

THE MOMENT OF TRUTH COMES FOR COHEN AND FLYNN

As you likely know by now, Trump fixer Michael Cohen is getting sentenced this morning. In fact, the proceeding is starting as I write this post, so I am going to get it up so that there

is an appropriate place to discuss the events.

There are three sentencing memos in the Cohen matter

- 1) Cohen's memo
- 2) The SDNY Memo
- 3) The Mueller SCO Memo

The sentencing guideline range is 51-63 months, but the government has already suggested a downward departure, i.e. a reduction for those that do not practice federal criminal law, to 41 months. Remember, he is being, technically, sentenced on two different pleas today, the original comprehensive plea, and the one count of lying to the Feds under 18 USC §1001. The latter is a tack on charge and is really not particularly pertinent for sentencing and, in fact, the government has recommended no additional time for that above and beyond whatever is imposed in the original SDNY case. The judge is William H. Pauley, and, for what it



is worth, he is not known for overly lenient sentences, and that is likely exacerbated in this case by the fact that Cohen's conduct impinged on government.

I will make no bets here, but at one point I thought Cohen would do a lot better at sentencing, but the SDNY sentencing memo was just brutal. Currently having a hard time seeing Cohen walking out with less than the 41 months SDNY recommended, but you never know, only Pauley gets to decide. Do note that, should Cohen wake up and fully cooperate in the future, he can still get relief in the next year under Rule 35 of the Federal Criminal Rules of Procedure. Who knows what is yet to come, but it is technically possible that his sentence is not written in stone.

One interesting question is whether Judge Pauley will remand Cohen into custody today, or allow him to go home and self report at a later date. The presumption is always remand, but Cohen's wife Laura clearly has health issues from seeing her enter the court this morning. If I were Cohen's lawyer, Guy Petrillo, I would ask for the courtesy on him taking her home and self reporting later. We shall see.

Also, if interested in the blow by blow in real time, follow Adam Klasfeld @KlasfeldReports on Twitter.

Will add in Some Flynn material in a bit.

GRAB YOUR PHONE AND DIAL NOW: NO ON FARR [UPDATE]

Just as it says on the tin: PICK UP YOUR PHONE NOW AND CALL your senators at (202) 224-3121 – NO on Thomas Farr

BIRDS OF A FEATHER: COMPARING 'SPARROWS' CHAPMAN AND BUTINA

Let's take a look at two somewhat similar winged creatures, one of which is currently in a cage in Virginia.

KAVANAUGH CONFIRMATION STANDARDS OF NONSENSE



Okay, in case you have not already guessed, Marcy is away, mostly, for a couple of

days. Even a prolific presence like her is entitled to that. So, you get me for today. Sorry!

Now, because I have been a little involved in trying to figure what is the "real standard of proof" for people in the shoes of, say, Susan Collins and Jeff Flake, I have been a tad predisposed this morning. But let us for now go back to Blasey Ford, Kavanaugh, Collins, Flake,

Grassley and the “standard of proof”.

An executive branch nomination is NOT a criminal trial. Any talk about “presumed innocent” and “beyond a reasonable doubt” is asinine and duplicitous. There is no set standard for a nomination consideration, much less one for the Supreme Court. Senators, especially those on the screening Senate Judiciary Committee, get to make their own individual assessments. In a perverse kind of way, it is like impeachment’s “high crimes and misdemeanors”, it is easy for people to argue, but the net result is that it is whatever strikes Congress as being applicable.

Frankly, I think the argument over what Susan Collins’ standard was is kind of silly and diversionary. Collins stated on the record:

“This is not a criminal trial, and I do not believe that claims such as these need to be proved beyond a reasonable doubt. Nevertheless, fairness would dictate that the claims at least should meet a threshold of more likely than not as our standard.”

This is bullshit. As David Graham, again, pointed out:

Citing the lack of corroboration of Ford’s account as well as lacunas in Ford’s own recollection, Collins said she did not believe the “more likely than not” standard had been met.

Although she did not use the phrase, the standard that Collins offers appears to be the same as “the preponderance of the evidence,” which is the burden of proof required in civil trials—as opposed to the beyond-a-reasonable-doubt standard in criminal cases. This is also the standard that many colleges now use in evaluating sexual-violence claims under Title IX. Obama-era guidance required schools to use a preponderance-of-

evidence standard, though the Trump Education Department has granted schools greater leeway, instructing that “findings of fact and conclusions should be reached by applying either a preponderance of the evidence standard or a clear and convincing evidence standard.”

So, what is the relevant standard? As propounded earlier, there is no set one in these circumstances. It certainly is not “beyond a reasonable doubt” as is in criminal trials. Anybody using that language, including most of the geriatric white geezers in the SJC, is lying.

“Clear and convincing evidence”? Nope, there is no precedent for that either. Preponderance of the evidence/more likely than not? Again, there is scant authority to establish that as a relevant standard. Bottom line is Susan Collins manufactured her own “standard” and then cynically applied it, all without any legitimate basis. And, maybe, that is the kind of intellectual malleability these SJC determinations engender, but, if so, people like Collins, and the journalists that cover her charade, should acknowledge it.

So, what is the real “standard”? Again, there is none I can find. But if the course and scope of “background investigations” conducted by the FBI at the behalf of an Article II Executive Branch request is any indication, it is far different than being duplicitously portrayed by both the White House and Senate Judiciary Republicans.

Here is a specialist in clearance and background investigation issues, Brad Moss:

Um, not totally true. It happens for high level national security operatives working for the NSC and related White House components. Those individuals have to hold TS/SCI access and often times can be subject to invasive polygraph

screenings.

Actual vetting, not that Kushner BS.

Here is another, Kel McClanahan, of National Security Counselors:

The White House can't order @FBI to just rummage through a random person's life. They can definitely AUTHORIZE FBI to rummage through a person's life who has agreed to be subjected to a background investigation.

If this is true, it was McGahn & not Trump who was playing games...

Yes. Exactly. And, as a Senator who was one of the maybe 115 American citizens able to actually read the "FBI Investigation" work product, for Susan Collins and Jeff Flake to blithely sign off on the limited, restricted and choked off nonsense, is beyond craven. It is straight up duplicitous. And the New York Times article is kind compared to the chicanery that was clearly afoot from Don McGahn, a close friend and Federalist Society gang member for decades with Brett Kavanaugh.

In short, it is NOT about the relative "standard of proof" used by Susan Collins. She used "more likely than not" standard (effectively a preponderance of evidence standard). When she said that was the standard, she was lying. It never has been, and never will be. That was manufactured bullshit.

People have also argued that the standard should have been "reasonable accusation" or "credible accusation". And those are even lesser than the preponderance/more likely than not" standard Collins artificially, self servingly and cynically utilized.

Is clearance on a Background Investigation warranted? Does anybody, including the high holy Brett Kavanaugh, have any god given right to have a clean BI and be elevated to the Supreme

Court? Of course not (See Title 32 of the CFR), that is gibberish propounded by old white conservative and misogynistic demagogues, like Grassley, Hatch, Cornyn and Graham in the Senate Judiciary Committee. And it is pure rubbish.

And, so too is the manufactured "standard" Susan Collins magically announced in her drama queen dog and pony show yesterday that seemed to narcissistically go on forever.

The bottom line is that whether under Collins' manufactured and elevated standard, or even lesser ones such as reasonable or credible allegations, Brett Kavanaugh was not fit for passage and subsequent confirmation.

As Mark J. Stern detailed in Slate, Susan Collins' manifesto announced with all the drama of a royal wedding, was in incredible bad faith. Her "standard" was nonsense and nowhere close to any applicable standard. It was a joke.

But, even more so, under ANY standard Susan Collins could have cited, her "finding" thereunder was garbage. Even in criminal sex cases, not just occasionally, but often, finders of fact (usually juries), decisions come down to weighing the relative credibility of an accuser versus the accused. And, given the relentless series of outright lies Brett Kavanaugh stated under oath, there is no way that a sentient human could see his testimony as more credible than the measured, and admitting as to gaps, honesty of Dr. Christine Blasey Ford. And, again, credibility of witnesses is what criminal trials, much less less than even civil litigation burdens, as here, are decided by every day.

This is because there are usually zero other witnesses to such kidnapping, molestation and attempted rape cases as Dr. Christine Blasey Ford credibly alleged, but also because time and reticence of victims is often a factor. And, yet, cases are filed and determinations made on just such "he said/she said" allegations every day. The implication by Susan Collins, Chuck

Grassley, the other wrinkled old entitled white men like Hatch in the SJC, not to mention their cynically hired criminal prosecutor, Rachel Mitchell, are complete baloney.

Somebody go ask Rachel Mitchell, and the sad old men that hired her before they fired her, how many times she has operated off of an accuser's words. The answer will be a lie, because it happens all the time. And, yeah, that is enough to generate a full and meaningful "background investigation" despite the bullshit being proffered by the White House, Don McGahn and the SJC.

THREE URGENT THINGS: POTUS' ALERT TEXT, FACEBONKED, KAVANUH-UH

Item One needs immediate attention – like NOW. Tell your friends and family, too. The next two items are pretty urgent, too.

JEFF FLAKE'S "INVESTIGATION" IS A PREDICABLE TRUMPIAN SHAM



This was
about the
easiest
thing in
the world
to
predict.
Jeff Flake
issues
some

hollow self indulgent bullshit to make himself look like the last great reasonable man, and it is all garbage being run as cover for a complicit Trump White House and weak Senate Republicans (and at least one faux Democrat) desperately and cowardly seeking any fig leaf possible to allow them to put a craven, partisan, angry and drunkard historical sex offender on the United States Supreme Court for the next three to four decades.

If you thought that was just hyperbole previously, read this from NBC News and chew on it:

Instead of investigating Swetnick's claims, the White House counsel's office has given the FBI a list of witnesses they are permitted to interview, according to several people who discussed the parameters on the condition of anonymity. They characterized the White House instructions as a significant constraint on the FBI investigation and caution that such a limited scope, while not unusual in normal circumstances, may make it difficult to pursue additional leads in a case in which a Supreme Court nominee has been accused of sexual assault.

The limited scope seems to be at odds with what some members of the Senate judiciary seemed to expect when they agreed to give the FBI as much as a week to investigate allegations against

Kavanaugh, a federal judge who grew up in the Washington DC area and attended an elite all-boys high school before going on to Yale.

Yes, of course Trump and McGahn are limiting the scope and time of this “investigation”. It was always going to be a sham, and that is why it was always so absurd that the SJC Minority, and other Dems, not to mention the ridiculously ever gullible national press, bought off on this idiocy. It was an own goal that they set themselves up for and are now being collared by.

This is a fraud being perpetrated on the American public. The media needs to take the time and do their own investigation, the “FBI” one is a sham being manipulated by the sex criminal led and protecting, White House.

I honestly don’t know who is more clueless in what was up with this ruse...the national media as to the forever sucker play of “the last honest Republican, Jeff Flake”...or the Democratic cheerleaders that thought this was anything other than a sham fig leaf cover play. Both are pathetic. This was obvious from the first second Flake uttered the words “limited” and “one week or less”.

PT Barnum said that a sucker is born every minute. A LOT of them were born yesterday. Didn’t have to be that way, but that is the stupidity of DC politics, and press coverage thereof.

CAN SENATOR FEINSTEIN BLOCK THE

APPOINTMENT OF RACHEL MITCHELL?



As you
know by
now,
Maricopa
County
(Arizona)
sex crimes
unit chief
Rachel
Mitchell

has been deemed by Chuck Grassley and the Senate Judiciary Republicans as their front person to examine Dr. Christine Blasey Ford. From NBC News:

The woman chosen by Senate Judiciary Committee Republicans to question Supreme Court nominee Brett Kavanaugh's accuser will be in an unusual position when she goes face-to-face with Christine Blasey Ford on Thursday.

Senate Judiciary Committee Chairman Chuck Grassley announced Tuesday that he hired Rachel Mitchell, an outside attorney to question Kavanaugh and Ford, on behalf of the 11 male Republicans on the committee – despite Ford's wishes to be questioned by the senators themselves about her accusation that Kavanaugh sexually assaulted her when the two were teenagers.

So, the eleven old white men of the SJC want a female stand in to make their evisceration and shining on of putative kidnapping, sexual assault and attempted rape victim Dr. Ford. Because the optics the GOP men, and men are the only sex that has ever served for Republicans on SJC, looked too ugly for even them.

But is this unprecedented move, clearly designed with public optics and maximal humiliation of

Dr. Ford even appropriate? Maybe not!

Now, I am not a Senate Rules expert, but a comment made me go do a little digging. Here is the text of the the most recent version of the United States Senate Standing Rules, Orders, Laws, And Resolutions. Here, specifically, is the section, contained in Chapter 43 thereof, in §4301(i)(3) relating to committee retention of consultants:

(3) With respect to the standing committees of the Senate, **any such consultant or organization shall be selected by the chairman and ranking minority member of the committee, acting jointly.** With respect to the standing committees of the House of Representatives, the standing committee concerned shall select any such consultant or organization. The committee shall submit to the Committee on Rules and Administration in the case of standing committees of the Senate, and the Committee on House Oversight in the case of standing committees of the House of Representatives, information bearing on the qualifications of each consultant whose services are procured pursuant to this subsection, including organizations, and such information shall be retained by that committee and shall be made available for public inspection upon request. (Emphasis added)

So, Senator Feinstein, is this indeed the case? If so, why would you assent to appointment of a prosecutorial thug like Rachel Mitchell to examine the putative victim here, Dr. Ford?

Rachel Mitchell is currently head of the Sex Crimes Unit in the Maricopa County Attorney's Office (MCAO). She has served under three heads of the MCAO, but she was elevated to her current position because she was an extremist who fit the desired bill by the notorious former MCAO

head, Andrew Thomas. As you may recall, Andy Thomas not only had to leave the MCAO in disgrace, but subsequently was disbarred for his zealotry. And that kind of craven zealot is exactly who Rachel Mitchell identified with and was promoted by back in January of 2005. And is Mitchell always hard on sex criminals? No, in fact her past also includes sweetheart deals to abusive clergy members in politically charged cases.

Rachel Mitchell is one of the worst choices imaginable for the current task. It is a heinous move by Chuck Grassley and a direct and complete screw you to Dr. Ford and sexual abuse and rape victims across the United States and world.

And the "screw you" to victims is especially salient with the existence of additional putative victims of Brett Kavanaugh's drunken debauchery. Not only is there Debbie Ramirez, who did not seek to come forward, but was located because friends and classmates of hers and Kavanaugh, while Kavanaugh was at Yale, started recalling her victimization and talking about it. Jane Mayer has more on that, not to mention her and Ronan Farrow's original reporting on Ramirez.

And, just as of an hour or two ago, yet another troubling story of Brett Kavanaugh's misogyny and conduct has been made public by her lawyer Michael Avenatti. Julie Swetnick has issued a sworn affidavit that is chilling. Swetnick is a 1980 graduate of Gaithersburg High School in Gaithersburg, Maryland, and has held multiple security clearances for work done at the Treasury Department, U.S. Mint, IRS, State Department and Justice Department. In short, she is a more than credible person who has put her statement under oath and penalty of perjury.

Here is her affidavit, and it is chilling. It describes what now seems obvious, Brett Kavanaugh and his friend Mark Judge were part of a group of a private boys school wilding gang that drank to excess regularly mistreated women. Judge and Kavanaugh were "joined at the hip"

according to Swetnick. She further states:

3 7. Following that first introduction, I attended well over ten house parties in the
4 Washington, D.C. area during the years 1981-1983 where Mark Judge and Brett
5 Kavanaugh were present. These parties were a common occurrence in the area and
6 occurred nearly every weekend during the school year. On numerous occasions at these
7 parties, I witnessed Mark Judge and Brett Kavanaugh drink excessively and engage in
8 highly inappropriate conduct, including being overly aggressive with girls and not taking
9 "No" for an answer. This conduct included the fondling and grabbing of girls without
10 their consent.
11 8. I observed Brett Kavanaugh drink excessively at many of these parties and
12 engage in abusive and physically aggressive behavior toward girls, including pressing
13 girls against him without their consent, "grinding" against girls, and attempting to remove
14 or shift girls' clothing to expose private body parts. I likewise observed him be verbally
15 abusive towards girls by making crude sexual comments to them that were designed to
16 demean, humiliate and embarrass them. I often witnessed Brett Kavanaugh speak in a
17 demeaning manner about girls in general as well as specific girls by name. I also
18 witnessed Brett Kavanaugh behave as a "mean drunk" on many occasions at these
19 parties.
20 9. I have been told by other women that this conduct also occurred during the
21 Summer months in Ocean City, Maryland on numerous occasions. I also witnessed such
22 conduct on one occasion in Ocean City, Maryland during "Beach Week."

There is more, much more, including descriptions of girls, including Ms. Swetnick herself, being knocked out with spiked punch and gang raped.

And that is where we find ourselves today. It appears that Senator Feinstein can put the kibosh on the craven hiring of a zealot prosecutorial thug like Rachel Mitchell and, further, can with the help of any and all Republican Senators of conscience, slow down this train wreck and investigate the claims and give a real hearing. That means someone among Jeff Flake, Lisa Murkowski, Susan Collins, or another, needs to step up and do the right thing. Will they? Will Senator Feinstein?

Within the last minute, Senator Feinstein has issued the following statement:

Washington—Following the release of a sworn affidavit from Julie Swetnick detailing new allegations of sexual assault by Brett Kavanaugh, all 10 Democratic members of the Senate Judiciary Committee today urged President Trump to immediately withdraw the nomination or order an FBI investigation into all allegations.

The senators wrote: "We are writing to

request that you immediately withdraw the nomination of Brett Kavanaugh to be an Associate Justice on the Supreme Court or direct the FBI to re-open its background investigation and thoroughly examine the multiple allegations of sexual assault.

“Judge Kavanaugh is being considered for a promotion. He is asking for a lifetime appointment to the nation’s highest court where he will have the opportunity to rule on matters that will impact Americans for decades. The standard of character and fitness for a position on the nation’s highest court must be higher than this. Judge Kavanaugh has staunchly declared his respect for women and issued blanket denials of any possible misconduct, but those declarations are in serious doubt.”

That is a nice statement, but there appears to be so much more that Senator Feinstein can do. Jeff Flake just took to the Senate Floor and, despite some words of empathy, wholeheartedly accepted that tomorrow’s sham hearing in SJC is all that there will ever be. While Flake appeared close to tears, he, as usual, said and intends to do nothing admirable and/or heroic.

It is a sad show we are watching. The hallowed halls of the Supreme Court deserve better, and so too do the American people.

THREE THINGS: CRC—WHAT? AN INDICTMENT, PLUS SHUT

DOWNS AHEAD

Here are three things which are in some way related and worth more of our attention, whatever is left after the 800-pound gorillas Kavanaugh and Rosenstein are done with it.

THE COMMITTEE PLAYING GAMES WITH PERJURY REFERRALS SWEARS THEY CAN MAKE MARK JUDGE TELL THE TRUTH WITHOUT TESTIFYING

Chuck Grassley promises Mark Judge will be referred for perjury charges if he lies to the Senate Judiciary Committee. But that's what he said to Don Jr before Don Jr lied to the committee.

WHIP IT, WHIP IT GOOD: KRUNCHTIME ON KAVANAUGH

How's your whip arm? Do you feel like using it? Grab your phone!