



For Immediate Release

Date: August 17, 2018

President Trump's Legal Team Appears To Be Depending On A Supreme Court With Judge Kavanaugh To Defend Him. That's Why The American People Need Full Access to Judge Kavanaugh's Records.

Weeks After President Trump Nominated Judge Kavanaugh, President Trump's Attorney Says They Are Preparing For A Supreme Court Fight

Judge Kavanaugh Has Publicly Criticized Supreme Court Precedents Limiting Presidential Power, Said President Is "Chief Law Enforcement Officer" With "Full Supervisory Control" Over Special Counsel Investigations

National Archives: Senate Republicans And Kavanaugh's Former Deputy Are Screening Kavanaugh's Records Using Process "That Has Never Happened Before" And "Do Not Represent the National Archives"

The American People Deserve Access to Judge Kavanaugh's Full Record from the National Archives Before The Senate Votes On His Confirmation To A Lifetime Position On The Supreme Court

WEEKS AFTER PRESIDENT TRUMP NOMINATED JUDGE KAVANAUGH TO THE SUPREME COURT, PRESIDENT TRUMP'S LEGAL TEAM IS REPORTEDLY PLANNING TO RELY ON THE SUPREME COURT TO AVOID COMPLYING WITH A LAWFULLY ISSUED SUBPOENA

Washington Post: Trump's lawyers prepare to fight subpoena all the way to the Supreme Court. "In the meantime, Trump's lawyers are preparing to oppose a potential subpoena from Mueller for a Trump sit-down by drafting a rebuttal that could set off a

dramatic fight in federal courts. ‘We would move to quash the subpoena,’ Giuliani said in an interview. “And we’re pretty much finished with our memorandum opposing a subpoena.’ Giuliani added that Trump’s attorneys are ready to ‘argue it before the Supreme Court, if it ever got there.’” [Washington Post, [8/15/18](#)]

AGAIN AND AGAIN, JUDGE KAVANAUGH HAS PUBLICLY CRITICIZED SUPREME COURT PRECEDENTS THAT LIMIT PRESIDENTIAL POWER AND INCREASE ACCOUNTABILITY

Associated Press: Kavanaugh: Watergate Tapes Decision May Have Been Wrong.

“Supreme Court nominee Brett Kavanaugh suggested several years ago that the unanimous high court ruling in 1974 that forced President Richard Nixon to turn over the Watergate tapes, leading to the end of his presidency, may have been wrongly decided. Kavanaugh was taking part in a roundtable discussion with other lawyers when he said at three different points that the decision in U.S. v. Nixon, which marked limits on a president’s ability to withhold information needed for a criminal prosecution, may have come out the wrong way.... ‘But maybe Nixon was wrongly decided — heresy though it is to say so. Nixon took away the power of the president to control information in the executive branch by holding that the courts had power and jurisdiction to order the president to disclose information in response to a subpoena sought by a subordinate executive branch official. That was a huge step with implications to this day that most people do not appreciate sufficiently...Maybe the tension of the time led to an erroneous decision,’ Kavanaugh said in a transcript of the discussion that was published in the January-February 1999 issue of the Washington Lawyer.” [AP, [7/22/18](#)]

Brett Kavanaugh: “Should United States v. Nixon be overruled on the ground that the case was nonjusticiable intrabranh dispute? Maybe so.” [Wash. Law. 34 (1999), Lawyers' Roundtable: Attorney-Client Privilege; p. [191](#)]

Judge Brett Kavanaugh: “I saw the difficulty of the job of President. I have often said that, much as we revere and respect the Presidency in this country, we vastly underestimate its demands I think Walter Dellinger is here, and I am not sure whether or not Clinton v. Jones is right as a constitutional matter, but I do know and especially appreciate now that the arguments Walter made about the burdens of the Presidency are right-on as a descriptive matter.” [Remarks to Inn of Court, [5/17/10](#); p. 639-644]

CNN: Trump Supreme Court Pick: I Would 'Put The Nail' In Ruling Upholding Independent Counsel.

“Judge Brett Kavanaugh two years ago expressed his desire to overturn a three-decade-old Supreme Court ruling upholding the constitutionality of an independent counsel, a comment bound to get renewed scrutiny in his confirmation proceedings to sit on the high court. Speaking to a conservative group in 2016, Kavanaugh bluntly said he wanted to ‘put the final nail’ in a 1988 Supreme Court ruling. That decision, known as Morrison v. Olson, upheld the constitutionality of provisions creating an independent counsel under the 1978 Ethics in Government Act - the same statute under which Ken Starr, for whom Kavanaugh worked, investigated President Bill Clinton.” [CNN, [7/18/18](#)]

JUDGE KAVANAUGH HAS A HISTORY OF CONTROVERSIAL STATEMENTS THAT SUGGEST HE BELIEVES THAT A SITTING PRESIDENT CANNOT BE SUBJECT TO AN INVESTIGATION – AND HAS THE POWER TO UPEND A SPECIAL COUNSEL INVESTIGATION

Brett Kavanaugh: “The implication is that Congress has to take responsibility for overseeing the conduct of the President in the first instance. That’s the role I believe the Framers envisioned, and that’s the role that makes sense if you just look at the last 20 years. It makes no sense at all to have an independent counsel looking at the conduct of the President. Now to be sure, most criminal investigations are going to involve multiple subjects, so we still need a criminal investigation ongoing. But when it comes to looking at the conduct of the president, it has to be the Congress. Congress has to get in this game and not – stop sitting on the sidelines.” [ABA Panel on the Future of the Independent Counsel Statute at Georgetown University Law Center, [2/19/98](#); 1:02:02-1:02:48; CNN, [7/20/18](#)]

Brett Kavanaugh:

LACOVARA: Do you accept the proposition that the attorney general, or the independent counsel, is the country’s chief law enforcement officer?

KAVANAUGH: I do not. The president is the chief law enforcement officer. That is one of the bedrock principles that has gotten lost since Nixon. The power of the president in these situations has diminished dramatically. [Wash. Law. 34 (1999), Lawyers' Roundtable: Attorney-Client Privilege; p. [191](#)]

Brett Kavanaugh:

COSSACK: Brett, the independent counsel law is dead and -- but yet we see Janet Reno appoint Senator Danforth to investigate what happened at Waco. It's a different kind of investigation than you worked under. Is it better or worse?

KAVANAUGH: I think it's better because the attorney general and, ultimately, the president have full supervisory control, which is the way the Constitution set up. But this shows -- and it's funny to happen so soon after the death of the statute -- when a serious investigation of the administration is needed, people are going to seek out a respected member of the opposite political party to conduct the investigation, whether it's the court appointing him or the attorney general. The same things that are said about Senator Danforth were said about Judge Starr in 1994: a very respected legal figure by both sides. [CNN Burden of Proof, [9/9/99](#); p. 169]

Judge Brett Kavanaugh: “Article II, Section 1, the first fifteen words, ‘The executive Power shall be vested in’ one person—you wonder do they mean that. Yes. You see the debates. There’s discussion of a plural executive. James Wilson, the father of the presidency—one person. One person. They meant one person. That has—we talk about does this have relevance today. Yes. For me, it does at least. When we have cases with agencies that are accountable to the President, yes. I think that’s in tension, as I’ve said, with the one person. But they meant it. It applies still today.” [GW Law School, A Dialogue with Federal Judges on the Role of History in Interpretation, [11/4/11](#)]

Judge Brett Kavanaugh: “Our Constitution makes one person responsible for the entirety of the Executive Branch, or at least for most of the Executive Branch.” [Remarks to Inn of Court, [5/17/10](#); p. 639-644]

SENATE REPUBLICANS ARE USING AN “UNPRECEDENTED” PROCESS TO SCREEN JUDGE KAVANAUGH’S RECORDS, CIRCUMVENTING THE NATIONAL ARCHIVES. WHAT ARE THEY HIDING?

National Archives Staff: “Meanwhile, a separate review – completely apart from the National Archives and the George W. Bush Presidential Library’s efforts – is also underway. The Presidential Records Act provides former Presidents with an independent right of access to the records of his administration. Accordingly, the PRA representative of President George W. Bush requested and received from the National Archives a copy of the White House Counsel’s Office and nomination records and has begun to provide copies of those records directly to the Senate Judiciary Committee, which is something that has never happened before. This effort by former President Bush does not represent the National Archives or the George W. Bush Presidential Library. The Senate Judiciary Committee is publicly releasing some of these documents on its website, which also do not represent the National Archives.” [National Archives News Staff, [8/15/18](#)]

Washington Post: Clearinghouse for Kavanaugh documents is a Bush White House lawyer, angering Senate Democrats. “The tens of thousands of pages that have emerged from the Supreme Court nominee’s tenure in the George W. Bush White House reveal little about his judicial philosophy and qualifications, much less any damning detail that could sink his bid to replace retired Justice Anthony M. Kennedy. Yet those papers are being disclosed to the public in an unusual fashion: A lawyer working for Bush and his legal team are scouring the reams of documents, determining what can be released and sending them to the Senate. The National Archives is doing its own nonpartisan review, but that won’t be finished for weeks — long after Kavanaugh is likely to be confirmed and has taken his seat on the nation’s most powerful court. ... But what makes the fight for Kavanaugh’s records unusual is that the National Archives, which has played a central role for previous nominees in vetting their White House papers and sending them to the Senate, has effectively been sidelined. In its place is a team led by attorney Bill Burck, who also served in the Bush White House as Kavanaugh’s deputy when the nominee was staff secretary. Burck, with an army of more than 50 lawyers, appears to be moving at a much faster clip than the formal process at the Archives, where about 30 staff members are spending hours going through Kavanaugh’s records. The Archives review won’t be completed until late October, well beyond when Republicans would like Kavanaugh to be confirmed. The Archives issued a statement Wednesday saying the Burck-led process was ‘completely apart’ from its work and is ‘something that has never happened before.’” [Washington Post, [8/15/18](#)]

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