


# The new Kavanaugh allegation is on precarious legal ground, former sex-crimes prosecutors say

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 [washingtonpost.com/politics/2018/09/24/new-kavanaugh-allegation-is-precarious-legal-ground-former-sex-crimes-prosecutors-say/](https://www.washingtonpost.com/politics/2018/09/24/new-kavanaugh-allegation-is-precarious-legal-ground-former-sex-crimes-prosecutors-say/)

Seven days after Christine Blasey Ford stepped into the national spotlight with a sexual assault allegation against Supreme Court nominee Brett M. Kavanaugh, a second accuser has done the same.

Her name is Deborah Ramirez, and she was an undergraduate Yale classmate of Kavanaugh, the [New Yorker reported](#) late Sunday. The new accusation dates back to the pair's 1983-84 freshman year, when she says Kavanaugh exposed himself to her while she was in a drunken stupor during a university dormitory party.

Kavanaugh [denied](#) that allegation, calling it a "a smear." The White House issued a statement of continued support for the nominee. Critics were quick to attack the New Yorker report's timing, but Sen. Dianne Feinstein (Calif.), the ranking Democrat on the Judiciary Committee, [called for a delay](#) in further consideration of Kavanaugh's nomination.

Former prosecutors said it's not surprising to see another woman come forward in such cases; it happens often. Yet by all accounts, the Ramirez narrative presents significantly more problems than Ford's, and without minimizing the gravity of the alleged conduct, experts also agree that the high school sexual assault that Ford describes is a more criminally serious offense than what could amount to indecent exposure by a young college student.

## Details of the disclosure are concerning

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One of the things that lawyer Douglas Wigdor, a former prosecutor and expert in sexual assault, said he grappled with when assessing Ford's claim was whether other women had similar experiences. "One disclosure often gives someone the courage to come forward, knowing 'I wasn't the only one.' It's common, and it adds to Ford's credibility," he said.

But Ramirez did not come forward on her own. Instead, journalists from several outlets sought her out after learning of a rumored assault from a non-eyewitness third party, according to the New Yorker report.

Linda Fairstein, former chief of the Manhattan District Attorney's Office's Sex Crimes Bureau, called this "problematic." At trial, that out-of-court statement would not be admissible evidence unless an exception to the hearsay rule was available.

"It's different from Ford, who confided that she wanted to come forward first," she said.

The other eyebrow-raising distinction is Ramirez's statement that because of how much alcohol she drank that night, it took her six days to clarify her own recollection of the events.

According to Arthur Aidala, a former New York prosecutor who now practices criminal defense, one crucial thing to look at is what happened in those six days. The first time Ramirez was able to say she was “confident enough” that the student she recalls exposing himself was Kavanaugh was after an attorney and the media became involved.

“Recollections don’t become certain farther away in time from the event,” he said.

Fairstein also said she was concerned, not with Ramirez’s drinking but with the fact that she did not have “the clear memory that Dr. Ford had of her assault,” making the new allegation “more troublesome.” Ford has never expressed less than certainty that Kavanaugh was her attacker.

Wigdor, however, disagreed.

“Having worked with many of these women, it’s not uncommon for them to have to piece things together,” he said. “That happens frequently, and it’s not like she’s a child with a psychologist feeding her facts.”

Ramirez’s memory of the party has gaps. If this was politically motivated, he said, “rather than admitting holes in her recollection, she would have made the assault more egregious.”

## Does it matter that she was drunk?

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Despite the common rape myth, in which a masked stranger drags a woman into a deserted alley, most sexual assaults are committed by an acquaintance, according to Wigdor. Alcohol or drugs are involved in large percentages of them, on the accuser’s and the accused’s side.

Although inebriation may affect a person’s perception, many argue that if she can recount specifics, her testimony should carry a certain weight.

Ramirez was honest about her own alcohol intake: She drank to the point that she was foggy and slurring her words.

Still, Aidala said, there are details that cannot be ignored, such as Ramirez’s inability to tell the difference between a “gag plastic penis” and a real one.

“She never actually says that she saw his penis. She only said that someone happened to yell his full name down the hall and that she’s certain he pulled his pants off,” factors that Aidala said senators, jurors and the public should focus on when assessing the credibility of her account.

“Any time you’re relying on recollections from this long ago, you have to question their accuracy. Not whether you believe a person is telling the truth, but if it’s accurate. We’ve all said things in our lives where we’re certain we’re accurate, but we’re wrong,” he said. “How can you find her credible if it’s not accurate?”

## How to comb through classmates’ contrasting stories

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The New Yorker reported that there was a lot of chatter at the time about the incident in their freshman social circle that Ramirez has described. Several Yale classmates, who knew Ramirez and Kavanaugh during freshman year, have also said it didn't happen, basing their conclusions on generalities.

Fairstein and Wigdor discounted the broad statements: "I went to college with Ramirez, and she's an honest person" or "Kavanaugh would never do something like this."

"We all know people well who we don't think capable of bad things, yet under certain circumstances, that good person is capable of bad acts. I don't doubt for a minute he's a great father and presents as a decent man, but that doesn't mean he couldn't have done this at another point in his life," Fairstein said.

Wigdor agreed, calling those providing general statements less important than witnesses with firsthand memories of the party Ramirez recalled or those who heard about it in the days that followed.

They also dismissed the statements of others who denied that the incident happened because they would have seen or heard about it if it had.

Dorm-room drinking parties happen spontaneously, Fairstein said. "Someone comes home with a few six-packs or buys a bottle of liquor. It's not a party with an engraved invitation."

## What falls in Ramirez's favor?

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Ramirez recalled that the party took place in a suite at Lawrance Hall, in the part of Yale known as Old Campus.

Another classmate, who wished to remain anonymous, confirmed Ramirez's account of the assault, adding that "it's been on my mind all these years when [Kavanaugh's] name came up. It was a big deal."

More striking is that, like Ramirez, the classmate recalled that the freshman-year party took place in a common room on the first floor in Entryway B of Lawrance Hall, according to the New Yorker.

Small details like that independently corroborate Ramirez's account. "When specifics are mentioned, that's very helpful to the prosecutor and a good sign of credibility," Fairstein said.

An email chain involving several then-classmates of the parties, after Kavanaugh's nomination, also stands out.

The conversation was reportedly among friends expressing concern about what Kavanaugh's past actions meant for his confirmation. One speculated that if true, the incident would "qualify as a sexual assault."

But it's unclear whether the participants were discussing their own observations or rumored

college gossip.

“I would certainly want the emails and would reach out to the participants, but until you have them under oath, testifying and being cross-examined, it’s difficult to assess the probative value of those sort of alleged facts,” Wigdor said.

The bottom line is that the surfaced allegations cry out for the Federal Bureau of Investigation to become involved in the hunt for the truth, the lawyers agree, particularly in light of the complications the new one presents.

“With the second person coming forward, it seems like there’s more for the Judiciary Committee to get their arms around before holding the hearing,” Wigdor said.