## Office of Senator Dianne Feinstein Ranking Member, Senate Judiciary Committee October 1, 2018

## **Response to Memo Prepared by Republican Attorney Rachel Mitchell**

- <u>Mitchell claim</u>: "Dr. Ford identified other witnesses to the event, and those witnesses either refuted her allegations or failed to corroborate them." "Dr. Ford's account of the alleged assault has not been corroborated by anyone she identified as having attended—including her lifelong friend."
  - <u>Reality</u>: Only one witness "refuted [Dr. Ford's] allegations"—Brett Kavanaugh. Here, Mitchell repeats Kavanaugh's flawed premise that individuals other than Kavanaugh have said that the sexual assault did not happen. That's simply not true. P.J. Smyth and Leland Keyser do not recall a party where—unlike Dr. Ford—nothing remarkable happened to them, and that is not surprising. More importantly, Ford said she did not tell either about the sexual assault, so again they would have no way of knowing. Finally, neither is alleged to have been in the room. Mitchell also selectively leaves out that Keyser said that she believes Dr. Ford.

Kavanaugh's friend Mark Judge—the one other person whom Dr. Ford has identified as having been in the room during the assault—has said that he does "not recall the events described by Dr. Ford in her testimony." This is also not surprising, given that Judge has written several books describing his years of drinking heavily, often to the point of blacking out.

In addition, an entry on Judge Kavanaugh's calendar dated July 1, 1982 matches Dr. Ford's description of the gathering where she was assaulted. The entry on Kavanaugh's calendar reads "skis" (i.e. brewskis) at "Timmy's" with "Judge, Tom, PJ, Bernie, Squi." Dr. Ford recalled drinking beer at the gathering, and two of the boys listed on Kavanaugh's calendar as having attended the gathering – Mark Judge and PJ Smyth – were identified by Dr. Ford as having been present that night. Judge was Kavanaugh's accomplice in the assault. In addition, Dr. Ford testified that there may have been others present.

Although Kavanaugh testified that "[t]he event described by Dr. Ford presumably happened on a weekend, because I believe everyone worked and had jobs during the summers," his calendar entry showing that a social gathering with alcohol occurred on Thursday, July 1, 1982, directly contradicts that testimony.

- <u>Mitchell claim</u>: "I do not think that a reasonable prosecutor would bring this case based on the evidence before the Committee."
  - **<u>Reality</u>**: The question before the Senate is to determine whether Brett Kavanaugh has the suitability and trustworthiness of an individual nominated to serve for a lifetime appointment on the Supreme Court. Last Thursday's hearing was not a trial.

Unfortunately, the hearing was also conducted without the benefit of an FBI supplemental investigation into the allegations. In addition, the majority refused to allow testimony from any other witness who could speak to the allegations. Mitchell omits that a "reasonable prosecutor" would never bring a case without gathering all the facts.

- Mitchell claim: "Dr. Ford has not offered a consistent account of when the alleged assault happened."
  - O <u>Reality</u>: Mitchell's criticism of Dr. Ford's narrowing of the timeframe for the sexual assault is not rooted in fact. First, as Mitchell acknowledges, "it is common for victims to be uncertain about dates," and Ford's statements about the timeframe are consistent. Second, in response to the *only* question Mitchell asked Dr. Ford about how she narrowed the timeframe, Dr. Ford explained exactly how she did so—"I'm just using memories of when I got my driver's license. I was 15 at the time, and I did not drive home from that party or to that party. And once I did have my driver's license, I liked to drive myself."

Dr. Ford also repeatedly said that she would like to provide a more precise date and explained exactly how she could do so—by identifying when Mark Judge worked at the Potomac Safeway. Judge has written about working at a grocery store for a few weeks that summer, and the precise timeframe could be verified if there were an investigation.

- <u>Mitchell claim</u>: "Dr. Ford has struggled to identify Judge Kavanaugh as the assailant by name."
  - **<u>Reality</u>**: Mitchell's characterization of Dr. Ford's identification of Judge Kavanaugh—that she "struggled" to identify him—is false. Dr. Ford testified she is "one hundred percent" certain that Kavanaugh was her assailant. The fact that Dr. Ford's marriage therapist did not write Kavanaugh's name in her notes—or, as Mitchell deceptively writes, that "no name was given in her . . . notes"—does not mean that Dr. Ford did not identify Kavanaugh to her therapist as her assailant. Therapists' notes generally don't cover those specifics as the name of a person isn't relevant to the broader issues discussed. And as Mitchell acknowledges, Dr. Ford's husband stated in a sworn declaration that Dr. Ford *did* identify "Judge Kavanaugh by name in 2012" during a therapy session.

Mitchell's attempt to cast aside that fact altogether because "Kavanaugh's name was widely reported in the press as a potential Supreme Court nominee if Governor Romney won the presidential election" is mystifying.

Moreover, Mitchell completely ignores several other instances where Dr. Ford named Kavanaugh as her assailant—an email after Justice Kennedy announced his retirement and before Kavanaugh was nominated, which Dr. Ford sent to Keith Koegler, a friend who she had informed during the summer of 2016 that she had been sexually assaulted in high school by a man who was now a federal judge in Washington, DC; a conversation with Congressman Eshoo's office before Kavanaugh's nomination; and a WhatsApp message to a Washington Post reporter on July 6, 2018, also before Kavanaugh was nominated.

Mitchell's deeply flawed characterization of Dr. Ford's identification of Judge Kavanaugh is further undermined by Mitchell's own accurate statement that delayed disclosure is common among sexual assault victims.

- <u>Mitchell claim</u>: "When speaking with her husband, Dr. Ford changed her description of the incident to become less specific."
  - **<u>Reality</u>**: The incident Dr. Ford has recounted consistently in which Judge Kavanaugh pinned her to a bed against her will, groped her, grinded his body into hers, tried to take off her clothes, and put his hand over her mouth to stop her from screaming constitutes both physical abuse and sexual assault. Indeed, in her July 30, 2018 confidential letter to Senator Feinstein, Dr. Ford wrote, "Brett Kavanaugh physically and sexually assaulted me during High School in the early 1980's."

The fact that the Washington Post used the former term rather than the latter at one point in its article (without purporting to quote either Dr. Ford or her husband as using that term) is irrelevant, and does not support a claim that Dr. Ford "changed her description" of the incident or that it became "less specific" at any point.

Dr. Ford has described the same incident consistently. Further, Dr. Ford's husband has signed a declaration stating that he learned around the time he got married to Dr. Ford (in 2002) that she had an experience with "sexual assault," though she did not share "the details of the sexual assault" until 2012.

- <u>Mitchell claim</u>: "Dr. Ford has no memory of key details of the night in question—details that could help corroborate her account."
  - <u>**Reality**</u>: Dr. Ford has a specific memory of the key details surrounding her assault. She has consistently and specifically described how Kavanaugh and Mark Judge pushed her into a bedroom and turned up the music to drown out her screams. She has also consistently described in detail how Kavanaugh pinned her to a bed against her will, groped her, grinded his body into hers, tried to take off her clothes, and put his hand over her mouth to stop her from screaming.

As to the other details about that night, she testified that she attended the gathering after a day of diving at Columbia Country Club, where she "spent most every day" in the summer of 1982. She testified who was there. She testified who was in the room. She was very specific about how the event began and how she was able to escape. And while she also testified that she does not "remember all of the details," according to experts, it is common for survivors to remember central details of a traumatic experience—those to which they paid attention or that were emotionally salient—while forgetting peripheral details.

The fact that Dr. Ford does not remember such peripheral details as how she heard about or got to the gathering – a small, spur-of-the-moment high school summer get-together after a typical day at the country club – is not surprising. Nor does it take anything away from her recollection of the central details of her assault, which has been clear and consistent.

• <u>Mitchell claim</u>: Dr. Ford's account is unreliable because she "does not remember in what house the assault allegedly took place or where that house was located with any specificity" or "how she got from the party back to her house."

- **<u>Reality</u>**: Dr. Ford's account of the assault and the day in question is entirely consistent with traumatic memory.<sup>1</sup> As a result of the brain's response to trauma, it is common for victims of an assault to form durable memories of their attack, but to have incomplete memories of the events before and after the attack took place. However, as a result of the brain's reaction to trauma, it is common for victims to "remember in exquisite detail what was happening just before and after they realized they were being attacked, including context and the sequence of events. However, they are likely to have very fragmented and incomplete memories for much of what happens after that."
- <u>Mitchell claim</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.
  - **<u>Reality</u>**: In her testimony before the Committee, Dr. Ford recalled that Kavanaugh and Judge were talking and laughing with each other as they walked down the stairs. She said she assumed "since it was a social gathering, people were talking." She went on to testify, "I could hear them talking as they went down the stairwell. They were laughing and --".

More importantly, whether Dr. Ford heard certain conversations has nothing to do with the "assault" itself - it concerns conduct following the assault. This section also does not fully capture Ford's testimony.

According to trauma experts Drs. Jim Hopper and David Lisak: "Victims may remember in exquisite detail what was happening just before and after they realized they were being attacked, including context and the sequence of events. However, they are likely to have very fragmented and incomplete memories for much of what happens after that." http://time.com/3625414/rape-trauma-brain-memory/

- <u>Mitchell claim</u>: In her letter to Senator Feinstein, she said "me and 4 others" were present at the party.
  - **<u>Reality:</u>** In the letter Dr. Ford wrote "at a gathering that included me and 4 others." The term "included" does not mean she said those were the *only* attendees and as such this statement is not inconsistent with her testimony.
- <u>Mitchell claim</u>: She could not remember the name of the fourth boy, and no one has come forward.
  - **<u>Reality:</u>** This statement has no bearing on Ms. Mitchell's argument that Dr. Ford's account of the party has been inconsistent.

<sup>&</sup>lt;sup>1</sup> Studies have shown that when an individual experiences a traumatic event, the brain releases a stress hormone called norepinephrine, which helps enhance memories of the trauma. (Cahill, Prins, Weber & McGaugh, Adrenergic activation and memory for emotional events, Nature International Journal of Science (Oct. 20, 1994).) Other studies have shown that "the initiation of a stressful experience produces an intense, but brief, activation of memory-encoding plasticity within the hippocampus," which is the part of the brain responsible for memory. (Diamond, Campbell, Park, Halonen, Zoladz, The Temporal Dynamics Model of Emotional Memory Processing: A Synthesis on the Neurobiological Basis of Stress-Induced Amnesia, Flashbulb and Traumatic Memories, and the Yerkes-Dodson Law, Hindawi Publishing Corporation Neural Plasticity Volume 2007 (Jul. 28, 2006).) According to Dr. James Hopper, an expert on psychological trauma and memory, "memories of highly stressful and traumatic experiences, at least their most central details, don't tend to fade over time." (Hopper & Lisak, Time Magazine, Dec. 9, 2014).

- <u>Mitchell claim</u>: 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.
  - <u>Reality:</u> The use of the term "bystander" does not appear in Dr. Ford's statement to the polygrapher. Nor did Dr. Ford testify that it was "inaccurate" to call "PJ" Smyth a bystander. In her testimony, Dr. Ford merely said that she "misused" that term as an adjective because "I was writing very quickly and with a sense of urgency." The misuse of that term does not support Ms. Mitchell's argument that her account of the party was inconsistent.
- Mitchell claim: Leland Keyser's presence should have been more memorable than PJ Smyth's.
  - **<u>Reality</u>**: There is no basis for this statement and Ms. Mitchell does not offer one.
- <u>Mitchell claim</u>: Dr. Ford's explanation of why she disclosed her allegations the way she did raises questions. According to Mitchell, Ford 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.
  - **<u>Reality</u>**: False. Mr. Keith Koegler has submitted a declaration swearing <u>under penalty of perjury</u> that Dr. Ford told him **in 2016** that she was assaulted by a man who is now a federal judge, and that he has **emails** from late June 2018 confirming that she identified her assailant as Brett Kavanaugh. Dr. Ford was not in contact with the Washington Post until July 2018.

Ms. Adela Gildo-Mazzon submitted a declaration swearing <u>under penalty of perjury</u> that Dr. Ford told her **in 2013** that "she had been almost raped by someone who was now a federal judge."

And Ms. Rebecca White submitted a declaration swearing <u>under penalty of perjury</u> that **in 2017**, Dr. Ford told her that she had been sexually assaulted by a man who was now a federal judge.

- <u>Mitchell claim</u>: 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.
  - **<u>Reality</u>**: Neither Dr. Ford nor her lawyers told the Committee that she could not fly or that the reason for Thursday was because of flying.
- <u>Mitchell claim:</u> The activities of congressional Democrats and Dr. Ford's attorneys likely affected Dr. Ford's account.
  - **<u>Reality</u>**: This is an unsupported and patently absurd political attack. Mitchell has provided no support for her utterly baseless allegation that any outside source influenced Dr. Ford's testimony.

To the contrary, Dr. Ford **repeatedly** stated that nobody assisted her in drafting her statement, and that her sole motivation in coming forward was because she felt it was her "civic duty" and to "provide facts about how Mr. Kavanaugh's actions have damaged [her] life" to assist the Senate in deciding how to proceed. (Sept. 27, 2018 Hearing Tr. at 29:23 - 30:3).