

# “Advice and Consent” or “Search and Destroy”?

## LEGAL SCHOLAR RAISES SALIENT QUESTIONS IN FORD ACCUSATION, REPRESENTATION

by [Joseph DeMaio](#), ©2018



(Sep. 30, 2018) — To characterize the Kavanaugh “advice and consent” confirmation hearings and their surrounding clouds of rancor and vitriol as a “circus” is to denigrate and slander all true circuses. The behavior of the Senate Democrats is *far* beyond the pale, with some of them facing potential prosecution and/or expulsion from the Senate for their treachery and perfidy after Judge Kavanaugh is finally confirmed to the Court. Oh, yes..., that will happen..., eventually.

Once again, these swamp-dwellers graphically prove – beyond the shadow of any reasonable doubt – why they have forever forfeited any claim of right or ability to govern a free people in a constitutional republic such as we still, for the moment, possess. The core purpose of this post, however, will be to focus attention on how, exactly, we got to this point and where, potentially, it might next move.

First, note at the outset that your humble servant does not deny – as Judge Kavanaugh does not deny – that something awful may have happened to Dr. Ford 36 years ago, but only that Brett Kavanaugh was not the perpetrator. We have no “proof” that the assault actually happened, but in the Democrats’ eyes, proof is irrelevant. Because President Trump nominated Judge Kavanaugh, the mere allegation is sufficient to “bring him down.” Whether this moving train wreck created by the Democrats – aided and abetted by an Arizona senator who gives new meaning to the term “feckless” – ends well (or, as the Democrats would prefer, does not *ever* end) will depend a lot on what, if anything, the new FBI background investigation discloses.

Second, however, recall exactly how we got here. As Fox News columnist Gregg Jarrett notes [here](#), there is growing evidence, not to be confused with mere allegations, that the accuser's attorneys – Debra Katz, Lisa Banks and Michael Bromwich – have surrendered their obligation to “zealously represent” the client, Dr. Ford, and substituted, under the radar, an allegiance to Dianne Feinstein and her cohorts on the Judiciary Committee and/or the Democrat Party and/or all of the anti-Trumpers out there.

As both Mr. Jarrett and Senator Lindsey Graham noted, this entire debacle could have been **completely** avoided had Feinstein shown more honesty and candor to Senator Grassley by telling him of “The Letter” Dr. Ford sent to her long before the scheduled hearing. But since that did not fit the “plan,” she sprang it like a Claymore mine at the last minute after all other gambits had failed. Perhaps she was trying to regain the trust and favor of her radical supporters in California, since that state's Democrat Party declined to support her in her re-election efforts. If she could “save” the nation from Kavanaugh, maybe they would allow her back into the fold.

Third, as for the new FBI investigation, here is some food for thought, not only for P&E readers, but for FBI investigators who may, on occasion (sshhhh... we will tell no one....) “accidentally” stumble over to the P&E website..., and please, no “illegal-homebrew-computer-server-Hillary-Clinton-“interview”-style” investigations:

1. By raising the attorney-client privilege to prevent Ford from answering a question about whether her attorneys “or anyone else” ever told her that Grassley had offered to come to California to preserve her anonymity and privacy, the lawyers “opened the door” to questions about the relationship. Bromwich's objection was directed to the presiding officer, Chairman Grassley. Rachel Mitchell should have called for (but did not) a ruling from Grassley that even if a communication between Ford and her lawyers be deemed privileged, precluding an answer (unless the privilege had been waived), any **other** communications she may have received “from anyone else” as to the option for maintaining her confidentiality and privacy through a visit (even by female investigators, as offered by Grassley) to her *in California* is fair game. On the other hand, because the option for an interview and meeting in California was plastered all over the Internet, television and newspapers, how could Ford have not known of the offer? This would seem to suggest that she feigned surprise at the news of the offered option at the hearing, and may thus be culpable and “in bed” (so to speak) with the lawyers and the Democrats on the committee, all of them harboring the objective of killing the Kavanaugh confirmation rather than searching for the truth as to a claimed 36-year old outrage. The FBI might want to follow up on that.
2. By responding to a question (from Rachel Mitchell) as to whether Ford was paying the lawyers, that they were doing it “pro bono,” they (the lawyers) may have waived any further objections to any and all questions otherwise shielded from answer by the attorney-client privilege. The general rule is that a waiver of the privilege as to one question waives the privilege as to all other questions. See, e.g., *Hopson v. Mayor and City Council of Baltimore*, 232 F.R.D. 228, 232, n. 1

- (D. Md. 2005) (“partial disclosure on a given subject matter will bring in its wake total disclosure.”)
3. By confirming that the lawyers, and not Ford, paid for the polygraph test, and if this were a lawsuit, unless there is a separate agreement for Ford to reimburse them for a “cost” (as opposed to a “legal fee,”), the lawyers may have violated the ethical rules prohibiting barratry (the stirring up of vexatious litigation) and/or champerty (financing the maintenance of a lawsuit in return for a “cut” of the recovery).
  4. When the FBI again interviews Ford, as they must, they should ask whether, assuming the attorney-client privilege has *not* already been waived at the hearing (and under District of Columbia practice rules, a waiver may or may not have already happened), would Dr. Ford – in pursuit of “the truth, the WHOLE truth, and NOTHING BUT the truth...,” be willing to waive the attorney-client privilege, recalling that the privilege belongs to the *client* and not the lawyers? If she refuses, she should be asked why and that reason should be included in the FBI report.
  5. When the FBI again interviews Ford, as they must, they should ask her whether prior to the hearing, she was aware that her lawyers were telling Grassley that a postponement of the hearing was necessary because she (Dr. Ford) could not fly in an airplane to Washington, D.C. and would have to drive to the hearing by car, all the while knowing that was false. If she says “yes,” she then should be asked if she tried to correct them and, if not, is she aware that she could be held in contempt of Congress as an accessory and co-conspirator, and perhaps (after giving her the standard *Miranda* warnings) even prosecuted, along with her lawyers, for lying to Congress? She should also be asked if she is aware that Senator Blumenthal interrogated Judge Kavanaugh as to whether he knew of the Latin maxim “*falsus in uno, falsus in omnibus*” (“false in one thing, false in all things”) and, if so, whether she thinks that maxim should apply to her lawyers.
  6. When the FBI again interviews Ford, as they must, they should ask if she told any of her friends about her letter to her congressional representative, Representative Anna Eshoo, or her senator, Dianne Feinstein. If she says “yes,” who were they? If she refuses, she should be asked why and that reason should be included in the FBI report.
  7. When the FBI again interviews Ford, as they must, they should ask if she would supply her unredacted therapist’s notes and all of her unredacted medical records. The relevance of such records would, of course, be to determine if there were any psychological, psychiatric, false-memory or other cognitive impairment issues in her history which might have contributed to a “false-positive” memory that her “100%” recollection of the identity of her assailant was Judge Kavanaugh as opposed to someone else. If she refuses, she should be asked why she refuses. If she says on the advice of her attorneys, that refusal should also be documented and made a part of the FBI report.
  8. When the FBI again interviews Ford, as they must, they should ask if she is aware of who or what organization is paying for her lawyers. Given the backdrop that (a) Washington, D.C. lawyers can customarily charge over \$1,000.00/hour for their services, it is unlikely that even if Ford is not paying them, they are

rendering the services “for free”; and (b) there is a recent documented history of the DNC paying for the preparation of a certain “dossier” of information to be used against President Trump in support of a “collusion” assertion, it is a fair question to ask if Ford knows anything about who is paying the lawyers, whether gleaned from her lawyers or otherwise. If she refuses, she should be asked why she refuses. If she says on the advice of her attorneys, that refusal should also be documented and made a part of the FBI report.

When retired Supreme Court Justice Anthony Kennedy – whom Judge Kavanaugh will, eventually, replace – [observes](#) that we are witnessing the “death and decline” of democracy in this nation, he is *not* referring to the GOP as the perpetrators..., with the possible exception of Senator Jeff Flake.

Candidly, Liza Kavanaugh – Judge Kavanaugh’s ten-year old daughter who suggested to her mom that they pray for *Dr. Ford* – has more honor and character in her pinky finger than Jeff Flake has in his entire body. Oh, and memo to Flake: before opening your mouth, do your homework (hint: Article III, § 1, U.S. Constitution) so you don’t look so stupid. Stop claiming that the reason this new FBI investigation is “critical” is that, purportedly, we must be sure about Judge Kavanaugh’s character, since “this is a lifetime appointment.” All federal District Court and Appeals Court judges enjoy lifetime tenure “on good behavior,” so Judge Kavanaugh has had his “lifetime appointment” as a judge (2006) longer than you have been a senator (2013). Unproven, uncorroborated, evidence-lacking allegations of “bad behavior” 36 years ago do not count.

So, faithful P&E readers, stay tuned for the next faux bombshell concocted by the Democrats and leftists as their quest to destroy Brett Kavanaugh continues. And if, perchance, Judge Kavanaugh is reading this: hang tough. And P&E readers, if you want to do your country a favor, (1) watch and listen again to Senator Lindsey Graham’s compelling [indictment](#) of the Democrats at the “Ford” hearing and then (2) vote GOP on November 6. You will feel much better. I know I will.