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House of Representatives

The House was not in session today. Its next meeting will be held on Friday, October 5, 2018, at 9:30 a.m.

Senate

THURSDAY, OCTOBER 4, 2018

The Senate met at 11 a.m. and was called to order by the Honorable DAN SULLIVAN, a Senator from the State of Alaska.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal Spirit, giver of every good and perfect gift, we magnify Your Holy Name. Your righteousness endures forever.

Today, empower our lawmakers to do Your will. Give them insight that will make justice roll down like waters and righteousness like a mighty stream. May they remember that unless You build the house, they labor in vain who attempt to erect it. Provide our Senators with the wisdom to ask You for Your guidance and to follow Your counsel. Lord, incline them to so labor that Your will will be done on Earth even as it is done in Heaven. Subdue freedom's enemies, and provide a shield for liberty.

We pray in Your great Name. Amen.

PLEDGE OF ALLEGIANCE

The Presiding Officer led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication

to the Senate from the President pro tempore (Mr. HATCH).

The senior assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, October 4, 2018.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DAN SULLIVAN, a Senator from the State of Alaska, to perform the duties of the Chair.

ORRIN G. HATCH,
President pro tempore.

Mr. SULLIVAN thereupon assumed the Chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to resume consideration of the following nomination, which the clerk will report.

The senior assistant legislative clerk read the nomination of Brett M.

Kavanaugh, of Maryland, to be an Associate Justice of the Supreme Court of the United States.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

NOMINATION OF BRETT KAVANAUGH

Mr. McCONNELL. Mr. President, the Senate is considering the nomination of Judge Brett Kavanaugh to serve as an Associate Justice on the Supreme Court of the United States.

When the noise fades, when the uncorroborated mud washes away, what is left is the distinguished nominee who stands before us—an acclaimed judge whom peers and colleagues praise in the very strongest terms, a jurist whom the American Bar Association awarded its very highest rating unanimously—"well qualified."

Here is what the ABA says it takes to earn that distinction:

To merit a rating of "Well Qualified," the nominee must be at the top of the legal profession in his or her legal community; have outstanding legal ability, breadth of experience and the highest reputation for integrity; and demonstrate the capacity for sound judicial temperament.

This is the nonpartisan test that my friend the Democratic leader, among others, used to call the gold standard. Judge Kavanaugh passed that with flying colors.

To be clear, this seal of approval comes from the ABA's Standing Committee on the Federal Judiciary—an independent entity within the organization. Even after the ABA's President

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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tried to play politics with the nomination last week, the Standing Committee reaffirmed its rating yet again. Unanimously well qualified—that is Brett Kavanaugh.

So how did we end up where we are today? How did we get here? How did we get from a chorus of expert praise and professional respect to wild tales of violent gangs, sexual assault rings, fist fights on boats in Rhode Island harbors, and the possibility—get this—of an argument at a college bar?

Several weeks ago, a confidential allegation of misconduct from nearly 40 years ago was leaked to the press. Since then, other allegations have poured forth. Many were just patently ridiculous—a feeding frenzy of ridiculous accusations. While some cheered on the feeding frenzy for political purposes, Judiciary Chairman CHUCK GRASSLEY and his staff rolled up their sleeves and went to work. They promptly investigated the varied allegations that materialized at the last minute.

Chairman GRASSLEY reopened the public hearing so that Dr. Ford and Judge Kavanaugh could speak directly to those claims under oath. By the way, that was after he offered Dr. Ford the option to tell her story at any place of her choosing—either here or in California, either in public or in private, either with staff or with Members. It was an offer that, according to Dr. Ford's testimony, was seemingly never actually communicated to her by her lawyers despite a professional requirement to do so.

Now, of course, the FBI has completed a supplemental background investigation and delivered its results to us here in the Senate. This is now the seventh time the FBI has thoroughly reviewed Judge Kavanaugh's background—seven FBI investigations. So what have we learned? What do the facts and the evidence tell us after seven FBI investigations? The fact is, these allegations have not been corroborated. None of the allegations have been corroborated by the seven FBI investigations—not in the new FBI investigation, not anywhere. None of these last-minute allegations have been corroborated, as is confirmed by the seventh and latest FBI investigation.

As Chairman GRASSLEY stated this morning, “Neither the Judiciary Committee nor the FBI can locate any third parties who can attest to any of these allegations.” There is no backup from any witnesses, including those specifically named as eyewitnesses by the people who brought the allegations in the first place. Let me say that again. There is no backup from any witnesses, including those specifically named as eyewitnesses by the people who brought these allegations. In addition, one person has completely recanted their whole wild story. Another accuser went on television and backpedaled from many of their own ridiculous charges.

The facts do not support the allegations levied at Judge Kavanaugh's

character. Instead, many of the facts actually support Judge Kavanaugh's strong, unequivocal denial, which he repeatedly stated to committee investigators under penalty of felony and which he firmly restated under oath last Thursday before the full committee and the American people, which aligns with the testimony of hundreds—literally hundreds—of character witnesses who have known him over the years.

For goodness' sake, this is the United States of America. Nobody is supposed to be guilty until proven innocent in this country. Nobody is supposed to be guilty until proven innocent in the United States of America. The Senate should not set a fundamentally un-American precedent here.

Judge Kavanaugh's right to basic fairness does not disappear just because some disagree with his judicial philosophy. Our society is not a place where uncorroborated allegations of misconduct from nearly 40 years ago—allegations which are vigorously disputed—can nullify someone's career or destroy their reputation. Is that what the Senate is going to be known for—your nomination comes up here, and we destroy your reputation? Is that what the Senate is going to participate in?

Above the partisan noise, beyond this shameful spectacle, which is an embarrassment to the Senate, what will endure are the actual facts before us—the actual facts. Upon reviewing them, only one question is left for us to answer: Is Judge Brett Kavanaugh qualified to serve on the U.S. Supreme Court?

There is a good reason the political opponents of this nomination have never wanted to litigate that issue. Oh, no. They don't want to talk about that. There is a good reason they let the politics of personal destruction run away ahead of the facts. It is in an effort to dodge that very good question because Brett Kavanaugh is stunningly and totally qualified for this job.

We already know this, but, for starters, his academic and legal credentials are second to none. He graduated from Yale with honors and went on to Yale Law School. Then came not one, not two, but three clerkships in our Nation's Federal courts, ending up with Justice Kennedy. His career continued with work in the Office of Independent Counsel and the Office of White House Counsel.

That was only the beginning. For the last 12 years, Brett Kavanaugh has served on what is widely considered the second highest court in our land, the DC Circuit Court of Appeals. He has written more than 300 judicial opinions. Several have formed the basis of later rulings by the Supreme Court itself.

The litany of accomplishments is a fact—a fact. It is a matter of public record.

Just as telling are all the accounts of Judge Brett Kavanaugh, the person,

that have been volunteered by those who have known him every step of the way over the years. We have heard from literally hundreds of character witnesses who have heaped praise on the Brett Kavanaugh they know—the loyal friend and teammate; the stand-out student; the talented, hard-working colleague; the brilliant legal writer; the respected role model and mentor, particularly to women; and the devoted husband, father, and coach. These letters and recorded testimony were offered by men and women with nothing to gain for themselves; they were just glad to tell the truth about a nominee who they know possesses the character, temperament, and qualifications for this important job.

Judge Kavanaugh's professor and others who knew him at Yale describe “a true intellectual,” “a leading thinker,” and “a wonderful mentor and teacher.” One goes so far as saying: “It is hard to name anyone with judicial credentials as strong as those of Judge Kavanaugh.”

His former law clerks, in full-throated support, say that Judge Kavanaugh's work ethic “flows from a fundamental humility.” They say that he gives “unflinchingly honest advice” and “listens carefully to the views of his colleagues and clerks, even—indeed, especially—when they differ from his own.”

His legal peers here in Washington of all political persuasions haven't minced their words either. They deem him “unquestionably qualified by his extraordinary intellect, experience, and temperament” and warn the Senate not to miss this opportunity to put “such a strong advocate for decency and civility on our Nation's highest court.”

Let's not lose sight of the opportunity before us. This process has been ruled by fear, anger, and underhanded gamesmanship for too long. It is time for us to stand up to this kind of thing. We owe it to the American people not to be intimidated by these tactics. We owe it to the American people to underscore that you are innocent until proven guilty.

It is the Senate that is on trial here. What kind of image will we convey to the public? Can we be scared by all these people rampaging through the halls, accosting Members at airports, and coming to their homes, trying to intimidate the Senate into defeating a good man? Are we going to allow this to happen in this country?

We will not pretend that partisan histrionics take away the basic fairness that every American deserves. We will not be hoodwinked by those who have tried hard to smear this good man and to drag him through the mud. And when that didn't work, they turned on the dime and started claiming his real sin was that he spoke up too forcefully in defense of his good name and his family, or they decided he didn't have a judicial temperament because he aggressively defended his good name

against this outrageous smear conducted in conjunction with Senate Democrats.

Who among us would not have been outraged by having a lifetime record drug through the mud with accusations that cannot be proven and a blatant attempt to decide—on the part of at least some Senate Democrats—that the presumption of innocence no longer applies in this country? What kind of person wouldn't have been upset about that?

They claim he spoke too forcefully in defense of himself after being accused of such outrageous behavior that cannot be proven. I admire him for standing up for himself and standing up for his family. I would be shocked if it were not done in an aggressive fashion, for goodness' sake.

Let's reclaim this moment for what it should be—a chance to elevate a stunningly talented and impressive jurist to an important office for which he is so well qualified, so completely and totally qualified. It is a golden opportunity to give our great Nation precisely the kind of brilliant, fairminded, and collegial Supreme Court Justice that the Court deserves. This is the good that Senators will have an opportunity to do. We have a chance to do good here and to underscore the basic tenet of fairness in our country.

I filed cloture on the nomination yesterday evening, and I will be proud to vote to advance this nomination tomorrow.

I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Democratic leader is recognized.

Mr. SCHUMER. Mr. President, it is another morning in the Senate and another partisan diatribe coming from my good friend—and he is my good friend—the majority leader. Instead of looking at what happened—that a young woman came forward because she felt compelled to, knowing she would risk so much to herself, which, unfortunately, has happened—he seeks to blame somebody else; in this case, the Democrats.

Let's remember that Dr. Ford came forward before Judge Kavanaugh was even nominated. Dr. Ford came forward and called up two people before anyone even knew of her allegations, including, one, a hotline from the Washington Post, according to her testimony. Our colleague—my colleague here—has engaged in a giant Kabuki game. He knows how believable Dr. Ford is. He knows the majority of the American people believe Dr. Ford was

telling the truth rather than Judge Kavanaugh. He knows any focus on Dr. Ford would bring more feelings that Judge Kavanaugh is the wrong person for the Supreme Court, but he can't attack Dr. Ford because of her credibility—greater than Judge Kavanaugh's—so he attacks "Democrats," increasing the partisan rancor and basically the fundamental lack of getting to the truth in this Chamber.

I would like to ask the majority leader a few questions based on what he said a few minutes ago. He said this debate has been filled with partisan histrionics. Mr. Leader, are you accusing Dr. Ford of engaging in partisan histrionics when she came forward?

He said the politics of personal destruction is rampant. Again, Mr. Leader, are you accusing Dr. Ford of engaging in the politics of personal destruction?

He talked about people being intimidated. Again, Mr. Leader, are you accusing Dr. Ford of intimidating the Senate because she had the courage to come forward?

He talks over and over about the outrageous smear. Mr. Leader, it is about time you came forward and came clean. When you say "outrageous smear," you are really referring to what Dr. Ford said, but you can't say so because everyone knows that kind of rhetoric would be outrageous.

It is her testimony that got this whole thing going; her testimony, required by one courageous Republican who said he wouldn't just rush things through, as Leader MCCONNELL attempted to do, and that is why there was a hearing, not any Democrats—none.

I said yesterday, the leader is telling one of the greatest mistruths I have heard on the floor; that Democrats have delayed. Again, Mr. Leader, what power do we have to delay? Isn't it true that you set the time and place of hearings—or your committee chairs do—and you set the time and place of when we vote, with no effect from the Democrats, no influence by Democrats. If you have delayed, Mr. Leader, it is because you have delayed. If there has been delay, Mr. Leader, it is because you have delayed.

Ultimately, Dr. Ford came forward and won America's heart, and our Republican colleagues were upset because that might derail their headlong rush to put Judge Kavanaugh on the Supreme Court. Led by Judge Kavanaugh at his return testimony and by President Trump and by Leader MCCONNELL, they have tried to misdirect the whole issue away from Dr. Ford, who is the cause—the reason—we are debating all of this, and toward other boogymen, many of whom happen to be Democrats, coincidentally. It is wrong.

What our Republican friends are doing—what my dear friend, the leader, is doing—is demeaning to Dr. Ford, and demeaning is the last thing Dr. Ford and others who have gone through what she went through needs now or deserves now.

So I would say to the leader, if you are talking about partisan histrionics, if you are talking about politics of personal destruction, if you are talking about being intimidated, if you are talking about outrageous smears, you are really accusing Dr. Ford of all of those things, not anyone else, because she is the reason we are all here in this type of discussion, and no Democrat importuned her to come—no Democrat.

Senator FEINSTEIN tried to respect her wishes and not make it public. That was not a political instinct, that was a human instinct. As I understand it, Senator FEINSTEIN's staff called each week and said: Do you want to go public now? And Dr. Ford said no, and DIANNE FEINSTEIN respected that. Now, because she did that, our Republican friends are accusing her of manipulating. Manipulating what? Dr. Ford's desire to keep this private?

We heard what Dr. Ford said. She wrestled with deciding whether to go public. She knew the damage it would create for her family, for her life—her very life. She decided she had an obligation to come forward. She decided she had to come forward. I believe her. A large number of Americans believe her, but even if you don't believe her and you choose to believe Judge Kavanaugh, don't demean Dr. Ford, which is exactly what you are doing.

It is a shame. It is a low point in a headlong rush to get somebody whose views are out of touch with the American people, who would, in all likelihood, greatly limit women's healthcare and women's right to choose, who would gravely constrain healthcare, who would allow this overreaching President to overreach with no constraint.

Dr. Ford seems to be a casualty along the way in terms of the name-calling, the nastiness, and the viciousness. Now, they don't say it is Dr. Ford, but make no mistake about it, it is her they are talking about because it was only she who brought all of these things up—not Democrats. Democrats didn't put words in her mouth. Her words came from the heart.

Now, I will make three final points about the documents that were released late last night. First, we Democrats had many fears this would be an all-too-limited process that would constrain the FBI from getting the facts. Having received a thorough briefing a few minutes ago, our fears have been realized. Our fears have been realized.

This is not a thorough investigation. According to Dr. Ford's lawyers and Ms. Ramirez's lawyers, there were many, many witnesses they wished to have interviewed, and they said they were not interviewed. They should be. Why not? What limits were placed on the FBI so that they couldn't do a full and thorough investigation? The word is, it was the White House, importuned by some of the Republican Senate staffers here.

Well, the White House has two choices: They can admit it or, if they