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## United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*  
JENNIFER DUCK, *Democratic Chief Counsel and Staff Director*

August 22, 2018

The Honorable Amy Klobuchar  
Member, United States Senate Committee on the Judiciary  
302 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Klobuchar:

Thank you for your letter dated August 20, 2018, requesting my assistance in making public certain documents currently held as confidential by this Committee and expressing concerns with the number of documents we have received.

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. During last week’s markup, Senator Feinstein asked me to do the same thing this year.

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.

Turning to the rest of your letter, you express "concern[ ] that the Committee has not received the vast majority of relevant documents from Judge Kavanaugh's work at the White House." Of course, the day after you sent your letter, we received nearly 170,000 new pages of Judge Kavanaugh's records as a White House lawyer. That brought the total number of Executive Branch materials we have received for this nomination to 430,711. That is *by far* the largest volume we have ever received for a Supreme Court nomination and nearly surpasses the total volume received for the last five successful nominees *combined*. And I remain confident that the Committee will receive every non-privileged Presidential record from Judge Kavanaugh's service in the White House Counsel's Office before the hearing begins on September 4.

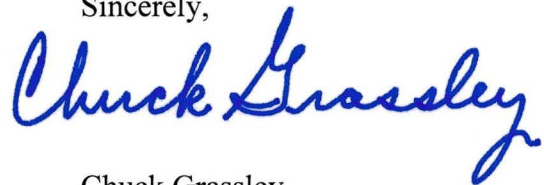
I see no need to rehash the settled debate over whether the Committee should obtain Judge Kavanaugh's Staff Secretary documents. Those documents are the least revelatory of his views on the law and the most sensitive to Executive Branch. We did not request Justice Kagan's Solicitor General records because of their sensitivity to the Justice Department, even though they would have been the most revelatory of her views on the law. I see no reason, apart from delay and obstruction, to depart from the precedent we established during Justice Kagan's nomination by seeking even more sensitive records from Judge Kavanaugh's non-lawyer work in the White House.

And even though I believe that these documents are irrelevant to Judge Kavanaugh's nomination, I worked hard to find a way to get the Democrats the Staff Secretary documents they believed were most important. But the Ranking Member's staff refused to work with me. They demanded the

search of *every* email and *every* scrap of paper from *every* one of the hundreds of White House aides who came and went for the *entire* eight years of the George W. Bush presidency. My staff offered to allow Democratic Members of the Committee to run search terms and other search tools on Staff Secretary documents to narrow the scope of the production, but the Ranking Member's staff refused to budge from their position, knowing that much of what they wanted would be extraneous to our task.

It's time to move past this argument over irrelevant documents. We have Judge Kavanaugh's twelve-year judicial record, comprised of more than 10,000 pages of opinions he wrote or joined, to review. We have his many speeches and articles among the more than 17,000 pages he submitted with his questionnaire. We have the most Executive Branch documents of any Supreme Court nominee in history. And we have a hearing date. We thus have everything we need to make an informed judgment on whether to confirm Judge Kavanaugh. It's time to get down to business and review the nominee's record.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive, flowing style with a prominent "C" and "G".

Chuck Grassley  
Chairman