

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

ORRIN G. HATCH, UTAH
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
BEN SASSE, NEBRASKA
JEFF FLAKE, ARIZONA
MIKE CRAPO, IDAHO
THOM TILLIS, NORTH CAROLINA
JOHN KENNEDY, LOUISIANA

DIANNE FEINSTEIN, CALIFORNIA
PATRICK J. LEAHY, VERMONT
RICHARD J. DURBIN, ILLINOIS
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE K. HIRONO, HAWAII
CORY A. BOOKER, NEW JERSEY
KAMALA D. HARRIS, CALIFORNIA

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 27, 2018

The Honorable Sheldon Whitehouse
Member, United States Senate Committee on the Judiciary
530 Hart Senate Office Building
Washington, DC 20510

Dear Senator ~~Whitehouse~~ *Sheldon*:

I write to respond to your letter dated August 24, 2018. Your letter criticizes me for allegedly denying Senators the opportunity to submit search terms to identify documents of interest from Judge Kavanaugh's time as Staff Secretary. I would like to correct the record.

Even though I believed, and still believe, Staff Secretary documents to be irrelevant to the nomination of Judge Kavanaugh, my staff told the Ranking Member's staff on July 16 that I was willing to request some Staff Secretary documents in a good-faith effort to reach a bipartisan compromise on the document issue. My staff made clear that they would work with the Ranking Member's staff to identify search terms and other search aids to narrow the range of documents for review and production while avoiding flooding the Senate with millions and millions of pages of extraneous documents. While I was unwilling to put the American taxpayers on the hook for a fishing expedition through millions of pages of irrelevant Staff Secretary documents, I was willing to request Staff Secretary documents containing the terms most important to the Minority.

But the Ranking Member's staff refused to work with us. Instead of agreeing on reasonable search terms to narrow the universe of documents to be produced to the Senate, they demanded the search of every White House email and document from every one of the hundreds of White House employees over the course of all eight years of the Bush presidency. They wanted the production of documents that Judge Kavanaugh never saw but merely mention his name. The Senate didn't even receive such documents in connection with Justice Kagan's nomination. And, over the course of multiple rounds of negotiations, the Ranking Member's staff refused to budge from their extremist position. The Ranking Member's staff—as their letter dated July 23 reflects—would agree to search terms only to *prioritize* the production of White House documents, not to reasonably limit the range of documents for review and production. The Minority's proposed course of action would have taken many months to complete.

We are far too late in the process to reconsider the possibility of requesting Staff Secretary documents. Nothing prevented the Ranking Member's staff from sending me a list of search terms more than one month ago when we could have obtained a reasonable number of Staff Secretary

documents before the confirmation hearing. I did not allow the Minority staff's weeks-long refusal to budge from its unreasonable negotiating position to delay the confirmation process. I likewise will not allow recent late-breaking requests to reopen the search-term issue on the eve of Judge Kavanaugh's hearing to delay the confirmation process.

Finally, you suggest that the involvement of Bill Burck, President Bush's representative under the Presidential Records Act (PRA) since 2009, and the Trump Administration is somehow nefarious. As I've explained, the PRA *requires* that President Bush and President Trump review any documents before they are sent to the Senate. Representatives of the incumbent and former Presidents reviewed documents during the nominations of Justices Kagan and Gorsuch before they arrived at the Senate. Indeed, Justice Kagan's records were reviewed by President Clinton's PRA representative, Bruce Lindsey, the hyper-partisan lawyer who served as President Clinton's national campaign director, his White House "fixer," and longtime CEO of the Clinton Foundation. Quite clearly, he had substantially more ties to Democratic partisan politics than Mr. Burck does to Republican politics. And I don't recall complaints about Mr. Burck's involvement in the review of White House documents last year during Justice Gorsuch's confirmation process.

As I explained in my previous letter to you and my letter to Ranking Member Feinstein, dated August 22, 2018, I am taking the same approach to publicly releasing Committee Confidential documents that you wish to use in the hearing that I took during Justice Gorsuch's confirmation process. The deadline for submitting requests for the public release of documents to be used at the hearing is not "arbitrary." It is a week before the start of the hearing and gives President Bush's and President Trump's representatives sufficient time to review the documents and decide whether to waive statutory restrictions. My staff is ready to work with you to obtain the public release of documents you would like to use at Judge Kavanaugh's confirmation hearing.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive, flowing style with a small dash at the end.

Chuck Grassley
Chairman