

RACHEL MITCHELL IS NOT VERY GOOD AT PROPAGANDA

The Senate Judiciary Republicans' hand-picked sex prosecutor, Rachel Mitchell, has released a report that is generating the desired headlines from credulous journalists. It should take reporters no more work than to compare what Mitchell claims in her memo with what actually happened last Thursday to declare it a sham report. But since journalists are reporting it as an honest submission, I guess I'll have to debunk it.

Mitchell's report makes no mention of July 1

Start with the fact that Mitchell's report makes no mention of the July 1 get-together that included all of the boys Christine Blasey Ford has claimed were at the event where she was assaulted. Here's how Mitchell got Brett Kavanaugh to confirm that fact in the hearing.

MITCHELL: I would like you to look at the July 1st entry.

KAVANAUGH: Yes.

MITCHELL: The entry says – and I quote – “Go to Timmy’s (ph) for skis (ph) with Judge (ph), Tom (ph), P.J. (ph), Bernie (ph) and Squee (ph)”?

KAVANAUGH: Squee. That’s a nick...

MITCHELL: What does...

KAVANAUGH: ... that’s a nickname.

MITCHELL: OK. To what does this refer, and to whom?

KAVANAUGH: So first, says “Tobin’s (ph) house workout”. So that’s one of the

football workouts that we would have – that Dr. (inaudible) would run for guys on the football team during the summer.

So we would be there – that’s usually 6:00 to 8:00 or so, kind of – until near dark. And then it looks like we went over to Timmy’s – you want to know their last names too? I’m happy to do it.

MITCHELL: If you could just identify, is – is “Judge,” Mark Judge?

KAVANAUGH: It is.

MITCHELL: And is “P.J.,” P.J. Smith?

KAVANAUGH: It is.

So – all right. It’s Tim Gaudette (ph), Mark Judge, Tom Caine (ph), P.J. Smith, Bernie McCarthy (ph), Chris Garrett (ph).

MITCHELL: Chris Garrett is Squee?

As I have noted, Mitchell got Kavanaugh to confirm that Judge, PJ, and Kavanaugh – and other boys, as Ford has testified – were drinking at a suburban Maryland home on a weekday around the same time as Ford’s testimony said the event would have happened. This *by itself* refutes the key prong of Kavanaugh’s defense, that he was never at a party like the one Ford described, as Kavanaugh had claimed in response to Mitchell just minutes earlier.

MITCHELL: Dr. Ford described a small gathering of people at a suburban Maryland home in the summer of 1982. She said that Mark Judge, P.J. Smyth and Leland Ingham also were present, as well as an unknown male, and that the people were drinking to varying degrees. Were you ever at a gathering that fits that description?

KAVANAUGH: No, as I’ve said in my opening statements – opening statement.

He was at such a party, and the calendars he say validate his claims actually undermine his credibility.

But Mitchell makes no mention of the fact that, in her limited questioning of Kavanaugh, he had both provided possible corroboration to Ford and contradicted a statement he made minutes earlier.

The report makes no mention of Mitchell's truncated questioning of Kavanaugh, at all

Of course Mitchell didn't mention that, in her limited questioning of Kavanaugh, she obtained evidence from him that actually helps Ford and hurts Kavanaugh. That's because she's utterly silent about what happened in her questioning of Kavanaugh.

That's important because it obscures both what did happen and what didn't happen. The Republicans subjected Kavanaugh to just three rounds of questioning from Mitchell before Lindsey Graham took over in a rant almost as belligerent as the nominee's. Over the course of those rounds, Kavanaugh showed visible discomfort – and a professed need to refer back to the definition of sexual behavior – after Mitchell provided that to him.

MITCHELL: I want you to take a moment to review the definition that's before you of sexual behavior.

MITCHELL: Have you had a chance to review it?

KAVANAUGH: I have. I may refer back to it, if I can?

MITCHELL: Yes, please.

I'd like to point out two specific parts. Among the examples of sexual

behavior, it includes rubbing or grinding your genitals against somebody, clothed or unclothed. And I would also point out that the definition applies whether or not the acts were sexually motivated or, for example, horseplay. Do you understand the definition I have given you?

KAVANAUGH: I do.

In round two, under Mitchell's questioning, Kavanaugh offered up his first really troubling denial of drinking to excess, including a refusal to describe, in behavioral or even legal terms, what it means to drink too much.

MITCHELL: Dr. Ford has described you as being intoxicated at a party. Did you consume alcohol during your high school years?

KAVANAUGH: Yes, we drank beer. My friends and I, the boys and girls. Yes, we drank beer. I liked beer. Still like beer. We drank beer. The drinking age, as I noted, was 18, so the seniors were legal, senior year in high school, people were legal to drink, and we – yeah, we drank beer, and I said sometimes – sometimes probably had too many beers, and sometimes other people had too many beers.

MITCHELL: What do you...

KAVANAUGH: We drank beer. We liked beer.

MITCHELL: What do you consider to be too many beers?

KAVANAUGH: I don't know. You know, we – whatever the chart says, a blood-alcohol chart.

MITCHELL: When you talked to Fox News the other night, you said that there were times in high school when people might have had too many beers on

occasion. Does that include you?

KAVANAUGH: Sure.

MITCHELL: OK. Have you ever passed out from drinking?

KAVANAUGH: I – passed out would be – no, but I’ve gone to sleep, but – but I’ve never blacked out. That’s the – that’s the – the allegation, and that – that – that’s wrong.

Kavanaugh would go on to deny more specific questions about blacking out, but this initial response shows that Kavanaugh is too defensive about his drinking to be reliable.

Immediately after that second round of questioning, Kavanaugh took his first break.

In Mitchell’s third round, she got Kavanaugh to confirm that he had, in fact, been at a party the likes of which he said he had not been, though she didn’t call attention to that fact. Also in that round, she asked him about his interview *with the committee* about the alleged assaults.

MITCHELL: Since Dr. Ford’s allegation was made public, how many times have you been interviewed by the committee?

KAVANAUGH: It’s – it’s been a – three or four. I’m – I’m trying to remember now. It’s – it’s been several times. Each of these new things, absurd as they are, we’d get on the phone and kind of go through them.

MITCHELL: So have you submitted to interviews specifically about Dr. Ford’s allegation?

KAVANAUGH: Yes.

MITCHELL: And what about Deborah Ramirez’s allegation...

KAVANAUGH: Yes.

MITCHELL: ... that you waved your penis in front of her?

KAVANAUGH: Yes.

MITCHELL: What about Julie Swetnick's allegation that you repeatedly engaged in drugging and gang-raping, or allowing women to be gang-raped?

KAVANAUGH: Yes. Yes, I've been interviewed about it.

MITCHELL: Were **your answers to my questions** today consistent with the answers that you gave to the committee in these various interviews?

KAVANAUGH: Yes, ma'am.

MITCHELL: OK. I see I'm out of time. [my emphasis]

And that was it, Mitchell was yanked by Republicans before she asked any more questions that helped Ford and hurt Kavanaugh.

Mitchell held Ford's statements to a much higher standard than she did Kavanaugh's

Now compare that last bit – where Mitchell simply asked Kavanaugh to judge from himself whether his responses to her were consistent with *just the interviews* he had had with the committee – with how Mitchell asked Ford to review her statements and point out anything she would change.

MITCHELL: OK.

We've put before you – and I'm sure you have copies of them anyway – five pieces of information, and I wanted to go over them.

The first is a screenshot of a WhatsApp texting between you and somebody at the Washington Post. Do you have that in front of you?

FORD: Yes.

MITCHELL: The first two texts were sent by you on July 6th. Is that correct?

FORD: Correct.

MITCHELL: And then the last one sent by you was on July 10th?

FORD: Correct.

MITCHELL: OK. Are those three comments accurate?

FORD: I will read them.

(UNKNOWN): Take your time.

Ford did so, and corrected a number of things that were made, often in non-legal contexts, quite specifically. Her corrections of her non-legal statements were a key part of her credibility, because they showed her to be a careful person with attention to detail.

As a threshold matter, Mitchell assessing the consistency of Ford's statements across five different kinds of statements: statements to her therapists, her spouse and friends, to the WaPo, before a polygraph, and to the committee. She's only asking Kavanaugh to validate one kind of statement – his interviews with friendly staffers on the committee – with his responses to her questioning, and her questioning didn't even touch on the topics of one of those interviews (that is, the other allegations). She specifically left out the Fox interview where (among other things), Kavanaugh defined "sexual assault" to be limited to vaginal intercourse, which is far different than the one Kavanaugh squirmed at when presented with it by Mitchell. That's also where Kavanaugh claimed seniors were legal to drink, and everyone drank that much,

and his friendship with girls extended just to those at sister Catholic schools, not Holton-Arms where Ford attended.

friendship, friendship with my fellow classmates and friendship with girls from the local all girls Catholic schools.

There was even an exchange where Kavanaugh might be taken to have claimed he never met Ford.

MACCALLUM: And to this date, no one has corroborated the story that she has told. As you accurately point out, but is there – so there's no chance that there was something between the two of you that maybe she misunderstood the exchange that you had?

Nothing ever physical, you never met her, never kissed her, never touched her, nothing that you remember?

KAVANAUGH: Correct

Though earlier, he had said he may have met her, even though he claimed they did not travel the same circles.

KAVANAUGH: I may have met her, we did not travel in the same social circle, she was not a friend, not someone I knew—

And, of course, the Fox interview is where he claimed he was the last American virgin.

Particularly given the content of the hearing, where Ford testified that Squi was the guy through whom she met Kavanaugh, the judge's claims that she didn't travel in his same circles appear absolutely false, as do a number of other details Kavanaugh made public. But by narrowly construing the validation she asked Kavanaugh to make (as compared to the broad comparison she demanded of Ford), Mitchell

avoided making Kavanaugh swear that some of his obviously bullshit comments are true and in the process absolved herself of conducting the same assessment of whether Kavanaugh's claims were consistent over time. And all that's before you look at other claims – such as that he claimed the 65 women who signed a letter backing him knew him well, including those who went to Holton-Arms along with Ford, even though he claimed he was only friends with Catholic school girls. Or, his comments in the yearbook.

Kavanaugh's statements would not survive the kind of apples to orange comparison Mitchell subjected Ford's statements to

Mitchell's failure to conduct the same scrutiny of Kavanaugh's statements matters because that's a key prong of her finding that Ford's statements were not consistent, of which these two passages are representative of the problems with Mitchell's claims.

Dr. Ford has not offered a consistent account of when the alleged assault happened.

- *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.

[snip]

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.

Note how central the WaPo is to this (and, though I won't deal with it here, to her timeline of Ford's disclosures). That is, Mitchell is holding Ford responsible for how a text submitted to a tipline gets developed into more specific timelines that appeared in the WaPo. And she may be holding Ford accountable to inaccuracies in the WaPo story and her therapist's report, neither of which Ford had final control over.

Plus, Mitchell is absolute incorrect when she claims that Ford offered no explanation for how she narrowed in on the summer of 1982 for the assault – because, given that she didn't drive, it must have been before she got her driver's license.

MITCHELL: In your polygraph statement you said it was high school summer in '80s, and you actually had written in and this is one of the corrections I referred to early and then you crossed that out.

Later in your interview with The Washington Post, you were more specific. You believed it occurred in the summer of 1982 and you said at the end of your sophomore year.

FORD: Yes.

MITCHELL: You said the same thing I believe in your prepared statement.

How were you able to narrow down the timeframe?

FORD: I can't give the exact date. And I would like to be more helpful about the date, and if I knew when Mark Judge worked at the Potomac Safeway, then I would be able to be more helpful in that way.

So I'm just using memories of when I got my driver's license. I was 15 at the time. And I – 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.

It's remarkable Mitchell completely ignored this explanation, because mapping relationships in time via what friends drove him is something Kavanaugh did, too.

MITCHELL: And how did you know Patrick Smyth?

KAVANAUGH: Also ninth grade, Georgetown Prep. Went by P.J. then. He and I lived close to one another. Played football together, he was defensive tackle, I was the quarterback and wide receiver. We carpooled to school along with De Davis (ph) every year, the three of us for two years. I didn't have a car, so one of the two of them would drive every day. And I'd be in the (ph), you know, they'd pick me up.

All of which is to say the key basis by which Mitchell declares Ford unreliable is a methodology she protects Kavanaugh from. Had she subjected him to the same treatment, he would have looked far more unreliable.

Both witnesses had

short term memory loss

The same is true of Mitchell's claim that Ford struggled to remember details of the recent past.

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.

- *Dr. Ford struggled to remember her interactions with the Washington Post.*

[snip]

- *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.*
- *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.*

First, the second and third bullets are not memory issues at all – she treats the anxiety of coming forward, and the differing choices she made, as a memory issue rather than a stress one.

But as to the others, she holds Ford accountable for interactions with the WaPo, not all of which may be her doing. And she treats uncertainty about a foreign process, the polygraph, as a memory issue.

And Kavanaugh himself had troubles remembering something even more recent – how many times he had been interviewed by the committee, three or four.

MITCHELL: Since Dr. Ford's allegation was made public, how many times have you been interviewed by the committee?

KAVANAUGH: It's – it's been a – three or four. I'm – I'm trying to remember now. It's – it's been several times. Each of these new things, absurd as they are, we'd get on the phone and kind of go through them.

There's likely a good reason for this memory loss: the committee has only released transcripts from two conversations. So if there were four interviews, it suggests there may be two where he was massaging his story. Whatever the explanation, though, these interviews were just weeks and days before this hearing, and Kavanaugh couldn't remember them.

In short, this report is an attack on Ford. It's not a measure of a he said she said dispute. To assess such a dispute, Mitchell would have had to examine how badly Kavanaugh flubbed his responses to her.

And she wasn't paid for that kind of scrutiny.