

Supreme Court Justice Brett Kavanaugh gets hero's welcome from conservative Federalist Society

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On Thursday night, a hero's welcome greeted the associate justice who made it to the Supreme Court by the narrowest of margins last October after two contentious Senate confirmation hearings.

The annual black-tie dinner of the Federalist Society – the nation's premier gathering of conservatives in the law – is dedicated to the memory of the late Associate Justice Antonin Scalia. But Kavanaugh, 54, who demurred when invited to be the headliner last year, became its shining star Thursday.

"I am optimistic about the future of America and our independent judiciary," Kavanaugh said in a self-effacing, 34-minute address almost completely devoid of controversial topics. He heaped praise on virtually everyone who helped him get to the nation's most lofty bench as well as his eight colleagues already there, regardless of ideology.

Not all of 2,000-plus conservatives gathered in the Great Hall at Union Station were enthusiastic in 2018 when President Trump made Kavanaugh his second pick for the nation's highest court. Some worried he would be more like Chief Justice John Roberts, who seeks compromise when possible, than Associate Justices Clarence Thomas, Samuel Alito and Neil Gorsuch, Trump's first nominee in 2017.

Those concerns have not been allayed. In his first term, Kavanaugh agreed with Roberts in more than 90% of the cases, but he didn't stray far from the staunchly conservative Alito. He voted often with liberals but stuck with the conservative majority on the most significant cases, such as the 5-4 ruling that blocked federal courts from striking down partisan election maps drawn by state lawmakers.

But Kavanaugh's vigorous responses to attacks on his record and allegations of sexual misconduct in his high school and college days, which he denied, brought many of those skeptics on board. On Thursday night, he referred often to the confirmation process without mentioning specifics.

"I signed up for what I knew would be an ugly process – maybe not that ugly – but my friends did not," he said. "And yet in the midst of it all, they stood up, and they stood by me."

“I think he’s teaching this audience a lesson – that in today’s culture, when you stand for certain principles, you’re going to be attacked, and you need to have the courage to see it through,” said Leonard Leo, executive vice president of the Federalist Society and a close adviser to the White House on judicial appointments.

The attacks resumed Thursday night, as liberal activists serenaded the Federalist Society dinner with a giant video billboard playing the Senate testimony of Christine Blasey Ford, who accused Kavanaugh of sexual assault last year.

"Brett Kavanaugh apparently thinks one year is enough time for the public to forget about his sham of a confirmation proceeding," said Brian Fallon, executive director of the liberal advocacy group Demand Justice. "The more of a public presence he asserts, the more damage he does to the court's legitimacy."

Strong words

The Federalists have heard strong rhetoric from some of Kavanaugh's predecessors. Two years ago, Gorsuch boasted that "a person can be both a publicly committed originalist and textualist and be confirmed to the Supreme Court."

The year before, Thomas said the high court must not grant rights unless they are found in the Constitution. He cited same-sex marriage as an example, just a year after the justices had declared it legal nationwide.

In 2012, Alito defended the court's controversial *Citizens United v. Federal Election Commission* ruling against the argument that corporations don't deserve First Amendment rights to spend unlimited amounts independently on elections.

Kavanaugh "joins a long line of justices who have spoken at one of the most important conservative legal events of the year," said Carrie Severino, chief counsel at the Judicial Crisis Network, which helped finance the media campaigns to put Gorsuch and Kavanaugh on the high court.

But the more than 2,000 black-tie guests did not expect Kavanaugh to match Gorsuch or the other conservative justices in feeding "red meat" to the audience, said Ilya Shapiro, director of constitutional studies at the libertarian Cato Institute. Kavanaugh, he said, "is more a part of the establishment."

Indeed, Kavanaugh sprinkled his remarks with quips and jokes but little legal substance, other than when he invoked Scalia's name.

"Thanks to him, we are all originalists now. We are all textualists now," he said.

More typical were his references to baseball and the Washington Nationals World Series title, his boast about getting pizza added to the Supreme Court cafeteria's menu, and his surprising reference to Matt Damon, who played Kavanaugh before the Senate Judiciary Committee in a memorable Saturday Night Live skit.

Briefly nearing tears as he spoke about his two daughters, Kavanaugh noted: "Matt Damon would have made it through this."

Jonathan Adler, a professor at Case Western Reserve University School of Law, said the court's most conservative justices want to overrule past decisions they consider incorrect, while Roberts – and perhaps Kavanaugh – lean more toward avoiding new ones.

"It remains to be seen whether he will be more of an incrementalist and play the so-called long game, as Chief Justice Roberts appears to do," said John Malcolm, director of judicial and legal studies at the conservative Heritage Foundation.

As he enters his second term, Kavanaugh is showing signs of becoming more comfortable in the job. He is one of the most frequent questioners during oral arguments, and his Federalist Society speech represents "a homecoming," said Josh Blackman, a professor at South Texas College of Law in Houston.

"Roberts these days distances himself from the Federalist Society, and his ideological predecessor (Associate Justice Anthony) Kennedy did as well," said Curt Levey, president of the conservative Committee for Justice. Kavanaugh's keynote address, he said, represents "an indication that he feels less of a need to keep a low profile."