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Counsel's Office, White House

Rao, Neomi

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Folder Title:

[Brett Kavanaugh] [1]

Withdrawn/Redacted Material

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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Report	Candidate Report: Brett M. Kavanaugh	19	07/14/2003	P5; P6/b6;
002	Information Sheet	Confidential	2	04/15/2004	P6/b6;

COLLECTION TITLE:
Counsel's Office, White House

SERIES:
Rao, Neomi

FOLDER TITLE:
[Brett Kavanaugh] [1]

FRC ID:
10166

RESTRICTION CODES

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

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

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

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

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

Records Not Subject to FOIA

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

Withdrawal Marker

The George W. Bush Library

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For a complete list of items withdrawn from this folder, see the
Withdrawal/Redaction Sheet at the front of the folder.**

COLLECTION:

Counsel's Office, White House

SERIES:

Rao, Neomi

FOLDER TITLE:

[Brett Kavanaugh] [1]

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)]

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I. BIOGRAPHICAL INFORMATION (PUBLIC)**1. Full name (include any former names used.)**

Brett Michael Kavanaugh.

2. Address: List current place of residence and office addresses.

Residence: 3633 M Street, #3A, N.W., Washington, DC 20007.

Office: Staff Secretary's Office, White House West Wing, Washington, DC 20502.

3. Date and place of birth.

February 12, 1965. Washington, DC.

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Single. I have never been married.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Yale Law School, 1987-90. J.D. 1990.

Yale College, 1983-87. B.A. 1987.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

President George W. Bush.

Assistant to the President and Staff Secretary, 2003-present.

President George W. Bush.

Senior Associate Counsel to the President, 2003.

Associate Counsel to the President, 2001-2003.

Kirkland & Ellis, Washington, DC.

Partner, 1997-98, 1999-2001.

Office of Independent Counsel Kenneth W. Starr.

Associate Counsel, 1994-97, 1998.

Justice Anthony M. Kennedy, Supreme Court of the United States.
Law Clerk, 1993-94.

Office of the Solicitor General, U.S. Department of Justice.
Attorney, 1992-93.

Munger Tolles & Olson, Los Angeles, CA.
Summer Associate, Summer 1992.

Judge Alex Kozinski, U.S. Court of Appeals for the Ninth Circuit.
Law Clerk, 1991-92.

Judge Walter K. Stapleton, U.S. Court of Appeals for the Third Circuit.
Law Clerk, 1990-91.

Williams & Connolly, Washington, DC.
Summer Associate, Summer 1990.

Covington & Burling, Washington, DC.
Summer Associate, Summer 1989.

Miller Cassidy Larocca & Lewin, Washington, DC.
Summer Associate, Summer 1989.

Pillsbury Madison & Sutro, Washington, DC.
Summer Associate, Summer 1988.

Other:

Commission on the Future of Maryland Courts.
Research Associate to the Chairman, 1996.

Georgetown Prep Alumni Association (since 1990's).

Federalist Society.
Co-Chair of School Choice Subcommittee of Religious Liberties Practice Group, 1999-2001.

Class Secretary for Yale Law School Class of 1990 in 2000-01.

7. **Military Service:** Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

None.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Cum laude graduate of Yale College.
Notes Editor, Yale Law Journal, 1989-90.

9. **Bar Associations:** List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Maryland State Bar Association.
Montgomery County Bar Association.
District of Columbia Bar Association.
American Bar Association.
Federalist Society. Co-Chair of School Choice Subcommittee of Religious Liberties Practice Group, 1999-2001.
Commission on the Future of Maryland Courts. Research Associate to the Chairman, 1996.

10. **Other Memberships:** List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Lobbying Organizations: None.
Other Organizations:
Congressional Country Club.
Holy Trinity Roman Catholic Church.
Georgetown Prep Alumni Association.
Delta Kappa Epsilon (when at Yale College).
Truth and Courage Society (when at Yale College).
I have been a member of the American Bar Association and the Federalist Society at various times since law school.

11. **Court Admission:** List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Supreme Court of the United States, 1994.

Maryland, 1990.

District of Columbia, 1992. (Lapsed for brief period in 2002 when renewal form was sent to incorrect home address.)

I also have been admitted at various times to several lower federal courts, including the United States Court of Appeals for the D.C. Circuit and the United States District Court for the District of Columbia.

12. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Articles:

The President and the Independent Counsel, 86 Georgetown Law Journal 2133 (1998).

Defense Presence and Participation: A Procedural Minimum for Batson v. Kentucky Hearings, 99 Yale Law Journal 187 (1989).

Op-eds:

Washington Post, November 15, 1999 (joint op-ed responding to Richard Cohen's column criticizing Judge Starr).

Wall Street Journal, September 27, 1999 (op-ed about Supreme Court case in which I represented an amicus curiae as a client; the Supreme Court agreed 7-2 with the position in the amicus brief).

American Spectator, April 1999 (brief submission describing lessons from independent counsel investigations).

Washington Post, February 26, 1999 (op-ed criticizing the operation of the independent counsel statute in relation to impeachment and the House of Representatives for its "immediate and unscreened release of the referral").

Letters to Editor:

Washington Post, August 31, 1999.

New York Times, August 1, 1999.

Washington Post, July 1, 1999.

Speeches:

I have given remarks on occasion in official and personal capacities. These remarks have most often occurred at legal conferences and on panels. I also have guest-taught classes at various law schools. In the White House Counsel's office, I also spoke to visitors to the White House and on Capitol Hill. I generally have spoken with short written points, which I have not ordinarily retained, rather than prepared speeches. I also have not maintained an ongoing list of remarks, but I have attempted to reconstruct a responsive list for this purpose. I will supplement the list if I become aware of other speeches that fit within this question.

Remarks to Log Cabin Republicans on judicial appointments, 2003.

Remarks to Yale Law School Association of Washington, DC, on judicial appointments, 2003.

Remarks to American Forest and Paper Association on variety of legal issues, 2003.

Remarks to Federalist Society Southern Leadership conference, 2003.

Remarks to groups of historians interested in Presidential records, 2001-03.

Remarks to Iowa State Bar Association on judicial appointments, 2002.

Remarks to National Conference of Women's Bar Associations on judicial appointments, 2002.

Remarks at American Judicature Society panel on judicial appointments, 2002.

Remarks at Republican National Lawyers Association on judges, 2002, 2003.

Participant in Yale Law School panel on judicial appointments, 2002.

Participant in panel on judicial appointments sponsored by Association of the Bar of the City of New York, 2002.

Participant in panel on judicial appointments sponsored by Washington Council of Lawyers, 2002.

Moderator of Federalist Society panel on originalism, 2001.

Remarks at Yale Club of Pittsburgh on independent counsel law and role of White House Counsel's office, 2001.

Moderator of Federalist Society panel on First Amendment, 2000.

Remarks at American Bar Association panel on Internet regulation, 2000.

Participant in symposium sponsored by Georgetown Journal of Legal Ethics, 2000.

Moderator of Federalist Society panel on shareable justice, 2000.

Remarks at National Bar Association symposium on Federal Sentencing Guidelines, 2000.

Remarks at Duke University Law School panel on independent counsel statute, 1999.

Remarks at the Life magazine Judge Kozminski, 1999.

Remarks at Georgetown University Law Center panel on independent counsel law, 1998.

Television Appearances:

CNN The World Today with Wolf Blitzer (2000).

CNN Burden of Proof (in 1999 and 2000).

MSNBC (2000).

ABC 20/20 (1998).

13. **Health:** What is the present state of your health? List the date of your last physical examination.

Excellent. June 2003.

14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None.

15. **Citations:** If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not applicable.

16. **Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.**

Appointed by President George W. Bush as Assistant to the President and Staff Secretary, 2003-present.

Appointed by President George W. Bush as Associate Counsel, 2001-2003, and Senior Associate Counsel, 2003.

Appointed by Judge Kenneth W. Starr as Associate Counsel in Office of Independent Counsel, 1994-97, 1998.

Appointed by Justice Anthony M. Kennedy as Law Clerk, 1993-94.

Employed as Attorney, Office of the Solicitor General, 1992-93.

Appointed by Judge Alex Kozinski as Law Clerk, U.S. Court of Appeals for the Ninth Circuit, 1991-92.

Appointed by Judge Walter K. Stapleton as Law Clerk, U.S. Court of Appeals for the Third Circuit, 1990-91.

17. **Legal Career:**

- a. **Describe chronologically your law practice and experience after graduation from law school including:**

1. **whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;**

From 1993 to 1994, I served as a law clerk to Justice Anthony M. Kennedy on the Supreme Court of the United States.

From 1991 to 1992, I served as law clerk to Judge Alex Kozinski of the United States Court of Appeals for the Ninth Circuit.

From 1990 to 1991, I served as a law clerk to Judge Walter K. Stapleton of the United States Court of Appeals for the Third Circuit.

2. **whether you practiced alone, and if so, the addresses and dates;**

I have never been a sole practitioner.

3. **the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;**

President George W. Bush
Assistant to the President and Staff Secretary, 2003-present
The White House
1600 Pennsylvania Avenue
Washington, DC 20502

President George W. Bush
Office of Counsel to the President
The White House
1600 Pennsylvania Avenue
Washington, DC 20502
Senior Associate Counsel, 2003.
Associate Counsel, 2001-2003.

Kirkland & Ellis
655 15th Street, N.W.
Washington, DC 20005
Partner, 1997-98 and 1999-2001.

Office of Independent Counsel
1001 Pennsylvania Ave., N.W., Suite 490-N
Washington, DC 20004
Associate Counsel, 1994-97 and 1998.

Office of the Solicitor General
United States Department of Justice
950 Pennsylvania Ave.
Washington, DC 20530
Attorney, 1992-93.

Munger Tolles & Olson
355 South Grand Ave., 35th Floor
Los Angeles, CA 90071
Summer Associate, 1992.

Williams & Connolly
725 12th St., N.W.
Washington, DC 20005
Summer Associate, 1990.

- b. 1. **What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?**

I have devoted the bulk of my professional career to public service.

Clerkships:

I served as a law clerk to three appellate judges, including Justice Kennedy on the Supreme Court. My primary responsibilities were: (i) to prepare memos before oral argument that summarized the cases and issues presented; (ii) to prepare and edit draft opinions; and (iii) to analyze and make comments on draft opinions prepared by other judges.

Office of the Solicitor General:

I served for one year as an attorney in this office from 1992 to 1993. I was responsible for preparing briefs in opposition to certiorari petitions and appeal recommendations. In addition, I assisted the Solicitor General and his Deputies and Assistants in preparing briefs and in preparing for oral arguments before the Supreme Court. I also handled two court of appeals cases, writing the brief in both cases and arguing one in the U.S. Court of Appeals for the Fifth Circuit. The government prevailed in both cases.

Office of Independent Counsel:

In the summer of 1994, after my clerkship with Justice Kennedy concluded, I interviewed with law firms. At about the same time, in August 1994, Judge Starr was appointed independent counsel. I had worked briefly for Judge Starr in the Office of the Solicitor General, and he offered me a position in the Office of Independent Counsel.

In that Office, I performed six main functions during the course of my service.

First, I was a line attorney responsible for the Office's investigation into the death of former Deputy White House Counsel Vincent W. Foster, Jr. This assignment required management and coordination with a number of FBI agents and investigators, FBI laboratory officials, and outside experts

on forensic and psychological issues. I was responsible for conducting and assisting with interviews of a wide variety of witnesses with respect to both the cause of death and Mr. Foster's state of mind. I was responsible for preparing a draft of the report on his death. The investigation and report resolved questions about the cause and manner of Mr. Foster's death, concluding that he committed suicide in Fort Marcy Park, Virginia.

Second, I was one of two line attorneys responsible for conducting the investigation into possible obstruction of justice in the wake of Mr. Foster's death, including whether documents had been unlawfully removed from his office or otherwise concealed from investigators. This was an extensive grand jury investigation. I conducted numerous interviews and grand jury sessions and, with another attorney, prepared a memorandum of more than 300 pages summarizing the matter. At the time, this matter also was being investigated by the Senate. The Office conducted a thorough investigation of the facts and did not seek criminal charges against any individuals.

Third, I was substantially responsible for writing briefs and conducting oral arguments regarding privilege and other legal matters that arose frequently during the investigation. These included cases about the government attorney-client privilege, Secret Service privilege, and private attorney-client privilege. I argued once before the Supreme Court of the United States and twice before the U.S. Court of Appeals for the D.C. Circuit.

Fourth, I served as a legal advisor on a variety of issues facing the Office. I and several other attorneys sometimes served a function roughly equivalent to that of attorneys in the Office of Legal Counsel in the Justice Department. This required analysis of, for example, statutory reporting requirements, Rule 6(e) obligations, FOIA disclosure rules, and issues related to interaction with Congress.

Fifth, I was part of the team that prepared that part of Judge Starr's 1998 report to Congress, submitted pursuant to statute, that outlined information that "may constitute grounds" for impeachment. Although many volumes of evidence were provided to the House of Representatives under seal, the report as publicly released by the House of Representatives was divided into two parts. The first part was a summary of facts known as the "narrative" section. I did not draft that part of the report. The second part was a description of possible grounds for impeachment that identified areas where the President may have made false statements or otherwise obstructed justice. I drafted portions of that part of the report. This is a matter of some continuing controversy. As I have stated publicly before, I

regret that the House of Representatives did not handle the report in a way that would have kept sensitive details in the report from public disclosure (as had occurred with the House's handling of the Special Prosecutor's report in 1974) or, if not, that the report did not further segregate certain sensitive details. The House of Representatives voted to publicly release the report without reviewing it beforehand.

Sixth, I was an attorney primarily responsible for assisting Judge Starr with preparation of his two-hour statement to the House Judiciary Committee, which he submitted in written form and delivered orally on November 19, 1998. The statement identified and discussed the investigation and evidence.

Kirkland & Ellis:

At Kirkland & Ellis, I worked primarily on appellate and pre-trial briefs in commercial and constitutional litigation. My most significant corporate clients were firm clients Verizon, America Online, General Motors, and Morgan Stanley. I represented them in a variety of litigation and administrative matters. I also represented individuals and non-corporate entities in litigation matters. I represented Adat Shalom synagogue pro bono in a case involving Montgomery County zoning regulations. I represented Governor Jeb Bush in his official capacity against a constitutional challenge to Florida's school choice legislation. I represented Elian Gonzalez's American relatives pro bono in their petition for rehearing in the Eleventh Circuit and their petition for certiorari in the Supreme Court. In all of these matters, I was part of a larger litigation team.

Office of Counsel to the President:

I assisted with some of the wide variety of issues that confront the Office. I worked on the nomination and confirmation of federal judges. I assisted on legal policy issues affecting the tort system, such as airline liability, victims compensation, terrorism insurance, medical liability, and class action reform. I worked on issues of separation of powers, including issues involving congressional and other requests for records and testimony. I worked on various ethics issues. I also monitored and worked on certain litigation matters, including those involving the White House.

Assistant to the President and Staff Secretary:

I perform the standard duties of the Staff Secretary. The Staff Secretary's Office traditionally coordinates the staffing and presentation of documents for the President, among other responsibilities.

2. **Describe your typical former clients, and mention the areas, if any, in which you have specialized.**

In private practice, I specialized in constitutional issues, commercial litigation, and appellate practice. My typical former clients are described in the previous answer.

- c. 1. **Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.**

Occasionally. In both public service and private practice, I argued a number of appellate matters and also conducted legal arguments in district court.

2. **Indicate the percentage of these appearances in:**

(A) **civil proceedings:** approximately 50% (private practice)
(B) **criminal proceedings:** approximately 50% (government practice)

3. **What percentage of these appearances was in:**

(a) **federal courts;**
approximately 90%
(b) **state courts of record;**
approximately 10%
(c) **other courts.**

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

None, as I have not been a trial lawyer. I have worked on legal issues and appeals in both public service and private practice and argued in court, including the Supreme Court of the United States, the U.S. Court of Appeals for the D.C. Circuit, federal district courts, and state courts.

5. **What percentage of these trials was:**

- (a) jury;
- (b) non-jury.

Not applicable.

18. **Litigation:** Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Swidler & Berlin v. United States, 524 U.S. 399 (1998), reversing 124 F.3d 230 (D.C. Cir. 1997).

I represented the United States and argued and briefed this case in both the Supreme Court of the United States and the United States Court of Appeals for the District of Columbia Circuit. The court of appeals decision was rendered in 1997 and the Supreme Court decision in 1998.

The case presented the question whether the attorney-client privilege continues to apply in federal criminal proceedings when the client is deceased. A federal grand jury issued a subpoena for communications that occurred between Vincent W. Foster, Jr., and his attorney James Hamilton nine days before Mr. Foster's suicide. Mr. Hamilton challenged the subpoena, arguing that the attorney-client privilege continued to apply after the death of the client and that he was not permitted to disclose what Mr. Foster had told him. The United States, represented by the Office of Independent Counsel, sought to enforce the grand jury subpoena, arguing that the attorney-client privilege did not apply with full force in federal criminal proceedings when the client was deceased. Many legal treatises, including the American Law Institute's Restatement of the Law, had agreed with the position advocated by the Office of Independent Counsel. The U.S. Court of Appeals for the D.C. Circuit, in an opinion by Judge Patricia Wald and Judge Stephen Williams, ruled in favor of the Office of Independent Counsel. Judge Tatel dissented. The Supreme Court then granted certiorari and ruled 6-3 in favor of Mr. Hamilton in an opinion by Chief Justice Rehnquist. The dissent written by Justice O'Connor and joined by Justices Scalia and Thomas agreed with the position of the Office of Independent Counsel.

My co-counsel in this case were Ken Starr, now of Kirkland & Ellis, 655 15th Street, N.W., Washington, DC 20005, (202) 879-5130, and Craig Lerner, now a professor at George Mason University Law School, 3301 N. Fairfax Drive, Arlington, VA 22201, (703) 993-8080. The opposing counsel was James Hamilton of Swidler Berlin Shereff Friedman, 3000 K Street, N.W., Suite 300, Washington, DC 20007, (202) 424-7826. The counsel of record on the primary amicus brief was Mark I. Levy, Howrey & Simon, 1299 Pennsylvania Ave., N.W., Washington, DC 20004, (202) 383-7441.

Concerned Citizens of Carderock v. Hubbard and Adat Shalom Reconstructionist Congregation, 84 F.Supp.2d 668 (D. Md. 2000).

In this case, I represented pro bono Adat Shalom, a synagogue in Bethesda, Maryland, in the United States District Court for the District of Maryland (Judge Andre Davis). The district court decided the case in 2000.

Plaintiffs sued Montgomery County and Adat Shalom, arguing that Montgomery County's zoning ordinance violated the Establishment Clause by granting religious entities an exemption from the county's special exception zoning process. Adat Shalom argued that the ordinance was neutral between religious and non-religious entities and thus constitutional. In particular, Adat Shalom contended that the ordinance exempted several non-religious entities in addition to religious entities and therefore did not reflect a preference for religion. Judge Davis ruled in favor of Adat Shalom and the County. The court found that the ordinance was neutral toward religion and consistent with the Establishment Clause.

My primary co-counsel at Kirkland & Ellis were Jay P. Lefkowitz, now at the White House Domestic Policy Council, 1600 Pennsylvania Ave., N.W., Washington, DC 20502, (202) 456-1473, and John Wood, now at the Department of Justice, 950 Pennsylvania Ave., N.W., Washington, DC 20530, (202) 514-2001. The primary counsel for the plaintiffs was Stanley D. Abrams of Abrams, West & Storm, 4550 Montgomery Ave., Suite 760N, Bethesda, MD 20814, (301) 951-1550. The primary counsel for Montgomery County were Charles W. Thompson and Edward B. Lattner of the County Attorney's Office for Montgomery County, 101 Monroe St., 3rd Floor, Rockville, MD 20850; (240) 777-6700.

America Online 5.0 Litigation (1999-2000).

In these cases, I represented America Online (AOL) in a series of class-action lawsuits. In particular, I filed briefs and conducted oral arguments for AOL in a number of federal district courts around the country. I also argued a proceeding before the Judicial Panel on Multidistrict Litigation and a motion to dismiss in a related case in the Circuit Court for Baltimore City. The complaints in these cases alleged that AOL had engaged in a variety of deceptive tactics and antitrust violations in designing and marketing AOL Version 5.0.

My primary co-counsel at Kirkland & Ellis were Thomas Yannucci and Eugene Assaf, Kirkland & Ellis, 655 15th Street, N.W., Washington, DC 20005, (202) 879-5000. The opposing counsel were a large group of attorneys representing different plaintiffs from around the country; many of the attorneys are listed in a reported consolidated case at 168 F.Supp.2d 1359.

In re Lindsey, 158 F.3d 1263 (D.C. Cir. 1998), cert. denied, Office of the President v. Office of Independent Counsel, 525 U.S. 996 (1998).

I represented the United States (Office of Independent Counsel) in this case. I briefed and argued the case in the U.S. Court of Appeals for the D.C. Circuit and worked on the brief in opposition to the petition for certiorari in the Supreme Court of the United States. I also had worked on a petition for certiorari before judgment to the Supreme Court.

This case arose out of a federal grand jury subpoena issued to Bruce R. Lindsey, an attorney employed in the White House. President Clinton asserted a government attorney-client privilege in response to the subpoena. The Office of Independent Counsel sought to have the subpoena enforced. The D.C. Circuit (Judges Randolph and Rogers for the majority; Judge Tatel in dissent) ruled in favor of the Office of Independent Counsel. The Office of the President then filed a petition for certiorari in the Supreme Court. The Supreme Court denied the petition.

My co-counsel were Ken Starr, now of Kirkland & Ellis, 655 15th Street, N.W., Washington, DC 20005, (202) 879-5130, and Joseph Ditkoff, now of the Suffolk County District Attorney's Office in Massachusetts, One Bulfinch Place, Boston, MA 02114, (617) 619-4000. The primary opposing counsel were David Kendall of Williams & Connolly, 725 12th Street, N.W., Washington, DC 20005, (202) 434-5000; Neil Eggleston, Howrey Simon Arnold & White, 1299 Pennsylvania Ave., N.W., Washington, DC 20004, (202) 783-0800; and Douglas Letter, U.S. Department of Justice, 950 Pennsylvania Ave., N.W., Washington, DC 20005, (202) 514-3301.

Gonzalez v. Reno, 215 F.3d 1243 (11th Cir. 2000) (denying petition for rehearing en banc), cert. denied, 530 U.S. 1270 (2000).

In this case, I represented pro bono the American relatives of Elian Gonzalez in their petition for rehearing en banc in the U.S. Court of Appeals for the Eleventh Circuit, application for stay in the Supreme Court of the United States, and petition for writ of certiorari in the Supreme Court. The case came into my law firm through a contact made to an associate in the firm. The associate then asked me if I would be willing to work on the petition for rehearing, application for stay, and petition for certiorari. I agreed to do so.

The American relatives of Elian Gonzalez argued that the INS's decision to deny an asylum hearing or interview to Elian Gonzalez contravened both the Due Process Clause and the Refugee Act of 1980. The case also raised an important question about the appropriate amount of judicial deference to decisions of administrative agencies.

The Eleventh Circuit initially had granted an injunction pending appeal on the ground that the Gonzalez family had made a compelling case that the Refugee Act of 1980 requires a hearing for alien children who may apply for asylum. The Eleventh Circuit's subsequent decision on the merits (Judges Edmondson, Dubina, and Wilson) held, however, that the INS's contrary interpretation of the statute was entitled to deference from the courts. The Gonzalez family filed a petition for rehearing and rehearing en banc arguing, in essence, that the court's original decision granting an injunction pending appeal had analyzed the issue correctly and that deference to the INS was not warranted. The Eleventh Circuit denied the petition for rehearing and rehearing en banc. The Gonzalez family then filed an application for stay and petition for writ of certiorari in the Supreme Court. The Supreme Court denied both the application and the petition.

My co-counsel included Jeffrey Clark, then at Kirkland & Ellis and now at the U.S. Department of Justice, 950 Pennsylvania Ave., N.W., Washington, DC 20530, (202) 514-3370; and Kendall Coffey of Coffey & Wright, 2665 South Bayshore Drive, Miami, Florida 33133, (305) 857-9797. The primary opposing counsel was Ed Kneedler, Office of the Solicitor General, U.S. Department of Justice, 950 Pennsylvania Ave., N.W., Washington, DC 20530, (202) 514-2217.

In re Grand Jury Subpoena Duces Tecum, 112 F.3d 910 (8th Cir.), cert. denied, 521 U.S. 1105 (1997).

I represented the United States (Office of Independent Counsel) in this case. I primarily wrote the brief in the U.S. Court of Appeals for the Eighth Circuit and worked on the brief in opposition to the petition for certiorari in the Supreme Court of the United States. I also briefed the case in the United States District Court for the Eastern District of Arkansas.

This case arose out of a federal grand jury subpoena issued to the White House Office for documents of a government attorney employed in the White House. President Clinton asserted a government attorney-client privilege in response to the subpoena. The Eighth Circuit (Judges Bowman and Wollman for majority; Judge Kopf in partial dissent) ruled in favor of the United States, represented by the Independent Counsel. The Office of the President then filed a petition for certiorari in the Supreme Court. The Supreme Court denied the petition.

My co-counsel were Ken Starr, now of Kirkland & Ellis, 655 15th Street, N.W., Washington, DC 20005, (202) 879-5130; and John Bates, now of the U.S. District Court for the District of Columbia, 333 Constitution Ave., N.W., Washington, DC 20001, (202)

354-3430. The primary opposing counsel were David Kendall of Williams & Connolly, 725 12th Street, N.W., Washington, DC 20005, (202) 434-5000; Lawrence Robbins, Robbins, Russell, Englert, Orseck & Untereiner, 1801 K Street, N.W., Suite 411, Washington, DC 20006, (202) 775-4500; Andrew Frey, Mayer Brown Rowe & Maw, 1909 K Street, N.W., Washington, DC 20006, (202) 263-3000; and Miriam Nernetz, now of Mayer Brown Rowe & Maw, 1909 K Street, N.W., Washington, DC 20006, (202) 263-3000.

Good News Club v. Milford Central School, 533 U.S. 98 (2001).

In this Supreme Court case, I represented an amicus curiae, Sally Campbell, and filed an amicus brief.

The case involved a Free Speech Clause and Free Exercise Clause challenge to the community use policy of a school district in New York. The policy excluded religious organizations from using public school facilities after school hours. (Ms. Campbell had challenged a similar policy in Louisiana.) The question in the case was whether the exclusion of religious organizations was permitted under the Religion and Free Speech Clauses of the First Amendment. The amicus brief filed on behalf of Ms. Campbell argued that the policy was neither required nor permitted by the Constitution. The Supreme Court agreed in a 6-3 decision.

The counsel for the plaintiff/petitioner was Thomas Marcelle, 71 Fernbank Ave., Delmar, NY 12054, (518) 475-0806. The primary counsel for other amici were Paul Clement, now Deputy Solicitor General, U.S. Department of Justice, 950 Pennsylvania Ave., N.W., Washington, DC 20530, (202) 514-2206; and Viet Dinh, now at Georgetown University Law Center, 600 New Jersey Ave., N.W., Washington, DC 20001, (202) 662-2000. The primary counsel for the defendant/respondent was Frank W. Miller, 6296 Fly Road, East Syracuse, NY 13057, (315) 234-9900.

Rubin v. United States, 525 U.S. 990 (1998).

In this case, I represented the United States (Office of Independent Counsel) in the Supreme Court proceedings in which the Office of Independent Counsel opposed a petition for certiorari filed by the Secretary of the Treasury and Director of the Secret Service.

The question presented was whether the federal courts should recognize a new "protective function" privilege in federal criminal proceedings that would prevent Secret Service agents from testifying in the grand jury. The U.S. Court of Appeals for the D.C. Circuit ruled in favor of the Office of Independent Counsel (Judges Williams, D.H. Ginsburg, and Randolph). The Secretary of the Treasury filed a petition for certiorari and sought a stay of enforcement of the subpoena. The Supreme Court denied a stay and then denied the petition for certiorari (over the dissents of Justices Ginsburg and Breyer).

My co-counsel included Ken Starr, now of Kirkland & Ellis, 655 15th Street, N.W., Washington, DC 20005, (202) 879-5130. The primary opposing counsel was Ed Kneedler, Office of the Solicitor General, U.S. Department of Justice, 950 Pennsylvania Ave., N.W., Washington, DC 20530, (202) 514-2217.

General Motors v. Green, 709 A.2d 205 (N.J. Super. Ct. App. Div. 1998).

General Motors was a significant institutional client of my former firm, Kirkland & Ellis. In this particular case, I was asked to represent General Motors and conduct oral argument on its behalf in the Appellate Division of the New Jersey Superior Court before Judges Dreier, Levy, and Wecker. The case was a design defect products liability case involving an alleged roof design defect. At trial, the jury had found General Motors liable and awarded plaintiff \$25 million. General Motors appealed on numerous grounds, challenging both the liability judgment and damages award. The Appellate Division affirmed the liability judgment and substantially reduced the damages award.

My primary co-counsel at Kirkland & Ellis was Paul T. Cappuccio, now General Counsel of AOL Time Warner, 75 Rockefeller Plaza, New York, NY 10019, (212) 484-7980; and another co-counsel was Thomas F. Tansey, 521 Green Street, Woodbridge, NJ 07095, (732) 634-7880. The primary opposing counsel was Maurice Donovan, 405 Northfield Ave., West Orange, NJ 07052, (973) 736-8050.

Lewis v. Brunswick, No. 97-288 (Supreme Court of the United States) (dismissed as moot because of settlement after oral argument).

In the Lewis case, I represented General Motors in filing an amicus brief in the Supreme Court. The question presented in the case was whether the Boat Safety Act preempted a state common-law requirement that recreational boats be equipped with propeller guards. Because of the similarity of the question to a question under the National Traffic and Motor Vehicle Safety Act, General Motors filed an amicus brief. The Supreme Court subsequently dismissed the case after oral argument because the parties settled.

My primary co-counsel were Paul T. Cappuccio, now General Counsel of AOL Time Warner, 75 Rockefeller Plaza, New York, NY 10019, (212) 484-7980; and Richard A. Cordray, of counsel at Kirkland & Ellis, 655 15th Street, N.W., Washington, DC 20005, (202) 879-5000. The primary counsel for plaintiff/petitioner was David E. Hudson, 801 Broad Street, Suite 700, Augusta, GA 30901, (706) 722-4481. The primary counsel for defendant/respondent was Kenneth S. Geller, Mayer Brown Rowe & Maw, 1909 K Street, N.W., Washington, DC 20006, (202) 263-3000.

19. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

Clerkships:

I served as a law clerk to three appellate judges, including Justice Kennedy on the Supreme Court. My primary responsibilities were: (i) to prepare memos before oral argument that summarized the cases and issues presented; (ii) to prepare and edit draft opinions; and (iii) to analyze and make comments on draft opinions prepared by other judges.

Office of Counsel to the President:

I assisted with some of the wide variety of issues that confront the Office. I worked on the nomination and confirmation of federal judges. I assisted on legal policy issues affecting the tort system, such as airline liability, victims compensation, terrorism insurance, medical liability, and class action reform. I worked on issues of separation of powers, including issues involving congressional and other requests for records and testimony. I worked on various ethics issues. I also monitored and worked on certain litigation matters, including those involving the White House.

Office of Staff Secretary:

I perform the standard duties of the Staff Secretary. The Staff Secretary's Office traditionally coordinates the staffing and presentation of documents for the President, among other responsibilities.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

None. I have a government Thrift Savings Plan retirement fund.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

I will faithfully follow all applicable statutes, court decisions, and policies regarding recusal, including 28 U.S.C. 455.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

It is possible in the future that I would want to teach part-time at some point or write articles or books. If so, I would faithfully follow all applicable laws and policies.

4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

See attached financial disclosure report.

5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**

See attached net worth statement.

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

Lawyers for Bush Cheney, 2000. Regional Coordinator for Pennsylvania, Maryland, Delaware, and District of Columbia. I also went to Daland, Florida, in November 2000 to participate in legal activities related to the recount.

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES		
Cash on hand and in banks	10k		Notes payable to banks-secured		
U.S. Government securities-add schedule			Notes payable to banks-unsecured		
Listed securities-add schedule			Notes payable to relatives		
Unlisted securities--add schedule			Notes payable to others		
Accounts and notes receivable:			Accounts and bills due		
Due from relatives and friends			Unpaid income tax		
Due from others			Other unpaid income and interest		
Doubtful			Real estate mortgages payable-add schedule		
Real estate owned-add schedule			Chattel mortgages and other liens payable		
Real estate mortgages receivable			Other debts-itemize:		
Autos and other personal property	20k				
Cash value-life insurance					
Other assets itemize:					
TSP account	55k				
			Total liabilities	0	
			Net Worth	85k	
Total Assets	85k		Total liabilities and net worth	85k	
CONTINGENT LIABILITIES	No		GENERAL INFORMATION		
As endorser, comaker or guarantor			Are any assets pledged? (Add schedule)	No	

On leases or contracts			Are you defendant in any suits or legal actions?	No		
Legal Claims			Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax						
Other special debt						

III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

I have devoted 10 of the 13 years of my legal career to public service for the United States Government in a variety of capacities. In private practice, I represented several clients pro bono, most notably Adat Shalom synagogue and Elian Gonzalez's American relatives. I have participated in community work on occasion, most recently by participating in an all-day playground build in Washington. I contribute to various charities and community organizations, including by way of the Combined Federal Campaign.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?**

No, other than my college fraternity and senior society, which were all-male.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

There was no commission process. In 2002, Counsel to the President Alberto Gonzales discussed with me a vacancy on the U.S. Court of Appeals for the Fourth Circuit. In 2003, he discussed with me a vacancy on the U.S. Court of Appeals for the D.C. Circuit. Later in 2003, Judge Gonzales informed me of the President's intent to nominate me to the D.C. Circuit. I underwent an FBI background investigation and was then nominated.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

No.

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. **A tendency by the judiciary toward problem-solution rather than grievance-resolution;**
- b. **A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**
- c. **A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**
- d. **A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and**
- e. **A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.**

A court of appeals judge should interpret constitutional and statutory provisions without regard to personal or policy views on any issue. Our legal system must ensure equal justice under law for all, and a court of appeals judge should interpret the law as enacted and as subsequently interpreted by the Supreme Court where applicable. A judge should treat parties and colleagues with dignity and respect and should act at all times -- in and out of the courtroom -- with an appropriate judicial temperament. A judge should always remember that the court's decisions will have an enormous impact on the lives and liberties of the individuals involved in the cases, as well as the American people. And a judge should approach the task of judging with humility, recognizing that federal judges are entrusted with a sacred responsibility to the American people.

10-10
Rev. 1/2003

**FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 2002**

Report Required by the Ethics
in Government Act of 1978.
(5 U.S.C. App. §§101-111)

1. Person Reporting (Last name, first, middle initial) KAVANAUGH, BRETT M.	2. Court or Organization NOMINEE TO U.S. COURT OF APPEALS FOR D.C. CIRCUIT	3. Date of Report 7-29-03
4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time) CIRCUIT JUDGE - NOMINEE	5. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 7-25-03 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final	6. Reporting Period 1-1-2002 7-25-2003
7. Chambers or Office Address STAFF SECRETARY THE WHITE HOUSE WASHINGTON, DC 20502	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

I. POSITIONS. (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION

NAME OF ORGANIZATION/ENTITY

NONE (No reportable positions.)

1 ALUMNI BOARD OF GOVERNORS GEORGETOWN PREPARATORY SCHOOL
2 A LUMNI ASSOCIATION
3 _____

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of Instructions.)

DATE

PARTIES AND TERMS

NONE (No reportable agreements.)

1 _____
2 _____
3 _____

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of Instructions.)

DATE

SOURCE AND TYPE

GROSS INCOME
(Yours, not spouse's)

NONE (No reportable non-investment income.)

1 _____ \$ _____
2 _____ \$ _____
3 _____ \$ _____
4 _____ \$ _____
5 _____ \$ _____

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

KAVANAUGH, BRETT M.

Date of Report

7-29-03

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-27 of Instructions.)

SOURCE

DESCRIPTION

NONE (No such reportable reimbursements.)

EXEMPT

V. GIFTS. (Includes those to spouse and dependent children. See pp. 28-31 of Instructions.)

SOURCE

DESCRIPTION

VALUE

NONE (No such reportable gifts.)

EXEMPT

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-33 of Instructions.)

CREDITOR

DESCRIPTION

VALUE CODE*

NONE (No reportable liabilities.)

FIRST USA

CREDIT CARD

J
PAID IN FULL

*Value Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000
 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

KAVANAUGH, BRETT

Date of Report

7-29-03

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)

A. Description of Assets (including trust assets) <i>Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
	Ann. Code1 (A-H)	Type (e.g., div., rent or int.)	Value Code2 (J-P)	Value Method Code3 (Q-W)	Type (e.g., buy, sell, merger, redemption)	(2) Date: Month- Day	(3) Value Code2 (I-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, (TSP) EXEMPT									
1 BANK OF AMERICA CHECKING	A	Checking Account	J	T					
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									

1	Income/Gain Codes: (See Col. B1, D4)	A=\$1,000 or less F=\$50,001-\$100,000	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 H2=More than \$5,000,000	E=\$15,001-\$50,000
2	Value Codes: (See Col. C1, D3)	J=\$15,000 or less N=\$250,001-\$500,000 P3=\$25,000,001-\$50,000,000	K=\$15,001-\$50,000 O=\$500,001-\$1,000,000	L=\$50,001-\$100,000 P1=\$1,000,001-\$5,000,000 P4=More than \$50,000,000	M=\$100,001-\$250,000 P2=\$5,000,001-\$25,000,000	
3	Value Method Codes: (See Col. C2)	Q=Appraisal U=Book value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market	

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

KAVANAUGH, BRETT

Date of Report

7-29-03

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app., § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature

Brett M. Kavanaugh

Date

July 29, 2003

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. App., § 104.)

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the
United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

Withdrawal Marker

The George W. Bush Library

FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Information Sheet	Confidential	2	04/15/2004	P6/b6;

**This marker identifies the original location of the withdrawn item listed above.
For a complete list of items withdrawn from this folder, see the
Withdrawal/Redaction Sheet at the front of the folder.**

COLLECTION:

Counsel's Office, White House

SERIES:

Rao, Neomi

FOLDER TITLE:

[Brett Kavanaugh] [1]

FRC ID:

10166

OA Num.:

6323

NARA Num.:

6124

FOIA IDs and Segments:

2018-0009-P

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

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

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

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

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

Records Not Subject to FOIA

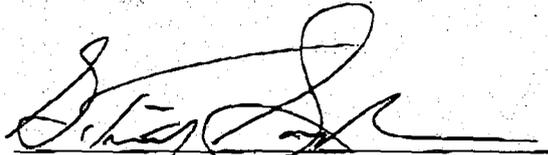
Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

AFFIDAVIT

I, Brett Kavanaugh, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

September 22, 2003
(DATE)

Brett Kavanaugh
(NAME)


(NOTARY)

Notary Public for the District of Columbia,
Commission expires 1/31/08

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

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

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

Facts on Experience:

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

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

Facts on Suitability for the Bench:

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

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

Facts on the Judicial Nominations Process:

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

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

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

Facts about President Bush’s Nominees:

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

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

Facts about the Starr Report:

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

TO: Dabney Friedrich

FAX: 202-456-7528

FROM: David Best

VOICE: (202) 514-2061

FAX: (202) 616-3180

Total Pages (including this cover): 10

Additional Message:

William P. Barr
Executive Vice President and General Counsel



1095 Avenue of the Americas
New York, NY 10036

Phone 212.395.1888
Fax 212.597.2587

May 10, 2005

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

Dear Chairman Specter:

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

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

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

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

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

Sincerely,

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

William P. Barr

SIDLEY AUSTIN BROWN & WOOD LLP

BEIJING
BRUSSELS
CHICAGO
DALLAS
GENEVA
HONG KONG
LONDON

1501 K STREET, N.W.
WASHINGTON, D.C. 20005
TELEPHONE 202 736 8000
FACSIMILE 202 736 8711
www.sidley.com
FOUNDED 1866

LOS ANGELES
NEW YORK
SAN FRANCISCO
SHANGHAI
SINGAPORE
TOKYO
WASHINGTON, D.C.

WRITER'S DIRECT NUMBER
202-736-8971

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

May 10, 2005

By Facsimile

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

Dear Senator Specter:

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

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

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

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WASHINGTON, D.C.

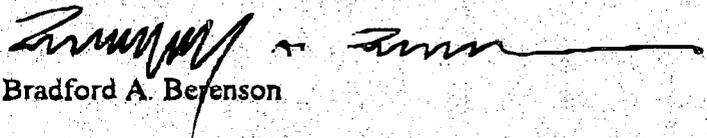
Honorable Arlen Specter
May 10, 2005
Page 2

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

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

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

Sincerely,



Bradford A. Beyenson

cc: Honorable Patrick Leahy

SIDLEY AUSTIN BROWN & WOOD LLP

WASHINGTON, D.C.

Honorable Arlen Specter
May 10, 2005
Page 3

bcc: David Best (202-616-3180)

LAW OFFICES
WILLIAMS & CONNOLLY LLP725 TWELFTH STREET, N.W.
WASHINGTON, D. C. 20005-5901CAROLYN H. WILLIAMS
(202) 434-5830
cwilliams@wc.com

(202) 434-5000

FAX (202) 434-5029

EDWARD BENNETT WILLIAMS (1920-1900)
PAUL R. CONNOLLY (1922-1978)

May 11, 2005

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

Dear Senator Specter:

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

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

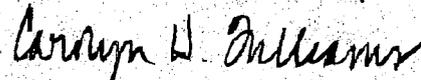
Throughout his career, Brett Kavanaugh has performed at the highest level of professional excellence. Your Committee has his curriculum vitae before you, and I do not need to summarize it. He is universally respected for his comprehensive knowledge of the law, his brilliant analytical abilities and his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

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

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

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

Respectfully submitted,



Carolyn H. Williams

RUSSELL D. FEINGOLD
WISCONSIN

506 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-5323
(202) 224-1280 (TDD)
feingold@senate.gov

COMMITTEE ON THE BUDGET
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DEMOCRATIC POLICY COMMITTEE

United States Senate

WASHINGTON, DC 20510-4904

May 5, 2006

VIA FAX to the Department of Justice – [202-353-9163]

Mr. Brett Kavanaugh
Assistant to the President and Staff Secretary
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. Kavanaugh:

As you know, I was not able to attend your first hearing before the Senate Judiciary Committee on April 27, 2004, but I did submit written questions to you following that hearing. Those questions were delivered to the Committee for transmission to you on May 4, 2004. Your attached responses, which were not sent to the Committee until November 19, 2004, were inadequate. In light of your failure to answer written questions for over seven months, it was by no means clear that you were serious about pursuing the nomination so I did not ask you for additional information at that time.

In recent weeks, the leadership in the Senate has indicated renewed interest in your nomination, and Chairman Specter has now scheduled a second confirmation hearing for you on Tuesday, May 9, 2006. In anticipation of that hearing, I request that you now answer my questions 3 through 7. These questions, other than the very last part of question 7, concerning your recommendation to the President on the signing of Judge Ron Clark's commission, which I hereby withdraw, fall into two categories. Both kinds of questions are entirely appropriate for me to ask and for you to answer:

1. Factual questions concerning your knowledge and the timing of your knowledge of ethical controversies that arose in connection with certain nominations that occurred during your time in the White House Counsel's office. Answering these questions will not in any way intrude on internal Executive Branch communications concerning these long since confirmed judges. Many of them can be answered with a simple "yes" or "no."
2. Questions concerning your current, personal judgment on and analysis of certain ethical issues raised during consideration of nominations that occurred during your time in the White House Counsel's office. It is not

○ 1800 ASPEN COMMONS
ROOM 100
MIDDLETON, WI 53562
(608) 828-1200
(608) 828-1215 (TDD)

○ 517 EAST WISCONSIN AVENUE
ROOM 408
MILWAUKEE, WI 53202
(414) 276-7282

○ 401 8TH STREET
ROOM 410
WALSAU, WI 54403
(715) 848-5880

○ 425 STATE STREET
ROOM 225
LA CROSSE, WI 54601
(608) 782-5585

○ 1840 MAIN STREET
GREEN BAY, WI 54302
(920) 485-7508

only appropriate but crucial for you to answer questions concerning judicial ethics since you seek confirmation to be a federal appellate judge.

I would appreciate your providing answers to these questions, which are not complicated or lengthy, by the close of business on Monday, May 8, so that I may discuss them with you at the hearing on Tuesday. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Russell D. Feingold".

Russell D. Feingold
United States Senator

**Responses of Brett M. Kavanaugh
to the Written Questions of Senator Feingold**

1. According to your Judiciary Committee questionnaire, while working in the White House Counsel's office, you "worked on the nomination and confirmation of federal judges." You state that you also worked on "various ethics issues." As part of your responsibilities in that office, did you review the records of potential nominees for their compliance with standards of legal and judicial ethics?

Response: The responsibility for reviewing background investigation files was performed by the Counsel and Deputy Counsel to the President, as well as attorneys in the Department of Justice. I therefore was rarely involved in that particular aspect of the judicial selection process.

2. Do you believe that adherence to strict ethical standards is an important qualification for being a federal judge?

Response: Yes.

3. During the Senate's consideration of Judge Charles Pickering's nomination to the Fifth Circuit, the Judiciary Committee learned that he solicited and collected letters of support from lawyers who had appeared in his courtroom and practiced in his district. It later became apparent that some of these lawyers had cases pending before him when they wrote the letters that Judge Pickering requested. Prof. Stephen Gillers of NYU Law School has written: "Judge Pickering's solicitation creates the appearance of impropriety in violation of Canon 2 of the Code of Conduct for U.S. Judges. . . . The impropriety becomes particularly acute if lawyers or litigants with matters currently pending before the Judge were solicited."

Did you know that Judge Pickering planned to solicit letters of support in this manner before he did so? When did you become aware that Judge Pickering had solicited these letters of support?

Do you believe that Judge Pickering's conduct in this instance is consistent with the ethical obligations of a federal judge?

Do you believe it is appropriate for federal judges to solicit letters of support from lawyers who practice before them and ask that those letters be sent directly to him to be forwarded to the Senate Judiciary Committee?

Response: I believe Judge Pickering addressed inquiries about this matter in his confirmation hearings. It would not be appropriate in this context for me to comment on the record of another nominee or on internal Executive Branch communications.

4. During the Senate's consideration of Judge D. Brook Smith's nomination to the Third Circuit, the Judiciary Committee learned that Judge Smith had not resigned from the Spruce Creek Rod and Gun Club until 1999, even though he had promised during a

confirmation hearing in 1988 that he would do so if he was unable to bring about a change in the club's discriminatory membership policies.

When Judge Smith was nominated did you know that he had made this promise to the Judiciary Committee in 1988 and that he remained a member until 1999? If not, when did you become aware of these facts?

Did you work with Judge Smith in preparing his discussion of his membership in the Spruce Creek Rod and Gun Club in this Judiciary Committee questionnaire and his answers to questions about that membership in the club? Did you review his answers to questions on this matter before they were submitted?

Do you believe Judge Smith's continued membership in the Spruce Creek Rod and Gun Club from 1992 to 1999 was consistent with the Code of Conduct for United States Judges?

Response: I believe Judge Smith addressed inquiries about this matter in his confirmation hearing. It would not be appropriate in this context for me to comment on the record of another nominee or on internal Executive Branch communications.

5. Also in connection with Judge Smith's nomination, the Committee considered allegations that he violated the judicial disqualification statute, 28 U.S.C. section 455, by not recusing himself earlier in *SEC v. Black*, and by not recusing himself immediately upon being assigned the criminal matter in *United States v. Black*. Prof. Monroe Freedman of the University of Hofstra University Law School called his violations "among the most serious I have seen."

Were you aware of the controversy over Judge Smith's handling of the *SEC v. Black* and *United States v. Black* cases when he was being considered for nomination to the Third Circuit?

Do you believe that Judge Smith's actions in these cases were consistent with his obligations under the judicial disqualification statute and the Code of Conduct?

Response: I believe Judge Smith addressed inquiries about this matter in his confirmation hearing. It would not be appropriate in this context for me to comment on the record of another nominee or on internal Executive Branch communications.

6. As you may know, I have questioned a number of judicial nominees about their acceptance of what some have termed "junkets for judges" - free trips to education seminars sponsored by ideological organizations such as Montana-based Foundation for Research on Economics and the Environment ("FREE"). In answer to a written question, Judge Smith stated that under Advisory Committee Opinion No. 67, which sets out the ethical obligations of judges who wish to go on such trips, he did not need to inquire about the sources of funding of seminars put on by the Law and Economics Center at George Mason University.

Do you agree with Judge Smith's interpretation of Advisory Committee Opinion No. 677

If you are confirmed, will you accept free trips from organizations such as FREE and the Law and Economics Center?

Response: On these kinds of ethics issues, I would faithfully follow all applicable statutes, court decisions, and policies. I believe Judge Smith addressed inquiries about this matter in his confirmation hearing. It would not be appropriate in this context for me to comment on the record of another nominee or on internal Executive Branch communications.

7. After Judge Ron Clark was confirmed by the Senate to a district judgeship in Texas, he told the New York Times that, despite his confirmation, "right now, I'm running for state representative." Indeed, he admits that he was actively campaigning for office, stating "I go to functions, go block walking, that sort of thing." The Code of Conduct prohibits a candidate for judicial office from engaging in partisan political activity.

Were you involved in discussions about the timing of Judge Clark's commission or whether Judge Clark should continue to campaign for office after he was confirmed by the Senate?

Do you believe that Judge Clark complied with his ethical obligations in campaigning for the Texas legislature while he was awaiting his commission from President Bush? If not, did you ever recommend to the President or your supervisors that Judge Clark's commission not be signed?

Response: It would not be appropriate in this context for me to comment on the record of another nominee or on internal Executive Branch communications.