

## **I Wrote Some of the Stolen Memos That Brett Kavanaugh Lied to the Senate About**

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### **He should be impeached, not elevated.**

Judge Brett Kavanaugh prepares to testify before the Senate Judiciary Committee on the third day of his Supreme Court confirmation hearings on Capitol Hill on Sept. 6.

Photo edited by Slate. Photo by Chip Somodevilla/Getty Images.

Much of Washington has spent the week focusing on whether Judge Brett Kavanaugh should be confirmed to the Supreme Court. After the revelations of his confirmation hearings, the better question is whether he should be impeached from the federal judiciary.

I do not raise that question lightly, but I am certain it must be raised.

Newly released emails show that while he was working to move through President George W. Bush's judicial nominees in the early 2000s, Kavanaugh received confidential memos, letters, and talking points of Democratic staffers stolen by GOP Senate aide Manuel Miranda. That includes research and talking points Miranda stole from the Senate server after I had written them for the Senate Judiciary Committee as the chief counsel for nominations for the minority.

Receiving those memos and letters alone is not an impeachable offense.

No, Kavanaugh should be removed because he was repeatedly asked under oath as part of his 2004 and 2006 confirmation hearings for his position on the U.S. Court of Appeals for the D.C. Circuit about whether he had received [such information from Miranda](#), and each time he falsely denied it.

For example, in 2004, Sen. Orrin Hatch asked him directly if he received "any documents that appeared to you to have been drafted or prepared by Democratic staff members of the Senate Judiciary Committee." Kavanaugh responded, unequivocally, "No."

In 2006, Sen. Ted Kennedy asked him if he had any regrets about how he treated documents he had received from Miranda that he later learned were stolen. Kavanaugh rejected the premise of the question, restating that he never even saw one of those documents.

Back then the senators did not have the emails that they have now, showing that Miranda sent Kavanaugh numerous documents containing what was plainly research by Democrats. Some of those emails went so far as to warn Kavanaugh

not to distribute the Democratic talking points he was being given. If these were documents shared from the Democratic side of the aisle as part of normal business, as Kavanaugh claimed to have believed in his most recent testimony, why would they be labeled “not [for] distribution”? And why would we share our precise strategy to fight controversial Republican nominations with the Republicans we were fighting?

Another email chain included the subject line “[spying](#).” It’s hard to imagine a more definitive clue than that. Another said “Senator Leahy’s staff has distributed a [confidential letter](#) to Dem Counsel” and then described for Kavanaugh that *precise* confidential information we had gathered about a nominee Kavanaugh was boosting. Again, it is illogical to think that we would have just given Miranda this “confidential” information for him to use against us. But this is precisely what Judge Kavanaugh suggested in his testimony on Wednesday. He is not that naïve.

In the hearing this week, Sen. Leahy also noted that the previously [hidden emails](#) showed that Miranda asked to meet Kavanaugh in person to give him “paper” files with “useful info to map out [Sens. Joe] Biden and [Dianne] Feinstein, and others.” The promised information included “Biden-speak.” Again, this would not have been a normal information exchange.

In response to Leahy’s questions this week, Kavanaugh made the outlandish claim that it was typical for him to be told what Democrats planned to ask at these combative hearings over controversial nominees, and that this was in fact the “coin of the realm.” As a Democrat who worked on those questions, I can say definitively that it was not typical at all. Kavanaugh knows this full well.

At the time, Kavanaugh was working with Miranda and outside groups to try to force these nominees through the Senate over Democratic objections, and it would have been suicide to give them our research, talking points, strategies, or confidential letters. The GOP senators, their staff, the White House, and outside groups were working intensively to undermine the work of Democratic senators to block the most extreme of President Bush’s judicial nominees.

***Kavanaugh’s actions were dishonorable and dishonest.***

The Leahy talking points given to Kavanaugh were from my in-depth research into why the Senate had compelling historical precedent for examining Miguel Estrada’s Department of Justice records, which the White House counsel’s office was refusing to surrender. Other confidential materials Miranda shared with Kavanaugh related to investigations Democrats were pursuing over how Judge Priscilla Owen had handled an abortion case involving parental consent and about the overlap between her funders and groups with business before the courts of Texas. We would never have provided that information—key to our strategy to try to block what we considered extremist judicial nominations—to Miranda or to the White House.

During his testimony, Kavanaugh conflated these adversarial proceedings with ones in which Democrats might have cooperated with the other side, like the Patriot Act and airline liability. But these weren't hearings on some bill where senators would share their concerns across the aisle to try to get a bipartisan fix on problems in a piece of legislation. These were oppositional proceedings in committee and on the floor over controversial judicial nominees. Kavanaugh knew this just as intimately as I did—our sides fought over those nominations intensely.

It was also an area where Kavanaugh's judicial nominations alliance had taken a scorched-earth approach, attacking Democrats ruthlessly. The White House's closest allies went so far as to call Leahy and other Democrats on the committee "anti-Catholic," even running [attack ads](#).

Perhaps Kavanaugh was so blinded by his quest to get the most controversial Bush nominees confirmed in 2003 that he did not have any concerns about the bounty of secret memos and letters he was receiving—the full extent of which is not known because so many documents are still secret.

But, surely, reasonable questions about what he had been party to would have been considered after the story of the theft exploded in the news, Miranda was forced to resign, and the U.S. Senate sergeant-at-arms began a bipartisan investigation into the files stolen from the Senate?

As of November 2003, when the sergeant-at-arms seized the Judiciary Committee's servers, Kavanaugh would have been on notice that any of the letters, talking points, or research described as being from Democrats that were provided to him by Miranda were suspect and probably stolen from the Senate's server.

But he did nothing. He did not come forward to the Senate to provide information about the confidential documents Miranda had given him, which were clearly from the Democrats.

Kavanaugh also apparently did nothing when the Senate referred the case to the U.S. attorney's office for criminal prosecution. (Miranda was never prosecuted.)

Eventually, though, Kavanaugh went *even further* to help cover up the details of the theft.

During the hearings on his nomination to the D.C. Circuit a few months after the Miranda news broke, Kavanaugh actively hid his own involvement, lying to the Senate Judiciary Committee by stating unequivocally that he not only knew nothing of the episode, but also never even received any stolen material.

Even if Kavanaugh could claim that he didn't have any hint *at the time he received the emails* that these documents were of suspect provenance—which I personally find implausible—there is no reasonable way for him to assert honestly that he had

no idea what they were *after* the revelation of the theft. Any reasonable person would have realized they had been stolen, and certainly someone as smart as Kavanaugh would have too.

But he lied.

Under oath.

And he did so repeatedly.

Significantly, he did so even though a few years earlier he had helped spearhead the impeachment of President Bill Clinton for perjury in a private civil case. Back then Kavanaugh took lying under oath so seriously that he was determined to do everything he could to help remove a president from office.

Now we know that he procured his own confirmation to the federal bench by committing the same offense. And he did so not in a private case but in the midst of public hearings for a position of trust, for a lifetime appointment to the federal judiciary.

His actions were dishonorable and dishonest.

This week, as part of his efforts to be elevated to the highest court in the land, he has calmly continued to deceive, falsely claiming that it would have been perfectly normal for him to receive secret Democratic letters, talking points, and other materials. And if this absurd notion were somehow true, it would not even be consistent with what he testified to 12 and 14 years ago. Back then, he didn't state it would have been normal for him to receive secret Democratic strategy materials.

Instead, he explicitly and repeatedly went out of his way to say *he never had access to any such materials*. These objectively false statements were offered under oath to convince the committee of something that was untrue. It was clearly intentional, with Kavanaugh going so far as to correct Sen. Kennedy when the senator described the document situation accurately.

That's why—without even getting into other reasonable objections to his nomination—he should not be confirmed.

In fact, by his own standard, he should clearly be impeached.

***Lisa Graves is the co-founder of Documented, which investigates corporate influence on democracy. She is the former chief counsel for nominations for the ranking member of the Senate Judiciary Committee and was deputy assistant attorney general in the Department of Justice.***

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