

Statement of

The Honorable Orrin Hatch.

United States Senator
Utah
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Statement of Chairman Orrin G. Hatch

Before the United States Senate Committee on the Judiciary

Hearing on the Nomination of

Brett M. Kavanaugh

to be United States Circuit Judge for the District of Columbia Circuit

I am pleased to welcome to the Committee today members, guests, and our nominee, Mr. Brett Kavanaugh, who has been nominated by President Bush to be a United States Circuit Judge for the District of Columbia Circuit. We also welcome members of his family. I would note his father, Mr. Ed Kavanaugh, long-time President of the CTFA, is a great individual whom we all respect. Welcome to you all.

Before we turn to the nomination, I want to tell members of the Committee that I remain hopeful that we can continue to complete the work of the Committee on both legislation and nominations. I was disappointed that we were not able to accomplish more at our markup last week. Earlier this month we did report five district judges and two circuit judges. I do appreciate the Committee's efforts in that regard.

I remain concerned about the executive calendar and floor action. I remain hopeful that an accommodation on nominees can be reached and that floor action can be scheduled for those judges. The Senate has confirmed only four judges this year - all District court judges. By comparison, in the last Presidential election year of 2000 - with a Democratic President and a Republican Senate - seven judges had been confirmed by this point in the year, including five Circuit court judges. Furthermore, we are way behind the pace of that election year, which saw a total of 39 judges confirmed. And we remain well behind President Clinton's first term confirmation total of 203.

So while we have made some progress in reporting nominees to the full Senate, the work of confirming judges remains. We presently have twenty-nine judges on the Executive Calendar. Five Circuit nominees remain from last year on the executive calendar in addition to the six reported this year. Eighteen district nominees are available for Senate confirmation, including two holdovers from the last session. But we are making progress, and I thank all members for their support and ask for their continued cooperation.

Today we will consider the nomination of Mr. Brett M. Kavanaugh. He is an outstanding nominee, who has been nominated to the Circuit Court of Appeals for the District of Columbia. He comes to us with a sterling resume and a record of distinguished public service. Mr. Kavanaugh currently serves as Assistant to the President and Staff Secretary, having been appointed to that position by President George W. Bush in 2003. He previously served in the Office of Counsel to the President, as an Associate Counsel and Senior Associate Counsel.

After graduating from Yale Law School in 1990, Mr. Kavanaugh served as a law clerk for three appellate judges: Justice Anthony M. Kennedy of the Supreme Court, Judge Alex Kozinski of the United States Court of Appeals for the Ninth Circuit, and Judge Walter K. Stapleton of the United States Court of Appeals for the Third Circuit. He served for one year as an attorney in the Office of the Solicitor General, where he prepared briefs and oral arguments.

Mr. Kavanaugh served in the Office of Independent Counsel, under Judge Starr, where he conducted Office's investigation into the death of former Deputy White House Counsel Vincent W. Foster, Jr. He also was responsible for briefs and arguments regarding privilege and other legal matters that arose during investigations conducted by the Office. Mr. Kavanaugh was part of the team that prepared the 1998 report to Congress regarding possible grounds for impeachment of the President of the United States.

In addition to his extensive public service, Mr. Kavanaugh was also in private practice. As a partner at the distinguished firm of Kirkland & Ellis he worked primarily on appellate and pre-trial briefs in commercial and constitutional litigation.

Mr. Kavanaugh received his law degree from Yale Law School, where he was a Notes Editor for the Yale Law Journal. He is a cum laude graduate of Yale College, where he received his B.A. degree.

The American Bar Association has rated Brett Kavanaugh as "Well Qualified." Let me remind everyone what that rating means. According to guidelines published by the American Bar Association Standing Committee on Federal Judiciary, "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."

I want to turn now to a few of the arguments which I have heard raised by a number of Mr. Kavanaugh's opponents and address some of the concerns I expect to hear today.

First, is that Mr. Kavanaugh is too young and inexperienced to be given a lifetime appointment to the federal bench, particularly to the important D.C. Circuit Court of Appeals. There are many examples of judges who were appointed to the bench at an age similar to Mr. Kavanaugh, who is 39 years old, and have had illustrious careers. For example, all three of the judges for whom Mr. Kavanaugh clerked were appointed to the bench before they were 39 and all have been recognized as distinguished jurists. Justice Kennedy was appointed to the 9th Circuit when he was 38 years old; Judge Kozinski was appointed to the 9th Circuit when he was 35 years old; and Judge Stapleton was appointed to the district court at 35 and later elevated to the 3rd Circuit.

I think many of my colleagues would agree that age is not a factor in public service, other than the constitutional requirements. I would note that many in this body began their service in their 30's if not barely age 30. Through successful re-elections we have been benefited from a life-time of service from such members.

With regard to judicial experience, I would reiterate that Brett Kavanaugh has all of the qualities necessary to be an outstanding appellate judge. He has impeccable academic credentials with extensive experience in the appellate courts, both as a clerk and as counsel, having argued both civil and criminal matters before the Supreme Court and appellate courts throughout the country.

As I have pointed out with previous nominees, a number of highly successful judges have come to the federal appellate bench without prior judicial experience. On this particular court, the D.C. Circuit, only three of the nineteen judges confirmed since President Carter's term began in 1977 previously had served as judges. Furthermore, President Clinton nominated, and the Senate confirmed, a total of 32 lawyers without any prior judicial experience to the U.S. Court of Appeals, including Judges David Tatel and Merrick Garland to the DC Circuit.

Opponents will attempt to portray Mr. Kavanaugh as a right-wing ideologue who pursues a partisan agenda. I believe this allegation is without merit and a careful scrutiny of his record will demonstrate otherwise. He is an individual who has devoted the majority of his career to public service, not private ideological causes. Within his public career he has dedicated his work to legal issues, always working carefully and thoroughly in a professional manner.

In short, Mr. Kavanaugh is a person of high integrity, of skilled professional competence, and outstanding character. He will be a great addition to the federal bench and I look forward to hearing his testimony and responses.

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