Memorandum

TO: **All Republican Senators**
FROM: **Rachel Mitchell, Nominations Investigative Counsel**
United States Senate Committee on the Judiciary
DATE: **September 30, 2018**
RE: **Analysis of Dr. Christine Blasey Ford's Allegations**

Please permit me this opportunity to present my independent assessment of Dr. Christine Blasey Ford's allegations against Judge Brett Kavanaugh. Before I do this, I want to emphasize two important points:

1. This memorandum contains my own independent assessment of Dr. Ford's allegations, based upon my independent review of the evidence and my nearly 25 years of experience as a career prosecutor of sex-related and other crimes in Arizona. This memorandum does not necessarily reflect the views of the Chairman, any committee member, or any other senator. No senator reviewed or approved this memorandum before its release, and I was not pressured in any way to write this memorandum or to write any words in this memorandum with which I do not fully agree. The words written in this memorandum are mine, and I fully stand by all of them. While I am a registered Republican, I am not a political or partisan person.

2. A Senate confirmation hearing is not a trial, especially not a prosecution. The Chairman made the following statement on September 25, 2018, after he hired me:

   As I have said, I'm committed to providing a forum to both Dr. Ford and Judge Kavanaugh on Thursday that is safe, comfortable and dignified. The majority members have followed the bipartisan recommendation to hire as staff counsel for the committee an experienced career sex-crimes prosecutor to question the witnesses at Thursday's hearing. The goal is to de-politicize the process and get to the truth, instead of grandstanding and giving senators an opportunity to launch their presidential campaigns. I'm very appreciative that Rachel Mitchell has stepped forward to serve in this important and serious role. Ms. Mitchell has been recognized in the legal community for her experience and objectivity. I've worked to give Dr. Ford an opportunity to share serious allegations with committee members in any format she'd like after learning of the allegations. I promised Dr. Ford that I would do everything in my power to avoid a repeat of the 'circus' atmosphere in the hearing room that we saw the week of September 4. I've taken this additional step to have questions asked by expert staff counsel to establish the most fair and respectful treatment of the witnesses possible.

   That is how I approached my job. There is no clear standard of proof for allegations made during the Senate's confirmation process. But the world in which I work is the legal world, not the political world. Thus, I can only provide my assessment of Dr. Ford's allegations in that legal context.

<u>In the legal context, here is my bottom line:</u> A "he said, she said" case is incredibly difficult to prove. But this case is even weaker than that. Dr. Ford identified other witnesses to the event, and those witnesses either refuted her allegations or failed to corroborate them. For the reasons discussed below, I do not think that a reasonable prosecutor would bring this case based on the evidence before the Committee. Nor do I believe that this evidence is sufficient to satisfy the preponderance-of-the-evidence standard.

<u>Dr. Ford has not offered a consistent account of when the alleged assault happened.</u>

- In a July 6 text to the *Washington Post*, she said it happened in the "mid 1980s."
- In her July 30 letter to Senator Feinstein, she said it happened in the "early 80s."
- Her August 7 statement to the polygrapher said that it happened one "high school summer in early 80's," but she crossed out the word "early" for reasons she did not explain.
- A September 16 *Washington Post* article reported that Dr. Ford said it happened in the "summer of 1982."
- Similarly, the September 16 article reported that notes from an individual therapy session in 2013 show her describing the assault as occurring in her "late teens." But she told the *Post* and the Committee that she was 15 when the assault allegedly occurred. She has not turned over her therapy records for the Committee to review.
- While it is common for victims to be uncertain about dates, Dr. Ford failed to explain how she was suddenly able to narrow the timeframe to a particular season and particular year.

<u>Dr. Ford has struggled to identify Judge Kavanaugh as the assailant by name.</u>

- No name was given in her 2012 marriage therapy notes.
- No name was given in her 2013 individual therapy notes.
- Dr. Ford's husband claims to recall that she identified Judge Kavanaugh by name in 2012. At that point, Judge Kavanaugh's name was widely reported in the press as a potential Supreme Court nominee if Governor Romney won the presidential election.
- In any event, it took Dr. Ford over thirty years to name her assailant. Delayed disclosure of abuse is common so this is not dispositive.

<u>When speaking with her husband, Dr. Ford changed her description of the incident to become less specific.</u>

- Dr. Ford testified that she told her husband about a *"sexual assault"* before they were married.
- But she told the *Washington Post* that she informed her husband that she was the victim of "*physical abuse*" at the beginning of their marriage.
- She testified that, both times, she was referring to the same incident.

<u>Dr. Ford has no memory of key details of the night in question—details that could help corroborate her account</u>.

- She does not remember who invited her to the party or how she heard about it.
- She does not remember how she got to the party.

- She does not remember in what house the assault allegedly took place or where that house was located with any specificity.
- Perhaps most importantly, she does not remember how she got from the party back to her house.
    - Her inability to remember this detail raises significant questions.
    - She told the *Washington Post* that the party took place near the Columbia Country Club. The Club is more than 7 miles from her childhood home as the crow flies, and she testified that it was a roughly 20-minute drive from her childhood home.
    - She also agreed for the first time in her testimony that she was driven somewhere that night, either to the party or from the party or both.
    - Dr. Ford was able to describe hiding in the bathroom, locking the door, and subsequently exiting the house. She also described wanting to make sure that she did not look like she had been attacked.
    - But she has no memory of who drove her or when. Nor has anyone come forward to identify him or herself as the driver.
    - Given that this all took place before cell phones, arranging a ride home would not have been easy. Indeed, she stated that she ran out of the house after coming downstairs and did not state that she made a phone call from the house before she did, or that she called anyone else thereafter.
- She does, however, remember small, distinct details from the party unrelated to the assault. For example, she testified that she had exactly one beer at the party and was taking no medication at the time of the alleged assault.

<u>Dr. Ford's account of the alleged assault has not been corroborated by anyone she identified as having attended—including her lifelong friend</u>.

- Dr. Ford has named three people other than Judge Kavanaugh who attended the party—Mark Judge, Patrick "PJ" Smyth, and her lifelong friend Leland Keyser (née Ingham). Dr. Ford testified to the Committee that another boy attended the party, but that she could not remember his name. No others have come forward.
- All three named eyewitnesses have submitted statements to the Committee denying any memory of the party whatsoever. Most relevantly, in her first statement to the Committee, Ms. Keyser stated through counsel that, "[s]imply put, Ms. Keyser does not know Mr. Kavanaugh and she has no recollection of ever being at a party or gathering where he was present, with, or without, Dr. Ford." In a subsequent statement to the Committee through counsel, Ms. Keyser said that "the simple and unchangeable truth is that she is unable to corroborate [Dr. Ford's allegations] because she has no recollection of the incident in question."
    - Moreover, Dr. Ford testified that her friend Leland, apparently the only other girl at the party, did not follow up with Dr. Ford after the party to ask why she had suddenly disappeared.

<u>Dr. Ford has not offered a consistent account of the alleged assault.</u>

- According to her letter to Senator Feinstein, Dr. Ford heard Judge Kavanaugh and Mark Judge talking to other partygoers downstairs while she was hiding in the bathroom after the alleged assault. But according to her testimony, she could not hear them talking to anyone.

    - In her letter, she stated, "I locked the door behind me. Both loudly stumbled down the stairwell, at which point other persons at the house were talking with them."
    - She testified that Judge Kavanaugh or Mark Judge turned up the music in the bedroom so that the people downstairs could not hear her scream. She testified that, after the incident, she ran into the bathroom, locked the door, and heard them going downstairs. But she maintained that she could not hear their conversation with others when they got downstairs. Instead, she testified that she "assum[ed]" a conversation took place.
- Her account of who was at the party has been inconsistent.
    - According to the *Washington Post*'s account of her therapy notes, there were four boys in the bedroom in which she was assaulted.
    - She told the *Washington Post* that the notes were erroneous because there were four boys at the party, but only two in the bedroom.
    - In her letter to Senator Feinstein, she said "me and 4 others" were present at the party.
    - In her testimony, she said there were four boys in addition to Leland Keyser and herself. She could not remember the name of the fourth boy, and no one has come forward.
    - Dr. Ford listed Patrick "PJ" Smyth as a "bystander" in her statement to the polygrapher and in her July 6 text to the *Washington Post*, although she testified that it was inaccurate to call him a bystander. She did not list Leland Keyser even though they are good friends. Leland Keyser's presence should have been more memorable than PJ Smyth's.

<u>Dr. Ford has struggled to recall important recent events relating to her allegations, and her testimony regarding recent events raises further questions about her memory.</u>

- Dr. Ford struggled to remember her interactions with the *Washington Post*.
    - Dr. Ford could not remember if she showed a full or partial set of therapy notes to the *Washington Post* reporter.
        - She does not remember whether she showed the *Post* reporter the therapist's notes or her own summary of those notes. The *Washington Post* article said that "portions" of her "therapist's notes" were "provided by Ford and reviewed by" the *Post*. But in her testimony, Dr. Ford could not recall whether she summarized the notes for the reporter or showed her the actual records.
    - She does not remember if she actually had a copy of the notes when she texted the *Washington Post* WhatsApp account on July 6.
        - Dr. Ford said in her first WhatsApp message to the *Post* that she "ha[d] therapy notes talking about" the incident when she contacted the *Post*'s tipline. She testified that she had reviewed her therapy notes before contacting the *Post* to determine whether the mentioned anything about the alleged incident, but could not remember if she had a copy of those notes, as she said in her WhatsApp message, or merely reviewed them in her therapist's office.
- Dr. Ford refused to provide *any* of her therapy notes to the Committee.

- Dr. Ford's explanation of why she disclosed her allegations the way she did raises questions.
    - She claimed originally that she wished for her story to remain confidential, but the person operating the tipline at the *Washington Post* was the first person other than her therapist or husband to whom she disclosed the identity of her alleged attacker. She testified that she had a "sense of urgency to relay the information to the Senate and the president." She did not contact the Senate, however, because she claims she "did not know how to do that." She does not explain why she knew how to contact her Congresswoman but not her Senator.
- Dr. Ford could not remember if she was being audio- or video-recorded when she took the polygraph. And she could not remember whether the polygraph occurred the same day as her grandmother's funeral or the day after her grandmother's funeral.
    - It would also have been inappropriate to administer a polygraph to someone who was grieving.

<u>Dr. Ford's description of the psychological impact of the event raises questions.</u>

- She maintains that she suffers from anxiety, claustrophobia, and post-traumatic stress disorder (PTSD).
    - The date of the hearing was delayed because the Committee was informed that her symptoms prevent her from flying. But she agreed during her testimony that she flies "fairly frequently for [her] hobbies and … work." She flies to the mid-Atlantic at least once a year to visit her family. She has flown to Hawaii, French Polynesia, and Costa Rica. She also flew to Washington, D.C. for the hearing.
    - Note too that her attorneys refused a private hearing or interview. Dr. Ford testified that she was not "clear" on whether investigators were willing to travel to California to interview her. It therefore is not clear that her attorneys ever communicated Chairman Grassley's offer to send investigators to meet her in California or wherever she wanted to meet to conduct the interview.
- She alleges that she struggled academically in college, but she has never made any similar claim about her last two years of high school.
- It is significant that she used the word "contributed" when she described the psychological impact of the incident to the *Washington Post*. Use of the word "contributed" rather than "caused" suggests that other life events may have contributed to her symptoms. And when questioned on that point, said that she could think of "nothing as striking as" the alleged assault.

<u>The activities of congressional Democrats and Dr. Ford's attorneys likely affected Dr. Ford's account.</u>

- See the included timeline for details.

Timeline

Date	Event	Description/Notes	Citation
July 6	Ford speaks with Rep. Eshoo's staff.	Ford called Eshoo's office and requested a meeting. A staffer spoke with Ford in advance of the meeting. In her letter to Senator Feinstein, Ford wrote, "On July 6 I notified my local government representative to ask them how to proceed . . . ."	Hearing testimony; Casey Tolan, *Congresswoman Anna Eshoo First To Hear Blasey Ford's Story: 'I Told Her I Believed Her,'* Mercury News (Sep. 18, 2018), https://www.mercurynews.com/2018/09/18/christine-blasey-ford-first-meeting-anna-eshoo-brett-kavanaugh/; *Read the Letter Christine Blasey Ford Sent Accusing Brett Kavanaugh of Sexual Misconduct*, CNN (Sep. 17, 2018), https://www.cnn.com/2018/09/16/politics/blasey-ford-kavanaugh-letter-feinstein/index.html.
	Ford texts the *Washington Post* tipline using WhatsApp.	Identifies "Brett Kavanaugh with Mark Judge" as her attacker and says that "PJ" was a "bystander." She says she "shouldn't be quiet" about her allegations.	Hearing Testimony; Produced documents
July 9	Ford speaks with Eshoo's staff on the phone.		Hearing testimony
July 10	Ford contacts the *Washington Post* again.	"Been advised to contact senators or NYT. Haven't heard back from WaPo."	Produced documents
At some point between July 10 and September 16	Ford speaks with Emma Brown, a *Washington Post* reporter.	Brown was the reporter who ultimately responded to the WhatsApp entries.	Hearing testimony
July 18	Ford meets with Eshoo's staff.		Hearing testimony
July 20	Ford speaks with Eshoo.	Ford and Eshoo met for "more than an hour and half" in a "conference room." Eshoo suggested that she write a letter detailing her claims to Senator Feinstein.	Hearing testimony; Casey Tolan, *Congresswoman Anna Eshoo First To Hear Blasey Ford's Story: 'I Told Her I Believed Her,'* Mercury News (Sep. 18, 2018), https://www.mercurynews.com/2018/09/18/christine-blasey-ford-first-meeting-anna-eshoo-brett-kavanaugh/.
July 30	The letter, dated July 30, is delivered to Senator Feinstein's D.C. office.	"Eshoo said she hasn't met with the professor since that July afternoon, although her staff has been in contact with her since she came forward."	Hearing testimony; Casey Tolan, *Congresswoman Anna Eshoo First To Hear Blasey Ford's Story: 'I Told Her I Believed Her,'* Mercury News (Sep. 18, 2018), https://www.mercurynews.com/2018/09/18/christine-blasey-ford-first-meeting-anna-eshoo-brett-kavanaugh/.

July 31	Senator Feinstein writes a return letter to Ford.	The letter promises not to share Ford's letter without her explicit consent. Ford did not provide this letter to the Committee.	Hearing testimony
Between July 30 and August 7	Ford speaks by phone with Senator Feinstein.		Hearing testimony
Between July 30 and August 7	Ford speaks with Senator Feinstein's staff, who recommends that she engage Debra Katz.		Hearing testimony
Between July 30 and August 7	Ford engages Debra Katz to represent her with regard to her allegations.		Hearing testimony
August 7	Ford takes a polygraph test after she engages Katz.	Ford took a polygraph test administered by a former FBI agent. Katz provided the results to the *Washington Post*. They showed that she "was being truthful when she said a statement summarizing her allegations was accurate."	Hearing Testimony; Emma Brown, *California Professor, Writer of Confidential Brett Kavanaugh Letter, Speaks Out About Her Allegation of Sexual Assault*, Washington Post (Sep. 16, 2018), https://www.washingtonpost.com/investigations/california-professor-writer-of-confidential-brett-kavanaugh-letter-speaks-out-about-her-allegation-of-sexual-assault/2018/09/16/46982194-b846-11e8-94eb-3bd52dfe917b_story.html.
August 20	Senator Feinstein meets one-on-one with Kavanaugh.		Hearing Testimony; Michael Macagnone & Jimmy Hoover, *Kavanaugh Meets Top Senate Dem Opposing His Confirmation*, Law360 (Aug. 20, 2018), https://www.law360.com/articles/1075169/kavanaugh-meets-top-senate-dem-opposing-his-confirmation.
August 28	Senator Feinstein's staff participates in the first Background Investigation (BI) call.	Senator Feinstein's staff asked Judge Kavanaugh numerous questions about confidential background information.	Committee records
August 31	Senator Feinstein writes Dr. Ford a letter	Senator Feinstein promises that "she would not share [Dr. Ford's July 30] letter without [Dr. Ford's] explicit consent."	Hearing testimony

September 4-7	SJC holds a public hearing on Kavanaugh's nomination.		Committee records
September 6	SJC gives Senators an opportunity to question Kavanaugh about sensitive issues at a closed session.	Senator Feinstein does not attend closed session.	Committee records
September 12	The *Intercept* reports that SJC Democrats have requested to view a "Kavanaugh-related document" in the possession of Senator Feinstein.	The article reported that a letter in the possession of Senator Feinstein "purportedly describe[d] an incident that was relayed to someone affiliated with Stanford University, who authored the letter and sent it to Rep. Anna Eshoo, a Democrat who represents the area."	Ryan Grim, *Dianne Feinstein Withholding Brett Kavanaugh Document From Fellow Judiciary Committee Democrats*, Intercept (Sep. 12, 2018), https://theintercept.com/2018/09/12/brett-kavanaugh-confirmation-dianne-feinstein/.
September 12	Ford's attorney Debra Katz is seen leaving Capitol Hill shortly after the *Intercept* story was published.		Lissandra Villa and Paul McLeod, *Senate Democrats Have Referred a Secret Letter about Brett Kavanaugh to the FBI*, BuzzFeed News (Sep. 13, 2018), https://www.buzzfeednews.com/article/lissandravilla/senate-democrats-have-sent-a-secret-letter-about-brett.
September 13	Senator Feinstein refers the letter to the FBI.		Burgess Everett & Edward-Isaac Dovere, *Feinstein Asks Feds To Investigate Kavanaugh Claims in Letter*, Politico (Sep. 30, 2018), https://www.politico.com/story/2018/09/13/feinstein-kavanaugh-investigation-letter-822902.
September 14	The *New Yorker* reports on an interview with Ford but does not identify her by name.	The article described the incident in detail.	Ronan Farrow & Jane Mayer, *A Sexual-Misconduct Allegation Against the Supreme Court Nominee Brett Kavanaugh Stirs Tension Among Democrats in Congress*, New Yorker (Sep. 14, 2018), https://www.newyorker.com/news/news-desk/a-sexual-misconduct-allegation-against-the-supreme-court-nominee-brett-kavanaugh-stirs-tension-among-democrats-in-congress.
September 16	The *Washington Post* reports on an interview with Ford.	The article described the incident in detail.	Emma Brown, *California Professor, Writer of Confidential Brett Kavanaugh Letter, Speaks Out About Her Allegation of Sexual Assault*, Washington Post (Sep. 16, 2018), https://www.washingtonpost.com/investigations/california-professor-writer-of-confidential-brett-kavanaugh-letter-

			speaks-out-about-her-allegation-of-sexual-assault/2018/09/16/46982194-b846-11e8-94eb-3bd52dfe917b_story.html.
September 17	SJC has a follow-up BI call with Kavanaugh on the Ford letter. Senator Feinstein does not participate.	Senator Feinstein's staff did not show up.	Committee records
September 25	SJC speaks with Kavanaugh about the allegations against him.	Senator Feinstein's staff declared that they were present "under protest" and did not participate.	Committee records
September 26	SJC speaks with Judge Kavanaugh about the allegations against him.	Senator Feinstein's staff declared that they were present "under protest" and did not participate.	Committee records