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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
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August 22, 2018

The Honorable Dianne Feinstein
Ranking Member, United States Senate Committee on the Judiciary
331 Hart Senate Office Building
Washington, DC 20510

Dear Ranking Member  Feinstein:

At last week's markup, you asked whether I would permit Committee Confidential documents to be made public for use at the hearing. I agreed that I would do what I could to help Members get the documents they need for the hearing. I write briefly to explain that process.

As you know, during the nominations of Justices Kagan and Gorsuch, the Committee received on a Committee Confidential basis documents containing material restricted from public access by the Presidential Records Act (PRA) and Freedom of Information Act (FOIA). Then-Chairman Leahy explained that he agreed to receive documents on a Committee Confidential basis "to permit the Committee prompt access to them." I have done the same thing here. In order to facilitate the Committee's review of Judge Kavanaugh's record, I agreed to receive documents on a Committee Confidential basis. Keeping these documents initially confidential prevents the public release of PRA-restricted and FOIA-exempt material—including sensitive, confidential advice given to the President as well as personal privacy information like Social Security numbers and bank account numbers.

But the documents do not remain confidential forever. While the Committee begins its review of the documents, President Bush's representatives undertake a second review to identify PRA-restricted material. If the documents do not contain material which the PRA shields from public access, we quickly release the documents to the public. We thus end up in exactly the same place as we did with Justices Kagan and Gorsuch: Material restricted by the PRA or FOIA is held Committee Confidential, while non-restricted material is released to the public. To date, President Bush's representatives have authorized four public releases of Judge Kavanaugh's White House Counsel records, totaling more than 157,000 pages. I expect more public releases this week, and I expect the final public release around Monday, August 27.

During Justice Gorsuch's confirmation, I worked closely with my Democratic colleagues to assist them in asking the Administration to waive the PRA restrictions and FOIA exemptions on a reasonable number of Committee Confidential documents that those colleagues intended to use at the confirmation hearing.

As I did last year, I stand ready to work with President Trump and President Bush to request that they waive the PRA restrictions and FOIA exemptions for a reasonable number of documents that individual Members intend specifically to use at the confirmation hearing.

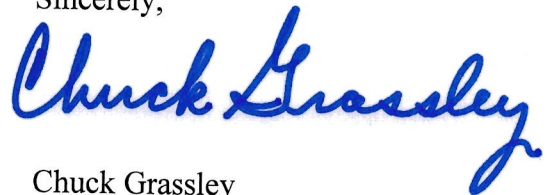
Accordingly, I invite all Members of the Committee to submit to me, by noon on August 28, a list of document-control numbers specifically identifying the Committee Confidential documents (or documents publicly released with redactions) that the Member wishes to use at the hearing. So long as the request is reasonable, I will ask President Trump and President Bush on that day to review those documents and agree to waive any applicable PRA restrictions and FOIA exemptions so that Members may use the documents during the public sessions of the confirmation hearing.

Although Members are welcome to submit their lists before August 28, I will not formally request that President Trump and President Bush waive applicable restrictions until August 28. As I have explained, I expect additional documents to be made public on a rolling basis through August 27. I do not want to overburden either President with requests for public release of documents they may be planning to release anyway.

Each Member's request must be reasonable both in size and scope. I will not ask for the release of dozens of documents on the eve of the hearing. I will not request the release of categories of documents. I will ask for the release of specifically identified documents that a Member could reasonably use during the hearing itself. Nor will I request the release of any document for any purpose other than for use at the hearing, where our only task will be to assess Judge Kavanaugh's views on the law and fitness for judicial office.

I look forward to continuing to work with you as we prepare to hear from Judge Kavanaugh at his confirmation hearing beginning September 4.

Sincerely,



Chuck Grassley
Chairman

CC:

The Honorable Orrin G. Hatch
The Honorable Lindsay Graham
The Honorable John Cornyn
The Honorable Michael S. Lee
The Honorable Ted Cruz
The Honorable Ben Sasse
The Honorable Jeff Flake
The Honorable Mike Crapo
The Honorable Thom Tillis
The Honorable John Kennedy

The Honorable Patrick Leahy
The Honorable Dick Durbin
The Honorable Sheldon Whitehouse
The Honorable Amy Klobuchar
The Honorable Christopher A. Coons
The Honorable Richard Blumenthal
The Honorable Mazie Hirono
The Honorable Cory Booker
The Honorable Kamala Harris