


Experts question GOP prosecutor's memo on Christine Blasey Ford

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The prosecutor hired by Republican senators to question Christine Blasey Ford has declared that Ford's allegations of sexual assault against Supreme Court nominee Brett M. Kavanaugh are so weak that no "reasonable prosecutor" would pursue the case.

The Washington Post

"A 'he said, she said' case is incredibly difficult to prove. But this case is even weaker than that," Rachel Mitchell, a Republican sex-crimes prosecutor from Arizona, wrote Sunday in a five-page memorandum, highlighting what she described as inconsistencies in Ford's account and a lack of corroboration from potential witnesses.

Though Senate Republicans said the memo was helpful, legal experts from both political parties and advocates for victims of sexual assault on Monday questioned how Mitchell could reach such a conclusion without a fuller investigation and without the ability to cross-examine witnesses such as Mark Judge, the only other person Ford says was in the room when the alleged incident occurred in the summer of 1982.

"As a former prosecutor myself, I've come to no conclusion other than the conclusion that there needs to be more facts to come to a conclusion," said Douglas Wigdor, an employment lawyer who has represented plaintiffs in sexual assault and harassment cases. Wigdor, a Republican, called the memo "a joke" and "preposterous."

The memo does not address Kavanaugh's testimony before the Senate Judiciary Committee, including discrepancies between his statements and those of his college roommates who have disputed his characterization of drinking habits. When Kavanaugh testified last week, Mitchell had been questioning him for only about 10 minutes when she was sidelined by Republican senators.

Linda Fairstein, a former sex-crimes prosecutor in Manhattan who is a Democrat, said that Mitchell seemed to misrepresent matters in referring twice to her "independent assessment" and once to her "independent review."

"There is nothing independent about her opinion," Fairstein said. "She is a hired gun giving an opinion for the side that hired her."

Neither Mitchell nor a spokeswoman for the Maricopa County Attorney's Office, where she runs the division responsible for prosecuting sex crimes and family violence, responded to a request for comment.

Republicans praised her analysis and said there is no need for Mitchell to do a similar examination of Kavanaugh's answers during the hearing.

"The burden's not on the defendant to disprove the case even though he's vehemently denied it. She's the one making the claim," Senate Majority Whip John Cornyn (R-Tex.) said Monday. "It's not corroborated, it's not proven and I think she was pointing that out."

A Judiciary Committee spokesman, Taylor Foy, confirmed Monday that Mitchell was paid for her work but declined to say how much. Foy said she was compensated at the same rate as other attorneys temporarily hired by the committee to work on Kavanaugh's nomination. Mitchell was not required to draft the memo as a condition of her employment, Foy said, nor was such document discussed before Thursday's hearing.

Foy said the analysis went far beyond Ford's responses at the hearing.

"It was provided after looking at the evidence before the committee, which included testimony and interviews conducted with Judge Kavanaugh as well as the statements submitted by others whom Dr. Ford said were there," Foy said. "Her opinion — that the evidence currently before the committee does not meet the standard of beyond a reasonable doubt or preponderance of the evidence — was based on the entirety of the record."

The process of selecting Mitchell has been largely secret, with details constrained primarily to Judiciary Committee Chairman Charles E. Grassley (R-Iowa) and his staff. Other GOP senators on the committee did not learn that Grassley had brought Mitchell on board until Sept. 24, although senators had privately floated the idea of bringing an outside female prosecutor on board for about a week before that.

The committee staff interviewed about 20 potential counsels for Mitchell's position, according to a Republican official briefed on the hiring process, before settling on the Maricopa County prosecutor. Foy said the committee "conducted a search for and interviewed a number of experienced subject-matter experts who could help to depoliticize and uncover the truth. Ms. Mitchell demonstrated that she was well-suited for the task."

Senate Democrats released a detailed rebuttal of Mitchell's memo, arguing that Mitchell cherry-picked information to undermine Ford and omitted other information that bolstered Ford's credibility. In response to Mitchell's argument that no reasonable prosecutor would pursue Ford's claims, the rebuttal said: "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."

Mitchell has served as a prosecutor in Maricopa County since 1993, and she has spent much of her career as a prosecutor of sex-related crimes, including child molestation and adult sexual assault. In one high-profile case more than a decade ago, she successfully prosecuted a Catholic priest accused of molesting boys in the 1980s and 1990s.

Maricopa County defense lawyer Rhonda Neff said Mitchell has a reputation as a strong advocate for victims' rights and as a fair and reasonable prosecutor. But her memo may open up a new line of attack for defense attorneys seeking to challenge cases in which victims have diminished memory or waited a long time to report allegations, Neff said. If in Mitchell's analysis those issues helped undermine Ford's claims, they might also be used to undermine the claims of an alleged victim in Maricopa County, Neff said.

"We certainly are going to use this as a means of challenge," Neff said.

Some advocates for survivors of sexual violence also said that Mitchell's memo could reinforce doubts among many survivors that their complaints will be taken seriously. Though it notes that it is "common for victims to be uncertain about dates," the memo is critical of Ford's uncertainty about the date of her alleged assault; and even though Mitchell writes that "delayed disclosure of abuse is common," she says Ford has "struggled" to name Kavanaugh as her attacker because it took her decades to tell anyone about the assault.

Tasha Menacker, chief strategy officer for the Arizona Coalition to End Sexual and Domestic Violence, said she has heard survivors talking in recent days about how their experiences match the experience described by Ford, including an inability to pinpoint when their assault occurred or other such details.

"I'm afraid that survivors in Maricopa County are going to see this and relate to Dr. Ford, and be concerned about whether or not they would be believed," she said. "Survivors are going to see this and say, 'I wouldn't be able to be consistent in my recollections either, remember specific dates either.' "

Matthew Long, a defense attorney who once worked for Mitchell as a sex-crimes prosecutor, was quoted as calling her "the best" in a [story](#) in a local newspaper last week, before the memo was issued. On Monday, Long said he was surprised to see that she cited Ford's gaps in memory as evidence of the weakness of her allegation.

"The things that she's highlighting that say that Dr. Ford is not credible are the very things she has taught me to ignore and not rely on," he said in an interview. The memo, he said, "demonstrates she's abandoned what she knows to be true in favor of being a political operative."

Long said that while he is still registered as a Republican, he considers himself politically unaffiliated and doesn't plan to vote.