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SUPREME AMBITION:
BRETT KAVANAUGH AND THE CONSERVATIVE TAKEOVER

A BOOK DISCUSSION WITH
RUTH MARCUS AND BENJAMIN WITTES

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P R O C E E D I N G S

MR. WITTES: Welcome to The Brookings Institution. Thank you all for coming out and thanks to everyone who's joining us online for the webcast version. Please silence your phones because somebody's going to make an inappropriate amount of noise.

My name is Benjamin Wittes. I'm a senior fellow in Governance Studies. And I don't normally do lengthy introductions, so I'm going to keep this brief, but I want to say a few words about Ruth, our guest and who has written this incredible book that we're going to talk about.

So just on a personal -- I was very touched that Ruth asked me to host this event because this is a project that I have a lot of personal connections with. It's not a secret that Brett Kavanaugh and I were friends for a long time, and Ruth and I were colleagues for a long time.

MS. MARCUS: I thought we were friends. (Laughter)

MR. WITTES: We were -- no, no, that's present tense.

MS. MARCUS: Okay.

MR. WITTES: We are also friends, but we worked together at *The Washington Post* editorial page during some of the periods in which Ruth writes about in this book, the period of Kavanaugh's nominations to the D.C. Circuit as well as some of the period in that's covered by the Starr period as well as some of his tenure on the court.

And so I read this book with a lot of personal interest and I just want to say, I mean, as a preliminary matter, this is a spectacular piece of work. And it is unbelievable to me that Ruth has been able to gather as much information as this book conveys, talk to as many people, go through as many scraps of paper from all periods of Kavanaugh's life and career, and be ambitious in the scope of telling this story, which is not just about the nomination and confirmation, but about a much larger construction of a life and career, as well as about a long-term political ambition both on the part of the nominee, but also on the part of a political movement with respect to the Court. And to do it all with really scrupulous fairness to a lot of different individuals who have equities in this confrontation that came to a head a year ago now, basically.

And so I just want to start by really commending this book to you. I was floored by how good it is and I don't normally open an event by saying this, but it's a real pleasure to have you here

today, Ruth.

MS. MARCUS: Yeah, I think we can all go home now. (Laughter) Because it's not going to get any better than that.

MR. WITTES: Actually it is. So let's get into it.

MS. MARCUS: Can I say two things? One is that I was here in October a year ago moderating a panel when I was just getting launched on this book and I talked about how I loved coming to Brookings because it was a spa from the otherwise completely partisan and ugly atmosphere of Washington. And I mentioned that I might be -- that I enjoyed the sort of day spa of Brookings, and my friend Elaine Kamarck helped me actually arrange, based on that conversation, office space here at Brookings, where I was for a year.

So I need to first start by thanking Elaine; thanking Darrell West, head of Governance Studies at Brookings; and thanking Brookings for housing and feeding me for -- and my research assistant, who went through many of those scraps of paper here for a year. It was just a fantastic venue.

And I also have to thank my friend -- you're my friend -- of longstanding, going back. Actually before I joined the *Post* editorial board, during the last impeachment, Ben would wander out from his office in the confines of Editorial to talk to me about what I was making of the impeachment proceedings. And we were probably both speaking to somebody named Brett Kavanaugh at the time.

So there's just nobody more -- well, there's nobody whose kind words mean more to me than Ben's. But there's also just like nobody who is better positioned to discuss this book with. And particularly thankful that it's a little bit busy out there and there's a few things going on that might distract Ben from this really important task of talking about *Supreme Ambition*. So I'm especially thankful that you're taking the time.

MR. WITTES: It was an exceptional pleasure to be here with you.

I want to start with the scope of the project. Because I think when most people think of, you know, a book about the Brett Kavanaugh nomination and confirmation the initial reaction is going to be, ugh, why do I want to relive that? And that may be less of an issue for this group of people who wanted to relive it enough to show up in here and talk about it, but I do think a lot of people are going to ask the question, you know, we kind of know what happened. We kind of know who we believe. The

book is actually about a lot more than the nomination and confirmation.

And so, I guess, in your own words, what were you trying to do with this project? And what's both the narrow story you were trying to tell and the broader story you were trying to tell?

MS. MARCUS: So that's a fantastic question and I was really trying to do two things. The first was because, spoiler alert, we do know how this comes out, to tell you the store of even though you thought you were watching it and, you know, many of us were riveted to it in real-time, the story of what was going on behind the scenes not just at the very end when the Christine Blasey Ford allegations came forward, but through the whole totality of these proceedings we forget that Justice Kavanaugh was not the first choice of conservatives. It was hard for him to get on the President's list. And then it was hard for him to be chosen by the President. So I wanted to tell the story of what was going on behind the scenes because I thought it was a riveting and juicy story, and it did turn out to be, at least for me, pretty riveting.

But the bigger reason I wanted to write the book was that it's not just about Brett Kavanaugh. It's about the transformation of the federal Judiciary and how it's the story that I've been reporting on in one form or another over the years from Bork through Thomas through the fusion of those two amazing confirmation battles in the Trump era and the #MeToo era with the Kavanaugh fight.

And finally, I think I said two, but I'm going to add a third, I wanted to explain a little bit more than I think we understood about both who Brett Kavanaugh is, what the formative experiences of his life were, and what kind of Justice he's going to be. Because long after we're done with impeachment, long after the November election, President Trump's biggest legacy is going to be the federal Judiciary. And his two biggest legacies, and maybe there will be more than that, are going to be Justice Gorsuch and Justice Kavanaugh.

So people kept saying to me as I was saying I was writing this book, what's your angle? What's your angle? And I kept saying, well, why do I have to have an angle? My angle is the whole story. Because I didn't -- why would you write a slice of the pie when the whole pie is so tasty?

MR. WITTES: So the book opens with Justice Kennedy's somewhat unusual quasi-lobbying for his former clerk to be his replacement. And you don't really write an assessment of it. You just kind of describe this episode. But I'm interested for your sense of how we should understand what

Justice Kennedy did here. First of all, what did he do? And secondly, like what should we make of it?

MS. MARCUS: So just to set the scene, it's April of 2017. Justice Kennedy has come to the White House to swear in his former clerk, Neil Gorsuch, on a beautiful day in the Rose Garden. And he asks for a little bit of time alone with the President. Why does he ask for this time with the President?

Well, President Trump, when he was candidate Trump, did what no candidate had done before. He didn't just assemble a short list of potential Supreme Court nominees. He made that short list public. And that -- not just one of them, but two. And that list was central to his success, I believe, he believes, Mitch McConnell believes to his success in getting elected. Because it assuaged evangelical voters and social conservatives about the thing they were most worried about with this unusual Republican nominees.

But when he was, to the surprise of very many people, elected, that list became a different thing. It was a list from which he had promised to pick. And there was one name in particular that was missing from that list and that name was Brett Kavanaugh. And that was not, as I write in the book, that was not an accident. It was on purpose for two reasons.

President Trump, as candidate Trump, did not want Brett Kavanaugh's name on that list because Kavanaugh was the ultimate Bushie. He had not only been nominated to the Appeals Court by President George W. Bush, he had worked for President Bush for five years and he had actually married the President's secretary, who was something like a third daughter to the Bushes. So he was the ultimate Bush likely -- and the Bushes, as you may recall, were not particular fans of the President nor was he big fans of them. So he didn't want a Bushie on the list and he didn't want a swamp creature on the list.

Also, interestingly, when Leonard Leo in March of 2016 met with candidate Trump at the Jones Day offices to give him the first draft of that list, he had six names on the list and none of those names was Brett Kavanaugh. Quite surprising since they had worked together at the Bush White House on judicial selection. Quite surprising since Brett Kavanaugh's name would have been on the short list for almost any Republican nominee. So those two realities conspired to keep Brett Kavanaugh's name off of the list.

So in the spring of 2017, as Justice Kennedy surely was thinking about his future and whether he would retire, as many people expected and many people in the White House expected,

whether he would retire at the end of that term or, as it happened, at the end of the next term, there was a problem. He was looking at this list and his favorite clerk was not on there. And so he, in a private session with the President, said you've got this great list. There's a name -- you've named my clerk, but there's a name missing. It's Brett Kavanaugh.

After that, the President started to ask questions about Kavanaugh of his aides. Would he be a strong Trump justice? Would he be loyal? Why didn't I know this about him? Why didn't I know that about him? Do you think he'd be good?

And low and behold, in November, just a few months later, a new list of unveiled and Brett Kavanaugh's name was on there.

Now, I think I say in the book that it was an unusual intervention by a sitting Supreme Court Justice. And I didn't want to draw many more conclusions from that because I think there's been a lot of -- in previous administrations, back, you know, think about Abe Fortas and Lyndon Johnson, think about earlier justices, there is a lot of interaction between presidents and justices, so I didn't want to use words like "unprecedented" or something. So I used a word like "remarkable" intervention by a sitting Justice.

Was it improper? It was pretty unusual, but it was of a piece with this really interesting loyalty that Justice Kavanaugh was able to generate from some of his mentors. Because it wasn't just that Justice Kennedy went to bat for him, but, in the end, his biggest albatross in getting onto the list and, in some ways, getting selected by President Trump, which was George W. Bush, was his biggest help in getting through the Senate once he was nominated. Because I describe in the book how President Bush made critical calls to senators in order to help him get past the finish line.

The best one is a call that didn't go through the day after the hearings. As Jeff Flake is in this crowded anteroom trying to negotiate whether there was going to be an FBI investigation, somebody comes through carrying a cellphone and saying President Bush is trying to reach Senator Flake. And Flake says I can't talk to him now, I'm too busy. (Laughter)

So that's a little bit of an answer to your question.

MR. WITTES: So one of the most fascinating parts of this book for me was your portrayal of the kind of intellectual and political development of Brett Kavanaugh. By the time I ever met

him, he was very much the person that he is today. And that is to say politically, you know, quite firmly aligned, an extremely talented appellate lawyer with a decidedly conservative bent, whose entire career was organized around association with conservative causes of one sort or another.

Your portrayal of his earlier life is sharply at odds with that in important ways. And the evolution of the person you describe into the person who Trump could think of as, you know, oh, he could be a Trump justice, right, is a remarkable story that is, despite your elucidation of it, quite mysterious.

And so I'm curious for your thoughts, like, on the education and formation of the political personality and the jurisprudential personality of Brett Kavanaugh.

MS. MARCUS: So I'm going to start with one of my favorite factoids in the book, though I do have to say I have a lot of favorite factoids. One is Brett Kavanaugh is a senior in college. He is applying to a bunch of places, including Yale College. At that time Yale --

MR. WITTES: Senior in high school.

MS. MARCUS: Senior in high school, I'm sorry. Thank you. At that time Yale has two essay questions, you know. And I can't recall what they were, but for Brett Kavanaugh the answer to both is to write about basketball.

I was hoping you guys would laugh at that. (Laughter) You know, I can understand one essay question about basketball, but two? And it tells you everything that you need to understand about what young Brett Kavanaugh was interested in at the time.

And through his college years, through his law school years, it's kind of understood by his peers that Brett Kavanaugh is a Republican, maybe a conservative, but not one of those floridly conservative Republicans that you know on your college campus or if you went to law school on your law school campus during the Bork nomination was in full flower before the Senate. During his first semester of law school nobody remembers 1L Brett Kavanaugh engaged in the conversations about Judge Bork, who, by the way, of course, had been a professor at Yale Law School. So it was a particular topic of conversation there.

And even as he -- he's a member of the Federalist Society, but even the law professor George Priest, who was the chapter head of the Federalist Society, doesn't really remember him as part of the Federalist Society. In fact, when George Priest made the phone call that changed Brett

Kavanaugh's life, he called -- which I'll describe in one second -- he called him not because he thought he was his best student or not because he particularly remembered him as a conservative, but because -- and I'm not making this up because he told me this and it's in the book -- he thought he was a really good guy on the basketball court. (Laughter)

The phone call and why he was looking for somebody who would be a good guy and a sort of calming influence, the phone call happened because Alex Azar, whose name may be familiar to you because he's now the Secretary of Health and Human Services, had done something remarkable. After just about six weeks clerking for Judge Kozinski on the Ninth Circuit, he had decided to suddenly leave, though he did have a clerkship with Justice Scalia in hand.

Under somewhat mysterious circumstances, this opened up a space and Judge Kozinski called George Priest and said, hey, I need a replacement clerk. You recommended this Azar guy, find me a replacement.

Brett Kavanaugh had been clerking for not a feeder judge, a perfectly kind of run-of-the-mill, non-movement, conservative Republican judge on the Third Circuit. He was getting ready to go practice law at Williams & Connolly, which was a very comfortable -- a great law firm and a very comfortable place for a hometown Irish Catholic boy. And he was going to go on at that point to have a perfectly good legal career. He had lost out on a clerkship for the Chief Justice then, William Rehnquist. He had gotten an interview, but had not been selected.

And then comes this phone call that changes his life. And had it not been for Alex Azar's decision to leave that clerkship, I would venture to argue that it's very possible we would not have Justice Kavanaugh today. The Kozinski clerkship opened the door to his meeting Ken Starr at the Solicitor General's Office, where he went the next year. It opened the door, most importantly, to his clerkship for Justice Kennedy, who played such an important role in his life and was such a lure for the President, President Trump, to overcome his aversion to all things Bush in order to help Kennedy decide to retire.

And just went on and built from this person who was not very politically motivated. The conversation in the Kavanaugh household growing up, even though it was inside the Beltway, was not about politics. It was about sports, very -- it was about church and family. And that kind of burning movement conservatism which we see in many people that we know from college on, was not present in

Brett Kavanaugh really until after he graduated from law school.

MR. WITTES: All right. So that story vividly explains the meteoric career rise. Right? You go from a Third Circuit respectable judge going to a law firm, that's your track; to a feeder judge on the Ninth Circuit who's somewhat more movement aligned to a Supreme Court clerkship to the SG's office. It does not explain to me how you become that more fervent kind of movement guy from the guy who's middling academic, smart, but people don't even know he's smart because they think of him as somebody who drinks a lot and plays basketball.

So what's the other half of that story, the part where Brett Kavanaugh goes from not especially conservative, to not just a rising star, but a rising star as a conservative?

MS. MARCUS: Well, I talked to a lot of people who were in law school, in clerkships, in other proximity to younger Brett Kavanaugh, and I asked them that question a lot. And it's one potential explanation is he, as he matured, as he became more serious, he became seized as a true believer in the tenets of the conservative legal movement. And I think that's a piece of the explanation.

I also talked to a number of people who said I did wonder about the degree to which this was also extremely convenient. It was -- if you imagine that if you are ambitious -- and the book is called *Supreme Ambition* for actually two reasons. One is it's about Brett Kavanaugh's ambition and the second is it's about the conservative movement's ambition.

But if you're any young lawyer who's ambitious and you are tending towards the conservative side, in that moment your best ticket to fame and fortune and potentially the Supreme Court, and it was remarkable how early on Brett Kavanaugh started talking to people about his interest in becoming a Justice someday. Your best route to that was to be a card-carrying member of the Federalist Society and to sign on to that project for all it was worth.

And so I'm not a mind reader and I don't impute movement to people, but there were a lot of friends of Brett Kavanaugh who wondered about how the pie chart was carved up between true belief and a conservatism of convenience.

MR. WITTES: I want to turn to the conservative movement in a moment, but one data point in your book that leans toward the true beliefs is your description of a date he goes on in which he really expresses a lot of animus to the Clintons at a time that he was working for Ken Starr. And, you

know, I read it as I was thinking about this IG investigation of the FBI. And, you know, this is a time when we're supposed to -- you know, we're all supposed to be outraged by text exchanges that FBI officials send each other that are disparaging of the President while they're involved in an investigation of it. Here's a Supreme Court Justice who's at the time working for an investigation of the President, who is expressing pretty extreme animus in social situations toward them.

Is your impression that that was typical of him at the time and that his -- you know, by the late '90s, he was at least on the matter of the Clintons a true believer.

MS. MARCUS: Absolutely. I think there's two elements of the true belief. One is the true belief in the conservative legal project and the view of what the correct role of the Judiciary is and executive power versus congressional power and the rule of administrative agencies and the like. And that was definitely flowering in Justice Kavanaugh during his clerkships and afterwards.

There's another piece of him that is also flowering at the time and that was also not hugely evidence in his younger self, and that was the partisan piece of it. Friends of his were surprised when he decided to sign on to the independent counsel's project. He had been talking to both Ken Starr and other law firms after this clerkship about going and joint their Supreme Court practices. He and Ken Starr have a lunch at Cactus Cantina and Starr says come join me, it'll take six months. Ha, ha, ha.

Many years later, that all finishes up. But that sees the flowering of this partisan warrior piece of Brett Kavanaugh that had not previously been evidence to people. And in particular, the partisan warrior piece that we saw a glimpse of that fateful afternoon at the hearings, which had to do with his animus towards the Clintons.

I have to say, having covered the Clintons at the time, having covered impeachment, there were a lot of ways in which you could get awfully frustrated with the Clintons and their testimony and questions about honesty and behavior. However, it was remarkable.

By the way, and just to tell this story, he's set up on a blind date with an AUSA, and AUSA who I think he knows at the time is a Democrat. And he starts to foment to this complete stranger about the Clintons and how corrupt they are and how dishonest they are. And she's on the record in this book telling me that she's just gobsmacked at his lack of professionalism because this wasn't me as a reporter bellyaching about the Clintons. This is a prosecutor who's investigating the Clintons, who's

mouthed off this way. And it was not one isolated incident. There are a number of his friends from this period who recall similar animus towards the Clintons. And it was a pretty revelatory moment and especially revelatory in light of what we saw erupt many, many years later.

MR. WITTES: All right, let's talk about the conservative legal movement. Because the other supreme ambition in this book, as you describe, is the ambition of a political movement to reshape the American Judiciary, of which the Kavanaugh nomination was imagined by both sides to be a kind of crowning achievement. Whether it turns out that way for whatever reason is a different question.

But you describe the Federalist Society and the broader political architecture of which it is a part or which it is the center in a very vivid way, which I think is quite accurate and quite -- but also different from the way a lot of people describe it. And I'm curious for your sense of how important that ecosystem was to the shift in the political -- in the complexion of the courts and what the role that it played in the Kavanaugh nomination and selection was, and support and confirmation.

MS. MARCUS: So as with all things in the judicial nominations wars, we have to go back to Bork. And it's 1987 and this sounds so quaint in retrospect, but we're having this very fervent national debate about whether it is or is not legitimate to take ideology into account when you're assessing a judicial nominee. Because there was a very intense belief at the time that the question was -- Judge Bork at the time was a D.C. Circuit judge. He was an eminent professor before that at Yale School. Obviously, a leading legal light of his time, case closed. That was not the way that conversation developed. It developed into a conversation about whether he was in or outside the judicial mainstream.

But it also became the first real transformation of the judicial confirmation process into a heated political battle. It also sounds quaint, but at the time it was so astonishing that there would be a television advertisement run featuring Gregory Peck against Judge Bork, run by People for the American Way. It was a very low-scale buy. It was something like 80-something-thousand dollars. We now have millions and millions of dollars in television advertising that surrounds every Supreme Court nomination and it's only going to get bigger with the next ones.

But the lesson -- Democrats mobilized in a way they've actually never been able to mobilize since to defeat Judge Bork. And for Republicans, for the conservative legal movement, Bork became a "never again" moment. Never again were they going to allow themselves to be

outmaneuvered, outgunned, outspent, out-organized by Democrats in the pursuit of a conservative majority.

They messed up in other ways, of course. Right? George H.W. Bush picked David Souter, who was supposed to be a home run for conservatives and turned out to be a quite liberal Justice. And that also became a rallying point of the Federalist Society. It became not only part of the architecture and the architecture went beyond the Federalist Society to other entities that were financed and organized to help get judicial nominees across the finish line.

But they were going to make sure that they were the vetting process. They were going to nurture and create the law students who would grow up to be conservative lawyers, they'd work in the White House or in the administration during Republican presidencies, go on to the federal courts. Some of those seedlings would sprout into future Supreme Court justices.

So the Federalist Society would nurture them, but as it was nurturing them, it would also vet them. It would make certain that never again were we going to pick somebody like Justice O'Connor who was picked for obvious reasons of gender, being the first woman. But when Don McGahn was closeted with -- at the start of the transition with other folks picking President Trump's first nominee, he didn't just say no more Souters, he said no more O'Connors.

One of the ways to make sure we would have no more O'Connors and no more Souters was to be certain that we knew what was in records. We weren't going to -- first of all, we're not going to pick somebody who wasn't a judge, so we didn't know what his or her record was. And it was going to need to be a judge who had a robust enough record that you could be fairly confident they would be the kind of justice you wanted them to be.

That, by the way, just one more sentence, was actually a big part of why then Judge Kavanaugh was of concern to people like Leonard Leo of the Federalist Society because he had had some deviations. Most prominently, his worst from that point of view, deviation was in failing to vote to overturn the Affordable Care Act when he had a chance to do that. He found a way to avoid that outcome.

So absent that architecture, which included but is not limited to the Federalist Society, we would not be where we are today.

MR. WITTES: So we haven't talked yet, and I want to reserve time for audience questions, but we haven't talked yet about the actual confirmation battle --

MS. MARCUS: Oh, that.

MR. WITTES: -- and the Christine Blasey Ford and Debbie Martinez allegations. Since I assume the audience is familiar with that story, I want to ask something that is subtextual in your chapters about this, which is this sense that the whole thing was handled badly and could have been handled differently and better. And you lay a fair bit of blame on Ranking Member Feinstein for her handling of these matters as they came up.

And so the question I want to pose to you is in the Ruth Marcus designed world --

MS. MARCUS: Oh, boy, imagine that.

THE WITNESS: -- what does the processing and handling of these #MeToo allegations look like in the Senate Judiciary Committee?

MS. MARCUS: So thank you for asking a really super hard question, Ben. Don't we want to go to audience questions? (Laughter)

It's a real conundrum because nobody should pretend that Senator Feinstein when she received a phone call from Anna Eshoo, who was Christine Blasey Ford's congresswoman, telling her about the existence of this person, she was in a very, very difficult position. And she was in a difficult position because it is very important if you are a woman who has a story like this, but you do not want to come forward publicly, you should not be forced into the position that Christine Blasey Ford was ultimately forced into.

However, anybody who had been through or had been elected as a result of the mishandling of the Anita Hill-Clarence Thomas hearings should have understood a few things from the start. One, and probably the most important, was that with information this explosive it's not likely to remain private. By the point that Christine Blasey Ford wrote her letter to Diane Feinstein laying out what she said had happened between her and Brett Kavanaugh, she had already told enough people in what I describe as the incestuous and chatty confines of Palo Alto that people were talking about it. And it was almost kind of hydraulically inevitable that at the end of the summer, when she made the final decision, when she, Christine Ford, made the final decision not to come forward, that enough people would be

upset about that, that it would find its way out. Because information wants to find its way out.

And so if you had reverse engineered that and said who have you told and how many people have you told? Let me give you my assessment, which is this is likely to come out. Let's talk about ways in which we can handle this.

I think it could have been handled earlier and differently. Christine Ford was very tormented about whether to come forward or not to come forward. But I think a little bit of reality therapy early on about what was apt to happen might have produced a better result.

The second thing where I think that, though, as I say, Senator Feinstein was in an exquisitely difficult situation, was that she decided that she was going to take it on herself to make that decision on her own. Knowing what had happened, knowing how explosive the last-minute eruption of the Anita Hill-Clarence Thomas allegations had been, she did not tell a soul about this outside her very, very close staff. She didn't go to the leadership. Dick Durbin in the Senate leadership on her committee she could have confided in. She could have confided in the Senate Minority Leader Chuck Schumer.

She sort of batted away any -- because things were starting to bubble up. People were hearing rumors. She kept batting them away. If the staff would tell people if anything like that is happening, we're handling it appropriately. I just don't think one senator, given the social consequences, the national consequences, and the political consequences, should have made that decision on their own.

And one of the episodes that I relate in the book is the meeting that happened right off the Senate floor as the Ford allegations were starting to become public. When Feinstein has an emergency meeting with the Democratic senators on the committee and they are telling her -- she shows them the letter, they read it, they cannot believe what they're seeing, and they tell her, Diane, this has to go to the FBI. And she says, fine, I'll give it to the FBI tomorrow. And they say, no, it has to go tonight because they really want to tear her limb from limb because they've been caught in this terrible situation.

So there was no easy way to handle it, but this was not a good way to handle it.

MR. WITTES: So if you want to ask a question, please make yourself visible. Please state your question in the form of a question. And I will point at you and a mike will come around which you should wait for. If you ramble on or take the opportunity to make a lengthy political speech, I will cut you off with a shocking lack of due process. (Laughter)

Before Gary asks the first question, Ruth, though, I do just thought one of my favorite little items in the book relates to this period of time in the Senate where things are being mishandled. And just for those of you who think life in the Senate is glamorous, Ruth, where did Chuck Grassley and Diane Feinstein meet in order to iron out some items related to this? And what is the name of that meeting now in Senate lore?

MS. MARCUS: Well, this is the morning after that meeting that I describe that it is in the very elegant and ornate President's Room off the Senate floor. This was a slightly different setting. There was a markup and after the markup the senators receded to the anteroom behind the Senate Judiciary room.

At which point -- not only am I not making this up, but I have photos of this venue -- Diane Feinstein goes into the unisex bathroom off the Senate Judiciary Committee anteroom, I'd say it looks something like a middle school faculty bathroom, and goes into the bathroom and motions in her colleague Chuck Grassley, the chairman, and says, Chuck, do you have a moment? And motions in Chuck's chief counsel and says, could you go get Jennifer? Jennifer Duck, her chief counsel, who's talking to the senators. And the four of them in this very small space with this wall-mounted, utilitarian-looking toilet are having their first conversation in what the Grassley staff then called the "Bathroom Summit" about the existence of Christine Blasey Ford.

So thank you for giving me the opportunity to tell that one.

MR. WITTES: There's a lot of items like that and the book is just full of these little gems. Gary?

MR. MITCHELL: Thanks very much. I'm Garrett Mitchell. I write The Mitchell Report. And I'm looking forward to reading this.

I had a thought and so let me just put it this way. It is somewhere between the ultimate hypothetical and a thought-up experiment. But this is a question about Ruth Marcus, the author of this book and the impetus you were feeling for writing this book, as well as the larger theme of *Supreme Ambition*, about what was happening to the Court.

Suppose Merrick Garland had been appointed. Do you imagine that Brett Kavanaugh would still be somewhere else other than the Supreme Court? In other words, he was not only next in

line after Gorsuch, he wasn't even in line when Gorsuch was being nominated.

And I think the question I'm really interested in is, was there something about the Kavanaugh thing itself that really said to you I've got to write this and I've got to write this now? And it's both about the person Kavanaugh and about the larger ambition. Or is this something that had been stewing in your mind for quite some time?

MS. MARCUS: No, for quite -- thank you for asking that question. For quite some time I had been looking for the right book to write and I thought it was going to be something historical. I didn't think it was going to be sort of plucked from the headlines. And then this happened.

I can't reverse engineer if Merrick Garland had been not just appointed, but confirmed as he should have been if -- who would have been next in the chute. Or really I think there is a very reasonable argument to be made that if Merrick Garland had been confirmed, Brett Kavanaugh would not be on Supreme Court today. Not because he wouldn't have been President Trump's first choice, but because President Trump would not have been elected.

The existence of that vacancy, as outrageous as it was for Mitch McConnell to hold it open -- and by the way, he didn't hold it open because he thought it was going to help Donald Trump get elected because he didn't think that was going to happen. He held it open because he thought it was going to help his Senate Republicans get elected and reelected. But if it hadn't been for that vacancy I think it's very possible we would not have President Trump today.

I wrote the book, I came very late in the game as I really decided to write the book in that last week before Justice Kavanaugh was confirmed because it really was the fusion of everything that I had lived. It was a bigger and more interesting story than just a he-said/she-said about what happened on a summer night in Bethesda or Chevy Chase a long time ago. But it was this bigger story and it was an amazing behind-the-scenes moment.

So I think if I had my druthers, I would have preferred to have Justice Merrick Garland and to not have written this book. (Laughter)

MR. WITTES: Sir?

MR. CHECCO: Thank you very much. Larry Checco.

You've totally disabused me of the fact, or the myth I should say, that justice is blind. But

I would ask you this, and this goes a little bit beyond Mr. Kavanaugh. Is John Roberts now our swing vote in the Supreme Court? And as a result of all the politics infused in the Supreme Court of late, is it still a relevant institution?

MS. MARCUS: It's still a relevant institution?

MR. CHECCO: Relevant institution.

MS. MARCUS: Well, it is an incredibly relevant institution. And I think if you -- I think this is going to be an incredibly interesting term at the Supreme Court as it deals with everything from legislative protections, if they are for gay, lesbian, transgender workers, to questions of gun rights to questions about the legitimacy of DACA to abortion rights to the executive power issues that are wending their way to the Court. So I think it is, pardon the pun, supremely relevant.

I think by default, and I write about this in the book, Chief Justice Roberts is the swing Justice. But to think of him as the swing Justice really shows you how far that spectrum has shifted. Because while there are conservatives who think of the Chief Justice as a turncoat swish because of a few votes on things like the Affordable Care Act, the notion that he is not a very conservative jurist at the helm of a very conservative -- he is a very conservative jurist at the helm of a very conservative Court.

And so that spectrum runs from extraordinarily conservative -- Justice Thomas, Justice Alito, Justice Gorsuch -- to Justice Roberts, but it's all on one side of the spectrum. And the interesting question is going to be, and we saw some of it last term, we'll see more if it this term, where Justice Kavanaugh situates himself in that conservative spectrum between Justice Roberts, Chief Justice Roberts, and Justice Gorsuch, who, at least from all available information, is a significantly more conservative Justice than conservative Justice Brett Kavanaugh.

MS. TANNEN: Hi. Deborah Tannen. Could you say something about Brett Kavanaugh's comportment at the hearing, at the confirmation hearing? People that I talked to, well, of course, everybody was shocked by his belligerent stance, the disrespectful way he addressed the senators, but many people that I talked to were saying that isn't really him. He was told he had to do that. Is that true? Because it just seems out of keeping with what you're saying about the loyalty and affection that people who knew him better felt for him.

MS. MARCUS: Sure. That's a really, really good question. And Ben has a point of view

on this, also. Because Ben wrote a fantastic piece about this at the time for *The Atlantic*, about how disqualifying. And he knows Justice Kavanaugh way better than I do and had been quite supportive of him, correct, during the proceedings. And then was floored, if I'm speaking for you, as was I by his conduct.

And if you did a kind of word bubble about Justice Kavanaugh and you were interviewing people about him, I think that the word that would come up most often would be "affable." In a good way he is a very -- I write in the book about how pleasant I found my dealings with him during the Starr investigation. He was professional, he was helpful, he wasn't prickly in the way that some conservatives could be when they're dealing with newspaper reporters.

And so that is -- but I think all of us are really complex people. There is also a piece of Brett Kavanaugh, and you can -- I think I call it in the book "episodic truculence," where you can see these moment where he erupts in resentment or anger. And so the notion that this was simply a performance that he was putting on in order to gain, keep, or retain the support of President Trump is not entirely correct. He certainly was spun up by Don McGahn, the White House counsel, to be forceful.

But I describe in the book the scene inside the Kavanaugh chambers as he decides to rewrite his opening statement on his own with one former clerk who had been a Bush speechwriter. And that is him who is putting in the stuff about the Clintons. That is all from the heart and just shows the depth of his anger and resentment in that moment.

I'm going to tell one quick story from the book since I mentioned Don McGahn. It's right before Justice Kavanaugh takes the -- goes to the hearing. And the President -- and this is after Christine Blasey Ford's testimony, and the Republican senators are convinced that the nomination is sunk. And Don McGahn is with colleagues and they're with Justice Kavanaugh and the President is trying to reach him, not just once, but repeatedly. And he's not taking the President's phone call because he is convinced that the President is getting ready to pull the nomination. I don't know that he was. I know he was concerned about where things were. He's not taking the phone call.

Finally, his deputy, a woman named Annie Donaldson, reaches him and she says the President's trying to reach you. You need to take his call. And Don McGahn says to her, I don't talk to quitters.

And that's where we were because Brett Kavanaugh had become too big to fail and nobody -- Don McGahn and the movement was -- so at a certain point Leonard Leo got cold feet and was ready to pull the nomination, but they weren't going to quit on Brett Kavanaugh.

MR. WITTES: We have time for one more question. Sir?

MR. HIRSCHHORN: Yeah, Eric Hirschhorn. I know that you weren't in the room at the time, but I wondered often whether the discussion between Justice Kennedy and the President was more than just lobbying and was if you want me to resign this term, this is who you're going to pick.

MS. MARCUS: Well, I wasn't in the room. Would that I were. (Laughter) And so I want to stick close to the facts that I know. But I do know that the -- and I write about it in the book that the Trump administration and people in and advising the Trump administration were convinced for some time that Justice Kennedy was on the verge of retirement. They had signals from the Kennedy children; I describe one of those scenes in the book. And they were trying to do whatever they could to induce the Justice to retire, to make him comfortable about retiring.

And so was there, just to use a phrase of the moment, was there a quid pro quo? I don't have any basis for saying that, but I would say that I think everybody understood at the very least, even without an explicit Gordon Sondland-like statement, that the next person who was most likely to retire and who the President just desperately wanted to retire because he loved the Gorsuch experience. It was a huge success for him at a time when he wasn't having a lot of successes and he wanted to replicate that. So I don't think that Justice Kennedy needed to be explicit in order to get the President's attention.

MR. WITTES: Call it quid pro hope.

Ruth will be signing books outside the front doors of this room. Let's give her a moment to get to the table and please join me in thanking her for joining us. (Applause)

MS. MARCUS: So much fun.

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I, Carleton J. Anderson, III do hereby certify that the forgoing electronic file when originally transmitted was reduced to text at my direction; that said transcript is a true record of the proceedings therein referenced; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and, furthermore, that I am neither a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

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