

September 26, 2018

Senate Majority Leader Mitch McConnell  
Senate Majority Whip John Cornyn  
Senate Judiciary Committee Chair Chuck Grassley

Dear Senators,

We write as law professors who have significant experience teaching, researching, and writing about issues of gender violence and representing gender violence survivors in family, civil, and criminal courts. We write to express our profound concern about the plans for evaluating the allegations of Judge Kavanaugh's sexual misconduct that have been announced to date, especially in light of recently emerging claims. The Senate should seek to review all available evidence, including witness testimony relating to all of the allegations raised, in order to evaluate both the competing accounts of underlying events and the nominee's reflection on those accounts. The allegations should be fully and sensitively investigated by experts who are trained in trauma-informed interviewing techniques before the hearing is held. In this instance, as Dr. Ford has requested, the investigation should be performed by the FBI. There should be no rush in undertaking this important task. All those concerned both with the gravity of the allegations and the integrity of the Court and our systems of governance should prioritize investigation over politics. Particularly given the most recent information about additional allegations, it is incumbent upon the Committee to delay the hearings and a vote until a thorough investigation of all allegations is completed.

The Senate's approach to the allegations raised by Dr. Christine Blasey Ford, Deborah Ramirez, and now, Julie Swetnick, is deeply troubling. Public statements prejudging the credibility of witnesses and the outcome of the proceedings reflect the very type of biases that have no place in any investigation and that run counter to the purpose of these hearings. The attacks on the witnesses' credibility and integrity are reminiscent of outdated and discredited stereotypes that defy best practices developed through decades of research about fair and effective treatment of sexual violence survivors. Both criminal law and psychological research on the impact of trauma roundly reject the idea that sexual violence is restricted to forced sexual intercourse. Similarly, legislatures and courts have rejected for decades the outdated notion that allegations must be corroborated in order to be credible. In this matter, however, corroborating witnesses do exist, and the exclusion of these witnesses demonstrates that the process is not designed to assess the truth of the allegations.

The Committee's process undermines the very laws that Congress has claimed credit for passing. The Violence Against Women Act (VAWA), initially enacted nearly 25 years ago, aims to recognize the importance of upholding the dignity and safety of those who come forward to report that they were victims of sexual misconduct. Best practices reinforce the importance of fair process and meaningful justice for gender violence survivors. The rush to a hearing and a vote, without investigation, mirrors the miscarriage of justice in many domestic violence cases, where cases typically are rushed through what can best be described as "perfunctory justice."

We are additionally concerned about the selection of a prosecutor to question Dr. Ford. Questioning by a prosecutor fuels misguided ideas that the allegations raised should be proved “beyond a reasonable doubt.” That standard of proof has no place here, since the liberty and equitable issues at stake in criminal cases are not at issue. We would expect the Committee to conduct its own questioning, as it has done with other nominees and throughout this process.

This is neither a criminal trial nor a civil proceeding. The focus should be on the nominee’s intellect, demeanor, judicial temperament and moral conduct. Senators should be concerned with the nominee’s judgment, insight, and capacity for reflection on the impact of a person’s behavior on others. Senators should assess how the nominee engages with complex and emotionally charged social issues, such as those that may come before the court. All of these issues are implicated by the allegations made by Dr. Ford, Ms. Ramirez, and Ms. Swetnick, and the Senate should have a full understanding of the events underlying those allegations before it determines whether Judge Kavanaugh should be elevated to the Supreme Court.

Respectfully,\*

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