

# Kavanaugh - Legitimate for the Supreme Court??

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Thomas A. Burns, PhD.

Klamath Falls, Oregon

What does it take for a reasonable person to find Brett Kavanaugh unqualified to be confirmed as a nominee to the Supreme Court of the United States? How many of the following facts that have emerged in Kavanaugh's nomination process have to accumulate before a reasonable person of any political persuasion says, "Enough!"

- 1) Even by conservative standards, Kavanaugh's policy positions in the law are extreme, especially on the issues of executive privilege, corporate rights, and women and minority rights. These positions are clearly revealed in his extensive opinions and writings, as well as his political associations [long time Federalist Society member and judicial council for George W. Bush].
- 2) Kavanaugh's behavior in his second appearance before the Senate Judiciary Committee exposed a nominee with a clear political bias whose character, demeanor, and temperament did not even approach being judicial.
- 3) Kavanaugh's behavior before the Committee was emotional [agitated, snarling and loud], confrontational [refusing or avoiding questions while tossing adolescent like reverse questions at his questioners], and politically highly charged [claiming a conspiracy against him funded by Democrats and liberals and motivated by the 2018 Trump win and revenge for the Clinton election loss].
- 4) Kavanaugh's extreme behavior before the Committee is of a kind that Kavanaugh himself is on the record [video of his statement on the issue of demeanor and temperament while teaching at Harvard Law School] as regarding as inappropriate for a judge at any judicial level to display at any time publicly.
- 5) Kavanaugh's behavior before the Committee was not an outburst responding to the provocation of the moment. His behavior occurred in his initial statement to the Committee, and it was written down and read. His emotional delivery was in response to his own written words. Kavanaugh's statement was formulated beforehand and with the opportunity for full review – by both himself and probably by those assisting him in preparing his opening remarks. Kavanaugh's opening statements to the Committee reflect accurately his non-judicial character and politically biased point of view.

6) Kavanaugh's behavior before the Committee was sufficiently objectionable for more than 1800 professors in law schools across the country to sign a collective letter to the Judiciary Committee and Senate indicating that his behavior as disqualifying. The submission of such a letter is unprecedented in the entire history of Judiciary Committee proceedings. This letter included professors with a wide range of public policy positions and was signed by more than 900 female law professors. Importantly, this letter was signed by 12 professors from Yale – Kavanaugh's AL-ma-mater, and 14 professors from Harvard – where Kavanaugh was on the law faculty for 10 years. In essence, Kavanaugh's nomination to the Supreme Court has been rejected by the professionals across the country who train those in Kavanaugh's own profession!

7) Kavanaugh's behavior before the Senate Judiciary Committee was so out of line that retired Supreme Court Justice John Paul Stevens made the unprecedented move of announcing that Kavanaugh had revealed himself to be unfit to serve on the high court. Importantly, Justice Steven was a conservative justice appointed by Republican President Gerald Ford; so, his announcement can not be attributed to someone with an opposing political philosophy.

8) With regard to matters both relatively insignificant and those much more important, evidence has accumulated revealing that on multiple occasions while sworn and under oath before the Senate Judiciary Committee, Kavanaugh has not told the truth. In addition, Kavanaugh has repeatedly dissembled and avoided answering questions – and not just with respect to inquiries dealing with policy issues, which can be common. Kavanaugh has refused to answer even what would seem to be the simplest of questions - “Does the name Bart that occurs in entries in your year book as well as in the memoir of Mark Judge refer to you – Brett?” Kavanaugh will not say “Yes” even though he knows full well that Bart was his nickname used commonly by his friends in high school to refer to him. Why is such a seemingly “minor” issue significant? Because the references in Kavanaugh's yearbook to “Bart” are linked to excessive drinking and aggressive sexual behavior with women! In another seemingly minor matter, when Kavanaugh is asked about what certain terms mean that appear in his own entry in his yearbook, Kavanaugh makes up meanings for “boof” [flatulence instead of anal sex] and “Devil's Triangle” [drinking game rather than sex involving two men and one woman]. Above all, a federal judge at any level is to be above reproach when it comes to his or her trustworthiness, and absolutely so when under oath to “tell the truth, the whole truth and nothing but the truth.” Importantly, these “minor” issues are just the tip of the untruth iceberg in Kavanaugh's testimony. [See allegations of lies exposed by his own emails]

9) In light of the multiple accusations of aggressive sexual behavior, including attempted rape, brought against Kavanaugh and in the context of resistance by the Republicans on the Judiciary Committee to reopening the FBI background check for Kavanaugh, the American Bar Association, the national level professional organization for American lawyers, submitted a letter to the Committee indicating its support for reopening this FBI background check investigation. Such a letter from the ABA is again unprecedented. The great majority of representatives to Congress are lawyers with many [including Republicans] having been prosecutors. The ABA is the main professional organization for most representatives in Congress! It felt itself to be forced to come forward in order to get its own to do the right thing. The need for the ABA to take this unprecedented step constitutes a strong negative statement about the process that Republicans have been following on the Judiciary Committee.

10) In spite of all the objections by Democrats and major non-partisan organizations, the Republicans have insisted on a non-standard nominee review process in order to rush the Kavanaugh nomination to a confirmation vote in the Senate. The average length of time for such a review process is about 6 months while the Kavanaugh process was scheduled by Republicans to be completed in just over a month. Instead, with the late emerging accusations against Kavanaugh, it has taken just about two months.

11) For more than 10 months in 2015, the Republicans refused to even consider the nomination by President Obama of Merrick Garland for the Supreme Court. The claim by Republicans that the Democrats have been trying to delay the rushed Kavanaugh nomination process is nothing short of gross political hypocrisy!

12) The follow-up FBI background check of Kavanaugh, which the Republicans strongly resisted until they were forced to do it by one Republican on the Judiciary Committee, Jeff Flake, was so restricted by the White House [Don McGahn, who pushed the Kavanaugh candidacy from the start and who coached Kavanaugh during the Committee review process] as to be essentially inconsequential. Neither his main accuser, Ford, nor Kavanaugh himself received follow up FBI interviews, and only 8 of approximately 36 highly relevant witness were interviewed. Many of these potential witnesses came forward on their own and approached the FBI as sources of corroboration for the three main accusers of Kavanaugh. The White House actively blocked access by the FBI to these witnesses. This situation of a highly restricted FBI "investigation" is true in spite of Trump's claim that in the reopened background check process the FBI was to be able to follow all potential leads at the FBI's own discretion.

13) The accusations of excessive drunkenness, assault, and sexual assault brought against Kavanaugh are very serious and span a time from Kavanaugh's teenage years to at least 1998 when he had completed law school and was an adult of 33 years. The accusations are not limited to Kavanaugh's "boyhood."

14) If true and if confirmed by a serious FBI investigation, the accusations against Kavanaugh amount to nothing short of attempted rape and possibly even serial rape, crimes for which there is no statute of limitation.

15) The evidence of Kavanaugh's drunkenness, at least into his mid 30s, provide no excuse for his aggressive behavior. In fact, it seems that at least in his high school and college years he knowingly put himself in a state of inebriation along with his companions for the purpose of targeting women so as to render them in a condition where they could be abused sexually, sometimes in the most extreme form – gang rape!

16) Alcoholic intoxication can cause an individual's memory to be impaired to the point of not being able to later recall behavior during the prior period of intoxication. But the evidence for Kavanaugh's participation in a social group that thrived on and celebrated [in writing] inebriation and aggressive behavior with women makes it clear that he was made aware by his friends of what he did while intoxicated. Kavanaugh's high school years book and the memoir written by his close friend Mark Judge make clear reference to Kavanaugh's drunkenness and sexual exploits. There is every reason to believe that Kavanaugh knew and KNOWS what he did. But, if in fact he does not really remember now what he did, then as a middle age adult and the father of two girls, Kavanaugh's total rejection of any alcoholic inebriation or assault like behavior at any time in his life most likely reveal an adult who is in a significant state of psychological denial.

17) However laudable Kavanaugh's legal career may have been from full adulthood on, it in no way justifies what is reported and confirmed by many to be his inexcusable and likely criminal behavior as a teenager and young adult at least into his 20's.

### Conclusion

I suggest that for any one of the following nine reasons – much less the likely combination of most of them, a reasonable person would find Brett Kavanaugh unfit to serve as a judge on the Supreme Court: 1) commitment to extreme positions and interpretations of the law in relation to the Constitution, 2)

repeated failure to tell the truth when under oath to do so before the Judiciary Committee, 3) current evidence for disqualifying judicial demeanor, temperament and political bias, 4) current and unprecedented judgments of disqualification from highly relevant and independent professional groups, organizations, and federal judges, 5) evidence for frequent inebriation to the point of incoherence and physical instability at least as a young adult – suggestive of at least a latent state of alcoholism, 6) evidence in general for very aggressive verbal and physical behavior while inebriated at least to the age of 33, 7) evidence for sexually aggressive behavior toward women as a young adult most likely to the point of attempted rape and possibly to the point of serial rape, 8) a rushed, non-standard, and truncated process of review by the Republican controlled Senate Judiciary Committee, 9) a White House directed, totally incomplete and inadequate FBI background check into the accusations of sexual assault brought by credible accusers and their multiple corroborators.

### Post Kavanaugh Confirmation

As a research social scientist, here is what I consider to be the Ultimate Conclusion on what has become this Kavanaugh fiasco:

## **INVESTIGATE**

**THOROUGHLY – INDEPENDENTLY – WITHOUT BIAS  
and  
REPORT FULLY**

Until this happens, we will never get as close as we can to what the TRUTH really is!! All of us with “opinions” on this matter select our facts – including ME. Now that Kavanaugh has been confirmed, hopefully the Democrats and the public will not let this matter fade as we all move to the November federal elections, surely with much more Trump distraction on the way. For the sake of the integrity of the country and the Supreme Court, and to proclaim our respect for women, we all need to insist on a probable Democrat majority in the House of Representatives reopening the Kavanaugh FBI investigation, which must meet the above requirements. And we must be prepared to accept the results of that fully credible investigation – whether it ultimately supports Kavanaugh or his detractors. Short of such an investigation occurring with its authoritative consequence, it is difficult for those of us who have taken a position to keep an open mind on this contentious and divisive matter.

## **INVESTIGATE!!**