

United States Senate

WASHINGTON, DC 20510

COMMITTEES:
ARMED SERVICES
ENERGY AND NATURAL RESOURCES
INTELLIGENCE
JOINT ECONOMIC

August 21, 2018

The Honorable Chairman Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Building
Washington, DC 20510

Dear Chairman Grassley,

I am writing to request that as Chairman of the Senate Committee on the Judiciary, you authorize the release of all documents provided to the committee pertaining to Judge Brett Kavanaugh's time with the Office of the Independent Counsel as Associate Counsel, and his tenure at the White House as Associate Counsel, Assistant to the President, and Staff Secretary as they relate to presidential power, presidential war power, judicial independence, the detention and interrogation of suspected terrorists, and the mass surveillance of Americans. Access to Judge Kavanaugh's documents relating to these matters is essential to properly fulfill my constitutional obligation.

I am troubled by your unilateral and unprecedented decision to mark many of the documents "Committee Confidential," essentially blocking Senators not on the committee from conducting their constitutional due diligence necessary to perform our role of "advice and consent." Judge Kavanaugh's documents from his time in the White House and the Office of the Independent Counsel illuminate his thoughts and approach on many issues important to New Mexicans that may come before the Supreme Court. It is essential that as Senators we have full access to nominee's views and positions to better understand his jurisprudence and thought process before a confirmation vote.

The committee has so far released only a tiny fraction of the nearly 1 million potentially relevant documents pertaining to Judge Kavanaugh. However, portions of the 124,000 documents released already raise serious questions about Judge Kavanaugh's truthfulness in his prior nomination hearing, and his willingness to provide this body with the information it needs to make informed decisions. We know that Judge Kavanaugh was involved in the Bush Administration's considerations of mass surveillance, wiretapping, anti-terrorism laws, military tribunals, and the detention and interrogation of suspected terrorists. This is contrary to Judge Kavanaugh's testimony during his 2007 confirmation hearing that he has yet to reconcile. Further, during his time at the White House, Judge Kavanaugh was actively involved in limiting the ability of this body and the public to access information concerning judicial nominees, presidential records, detainee information, and General Accountability Office inquiries. These are troubling patterns that should clearly weigh in favor of providing more access to Senators, not less.

Of particular interest to me and my work on the Senate Select Committee on Intelligence and the Senate Armed Services Committee are documents that relate to Judge Kavanaugh's view on the separation of powers, the role of an independent judiciary, and the power of the president. A cursory review of the subject matter from Judge Kavanaugh's emails from 2001 to 2003 raise significant questions. There is evidence that Judge Kavanaugh worked to expand and protect presidential powers while blocking oversight by Congress. He was involved in developing the Bush Administration's "Preemptive Strike Theory," and the use of military tribunals. He has stated that he believes in an extremely narrow view of the role of the judiciary in resolving conflicts between the executive and legislative branches, but believes that the Presidency is virtually above the law. Finally, we know he was actively involved in developing the Bush Administration's views on mass surveillance, wiretapping, and policies regarding detainees. It is unconscionable on these important issues that speak to the very freedoms we hold dear that we as Senators would be denied access to a record that exists and is critical to evaluating the nominee.

The Constitution is unambiguous on the advice and consent role of the Senate in judicial nominations. Not allowing Senators and the public a complete view of a nominee's record makes a mockery of our nomination process. I urge you to make the documents available to me and my staff.

Sincerely,

A handwritten signature in blue ink, appearing to read "Martin Heinrich", written over a horizontal line.

Martin Heinrich
United States Senator