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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 24, 2018

The Honorable Jack Reed
Ranking Member, United States Senate Committee on Armed Forces
728 Hart Senate Office Building
Washington, DC 20510

Dear Ranking Member Reed:

I have received your August 22 letter asking for access “to records under the Judiciary Committee’s control regarding Judge Brett Kavanaugh’s service in the White House that address national security and the scope of presidential authority on national security matters.” You also ask that I assist you in obtaining “any additional such records not under your control from the National Archives.” I write to address both of your requests.

The Committee has received to date more than 408,000 pages of records from Judge Kavanaugh’s service as a White House lawyer, as well as more than 22,000 documents from Judge Kavanaugh’s time in the Office of the Independent Counsel. You may recall that, 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 am following that precedent here. In order to permit the Committee to begin reviewing Judge Kavanaugh’s record as quickly as possible, President Bush’s representatives have been producing to the Committee documents that contain PRA-restricted and FOIA-exempted material—including sensitive, confidential advice given to the President as well as personal privacy information like Social Security numbers and bank account numbers. I have agreed to receive these documents on a Committee Confidential basis in order to prevent the public exposure of this information. My doing so has given the Committee access to more than 430,000 pages of records since the Committee first requested records on July 27—an unprecedented pace of production.

But these documents do not remain Committee Confidential forever. While the Committee begins its review of the documents, President Bush’s representatives undertake a second review to identify PRA-restricted and FOIA-exempted material. If the documents do not contain such material, 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 the release of more than 182,000 pages of White House

records, in addition to the more than 20,000 pages of records from the Office of the Independent Counsel released to the public from the National Archives and Records Administration (NARA). That's the most pages of Executive Branch material ever made available for any Supreme Court nominee in the history of the Senate. And I expect more public releases through Monday, August 27.

You have requested access to these documents. I have repeatedly stated that, consistent with Rule 26.10a of the Standing Rules of the Senate, I am happy to provide any Member of the Senate with access to every Committee Confidential document we have received to date. Any Member who wishes to access those documents need only contact my staffer at Andrew.Ferguson@judiciary-rep.senate.gov to schedule a time to access those documents in the Committee front office. My staff is available anytime (24/7). I have computer terminals setup and the documents are searchable. My staff can help you run searches. You are welcome to take notes.

You also ask that I "obtain any additional records that are not under my control from the National Archives" relating to the topics in which you are interested. I assume this is yet another request for documents from Judge Kavanaugh's service as Staff Secretary.

As I have explained in numerous public statements, documents from Judge Kavanaugh's time as Staff Secretary are the least revelatory of his views on the law and the most sensitive to the 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 in light of her lack of a judicial record. 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.

Even though I believe that these documents are irrelevant to Judge Kavanaugh's nomination, I worked hard to find a way to obtain the Staff Secretary documents that my Democratic colleagues believed were most important. Specifically, my staff offered to use targeted search terms to help the Minority get the Staff Secretary documents that were of the greatest interest to them. Indeed, those terms could very well have been used to obtain documents on the topics you address in your letter. But the Ranking Member's staff refused our offer of search terms, demanding 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. They refused to move from this unreasonable and unprecedented position during the course of negotiations. I would not accede to this unreasonable demand, the hardly veiled purpose of which was to delay Judge Kavanaugh's confirmation. As I have said repeatedly, I will not put American taxpayers on the hook for Senate Democrats' fishing expedition.

As a Member of the Senate, you are welcomed and encouraged to search all of the documents this Committee has received from Judge Kavanaugh's time in the White House Counsel's Office for information on any topic of interest to you—including "national security and the scope of presidential authority on national security matters." I encourage you to read the 307 judicial opinions that Judge Kavanaugh authored and the hundreds more he joined during his twelve years of service on the D.C. Circuit, considered by many to be the second highest court in the country.

These amount to more than 10,000 pages of judicial writings publicly available right now. Moreover, I encourage you to read the more than 17,000 pages of speeches, articles, and other materials that Judge Kavanaugh submitted with his 120-page response to the most robust Senate Judiciary Committee Questionnaire ever issued to a Supreme Court nominee. These materials are publicly available right now on the Senate Judiciary Committee's website. So are many letters supporting Judge Kavanaugh's confirmation, including from his former law clerks, law students, classmates, and colleagues, along with parents of the Catholic Youth Association athletes he coaches, state governors, state attorneys general, state representatives, an association representing 17,000 African-American farmers, and many others who know Judge Kavanaugh. The Committee's website also includes more than 202,000 pages of emails and other records from Judge Kavanaugh's legal service in the White House Counsel's Office and the Office of the Independent Counsel. I have instructed my staff to make available to any Senator, any time (24/7), the remaining approximately 228,000 pages of currently nonpublic records produced to the Committee.

Sincerely,



Chuck Grassley
Chairman