

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used.)**
Brett Michael Kavanaugh.
2. **Address: List current place of residence and office addresses.**
Residence: Washington, DC 20007.
Office: Staff Secretary's Office, White House West Wing, Washington, DC 20502.
3. **Date and place of birth.**
February 12, 1965. Washington, DC.
4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**
Single. I have never been married.
5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**
Yale Law School, 1987-90. J.D. 1990.
Yale College, 1983-87. B.A. 1987.
6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

President George W. Bush.
Assistant to the President and Staff Secretary, 2003-present.

President George W. Bush.
Senior Associate Counsel to the President, 2003.
Associate Counsel to the President, 2001-2003.

Kirkland & Ellis, Washington, DC.
Partner, 1997-98, 1999-2001.

Office of Independent Counsel Kenneth W. Starr.
Associate Counsel, 1994-97, 1998.

Justice Anthony M. Kennedy, Supreme Court of the United States.
Law Clerk, 1993-94.

Office of the Solicitor General, U.S. Department of Justice.
Attorney, 1992-93.

Munger Tolles & Olson, Los Angeles, CA.
Summer Associate, Summer 1992.

Judge Alex Kozinski, U.S. Court of Appeals for the Ninth Circuit.
Law Clerk, 1991-92.

Judge Walter K. Stapleton, U.S. Court of Appeals for the Third Circuit.
Law Clerk, 1990-91.

Williams & Connolly, Washington, DC.
Summer Associate, Summer 1990.

Covington & Burling, Washington, DC.
Summer Associate, Summer 1989.

Miller Cassidy Larocca & Lewin, Washington, DC.
Summer Associate, Summer 1989.

Pillsbury Madison & Sutro, Washington, DC.
Summer Associate, Summer 1988.

Other:

Commission on the Future of Maryland Courts.
Research Associate to the Chairman, 1996.

Georgetown Prep Alumni Association (since 1990's).

Federalist Society.
Co-Chair of School Choice Subcommittee of Religious Liberties Practice Group, 1999-2001.

Class Secretary for Yale Law School Class of 1990 in 2000-01.

7. **Military Service:** Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

None.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Cum laude graduate of Yale College.
Notes Editor, Yale Law Journal, 1989-90.

9. **Bar Associations:** List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Maryland State Bar Association.
Montgomery County Bar Association.
District of Columbia Bar Association.
American Bar Association.
Federalist Society. Co-Chair of School Choice Subcommittee of Religious Liberties Practice Group, 1999-2001.
Commission on the Future of Maryland Courts. Research Associate to the Chairman, 1996.

10. **Other Memberships:** List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Lobbying Organizations: None.
Other Organizations:
Congressional Country Club.
Holy Trinity Roman Catholic Church.
Georgetown Prep Alumni Association.
Delta Kappa Epsilon (when at Yale College).
Truth and Courage Society (when at Yale College).
I have been a member of the American Bar Association and the Federalist Society at various times since law school.

11. **Court Admission:** List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Supreme Court of the United States, 1994.

Maryland, 1990.

District of Columbia, 1992. (Lapsed for brief period in 2002 when renewal form was sent to incorrect home address.)

I also have been admitted at various times to several lower federal courts, including the United States Court of Appeals for the D.C. Circuit and the United States District Court for the District of Columbia.

12. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Articles:

The President and the Independent Counsel, 86 Georgetown Law Journal 2133 (1998).

Defense Presence and Participation: A Procedural Minimum for Batson v. Kentucky Hearings, 99 Yale Law Journal 187 (1989).

Op-eds:

Washington Post, November 15, 1999 (joint op-ed responding to Richard Cohen's column criticizing Judge Starr).

Wall Street Journal, September 27, 1999 (op-ed about Supreme Court case in which I represented an amicus curiae as a client; the Supreme Court agreed 7-2 with the position in the amicus brief).

American Spectator, April 1999 (brief submission describing lessons from independent counsel investigations).

Washington Post, February 26, 1999 (op-ed criticizing the operation of the independent counsel statute in relation to impeachment and the House of Representatives for its "immediate and unscreened release of the referral").

Letters to Editor:

Washington Post, August 31, 1999.

New York Times, August 1, 1999.

Washington Post, July 1, 1999.

Speeches:

I have given remarks on occasion in official and personal capacities. These remarks have most often occurred at legal conferences and on panels. I also have guest-taught classes at various law schools. In the White House Counsel's office, I also spoke to visitors to the White House and on Capitol Hill. I generally have spoken with short written points, which I have not ordinarily retained, rather than prepared speeches. I also have not maintained an ongoing list of remarks, but I have attempted to reconstruct a responsive list for this purpose. I will supplement the list if I become aware of other speeches that fit within this question.

Remarks to Log Cabin Republicans on judicial appointments, 2003.

Remarks to Yale Law School Association of Washington, DC, on judicial appointments, 2003.

Remarks to American Forest and Paper Association on variety of legal issues, 2003.

Remarks to Federalist Society Southern Leadership conference, 2003.

Remarks to groups of historians interested in Presidential records, 2001-03.

Remarks to Iowa State Bar Association on judicial appointments, 2002.

Remarks to National Conference of Women's Bar Associations on judicial appointments, 2002.

Remarks at American Judicature Society panel on judicial appointments, 2002.

Remarks at Republican National Lawyers Association on judges, 2002, 2003.

Participant in Yale Law School panel on judicial appointments, 2002.

Participant in panel on judicial appointments sponsored by Association of the Bar of the City of New York, 2002.

Participant in panel on judicial appointments sponsored by Washington Council of Lawyers, 2002.

Moderator of Federalist Society panel on originalism, 2001.

Remarks at Yale Club of Pittsburgh on independent counsel law and role of White House Counsel's office, 2001.

Moderator of Federalist Society panel on First Amendment, 2000.

Remarks at American Bar Association panel on Internet regulation, 2000.

Participant in symposium sponsored by Georgetown Journal of Legal Ethics, 2000.

Moderator of Federalist Society panel on charitable choice, 2000.

Remarks at Federal Bar Association symposium on federal Sentencing Guidelines, 2000.

Remarks at Duke University Law School panel on independent counsel statute, 1999.

Remarks at tribute dinner for Judge Ken Starr, 1999.

Remarks at Georgetown University Law Center panel on independent counsel law, 1998.

Television Appearances:

CNN The World Today with Wolf Blitzer (2000).
CNN Burden of Proof (in 1999 and 2000).
MSNBC (2000).
ABC 20/20 (1998).

13. **Health:** What is the present state of your health? List the date of your last physical examination.

Excellent. June 2003.

14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None.

15. **Citations:** If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not applicable.

16. **Public Office:** State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Appointed by President George W. Bush as Assistant to the President and Staff Secretary, 2003-present.

Appointed by President George W. Bush as Associate Counsel, 2001-2003, and Senior Associate Counsel, 2003.

Appointed by Judge Kenneth W. Starr as Associate Counsel in Office of Independent Counsel, 1994-97, 1998.

Appointed by Justice Anthony M. Kennedy as Law Clerk, 1993-94.

Employed as Attorney, Office of the Solicitor General, 1992-93.

Appointed by Judge Alex Kozinski as Law Clerk, U.S. Court of Appeals for the Ninth Circuit, 1991-92.

Appointed by Judge Walter K. Stapleton as Law Clerk, U.S. Court of Appeals for the Third Circuit, 1990-91.

17. **Legal Career:**

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

From 1993 to 1994, I served as a law clerk to Justice Anthony M. Kennedy on the Supreme Court of the United States.

From 1991 to 1992, I served as law clerk to Judge Alex Kozinski of the United States Court of Appeals for the Ninth Circuit.

From 1990 to 1991, I served as a law clerk to Judge Walter K. Stapleton of the United States Court of Appeals for the Third Circuit.

2. **whether you practiced alone, and if so, the addresses and dates;**

I have never been a sole practitioner.

3. **the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;**

President George W. Bush
Assistant to the President and Staff Secretary, 2003-present
The White House
1600 Pennsylvania Avenue
Washington, DC 20502

President George W. Bush
Office of Counsel to the President
The White House
1600 Pennsylvania Avenue
Washington, DC 20502
Senior Associate Counsel, 2003.
Associate Counsel, 2001-2003.

Kirkland & Ellis
655 15th Street, N.W.
Washington, DC 20005
Partner, 1997-98 and 1999-2001.

Office of Independent Counsel
1001 Pennsylvania Ave., N.W., Suite 490-N
Washington, DC 20004
Associate Counsel, 1994-97 and 1998.

Office of the Solicitor General
United States Department of Justice
950 Pennsylvania Ave.
Washington, DC 20530
Attorney, 1992-93.

Munger Tolles & Olson
355 South Grand Ave., 35th Floor
Los Angeles, CA 90071
Summer Associate, 1992.

Williams & Connolly
725 12th St., N.W.
Washington, DC 20005
Summer Associate, 1990.

- b. 1. **What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?**

I have devoted the bulk of my professional career to public service.

Clerkships:

I served as a law clerk to three appellate judges, including Justice Kennedy on the Supreme Court. My primary responsibilities were: (i) to prepare memos before oral argument that summarized the cases and issues presented; (ii) to prepare and edit draft opinions; and (iii) to analyze and make comments on draft opinions prepared by other judges.

Office of the Solicitor General:

I served for one year as an attorney in this office from 1992 to 1993. I was responsible for preparing briefs in opposition to certiorari petitions and appeal recommendations. In addition, I assisted the Solicitor General and his Deputies and Assistants in preparing briefs and in preparing for oral arguments before the Supreme Court. I also handled two court of appeals cases, writing the brief in both cases and arguing one in the U.S. Court of Appeals for the Fifth Circuit. The government prevailed in both cases.

Office of Independent Counsel:

In the summer of 1994, after my clerkship with Justice Kennedy concluded, I interviewed with law firms. At about the same time, in August 1994, Judge Starr was appointed independent counsel. I had worked briefly for Judge Starr in the Office of the Solicitor General, and he offered me a position in the Office of Independent Counsel.

In that Office, I performed six main functions during the course of my service.

First, I was a line attorney responsible for the Office's investigation into the death of former Deputy White House Counsel Vincent W. Foster, Jr. This assignment required management and coordination with a number of FBI agents and investigators, FBI laboratory officials, and outside experts

on forensic and psychological issues. I was responsible for conducting and assisting with interviews of a wide variety of witnesses with respect to both the cause of death and Mr. Foster's state of mind. I was responsible for preparing a draft of the report on his death. The investigation and report resolved questions about the cause and manner of Mr. Foster's death, concluding that he committed suicide in Fort Marcy Park, Virginia.

Second, I was one of two line attorneys responsible for conducting the investigation into possible obstruction of justice in the wake of Mr. Foster's death, including whether documents had been unlawfully removed from his office or otherwise concealed from investigators. This was an extensive grand jury investigation. I conducted numerous interviews and grand jury sessions and, with another attorney, prepared a memorandum of more than 300 pages summarizing the matter. At the time, this matter also was being investigated by the Senate. The Office conducted a thorough investigation of the facts and did not seek criminal charges against any individuals.

Third, I was substantially responsible for writing briefs and conducting oral arguments regarding privilege and other legal matters that arose frequently during the investigation. These included cases about the government attorney-client privilege, Secret Service privilege, and private attorney-client privilege. I argued once before the Supreme Court of the United States and twice before the U.S. Court of Appeals for the D.C. Circuit.

Fourth, I served as a legal advisor on a variety of issues facing the Office. I and several other attorneys sometimes served a function roughly equivalent to that of attorneys in the Office of Legal Counsel in the Justice Department. This required analysis of, for example, statutory reporting requirements, Rule 6(e) obligations, FOIA disclosure rules, and issues related to interaction with Congress.

Fifth, I was part of the team that prepared that part of Judge Starr's 1998 report to Congress, submitted pursuant to statute, that outlined information that "may constitute grounds" for impeachment. Although many volumes of evidence were provided to the House of Representatives under seal, the report as publicly released by the House of Representatives was divided into two parts. The first part was a summary of facts known as the "narrative" section. I did not draft that part of the report. The second part was a description of possible grounds for impeachment that identified areas where the President may have made false statements or otherwise obstructed justice. I drafted portions of that part of the report. This is a matter of some continuing controversy. As I have stated publicly before, I

regret that the House of Representatives did not handle the report in a way that would have kept sensitive details in the report from public disclosure (as had occurred with the House's handling of the Special Prosecutor's report in 1974) or, if not, that the report did not further segregate certain sensitive details. The House of Representatives voted to publicly release the report without reviewing it beforehand.

Sixth, I was an attorney primarily responsible for assisting Judge Starr with preparation of his two-hour statement to the House Judiciary Committee, which he submitted in written form and delivered orally on November 19, 1998. The statement identified and discussed the investigation and evidence.

Kirkland & Ellis:

At Kirkland & Ellis, I worked primarily on appellate and pre-trial briefs in commercial and constitutional litigation. My most significant corporate clients were firm clients Verizon, America Online, General Motors, and Morgan Stanley. I represented them in a variety of litigation and administrative matters. I also represented individuals and non-corporate entities in litigation matters. I represented Adat Shalom synagogue pro bono in a case involving Montgomery County zoning regulations. I represented Governor Jeb Bush in his official capacity against a constitutional challenge to Florida's school choice legislation. I represented Elian Gonzalez's American relatives pro bono in their petition for rehearing in the Eleventh Circuit and their petition for certiorari in the Supreme Court. In all of these matters, I was part of a larger litigation team.

Office of Counsel to the President:

I assisted with some of the wide variety of issues that confront the Office. I worked on the nomination and confirmation of federal judges. I assisted on legal policy issues affecting the tort system, such as airline liability, victims compensation, terrorism insurance, medical liability, and class action reform. I worked on issues of separation of powers, including issues involving congressional and other requests for records and testimony. I worked on various ethics issues. I also monitored and worked on certain litigation matters, including those involving the White House.

Assistant to the President and Staff Secretary:

I perform the standard duties of the Staff Secretary. The Staff Secretary's Office traditionally coordinates the staffing and presentation of documents for the President, among other responsibilities.

2. **Describe your typical former clients, and mention the areas, if any, in which you have specialized.**

In private practice, I specialized in constitutional issues, commercial litigation, and appellate practice. My typical former clients are described in the previous answer.

- c. 1. **Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.**

Occasionally. In both public service and private practice, I argued a number of appellate matters and also conducted legal arguments in district court.

2. **Indicate the percentage of these appearances in:**

(A) **civil proceedings:** approximately 50% (private practice)
 (B) **criminal proceedings:** approximately 50% (government practice)

3. **What percentage of these appearances was in:**

(a) **federal courts;**
 approximately 90%
 (b) **state courts of record;**
 approximately 10%
 (c) **other courts.**

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

None, as I have not been a trial lawyer. I have worked on legal issues and appeals in both public service and private practice and argued in court, including the Supreme Court of the United States, the U.S. Court of Appeals for the D.C. Circuit, federal district courts, and state courts.

5. What percentage of these trials was:
 (a) jury;
 (b) non-jury.

Not applicable.

18. **Litigation:** Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
- (a) the date of representation;
 - (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
 - (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Swidler & Berlin v. United States, 524 U.S. 399 (1998), reversing 124 F.3d 230 (D.C. Cir. 1997).

I represented the United States and argued and briefed this case in both the Supreme Court of the United States and the United States Court of Appeals for the District of Columbia Circuit. The court of appeals decision was rendered in 1997 and the Supreme Court decision in 1998.

The case presented the question whether the attorney-client privilege continues to apply in federal criminal proceedings when the client is deceased. A federal grand jury issued a subpoena for communications that occurred between Vincent W. Foster, Jr., and his attorney James Hamilton nine days before Mr. Foster's suicide. Mr. Hamilton challenged the subpoena, arguing that the attorney-client privilege continued to apply after the death of the client and that he was not permitted to disclose what Mr. Foster had told him. The United States, represented by the Office of Independent Counsel, sought to enforce the grand jury subpoena, arguing that the attorney-client privilege did not apply with full force in federal criminal proceedings when the client was deceased. Many legal treatises, including the American Law Institute's Restatement of the Law, had agreed with the position advocated by the Office of Independent Counsel. The U.S. Court of Appeals for the D.C. Circuit, in an opinion by Judge Patricia Wald and Judge Stephen Williams, ruled in favor of the Office of Independent Counsel. Judge Tatel dissented. The Supreme Court then granted certiorari and ruled 6-3 in favor of Mr. Hamilton in an opinion by Chief Justice Rehnquist. The dissent written by Justice O'Connor and joined by Justices Scalia and Thomas agreed with the position of the Office of Independent Counsel.

My co-counsel in this case were Ken Starr, now of Kirkland & Ellis, 655 15th Street, N.W., Washington, DC 20005, (202) 879-5130, and Craig Lerner, now a professor at George Mason University Law School, 3301 N. Fairfax Drive, Arlington, VA 22201, (703) 993-8080. The opposing counsel was James Hamilton of Swidler Berlin Shereff Friedman, 3000 K Street, N.W., Suite 300, Washington, DC 20007, (202) 424-7826. The counsel of record on the primary amicus brief was Mark I. Levy, Howrey & Simon, 1299 Pennsylvania Ave., N.W., Washington, DC 20004, (202) 383-7441.

Concerned Citizens of Carderock v. Hubbard and Adat Shalom Reconstructionist Congregation, 84 F.Supp.2d 668 (D. Md. 2000).

In this case, I represented pro bono Adat Shalom, a synagogue in Bethesda, Maryland, in the United States District Court for the District of Maryland (Judge Andre Davis). The district court decided the case in 2000.

Plaintiffs sued Montgomery County and Adat Shalom, arguing that Montgomery County's zoning ordinance violated the Establishment Clause by granting religious entities an exemption from the county's special exception zoning process. Adat Shalom argued that the ordinance was neutral between religious and non-religious entities and thus constitutional. In particular, Adat Shalom contended that the ordinance exempted several non-religious entities in addition to religious entities and therefore did not reflect a preference for religion. Judge Davis ruled in favor of Adat Shalom and the County. The court found that the ordinance was neutral toward religion and consistent with the Establishment Clause.

My primary co-counsel at Kirkland & Ellis were Jay P. Lefkowitz, now at the White House Domestic Policy Council, 1600 Pennsylvania Ave., N.W., Washington, DC 20502, (202) 456-1473, and John Wood, now at the Department of Justice, 950 Pennsylvania Ave., N.W., Washington, DC 20530, (202) 514-2001. The primary counsel for the plaintiffs was Stanley D. Abrams of Abrams, West & Storm, 4550 Montgomery Ave., Suite 760N, Bethesda, MD 20814, (301) 951-1550. The primary counsel for Montgomery County were Charles W. Thompson and Edward B. Lattner of the County Attorney's Office for Montgomery County, 101 Monroe St., 3rd Floor, Rockville, MD 20850, (240) 777-6700.

America Online 5.0 Litigation (1999-2000).

In these cases, I represented America Online (AOL) in a series of class-action lawsuits. In particular, I filed briefs and conducted oral arguments for AOL in a number of federal district courts around the country. I also argued a proceeding before the Judicial Panel on Multidistrict Litigation and a motion to dismiss in a related case in the Circuit Court for Baltimore City. The complaints in these cases alleged that AOL had engaged in a variety of deceptive tactics and antitrust violations in designing and marketing AOL Version 5.0.

My primary co-counsel at Kirkland & Ellis were Thomas Yannucci and Eugene Assaf, Kirkland & Ellis, 655 15th Street, N.W., Washington, DC 20005, (202) 879-5000. The opposing counsel were a large group of attorneys representing different plaintiffs from around the country; many of the attorneys are listed in a reported consolidated case at 168 F.Supp.2d 1359.

In re Lindsey, 158 F.3d 1263 (D.C. Cir. 1998), cert. denied, Office of the President v. Office of Independent Counsel, 525 U.S. 996 (1998).

I represented the United States (Office of Independent Counsel) in this case. I briefed and argued the case in the U.S. Court of Appeals for the D.C. Circuit and worked on the brief in opposition to the petition for certiorari in the Supreme Court of the United States. I also had worked on a petition for certiorari before judgment to the Supreme Court.

This case arose out of a federal grand jury subpoena issued to Bruce R. Lindsey, an attorney employed in the White House. President Clinton asserted a government attorney-client privilege in response to the subpoena. The Office of Independent Counsel sought to have the subpoena enforced. The D.C. Circuit (Judges Randolph and Rogers for the majority; Judge Tatel in dissent) ruled in favor of the Office of Independent Counsel. The Office of the President then filed a petition for certiorari in the Supreme Court. The Supreme Court denied the petition.

My co-counsel were Ken Starr, now of Kirkland & Ellis, 655 15th Street, N.W., Washington, DC 20005, (202) 879-5130, and Joseph Ditkoff, now of the Suffolk County District Attorney's Office in Massachusetts, One Bulfinch Place, Boston, MA 02114, (617) 619-4000. The primary opposing counsel were David Kendall of Williams & Connolly, 725 12th Street, N.W., Washington, DC 20005, (202) 434-5000; Neil Eggleston, Howrey Simon Arnold & White, 1299 Pennsylvania Ave., N.W., Washington, DC 20004, (202) 783-0800; and Douglas Letter, U.S. Department of Justice, 950 Pennsylvania Ave., N.W., Washington, DC 20005, (202) 514-3301.

Gonzalez v. Reno, 215 F.3d 1243 (11th Cir. 2000) (denying petition for rehearing en banc), cert. denied, 530 U.S. 1270 (2000).

In this case, I represented pro bono the American relatives of Elian Gonzalez in their petition for rehearing en banc in the U.S. Court of Appeals for the Eleventh Circuit, application for stay in the Supreme Court of the United States, and petition for writ of certiorari in the Supreme Court. The case came into my law firm through a contact made to an associate in the firm. The associate then asked me if I would be willing to work on the petition for rehearing, application for stay, and petition for certiorari. I agreed to do so.

The American relatives of Elian Gonzalez argued that the INS's decision to deny an asylum hearing or interview to Elian Gonzalez contravened both the Due Process Clause and the Refugee Act of 1980. The case also raised an important question about the appropriate amount of judicial deference to decisions of administrative agencies.

The Eleventh Circuit initially had granted an injunction pending appeal on the ground that the Gonzalez family had made a compelling case that the Refugee Act of 1980 requires a hearing for alien children who may apply for asylum. The Eleventh Circuit's subsequent decision on the merits (Judges Edmondson, Dubina, and Wilson) held, however, that the INS's contrary interpretation of the statute was entitled to deference from the courts. The Gonzalez family filed a petition for rehearing and rehearing en banc arguing, in essence, that the court's original decision granting an injunction pending appeal had analyzed the issue correctly and that deference to the INS was not warranted. The Eleventh Circuit denied the petition for rehearing and rehearing en banc. The Gonzalez family then filed an application for stay and petition for writ of certiorari in the Supreme Court. The Supreme Court denied both the application and the petition.

My co-counsel included Jeffrey Clark, then at Kirkland & Ellis and now at the U.S. Department of Justice, 950 Pennsylvania Ave., N.W., Washington, DC 20530, (202) 514-3370; and Kendall Coffey of Coffey & Wright, 2665 South Bayshore Drive, Miami, Florida 33133, (305) 857-9797. The primary opposing counsel was Ed Kneedler, Office of the Solicitor General, U.S. Department of Justice, 950 Pennsylvania Ave., N.W., Washington, DC 20530, (202) 514-2217.

In re Grand Jury Subpoena Duces Tecum, 112 F.3d 910 (8th Cir.), cert. denied, 521 U.S. 1105 (1997).

I represented the United States (Office of Independent Counsel) in this case. I primarily wrote the brief in the U.S. Court of Appeals for the Eighth Circuit and worked on the brief in opposition to the petition for certiorari in the Supreme Court of the United States. I also briefed the case in the United States District Court for the Eastern District of Arkansas.

This case arose out of a federal grand jury subpoena issued to the White House Office for documents of a government attorney employed in the White House. President Clinton asserted a government attorney-client privilege in response to the subpoena. The Eighth Circuit (Judges Bowman and Wollman for majority; Judge Kopf in partial dissent) ruled in favor of the United States, represented by the Independent Counsel. The Office of the President then filed a petition for certiorari in the Supreme Court. The Supreme Court denied the petition.

My co-counsel were Ken Starr, now of Kirkland & Ellis, 655 15th Street, N.W., Washington, DC 20005, (202) 879-5130; and John Bates, now of the U.S. District Court for the District of Columbia, 333 Constitution Ave., N.W., Washington, DC 20001, (202)

354-3430. The primary opposing counsel were David Kendall of Williams & Connolly, 725 12th Street, N.W., Washington, DC 20005, (202) 434-5000; Lawrence Robbins, Robbins, Russell, Englert, Orseck & Untereiner, 1801 K Street, N.W., Suite 411, Washington, DC 20006, (202) 775-4500; Andrew Frey, Mayer Brown Rowe & Maw, 1909 K Street, N.W., Washington, DC 20006, (202) 263-3000; and Miriam Nemetz, now of Mayer Brown Rowe & Maw, 1909 K Street, N.W., Washington, DC 20006, (202) 263-3000.

Good News Club v. Milford Central School, 533 U.S. 98 (2001).

In this Supreme Court case, I represented an amicus curiae, Sally Campbell, and filed an amicus brief.

The case involved a Free Speech Clause and Free Exercise Clause challenge to the community use policy of a school district in New York. The policy excluded religious organizations from using public school facilities after school hours. (Ms. Campbell had challenged a similar policy in Louisiana.) The question in the case was whether the exclusion of religious organizations was permitted under the Religion and Free Speech Clauses of the First Amendment. The amicus brief filed on behalf of Ms. Campbell argued that the policy was neither required nor permitted by the Constitution. The Supreme Court agreed in a 6-3 decision.

The counsel for the plaintiff/petitioner was Thomas Marcelle, 71 Fernbank Ave., Delmar, NY 12054, (518) 475-0806. The primary counsel for other amici were Paul Clement, now Deputy Solicitor General, U.S. Department of Justice, 950 Pennsylvania Ave., N.W., Washington, DC 20530, (202) 514-2206; and Viet Dinh, now at Georgetown University Law Center, 600 New Jersey Ave., N.W., Washington, DC 20001, (202) 662-2000. The primary counsel for the defendant/respondent was Frank W. Miller, 6296 Fly Road, East Syracuse, NY 13057, (315) 234-9900.

Rubin v. United States, 525 U.S. 990 (1998).

In this case, I represented the United States (Office of Independent Counsel) in the Supreme Court proceedings in which the Office of Independent Counsel opposed a petition for certiorari filed by the Secretary of the Treasury and Director of the Secret Service.

The question presented was whether the federal courts should recognize a new "protective function" privilege in federal criminal proceedings that would prevent Secret Service agents from testifying in the grand jury. The U.S. Court of Appeals for the D.C. Circuit ruled in favor of the Office of Independent Counsel (Judges Williams, D.H. Ginsburg, and Randolph). The Secretary of the Treasury filed a petition for certiorari and sought a stay of enforcement of the subpoena. The Supreme Court denied a stay and then denied the petition for certiorari (over the dissents of Justices Ginsburg and Breyer).

My co-counsel included Ken Starr, now of Kirkland & Ellis, 655 15th Street, N.W., Washington, DC 20005, (202) 879-5130. The primary opposing counsel was Ed Kneedler, Office of the Solicitor General, U.S. Department of Justice, 950 Pennsylvania Ave., N.W., Washington, DC 20530, (202) 514-2217.

General Motors v. Green, 709 A.2d 205 (N.J. Super. Ct. App. Div. 1998).

General Motors was a significant institutional client of my former firm, Kirkland & Ellis. In this particular case, I was asked to represent General Motors and conduct oral argument on its behalf in the Appellate Division of the New Jersey Superior Court before Judges Dreier, Levy, and Wecker. The case was a design defect products liability case involving an alleged roof design defect. At trial, the jury had found General Motors liable and awarded plaintiff \$25 million. General Motors appealed on numerous grounds, challenging both the liability judgment and damages award. The Appellate Division affirmed the liability judgment and substantially reduced the damages award.

My primary co-counsel at Kirkland & Ellis was Paul T. Cappuccio, now General Counsel of AOL Time Warner, 75 Rockefeller Plaza, New York, NY 10019, (212) 484-7980; and another co-counsel was Thomas F. Tansey, 521 Green Street, Woodbridge, NJ 07095, (732) 634-7880. The primary opposing counsel was Maurice Donovan, 405 Northfield Ave., West Orange, NJ 07052, (973) 736-8050.

Lewis v. Brunswick, No. 97-288 (Supreme Court of the United States) (dismissed as moot because of settlement after oral argument).

In the Lewis case, I represented General Motors in filing an amicus brief in the Supreme Court. The question presented in the case was whether the Boat Safety Act preempted a state common-law requirement that recreational boats be equipped with propeller guards. Because of the similarity of the question to a question under the National Traffic and Motor Vehicle Safety Act, General Motors filed an amicus brief. The Supreme Court subsequently dismissed the case after oral argument because the parties settled.

My primary co-counsel were Paul T. Cappuccio, now General Counsel of AOL Time Warner, 75 Rockefeller Plaza, New York, NY 10019, (212) 484-7980; and Richard A. Cordray, of counsel at Kirkland & Ellis, 655 15th Street, N.W., Washington, DC 20005, (202) 879-5000. The primary counsel for plaintiff/petitioner was David E. Hudson, 801 Broad Street, Suite 700, Augusta, GA 30901, (706) 722-4481. The primary counsel for defendant/respondent was Kenneth S. Geller, Mayer Brown Rowe & Maw, 1909 K Street, N.W., Washington, DC 20006, (202) 263-3000.

19. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

Clerkships:

I served as a law clerk to three appellate judges, including Justice Kennedy on the Supreme Court. My primary responsibilities were: (i) to prepare memos before oral argument that summarized the cases and issues presented; (ii) to prepare and edit draft opinions; and (iii) to analyze and make comments on draft opinions prepared by other judges.

Office of Counsel to the President:

I assisted with some of the wide variety of issues that confront the Office. I worked on the nomination and confirmation of federal judges. I assisted on legal policy issues affecting the tort system, such as airline liability, victims compensation, terrorism insurance, medical liability, and class action reform. I worked on issues of separation of powers, including issues involving congressional and other requests for records and testimony. I worked on various ethics issues. I also monitored and worked on certain litigation matters, including those involving the White House.

Office of Staff Secretary:

I perform the standard duties of the Staff Secretary. The Staff Secretary's Office traditionally coordinates the staffing and presentation of documents for the President, among other responsibilities.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

- 1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

None. I have a government Thrift Savings Plan retirement fund.

- 2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

I will faithfully follow all applicable statutes, court decisions, and policies regarding recusal, including 28 U.S.C. 455.

- 3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

It is possible in the future that I would want to teach part-time at some point or write articles or books. If so, I would faithfully follow all applicable laws and policies.

- 4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

See attached financial disclosure report.

- 5. Please complete the attached financial net worth statement in detail (Add schedules as called for).**

See attached net worth statement.

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

Lawyers for Bush Cheney, 2000. Regional Coordinator for Pennsylvania, Maryland, Delaware, and District of Columbia. I also went to Daland, Florida, in November 2000 to participate in legal activities related to the recount.