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## **THE RACHEL MADDOW SHOW for July 9, 2018**

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### **Body**

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RACHEL MADDOW, HOST: Good evening, Chris. Actually, let me hold on to you for a second. We've just had this news that Pete Williams just broke on your air. Obviously, this is going to be an historic night no matter who is nominated. This president has not been in office a year-and-a-half yet. He's making his second Supreme Court nominee.

But now with Pete reporting, NBC News, reporting that it is Brett **Kavanaugh**, it's interesting. This is somebody who has been the subject of really, really, really hard fought confirmation proceedings in Washington before.

Chris, let me just get your -- just personally, as you're learning this news just as we are, what is your reaction to this?

HAYES: You know, my reaction, twofold. One, I'm not surprised. It always seemed like this was the most Gorsuch like pick of the bunch. And by that I mean someone who had punched all the tickets, all the sort of elite credentials, and who had also spent his life in conservative right wing legal circles in which people can be sure they're not going to get a suitor, right.

I mean, there is an entire infrastructure that's been built up on the right to create processes, to create associations, to create pipelines of cultivation, to make sure that they get conservative justices appointed by Republicans who end up ruling in ways that align with their policy preferences and their constitutional theories, and they've gotten very good at it.

Gorsuch has performed in the first few years he's been on the court speaks to that. And I think that Kavanaugh is cut of that same cloth.

So it's not surprising that this vetting process, which started way before the president was even sworn in, and one that has been the subject of a lot of attention and labor by people for whom this matters a lot, would produce this pick.

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MADDOW: Yeah.

I think the thing that you're identifying here, which I think is absolutely right, Chris, is that there is this infrastructure on the right when it comes to judicial nominees that just doesn't have any parallel whatsoever on the left.

And so, therefore, there is a, even with an unpredictable president like this, there is a predictability to conservative nominees that would produce somebody like Kavanaugh.

Chris, thank you, my friend. Much appreciate.

HAYES: Thank you, Rachel.

MADDOW: Again, let me repeat this hour's breaking news. We are awaiting the official announcement from President Trump, but NBC News's Pete Williams has just broken the news here on our air that according to NBC's reporting, the pick will be Brett Kavanaugh.

Interesting about Brett Kavanaugh, he was nominated to the D.C. Circuit in 2003 by George W. Bush. His nomination stalled for three years amid intense, intense controversy. At the time, the liberal lion of the Senate, Senator Ted Kennedy, called Brett Kavanaugh, quote, the youngest least experienced and most partisan appointee to the court in decades.

He was nominated in 2003. He didn't actually have his successful confirmation hearing until 2006. Even still, there were votes against him.

There's also been some intriguing reporting about his history with Justice Kennedy. Justice Kennedy made his decision to retire this year, handing this opportunity to announce a new -- to name a new nominee to President Trump. There had been some interesting reporting about the way that was negotiated between Justice Kennedy and the Trump White House. Brett Kavanaugh was a clerk to Justice Kennedy and Brett Kavanaugh his name was not on the first couple of lists of potential nominees that were circulated as people who President Trump might choose when he suddenly popped up on the list, when he was added to the list late last year in November 2017. Some people saw that as a sign that that might have been a change to the list meant to assure Justice Kennedy that Brett Kavanaugh would get his seat, thus encouraging Justice Kennedy that it was safe to retire.

We're about a minute and a half two minutes away from the nomination. While we wait for the president to appear at the rostrum here, I want to bring in our friend Dahlia Lithwick, who's here from slate.com.

Dahlia, Brett Kavanaugh was sort of seen as the most likely pick instantly. Is there anything that surprises you about this nomination?

DAHLIA LITHWICK, SENIOR EDITOR, SLATE.COM: A little bit that I thought he would troll us with Amy Coney Barrett. I thought -- I thought it would be very Trumpy of him to pick a woman, who'd be the person to reverse Roe, to have, you know, Senator Collins and Senator Murkowski. You have to fight a woman. I thought that would be fun for Donald Trump.

So this seems like a slightly safer pick than I thought Donald Trump might do.

MADDOW: And. Dahlia, we've been told that Senator Mitch McConnell, the Republican leader of the Senate, had sort of cautioned the White House about Brett Kavanaugh, saying, you know what, he's got a long record that we're all going to have to go through. And he's not necessarily saying that might be a pain but he's saying that there might be some issues there that may arise over the course of a confirmation process.

He's been more than -- correct me if I'm wrong -- more than a dozen years on the Appeals Court. Before that, he worked in the Bush White House for five years. He was there for a lot of the controversial times of the George W. Bush White House. There will be a very long paper trail here.

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LITHWICK: I think Dick Durbin once famously called him the Selig or the Forrest Gump of -- you know, every time, there was Bush v. Gore, he was there. Elian Gonzales, he was there. That Ken Starr report, he was there.

And so, he's been at the epicenter of every big conservative White House story for a long time. There's a lot. There's 300 opinions to mine, Rachel. There's a lot there.

And that made McConnell nervous. I think he wanted one of the two short-listers with much, much less substantial records because he wants this done by September.

MADDOW: The speculation that I was alluding to that the Kavanaugh addition to the list from which President Trump was reportedly choosing, that it may have been designed to encourage Justice Kennedy to retire. What do you make of that?

LITHWICK: I think that's right. I mean, I think that the predictability, the fact that George W. Bush would have picked him, Ted Cruz, Mitt Romney would have picked him tells you that this was a decision that was done by the Federalist Society, the Heritage Foundation. The groups that do this have almost entirely controlled the process and that's why he's on the list.

Typical traditional pick, this is not an alarming or sort of wacky pick that we might have expected.

MADDOW: This is the live shot that you're seeing right here on your screen. It's the East Room. We're expecting the president to arrive essentially now to make this nomination.

Again, NBC News reporting that the nominee will be Judge Brett Kavanaugh.

(PRESIDENT TRUMP'S SUPREME COURT JUSTICE NOMINEE ANNOUNCEMENT)

MADDOW: President tonight announcing that he has chosen Brett Kavanaugh to fill the vacancy created on the Supreme Court by the retirement of Justice Anthony Kennedy. We saw short remarks from the president there and somewhat longer remarks from Judge Kavanaugh himself.

Judge Kavanaugh, you should know, has been on the D.C. Circuit Court of Appeals for dozen years. That court has a remarkable record of feeding judges to the Supreme Court. From the current court, John Roberts, Ruth Bader Ginsburg and Clarence Thomas, they're all on the Supreme Court now, they all served on the D.C. Circuit Court before being elevated to the supremes.

On the D.C. Circuit Court where he sits now, Brett Kavanaugh all these years has served under the chief judge of that court, that circuit, Merrick Garland, who, of course, was nominated in the spring of 2016 to fill the seat left vacant by the death of Antonin Scalia, nominated by President Barack Obama. Because he was nominated by President Obama, Republicans in the Senate would not allow a hearing on Judge Garland's nomination. They cited the election coming later that year.

Close observers will note, there is also an election coming later this year but nobody knows if Democrats will be able to apply the same standard this time to wait on hearings on Brett Kavanaugh until after the election the way the Republicans applied that standard last time.

Democrats will apparently try for that, but they're not in power and we don't know if they'll be able to pull it off. We're going to be talking about that over the course of this hour. We also I think shouldn't lose sight of what a just a -- what a remarkable thing this is that has just happened tonight. President Trump after less than 18 months in office, not yet halfway through one term as president, is already making his second nomination to the court. There's only nine people on the court.

This nomination comes at a time when that choice is fraught and consequential in ways that have never applied to any other U.S. president ever. Just consider for a second the snapshot here. The president's first national security adviser has pled guilty to a felony charge he's going to appear in person in federal court tomorrow because a federal judge is about to hold a hearing on the start of his sentencing process.

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The president's campaign chairman is now three and a half weeks into solitary confinement in a federal jail while he awaits the start of two federal trials on multiple felony counts. The president's longtime personal lawyer has just secured the legal services of one of President Clinton's lawyers from his impeachment fight in the '90s while federal prosecutors mull criminal charges against him and while he is widely reported to be considering cooperating with those prosecutors than a potential plea deal.

If the president ends up himself in the crosshairs of the ongoing special counsel's investigation, any number of the elements of his defense may end up before the U.S. Supreme Court and therefore potentially before the nominee he has named tonight. Can the president be subpoenaed to testify before a grand jury? Can a president be criminally indicted? Can the president pardon himself? Can the president pardon others if the goal of those pardons is to weaken the case against himself or his family? Can individual states bring prosecutions against people the president has pardoned if he pardons them for those reasons?

Now, all of those questions are considered more or less to be unsettled as matters of American law, which means if and when push comes to shove between the special counsel's investigation and this president, tonight's announcement of this nominee to fill the seat of retiring Justice Anthony Kennedy, this nomination will be both critical to the future of law and policy in this country, but it will also be critical to the president's personal fate in a way we have never seen before.

And that is not a normal thing you worry about with most Supreme Court nominations, but that is now a very, very live consideration for the announced nomination just moments ago of Brett Kavanaugh to the United States Supreme Court.

Joining us now is U.S. Senator Cory Booker who serves on the Judiciary Committee.

Senator Booker, thank you for being with us tonight. I know this is an incredibly important evening. Appreciate you having some time for us.

SEN. CORY BOOKER (D), NEW JERSEY: Thank you, Rachel. Thanks for having me on.

MADDOW: What's your reaction to the president's nomination of Brett Kavanaugh?

BOOKER: I'm a little sort of stunned at the way this is all played out. If you look at the entire list of 20 or so people that he had on, the one person the president could find on that list that would be most assured to rule in his favor should many of the things you're describing come before the Supreme Court is this judge. He picked the one guy who has specifically written that a president in fact should not be the subject of a criminal investigation, which the president is right now.

So, this seems to be the of all the people the most self-serving person he could choose in order to protect himself from this criminal investigation.

MADDOW: CNN reported earlier this evening that that factor about Judge Kavanaugh, his writings on whether a president can be indicted about a president's potential susceptibility to obstruction of justice charges, that those writings by Judge Kavanaugh were overtly considered and reviewed by the White House team that was advising the president on making this pick. If that's true, if it turns out that the president chose Judge Kavanaugh for this nomination in part on the basis of what he said about whether President Trump conceivably could be indicted with that itself be a factor for the confirmation here, would that be disqualifying in your mind?

BOOKER: Well, first of all, I have no doubt that his president who seems to be very concerned about himself, I didn't see that as a shining pearl within the picks that he had and the criteria that he looked at. But I've been saying emphatically before this and now I will be saying with even stronger voice that we as the United States Senate -- forget partisanship or what-have-you -- a respect for the Constitution to avoid a constitutional crisis, we cannot let this confirmation process go forward, especially now that we have someone that has clearly said that they have a strong opinion should any of those issues come before the Supreme Court.

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We know now that the ideas that you said are not settled law, or whether the president can pardon himself, whether the president can just dispense with the criminal investigation, a lot of these issues could come right before that justice that now he is a hundred percent certain we'll have his back.

MADDOW: And, Senator, I know in addition to being a U.S. senator, you are also a trained lawyer and you have expert opinions on these things, as well as observing them there are political lens. The way I understand Judge Kavanaugh is writing on this subject is not just that he said that a president definitively cannot be indicted and should not be indicted while in office, but he's also sort of further said that a president shouldn't be subject to either criminal prosecution or any civil lawsuits while in office, that a president should essentially be exempt from accountability on either criminal or civil law while in office simply as a way to ensure that he's able to focus -- a president is able to focus entirely on the business of running the country.

That is -- that's interesting in terms of just Kavanaugh's history given his involvement with the Ken Starr investigation.

BOOKER: Right.

MADDOW: I believe he was the lead author of the of the Ken Starr report. But this would also seem to have implications for the president's potential liability not just for the Mueller investigation, but also for any liability that may attend to the Trump foundation or these Summer Zervos lawsuit, or -- or the emoluments cases that have been brought. It would seem to apply to a lot of the legal trouble that the president has been at the -- that has been sort of brewing around the president over this last year-and-a-half.

BOOKER: Yes. Well, we know that this president has already in those deep in legal matters before he even became president and was settling with millions of dollars beforehand. But now he has a lot of other legal trouble and the challenges that this president could have caused for himself, now he's got that insurance policy. He's got this get-out-of-jail-free card if you if you will in the in him sifting through 20-plus names as well as all the other people he could have considered.

He picked the one that as you said, it's not just that he said a president couldn't be indicted, it's not just that he said that a president couldn't be held accountable for his actions, this is somebody that goes as far as to say that even an investigation, even him being in the midst of an at larger investigation, that this could distract the president from his other urgent work. And yet you're right, Rachel, it's a choice piece of irony that this was a person that is a very much a political actor before he was a jurist, that was a part of the Starr investigation himself.

So, I'm deeply troubled by this. Before you even get to the issues that concern me as an American citizen, that this is a person that's going to roll back so many of the freedoms and liberties that Americans have a gained from themselves over the fifty years, whether it's a woman's right to make her own medical decision, whether it's voting rights, whether it's right for workers to organize, whether it's the right for individuals to have the rights of citizenship like voting rights -- there's so many things here that should be objectionable to, again, people on both sides of the aisle, worrying about the corporate ascendancy in this country that we already saw with the Citizens United decision, that's so muted the voices of ordinary Americans and ascended the billions of dollars now that we see dark money pouring into our campaigns.

But this trend now with the shifting imbalance of the court, that should be enough to cause outrage and to give me a sense of conviction. But I am really stunned having watched what's happened over the last six months with a legitimate investigation of a nation that has been attacked by the Russians of which as you said, there has been a seventy plus charges, twenty plus individuals and companies that have been subject to those charges, five guilty pleas, one sentence, people all swirling around this president, we have a bipartisan group within the intelligence committee on the Senate side at least saying that the Russians indeed did attack us -- all of this is going on right now, and it's almost like I'm watching a bad movie that now a president of the United States has got sort of indemnified himself by picking the one person he knew would have his back and one person that would give him shield from anything that might come up at him, even though we now see that numerous people around his campaign and his administration are under investigation right now.

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MADDOW: Senator Cory Booker of the great state of New Jersey, thank you for being with us tonight, sir, on this big important night. Thanks for being here.

BOOKER: Thank you for having me, Rachel.

MADDOW: That last point that Senator Booker was making there that this nominee was chosen off a list which is an unusual thing, right? Previous presidents haven't done this. But this president said that he would choose nominees from a list prepared by conservative interest groups.

Brett Kavanaugh was added to that list late last year. What Senator Booker is saying that he's the one person on that list who's explicitly and multiply on the record talking about a president's liability to criminal investigation and indictment and saying as Senator Booker said that a president should not be subject to criminal investigation and cannot be indicted. If he's the one guy from that list of two dozen choices who's been explicit on that point, is that the signal element that we should see here in this choice.

Joining us once again is Dahlia Lithwick, senior editor and legal correspondent at slate.com.

Dahlia, to this point -- is Senator Booker correct that Kavanaugh has an explicit, overt record on this subject that might have appealed to the president because of his own legal woes?

LITHWICK: I think that if the president were poring over the writings of every single person on his list, Judge Kavanaugh would have given him most succor.

I want to actually just clarify one tiny thing, Rachel. I think it's important. I think in Judge Kavanaugh's law review article where he talked about this, he didn't say it's a constitutional matter the president should be immune from all civil and criminal liability. He said Congress should pass a law to protect the president.

So, not that we think Congress is capable of doing anything in any sense, but I don't think he was making the constitutional point that is quite so broad that he, you know --

MADDOW: He was making a political argument exactly that there -- the impeachment of a president would essentially put a prosecutor in position of supplanting Congress's responsibility to impeach.

LITHWICK: Yes, I and I just think it's important because I think it's -- it's not quite as, you know, dispositive of this question is we like to think. But on your question and I think it's so important, if you think about how much fire Brett Kavanaugh drew, Ted Cruz hated him, we had the whole federalists was posting anonymous post after another saying we're not going to be for Trump if he puts Kavanaugh up -- what was the resistance to Kavanaugh?

MADDOW: What was the resistance?

LITHWICK: So, I -- you know, it's been really interesting to me because I thought for a very long time it was just that he wasn't a sort of religious conservative. This wasn't going to be the fire fight some of the evangelical community wanted. And now, I think it's just that they're not completely certain -- Ted Cruz has been warning all along he's going to be a Southerner. You know, he's going to be --

(CROSSTALK)

MADDOW: But as an observer of these things, are there any indications in his record that -- I mean, he's got more than 300 opinions. He's been on the appeals court for a dozen years and it's the D.C. circuit, so it's lots of high-profile cases. There lots of very ideologically charged cases.

He was Bush-Gore recount Bush lawyer. He was a George W. Bush White House employee for more than four years like the -- what in the record -- what in his record would allow conservative critics to see him as a squish?

LITHWICK: I have no idea, but I know that I was stunned at how they came out with the long knives against him and I think that Donald Trump was making exactly the calculus you and Senator Booker just identified, that if I have

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to figure out who to mollify here, I've got all these groups who are angry about someone, I'm going to protect myself. I'm going to pick the guy who said most expansively in writings over the years what the scope of presidential power is.

And I think that in that sense you see Trump not looking at the sort of landscape of who's -- who do I need to satisfy for these upcoming midterms, how do I protect me?

MADDOW: How do I protect myself?

Again, let's just quote directly Judge Kavanaugh from a 1998 Georgetown law journal article, quote, Congress should establish as well important to point that out -- Congress should establish that the president can be indicted only after he leaves office voluntarily or is impeached by the House and convicted and removed by the Senate. That's Kavanaugh on the record saying there should be no indictment of a sitting president.

Dahlia Lithwick here from slate.com, thank you very much. It's good to have you with us tonight.

LITHWICK: Thanks, Rachel.

MADDOW: I do want to bring in now my good friend Chris Matthews, the host of "HARDBALL" on MSNBC who has covered any number of Supreme Court fights, knows as well as anyone how these things unfold.

Chris, it's good to see you, my friend. What's your reaction to this announcement tonight?

CHRIS MATTHEWS, MSNBC HOST, "HARDBALL": Well, my first reaction is how smart you are because I think this guy was promised inferentially at least to Judge Kennedy that he would be his replacement. He -- I think that's what they're going to sell him as.

Do you notice that little thing there? He comes from my parish, Blessed Sacrament. He coached a CYO basketball for his daughter. He went to Georgetown prep. That's the world I come from.

But he also pointed out that there's a lot of arguments within that community, that they're not all pro-life in the way political people use the term. They are certainly in rigidly religious doctrine but they have different views about politics. I thought it was very interesting pointed that out, there's a difference of opinion within his community.

I thought it was very thoughtful, unlike perhaps Amy Barrett would have said something. I think he solved of simultaneous equation tonight the president tried to. One is he did -- he tried to pick someone in the shadow or in the -- in the model of Justice Kennedy who might turn out to be surprisingly liberal or tolerant or live-and-let-live on issues of sexual behavior or whatever sexual orientation or even abortion rights.

But also, he wanted to get somebody out there who would get the votes that he needs to get to 51. He already has the votes for this appellate of confirmation from Senator Murkowski and Senator Collins, the two people who have been leaning perhaps against a hard pro-life appointment. He's also got the precedent of Gorsuch having gotten the votes of, of course, Heidi Heitkamp out there in North Dakota and Donnelly in Indiana and Manchin in West Virginia.

So, it looks to me like they have sized it up they've solved the equation OK with the pro-choice women in the Senate on the Republican side of the aisle, OK enough for the people and the Democratic side who want to lead towards their constituents at home, and also most importantly, the gem the president mentioned today was not the Constitution, it's what you finger- pointed, which you put you put your finger on, the fact that this guy has a history of saying he doesn't think presidents should be indicted, and he thinks there ought to be legislation to codify that.

This is powerful stuff. You know how Trump is. We all know he likes that people tell him how great he is and how he's always right. Here's a guy applying for a job associate justices of the Supreme Court who says you shouldn't have a finger laid on you by the prosecutor. That's a pretty good selling point.



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MADDOW: And what strikes me as important about that, Chris, and Senator Booker was right was right on this point, focused right in on it, was that there were a couple dozen names on that list. We're in this weird situation where the president is picking names off a list. This isn't the way it used to work.

But because of that, we can look at this choice and compare it to all the other names on the list. It is Judge Kavanaugh who I believe alone on that list is the only one who's on the record at length on this question of whether a president is subject -- should be subject to criminal investigation, civil lawsuits, indictment, impeachment and all the rest of it. I mean, he's the only one from that list who said a lot on the record in print on this matter that the White House could have reviewed and he's the one that they picked.

I can't imagine that under any other president picking him -- you can imagine another Republican president picking Brett Kavanaugh, but with no other president picking him, would you -- your first concern be that maybe he was picking him because the president thought he wouldn't indict him?

MATTHEWS: Does the phrase judge shopping come to mind?

MADDOW: Yes.

MATTHEWS: And that's -- he's selecting the decisive vote on the court that will rule on whether he has to respond to a subpoena or not. These are near-term concerns. The next within this year he may have to -- the court may have to rule on whether he has to be questioned by Mueller. These are very near-term questions.

MADDOW: Chris, let me ask you about one other element here. Judge Kavanaugh was initially nominated by George W. Bush and that has a couple of implications and in the Trump White House. That means that he'll be seen as a Bush guy and that has become something negative to this president a lot of circumstances.

But we also now have the history of what he went through the last time he got nominated. He was initially picked in 2003. His nomination was essentially iced because it was so controversial for three solid years.

He didn't get a successful confirmation hearing until 2006. It was very contentious, he was described as unqualified. He was described as one of the most partisan nominees of the era, if not ever.

MATTHEWS: Right.

MADDOW: I mean it was a it was a hard thing for him to get confirmed a dozen years ago. How does that carry forward to 2018?

MATTHEWS: Well, he carries forward tonight from Crawford, Texas. Dateline, Crawford, Texas. It's just came out.

President Trump has made an outstanding decision and nominating Judge Brett Kavanaugh to the Supreme Court. This is from George W.

Brett is a brilliant jurist who has faithfully applied the Constitution and laws throughout his 12 years in the D.C. Circuit. He's a fine husband, father and a friend and a man of the highest integrity. He will make a superb justice of the Supreme Court of the United States.

This fight is going on. I don't understand -- I'll be honest with you, I don't understand the nuance of this. But clearly, he's cleared muster now with the Federalist Society and that whole legion of as you point out, that asymmetric warfare that goes on between right and left in this country.

Democrats don't have a Federalist Society. They don't have a Heritage Foundation of all that -- all that sort of mechanism for finding who speaks for the great force of the right.

MADDOW: Chris Matthews, my dear friend, I always want to talk to you on big nights in the news and history. Thank you for making time to be here tonight, my friend.

MATTHEWS: Thanks for having me on tonight.

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MADDOW: Thanks.

Turning now to the expected fight, figuring out who the nominee was going to be from among the list of a couple of dozen names that were pre-circulated by the White House in this new era of how this White House picks Supreme Court nominees, that was one thing, in terms of figuring out how you ended up with Brett Kavanaugh rising to the top of that list for the White House to make this choice.

Now that the White House has made this choice, this nominee has to get through the U.S. Senate, where the balance of power stands at 51 Republicans to 49 Democrats. Among those 51 Republicans is Senator John McCain who is out in home because of health reasons and health concerns.

Given that math and given the way this Supreme Court nomination came to be, given the history of President Barack Obama not being allowed essentially to advance his nominee Merrick Garland because of an impending nomination, what are the Democrats best chances for fighting this nominee if they decide that they're unified in doing so? What should we expect in terms of the fight ahead as to whether or not Kavanaugh will be confirmed?

I want to bring into the conversation here, a former Senate staffer named Adam Jentleson. He's not a household name but he's a crucial character. He was part of losing Democratic fight to put Merrick Garland on the Supreme Court in 2016. Mr. Jentleson was also deputy chief of staff for Democratic leader Harry Reid who was seen as a master of the Senate rules and who went to the mat in all sorts of unprecedented ways and fights like this in the past.

Mr. Jentleson, thank you for being with us tonight. I really appreciate you being here.

ADAM JENTLESON, FORMER SENIOR AIDE TO SEN. HARRY REID (D-NV): It's great to be here, Rachel. Thanks for having me.

MADDOW: So, Adam, you've spoken publicly about what you think Democrats ought to do if they decide that this is a nominee that they want to pull out all the stops to fight. Now that we've got a name and it's not just a hypothetical, do you think that Brett Kavanaugh will inspire a unified Democratic opposition in the Senate?

JENTLESON: I think that Brett Kavanaugh presents Democrats who want to find a way to vote no with ample opportunity to get to know. You know you were talking about the Russia aspect of this, the president appointing somebody with pretty clear intent to, you know, be let off when the Russia she makes it at the Supreme Court. That's one rationale.

Kavanaugh seems very likely to overturn the Affordable Care Act, that's another rationale. His writings on Roe v. Wade are very troubling, it seems like he would overturn the woman's right to choose. So, that's another rationale.

So if you want to get to know, you have ample ways of doing it if you're a Senate Democrat right now.

MADDOW: And, of course, the procedural dynamic here. Process doesn't tend to motivate people at large in the way that real policy issues do. But on the process here, we do have this strange precedent with the last vacancy on the court having been created by the death of Antonin Scalia in February of 2016, Republicans just refused to allow President Obama's nomination of Merrick Garland to proceed in any way shape or form, no meetings, no hearings nor votes. They said they would not do that until after the election.

Now, Democrats have made some noises about trying to hold the Senate to the same precedent, saying, well, you know, listen this time the election is even closer than it was when Antonin Scalia died.

What do you see in term of the Democrats chances for delaying, simply on the basis of the fact that that was the precedent set by the last vacancy?

JENTLESON: Well, it's hard to -- you know, the difference between the position now the Democrats turn and position Republicans were in under Garland was the Republicans held the majority when Garland was nominated,

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so they set the floor scheduled if they wanted to delay. All that took was Mitch McConnell deciding that he wanted to delay, so Democrats in the minority, they unfortunately can't do that.

But the minority has a lot of power in the Senate. There are a lot of things that they can do to delay this process as much as possible. And one interesting thing about Brett Kavanaugh on that front is that he has a massive paper trail that deserves to be scrutinized very carefully. You mentioned the 300 decisions.

So, making sure that all of the proper paperwork is delivered to the Judiciary Committee, making sure that all of the review that needs to happen is completed before the Senate Judiciary Committee holds its hearings. There are ample opportunities, they're legitimate, not just -- this isn't just throwing sand in the gears, this is a man who has a massive, massive paper trail who is being nominated to the highest court in the land and scrutinizing that is going to take some time.

Mitch McConnell said he wants to hold a vote by September or October. That is a rushed process. I mean, that is a very, very fast track to put someone like Kavanaugh on so Democrats similar to you know the rationales for voting no, there are opportunities for delay here and scrutiny if Democrats choose to take them.

MADDOW: And just specifically to that point, Adam, briefly -- in addition to his time on the appeals court, Brett Kavanaugh served for many years in the -- in the White House. He was a counsel with George W. Bush and then he was staff secretary, which is a small sounding job that's actually an incredibly important job.

Would you expect that Democrats and other senators would want to see -- Democrats and other senators -- would you expect that senators considering his nomination would want to see all of his records, all the paperwork associated with all of his work product associated with all of his time serving in the executive branch in the past, in addition to his judicial record?

JENTLESON: They should absolutely want to see them. The public should want to see them, especially given that the nature of executive power and Kavanaugh's opinions on executive power, how its wielded, how it interacts with the other branches of government are massively important, especially given the Russian investigation. So, all of his emails are public record. They're available. They should be posted online. Democrats should demand that and everything -- every piece of paper associated with this man who is poised to wield a massive influence on the future of this country should be and ought to be scrutinized.

MADDOW: Yes, and that's likely to be -- honestly, it's likely to be millions of documents given the length of his career in public service.

JENTLESON: Absolutely.

MADDOW: Adam Jentleson, former deputy chief of staff for Senator Harry Reid, now part of the group of Democracy Forward and the Center for American Progress Action Fund, Mr. Jentleson, thank you for your time. Appreciate you being here.

JENTLESON: Thank you, Rachel. Great.

MADDOW: Nina Totenberg is going to be joining us in just a moment. We've got much more to come on this big news night. Do stay with us.

MADDOW: The president tonight has announced that Brett Kavanaugh is his nominee to fill the vacancy on the Supreme Court that will be created by the retirement of Justice Anthony Kennedy.

Can we go right now to a shot of the Supreme Court? We have all -- we are already seeing -- do we have that footage? Yes, we are already seeing protests tonight. This is actually outside the U.S. Supreme Court.

I believe we've got some still images too that show a wider shot here of what -- yes. So, this is what's happening right now in Washington, D.C., on the steps of the Supreme Court. We've got people gathered there basically

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essentially for the announcement from President Trump and now that the nomination has been announced specifically as Brett Kavanaugh. You've already got people out there with signs that say "Stop Kavanaugh".

Joining us now is legal affairs correspondent Nina Totenberg of NPR, among the foremost reporters ever of all things Supreme Court.

Ms. Totenberg, thank you so much for being with us on this big night.

NINA TOTENBERG, LEGAL AFFAIRS CORRESPONDENT, NPR: It's my pleasure, Rachel.

MADDOW: So, let me just get your top-line reaction to the president choosing Brett Kavanaugh. It seems like from the survey we've done over the course of this evening thus far, he is both an expected choice, somebody who wouldn't be a surprise choice for any Republican president looking for a Supreme Court nominee, but also one that is seemingly raising some controversial issues that other nominees might not have raised.

What's your take?

TOTENBERG: I think that this is from the president's point of view and from the point of view of conservatives is a smart choice. You saw a very graceful, gracious nominee not nearly as stiff as Neil Gorsuch was at his announcement hearing, somebody who's used to Washington, who's already been mulled by the Senate Judiciary Committee at least once, and somebody who is likely to be able to handle it.

On the other hand, if he's confirmed, one assumes that he will be an enormously influential member of the court and very quickly. If you've already written 300 opinions in the D.C. Circuit which handles the big regulatory cases, which handles big separation of powers cases, true he hasn't actually ruled specifically on Roe versus Wade, but he has ruled on a whole bunch of other stuff and they can see that he will be able to carry the water. And in some ways, he doesn't even have to carry that heavy a pail of water if you've got five very conservative members of the court what you now do,

MADDOW: Nina, in terms of his expected role on the court, as you say, if he is confirmed, what have we learned about him over the course of his 12 years on the D.C. Circuit in terms of his -- not just his temperament, not just his ideological place on the number line, but his skill as a jurist and his -- the way that he works with other judges?

TOTENBERG: He is as I said an enormously skilled and very conservative jurist, who as far as I can tell gets along with his colleagues very well, can slice the salami pretty thin when he needs to in order to win a victory and is a -- something of a team player and not sort of a rogue on your own, I'll dissent from everything in whatever small ways I don't agree person. And that is the picture of somebody who is potentially a very influential member of the United States Supreme Court.

Having said that and having acknowledged that the Democrats at the moment do not have the votes to defeat this nominee, as I have often said, anything can happen in a ball game or a confirmation hearing, and the other part of this that we have not seen quite play out is that there is a recent study that came out that showed the responsiveness of recent nominees to the Supreme Court from 1968 or '65 onward.

And from bottom to top, it turns out, you know, the Republicans always talk about our nominee is going to follow the Ginsburg rule, I'm not going to give any hint about how I'll how I'm going to rule, I'm not going to answer any questions about a specific case and that was true for Ginsburg. But she actually answered a remarkable number of questions and it turns out that in this analysis anyway, this recent study, Neil Gorsuch was the least responsive person to sit in the nominees seat.

And if you looked at Sonia Sotomayor and Elena Kagan and Sam Alito and John Roberts, they weren't particularly responsive either, but in -- that's because these nominees learn that if they answer a question, they might end up in trouble. They have to answer more and more and more, and they don't want to go down that path.

But the Democrats have enough votes I think to demand a certain level of responsiveness to put at least some limit on the stonewalling, and if you don't answer questions about Brown versus the Board of Education, that whether

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you -- that ruled unconstitutional school segregation, if you won't answer some pretty basic accepted decisions, and that may not include Roe, by the way, but if you -- if you aren't more responsive about the elements that you will be looking at when you're examining the question of whether you've follow precedent and la de da de da de da -- if you're not more responsive, I can see the ads in my brain already.

And we know that on the right and the left, they're going to spend millions and millions of dollars defending Brett Kavanaugh and attacking Brett Kavanaugh. And always, the attackers have the slight edge. It's easier to make a charge than refute it.

MADDOW: Nina Totenberg, legal affairs correspondent for NPR, thank you for being with us tonight on this big night. It's nice to have you here.

TOTENBERG: Always a pleasure to be with you, Rachel.

MADDOW: Thank you very much.

In what Nina was saying there about, the declining responsiveness of nominees at their confirmation hearings over time, in the case of Brett Kavanaugh, that is going to run up against this very interesting thing which is that he really does have a paper trail a mile long, not only 300 opinions that he's authored as an appeals court judge in the D.C. Circuit which deals with a lot of the knottiest issues that come before any appeals court, but all -- knotty with a KN, not NAUG -- that's not what I mean. Never do homonyms on television.

But there's also is -- there there's also his record, an extensive record of his time in public service working in the George W. Bush White House and his other time in politics that will all be up for discussion at his hearing. She heard several references to Roe v. Wade, and whether or not Judge Kavanaugh, if he's confirmed, would be the justice to cast a deciding vote to overturn Roe versus Wade or otherwise get rid of the right to a legal abortion in this country.

Well, on that point, joining us now is Nancy Northup. She's the president and CEO of the Center for Reproductive Rights. Her organization is basically the frontline legal defense of Roe versus Wade and the other legal elements of access to legal abortion in this country.

When states passed laws that deny women reproductive rights, it's very often lawyers from the Centers for Reproductive Rights who file the lawsuits and argue these cases.

Nancy, thanks very much for being with us. I appreciate it on this busy night.

NANCY NORTHUP, PRESIDENT, CENTER FOR REPRODUCTIVE RIGHTS: Thank you, Rachel.

MADDOW: What's your reaction to the nomination of Brett Kavanaugh?

NORTHUP: Well, here's how I see the nomination of Brett Kavanaugh. The president promised to appoint to the Supreme Court only justices who would overturn Roe versus Wade, and we need to that President Trump tonight has done that. The presumption is that he has nominated a man that he feels confident will overturn Roe versus Wade.

And you know, Judge Kavanaugh's record is not one that rebuts that presumption. He has decided one case on abortion in his time on the D.C. Circuit, and in that case he ruled against the woman seeking access. And this was of a 17-year-old undocumented young woman who was in Health and Human Services custody. She found out that she was pregnant. She sought to have an abortion and she even went through the process in Texas where the judicial system said you can consent and make this decision.

And yet, HHS denied her the ability for four weeks to get the abortion, it goes up to the D.C. circuit, and Judge Kavanaugh would have denied her the abortion for at least another 11 days. I mean, time is everything when you're making this decision and eventually, that was overturned by the full D.C. Circuit and Judge Kavanaugh dissented.

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And so, he's got one case on abortion. It was ruling against access of a young woman to an abortion and so, we have to be very concerned and vigilant that we cannot play the games that always go on in these Senate confirmation hearings. The Americans need to have answers about where he stands on our basic personal liberties.

MADDOW: There are at least two female Republican senators who are on the record as supporting Roe versus Wade, as describing it as settled law, saying that it shouldn't be overturned and saying that that may be a factor in their -- in their votes. Do you expect that Judge Kavanaugh's record on this subject is something that should sway the potential votes of Republican senators who aren't diametrically opposed to abortion rights?

NORTHUP: Well, his record should, but also the fact that he has been appointed by a president with this unusual promise that he's only putting on justices who would overturn Roe versus Wade.

What the senators should insist upon, including Senator Collins and Murkowski is that they get an answer, a direct answer, a plain answer about where Judge Kavanaugh stands. Will he accept the rationale and the basis for the decision Roe versus Wade? Does he understand that this is about a woman's most personal decisions and the entire broader liberty cases, which it is part of? And will he confirm that he's not going to overturn Roe versus Wade?

This isn't a time for games on this issue or cleverness. We need answers.

MADDOW: Nancy Northup is the president and CEO of the Center for Reproductive rights. Nancy, thank you for joining us tonight. Appreciate your being here.

NORTHUP: Thank you, Rachel.

MADDOW: Again, the news is that it is Brett Kavanaugh. Brett Kavanaugh is 53 years old. He went to Yale undergrad and then Yale Law School. He is a appeals court judge right now on the D.C. Circuit Court of Appeals. He was initially nominated to that position in by George W. Bush.

The nomination was not well-received. It was incredibly controversial and the Senate essentially iced his nomination for three solid years. He didn't have a successful confirmation hearing until 2006. Even so, there were a few dozen votes against him, more than 30 votes against him at the time when he was confirmed.

Judge Kavanaugh was seen as somebody who might have been used to persuade Justice Kennedy to retire. Justice Kennedy was actually the person who swore Judge Kavanaugh in when he did finally get that appeals court seat. Judge Kavanaugh's name was only added to the list of potential nominees being considered by President Trump late last year and there's been some speculation that he was added to that list as a way to assure Justice Kennedy that his seat might go to his former clerk and somebody who he approved of.

We don't know what's going to happen in terms of the nomination fight from here on out. We've heard tonight a number of different grounds on which Democrats might try to object or to delay this hearing. The hearings that are surely ahead for Judge Kavanaugh but at least now we've got a name.

That does it for us tonight. We will see you again tomorrow.

Now, it's time for "THE LAST WORD WITH LAWRENCE O'DONNELL".

Good evening, Lawrence.

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