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Rao, Neomi

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Folder Title:

[Brett Kavanaugh]: Kavanaugh - ABA (American Bar Association)

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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Email	RE: ABA Written Statement on Kavanaugh - To: Neomi Rao, et al. - From: Brett Kavanaugh	1	05/08/2006	P5;
002	Briefing	ABA Testimony	1	N.D.	P5;
003	Report	Problems...	3	N.D.	P5; P6/b6;
004	Report	Problems...	2	N.D.	P5;

COLLECTION TITLE:
Counsel's Office, White House

SERIES:
Rao, Neomi

FOLDER TITLE:
[Brett Kavanaugh]: Kavanaugh - ABA (American Bar Association)

FRC ID:
10166

RESTRICTION CODES

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Rao, Neomi J.

From: White House Communications [WhiteHouseCommunications@WhiteHouse.Gov]
Sent: Monday, May 08, 2006 8:02 PM
To: Rao, Neomi J.
Subject: SETTING THE RECORD STRAIGHT: The ABA Finds Brett Kavanaugh Is "Indeed Qualified To Serve On The Federal Bench"
Attachments: 5.8.06 Kavanaugh.pdf

Setting The Record Straight:

The ABA Finds Brett Kavanaugh Is "Indeed Qualified To Serve On The Federal Bench"

"In 42 votes cast in the three ABA reviews, all 42 found Mr. Kavanaugh to be well qualified or qualified to serve on the DC Circuit. The ABA itself says that even the lowest of the three ratings is, in its words, 'a very high standard.'"

–White House Deputy Press Secretary Dana Perino
May 8, 2006

***The Associated Press*: "ABA Downgrades Rating For White House Aide From Well-Qualified To Qualified."**
(Laurie Kellman, "ABA Downgrades Rating For White House Aide From Well-Qualified To Qualified," *The Associated Press*, 5/8/06)

But According To ABA Review Panel Chairman Stephen Tober, Kavanaugh Is "Indeed Qualified To Serve On The Federal Bench." TOBER: "This nominee enjoys a solid reputation for integrity, intellectual capacity, and writing and analytical ability. ... A substantial majority of the Standing Committee believes that Mr. Kavanaugh is indeed qualified to serve on the federal bench." (Stephen L. Tober, Committee On The Judiciary, U.S. Senate, Testimony, 5/8/06)

Tober Himself Notes That "There Is No Bright-Line Litmus Test As To Whether A Nominee Is 'Well Qualified' Or 'Qualified.'" TOBER: "It is, at its most basic, the difference between the 'highest standard' and a 'very high standard.'" (Stephen L. Tober, Committee On The Judiciary, U.S. Senate, Testimony, 5/8/06)

According To The ABA's "Backgrounder," A "Qualified" Rating Means The Committee Believes A Nominee Will Be Able To Perform "All Duties And Responsibilities" Of A Federal Judge. TOBER: "The Backgrounder also makes clear that '(t)he rating of 'Qualified' 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.'" (Stephen L. Tober, Committee On The Judiciary, U.S. Senate, Testimony, 5/8/06)

Sen. Arlen Specter (R-PA): "[The ABA Rating Is] Just A Shading. ... He's Got A Very Strong Record."
(Laurie Kellman, "ABA Downgrades Rating For White House Aide From Well-Qualified To Qualified," *The Associated Press*, 5/8/06)

Brett M. Kavanaugh Is Superbly Qualified For The D.C. Circuit

Throughout His Career, Brett Kavanaugh Has Demonstrated Legal Excellence And The Fair-Minded Temperament To Serve As A Federal Appellate Judge. Kavanaugh has an extraordinary range of experience in the public and private sectors. He has dedicated the majority of his 16 years of practice to public service as an appellate lawyer, a government lawyer, and an Assistant to the President.

Kavanaugh Now Serves As Assistant To The President And Staff Secretary. He is responsible for coordinating virtually all documents to and from the President. He previously served as Senior Associate Counsel and Associate Counsel to the President, during which time he worked on numerous constitutional, legal, and ethical issues.

Prior To His Service In This Administration, Kavanaugh Was A Partner At The Law Firm Of Kirkland & Ellis, Where His Practice Focused On Appellate Matters. Kavanaugh also served as an Associate Counsel in the Office of Independent Counsel, where he handled a number of difficult constitutional issues presented during that investigation. Kavanaugh specialized in appellate law and has extensive experience in the Federal appellate courts, both as a law clerk and as counsel. Kavanaugh has argued both civil and criminal matters before the U.S. Supreme Court and appellate courts throughout the country.

Kavanaugh Clerked For U.S. 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, Kavanaugh earned a prestigious fellowship in the Office of the Solicitor General of the United States. The Solicitor General's office represents the United States before the Supreme Court.

The American Bar Association (ABA) Has Consistently Rated Kavanaugh "Well Qualified" Or "Qualified" To Serve On The D.C. Circuit. The ABA has rated Brett Kavanaugh qualified to serve on the D.C. Circuit on three separate occasions. In other words, 42 out of 42 ABA individual ratings found that Mr. Kavanaugh is either Well Qualified or Qualified to serve on the D.C. Circuit. And the majority of those 42 raters found Mr. Kavanaugh to be Well Qualified to serve on the D.C. Circuit.

Kavanaugh Has Impeccable Academic Credentials. He received his B.A. cum laude from Yale College and his law degree from Yale Law School, where he served as Notes Editor of the *Yale Law Journal*.

Kavanaugh Has Offered His Legal Expertise And Personal Time To Serving His Community. While in private practice, 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. Kavanaugh also represented, on a pro bono basis, six-year-old Elian Gonzalez after the Immigration and Naturalization Service decided to return him to Cuba.

Rao, Neomi J.

From: Kavanaugh, Brett M.
Sent: Tuesday, May 09, 2006 11:52 AM
To: Miers, Harriet; Kelley, William K.; Rao, Neomi J.
Subject: Ed Whelan post on National Review ...

Kavanaugh and the ABA

[Ed Whelan 05/09 11:38 AM]
In advance of this afternoon's hearing, I have a few comments on the ABA's statement yesterday on Brett Kavanaugh's nomination to the D.C. Circuit. (I have a copy of the statement but have not been able to locate an online link.) These comments supplement my earlier post, which explained (as the ABA's statement also does) the modest nature of the change in Kavanaugh's ABA rating.

1. Kavanaugh's latest rating—overall "qualified"—consists of a "substantial majority" of the ABA committee finding him "qualified" and a minority finding him "well qualified". As the ABA statement explains, the difference between "well qualified" and "qualified" is "the difference between the 'highest standard' and a 'very high standard'". Specifically, the "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."

Thus, what is most significant about the committee's recent rating is that all the members of the committee have found that Kavanaugh, at the very least, meets these "very high standards". No noise about the modest change in Kavanaugh's rating from "substantial majority well qualified, minority qualified" to "substantial majority qualified, minority well qualified" should obscure the ABA's bottom line.

2. It seems to me unfair to Kavanaugh for the committee to have made public a handful of anonymous negative statements without also disclosing some of the much larger universe of very positive statements that underlie the ABA's rating.

3. As this Washington Times article makes clear, there are serious reasons to question the objectivity and fitness of Marna Tucker, the new D.C. Circuit representative on the ABA committee who led the supplemental investigation of Kavanaugh:

> Washington divorce lawyer Marna S. Tucker, a registered Democrat, conducted the most recent interview of Mr. Kavanaugh and delivered testimony on behalf of the ABA over the telephone yesterday for the Judiciary Committee hearing today.
>
> Ms. Tucker has donated more than $10,000 to Democratic candidates and causes, according to Federal Election Commission records at www.politicalmoneyline.com, a Web site that tracks campaign contributions. She has never given to Republicans, according to the site.
>
> The Washington Post described her as a "prominent liberal" in 1991 and the following year noted her friendship with Hillary Rodham Clinton, now a Democratic senator from New York.

Ms. Tucker also is a founding member and board director of the National Women's Law Center, an organization committed to abortion rights and other liberal causes.

The fact that Ms. Tucker is a divorce lawyer is striking. I can't think of a specialty that has less relation to the work of the D.C. Circuit. It is bizarre that, with all the attorneys in D.C. who have practices that relate to the D.C. Circuit, the ABA would pick a divorce lawyer to be the D.C. Circuit representative.

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Email	RE: ABA Written Statement on Kavanaugh - To: Neomi Rao, et al. - From: Brett Kavanaugh	1	05/08/2006	P5;

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SERIES:
Rao, Neomi

FOLDER TITLE:
[Brett Kavanaugh]: Kavanaugh - ABA (American Bar Association)

FRC ID:
10166

OA Num.:
6323

NARA Num.:
6124

FOIA IDs and Segments:
2018-0009-P

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American Bar Association
Standing Committee on Federal Judiciary*

Circuit	2003-04	2004-05	2005-06
Chair (At Large)	Thomas Z. Hayward, Jr.	Thomas Z. Hayward, Jr.	Stephan L. Tober (First Circuit, 2003-04)
First	Stephan L. Tober	**Manuel San Juan**	Manuel San Juan
Second	Lorna G. Schofield	Lorna G. Schofield	Lorna G. Schofield
Third	Charisse R. Lillie	Charisse R. Lillie	**Roberta D. Liebenberg**
Fourth	E. Osborne Ayscue, Jr.	**D. Alan Rudlin**	D. Alan Rudlin
Fifth	Judy Perry Martinez	Judy Perry Martinez	**Kim J. Askew**
Sixth	Randall D. Noel	Randall D. Noel	Randall D. Noel
Seventh	Harold S. Barron	Harold S. Barron	Harold S. Barron
Eighth	Doreen D. Dodson	**Charles M. Thompson**	Charles M. Thompson
Ninth	Raymond Charles Marshall	Raymond Charles Marshall	Raymond Charles Marshall
	C. Timothy Hopkins	C. Timothy Hopkins	**Max A. Hansen**
Tenth	James B. Lee	James B. Lee	James B. Lee
Eleventh	Laveeda Morgan Battle	Laveeda Morgan Battle	**Teresa Wynn Roseborough**
D.C. Circuit	Pamela A. Bresnahan	Pamela A. Bresnahan	**Marna S. Tucker**
Federal Circuit	Sheila Slocum Hollis	Sheila Slocum Hollis	**John Payton**

* Names in bold signify new members from previous year.

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AMERICAN BAR ASSOCIATION
GOVERNMENTAL AFFAIRS OFFICE • 740 FIFTEENTH STREET, NW • WASHINGTON, DC 20005-1022 • (202) 662-1760

STATEMENT

of

STEPHEN L. TOBER

on behalf of the

STANDING COMMITTEE ON FEDERAL JUDICIARY

of the

AMERICAN BAR ASSOCIATION

concerning the

NOMINATION OF BRETT MICHAEL KAVANAUGH

TO BE JUDGE OF THE UNITED STATES COURT OF APPEALS
for the
THE DISTRICT OF COLUMBIA CIRCUIT

before the

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

May 8, 2006

I. Statement of Stephen L. Tober

Mr. Chairman and Members of the Committee:

My name is Stephen L. Tober. I am a practicing lawyer in Portsmouth, New Hampshire, and I am the Chair of the American Bar Association's Standing Committee on Federal Judiciary. I am submitting this written statement for the hearing record to present the Standing Committee's supplemental peer review evaluation of the nomination of Brett Michael Kavanaugh to serve on the United States Court of Appeals for the District of Columbia Circuit. This statement is divided into two sections. In this first section, I am pleased to summarize the Standing Committee's general investigative procedures and present an overview of the investigation of the nominee. In the second section, I will explain the process in this particular matter and the reasons for the Standing Committee's rating.

After careful investigation and consideration of his professional qualifications, a substantial majority of our Committee is of the opinion that the nominee is "Qualified" for the appointment. A minority found him to be "Well Qualified."

A. Procedures Followed By the Standing Committee

Before discussing the specifics of this case, I would like to review briefly the Committee's procedures. A more detailed description of the Committee's procedures is

contained in the Committee's booklet (commonly described as our *Backgrounder*), *Standing Committee on Federal Judiciary: What It Is and How It Works (2005).*

The ABA Standing Committee investigates and considers only the professional qualifications of a nominee -- his or her competence, integrity and judicial temperament. Ideology or political considerations are not taken into account. Our processes and procedures are carefully structured to produce a fair, thorough and objective peer evaluation of each nominee. A number of factors are investigated, including intellectual capacity, judgment, writing and analytical ability, knowledge of the law, breadth of professional experience, courtroom experience, character, integrity, freedom from bias, commitment to equal justice under the law, and general reputation in the legal community.

The investigation is ordinarily assigned to the Committee member residing in the judicial circuit in which the vacancy exists, although it may be conducted by another member or former member. In the current case, Pamela Bresnahan conducted the original formal investigation in 2003, and updated her report in 2005, as the District of Columbia Circuit representative on the Standing Committee. Marna Tucker, who succeeded Attorney Bresnahan as the District of Columbia Circuit representative on the Standing Committee in August 2005, subsequently conducted a further supplemental evaluation of the nominee.[1]

The investigator starts his or her investigation by reviewing the candidate's responses to the public portion of the Senate Judiciary Committee questionnaire. These responses provide the opportunity for the nominee to set forth his or her qualifications,

[1] Marna Tucker was joined by Federal Circuit representative John Payton for the interview of the nominee.

including professional experience, significant cases handled and major writings. The investigator makes extensive use of the questionnaire during the course of the investigation. In addition, the investigator examines the legal writings of the nominee and personally conducts extensive confidential interviews with those likely to have information regarding the integrity, professional competence and judicial temperament of the nominee, including, where pertinent, federal and state judges, practicing lawyers in both private and government service, legal services and public interest lawyers, representatives of professional legal organizations, and others who are in a position to evaluate the nominee's professional qualifications. This process provides a unique "peer-review" aspect to our investigation.

Interviews are conducted under an assurance of confidentiality. If information adverse to the nominee is uncovered, the investigator will advise the nominee of such information if he or she can do so without breaching the promise of confidentiality. During the personal interview with the nominee, the nominee is given a full opportunity to rebut the adverse information and provide any additional information bearing on it. If the nominee does not have the opportunity to rebut certain adverse information because it cannot be disclosed without breaching confidentiality, the investigator will not use that information in writing the formal report and the Standing Committee, therefore, will not consider those facts in its evaluation.

Sometimes a clear pattern emerges during the interviews, and the investigation can be briskly concluded. In other cases, conflicting evaluations over some aspect of the nominee's professional qualifications may arise. In those instances, the investigator takes whatever additional steps are necessary to reach a fair and accurate assessment of the

nominee.

Upon completion of the investigation, the investigator submits an informal report on the nominee to the Chair, who reviews it for thoroughness. Once the Chair determines that the investigation is thorough and complete, the investigator then prepares the formal investigative report, containing a description of the candidate's background, summaries of all interviews conducted (including the interview with the nominee) and an evaluation of the candidate's professional qualifications. This formal report, together with the public portion of the nominee's completed Senate Judiciary Committee questionnaire and copies of any other relevant materials, is circulated to the entire committee, composed of fourteen "circuit" members and the Chair. After carefully considering the formal report and its attachments, each member independently submits his or her vote to the Chair, rating the nominee "Well Qualified," "Qualified" or "Not Qualified." An investigator who is not a current member of the Standing Committee would not vote.

I would like to re-emphasize that an important concern of the Committee in carrying out its function is confidentiality. The Committee seeks information on a confidential basis and assures its sources that their identities and the information they provide will not be revealed outside of the Committee, unless they consent to disclosure or the information is so well known in the community that it has been repeated to the Committee members by multiple sources. It is the Committee's experience that only by assuring and maintaining such confidentiality can sources be persuaded to provide full and candid information. However, we are also alert to the potential for abuse of confidentiality. The substance of adverse information is shared with the nominee, who is given a full opportunity to explain the matter and to provide any additional information

bearing on it. If the information cannot be shared with the nominee, it is not included in the formal report and is not considered by the Committee in reaching its evaluation.

B. The Investigation of the Nominee

The Standing Committee has issued three evaluations on the nomination of Brett Kavanaugh. This is due to the fact that Mr. Kavanaugh has been nominated once (2003) and re-nominated twice (2005 and 2006). It is the established practice of the Standing Committee to conduct a further investigation on any nominee who is re-nominated, and the extent and scope of that further investigation is often influenced by the length of time that has passed from the date of the original evaluation and rating. Whenever a supplemental evaluation is performed, copies of all previous confidential formal reports on the nominee are reproduced, and presented to every member of the Standing Committee for review before they vote, alongside the new formal report. Thus, it is important that every supplemental evaluation performed goes back to the end-date of the original formal report, and brings the investigation forward from that point. That is what occurred here.

Concern has been raised that the most recent rating from the Standing Committee somehow results solely from a "change in personnel" on the Committee. In fact, such is not the case. Indeed, no less than six members who served on the Standing Committee before August, 2005,[2] and who continue to serve today, changed their votes on this nominee from "Well Qualified" to "Qualified" between the rating issued on February 16,

[2] Appointments to the Standing Committee are made by the incoming ABA President, and according to the ABA Constitution, all new appointments to this committee begin their service at the conclusion of the ABA Annual Meeting, which is generally in August of each year.

2005, and the rating issued April 3, 2006.

There are at least three general reasons to support the most recent rating given to this nominee. First, there was a wider universe of individuals contacted during the supplemental evaluation, than during the initial formal report or its update. The Standing Committee generally requires, at a minimum, 40 to 60 contacts with judges, lawyers and others in any nomination it is reviewing, although an evaluator is certainly free to do more. In 2003 there were 55 such contacts regarding Mr. Kavanaugh. In 2006, there were 91 such contacts. Nineteen more judges and seventeen more lawyers with potential knowledge about Mr. Kavanaugh were contacted, and not all of the original 55 contacts were summarily repeated. Thus, in 2006 a larger group of individuals was given the opportunity to share with the Standing Committee knowledge of the nominee's integrity, professional competence, and potential for judicial temperament.

Second, some individuals who may have had no contact with the nominee in 2003 were now individuals who had crossed paths with him. Some in public service or in the practice of law in 2003 were now no longer active, having been replaced in some measure by others. And, simply put, events and times had moved on, creating new and different developments and landscapes in which the professional qualifications of the nominee could be viewed, that were not present in 2003 or even 2005.

Third, it should be pointed out that with both earlier ratings issued by the Standing Committee, there was a "minority Qualifed" as part of the vote. The official rating by the Standing Committee has always been and remains the majority rating, yet nonetheless it is important to underscore that some members of the 2003 and 2005 Standing Committee considered this nominee to be "Qualified."

The Standing Committee takes most seriously its responsibility to conduct an independent, non-political, non-ideological examination of the professional qualifications of judicial nominees. There is no bright-line litmus test as to whether a nominee is "Well Qualified" or "Qualified." The *Backgrounder* makes clear that "(t)o merit a rating of 'Well-Qualified,' the nominee must be at the top of the legal profession in his or her legal community; have outstanding legal ability, breadth of experience and the highest reputation for integrity; and either demonstrate or exhibit the capacity for judicial temperament."

The *Backgrounder* also makes clear that "(t)he rating of 'Qualified' 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."

It is, at its most basic, the difference between the "highest standard" and a "very high standard." Our rating is not the result of tallying the comments - pro and con - about a particular nominee. Nor is it about politics or ideology or empirical data. Rather, in making our evaluation, we draw upon our previous experiences, the information and knowledge we gain about the nominee during the course of our investigation, and our independent judgment.

From the outset in 2003, even with an earlier rating of "Well Qualified" for this nominee, there were considerations arising from confidential interviews and other background information that act to explain the thread of "Qualified" running through the Standing Committee evaluations. The 2003 confidential record makes it clear that there

were then-present concerns regarding this nominee's breadth of professional experience. It was noted that he had never tried a case to verdict or judgment; that his litigation experience over the years was always in the company of senior counsel; and that he had very little experience with criminal cases. Indeed, it is the circumstance of courtroom experience that fills the transcripts that make the record before the Court of Appeals, and concerns were expressed about the nominee's insight into that very process. Nonetheless, a substantial majority saw other overriding factors that supported a rating of "Well Qualified."

The additional interviews conducted in 2006 expanded upon those earlier concerns. One judge who witnessed the nominee's oral presentation in court commented that the nominee was "less than adequate" before the court, had been "sanctimonious," and demonstrated "experience on the level of an associate." A lawyer who had observed him during a different court proceeding stated: "Mr. Kavanaugh did not handle the case well as an advocate and dissembled." Other lawyers expressed similar concerns, repeating in substance that the nominee was young and inexperienced in the practice of law.

Further, the 2006 interviews raised a new concern involving his potential for judicial temperament. Unlike the earlier 2003 final report and 2005 updated report, the recent supplemental evaluation contained comments from several interviewees with more recent experience with the nominee, which caused them to characterize the nominee as "insulated." One interviewee suggested that much of his concern about the nominee being insulated was due, understandably, to the nominee's current position as Staff Secretary to the President. However, this interviewee remained concerned about the

nominee's ability to be balanced and fair should he assume a federal judgeship. And another interviewee echoed essentially the same thoughts: "(He is) immovable and very stubborn and frustrating to deal with on some issues." Both issues—his professional experience and the question of his freedom from bias and open-mindedness—were brought up (along with others) with the nominee during his 2006 interview, and he was provided a full opportunity to address them in detail as part of our supplemental evaluation material.

This nominee enjoys a solid reputation for integrity, intellectual capacity, and writing and analytical ability. The concern has been and remains focused on the breadth of his professional experience, and the most recent supplemental evaluation has enhanced that concern. When taken in combination with the additional concern over whether this nominee is so insulated that he will be unable to judge fairly in the future, and placed alongside the consistently praiseworthy statements about the nominee in many other areas, the 2006 rating can be seen in context. A substantial majority of the Standing Committee believes that Mr. Kavanaugh is indeed qualified to serve on the federal bench.

Thank you for the rather unique opportunity to present these remarks.

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COLLECTION:
Counsel's Office, White House

SERIES:
Rao, Neomi

FOLDER TITLE:
[Brett Kavanaugh]: Kavanaugh - ABA (American Bar Association)

FRC ID:
10166

OA Num.:
6323

NARA Num.:
6124

FOIA IDs and Segments:
2018-0009-P

RESTRICTION CODES

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

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
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Judge	Rating[1]
Wald, Patricia McGowan (1979-1999)	WQ
Mikva, Abner Joseph (1979-1994)	WQ
Edwards, Harry Thomas (1980-present)	WQ[2]
Ginsburg, Ruth Bader (1980-1993)	EWQ
Bork, Robert Heron (1982-1988)	EWQ
Scalia, Antonin (1982-1986)	Q/WQ
Starr, Kenneth Winston (1983-1989)	Q/NQ[3]
Silberman, Laurence Hirsch (1985-present)	Q/NQ
Buckley, James Lane (1985-present)	Q/NQ
Williams, Stephen Fain (1986-present)	Q/NQ[4]
Ginsburg, Douglas Howard (1986-present)	Q
Sentelle, David Bryan (1987-present)	WQ/Q
Thomas, Clarence (1990-1991)	Q
Henderson, Karen LeCraft (1990-present)	WQ
Randolph, Arthur Raymond (1990-present)	Q (sm) / WQ (min)
Rogers, Judith Ann Wilson (1994-present)	WQ
Tatel, David S. (1994-present)	WQ
Garland, Merrick B. (1997-present)	WQ
Roberts, John Glover Jr. (2003-2005)	WQ
Brown, Janice Rogers (2005-present)	Q (m) / NQ (min)
Griffith, Thomas Beall (2005-present)	Q (m) / NQ (min)

[1] The ABA ratings do not appear to be available online prior to the 101st Congress. These ratings have been drawn from publicly-available sources such as news and journal articles and confirmed using OLP internal sources where available.

[2] Some sources indicate that Judge Edwards received a mixed WQ/Q rating. However, the letter from the ABA stated WQ(sm)/EWQ(min).

[3] Some sources indicate that Judge Starr received a mixed Q/NQ rating. OLP sources indicate that he received at least a substantial majority Q rating.

[4] OLP could not confirm this rating through its internal sources.

TELECONFERENCE:

PRESENTATION OF AMERICAN BAR ASSOCIATION'S

EVALUATION OF BRETT KAVANAUGH,

NOMINEE TO BE A CIRCUIT JUDGE ON THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

- - -

MONDAY, MAY 8, 2006

United States Senate,

Committee on the Judiciary,

Washington, D.C.

The Conference Call began at 2:05 p.m. in Room SD-240, Dirksen Senate Office Building.

Mr. Jensen. For Chairman Specter's office, we have Peter Jensen, Greg Nunziata, Michael Thorpe, Frank Scaturro and Danny Fisher. And if staff could go through quickly and say who's on the call.

Senator Schumer. Hello; this is Chuck Schumer. I just got on the call, Senator Schumer.

Mr. Jensen. Hello, Senator Schumer. This is Peter Jensen with Chairman Specter. We're just going through and doing a couple housekeeping items. There is a court reporter here. We are going to keep a transcript or a transcript will be made that hopefully will be available later this afternoon--

Senator Schumer. Okay.

Mr. Jensen. --for Members. The Chairman has said that written questions--

Senator Schumer. Yes, I am at an airport, and those are some F-16s. Sorry.

[Laughter.]

Senator Schumer. Syracuse Hancock; it's both a commercial airport and a military.

Mr. Jensen. Members will be allowed to submit written questions to the ABA. The Chairman will not delay the vote if those questions are not submitted. He announced at the last markup that he intends to vote on the nomination this Thursday. That's still the plan. And Mike O'Neill is joining us as well. He just walked in. Just going through a couple of housekeeping items, and Senator Schumer is on the call as well.

Mr. O'Neill. Hi, Senator Schumer.

Senator Schumer. To make it clear, there has been no agreement that there will be a vote on Thursday, and we don't know what kind of questions we'll have until after the hearing.

Mr. Jensen. Right, well, the Chairman announced that--one other thing: please state who is speaking for the benefit of the court reporter before you say anything.

Senator Schumer. Right.

Mr. Jensen. The Chairman did announce that he intends to hold the vote. I guess that's something that will be worked out later, but just so you know, individual Members can submit written questions to the ABA, but his intent is not to delay the vote until those questions are answered.

Mr. Meyer: Hey, Pete, this is John Meyer. Can I make a quick suggestion, which is that my understanding is that Senator Schumer's time is limited before he has to get on the flight, so why don't we go straight to that, and then, we can go through sort of the roll call of who's on after he leaves and before staff--

Senator Schumer. That would be very helpful. Are there any of my colleagues on the line? I don't want to--

Mr. Flug: No, as far as we know, the hearing has not been called to order as a formal hearing. This seems to be some form of informal conference call among staff.

Senator Schumer. No, no, I just wanted to make sure.

Mr. O'Neill. Although there is a transcript being made. This is Mike O'Neill being made of this.

Mr. Flug. That doesn't make it a hearing.

Mr. O'Neill. So it is on the record.

Senator Schumer. Right.

Mr. Tober. This is Steve Tober. I spoke, and I understood, that this was going to be a hearing by phone with a transcript. And I turned down the opportunity to

simply have an informal chat of an investigative nature, given the role that this Committee plays in this important process. If this is not within the parameters of what I thought this was going to be, then, this is not something that, you know, necessarily we are going to proceed with.

I was under the full impression that every Senator would be given the opportunity to be present by phone for a hearing.

Mr. O'Neill. That is correct, Steve. Every Senator was given the opportunity to be present by phone, and we are taking an official Committee transcript of the phone call.

Mr. Jensen. Which will be made a part of the record.

Senator Schumer. This is Senator Schumer. I think that is what everybody envisioned. There will be a transcript. Everybody can ask questions, and the transcript will be made available this afternoon.

Mr. Tober. Okay; well, on that basis, I am willing to proceed.

Senator Schumer. Great. No, no, no, this is not informal. I expect everything will be recorded and made public.

Mr. Tober. And if I may, Pete, with your indulgence, let me proceed, because I don't want the Senator to leave us from the airport.

Mr. Jensen. Let us go ahead and get started with Steve. I believe he has some remarks.

Senator Schumer. Then let me--go ahead.

Mr. Tober. Thank you, Senator. Steve Tober speaking.

And before I begin my remarks, I would like to request of somebody, I guess Pete or whomever, that the written statement that we previously submitted to you and to Senator Leahy's office earlier today be made part of this record and that its availability on our Website, which will be this afternoon, will be made known during the public hearing tomorrow. So that is our opening request.

And with that, let me make the following remarks.

Mr. O'Neill. That is fine. We will do that, Steve.

Mr. Tober. Thank you. The Standing Committee has issued three evaluations--

Mr. Flug. Excuse me for one minute, because I'm still concerned about the nature of this proceeding. Was this publicly announced?

Mr. O'Neill. Yes, this was publicly announced, and yes, sitting right behind me, Jim, is a court reporter transcribing everything.

Mr. Jensen. And, Jim, this is consistent with what was done for the Greg Van Tatenhove nomination in November of last year, in which we held this teleconference de facto hearing in which we kept a transcript like we're doing now

which was later made a part of the hearing record.

Mr. Paris. This is Jeremy Paris from Senator Leahy's office. I just want to interpose that that was meant to be an exception to the general rule meant to accommodate the schedules--we were getting out of session--and particularly the request of Senator McConnell, who was close to the nominee. And we, you know, we think that a return to the typical practice would be better.

I'll defer to the Senators who are on the call.

Senator Sessions. Let me join on that. The Van Tatenhove matter was something to which we accommodated the end of the session need but was not something we wish to engage in as a regular practice. The reason that I have been willing to do this today is that this is not a not qualified finding, and should it ever be a not qualified finding, we would obviously hope and expect to be called to testify before the Committee. Should I proceed?

Mr. Jensen. Yes.

Mr. Flug. I would like to know that we have some attendings who are not part of the staff. Are the White House and the Justice Department and the press on this call?

Mr. Jensen. I don't know about the press.

Mr. O'Neill. I mean, I don't know.

Mr. Jensen. It was--the call information was

circulated via the Committee's distribution list, and I believe there are Department of Justice and White House members on that.

Mr. Flug. And the press list got it, too?

Mr. Jensen. I don't believe so, but this will be a public transcript that's made available to the record, made available to the public so--

Mr. Flug. I don't think it can be a hearing if it is not publicly announced and the public allowed to attend.

Mr. O'Neill. We understand that, Jim. But the hearing is on the record, and the transcript will be made available to everyone.

Mr. Jensen. Okay; so, Steve, please proceed.

Mr. Tober. I will. Let me say again, I think, hello to Senator Sessions and Senator Schumer. You both on line?

Senator Schumer. Yes.

Senator Sessions. I am, Jeff Sessions.

Mr. Tober. Hi there, sir.

Let me go back and start over. The Standing Committee has issued three evaluations on the nomination of Brett Kavanaugh. This is due to the fact that Mr. Kavanaugh has been nominated once and renominated twice. It is the established practice of the Standing Committee to conduct a further investigation on any nominee who is renominated, and the extent and the scope of that further investigation

is often influenced by the length of time that has passed from the date of the original evaluation and rating.

Whenever a supplemental evaluation is performed, copies of all previous confidential formal reports on the nominee are reproduced and are presented to every member of the Standing Committee for review before they vote, alongside the new formal report. Thus, it is important that every supplemental evaluation performed goes back to the end date of the original formal report and brings the investigation forward from that point. And that is what has occurred here.

Concern has been raised that the most recent rating from the Standing Committee somehow results solely from a change in personnel on the Committee. In fact, that is not the case. Indeed, no less than six members who served on the Standing Committee in 2005 and who continue to serve today changed their votes on this nominee from well qualified to qualified between the rating issued on February 16, 2005, and the rating issued on April 3, 2006.

There are at least three general reasons to support the most recent rating given to this nominee. First, there is a wider universe of individuals contacted during the supplemental evaluation than during the initial formal report or its update. The Standing Committee generally requires at a minimum 40 to 60 contacts with judges,

lawyers, and others, in any nomination it is reviewing, although an evaluator is certainly free to do more.

In 2003, there were 55 such contacts regarding Mr. Kavanaugh. In 2006, there were 91 such contacts: 19 more judges and 17 more lawyers with potential knowledge about Mr. Kavanaugh were contacted, and not all of the original 55 contacts were summarily repeated. Thus, in 2006, a larger group of individuals was given the opportunity to share with the Standing Committee knowledge of the nominee's integrity, professional competence, and potential for judicial temperament.

Second, some individuals who may have had no contact with the nominee in 2003 are now individuals who had crossed paths with him. Some in public service or in the practice of law in 2003 were now no longer active, having been replaced in some measure by others, and simply put, events and times had moved on, creating new and different developments and landscapes in which the professional qualifications for the nominee could be viewed that were not present in 2003 or even 2005.

Third, it should be pointed out that with both earlier ratings issued by the Standing Committee, there was a minority qualified as part of the vote. The official rating by the Standard Committee has always been and remains the majority rating. Yet, nonetheless, it is

important to underscore that some members of the 2003 and 2005 Standing Committee considered this nominee to be qualified.

The Standing Committee takes most--

Senator Schumer. Mr. Tober?

Mr. Tober. Yes.

Senator Schumer. It's Senator Schumer.

Mr. Tober. Yes.

Senator Schumer. I have a few quick questions. You know, I have to get on my plane to come to Washington.

Mr. Tober. Go right ahead, sir. I'll be happy--

Senator Schumer. Could I do those? I mean, we all have the--I know you're reading it, and I'm glad you are. But could I just ask a few quick questions? Would that be all right with everybody, not only on behalf of myself but some of my colleagues, okay?

Mr. Tober. Go right ahead, Senator.

Senator Schumer. Great; okay.

First, this is to Mr. Tober and any of the others. I am correct in assuming you have no objection to appearing before the Committee tomorrow at 2:00.

Mr. Tober. I have no objection. We thought this would resolve the need to do so.

Senator Schumer. But all things being equal, would it not be better to proceed in the conventional fashion and

have live testimony so people could ask you questions?

Mr. Tober. Senator, if it is the will of the Senate Judiciary Committee to have me present along with Ms. Tucker and Mr. Payton and anybody else, we will certainly do whatever we can to make arrangements.

Senator Schumer. Well, that was the view of the minority, and it was scotched. And the only reason I can think of is, again, some do not want this report to be made as public and you to answer questions as fully as you do, and I just officially am renewing the request that you be allowed to appear. We don't have to have a debate on that right now, but I think that would be right.

So let me go on to my third question. How unusual is it for the ABA to downgrade its rating? Do you know how many times it has happened and how many times for a circuit court nominee?

Mr. Tober. We have reevaluated renominations on a few occasions. When you say downgraded, we changed our rating, for example, on Judge Payne; I am sure you are familiar with that circumstance.

Senator Schumer. Yes.

Mr. Tober. We did a reevaluation of Judge Ryan. That did not change. It came out again as not qualified. We are presently in the process of doing another one. Historically, I would have to defer to the staff to give

you the exact number, Senator. It is not an unusual thing. It is not something that is commonplace.

Senator Schumer. Right.

Mr. Tober. But this isn't the first time it's happened.

Senator Schumer. Got it; okay.

And the final question I had was this: on May 3, there was an article in the Washington Post where a White House spokesperson said the ABA's downgraded rating of the nomination, quote, resulted from changes in the ABA's panel's personnel, not from new findings. Your statement, your testimony states unequivocally this is not true; that at least six reviewers changed their votes based on new information.

Do you have any reason to know why the White House might have thought this was a personnel change? Could there have been a misunderstanding or something?

Mr. Tober. Senator, I wouldn't dare speak for anybody else, never mind the White House. I can only speak for what I know, and what I know is that this rating that was issued by this Committee was based on the substance of this information before this Committee based on the supplemental evaluation and the original report that was also provided.

Senator Schumer. Right; I understand that. All right; so, look, those are my--I mean, I think the report

speaks for itself, and I just want to thank all of you at the ABA and my colleagues from Senator Specter's office for arranging this. But I do believe that what makes the greatest sense is to have Mr. Tober, Ms. Tucker, and the others appear before us so that we can answer questions, and I do not see any reason on God's green earth why we couldn't do that.

Mr. Tober. Pete?

Mr. Jensen. Yes.

Mr. Tober. Let me go back to--

Mr. Jensen. Yes, why don't you go ahead and finish.

Mr. Tober. Okay.

Senator Schumer. Okay; I am going to sign off, and I thank everybody, and I'll see everyone in Washington, God willing, in a few hours.

Mr. Tober. Thank you, Senator.

Senator Schumer. Okay; great, bye.

Mr. Tober. Senator Sessions, I think I am reading for you now, sir.

The Standing Committee takes most seriously its responsibility to conduct an independent, non-political, non-ideological examination of the professional qualifications of judicial nominees. There is no bright line litmus test as to whether a nominee is well qualified or qualified. The backgrounder carefully defines both

ratings, and each Committee member applies those definitions when they independently vote. It is, at its most basic, the difference between the highest standard and a very high standard.

Our rating is not the result of tallying the comments pro and con about a particular nominee, nor is it about politics or ideology or empirical data. Rather, in making our evaluation, we draw upon our previous experiences, the information and knowledge we gain about the nominee during the course of our investigation, and our independent judgment.

From the outset in 2003; even with an earlier rating of well qualified for this nominee, there were considerations arising from confidential interviews and other background information that act to explain the thread of qualified running through the Standing Committee evaluations. The 2003 confidential record makes it clear that there were then present concerns regarding the nominee's breadth of professional experience. It was noted back then that he had never tried a case to verdict or judgment; that his litigation experience over the years was always in the company of senior counsel; and that he had very little experience in criminal cases.

Indeed, it is the circumstance of courtroom experience that builds the transcripts that make the record before the

court of appeals, and concerns were expressed about the nominee's insight into that very process. Nonetheless, a substantial majority saw other overriding factors that supported a rating of well qualified.

The additional interviews conducted in 2006 expanded upon those earlier concerns. One judge, who witnessed a nominee's oral presentation in court, commented that the nominee was, quote, less than adequate before the court and had been, quote, sanctimonious, and demonstrated, quote, experience on the level of an associate. The lawyer, who had observed him during a different court proceeding, stated, quote, Mr. Kavanaugh did not handle the case well as an advocate and dissembled. Other lawyers expressed similar concerns, repeating in substance that the nominee was young and inexperienced in the practice of law.

Further, the 2006 interviews raised a new concern involving his potential for judicial temperament. Unlike the earlier 2003 final report and 2005 updated report, the recent supplemental evaluation contained comments from several interviewees with more recent experience with the nominee, which caused them to characterize the nominee as, quote, insulated. One interviewee suggested that much of his concern about the nominee being insulated was due, understandably, to the nominee's current position as staff secretary to the President. However, this interviewee

remained concerned about the nominee's ability to be balanced and fair should he assume a Federal judgeship. And another interviewee echoed essentially the same thoughts, quote, he is immovable and very stubborn and frustrating to deal with on some issues.

Both issues, his professional experience, and the question of his openmindedness, were brought up along with others with the nominee during his 2006 interview, and he was provided a full opportunity to address them in detail as part of our supplemental evaluation material.

This nominee enjoys a solid reputation for integrity, intellectual capacity, and writing and analytical ability. The concern has been and remains focused on the breadth of his professional experience, and the most recent supplemental evaluation has enhanced that concern. Taken in combination with the additional concern over whether this nominee is so insulated that he would be unable to judge fairly in the future and placed alongside the consistently praiseworthy statements about the nominee in many other areas, the 2006 rating can be seen in context.

A substantial majority of the Standing Committee believes that Mr. Kavanaugh is indeed qualified to serve on the Federal bench. Thank you for what is increasingly a rather unique opportunity to present these remarks.

Mr. Jensen. Thanks, Steve.

I will turn it over--is Senator Sessions still with us? Senator? Okay; well, this is Pete Jensen. I will go ahead. I have a few questions that I would like to ask you, Steve.

Mr. Tober. Sure, Pete.

Mr. Jensen. First, you mentioned that I think six votes had changed or six Committee members had changed their votes from well qualified to qualified. Did anyone on the Committee change their vote from qualified to well qualified?

Mr. Tober. Did anybody on the Committee from '05 to '06 change their vote from qualified to well qualified?

Mr. Jensen. Yes.

Mr. Tober. I am not sure of that answer, Pete, I would have to go back and look. I do not have that in front of me.

Mr. Jensen. You provided a few negative quotes about Mr. Kavanaugh in your written statement. Can you provide some positive quotes? We want to make sure that the Committee does not misunderstand that everybody whom you interviewed had derogatory things to say about Mr. Kavanaugh.

Mr. Tober. Let me underscore, Pete, 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.

Mr. Jensen. Okay; and also, there has been a lot of talk about how this is--it is highly unusual to conduct a hearing in this manner. Along the highly unusual strain, I have one question, and that is to your knowledge has the Committee ever been brought in to testify for a lower court nominee that did not receive a not qualified rating?

Mr. Tober. I believe we did once.

Mr. Jensen. For whom?

Mr. Tober. I believe it was on--lower court meaning anything below the Supreme Court?

Mr. Jensen. Yes.

Mr. Tober. I believe we came in on the nomination of Judge Wilkinson in about 1984 to explain a qualified rating.

Mr. Jensen. And was that before or after the nomination had been reported out of Committee?

Mr. Tober. I don't know the answer to that, Pete. You'd have to tell me, I guess, when it was reported out

and when we came in. I honestly don't know.

Mr. Jensen. Okay; I believe it was after the nomination had been reported. Yes, that is correct.

Mr. Tober. It may have been. All I know is that we were asked to attend and to testify, to answer some questions regarding process, and in fact, we did so.

Mr. Jensen. Okay.

Ms. Bresnahan. It was a prenomination process, too. This is Pam Bresnahan.

Mr. Jensen. Yes, hi, Pam.

Ms. Bresnahan. Different process.

Mr. Jensen. I am sorry. What was the different process?

Ms. Bresnahan. I said it was prenomination for Wilkinson. You know, the ABA had gone through and vetted Judge Wilkinson prenomination.

Mr. Jensen. Right.

Ms. Bresnahan. Before this process was in place.

Mr. Jensen. I believe, and if you would not mind, Steve, checking on that, whether it was before or after it was reported out of Committee but also letting the Committee know what the circumstances were for the ABA coming in to testify.

Mr. Tober. I will. I'll ask one of the staff folks to get on that and get you an answer, Pete.

Mr. Jensen. That would be great. Thanks, Steve.

Staff, any other staff that have questions?

Mr. Paris. Yes, this is Jeremy Paris, counsel to Senator Leahy.

Mr. Tober. Hi, Jeremy.

Mr. Paris. Hi; how are you doing?

Mr. Tober. Fine, thank you.

Mr. Paris. I just want to ask a few follow-up questions. Do you have any reason to doubt the sincerity, credibility, or judgment of the most recent interviewees?

Mr. Tober. The people we spoke with?

Mr. Paris. Yes.

Mr. Tober. None.

Mr. Paris. Okay; in evaluating Mr. Kavanaugh's qualification for this nomination, I assume the Standing Committee reviewed his work for the last six years in the White House. That's almost half his legal career as associate White House Counsel and assistant and staff secretary to the President. I want to know, how did you evaluate Mr. Kavanaugh's work for six years in the White House?

Mr. Tober. Well, I will let Marna Tucker address that, too, but let me preface it by saying that one of the things we recognize by the course of Mr. Kavanaugh's experience in practice is the years he has served in rather

rarified air, including what you have just asked me about. And that is one of the concerns embodied in the expressed statement about being insulated and the concern about that.

The reason that's important; let me put this in perspective: the reason it is important to know whether someone has been insulated in that sense of the word is that when you have--our backgrounder requires that a nominee to the court have a minimum of 12 years of practical experience in the practice of law. When they do not have that, or if they are on the cusp of it, we then look to see what life experience they are having, so that they can bring life experience to the bench, and they need to be of a quality of life experience that will serve the American people well.

That is one of the areas that we looked at. That was one of the concerns that was expressed by some of the interviewees, that this was an insulating place to be and may not truly reflect upon a more broadened sense of life experience that one is supposed to have of a person sitting on the Federal bench.

Having said that, let me ask Marna Tucker to add any additional comments she has in response to your question.

Ms. Tucker. I would like to describe the process I followed in dealing with Mr. Kavanaugh's time in his various positions in the White House. He was, as I recall,

first a deputy White House counsel; then a senior White House counsel; then, finally, staff secretary. I spoke to many people, several of his superiors, others of his colleagues who worked in the same offices, people in the Cabinet, and asked them the questions about his legal competence, his integrity, and his potential for judicial temperament.

And they gave their different views on all of these. I particularly focused on whether or not he was doing legal work at the time and if they were able to comment on his legal work or quasi-legal work. That is what I did.

Mr. Tober. Is that fully responsive?

Mr. Paris. Yes; thank you. The new interviews that were conducted, one of them was from a judge, another one was from a lawyer who had seen Mr. Kavanaugh in court. My question is, am I correct that the new concerns raised come from a number of different interviewees based on independent and separate observations? In other words, can you address one court appearance? Were there several court appearances? Can you provide a little bit more detail?

Mr. Tober. Well, I want to be sure that what you have in front of you is fully understood, and then, I will ask Marna to weigh in again. I believe what we said was that we had comments from one judge, and then, we had a comment from a lawyer who saw the nominee in a different context,

in a different case, and then, we said there were other comments from other lawyers that had expressed similar sentiment about his youth and relative inexperience. Having said that, that's what we tried to write in our written statement so that that's not taken out of context.

Marna, do you have more that you wish to add to that?

Ms. Tucker. Well, I will simply add that the people I contacted were people whose names I received from the PDQ that the Senate had, that it listed lawyers on both sides of all of his major cases, people that Mr. Kavanaugh himself sent me the names of, and additional judges who had sat on cases that Mr. Kavanaugh was counsel in. So it is important to note, I contacted people who had relatively hands-on experience with this.

And in terms of the criticism, my job was if there was a criticism, it was to follow it through and to find out whether the criticism was warranted and also to give Mr. Kavanaugh a chance to respond to that criticism, which I did.

Mr. Paris. Thank you. Walking back just for a moment to make sure I fully understood I think it was Ms. Tucker's answer to the previous question about evaluating the six years in the White House. I believe you testified that you evaluated his legal and quasi-legal work. Can you describe what kind of legal work he did in the White House?

Ms. Tucker. His legal work was done primarily when he was in the Office of White House Counsel, both as a deputy counsel and as the senior counsel. In terms of exactly the legal work that he did, much of it--I mean, I don't know what he did. Much of it is privileged; in fact, almost all of it is privileged.

But in terms of--I was interested in primarily asking people how well he did his job, how thoroughly he did his job, how fairly he did his job. And as to the specific issues, we did ask him about a few areas. We asked Mr. Kavanaugh about a few areas of concern we had of specifics. But on the legal work, I can't tell you exactly what legal issues he did when he was in White House Counsel's office.

Mr. Paris. Thank you. I have no further questions, but I believe some of my colleagues do.

Mr. Meyer. This is Jonathan Meyer for Senator Biden. I just have a couple of quick questions.

The first is, with regard to the issue of--you said that no less than six members who served on the Committee and continue to serve today changed their votes. How many membership slots have switched over on the Committee from the first review until now? In other words, how many have been departed and replaced by someone else?

Mr. Tober. In August of '05; we change our constituency, if you will, on this Committee at the end of

every annual meeting from the ABA, and it runs for three years for most folks; one year, essentially, for the chair. I believe that there were seven appointments made in August of '05, so there were eight folks who carried over from the 2005 Committee.

Mr. Meyer. Eight carried over, and six changed from--

Mr. Tober. Seven were added, and six changed from the carryover.

Mr. Meyer. Okay; so six of eight changed their votes is what the bottom line is on that; is that right?

Mr. Tober. That is correct.

Mr. Meyer. Thank you.

I also had a question about a different section of your statement. If people are looking at your written statement, it's on page 8. You had a quote from a lawyer who said, quote, Mr. Kavanaugh did not handle the case well as an advocate and dissembled. I would like to learn anything more I can about what that referred to. I realize you can only go so far, but what was meant by he dissembled?

Mr. Tober. Well, I will turn that over to Ms. Tucker in a minute, but as you know, Jon, we cannot give information out that would tend to attribute to anybody who the comments are coming from.

Mr. Meyer. No, I understand, and I am asking for any

identification. I'm just trying to get some clarification on what is meant by that statement.

Mr. Tober. Marna?

Ms. Tucker. I can only give you the quote of what that person said who was involved in that case, but I can't tell you any more about what the case was or who said it.

Mr. Meyer. No, but did you ask him what he meant by that?

Ms. Tucker. I understood what he meant by that.

What he meant by that was--let me see. The quote was he did not handle the case well as an advocate; he was not forceful, and when he dissembled, he did not argue his case clearly. When questioned, he did not respond appropriately. That is my interpretation.

Mr. Meyer. Okay; thank you. Okay; I think that was all I had. Thank you very much.

Mr. Flug. This is Jim Flug, Senator Kennedy's

Mr. Artim. And this is Bruce Artim from Senator Hatch. After you, can I get a crack at a question after you?

Mr. Flug. You can go first so that we have--

Mr. Jensen. Let's go to Bruce so that we're--

Mr. Flug. Yes, sure.

Mr. Jensen. --back and forth.

Bruce, if you want to--

Mr. Artim. Ms. Tucker, when you were describing the process with the names submitted, it sounded as though from the White House Staff Secretary that Mr. Kavanaugh, he submitted a list of names. Is that the only universe of people you called upon, or do you have your own independent source of soliciting opinion?

Ms. Tucker. Of people just in the White House, or do you mean my universe of contacts?

Mr. Artim. The way you described it was as if Mr. Kavanaugh submitted a list of names. And did you call only the people on that list?

Ms. Tucker. Oh, no. My process was, as I said before, I read the PDQ, which listed the names of counsel on cases and people who were involved with Mr. Kavanaugh in his various areas of employment. I contacted those people. I contacted an independent list, not all of the people but most of the people that Mr. Kavanaugh had given me as a separate list, plus I went through all of the cases and contacted judges who heard his arguments.

Mr. Artim. But on the White House and the--particularly in this last role as staff secretary, can you give us--I know you can't identify names, but can you give us sort of a flavor and perhaps quantify, you said, you mentioned Cabinet secretaries? I mean, are we also talking sub-Cabinet officials? Can you give me--was it a

smattering of people? How many people are we talking about from the staff secretary roles? I also presume you might have extensive contacts with other White House components and OMB and other entities. How did you relate to those other White House offices?

Ms. Tucker. I contacted everyone whom I could contact who had a connection with Mr. Kavanaugh in his role as staff secretary. Now, of course, as staff secretary, although that role deals with reviewing the paper that goes to the President directly, what the role also involves is he has to contact various people in the Cabinet or sub-Cabinet positions in order to make sure that he presents the issues properly to the President. So I would talk to people he would have to deal with in his role as staff secretary.

Mr. Artim. I'm just trying to get a feel. There's a lot of Cabinet Departments the White House could--I mean, was it 10 people? Twenty? About how many people are we talking about?

Ms. Tucker. I contacted several people. I don't know the exact number.

Mr. Artim. And were there people on the list of names that he submitted that you didn't contact?

Ms. Tucker. Yes.

Mr. Artim. And, I mean, you may not be able to answer

this, and if you can't, don't, but is there a way that you--could you roughly say, of the people's names he submitted, did you contact half of them? Not all of them, but a quarter, roughly how many people did you contact?

Ms. Tucker. Well, the people that I didn't contact, most of them had been contacted by my predecessor, Pamela Bresnahan, and I didn't see any necessity to repeat that at the time. But there were people that I not seen who--that she had not contacted that I tried to contact. It was the vast majority of people on his list.

Mr. Artim. So it was on his list. Between the two of you, you say the vast majority were contacted?

Ms. Tucker. Yes.

Mr. Artim. And the list also dealt with also other White House components?

Ms. Tucker. I don't know what you mean by that.

Mr. Artim. OMB, USTR, Council of Economic Advisors, all the various entities that make up the White House, which I presume in that role, he's also refereeing not just among the Departments and agencies; he's also probably refereeing among White House components.

Ms. Tucker. Well, all I know is who I spoke to, and these were people who had had contacts with him in his job as staff secretary. I don't want to violate the confidence of people that I spoke to.

Mr. Artim. But can you at least tell us, were there people from other White House components? Are you saying, are they just Cabinet officials or sub-Cabinet officials?

Ms. Tucker. They're from all different branches. They're from different branches. Some are Cabinet, sub-Cabinet, White House Office, superiors to him, people who were colleagues of his.

Senator Sessions. This is Senator Jeff Sessions. I had to slip out for a moment to preside in the Senate, and I have been relieved. Could I ask a few quick questions?

Mr. Jensen. Yes, please, Senator.

Senator Sessions. Stephen Tober, are you there still?

Mr. Tober. I'm here, Senator.

Senator Sessions. Yes; well qualified; what percentage of the people that are nominated get well qualified?

Mr. Tober. Senator, I don't know what percentage that would be, and I don't know how far back we would look to give you an answer. I do know a significant number of people receive well qualified. We have a significant number of people who get qualified, and of course, we have the mix. We have people who receive a split vote, even though the majority rating is the official rating.

Senator Sessions. When Kavanaugh was first given a well qualified rating, and a number of voters gave him

qualified, he was relatively young. Were there other factors in his background? What other factors in his background played positively and negatively in that evaluation.

Mr. Tober. In the '03 and '05 evaluations?

Senator Sessions. Yes, in the original.

Mr. Tober. The positive factors haven't changed a whole lot. 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, but I think you were probably doing better things: he has those skills that will serve him well, certainly, on a Federal court.

What was of concern back in '03 and '05 and became, if you will, a more enhanced concern in '06 was the fact that his experience in the traditional notions of practice have been very thin; in fact, in some areas, extremely thin.

He has never tried a case to verdict or judgment. Every experience he had in the traditional setting of a courtroom in the traditional sense of the word was with senior counsel present. He has minimal or at least nominal criminal experience. And the concern was that to put him on summarily to a Federal bench where at that level of appellate review, he is going to be reading transcripts of records from a trial setting that he is not completely

familiar with is of some concern.

Senator Sessions. I guess what I would like to pursue there is the American Bar Association likes that kind of experience. You don't always get the complete package, but you like the kind of experience that shows corporate practice or at least law firm practice, government service, criminal as well as civil, and trial practice. Those are the things you like to see in a perfect nominee, right?

Mr. Tober. Well, we write about it in our backgrounder. We talk about the fact, Senator, that we like to see someone having at least 12 years of traditional experience, and this nominee back then, and even today to a degree, was just about bare on the cusp.

We don't stop there. We go on and say--but to answer your question, you know, we are not so bound by simple traditional notions that we are not willing to look at other experience.

Senator Sessions. I would note that despite some of those lacks, the Committee gave him a well qualified rating, because apparently, they found his writing skills, his brilliant background, the fact that he had clerked for two circuit judges and I guess a Supreme Court Judge, all of those were factors that moved him in some way higher than you would normally expect a person to be.

Mr. Tober. He did indeed receive a substantial

majority vote of well qualified. Yes, he did.

Senator Sessions. Well, now, it sort of seems like what's changed is that he is serving at the call of the President in a position that the President needs him in, in a critical personal position to the President, and having served in that position now for how long has it been in the White House there, it has further removed him from the things you normally look for, which is courtroom and law firm and litigation experience.

Mr. Tober. Well--

Senator Sessions. Is that what's happening here basically?

Mr. Tober. No, sir, that's not a fair statement.

Senator Sessions. I don't mean to be arguing in the sense of being that that's negative, but it seems to me that's kind of what happened, that he's been away from the practice, and you said in your statement that he was insulated, so he's been away and away from the aggressive full-time practice of law. That is undeniable.

Mr. Tober. Well, I agree with all of that. I guess that what I'm trying to say is that running throughout his rating, even when it was well qualified, there has always been a constancy of concern about his lack of experience, which resulted in a minority of qualified. What's happened, in my opinion, having read all this and

synthesized it into the report you're referring to, is that by expanding the universe of contact, including judges, for example, whom we had not previously talked to about the nominee and any other lawyers as well that the professional experience concern was heightened a bit, and the additional concern about get insulation, the question of openmindedness and judicial temperament in our standards was raised essentially for the first time.

And the combination of those two, Senator, in my opinion, is what brought about the substantial majority qualified/minority well qualified vote. He is qualified to serve on the Federal bench.

Senator Sessions. Yes, well, I appreciate that, and I would share that. I am not sure--one thing I would say in defense of your rating as a relatively young lawyer, he was fortunate to get a well qualified to begin with. I mean, you know you have to be pretty good to get that level, and I think the fact that it has edged away is of concern to me in the sense that I am not sure what exactly would have occurred to justify that. But I know that you indicate a couple of things there that--anyway, I don't have that before me; I was going to read something in the report.

So he is at the point where he remains rated qualified. He is qualified. Some still rate him well qualified, and you attribute the change to his--talking to

different people more than the fact of a change in his duties or both?

Mr. Tober. I take it as attributed to the expanded universe of people with whom we spoke who have had contact with the nominee, updating that contact to the present; that is correct.

Senator Sessions. And could they have factored in his away from active practice in their evaluation of his qualifications.

Mr. Tober. I certainly think that's fair, but I don't want to characterize it as an overriding concern. It's been there.

Senator Sessions. Right.

Mr. Tober. It's been there all along. It seemed to get some additional, if you will, traction when we did this review, the supplemental evaluation, and then, got it combined with a new issue that hadn't previously been in the earlier report about his insular position.

Senator Sessions. Okay; I've got to run back. Thank you so much. We appreciate the work that you do, and I believe the nominee is a superb person who has a remarkable record of achievement, and we thank you for continuing to provide your information to us.

Mr. Tober. Thank you, Senator.

Senator Sessions. Thank you.

Mr. Flug. Mr. Tober, I'll continue where I left off.

Senator Hatch. Jim, let me step in. This is Senator Hatch; just for a second.

Mr. Flug. Oh, hi, Senator.

Senator Hatch. So I just wanted to mention that am I correct in looking at the record that he's had some 24 people evaluate him, and not one has found him not qualified?

Mr. Tober. I don't know the number to be 24. I take your word on that. But it is true: there is not a single not qualified vote in the picture.

Senator Hatch. Out of all of those who have looked at his record.

Mr. Tober. That is correct, Senator.

Senator Hatch. Well, we appreciate all you do, and I just wanted to mention that to you. But thanks for all you do.

Mr. Tober. Thank you, sir.

Mr. Flug. Are you through, Senator?

Senator Hatch. Yes, I'm through.

Mr. Flug. Okay; Mr. Tober, both you and Ms. Tucker used the word in your oral and written statements concerns of the Committee. You, on page 7 onto 8, talk about then present concerns regarding this nominee's breadth of professional experience. And then, Ms. Tucker talked in

the context of his White House service about asking him about specific areas of concern. Are those two congruent with one another? Are you two talking about the same thing, or is Ms. Tucker, in her White House inquiries, talking about other areas of concern than the areas of concerned mentioned in your presentation?

Mr. Tober. Is this Mr. Flug? Is that who's asking me the question?

Mr. Flug. Oh, okay; thank you, sir.

Mr. Tober. I hope we're congruent, because what I tried to do was read everything that I have in these confidential reports and create a synthesis of that information. But I'll certainly let Ms. Tucker speak to that.

Ms. Tucker. Well, I think we certainly are congruent, but there are two different areas that I addressed my comments to. One is his legal work prior to being in the White House as well as his work in the White House. So--and Mr. Tober shared that information with me as well.

Mr. Flug. And when you say you asked him about specific areas of concern, did you have specific areas of concern with his work at the White House as well as with his work prior to the White House?

Ms. Tucker. Yes.

Mr. Flug. I'm sorry?

Ms. Tucker. Yes.

Mr. Flug. And what were the areas of concern that you had with his work at the White House?

Ms. Tucker. One of the areas of concern that we had with his work at the White House is first of all, I ought to say we asked him about several areas of concern that we had, and on the whole, he had very little information and was not involved in things like torture memos and issues like that. We asked him about a panoply of questions like that.

We also asked him, and the main area of concern we had was the issue of since he had been in charge of judicial nominations while he was in the White House Counsel's office, during that time, although he did not know about it until much, much later, during that time, there were documents taken from Senate computers by one Manuel Miranda, and we questioned him whether he had information from Mr. Miranda, since the Senate investigation only dealt with the matters that had occurred in the Senate. It did not go to any people in the White House.

We asked him whether the White House had an investigation, and we asked him whether--his views on this and whether he had been involved in any way with what I will call the purloined document. He was not--he had no knowledge of the fact that documents or information he was

getting from Mr. Miranda was taken improperly. He did not know about that until way after the fact.

And our concern was that we asked him whether he felt, has he checked into whether or not the process for which he was responsible, namely, presenting to the President issues concerning judges, whether that process had been compromised. And he did not express any concern that the process had been compromised or that there was the need for a White House investigation. He said he was already finished with that job. The appointees had already been confirmed, and there was no need for an investigation from his point of view.

We were concerned about his lack of interest in that particular matter, considering we felt that the process for which he was responsible had been tainted and needed some further examination.

Mr. Jensen. Could I ask a follow-up question? When you say we--

Mr. Flug. Can I finish my questions?

Mr. Jensen. This is just a clarification. When you say we, who are you referring to, Ms. Tucker? You said that we were concerned that he did not express enough concern over the investigation.

Ms. Tucker. This occurred at our interview with Mr. Kavanaugh and John Payton, who is here with me today and

can answer this as well, we conducted the interview. And Mr. Payton and I were both concerned about that.

Mr. Flug. And did you express those concerns to him?

Ms. Tucker. Yes.

Mr. Flug. And how did he respond?

Ms. Tucker. I'll let Mr. Payton respond to that.

Mr. Payton. Hi, this is John Payton. Just as Ms. Tucker just described, he was surprised to even reflect back on the issues, since he thought that he had left that behind, and he really did not appreciate any need to worry about what had happened in the office that he had left behind.

Mr. Flug. So he had no inclination to answer the question of whether, after the fact, he realized that materials which may have been disseminated to him or information which may have been disseminated to him were, to use Ms. Tucker's word, tainted.

Mr. Payton. Well, he didn't deny that. He didn't deny that something that shouldn't have happened had happened.

Mr. Flug. I'm sorry, but he was not concerned that the process that he was in charge of may have been tainted by that information, and he showed no inclination to inquire further into that?

Mr. Payton. He thought he had no continuing

responsibility to look into that or to see what had happened or didn't happen.

Mr. Flug. And were you aware that Members of the Committee had asked him similar questions two years closer to the fact and that he had not replied at that time, too?

Ms. Tucker. We had read the Senate hearings and those questions, the written questions as well as the hearing.

Mr. Flug. Thank you.

Mr. Jensen. Any Republicans that have any questions?

Mr. Pai. This is Ajit Pai with Senator Brownback. I just had one question.

How many nominees have received three evaluations before? Do you know?

Mr. Tober. How many nominees have received three evaluations before? You know, I don't know the answer to that. I'd be happy to ask staff to take a look at it. Please keep in mind that prior to 2001, it was a prenomination screening process, so that the likelihood of that probably was dampened by the fact that things would not have gone up three times, and it all depends on the factor of how many times people have been renominated. But I will certainly find out and try to let you know.

Mr. Flug. I do need to ask one other follow up. Ms. Tucker mentioned that one of the areas concerned was torture. At the time that you last interviewed him, had

the issue of NSA wiretapping become public, and did you cover that as well?

Ms. Tucker. Yes, we did ask him about that, and he said that he had no involvement with that issue in the White House.

Mr. Flug. And do you keep a transcript of your interviews?

Ms. Tucker. No.

Mr. Tober. Wait, wait. Mr. Flug?

Mr. Flug. Yes.

Mr. Tober. The answer is we don't keep transcripts, and we don't produce them anyway, but we don't have them.

Mr. Flug. Okay.

Mr. Tober. Pete, Mr. Flug, are you done, I don't mean to--

Mr. Flug. No; I mean, I assume that it is appropriate, if you do appear tomorrow, and Senators have additional questions along these lines, these issues, obviously from the previous questions and from the follow-up questions that were propounded more recently are very important to the Members of the Committee, and the prior answers I think were generally thought to be not fully responsive. So if there is a desire to go more deeply into this, his answers to you, and you may have asked better questions than the Committee did will be relevant to the

Committee.

Mr. Tober. No, I understand that, sir.

Pete, can I go back and just add one thing to--

Mr. Jensen. Sure.

Mr. Tober. --I believe the gentleman from Senator Brownback's office asked me about the three reviews?

Just so it's clear here, and I think it is, Mr. Kavanaugh was nominated for the first time in 2003. He was renominated in 2005, and he was renominated in 2006. Am I correct on that, Pete?

Mr. Jensen. Yes.

Mr. Tober. And our practice, which started actually just a little while ago during Tom Hayward's term was that when there is a renomination, we are going to bring forward from the last date of the original final report a supplemental evaluation of what that nomination is all about. So we've done that here, and I will find out if that's happened before and, if so, how many times.

Mr. Jensen. All right; Ajit, do you have anything further?

Mr. Pai. No, I guess would that inquiry include, before you adopted that practice, more than one prenomination evaluation? Were there any cases in which a nominee was evaluated more than once prenomination?

Mr. Tober. The good news is I don't know the answer

to that. We can go and try to find out, but I suspect, given the very different coloration of the way things worked prenomination, I don't think you're going to find much information from that. So it's going to be a question of going forward from that date, I think, from 2001, with maybe a couple of rare exceptions. There may have been some Supreme Court things that we can take a look at for you, but we'll get whatever data there is.

Mr. Pai. Okay; thanks.

Mr. Jensen. Any other questions?

Okay; Steve, just before we conclude, just a couple of last follow ups. Would you restate the total number of people that were interviewed over the course of the three evaluations?

Mr. Tober. Yes; it's in my statement, Pete. Let me turn to it. What I said was--I think it should be on page 6, I believe, of what I've submitted to you, where I indicate that generally, we require a minimum 40 to 60 contacts, and in 2003, there were 55 such contacts, and in 2006, there were 91 such contacts.

Mr. Jensen. Okay; and of those--does that include 2005?

Mr. Tober. 2005, there were no third party interviews. The 2005 update, and Ms. Bresnahan is on the line; she can clarify it, if you wish, did not include any

additional interviews other than a follow-up interview with the nominee himself.

Mr. Jensen. Why were none done in 2005 and an additional--what is it--36 done in 2006?

Mr. Tober. I'll turn it over to Ms. Bresnahan to answer that.

Ms. Bresnahan. My memory is, Pete, that what happened was in 2003, we did 55, I did 55 some-odd interviews, and then, within the year, he was renominated, and then, the Committee or Tom Hayward, and I believe we had a Committee meeting, and the decision was made for those people renominated within the year, we were not going to do additional interviews.

Then, as time passed, and it went to the new Committee, it's my understanding that then, since more time had passed, they had decided to contact additional people. All I did for my renomination was we didn't have an updated personal data questionnaire, so I called the nominee, spoke to him, asked what had changed, what was going to be changed on the new Senate questionnaire, and we did an additional Lexis search and asked if there had been any additional writing samples, which we knew, since he had been a staff secretary, there really wouldn't have been.

Mr. Jensen. And of those 91, can you tell us how many recommended him for the D.C. Circuit?

Mr. Tober. I can't, Pete. We don't count numbers. We don't do empirical data. I mean, there were a significant number of folks who thought and do think that Mr. Kavanaugh is an extremely competent and able individual to go on the bench. There are some people, again, not an insignificant number, who had some concerns about his lack of experience, and there were a number of people who felt that he was insulated and were concerned about what the picture of his life's experience would be that he might bring as an alternative to public service.

And that is the blend of what the report is, and as I'm sure you know, Pete, what happens is the underlying '03 report, as it is, and the '06 report, as it is, are presented to 14 people on this Committee, who independently, in their own offices, without connecting with each other, read everything and reach a conclusion of their own, independently, applying either well qualified, qualified, or not qualified standards that are clearly defined in our backgrounder. And you have, in this case, from having read all of that material, a substantial majority qualified and a minority well qualified.

Ms. Bresnahan. Also, just to be clear--this is Pam Bresnahan speaking--some of the people Ms. Tucker talked to, I also talked to. So it isn't 91 plus 55.

Mr. Jensen. Okay; those are--

Mr. Bresnahan. I think that's what you were asking, Pete.

Mr. Jensen. So there's a total of 91 interviews; we don't know how many interviewees; is that--

Ms. Bresnahan. Oh, no, there's at least 91 plus some number, because the 55 has some overlap, because Ms. Tucker talked to some of the same people, it's my understanding. I mean, she can speak for herself. She's on the phone, but it wasn't 100 percent different each time.

Mr. Payton. But it is 91 contacts, 91 people.

Ms. Bresnahan. Plus some number of the 55 I talked to that she did not talk to.

Mr. Payton. There was some overlap, Pete.

Mr. Tober. There was some overlap.

Mr. Payton. I misunderstood your question. There clearly was some overlap.

Ms. Bresnahan. That's what he asked.

Mr. Payton. I'm sorry; I misunderstood. But there were judges who had not been talked to before who were talked to this time, and the universe was expanded, for the reasons that we already explained.

Mr. Jensen. And I don't know if this is a question for Mr. Payton or for you, Steve, but for the first two evaluations, it was just Ms. Bresnahan that was assigned to conduct the investigation. Why was Mr. Payton brought in

for the third evaluation?

Mr. Tober. Well, our backgrounder addresses that too, Pete. There are times when in the discretion of the chair, if it is appropriate to have a second interviewer brought in, you'll do so, and frankly, it was because of the fact that this was a nominee that Ms. Tucker was spending a considerable amount of time on.

This is a volunteer organization. These people, you may recall, were just coming off of having done a significant amount of work on Justice Roberts, Harriet Miers, Justice Alito. I tried to make sure that nobody was overloaded or felt pressured, and we do all of that, Pete, as you also know, within 30 days and then try to get to a vote in five.

So we were moving along as smartly as we could given the caseload we had. That was my suggestion, and I was happy with it.

Mr. Jensen. So Mr. Payton was brought in to assist Ms. Tucker.

Mr. Payton. That is correct, that is right.

Mr. Jensen. In the evaluation.

Mr. Payton. That is right.

Ms. Tucker. At the White House interview, at that level.

Mr. Jensen. So Mr. Tucker was not involved with all

of the interviews, just--

Mr. Payton. Mr. Payton.

Mr. Jensen. Mr. Payton; excuse me.

Mr. Tober. Mr. Payton was not involved, except at the interview.

Mr. Jensen. Except at the--

Mr. Payton. Interview.

Mr. Jensen. The interview with Mr. Kavanaugh.

Mr. Payton. That is correct.

Mr. Jensen. Okay.

Mr. Tober. And some of the process that occurs thereafter.

Mr. Payton. Yes, right.

Mr. Jensen. And I know ahead of time you're not going to answer this question, Steve, but I'm going to ask it anyway.

Mr. Tober. Go right ahead, Pete.

[Laughter.]

Mr. Jensen. I understand that the investigators issue a recommended rating to the Committee. Will you tell us the recommended ratings for any of the three evaluations that were conducted?

Mr. Tober. You read it right to begin with, Pete. I cannot answer that question. And since this is a public transcript, I hate to leave it just at that. Let me point

out that the reason that this process works for the American people, for the Senate, for the American Bar Association, is that we maintain confidences, not just for the people that we talk to but for the individuals who are asked to carry this heavy load of putting this work together.

If we began to peel that back, this process, which has been taking place since 1948, would not be working as well as it is, and it probably wouldn't be very useful to anybody. And so, I hope and trust that you understand that. It is with reluctance that I don't answer your question, but there is a great sense of history weighing down on me for that very reason.

Mr. Jensen. Okay; sure. And then, the last question, and then, we'll let you go with appreciation for being on this call, and that is would you just go over one last time, I know it's in your statement, but I'd like to get it back on the record, exactly how you define both well qualified and qualified.

Mr. Tober. I'd be happy to. It is in the statement. Let me turn, if I can, to the backgrounder that, as you know, is a public document we put out to everybody involved in this process, and let me just read it. And it says, quote, to merit a rating of well qualified, the nominee must be at the top of the legal profession in his or her

legal community, of outstanding legal ability, breadth of experience and the highest reputation for integrity, and either demonstrate or exhibit the capacity for judicial temperament.

The rating of qualified means that the nominee meets the Committees' 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.

In anticipation of your next question, yes, Mr. Kavanaugh is qualified with a minority well qualified.

Mr. Paris. Pete, Steve, can I just jump in for a second? This is Jeremy Paris.

Mr. Tober. Sure, Jeremy.

Mr. Paris. I hate to maybe beat a dead horse, but according to the written testimony, in 2003, there were 55 contacts. And then, there were 19 more judges and 17 more lawyers, which is 36 added to the original 55 makes 91. So am I correct that it is actually 91 contacts with judges, lawyers, and others, with information?

Mr. Tober. Yes, and if you go on from there, just to make sure I'm clear about this, Jeremy, in the next sentence in that paragraph--

Mr. Paris. Yes.

Mr. Tober. --I indicated that not all the original 55 contacts were summarily repeated.

Mr. Paris. Right, right.

Mr. Tober. Thus, there was a larger group given an opportunity in 2006 to pass comment.

Mr. Paris. Thank you. I just wanted to clarify.

Mr. Tober. Yes.

Mr. Jensen. So is it correct to say that of the 42 votes that have been cast by this Committee on Mr. Kavanaugh's nomination, every one of those votes agreed that he met the very high standards of either well qualified or qualified to be a circuit judge on the D.C. Circuit, and not one of those 42 votes believed that he was not qualified?

Mr. Tober. Well, I don't know about the math, but I do know about the categories, and I can tell you that I have not seen a vote of not qualified in this matter.

Mr. Jensen. Okay; Steve, thank you very much to all of the ABA representatives on the phone. On behalf of the Chairman, we appreciate all of the many hours that you spend doing this, and it is a tremendous service to the Committee, and thank you very much for being on today.

Mr. Tober. Thank you, Pete, and thank you, everybody else.

[Whereupon, at 3:14 p.m., the hearing was concluded.]