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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
JENNIFER DUCK, *Democratic Chief Counsel and Staff Director*

September 19, 2018

The Honorable Dianne Feinstein, Ranking Member
The Honorable Patrick J. Leahy
The Honorable Richard J. Durbin
The Honorable Sheldon Whitehouse
The Honorable Amy Klobuchar
The Honorable Christopher A. Coons
The Honorable Richard Blumenthal
The Honorable Mazie K. Hirono
The Honorable Cory A. Booker
The Honorable Kamala D. Harris
United States Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Colleagues:

I received your letter dated September 18, 2018, asking me not to reopen the hearing on Judge Kavanaugh's nomination, scheduled for Monday, September 24. Dr. Christine Blasey Ford has made serious allegations against Judge Kavanaugh. She has said repeatedly that she wants to tell her story. And she has a right to be heard. Holding a hearing is in the best interests of justice and for the parties involved. This will allow Dr. Ford to make her allegations under oath, as her attorney has publicly requested. At the same time, reopening the hearing will allow Judge Kavanaugh, who has categorically denied Dr. Ford's allegations, to address these allegations without further delay.

I understand how difficult it might be for Dr. Ford to publicly testify on this subject. I have therefore offered her many options. We've offered her a public hearing, a private hearing, a public staff interview, or a private staff interview. The staff is even willing to fly to California, or anywhere else, to meet her.

An open session would be a matter of public record, while a closed session will remain confidential. I certainly can understand that Dr. Ford might be distrustful of the Committee's ability to keep matters confidential based on the Democratic members' recent conduct, but I sincerely hope that, if she chooses to testify in a closed session, that my colleagues can see their way to plugging the leaks which have plagued this nomination and gain her trust.

Your letter requests that I demand that the FBI conduct an additional investigation into this matter. This request demonstrates a fundamental misunderstanding of the FBI background investigation process. Before nominating an individual to a judicial or executive office, the White House directs

the FBI to conduct a background investigation. The FBI compiles information about a prospective nominee and sends it to the White House. The White House then provides FBI background investigation files to the Senate as a courtesy to help us determine whether to confirm a nominee. But the FBI does not make a credibility assessment of any information it receives with respect to a nominee. Nor is it tasked with investigating those matters that this Committee deems important. The Constitution assigns the Senate, and only the Senate, with the task of advising the President on his nominees and consenting if the circumstances merit. We have no power to commandeer an Executive Branch agency into conducting our due diligence. The job of assessing and investigating a nominee's qualifications in order to decide whether to consent to the nomination is ours, and ours alone.

Second, your request ignores the fact that Dr. Ford has already made her allegations public. The purpose of the background investigation process is to compile information in a confidential manner. Confidentiality permits people to speak freely and candidly about the character and qualifications of the nominee. The White House requires the Senate to keep background investigation files private so that people can speak anonymously to investigators if they so desire. Because Dr. Ford's allegations are in the public arena, there is no longer a need for a confidential FBI investigation.

In 1991, the FBI's additional investigation into Professor Anita Hill's allegations occurred when the allegations were still non-public. When the Senate received Professor Hill's non-public allegations of sexual harassment, then-Chairman Biden expeditiously notified the White House. (That decision sits in sharp contrast to Senator Feinstein's decision to sit on Dr. Ford's allegations for more than six weeks.) The White House directed the FBI to conduct a handful of interviews regarding Professor Hill's allegations. The FBI completed the interviews within a few days. The White House turned the interview reports over to the Senate as a courtesy. The contents of one of those reports was leaked to the public soon after. The hearing was subsequently reopened five days after the allegations were made public.

We are in the same position the Committee was in *after* Professor Hill's allegations were leaked. After that leak, we did not ask the FBI to conduct an investigation. Instead, we reopened the hearing and assessed the testimony that was given on our own. As in 1991, it is now up to the Senate to gather and assess the relevant evidence.

The Majority staff spoke with Judge Kavanaugh as part of the background investigation. Judge Kavanaugh immediately agreed to cooperate with Senate investigators. He sat for a transcribed interview on Monday. He understood that he was under penalty of felony, if he was not truthful. He fully, candidly, and unequivocally answered all questions. We have no reason to doubt the truthfulness of Judge Kavanaugh's testimony. Judge Kavanaugh volunteered to come back for a public hearing.

As is standard practice, we invited the Minority staff to participate and ask Judge Kavanaugh its own questions, but the Minority staff declined. The Majority staff has also sought to set up interviews with Dr. Ford, Mark Judge, and two other alleged witnesses. The Minority staff is welcome to participate in the investigative process as well, but it has thus far declined.

I have scheduled the hearing continuation for this Monday because Dr. Ford, through her counsel, expressed the desire to tell her story under oath. It is my understanding that Dr. Ford has been represented by counsel in this matter for months and thus should be adequately prepared to testify. I am following the same timeline Chairman Biden did after Professor Hill's allegations were made public. It would be a disservice to Dr. Ford, Judge Kavanaugh, this Committee, and the American people to delay this hearing any further.

Of course, we wouldn't find ourselves in this position if we had been made aware of the allegations in a timelier manner. The Ranking Member was aware of these allegations since July. But her staff did not ask Judge Kavanaugh about them during routine background investigation phone calls in late-August. Senator Feinstein did not ask Judge Kavanaugh about these allegations during her closed-door meeting on August 20. The Ranking Member withheld this serious information about Judge Kavanaugh from her colleagues, 64 of whom had private meetings with Judge Kavanaugh and could have asked him about the allegations directly. She did not ask about them when Judge Kavanaugh appeared before the Committee for more than 32 hours of testimony over 3 days. Nor did she attend the closed session of the hearing when members can ask Judge Kavanaugh about sensitive matters. And she did not ask any questions about these allegations among the nearly 1,300 written questions sent to Judge Kavanaugh after the hearing.

Senator Feinstein only informed the FBI of the allegations after they were leaked to the media on the eve of a confirmation vote. The proper course of action would have been to investigate Dr. Ford's serious allegations as quickly and as thoroughly as possible, as I did as soon as these allegations were made known to me.

I'm also concerned what the recent events mean for whistleblowers, especially victims of sexual assault. Dr. Ford expressed the desire that her allegations remain non-public. I can't emphasize how important it is to respect whistleblowers' and victims' desire for confidentiality. But notwithstanding her wishes for confidentiality, her allegations became public. I fear that the leaks of confidential information will discourage whistleblowers and victims from coming forward in the future.

This is but the latest—and most serious—of your side's abuse of this confirmation process. There has been delay and obstruction of this process at every turn and with every argument available. Therefore, I will view any additional complaints about the process very skeptically.

Sincerely,



Chuck Grassley
Chairman