



## Will Abe Fortas precedent hurt Kavanaugh? | Opinion

Robert Weiner and Emilie Solberg, Guest columnists Published 10:06 p.m. CT Nov. 18, 2018



(Photo: Fred Schilling, Collection of the Supreme Court)

In 1969, under the pressure of ongoing investigations, Abe Fortas, born and raised in Memphis, a graduate of South Side High School and Rhodes College in Memphis, became the first Supreme Court Justice to resign.

He did so not only to avoid impeachment proceedings, but to escape with some dignity, reputation and integrity.

In 1966, Fortas took a secret retainer from the family foundation of Louis Wolfson, a Wall Street financier who was in prison for security violations. For his advice he would receive \$20,000 a year for the rest of his life.

When Chief Justice Earl Warren was informed about this, he persuaded Fortas to resign to maintain the integrity of the Court.

On Oct. 10 this year, Chief Justice Roberts [sent ethical complaints](#) ([/story/news/politics/2018/10/10/brett-kavanaugh-judicial-misconduct-complaints-transferred-colorado/1594570002/](#)) about Supreme Court Justice Brett Kavanaugh's statements to Congress to Chief Tenth Circuit Judge Timothy M. Tymkovich for review.

Roberts requested that the Tenth Circuit investigate the more than 12 ethics complaints against Supreme Court Justice Kavanaugh for his statements on Sept. 4 and 27 before the Senate Judiciary Committee hearing.



The judiciary suffered from Kavanaugh's belligerent and partisan statements during his hearing, broadcast all around the world.

The country watched as Kavanaugh angrily read his testimony, stating that "this whole two-week effort has been a calculated and orchestrated political hit," somehow orchestrated by "the Clintons."

Not able to control his temper in a manner expected from a judge, Kavanaugh confronted and interrupted senators' questions about the sexual allegations against him by Dr. Christine Blasey Ford. He did not act impartially when insisting that the process had been partisan, calling the behavior of several of the Democratic members of committee at his first hearing as "an embarrassment".

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Supreme Court Justice Abe Fortas resigned in 1969. (Photo: Time magazine).  
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On Oct. 3, 2018, law professors signed a letter published by The New York Times and later presented to the Senate, stating that Justice Kavanaugh did not “display the impartiality and judicial temperament requisite to sit on the highest court of this land”. The letter also states that his lack of judicial temperament during the hearings would disqualify him for any court, especially the highest court in the U.S.

In an opinion published in the Wall Street Journal on Oct. 4, Kavanaugh admitted that he might have been too emotional at times during the hearing, writing “I know my tone was sharp, and I said a few things I should not have said”. In his commentary, Kavanaugh states that “an independent and impartial judiciary is essential to America’s constitutional republic.”

Kavanaugh showed that given a week to calm down, he eventually displays the temperament to be on the Court. However, his aggressive tone throughout the hearing did not seem to worry Republican senators.

Before Roberts received them, the ethical complaints against Kavanaugh were first received by the U.S. Court of Appeals, the same place that Kavanaugh served as a D.C. Circuit Judge. Although some of the complaints were dismissed, Judge Karen LeKraft Henderson found more than 12 complaints merited investigation by an impartial panel, and concluded that they should not be handled at the D.C. Circuit.

Chief Justice Roberts referred them to the 10th Circuit in Colorado.

Now that Democrats have captured the House, that body will be able to investigate why the FBI had to allow itself to yield to the White House instructions, not interview Kavanaugh's college roommates and other women with credible allegations, and not show Dr. Ford the locations to recognize.

The White House's top instructor to the FBI was Don McGhan, the since-resigned White House Counsel whose job was to shepherd Kavanaugh through - a huge conflict of interest. The next Congress's Judiciary Committee members will include Memphis Rep. Steve Cohen, who can help lead the investigation into the process.

The issue of the FBI's White House-forced ineptitude is the issue of concern, but the new House investigation may discover the truth as well about Kavanaugh.

The Abe Fortas precedent of what may occur is strong.

*Robert Weiner was a Clinton and Bush White House spokesman, and spokesman for the House Judiciary and Government Operations Committees. Emilie Solberg is a policy analyst for Robert Weiner Associates and Solutions for Change.*



Robert Weiner (Photo: Submitted)



**Emilie Solberg** (Photo: Emilie Solberg)