on executive privilege. While working for Independent Counsel Kenneth Starr during the Clinton Administration, Mr. Kavanaugh argued for a narrow interpretation of the privilege. As Associate White House Counsel, however, he asserted executive privilege for the Bush Administration in a variety of cases, including in his work drafting Executive Order 13233, which limits public access to presidential records.

RESPONSES:

- While serving in the White House Counsel's Office, Mr. Kavanaugh's work on executive privilege has been consistent and evenhanded.
 - Mr. Kavanaugh worked in the Counsel's Office when the Bush Administration asserted executive privilege to protect records regarding the pardons issued by President Clinton at the end of his presidency and to protect certain Justice Department documents related to the investigation of alleged campaign fundraising abuses by officials in the Clinton Administration.
- Mr. Kavanaugh's work on government privilege issues for the Office of the Independent Counsel (OIC) was consistent with Supreme Court precedent and prevailed in the courts.
 - On behalf of the OIC, Mr. Kavanaugh argued that government attorneys in the Clinton Administration could not invoke a government attorney-client privilege to block the production of information relevant to a federal criminal investigation.
 - Both federal courts of appeals to consider the question agreed with the Independent Counsel's position in those cases. In both cases, the Supreme Court denied review.
- 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 or would be successful. Nothing in Executive Order 13233 purports to block prosecutors or grand juries from gaining access to presidential records in a criminal investigation.
- In a 1998 article for the *Georgetown Law Journal*, Mr. Kavanaugh argued that executive privilege may exist only with respect to national security and foreign affairs information in the context of grand jury and criminal trial subpoenas.
 - This article demonstrates Mr. Kavanaugh's impartiality and ability to analyze complex legal issues without respect to partisan concerns. It is not inconsistent with any of his other work on executive privilege.

The President of the American Bar Association in another article on the subject, complimented Mr. Kavanaugh's "well-reasoned and objectively presented recommendations" and noted his "most scholarly and comprehensive review of the issues of executive privilege."

A Tale of Two Judges

New skirmishes in the judicial nomination wars are brewing. But their merits aren't the same.

SENATE REPUBLICAN leaders have decided to reignite the judicial nomination wars. The reason is politics. Majority Leader Bill Frist's strategy, with elections coming, is to schedule votes on the most controversial of the president's remaining appeals court nominees, forcing Democrats to capitulate or filibuster — either of which works for him. The first will be Brett M. Kavanaugh, the president's staff secretary and long-standing nominee to the U.S. Court of Appeals for the D.C. Circuit. Next is Judge Terrence W. Boyle, whose nomination to the 4th Circuit has languished since the beginning of President Bush's tenure. Both nominations are provocative, but their merits are different. The Senate should confirm Mr. Kavanaugh but not Judge Boyle.

Judge Boyle has served as a district judge in North Carolina for many years; his elevation to the 4th Circuit was a particular goal of former senator Jesse Helms (R), who blocked a string of President Bill Clinton's nominees to the court to keep the seat open for his man. Judge Boyle has written some impressive environmental opinions. But he has a high rate of reversal, some of his work is surprisingly sloppy, and some of his civil rights opinions are terrible.

Moreover, in recent weeks it has emerged that Judge Boyle has been careless about ethics.

The law forbids judges to rule in cases in which they own stock in one of the parties. Judge Boyle has done this repeatedly, even in the years since his nomination to the 4th Circuit. His pattern of disregard for clear legal obligations is exceptional. The Senate should not condone it.

Mr. Kavanaugh's nomination is more complicated. A wise president would have chosen someone utterly above partisan objection. Instead, Mr. Bush chose a young lawyer whose career has placed him at the vortex of numerous ideological controversies. During the Clinton administration, Mr. Kavanaugh worked for Whitewater independent counsel Kenneth W. Starr, whose impeachment report he helped write. He has also worked in the White House counsel's office on, among other controversial subjects, judicial nominations. Democrats can perhaps be forgiven for balking.

Yet Mr. Kavanaugh is a talented attorney. He has been involved in controversies, but he does not appear to be an ideologue. While Democrats complain that his experience is thin, it is no more so than others who have won confirmation and served on that court. Senate Judiciary Committee Chairman Arlen Specter (R-Pa.) is holding a second hearing on Mr. Kavanaugh's nomination today. If it produces nothing new, he should be confirmed.

The New York Sun

April 27, 2006

Girded for Battle

Editorial

If you thought the accession of Justice Alito to the Supreme Court marked the end of the judicial confirmation battles that roiled the Senate earlier in President Bush's tenure, you were wrong. After taking a breather, Senate Republicans are gearing up to enter the fray again, and hope to notch up their first victory of the new campaign before the Senate adjourns for its Memorial Day recess at the end of May.

In a recent conversation with reporters, an aide to Majority Leader Frist made clear that the senator intends to bring one high profile nominee to the floor before the holiday. That nominee will be Brett Kavanaugh, who has been named to serve on the U.S. Court of Appeals for the District of Columbia, the circuit court responsible for many suits involving the federal government and its powers. Mr. Kavanaugh has spent much of his career in public service, including as an associate counsel in Kenneth Starr's Office of the Independent Counsel. He currently holds the post of staff secretary to the president, in which capacity he coordinates the flow of documents across Mr. Bush's desk. He has also served as an appellate lawyer in private practice at Kirkland & Ellis, where he was a partner. The American Bar Association has rated him "well qualified."

Yet the Democrats can't stand him. Although after only one low profile hearing it's hard to say exactly what ammunition they will fire his way as his confirmation gathers steam in the next few weeks, discontent is likely to focus on three areas. They will object to his youth (he turned 41 in February) and his service in Mr. Starr's office. Neither of these is likely to get far. In particular, his record from the Independent Counsel's office shows nothing so much as that he's an exemplary lawyer with a commitment to public service and experience at that hazy nexus where government officials meet accountability, terrain frequently tread by the circuit-riders whose ranks he has been appointed to join.

More damaging might be an attempt, already being ventured about in some circles, to tarnish him with the torture issue. In particular, the allegation would run that as the staff secretary to Mr. Bush's cabinet, he was somehow involved in the decision to employ some physical interrogation methods against terror suspects. But the Democrats are themselves treading perilous ground if they elect to take this path. The charges won't hold up - Mr. Kavanaugh's post, prestigious though it is, is an administrative one and he has not been responsible for making any decisions himself. But they will turn attention again on the Democrats and the avidity - or lack of it - with which they would prosecute the war on terror.

In this respect, the decision to focus on pushing Mr. Kavanaugh through the Senate could prove a particularly savvy one. Not only do Republicans think that judicial confirmation is a winning issue for them in 2006, but a debate over Mr. Kavanaugh's nomination, if the debate focuses on torture and the war on terror, will only focus the public on national security, a weak spot for Democrats.

However the debate ultimately plays out, however, one thing is for sure: Another judicial debate is coming. That news will hearten any American with an interest in constitutional principles. Already, more than 50% of judges on the bench today were appointed either by President Reagan or by the first or second President Bush, presidents who, by and large, have understood the importance of judicial restraint. If Mr. Frist has his way, that percentage will increase before the summer is out.

Legal Times NATIONAL

March 6, 2006

The Next Generation

By Emma Schwartz, Legal Times

Most nights a line snakes out the door at Lauriol Plaza, the trendy Mexican restaurant on 18th Street in Dupont Circle that draws a cross section of the Washington cognoscenti, many of whom come as much to make the scene as to sample the cuisine.

On one such evening about two years ago, James Brochin, a New York lawyer, was waiting to be seated with a few buddies from Yale Law School, including Brett Kavanaugh, staff secretary for President George W. Bush.

Nearby, Jeff Berman, then counsel to Sen. Charles Schumer (D-N.Y.) on the Senate Judiciary Committee, caught Kavanaugh's eye and walked over. Kavanaugh was in the midst of a bitter confirmation battle over his nomination to the U.S. Court of Appeals for the D.C. Circuit, but the staffer still wanted to trade a few friendly words before heading out the door.

"I was struck at the time by the irony that this guy's boss was spending a great deal of energy trying to shoot Brett down, yet he was still good friends with this staffer," recalls Brochin, a partner at Paul, Weiss, Rifkind, Wharton & Garrison.

It might seem unusual, but the story is emblematic of the complex politics and loyalties often just behind the scenes of the judicial nomination process. It also illustrates the challenge Democrats have facing off against this 41-year-old Maryland native, whose stalled nomination is expected to come before the Senate Judiciary Committee again as early as next month.

Kavanaugh's conservative credentials are etched indelibly into his résumé. In fact, he's something of the Zelig of young Republican lawyers. A protégé of independent counsel Kenneth Starr, he was a key figure in the Whitewater investigation. In the recount fight after the 2000 election, he served as a foot soldier in the legal army that descended on Florida and gave Bush his presidency. As a lawyer for Bush in the White House counsel's office, he shepherded most of the administration's contentious federal court nominees, including Miguel Estrada and Priscilla Owen.

But whether his right-wing bona fides will incite enough Democratic opposition to keep him off the bench remains an open question.

THE LONG AND WINDING ROAD

Kavanaugh was first nominated to the D.C. Circuit in July 2003, but faced sharp opposition at his hearing the following April, where Senate Democrats lambasted him for his youth, lack of judicial experience, and partisanship. Although the American Bar Association rated him “well qualified,” Schumer bluntly labeled Kavanaugh’s nomination “payment for political services rendered.”

Attention shifted, however, to the 2004 presidential election, and Kavanaugh’s nomination was marooned in committee. He was then left out of the “Gang of 14” deal last summer, which allowed three previously controversial nominees to be voted on in the Senate and that seemed to signal nobody was interested in a brawl over him. Then came more than six months of bruising Supreme Court confirmation fights, during which Kavanaugh remained buried.

But when the Senate moved to hold over all nominees at the end of the last congressional session, Kavanaugh was again left out because of Democratic opposition. So the White House renominated him in January, sending the message that it won’t allow Kavanaugh to be forgotten.

Now he’s back at the front of the confirmation line. And while Sen. Arlen Specter (R-Pa.), chairman of the Judiciary Committee, has made Kavanaugh a priority this session, his path looks just as rocky as it did two years ago. Just last Friday, Senate Democrats renewed their call for another hearing on Kavanaugh. The D.C. Circuit — often called the second-most-important court in the country because of its jurisdiction over federal government agencies — has been fertile ground for past confirmation fights. Exhibit A: the controversy over Miguel Estrada, so nasty that it led him to withdraw in September 2003.

Senate Democrats are girding for a similar knock-down, drag-out fight over Kavanaugh, which looms as the latest test of their clout on future federal court confirmations.

“If the Democrats weren’t able to stop [Samuel] Alito,” says Sheldon Goldman, a political science professor at the University of Massachusetts at Amherst, “the question that is being asked now is, How can they stop anyone who is as professionally qualified as Brett Kavanaugh?”

MAKING A MODEL CONSERVATIVE

Politics have always threaded through Kavanaugh’s life. Raised in Bethesda, Md., he was the only child in a tight-knit family of lawyers. His mother, Martha, was a prosecutor in the state attorney’s office and later worked as a criminal defense lawyer. She was nominated to the Montgomery County Circuit Court in 1995, where she served until retiring, nearly five years ago.

Kavanaugh’s father, Edward, was a prominent figure inside the Beltway. As head of the Cosmetic, Toiletry and Fragrance Association for 22 years, he was friends with congressional heavyweights including the late Speaker of the House Thomas “Tip” O’Neill (D-Mass.) and Sen. Orrin Hatch (R-Utah). (Indeed, Hatch gave him a special welcome at his son’s nomination hearing.)

Bright, hard-working, and unflappable, Kavanaugh attended all-boys Catholic schools, first at Mater Dei and then at Georgetown Preparatory High School, where he excelled both in class and in sports, playing on the basketball and football teams. Friends also recall him being infused with a sense of religious faith that remains important to him today.

From an early age, Kavanaugh seems to have been drawn to the law. Growing up, he sat in on some of his mother's cases and spent a few summers interning on the Hill. But unlike many children of well-connected Washingtonians, Kavanaugh didn't come off to others as arrogant or transparently ambitious. "Brett's a chess player," says Steve Ochs, Kavanaugh's high school history teacher. "He always sees moves ahead without having guile."

That sense of reserve carried over to Yale University, where friends recall him as more of a sports guy than a campus partisan involved in student politics. Kavanaugh's more liberal friends certainly knew he was conservative but say he based friendships on shared interests, rather than shared politics.

Kavanaugh went directly to Yale Law School, graduating in 1990. While there he wrote an article in the Yale Law Journal analyzing the 1986 Supreme Court case *Batson v. Kentucky*, which restricted the use of peremptory challenges to strike jurors on the basis of race. Kavanaugh argued that the decision still left the exact enforcement procedures to the lower courts, but advocated a defendant's right to be present during any hearing on the proper use of peremptory challenges.

After law school, Kavanaugh spent two years clerking in federal appeals courts, first for Judge Walter Stapleton on the U.S. Court of Appeals for the 3rd Circuit and then for Judge Alex Kozinski on the U.S. Court of Appeals for the 9th Circuit (an icon for many legal conservatives, but something of an iconoclast himself).

Kozinski's clerkships are notoriously demanding, a kind of boot camp for young lawyers with Federalist Society credentials. A perfectionist and an outspoken conservative on a liberal court, Kozinski routinely cycles through dozens of drafts on opinions. To meet the workload, Kavanaugh and his fellow clerks worked in shifts. Mark Perry, now co-chair of Gibson, Dunn & Crutcher's D.C. office, recalls that when he clerked alongside Kavanaugh, he took the early shift, which started at 6 a.m., while Kavanaugh had the "late" one, which began at 8 a.m. — and ran until 9 or 10 at night, six days a week.

In Kozinski, Kavanaugh found a mentor and an intellectual sparring partner. "He's not one to sort of jump to conclusions. He weighs and he considers and goes back and forth," Kozinski recalls of their legal debates. "I think we sort of reinforce each other." Kozinski likens Kavanaugh's legal philosophy to that of Chief Justice John Roberts Jr. and Alito. "The question is what he would do in close cases," he says. "I think in close cases he would offer the conservative-libertarian result."

From Kozinski's chambers, Kavanaugh moved to a yearlong fellowship in the solicitor general's office under Starr. There he worked alongside conservative luminaries such as Roberts and

Maureen Mahoney and had a chance to argue his first appeals court case. In 1993, Kavanaugh moved up the clerkship ladder again, this time into the chambers of Justice Anthony Kennedy on the Supreme Court.

PLUNGING INTO WHITEWATER

As Kavanaugh's Kennedy clerkship was ending in the summer of 1994, Starr was tapped to replace Robert Fiske as independent counsel in the Whitewater investigation. One of his first moves was to bring Kavanaugh on board.

It was a watershed moment for the 29-year-old lawyer, one that would earn him both acclaim and lasting enemies. One of his initial duties was to lead the probe into the apparent suicide of White House counsel Vincent Foster, a close personal friend of President Bill Clinton and first lady Hillary and a former colleague of Hillary's at the Rose Law Firm in Arkansas — which Kavanaugh also investigated. Though Starr closed these investigations without prosecuting, Kavanaugh did not make any friends in the Clinton White House. Now-Sen. Clinton (D-N.Y.) in particular took bitter exception to Kavanaugh's investigatory tactics, which she viewed as a partisan witch hunt meant to destroy her and her husband.

In 1997, Kavanaugh briefly retreated into private practice, joining Kirkland & Ellis, Starr's old firm. But after less than a year, Starr asked him to return to the independent counsel's office to argue a case stemming from the Foster investigation that had been granted certiorari by the Supreme Court.

The case, *Swidler & Berlin v. United States*, led to an important decision on the scope of attorney-client privilege — but not one in Kavanaugh's favor. The issue was whether attorney James Hamilton was required to turn over notes to Starr on a conversation he had with his now-deceased client, Foster. Kavanaugh argued that lower court precedent, particularly in criminal cases, suggested that the attorney-client privilege did not survive the death of the client. Many attorneys found the position controversial because it encroached on a well-established privilege.

Hamilton, who argued the case himself, says despite the loss, Kavanaugh was impressive. "Brett is obviously a very talented lawyer. Although he lost the Swidler case — to the benefit of both clients and the profession — he did well with a most difficult position."

According to Bob Woodward's book *Shadow: Five Presidents and the Legacy of Watergate*, Kavanaugh was also something of a moderating force in the office. He was among those who encouraged Starr to seek direct testimony from White House intern Monica Lewinsky and Clinton about their affair, rather than simply write the report based on secondhand accounts. He questioned whether Starr needed to hand over the narrative section of the final report to Congress. And though he helped assemble the 11 possible legal violations laid out in the report, he was opposed to Congress' decision to release the report to the public.

Even after he left Starr's office, Kavanaugh continued to express concerns over the power afforded the independent counsel, going so far as to write an article for the *Georgetown Law*

Journal arguing that Congress should change the statute to limit the politicization of the independent counsel position.

Yet Kavanaugh's tenure with Starr continues to enrage Democrats, who note that he has defended the former independent counsel's work in newspaper editorials. In one such piece for The Washington Post, Kavanaugh said that subsequent congressional action, such as the vote by the House of Representatives to impeach Clinton, fully vindicated Starr's investigation.

THE PRESIDENT'S LAW FIRM

In 1999, Kavanaugh returned to Kirkland, where he mostly handled appellate cases for corporate clients such as Verizon Communications Inc., America Online Inc., and General Motors Corp.

Even in private practice, Kavanaugh managed to get involved in charged cases. For instance, he and a colleague joined the last-ditch appeal of Elian Gonzalez's deportation back to Cuba after a panel on the U.S. Court of Appeals for the 11th Circuit ruled that it did not have jurisdiction to overturn the Department of Justice's decision. The Supreme Court denied cert.

Kavanaugh also filed an amicus brief in the 1999 case *Santa Fe School District v. Jane Doe*, in which he represented two Republican congressmen who were supporting a school district's policy that allowed student-initiated prayer at football games. The Supreme Court ruled that the policy violated the Constitution's establishment clause.

But Kavanaugh's true return to politics came in 2000, when he joined the Bush recount team in Florida, overseeing Volusia County. After the election he was offered a spot in the White House counsel's office, then headed by Alberto Gonzales, where he joined an A list of top conservative lawyers, including Rachel Brand, now assistant attorney general for the Office of Legal Counsel; Stuart Bowen, now special inspector general for Iraq reconstruction; and Courtney Elwood, the current deputy chief of staff for Gonzales.

That office, however, has come under scrutiny recently for its role in drafting memos justifying the use of torture in questioning terrorism suspects and validating the National Security Agency's domestic eavesdropping program. Although he worked in the office at the time, Kavanaugh hasn't been directly tied to those controversial policies.

He was, however, at the forefront of other divisive issues, most notably serving as a chief architect of the administration's judicial selection process. He helped vet candidates and worked as a liaison between the White House and Capitol Hill, coordinating hearings with Republican staffers.

Along with judicial nominations, Kavanaugh pushed tort reform legislation on issues including asbestos, class actions, and terrorism risk insurance. He was also the main author of a controversial executive memo that allows presidents and their families to limit the release of presidential documents.

Once again in a place known for grueling hours, Kavanaugh stood out. He became a fast favorite of Gonzales, who put him forward as a candidate for a seat on the U.S. Court of Appeals for the 4th Circuit. Maryland senators objected because they wanted a nominee who had practiced in their home state.

Meanwhile, Kavanaugh replaced Harriet Miers as staff secretary, a little-known but powerful post in the Executive Office of the President. It's more a political than a policy job, but lawyers often hold it because it requires reviewing every piece of paper before it lands on the president's desk. Kavanaugh's position has brought him close to Bush, with whom he has traveled around the globe. The president even made a special appearance at Kavanaugh's 2004 wedding to Bush's personal secretary, Ashley Estes, held at Georgetown's Christ Episcopal Church.

The close association with the president has only fanned Democratic furor over Kavanaugh's nomination. Democrats especially want to question him on whether he had a role in approving the NSA wiretapping program. "He doesn't have the legal philosophy that ought to be had for that position," says Elliot Minberg, legal director of the liberal People For the American Way. "Most of his career has been spent as a far-right advocate." Maybe so, but Democrats have few options to derail Kavanaugh, without resorting to a filibuster.

In the meantime, in his West Wing office, Kavanaugh remains busy serving the president he helped put in the White House. In that office three large photographs adorn the front wall.

In the first, the president appears at his Oval Office desk with Kavanaugh and now-Chief Justice Roberts. To the right is a picture of Bush greeting the late Pope John Paul II at the Vatican. The third shot shows the president, behind a wooden podium, introducing his first crop of judicial nominees from the spring of 2001, a group that included Roberts, Estrada, and Owen.

It's a display befitting of a presidential aide, no doubt. But nervous Democrats might wonder how they would look in a judge's chambers.



UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

FEDERAL BUILDING, 844 KING STREET

WILMINGTON, DE 19801



WALTER K. STAPLETON
CIRCUIT JUDGE

May 3, 2006

Hon. Arlen Specter
United States Senate
711 Hart Building
Washington, D.C. 20510

Re: Brett M. Kavanaugh

Dear Chairman Specter:

I write to share my assessment of the qualifications of Brett Kavanaugh for service as a United States Circuit Judge.

It has been my privilege to serve as a federal judge for thirty-five years. For the last twenty of those thirty-five years, I have served as a United States Circuit Judge and am intimately familiar with the demands of that position. Mr. Kavanaugh worked closely with me as my law clerk, and I am also intimately familiar with his talents, experience and character. In my opinion, Mr. Kavanaugh is superbly qualified to serve as a United States Circuit Judge, and I have no reservations whatever in predicting that he would make an extraordinary contribution to the administration of justice in any Court of Appeals.

Mr. Kavanaugh's legal skills are impressive. As evidenced by his academic record as well as his subsequent professional performance, he has a powerful and creative mind. Indeed, "brilliant," an adjective I rarely use, is entirely appropriate for use in describing Mr. Kavanaugh. In addition, when it comes to written expression, Mr. Kavanaugh has extraordinary talent. He writes clearly, concisely, and with precision. I have had over a hundred well qualified law clerks, and none were more gifted in the skills needed by a Circuit Judge.

In addition to his impressive legal skills, Mr. Kavanaugh has the sophistication, insight and maturity that come from having served in a variety of professional positions noteworthy not only because of their diversity but also because of the grave responsibilities they imposed. While all of his professional experience will serve him well as a judge, a substantial portion of it renders Mr. Kavanaugh exceptionally well qualified in terms of experience. I refer, of course, to the fact that, in addition to his exposure to private practice and service to the President, Mr. Kavanaugh has had substantial litigation experience on

both sides of the bench. As you are aware, he has worked in a "one-to-one" relationship with two Court of Appeals judges, a Justice of the Supreme Court, and the Solicitor General of the United States. As you are also aware, Mr. Kavanaugh's litigation experience has included appearances before all levels of our federal courts.

Finally, I am confident that Mr. Kavanaugh's perspectives on both life and the law will result in his becoming what I regard as a "judge's judge." His personal confidence is matched by his humility, and his legal acuity by his good, common sense judgment. When he served as my clerk, no case was too small to deserve his rapt attention and, without exception, he initiated his evaluation of a case with no predelictions. His ultimate recommendation resulted from a careful case-by-case analysis of the facts and an objective application of the relevant precedents. He is firmly committed to the proposition that there must be equal justice for all and that this can be a reality only if all of our courts faithfully and objectively apply the statutory declarations of Congress and the teachings of the Supreme Court.

In short, my assessment is that Brett Kavanaugh is extraordinarily well qualified to be a United States Circuit Judge. I can commend him to you without reservation.

Sincerely,



Walter K. Stapleton
United States Circuit Judge - 3d

WKS:fw

United States Court of Appeals
For The Third Circuit

Chambers of
Edward R. Becker
Circuit Judge

19613 United States Courthouse
Independence Mall West
Philadelphia, PA 19106-1782
Phone: (215)-597-9642
Fax: (215)-597-7217

May 2, 2006

Honorable Arlen Specter
711 Hart Senate Office Building
Washington, DC 20510

Dear Senator Specter:

When in the course of a recent conversation I mentioned to you that I have known Brett Kavanaugh since his days as a law clerk to my colleague Judge Walter Stapleton, you inquired as to my views as to his suitability for appointment to the DC Circuit, and I am pleased to respond. I do so on the basis of my acquaintance with Brett during his clerkship days, my conversations about him with Judge Stapleton, my knowledge of his subsequent career, and my frequent dealings with him over the matter of Court of Appeals appointments when I was Chief Judge of this Court and he was employed in the Office of White House Counsel.

I consider Mr. Kavanaugh to be an extraordinarily able lawyer, based upon his stewardship as reported to me by Judge Stapleton, his clerkship with Justice Kennedy, and his record of achievement, including argument of important cases before the Supreme Court when he was in the Solicitor General's Office. During my discussions with him over the matter of appointments to the Third Circuit, I found him extraordinarily insightful and helpful. I can also report that the matter of ideology of putative nominees never entered into our discussion, which is consistent with what Judge Stapleton has told me – that Brett was not ideologically driven. I add as a postscript that a Judge is a very good arbiter of the ideological bent of his or her law clerks.

While my personal contact with Brett has been sporadic, my sense that he is enormously competent and highly professional impels me to the view that he would be an excellent appointee to the DC Circuit who would, in the model of his mentor, Judge Stapleton, always follow the law and not any personal agenda (if indeed he has one).

Sincerely,

/s/Edward R. Becker

May 5, 2006

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

Dear Chairman Specter:

As former Attorneys General of the United States, we write in strong support of Brett Kavanaugh's nomination to the United States Court of Appeals for the D.C. Circuit. Our past experiences as Attorneys General include extensive involvement in the selection of judges combined with a comprehensive knowledge of and familiarity with our federal court system. From that vantage point, we can each state with certainty that Mr. Kavanaugh is an outstanding nominee to the federal bench.

Mr. Kavanaugh is particularly known for his intelligence, commitment to public service, and integrity. Throughout his career, Mr. Kavanaugh has shown a dedication to the legal profession and the rule of law, and his professional accomplishments speak volumes to his ability to serve as a federal judge. His academic credentials are superlative, having graduated from Yale University and from Yale Law School. He followed these achievements by clerking for Supreme Court Justice Anthony Kennedy. Mr. Kavanaugh brings a wealth of broad experiences to this nomination, ranging from private practice as an associate and partner at a prestigious law firm to years as a close advisor to the President of the United States. During that time, he has practiced in each level of our judicial system, from trial, to appellate, to the Supreme Court, working on both criminal and civil matters. Mr. Kavanaugh also brings other qualities to the table—namely a warm personality, a strong work ethic, and a good character.

We believe that Mr. Kavanaugh possesses each characteristic of an outstanding nominee to the U.S. Court of Appeals for the D.C. Circuit, including academic and professional credentials and integrity. We therefore urge this Committee and the Senate to move quickly to confirm Mr. Kavanaugh to the federal bench. America would be well served by Mr. Kavanaugh's prompt confirmation.

Sincerely,



William P. Barr, Attorney General under
President George H.W. Bush, 1991-1993

On behalf of:

Griffin B. Bell, Attorney General under
President Carter, 1977-1979

Edwin Meese, III, Attorney General under
President Reagan, 1985-1988

Dick Thornburgh, Attorney General under
Presidents Ronald Reagan and George H. W. Bush,
1988-1991

John Ashcroft, Attorney General under
President George W. Bush, 2001-2005

cc: The Honorable Patrick J. Leahy



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Fred F. Fielding
202.719.7320
ffielding@wrf.com

May 5, 2006

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

Dear Chairman Specter:

We are writing to offer our strong support for the confirmation of Brett Kavanaugh to the United States Court of Appeals for the D.C. Circuit. We have each served as Counsel or Deputy Counsel to the President, and believe that Mr. Kavanaugh has the qualifications and experience necessary for the D.C. Circuit.

As former Counsel and Deputy Counsel to the President, we understand the importance of judicial appointments, particularly those to the federal courts of appeals. In our view, Mr. Kavanaugh possesses all of the requisite qualifications for such an appointment, including outstanding academic credentials, keen intellect, a calm and thoughtful demeanor, and exceptional analytical skills. He has extensive relevant professional experience, including arguments before the Supreme Court of the United States and the federal courts of appeals.

We would also like to emphasize the critical nature of the position that Mr. Kavanaugh currently holds as Staff Secretary. The importance of this position, as well as its substantive nature, is not always well known or understood outside the White House. As Staff Secretary, Mr. Kavanaugh is responsible for ensuring that all relevant views are concisely and accurately presented to the President. The ability to assess presentations of differing arguments on a wide range of topic areas is a skill that would serve him well on the D.C. Circuit.

The Honorable Arlen Specter

May 5, 2006

Page 2

Mr. Kavanaugh would be a fair and impartial judge, dedicated to the rule of law. He possesses the highest personal integrity and is exactly the type of individual this country needs on the federal appellate bench. We urge the Senate to act promptly to confirm him to the U.S. Court of Appeals for the D.C. Circuit.

Sincerely,



Fred F. Fielding

On behalf of:

Arthur B. Culvahouse, Jr.

Peter J. Wallison

Phillip D. Brady

Richard A. Hauser

Timothy E. Flanigan

David G. Leitch

John P. Schmitz

Jay B. Stephens

cc: The Honorable Patrick J. Leahy

GIBSON, DUNN & CRUTCHER LLP

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May 3, 2006

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(202) 530-9575

Client No.

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

Dear Chairman Specter:

As former Solicitors General of the United States, we write to urge this Committee and the Senate to vote to confirm Brett Kavanaugh to the United States Court of Appeals for the D.C. Circuit. Mr. Kavanaugh embodies all of the characteristics that make an outstanding federal court of appeals judge: exceptional appellate experience, stellar academic credentials, and unquestioned integrity.

Each of us has practiced extensively in the federal courts of appeals and the Supreme Court of the United States. Our experience has given us invaluable insight into the essential qualities of a good federal appellate judge. A federal judge must be completely impartial and dedicated to the rule of law, intelligent, reflective, and even tempered.

Mr. Kavanaugh thoroughly embodies these qualities, and we would welcome the opportunity to practice before him. His academic credentials are impeccable, and his professional accomplishments great and varied. Mr. Kavanaugh has extensive appellate experience, including both civil and criminal matters, in the courts of appeals and the Supreme Court of the United States. Perhaps most importantly of all, he is rightly known for his absolute integrity and sustained dedication to public service.

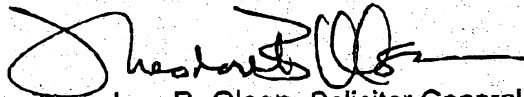
LOS ANGELES NEW YORK WASHINGTON, D.C. SAN FRANCISCO PALO ALTO
LONDON PARIS MUNICH BRUSSELS ORANGE COUNTY CENTURY CITY DALLAS DENVER

GIBSON, DUNN & CRUTCHER LLP

The Honorable Arlen Specter
May 3, 2006
Page 2

We have absolutely no hesitation endorsing Mr. Kavanaugh. He is exceptionally well qualified to serve on the Court of Appeals for the District of Columbia and would be a great credit to the judiciary. We therefore urge this Committee, and the Senate as a whole, to act promptly to confirm him.

Very truly yours,



Theodore B. Olson, Solicitor General, 2001-2004

On behalf of:

Kenneth W. Starr, Solicitor General, 1989-1993
Charles Fried, Solicitor General, 1985-1989

cc: The Honorable Patrick J. Leahy
Office of Legal Policy, U. S. Department of Justice

70348512_1.DOC

William P. Barr
Executive Vice President and General Counsel



1095 Avenue of the Americas
New York, NY 10036

Phone 212.398.1689
Fax 212.597.2587

May 10, 2005

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

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 black ink that reads "WP Barr".

William P. Barr



David G. Leitch
Senior Vice President
General Counsel

World Headquarters
One American Road
Dearborn, MI 48126-2798 USA

May 25, 2005

Via Facsimile

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

Dear Mr. Chairman:

I am writing to offer my strong personal support for the confirmation of Brett Kavanaugh to the United States Court of Appeals for the D.C. Circuit.

During my service as Deputy Counsel to the President from 2002-2005, I had the privilege of working with Mr. Kavanaugh first when he was Senior Associate Counsel to the President and then when he became Staff Secretary. In all of his responsibilities at the White House, Mr. Kavanaugh acted with skill, dedication, integrity, and good humor. He treated everyone with respect and dignity, and was highly admired by staff and colleagues alike. His tenure in the White House preceded mine, and I was especially gratified by his tireless dedication to assisting me as I began my service in that new environment; it speaks volumes about the quality of the individual.

Of particular relevance to the Committee's consideration is the fact that Mr. Kavanaugh -- despite portrayals in the press and by partisan interest groups -- is not an ideologue but is first and foremost faithful to the law. There is of course no secret about Mr. Kavanaugh's political affiliation, but the fact that he has served his country in political posts should not differentiate him from many other distinguished members of the D.C. Circuit, such as Patricia Wald and Abner Mikva. Like these distinguished jurists, Mr. Kavanaugh would apply the law to the best of his ability without regard to his personal views. I can attest from personal knowledge and repeated observation that Mr. Kavanaugh's dedication to and respect for the rule of law is far too deep to permit political considerations to infect his rulings from the bench.



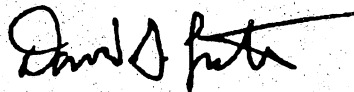
Page 2

I am confident that, if confirmed, Mr. Kavanaugh will be an outstanding member of the D.C. Circuit, both as a judge and as a colleague, and that both the President who nominated him and Senators that supported him would look back with great pride at their role in placing another accomplished jurist on the D.C. Circuit. I urge you and the Committee to move swiftly to confirm Mr. Kavanaugh.

I am of course available to discuss Mr. Kavanaugh personally with you or others on the Committee if it would be helpful. Thank you for considering my views, and for your tireless leadership of the Judiciary Committee in its important work for our country.

With all best wishes,

Sincerely yours,

A handwritten signature in black ink, appearing to read "David G. Leitch", with a long horizontal flourish extending to the right.

David G. Leitch

cc: The Honorable Patrick J. Leahy

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WRITER'S DIRECT NUMBER
202-736-8971

WRITER'S E-MAIL ADDRESS
bberenson@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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Honorable Arlen Specter

May 10, 2005

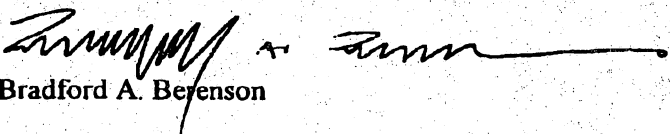
Page 2

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



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May 9, 2006

Helgi C. Walker
202.719.7349
hwalker@wrf.com

VIA FACSIMILE

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

Dear Mr. Chairman:

I would like to respectfully submit, for your consideration and that of the distinguished members of your Committee, my views regarding the nomination of Brett M. Kavanaugh to the United States Court of Appeals for the District of Columbia Circuit. I believe that Mr. Kavanaugh is exceptionally well-qualified to serve on the D.C. Circuit, and I hope that the Senate will confirm him expeditiously.

I have known Brett both personally and professionally for over a decade. Based on that experience, I can attest to his legal brilliance, strong personal character, and open-minded and intellectually honest approach to the law.

In particular, I worked with Brett in the White House Counsel's Office from 2001-2003, when I was fortunate to serve as Associate Counsel to the President. In our relatively small office, I was able to observe on a daily basis both the quality of his legal work and his professional demeanor. As you likely have heard from many others, Brett's work ethic and dedication to the task at hand, whatever it may be, are unparalleled. Moreover, his legal skills are among the finest I have ever seen, and I have been privileged to work with a great many talented attorneys over the years; Brett is truly a lawyer's lawyer. His impressive and diverse professional experiences and sheer ability surely place him in the top echelon of attorneys nationwide. I also know him to be unfailingly honest and forthright, striving always to do the right thing.

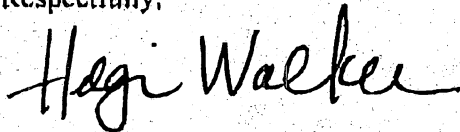
Finally, I would like to emphasize that in all the time that I have known Brett he was always deeply interested in understanding the many sides of an issue. In our office, he would spend hours hearing out others who might have a different view and analyzing a question until he was sure he got it right. If he and I happened to disagree on a matter, he was always respectful and courteous of my views, and any difference of opinion was always taken in the very best of humor.

Wiley Rein & Fielding LLP

The Honorable Arlen Specter
May 9, 2006
Page 2

In short, Brett's talent and experience as a truly first-rate lawyer make him exceedingly well-qualified to serve on the D.C. Circuit. And his temperament -- courteous, open to other viewpoints, considerate, intellectually honest, collegial, and good-humored -- make him even better suited to the federal appellate bench. We would all be fortunate, as lawyers and as citizens, to have a person of his ability and integrity on the D.C. Circuit.

Respectfully,



Helgi C. Walker

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

May 3, 2006

By Facsimile and U.S. Mail

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

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

Re Nomination of Brett M. Kavanaugh for United States Circuit Judge

Dear Chairman Specter and Senator Leahy:

We are a bipartisan group who were classmates with Brett Kavanaugh at Yale Law School in the Class of 1990. Many of us have kept in touch with him ever since and value his friendship greatly. We write in support of his confirmation to the United States Court of Appeals for the District of Columbia Circuit.

We understand that some have questioned whether Mr. Kavanaugh would make a fair and impartial judge, given his political experience in the executive branch. We have known Brett Kavanaugh for almost two decades and we are convinced that he would be fair and impartial on the bench. He has the integrity, intelligence, honesty, good sense and temperament to apply the law fairly and with intellectual honesty as a judge on the United States Court of Appeals.

From the time we first met him as a classmate, Mr. Kavanaugh has impressed us with his considerable intellect, friendly manner, good sense of humor and humility. His contributions to class discussions as a law student were perceptive, fair-minded, rational and calm. His service as a Notes Editor of the *Yale Law Journal* demonstrated his capacity for hard work, thoroughness, thoughtfulness and collegiality. Mr. Kavanaugh was, and remains, well-liked and respected by those who know him, regardless of their political party affiliations or stands on political issues. In the passionate intellectual atmosphere of Yale Law School, none of us can say that Mr. Kavanaugh stood out as ideological at all. He was not a young man with an agenda. Rather, he was a thoughtful classmate and loyal friend who obviously loved the intellectual challenges of the law and the good company of his peers.

We remember Mr. Kavanaugh from our law school days not just for his hard work on the *Journal* or his wisdom in the classroom, but also for his competitiveness in intramural basketball and his enthusiasm in organizing pre-graduation activities, such as a bus trip to Fenway Park. Brett Kavanaugh is a man anyone would be proud to have as a friend. He is extraordinarily

Senators Specter and Leahy

May 3, 2006

Page 2

bright, yet modest and humble about his intellect. His temperament is extremely well-suited to the federal bench.

Many of us disagree—occasionally strongly—with policy views Mr. Kavanaugh holds. But those disagreements do not diminish our conviction that Mr. Kavanaugh is a fair-minded and reasonable man who would, as a judge, interpret and apply the law fairly. Based on our years of knowing Mr. Kavanaugh, we are firmly convinced that his allegiance as a federal judge would be only to the Constitution and laws of the United States and not to any partisan interests. Many of us served as law clerks to federal judges across America, in chambers for United States District Court and Court of Appeals judges and United States Supreme Court justices. In that experience and in our subsequent legal careers, we have seen many models of outstanding judges, who treat every litigant before them with respect and who work hard to apply the law to reach the correct and just result in every case before them. We believe Mr. Kavanaugh would become such a judge. We doubt that we will agree with every decision Mr. Kavanaugh may make as a judge (and we doubt that the 100 Senators of the United States will, either), but we firmly believe that Mr. Kavanaugh would, through hard work, diligence and thoughtfulness, reach those decisions in a well-reasoned, honest and impartial manner that would bring credit to the distinguished court to which he has been nominated.

We appreciate the opportunity to submit this letter in support of Brett Kavanaugh's nomination and we urge the Senate to confirm him to serve as a judge on the United States Court of Appeals for the District of Columbia Circuit.

Respectfully,

James L. Brochin
Trevor A. Brown
Edmund C. Burns
Whit Cobb
Robert E. Easton
Jonathan S. Franklin
Robert H. Griffen
Vernon C. Grigg III
Steven H. Hartmann
C. Corley Holt
John P. Irwin
Paul E. Kalb
Zeb Landsman

Barr Linton
Kyle D. Logue
Mark W. Osler
Michael J. Proctor
Robert Rivera, Jr.
Douglas Rutzen
Austin C. Schlick
Michael A. Schwartz
Floyd G. Short
Jeff Shumway
Kent Sinclair
Richard J. Sullivan

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

JOHN F. McAULIFFE

(b)(6)

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240-777-9105 Courthouse

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E-Mail: (b)(6)

May 31, 2005

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

Re: Nomination of Brett M. Kavanaugh

Dear Chairman Specter:

I write to wholeheartedly support the nomination of Brett M. Kavanaugh to be a Judge of the United States Court of Appeals for the District of Columbia Circuit.

I have served in the Maryland State Judiciary for twenty-three years, as a Judge of the Circuit Court for Montgomery County, an Associate Judge of the Court of Appeals of Maryland and, since 1993 as an active-retired judge of the state. And, so that you will know, I am a life-long Democrat. Over the years I have formed definite impressions about the qualities that most often produce an excellent judge, and I strongly believe that Brett Kavanaugh possesses those qualities in abundance.

I have known Brett for more than twenty years, and I had the pleasure of working with him when he interned with me for a summer when I served on the Court of Appeals. I have stayed close to Brett and his family in the intervening years, and have followed his career with great interest. Brett is, without a doubt, one of the finest and brightest persons with whom I have worked or associated. He has a genuine and deep love of the law, an absolutely tireless capacity for work, and a friendly and sincere personality. Brett is totally without pretense and to put it quite simply, he is one of the warmest and nicest people you will ever wish to meet. Like his Dad, Brett is fiercely competitive on the golf course or tennis court, but your best friend when the game is over.

Brett Kavanaugh is blessed with a tremendous amount of common sense and a fine sense of humor – two attributes I consider important for judges at any level. Although it has been my experience that judicial demeanor is one of the most difficult traits to predict, I am absolutely certain that Brett will represent the

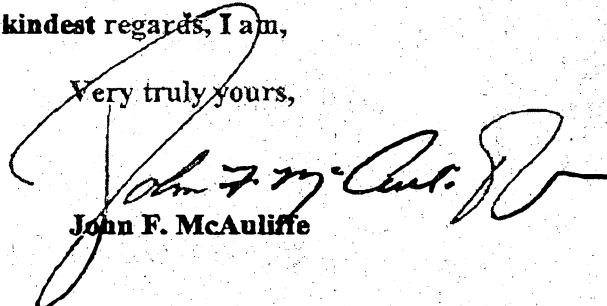
epitome of good judicial demeanor, and will be courteous, attentive and fair to all who appear before the Court.

I recognize the critical importance of the particular position for which Brett has been nominated, and I hope I have some idea of the significant demands of that position. It is my honest belief that if confirmed, Brett will serve every litigant and decide every issue fairly, without bias, prejudice, or partisanship. As a lover of Constitutional Law he will savor every difficult issue presented, but he will judge fairly and according to the law. Additionally, his intimate knowledge of the operation of government will be an added value in this Court. Brett has packed more intellectual, valuable, and practical knowledge and experience into his adult years than anyone I have ever known, yet he remains unassuming and very much with the common touch.

As the President recognized by his nomination, we have a wonderful opportunity to move onto a critically important Court a man of highest moral character, excellent legal and practical knowledge, demonstrated fairness and pleasant demeanor, who will likely prove to be one of our finest jurists. Please do not allow this opportunity to be lost.

Respectfully, and with kindest regards, I am,

Very truly yours,

A handwritten signature in black ink, appearing to read "John F. McAuliffe". The signature is fluid and cursive, with a large loop at the end.

John F. McAuliffe

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

5/9/2006

Senator Arlen Specter
Chairman, United States Senate Judiciary Committee
Washington, DC

Dear Senator Specter:

I write in support of the nomination of Brett Kavanaugh to the United States Court of Appeals for the District of Columbia Circuit. This is an entirely unsolicited letter, I have not spoken with Mr. Kavanaugh for approximately four years, nor have I spoken with anyone else at the White House, U.S. Department of Justice, or U.S. Senate, in conjunction with this nomination.

I have watched this nomination with strong interest for the past two years, but have stayed silent because I was not sure whether Mr. Kavanaugh had any role in a *pro bono* case in which I am lead counsel, *Hamdan v. Rumsfeld* (currently pending at the United States Supreme Court). Because of my uncertainty as to his involvement, I felt it improper to comment on the nomination given my status as counsel for a party. In the hearing before your committee today, however, Mr. Kavanaugh stated that he had no role with respect to Guantanamo Bay policy. I am very grateful for the hearing today, for it has allowed me to write to you.

Accordingly, I feel free to say that Mr. Kavanaugh would be a welcome, terrific addition to the United States Court of Appeals. Six years ago, I invited him to speak in a two-hour class I was teaching about the Clinton impeachment. I, and the 75-person class, found him open-minded, smart, and principled. In fact, after the class, I wound up sending one of my best students, who happened to be quite liberal, to work with him for a time. I recall her telling me that he was principled in his fealty to the law to a fault, and never let ideology get in the way of judgment.

I think the *Washington Post* today, in its editorial urging Mr. Kavanaugh's confirmation, hit the nail on the head when it said that the Democrats have understandable concerns with Mr. Kavanaugh that necessitated this second hearing given his position in the Administration. But now that the hearing has taken place, it is high time to confirm him.

It is undoubtedly true that Mr. Kavanaugh has been in the center of many legal disputes over the past fifteen years. That strikes me as an unqualified good – he has an enormous breadth of experience that will serve him well. I have watched his career for many years, and it strikes me as one of almost unmatched distinction. I would strongly caution any who might read into his service for the Administration a lack of judicial independence. That is not what I have seen in Mr. Kavanaugh, and not what one should

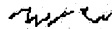
expect. As you reminded people in today's hearing, Justice Jackson handily showed his independence from the President despite his service as Attorney General.

I have only written one letter in support of a judicial confirmation before, for a nominee of either political party, and that was for then-John Roberts to serve on the D.C. Circuit. (As *Hamdan* was pending at the Supreme Court, I stayed silent with respect to the high-court nominations.) I do not believe it appropriate to write to you unless I feel strongly about a particular nominee. I feel strongly now: Brett Kavanaugh should be confirmed to the United States Court of Appeals for the D.C. Circuit.

At the same time, I also have strong concerns about the need for balance on this Court. At present, six of the nine sitting Judges on the D.C. Circuit were nominated by Republican Presidents, and only three by Democrats. Some of that imbalance is the unfortunate result of not providing up-or-down confirmation votes on President Clinton's nominees in the 1990s. I note that the Senate has done a much better job of confirming judges in recent years (including two Judges recently to the D.C. Circuit). Senators from both parties, and your stewardship of the Committee in conjunction with Senator Leahy, have done so much to move past the acrimonious 1990s. In the future, it is my fervent hope that the Administration, and the Senate, strive toward a bench in D.C. that mirrors the heartland of the American people.

I hope this helps as your committee evaluates Mr. Kavanaugh's nomination.

Sincerely,



Neal Katyal
Professor of Law
Georgetown University

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,

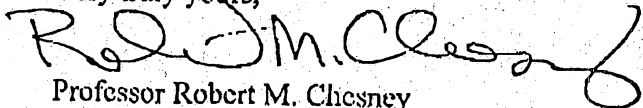
I write in support of the nomination of Brett Kavanaugh to become a judge of the United States Court of Appeals for the D.C. Circuit.

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 whole-heartedly 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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Professor of Law
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June 1, 2005

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

Dear Chairman Specter:

I'm writing to express my strong support for the confirmation of Brett Kavanaugh, who has been nominated to the U.S. Court of Appeals for the D.C. Circuit.

I had the honor of clerking at the Supreme Court the same Term that Brett clerked, and got to know Brett well, and admire him greatly. He is brilliant, careful, and thoughtful, a first-rate lawyer and legal thinker. His stellar academic record and his professional achievements reflect this clearly.

Brett also has a temperament that is perfectly suited to the federal bench. He listens well, considers all arguments seriously, and presents his views calmly and persuasively. I have disagreed with him on many occasions, but these occasions have only reinforced my admiration for him. He will both be a highly effective judge and a valuable example to the bar.

Finally, I am particularly impressed by Brett's commitment to public service, especially in a time when we could have made, and still can make, far more money in private practice than in a government job. Brett cares about his country, about people, and about the legal system more than he cares about money. (I have nothing against people who care about money, but someone who will at every oral argument be one of the lowest-paid lawyers in the room—sometimes by a factor of five or ten—had better have other priorities.)

In any event, I am positive that Brett will do an excellent job in this latest phase of his public service. I urge you to pass his name along to the floor, and to vote to confirm him.

Sincerely Yours,

A handwritten signature in cursive script that reads "Eugene Volokh".

Eugene Volokh

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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Thomas D. Yannucci, P.C.
To Call Writer Directly:
202 879-5055
tyannucci@kirkland.com

May 12, 2005

Via Facsimile and Hand Delivery

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

Re: *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

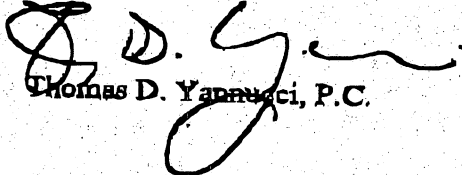
San Francisco

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. Yannuzzi, P.C.

TDY/tmzc

May 9, 2005

VIA FACSIMILE & FIRST CLASS MAIL

The Honorable Arlen Specter
Chairman, Senate Judiciary Committee
Washington, D.C. 20510

RE: Nomination of Brett Kavanaugh to the
U.S. Court of Appeals for the District of Columbia

Dear Chairman Specter:

I am pleased to write in enthusiastic support of the nomination of Brett Kavanaugh, Esq., to the D.C. Circuit. Brett's legal background at Yale, Yale Law School, two federal circuit clerkships, and a clerkship with Justice Kennedy, needs no further comment. His career at Kirkland and Ellis, at the Whitewater Special Prosecutor's Office, and at the White House, all bespeak the highest integrity and professional accomplishment. I am a Fellow of the American College of Trial Attorneys, a former prosecutor and former Deputy Federal Defender, the current President of the Bar Association of Montgomery County, Maryland, and a lifelong Democrat. I consider myself a moderate, and cannot conceive of a more highly qualified candidate than Brett.

Several personal notes about Mr. Kavanaugh. For years as a prosecutor and in private practice in Washington and Montgomery County, Maryland, I worked with Brett's mother, Martha Kavanaugh. Her first career had been as a teacher at McKinley Tech High School in Northeast Washington. Martha later became a lawyer, and then a judge in Montgomery County, but has remained devoted to the inner city of Washington. She instilled in her son, Brett, the same devotion to our hometown, Washington, D.C., and its residents, which exists in him to this day.

Despite coming to Venable recently, I have remained active on the Criminal Justice Act panel in the federal courts in Maryland and the Fourth Circuit because of my love for the work. Recently, about four years ago, I had to withdraw from representing a criminal appellant in that Circuit, and called Mr. Kavanaugh to see if he could undertake this case on a *pro bono* basis. He readily agreed, without any regard to compensation or personal gain. His later White House appointment necessitated him giving the case to other counsel, but that episode exemplifies Mr. Kavanaugh's hunger for fairness, justice, and moderation, regardless of economic status of the client.

The Honorable Arlen Specter

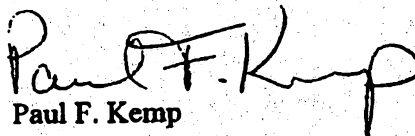
May 9, 2005

Page 2

In sum, like Justice Kennedy, Mr. Kavanaugh works at the highest intellectual level and is interested in the resolution of cases only on the merits, and in accordance with the established rule of law. Mr. Kavanaugh will be a judge of whom all Washingtonians, and all Americans, can be proud.

I would be pleased to supply any further information which your Committee might desire in support of Mr. Kavanaugh's nomination. Thank you for your review of this letter.

Very truly yours,


Paul F. Kemp

PFK:csl

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May 11, 2005

Via Facsimile (202.228.1698)

Senator Arlen Specter
Chairman, Senate Judiciary Committee
711 Hart Building
Washington, D.C. 20510

Re: 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
Carolyn H. Williams



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May 26, 2005

Scott M. McCaleb
202.719.3193
smccaleb@wrf.com

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

Re: Nomination of Brett M. Kavanaugh

Dear Mr. Chairman:

I write in enthusiastic and unqualified support of the nomination of Brett Kavanaugh to the U.S. Court of Appeals for the D.C. Circuit. Brett, whom I have known since high school, is precisely the type of person this country needs on the federal bench: he has been blessed with an extraordinary intellect; he enjoys a thoughtful and even-keeled temperament that is perfectly suited for the judiciary; and he is a man of tremendous integrity. The Senate should act in the nation's best interest and confirm Brett immediately.

Unlike many letters concerning Brett that you likely receive, I write from a unique perspective—I have known Brett since he was in his early teens and have personally witnessed his maturation. Though we began as rivals from opposing high schools, my admiration for Brett developed into a friendship that has endured high school, college, law school, clerkships, and D.C. legal careers. It is on this basis that I can speak with great (if not singular) conviction about the intellectual gifts that have been bestowed on Brett, his innately deliberate and reasoned manner, and his unimpeachable character.

Not even Brett's most ardent critics question his intellect. And, for good reason—his record (which I will not belabor) speaks for itself. Since he was a boy, Brett excelled academically. Yet, he never engendered the envy or scorn of his contemporaries because (while his superior intellect was readily apparent to all) he was never aloof, was always approachable, and he interacted with the least gifted students as easily as with the best students. Brett has brought that same ability to communicate at virtually any level to his legal career. He can address the most complex statutory or constitutional question to the satisfaction of the nation's finest jurists, while maintaining the ability to explain the same issue in its simplest terms to less learned folks. Brett's ability to dissect the most intricate legal question, find the correct answer, and explain his reasoning in a manner that is easily understandable is rare and will serve him and the nation well on the bench.

Wiley Rein & Fielding LLP


The Honorable Arlen Specter
May 26, 2005
Page 2

Brett likewise enjoys a thoughtful demeanor and deliberate logic that are well-suited to an appellate court. In the 25 years that I have known Brett, I cannot recall a single instance where he raised his voice in anger or demeaned a person who held views with which he may not have agreed. Instead, Brett is far more interested in understanding the logic underlying a particular position. This temperament, coupled with Brett's deep appreciation of the respective roles of our co-equal branches of government, will serve us all well. Just yesterday, I heard a Democratic senator on your committee say that he wants judges who will interpret the laws that Congress enacts, not make new laws by judicial fiat. There are few, if any, safer bets to fulfill that goal than Brett.

Finally, Brett has always comported himself with the highest integrity. Since our youth, he has done "the right thing," even when the majority chose a different route. This trait, too, will serve Brett well on the bench; indeed, he will not hesitate to dissent from majority opinions with which he disagrees, explaining the bases for his disagreement with great clarity. The Senate and American people can rest assured that Brett will adhere faithfully to the highest standards of the great jurists who preceded him on the D.C. Circuit.

In short, we are lucky that someone of Brett Kavanaugh's intellect, temperament, and integrity wants to serve the American people on the bench. Please act immediately to place him there; we will all be better for it.

Sincerely,



Scott M. McCaleb

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



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May 12, 2006

Kate Comerford Todd
202.719.3583
kcomerford@wrf.com

VIA FACSIMILE

The Honorable Arlen Specter
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510
Facsimile: (202) 228-1698

Dear Mr. Chairman:

I would like to respectfully submit my views regarding the nomination of Brett M. Kavanaugh to the United States Court of Appeals for the District of Columbia Circuit. I urge the Senate to confirm Mr. Kavanaugh as soon as possible.

I am confident that you have received myriad letters from Mr. Kavanaugh's colleagues and peers, as well as from a host of legal luminaries, speaking to his qualifications as a legal scholar, an advocate, and a counselor. As a young legal practitioner whose name does not carry any weight of its own, I am equally confident that my recommendation of Mr. Kavanaugh on these fronts would do very little to embellish this body of praise and support. I write to you, therefore, to focus on two other facets of Mr. Kavanaugh's legal and professional career—that of a role model and of a mentor. In the seven years I have known Mr. Kavanaugh, he has been, and continues to be, both a role model and mentor to me and to numerous other young attorneys who have had the good fortune to know him.

First, there can be no doubt that Mr. Kavanaugh is a role model in the legal profession. His resume reads like that of someone who is driven and pushes himself to excellence in any task he chooses—as he is clearly such a person—but his demeanor bespeaks a man who does not crave personal success at the expense of others' failures or shortcomings. He is unassuming, deliberative, and receptive to ideas and input from all corners. He takes criticism and welcomes advice easily, and he strives, at all times, to get to the right answer and to the truth, without presuming either. In short, he *listens* in a way that underscores that his commitment to public service is just that—a commitment to serve the public and not to serve himself or any particular agenda or ideology.

In a profession that does not always lend itself to positive role models, young attorneys often search for someone whom they can admire and look up to as a

Wiley Rein & Fielding LLP

The Honorable Arlen Specter

May 12, 2006

Page 2

vision of where they would like to be in a decade or beyond. Brett M. Kavanaugh meets this need by embodying the best of what the legal profession has to offer in a public servant who promotes the rule of law, without losing sight of the public that it serves or his place under it.

Second, Mr. Kavanaugh does not merely serve as a role model from afar; he actively takes an interest in and promotes the careers of those who compose the next generation of the legal profession. He is approachable, he is likeable, and he does not take himself too seriously—this is the perfect recipe for a man who acts as a mentor to those younger attorneys and professionals that cross his path. I have been fortunate enough to know Mr. Kavanaugh since I was a law student, and he has never, in the more than seven years that have followed, been too busy or too occupied to offer sound advice and encouraging thoughts. I am most certainly better off for having known Mr. Kavanaugh, and the country will be better off for having him in a position of the highest service for a lawyer—serving as an Article III judge on the U.S. Court of Appeals for the D.C. Circuit.

Sincerely,



Kate Comerford Todd

cc: The Honorable Patrick J. Leahy
Ranking Member, Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, D.C. 20510
Facsimile: (202) 224-9516

April 23, 2004

Adam H. Charney
direct dial 336 607 7382
direct fax 336 734 2602
ACharney@KilpatrickStockton.com

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.

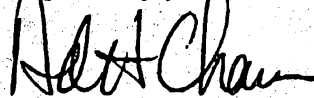
The Honorable Orrin G. Hatch
April 23, 2004
Page 2

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

HOGAN & HARTSON
L.L.P.

ROBERT H. MICHEL
SENIOR ADVISOR FOR CORPORATE
AND GOVERNMENTAL AFFAIRS
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June 2, 2005

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

Dear Pat:

This is just a short note to let you know of my personal friendship with Brett Kavanaugh, whom the President has nominated for the Circuit Court of Appeals. I have known his mother and father for better than thirty years and his mother, Martha, has served on the bench in the Maryland court system. Yes, he is basically conservative, as you know I am, but I have spent enough time in his company to know that he will be exercising good sound judgment if confirmed for the bench.

He also happens to be a good friend of our sons and we were privileged to be invited to his wedding, so we don't speak lightly of our personal relationship with him over the years. I would surely hope when the time comes for the Committee to consider his appointment formally that you would take my assessment of his character into account.

I appreciate the opportunity to express my thoughts to you in this note.

Sincerely,



RHM:sy