

Character Assassination on Judge Brett Kavanaugh in his 2018 Supreme Court Confirmation Hearing

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On July 9, 2018, President Donald Trump nominated Judge Brett Kavanaugh to fill a vacant seat on the Supreme Court. Republicans were naturally excited at the possibility of a conservative majority on the court; not surprisingly Democrats were opposed. Kavanaugh's nomination provoked a storm of controversy largely focused on accusations of sexual assault from Christine Blasey Ford. The hearing, held on September 27th, featured testimony by Ford and pointed comments by Senate Democrats. The Senate voted to confirm Kavanaugh 50-48 as the 114th Supreme Court justice on October 6, 2018. This essay applies the Theory of Persuasive Attack to criticisms leveled against Kavanaugh during the Senate confirmation hearing. These criticisms argued that Kavanaugh was responsible for the act, enhanced perceptions of the offensiveness of the act, and indicated that Kavanaugh possessed an unfavorable character.

Keywords

Brett Kavanaugh nomination, character assassination, offensiveness, persuasive attack, responsibility, sexual assault, Supreme Court

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Introduction

Between July 9th and October 6th 2018, the nation's attention was firmly fixed on the nomination of Judge Brett Kavanaugh for the U. S. Supreme Court. This event captivated viewers as "More than 20 million people watched Thursday's gripping testimony by Supreme Court nominee Brett Kavanaugh and the woman who accused him of a sexual assault that allegedly occurred in the 1980s, Christine Blasey Ford, on six television networks" (CBS/AP, 2018). Attention to this fierce nomination struggle shouldered aside other news (a Google search for "Brett Kavanaugh Supreme Court" yielded over 43 million hits). Journalists compared the fervor surrounding the case to other historical events that transfixed the public. For example, Healy and Stockman (2018) wrote: Some viewers "felt they had to bear witness to history unfolding. They compared it to watching the Challenger space shuttle explode or the O. J. Simpson police chase. Only now it was a battle for control of the Supreme court tangled with questions about justice, gender, equality and how America's political system treats claims of sexual assault against members of its ruling class." Millions of Americans were exposed to the rhetoric surrounding this controversial nomination.

Any confirmation of a justice of the U. S. Supreme Court is a momentous event. First, in America's tripartite form of government, the judiciary is an important branch of government. The Supreme Court has original jurisdiction in disputes among the American states. It can resolve cases involving treaties with other countries. The Supreme Court also has appellate jurisdiction on cases involving the constitution of the United States and federal law. *Marbury v. Madison* ("Marbury v Madison," 1803; see Benoit & D'Agostine, 1994) established the Supreme Court's power of judicial review, deciding whether a legislative or executive act is Constitutional. Because of its broad constitutional power, there can be no doubt of the importance of the Supreme Court in the United States. In 2019 (after Kavanaugh was confirmed), the significance of the Supreme Court came into sharp focus as Democrats in the House of Representatives issued several subpoenas which the Trump administration ignored; only the third branch of government could resolve this conflict (Associated Press, 2019).

Furthermore, the average length of time served by Supreme Court justices averages almost 17 years (List of United States Supreme Justices, 2018), giving individual justices the opportunity to vote on cases before the court for over twice as long as any president can constitutionally serve (two four-year terms), over eight times the term of a member of Congress (two years), and over twice as long as a Senate term (six years). Nine Supreme

Court justices serve as a check on the president and on the 435 members of the House and 100 members of the Senate. There was palpable fear among Democrats during the hearings that this vacancy provided Republicans an opportunity to reverse previous Supreme Court decisions such as *Roe V. Wade*. Hillary Clinton tweeted her followers: “If Brett Kavanaugh becomes a supreme court justice, will he help gut or overturn *Roe V Wade*, which legalized abortion in America? Yes, of course he will” (Siddiqui, 2018a). Statements like this are designed to mobilize the base and to steer public opinion against Kavanaugh’s nomination.

Attack discourse itself serves a valuable function in communication. Icks and Shiraev (2014) argue that “in every corner of history, we find people of all ranks, occupations, and persuasions attempting to damage or destroy the reputations of their opponents in order to win political battles, discredit unwelcome news, or settle personal scores” (p. 3). Apart from the overall pervasiveness of persuasive attack in all walks of life, Benoit (2017) argued that studying attack can help people better understand when attacks are unreasonable or unfounded as well as to expose people and organizations involved in wrongdoing. Attacks also function to help voters make informed decisions, to help consumers make decisions on purchases, and to satisfy a human need for this form of expression. Even the threat of attack can impel an individual or organization to make changes, which attests to their overall power. Attacks against Judge Kavanaugh also served a functional purpose as they attempted to prevent his confirmation to the Supreme Court and the potential for decades of conservative policy influence at the highest level. This essay investigates the Kavanaugh nomination as an important illustration of persuasive attack. We first describe the literature on the Theory of Persuasive Attack, which is the method employed to analyze criticisms of Kavanaugh. Then the attacks on Kavanaugh from Ford and Senate Democrats will be explicated and assessed for their overall effectiveness. Finally, implications of this analysis will be discussed.

Persuasive Attack

Persuasive attack is also known as character assassination. Although the theoretical origins of attack discourse go back several decades (see, e.g., Castor, 2015; Davis, 1950; Samoilenko, 2016), this section will, due to space constraints, only provide a summary of specific case study analyses investigating persuasive attacks and conclude with the most recent literature examining attacks on character.

Case Studies on Persuasive Attack

In addition to the more theoretical discussions of persuasive attack, communication scholars have also explored this important topic by examining specific cases of attack discourse.

The Theory of Persuasive Attack, initially articulated by Benoit and Dorries (1996), was designed to add structure to the literature in this area. The weekly television news magazine *Dateline NBC* aired a report on Wal-Mart's "Buy American" sales promotion on the December 22, 1992. The general accusation against Wal-Mart was that its "Buy American" campaign was deceptive. The organization was accused specifically of putting "Made in the USA" signs on foreign goods, of buying from foreign factories that exploit children, of changing suppliers of goods (such as sweaters) from U. S. to foreign manufacturers, and of selling inexpensive goods smuggled from China in abuse of import quotas. Walmart faced accusations of deceiving the public, selling goods made by exploited workers, and shifting orders from plants that provide jobs for Americans to foreign manufacturers. Wal-Mart's responsibility was heightened when *Dateline NBC* used the strategy that it was aware of the harmful effects of its business practices. The perceived offensiveness of its actions was increased by using four of the strategies: depicting the extent of the damage, indicating effects on the audience, portraying victims as innocent and/or helpless, and alleging that Wal-Mart's actions were hypocritical or inconsistent. These strategies for persuasive attack on actions can be found in Table 1.

Increasing Perceived Responsibility for the Act
Accused committed the act before
Accused planned the act
Accused knew likely consequences of the act
Accused benefitted from the act
Increasing Negative Perceptions of the Act
Extent of damage
Persistence of negative effects
Effects on the audience
Inconsistency

Victims are innocent/helpless Obligation to protect victims Victims are dignified/honorable/noble*
Source: Benoit & Dorries (1996); *Legge, et al. (2012)

Table 1 Strategies for Persuasive Attack on Actions

The Campaign for Tobacco-Free Kids, a group that includes 130 different organizations, disseminated newspaper ads attacking the tobacco industry for its efforts to addict children to deadly products. Benoit and Harthcock (1999) analyzed forty of these persuasive attacks. The ads were aimed at three different groups: the general public, elected officials, and voters. The analysis identified six strategies for levying a persuasive attack: victims are vulnerable, extent of harms to victims, inconsistency, malicious intent (deliberately selling to children), profiting from the harms created, and knowledge of dangers in the products they market to children. Legge, DiSanza, Gribas, and Shiffler (2012) extended the typology of Persuasive Attack, adding the tactics of arguing that the victims were dignified, honorable, or noble; pejorative labeling, and identifying the target with an offensive value or ideology. They examined the attacks on Rush Limbaugh after he attacked Sandra Fluke and concluded that more criticism focused on the offensiveness of his statements rather than on his responsibility for his remarks. DiSanza and Legge (2016) applied this framework to Keith Olbermann's attacks on the NFL and the Atlantic County DA's office over the Ray Rice incident. A video tape had surfaced showing him punching his girlfriend, Janay Palmer, in a hotel elevator. The analysis focused on extending the typology to include Aristotle's categories of ethos. Two studies examined the frequency of the persuasive attacks in presidential nomination acceptance addresses from 1960-1996. The first reported that extensiveness was the most frequently used of the five strategies (71%), followed by effects on the audience (14%); inconsistency (6%), persistence of effects (5%), and vulnerability of victims (4%) occurred less frequently. The authors also noted that these strategies all concerned offensiveness and none attempted to elevate the responsibility of the accused. Benoit, Blaney, and Pier (1998) also looked at the frequency of these five strategies in presidential campaign messages from the 1996 campaign. They found the most prominent strategy was extensiveness (60%), following by effects on the audience (16%), vulnerability of the victims (10%), inconsistency (8%),

and persistence (5%). Both studies concluded that extensiveness and effects on the audience were the most employed strategies.

Benoit et al. (2001) used Bormann's Fantasy Theme approach to understand political cartoons released during the Bill Clinton/Monica Lewinsky scandal. They uncovered a complex rhetorical vision: "Our public figures are engaged in a Tawdry burlesque drama" (p. 365). These cartoons ridiculed previously respected figures, such as Bill Clinton, Kenneth Starr, the U. S. Congress, the Democratic and Republican parties, Monica Lewinsky, Hillary Clinton, and Linda Tripp. They determined that these cartoons were "important symbolic (and visual) messages in public affairs" (p. 391). Benoit and Stein (2009) also examined persuasive attack in cartoons, but focused their attention on the Catholic sexual abuse scandal, which hit its peak in the early 2000s. They classified three recurrent themes in the cartoons they analyzed: the horrific abuse, the cover-up perpetrated by the Catholic Church, and the Church's ineffectual attempts to deal with the problem. The essay also argued that the cartoons intensified the attacks by emphasizing that the victims were innocent and helpless and that priests (and the Catholic Church) had a special obligation to protect these victims. Bostdorff (1987) used a Burkean approach in analyzing political cartoons blasting Secretary of the Interior James Watt for his controversial environmental policies as well as the linchpin that brought about his resignation, a comment wherein he referred to an advisory panel as "a black, a woman, two Jews, and a cripple" (p. 43). She focused on two key concepts: perspective by incongruity and the burlesque attitude. She also examined metaphor, irony, synecdoche, and metonymy in these cartoons.

Benoit and Delbert (2010) conducted a textual analysis of 47 television advertisements from a 2006 Apple computer campaign called "Get a Mac." They found seven persistent themes: PCs are more susceptible to viruses, they are vulnerable to spyware, it is difficult to upgrade PCs, it is difficult to upgrade to the Vista operating system, Vista has several weaknesses, the PCs and their operating system are produced by different sources, and PCs are not well-designed for children. The ads were often humorous and illustrated the strengths of Mac and the weakness of PCs through the behavior of two actors (one representing each type of computer). The authors argued that the campaign was effective, and provided external evidence to support the assessment in the form of awards for the ads and increases in Macintosh sales. Kelley-Romano and Westgate (2007) analyzed political cartoons blaming President Bush for his mishandling of the Hurricane Katrina crisis in 2005. They identified two major themes in these cartoons. First, Bush's decisions were ineffectual. Second, he lacked the intelligence and

integrity to deal effectively with this crisis. Delbert and Benoit (2014) explored the use of persuasive attack in music using two case studies: “Fighting Trousers” and “The Very Model of a Mad Attorney General.” “Fighting Trousers” is a 2010 song and a music video by “Professor Elemental” which disparaged a rival artist, “Mr. B.” In the same year, the *Richmond Times Dispatch* released a song attacking Virginia’s Attorney General Ken Cuccinelli in a parody of the Gilbert and Sullivan song “I Am the Very Model of a Modern Major General,” a song featured in the comic opera *Pirates of Penzance*. The song mocks Cuccinelli’s positions on the environment, his attempts to sue the federal government on health care, and the LGBT+ community, and his personal character. The essay argued that these persuasive attacks used the burlesque frame for criticism: reducing a situation to absurdity and mocking inconsistency in the targets’ behaviors. Compton (2019) investigates the intersection of politics and humor through an analysis of persuasive attack against Stephen Colbert following his testimony before the House Judiciary Committee on farm labor issues. Colbert heightened the visibility of migrant workers while he elicited partisan reactions (Democrats reacting more favorably than Republicans).

Other studies also provide insight into the how persuasive attacks function rhetorically. These include Seeger and Sellnow (2016), who wrote about narratives of blame and responses to blame utilizing Burke’s (1984) concepts of victimage, mortification, and transcendence. They also discuss macro-level blame narratives which transcend specific cases and end by pointing to two specific instances of blame narratives: Union Carbide’s Bhopal gas leak of 1984 (Benoit, 1995) and salmonella contamination of Conagra’s chicken pot pies in 2007. Benoit and Wells (1996) extended the earlier conceptualizations of attack offered by Pfau and Kensi (1990) and Jamieson (1993) by examining how three presidential candidates—George H. W. Bush, Bill Clinton, and Ross Perot—employed elements of persuasive attack (as well as acclaiming and defending) during the three debates in the 1992 election cycle. Taylor and Barton (2011) examined Twitter attacks by Justin Bieber fans toward rival music artist Esperanza Spalding after Spalding won the award for Best New Artist at the 2011 Grammys. The authors argued that the normal period of time for diffusion of information via traditional media channels was shortened dramatically as fans moved past the informative stage very quickly and engaged in a vitriolic onslaught toward Bieber. Clearly, the rhetorical literature is rich in studies on persuasive attack.

Persuasive Attack on Character

Benoit and Dorries' (1996) typology of strategies for persuasive attack provided the most useful framework for analyzing attacking messages until more recent studies have sought to extend the theory of persuasive attack to include attacks on character. Icks and Shiraev (2014) edited a volume of essays examining character assassination. The chapters focus on character assassination in ancient Rome, middle ages, early modern, and modern. The authors identified three primary elements that comprise the discourse of character assassination. They assert that for a message to be classified as character assassination it must be intentional, public, and not necessarily legitimate (the notion of "veracity") (p. 6). Shiraev (2014) provided six methods for achieving character assassination: anonymous lies, misquoting, deleting information about the target, vandalism (e.g., defacing photographs or paintings), name-calling, and accusations of deviance. As noted above, persuasive attacks can be justified or unjustified.

Benoit's (2007) Functional Theory of Political Campaign Discourse includes attack as an important part of the framework. This theory explains that political election messages contain three functions: acclaims (positive statements about the candidate), attacks (criticisms of opponents), and defenses (responses to, or refutations of, attacks). The nature of acclaims and defenses are outside the scope of this essay; however, attacks can occur on two topics: character (personal qualities, leadership experience, and ideals) and policy (past actions and future proposals for governmental action).

Whereas Benoit and Dorries (1996) focused exclusively on the former, policy or actions by the accused, Benoit (2017) extends the theory of persuasive attack to include character as well as actions. His new typology of attack includes the original strategies as well as new strategies focused on character attacks. These contain arguments enhancing the perception that the accused person possesses a certain trait and that this trait is particularly offensive. The specific sub-strategies within these two primary tactics are articulated in the methods section of this essay. Stein, Barton, and Paul (2017) used Benoit's new character framework in their analysis of the hostile Tweets directed toward former University of Missouri Professor, Melissa Click, after she attempted to bar student journalists from covering a race-related protest on campus. The authors concluded that Twitter provides a unique medium that is especially conducive to personal attacks. Cheng (2017) examined pre-fight personal attacks exchanged between Mixed Martial Arts fighters Conor McGregor and Nate Diaz as well as personal attacks levied by 2016 Republican presidential candidate Donald Trump. She argued that persuasive attack

typically accompanies praising or defensive discourse, that attack must appeal to the shared values of the audience to be effective, and that attacks including pejorative labeling, evidence, and belittling. These conclusions are consistent with previous literature on attack, particularly Benoit's (2017) extended typology of attack, Benoit's (2007) Functional Theory, and Ryan's (1982) discussion of attack and defense discourse as a "speech set."

It is also important to recognize that these two topics of character and behavior are inexorably intertwined. We infer character from behavior and we can predict behavior based on character. Clearly, there is a growing body of literature on character attacks that needs further exploration. Therefore, we pose the following research questions to guide our analysis: 1) What attack strategies were used by Christine Blasey Ford and Senate Democrats to increase the responsibility and offensiveness of Judge Brett Kavanaugh's alleged sexual assaults?; 2) What attack strategies were used by Ford and Senate Democrats to enhance negative perceptions of Kavanaugh's character?; 3) Were these strategies for attacking Kavanaugh's actions and character effective?

Theory of Persuasive Attack

In order to answer these questions, we use Benoit's (2017) expanded typology of attack in order to understand the rhetoric attacking Kavanaugh's actions and character. In the initial typology, Benoit and Dorries (1996) argued that there are four rhetorical strategies for increasing perceived responsibility for a harmful act: 1) argue that the accused committed the crime before; 2) argue that the accused planned the act; 3) claim that the accused knew the likely consequences of the act; and 4) show that the accused benefited from the act. The authors also argued that there are six strategies for increasing the offensiveness of a particular act: 1) emphasize the extent of the damage; 2) illustrate the persistence of negative effects; 3) show the effects on the audience; 4) argue that there is an inconsistency on the part of the offender; 5) claim the victims are innocent or helpless; and 6) show an obligation to protect the victims. Legg, Disanza, Gribas, and Shiffler (2012) would later add a seven category: 7) Victims are dignified, honorable, or noble.

The expanded typology adds strategies for persuasive attack on character. It provides four strategies for enhancing perceptions that the target possesses a trait: 1) accused has performed acts consistent with the trait; 2) accused has made statements consistent with the trait; 3) accused associates with people who share the trait; and 4) accused is contrasted with people who do not share this trait. The typology also lists two

strategies for enhancing perceptions that the trait is offensive: 1) exemplify the trait with a particularly offensive example; and 2) observe that the audience or people they care about can experience the negative effects of this trait. Table 2 offers a list of potential strategies for persuasive attack on character. Further illustration of these strategies will take place in the analysis as we review the attacks in this unique case.

Enhancing Perceptions that the Target Possesses a Trait
Accused as performed acts consistent with the trait
Accused has made statements consistent with the trait
Accused associates with people who share the trait
Accused is contrasted from people who do not share this trait
Enhancing Perceptions that the Trait is Offensive
Exemplify the trait with a particularly offensive example
Observe that the audience or people they care about can experience the negative effects of this trait
Source: Benoit (2017)

Table 2 Strategies for Persuasive Attack on Character

The primary text used for this analysis is a full transcript of day five in the Kavanaugh hearings released by Bloomberg Government and published in the *Washington Post* on September 27, 2018 (“Kavanaugh hearing,” 2018). This portion of the transcript is most relevant for our analysis because it includes Ford’s testimony against Kavanaugh as well as Kavanaugh’s defensive testimony. Although the focus of our analysis is not on Kavanaugh’s persuasive defense, his testimony is interspersed with attacks from Senate Democrats as they ask pointed questions and engage in commentary about the accusations.

Attacks on Judge Brett Kavanaugh

A variety of possible grounds were available for Democrats to oppose Kavanaugh’s nomination, including his positions on abortion, climate change, affirmative action, criminal punishment, digital privacy rights, the Affordable Care Act (“Obamacare”), and investigations of President Trump (Anne, 2018). Kavanaugh had served in the George W.

Bush White House and questions arose about his work there: However, “most of the millions of documents relating to his White House service will not be available for review before” his hearing (*Washington Post*, 2018). The confirmation hearing ended up focused on accusations of sexual assault against Kavanaugh. Other women made accusations against Kavanaugh, but Christine Blasey Ford was the only one to testify at the hearings.

Increasing Perceived Responsibility for the Act

Many statements from Ford and Senate Democrats functioned to increase Kavanaugh’s responsibility for the act. Some of these comments established Kavanaugh’s role in the assault without utilizing any of Benoit’s sub-strategies for increasing perceived responsibility. For example, Ford argued in her testimony:

I was pushed onto the bed, and Brett got on top of me. He began running his hands over my body and grinding into me. I yelled, hoping that someone downstairs might hear me, and I tried to get away from him, but his weight was heavy. Brett groped me and tried to take off my clothes. He had a hard time, because he was very inebriated, and because I was wearing a one-piece bathing suit underneath my clothing. I believed he was going to rape me. (p. 6)

Later in her testimony, Ford stated: “I thought it was my civic duty to relay information I had about Mr. Kavanaugh’s conduct so that those considering his nomination would know about this assault” (p. 7). When asked by Senator Dianne Feinstein how she could be so sure it was Kavanaugh who assaulted her, she responded, “The same way that I’m sure that I’m talking to you right now. It’s—just basic memory functions” (p. 11). These statements from Ford all function to establish Kavanaugh as a key figure in the sexual assault. Senate Democrats also sought to emphasize this level of responsibility. Hawaii Senator Mazie Hirono argued: “They [Republicans] want to distract us from what happened here this morning. And what happened here this morning was that we heard from Dr. Christine Ford, who spoke to us, with quiet, raw, emotional power, about what happened to her. She said she was 100 percent certain that it was you [Kavanaugh] who attacked her” (p. 63). Ford and Democratic Senators seek to eliminate any doubt from the audience’s mind that it was, in fact, Brett Kavanaugh who had assaulted Ford. Other statements more specifically utilized Benoit’s strategies for increasing perceived responsibility. These strategies included arguing that the accused had committed the act before, the accused planned the act, and the accused benefitted from the act.

Accused committed the act before. One strategy for increasing Kavanaugh's perceived responsibility for the sexual assault was to argue that Ford was not the only woman he assaulted. For example, Senator Feinstein said: Julie Swetnick "recounted seeing Kavanaugh engage, and I quote, 'in abusive and physically aggressive behavior toward girls,' end quote, including attempts to, quote, 'remove or shift girls' clothing,' end quote. Not taking, quote, 'no for an answer,' grabbing girls, quote "without their consent,' end quote, and targeting, quote, 'particular girls so that they could be taken advantage of,' end quote" (pp. 4-5). Feinstein also made reference to another accuser: "This past Sunday, we've learned about Debbie Ramirez, who was a student at Yale with Brett Kavanaugh. She, too, did not want to come forward, but after being approached by reporters, she told her story. She was at a college party where Kavanaugh exposed himself to her" (p. 4). The statements from Feinstein function to elevate the attack on Kavanaugh by showing his sexually assaultive behavior was not an isolated incident. By establishing a pattern of behavior, she demonstrates to the salient audiences that Ford is not falsely accusing Kavanaugh since other women corroborate her story with similar incidents.

Accused planned the act. Another strategy used to increase Kavanaugh's responsibility for the assault was to demonstrate that he had planned his attack. Ford recounted details of the assault that pointed to some premeditation: "Early in the evening, I went up a very narrow set of stairs leading from the living room to the second floor to use the restroom. When I got to the top of the stairs, I was pushed from behind into a bedroom across from the bathroom. I couldn't see who pushed me. Brett and Mark came into the bedroom and locked the door behind them. There was music playing in the bedroom. It was turned up louder by either Brett or Mark once we were in the room" (p. 6). In other parts of her testimony, Ford claimed that the event wasn't really a party, but more of a "pre-gathering" and that the main living room where people were congregating was "not loud." The implication here is that Kavanaugh and Judge were aware that any sounds from the attack might be heard downstairs and wanted to drown out the assault with music in the bedroom. Feinstein's earlier comment asserting that Kavanaugh had also committed a sexual assault on Julie Swetnick also sought to establish that he planned the attack on Ford by claiming he had targeted "particular girls so that they could be taken advantage of" (p. 5).

The accused benefitted from the act. The last strategy used to increase Kavanaugh's responsibility for the act was to argue that he gained something from the assault. In this case, Ford emphasized very heavily in her testimony the joy that Kavanaugh and Judge experienced from attacking her. At one point, she argued: "Both

Brett and Mark were drunkenly laughing during the attack. They seemed to be having a very good time” (p. 6). Ford also described her escape: “I was able to get up and run out of the room. Directly across the bedroom was a small bathroom. I ran inside the bathroom and locked the door. I waited until I heard Brett and Mark leave the bedroom, laughing and loudly walking down the narrow stairway, pinballing off the walls on the way down” (p. 6). Both of these quotes function to demonstrate a lack of remorse from Kavanaugh and a certain level of self-satisfaction in getting what he wanted from Ford. Senator Patrick Leahy followed up this testimony by asking Ford what her strongest memory was of the incident. She replied: “Indelible in the hippocampus is the laughter, the laugh—the uproarious laughter between the two, and their having fun at my expense” (pp. 12-13). This strategy of portraying Kavanaugh as not just a sexual predator, but also of one who takes great pleasure in committing heinous acts elevates his level of responsibility and increases the likelihood that audiences will view him negatively.

Increasing Negative Perceptions of the Act

In addition to establishing an accused individual’s responsibility for a given act, an attack also needs to show that the act itself is offensive. Christine Blasey Ford and Senate Democrats established this offensiveness by emphasizing the extent of the damage and the persistence of negative effects.

Extent of damage. Most of Ford’s testimony describes in great detail the trauma of being physically assaulted. These have been illustrated in previous sections where she points to Kavanaugh as her primary attacker, his premeditation in planning the act, and his satisfaction with his assault. However, she also emphasized other negative outcomes from the attack. In answering a question from Senator Feinstein about how the assault has impacted her life, she said: “The primary impact was in the initial four years after the event. I struggled academically. I struggled very much in Chapel Hill and in college. When I was 17 and went off to college, I had a very hard time, more so than others, forming new friendships and especially friendships with boys, and I had academic problems” (p. 10). She responded to a similar line of questioning from Senator Chris Coons by saying, “It’s impacted me at different stages of the development of my life” and after her academic struggles she was “finally able to pull myself together” (p. 23). Ford also recounts the extent of damage to her family life as a result of her choosing to tell her story. For example, she said: “Once the press started reporting on the existence of the letter I had sent to Senator Feinstein, I faced mounting pressure. Reporters appeared at my home and at my

workplace, demanding information about the letter in the presence of my graduate students. They called my bosses and co-workers, and left me many messages, making it clear that my name would inevitably be released to the media” (p. 8). Ford also claimed her decision to testify created numerous problems for her other and children: “My family and I were forced to move out of our home. Since September 16th, my family and I have been visiting in various secure locales, at times separated and at times together, with the help of security guards” (p. 6). She also claimed that the assault caused interpersonal conflict in her marriage. For example, she and her husband argued over a remodel of their home that would add a second front entry door: “Brett’s assault on me drastically altered my life...I had never told the details to anyone—the specific details—until May 2012, during a couples counseling session. The reason this came up in counseling is that my husband and I had completed a very extensive, very long remodel of our home and I insisted on a second front door, an idea that he and others disagreed with and could not understand” (p. 7). Statements like these elevate the offensiveness of Kavanaugh’s attack by demonstrating the extent of the damage to not only herself, but to those closest to her.

Persistence of negative effects. Ford also increased negative perceptions of the assault by testifying about the very long-term effects. For example, Ford says, “I understand and appreciate the importance of your hearing from me directly about what happened to me and the impact that it has had on my life and on my family” (p. 5). She also says of the assault: “They [details of attack] have been seared into my memory, and have haunted me episodically as an adult” (p. 6). The focus of these statements is on the fact that memories of the attack have stayed with Ford for her entire life and cause her continual trauma. One such detail that she claimed has persisted is her feeling that she nearly escaped death: “This [covering her mouth with his hands] is what terrified me the most, and has had the most lasting impact on my life. It was hard for me to breathe, and I thought that Brett was accidentally going to kill me” (p. 6). This trauma, according to Ford, manifested itself in a variety of psychological conditions. She argued, “Well, I think that the sequelae of sexual assault varies by person, so for me personally, anxiety, phobia, and PTSD-like symptoms are the types of things that I’ve been coping with. So, more specifically, claustrophobia, panic and that type of thing” (p. 10). In addition to persistent effects of the sexual assault itself, Ford recounts how coming forward has added another level of pain to her life. For example, she described the intense vitriol directed toward her:

My family and I have been the target of constant harassment and death threats, and I have been called the most vile and hateful names imaginable.

These messages, while far fewer than the expressions of support, have been terrifying and have rocked me to my core...This past Tuesday evening, my work email was hacked and messages were sent out trying to recant my description of the sexual assault. Apart from the assault itself, these past couple of weeks have been the hardest of my life. I've had to relive this trauma in front of the world. And I've seen my life picked apart by people on television, on Twitter, other social media, other media and this body, who have never met me or spoken to me. (p. 8)

Overall, Ford's testimony establishes the long-term effects of the Kavanaugh assault and elevates the offensiveness of his behavior by showing a singular act can ruin someone's life.

Enhancing Perceptions that the Target Possesses a Trait

Many statements from Ford and Senate Democrats functioned to increase perceptions that Kavanaugh possesses negative character traits. Some of these established his negative character attributes without utilizing any of Benoit's sub-strategies for enhancing perceptions that the target possesses a trait. For example, Ford argued: "During August 2018, the press reported that Mr. Kavanaugh's confirmation was virtually certain. Persons painted him as a champion of women's rights and empowerment. And I believed that if I came forward, my single voice would be drowned out by a chorus of powerful supporters" (p. 8). Although not stated explicitly, the not-so-subtle implication here is that the portrayal of Kavanaugh as a "champion of women's rights and empowerment" is not accurate since sexual assault disempowers women. Senator Mazie Hirono also challenged Kavanaugh's character in her question of Ford: "We all admire you for what you're doing, and I understand why you have come forward. You wanted us and the American people to know what you knew about the character, the character of a man we are considering for a lifetime appointment to the Supreme Court" (p. 28). Again, the statement is not explicit, but implies that Kavanaugh possesses character traits that would be inconsistent with someone being considered for a lifetime appointment to the Supreme Court. Other statements more specifically utilized Benoit's strategies for enhancing perceptions that the target possesses a trait. These strategies included arguing that the accused has performed acts consistent with the trait, the accused has made statements consistent with the trait, and the accused is contrasted from people who do not share the trait. There were no examples in the transcript of Ford or Senate Democrats using Benoit's strategies for enhancing perceptions that the trait is offensive.

Accused has performed acts consistent with the trait. With this strategy, Senate Democrats sought to establish that Kavanaugh's assault was consistent with a negative character that was unworthy of ascension to the Supreme Court. In fact, it could be argued that the entire confirmation hearings surrounded this one issue of whether his behavior disqualified him on a character level for this role. However, when the argument was not explicitly made, we classified these instances of increasing perceived responsibility or increasing perceived offensiveness of the act. In a few instances during the hearing, the argument is made that Kavanaugh's behavior should affect audiences' perceptions of his character. For example, Senator Hirono made the following remark: "By coming forward, you [Ford] have inserted the question of character into this nomination, and hopefully, back into American life, and rightly so. We should be made to face the question of who it is we are putting in positions of power and decision-making in this country. We should look the question square in the face: does character matter? Do our values, our real values about what is right and what is wrong, and about whether we treat our fellow human beings with dignity and respect, do they matter anymore?" (p. 28). Here, Senator Hirono clearly connects Kavanaugh's behavior (the notion of not treating people with dignity and respect) with character (his implied lack of values about what is right and wrong).

Accused has made statements consistent with the trait. This strategy, which was only employed by Senate Democrats and not Ford herself, argued that Brett Kavanaugh was a much heavier drinker than he claimed to be. For example, Senator Coons stated: "Liz Swisher is a college classmate. She's now a medical doctor. And I'm quoting from a recent interview she gave. She said, 'Brett Kavanaugh drank more than a lot of people. He'd end up slurring his words, stumbling. It's not credible for him to say he's had no memory lapses in the nights he drank to excess. I know because I drank with him'" (p. 58). Similarly, Senator Hirono said: "So I'd like to read your statements from people who knew you in college. And as Senator Coons noted James Roche said, your roommate, 'Although Brett was normally reserved, he was a notably heavy drinker, even by the standards of the time. And he became aggressive and belligerent when he was drunk'" (p. 64). The essence of these arguments is that Brett Kavanaugh's statements that he drank, but was never so inebriated that he could not remember events that transpired at the party where Ford was attacked, were lies and that those lies were consistent with a prominent trait (i.e., being a liar). In addition to Kavanaugh's statements about his drinking, he was also attacked for perceived inconsistencies in his willingness to cooperate with the investigation. For example, Senator Dick Durbin pointed out that

Kavanaugh's statements reflected his evasiveness toward a full FBI investigation of the charges:

Kavanaugh: I'm innocent. I'm innocent of this charge.

Durbin: Then you're prepared for an FBI investigator...

Kavanaugh: They don't reach conclusions. You reach the conclusion, Senator.

Durbin: No, but they do investigate questions.

Kavanaugh: I'm—I'm innocent.

Durbin: And you can't have it both ways, Judge. You can't say here at the beginning...I welcome any kind of investigation, and then walk away from this. (p. 49)

Durbin makes the argument in this exchange that Brett Kavanaugh talks out of both sides of his mouth and that the statements calling for and then avoiding an investigation into the charges reflects that trait.

Accused is contrasted from people who do not share the trait. During the hearing, Kavanaugh's character is contrasted with others. First, Ford sought to establish that most people at the party did not behave the way Kavanaugh and Judge did: "Mr. Kavanaugh and Mr. Judge were extremely inebriated, they had clearly been drinking prior. And the other people at the party were not." Independent prosecutor Rachel Mitchell then interrupted to ask if they had been drinking prior to Ford's arrival or prior to the party and Ford responds: "Prior to the time that they arrived" (p. 12). Ford paints a picture of a party that had not really started yet since it was earlier in the day and, unlike every other person at the party, Kavanaugh and Judge were already drunk. Senator Kamala Harris contrasted Brett Kavanaugh's character with Christine Blasey Ford when she argued that Kavanaugh was not willing to submit to a polygraph test or call for an FBI investigation: "You [Ford] have passed a polygraph—polygraph and submitted the results to this committee. Judge Kavanaugh has not. You have called for outside witnesses to testify and for expert witnesses to testify. Judge Kavanaugh has not. But most importantly you have called for an independent FBI investigation into the facts. Judge Kavanaugh has not" (p. 33). These statements all function to denigrate Kavanaugh's character by juxtaposing him with descriptions of people who have a more positive character.

Evaluation and Implications

This analysis shows that the attacks on Judge Kavanaugh employed a number of strategies identified by the Theory of Persuasive Attack. These messages argued that Kavanaugh was responsible for the offensive act (sexual assault), enhanced perceptions that the act was offensive, and strengthened perceptions that he possessed several offensive traits. The strategies for increasing responsibility were appropriate in light of the circumstances. Ford needed to establish that it was, in fact, Brett Kavanaugh who had assaulted her and that it was not possible for her to be mistaken about his role. In her testimony, she described in visceral detail Kavanaugh's efforts to grope her and remove her clothing as part of an attempted rape. She assured Senate Democrats under questioning that she was "100% certain" it was Kavanaugh who had attacked her and stressed the points that Kavanaugh knew what he was doing (locking the door and turning the music up loud) and that he enjoyed himself immensely (evidenced by his laughter). Though the varying audiences evaluating her testimony were likely to perceive the effectiveness of these strategies differently, there is no question that the discourse effectively constructed an argument that Kavanaugh was the responsible party. In establishing the offensiveness of the act, Ford provided detailed testimony about her emotional trauma during the attack, immediately after the attack, and in the decades since. She also described the reach of those effects, as the assault created fallout not only for herself but her husband and children as well. In establishing responsibility and offensiveness, Ford's testimony meets the two fundamental characteristics of a persuasive attack by attempting to convince her audience that an offensive act had occurred and attempting to show that the accused is wholly or partially responsible for the act (Benoit & Dorries, 1996). Whether audiences accepted these arguments is an important consideration, but separate from whether the arguments were well-conceived and executed.

Additionally, the application of new categories within Benoit's Theory of Persuasive Attack yielded some interesting insights into the extent to which actions and character are intertwined. First, although action and character are conceptually very different, it is likely that audiences watching the confirmation hearing did not make these distinctions as they observed the proceedings. When people hear arguments about a misdeed, they may naturally draw conclusions about the character of the person who perpetrated the act. Conversely, if someone is demonstrated to have poor character, people might assume this comes with a greater propensity for reprehensible behavior.

These types of unstated conclusions were initially described in Aristotle's *Rhetoric*, wherein he discusses a "rhetorical" type of syllogism or what Walton (2001) calls a "nonexplicit assumption" contained within a syllogism (p. 93). Although these types of implied premises or conclusions can be problematic because different audiences supply different conclusions based on their own unique worldviews, Walton (2001) suggested that "plausibility" of the explicit assumptions are more likely to lead audiences to certain conclusions. We would argue that although audiences may have supplied a different conclusion than the one Ford and Senate Democrats wanted them to reach (e.g. that Kavanaugh committed this offense and likely did so because of negative character traits), her strategy in arguing responsibility, offensiveness, and poor character traits all functioned together to increase the likelihood of negative attributions toward Kavanaugh's actions and character.

Although we argue that Ford's strategies were both internally consistent and plausible, there is external evidence to suggest different audiences reacted differently to her testimony. One example is the simple fact that on October 6, 2018 the Senate voted to confirm Judge Kavanaugh as a Supreme Court Justice, with the vote falling along party lines; Joe Manchin, Senator from deeply red West Virginia, was the only Senator to cross party lines. The unwillingness of Senate Republicans to vote against Kavanaugh's confirmation in light of Ford's testimony could mean that they were not persuaded by the discursive attacks or they found her testimony compelling and believable, yet the alleged offensive act was not viewed as serious enough to break from party lines. Either way, the persuasive attack was insufficient to derail Kavanaugh's confirmation. Ford herself was leery of such a result from the very beginning as she expressed in her testimony:

And I was in a hurry to try to get the information forward but didn't quite know how to do that. However, once he was selected and it seemed like he was popular and it was a sure vote, I was calculating daily the risk/benefit for me of coming forward, and wondering whether I would just be jumping in front of a train that was headed to where it was headed anyway and I would just be personally annihilated. (2019)

Because the outcome of the hearing may have been a certainty regardless of the persuasiveness of the attack, it is difficult to judge what impact the discourse had on individual senators. The only evidence of the effectiveness of the attack on Senate Republicans is the confirmation vote itself. With voters, though, we can gather some evidence from public opinion polls immediately following Kavanaugh's confirmation as

well as the results of the 2018 midterm elections. In a *Politico* poll taken four days after the confirmation, 46% of voters said the Senate “made the wrong decision,” while 40% said it was “right to elevate him to the high court.” Specifically, 78% of Democrats felt it was the wrong decision, while 73% of Republicans felt it was the right decision (Shepard, 2018). Again, sentiment toward Kavanaugh was split among members of the two major parties. The poll also showed independents and women largely dissatisfied with the results of the confirmation hearing with 55% of independents saying there should be further investigation (40% opposed) and 58% of women disapproving of the confirmation (40% of men disapproving). Overall, these data largely indicate that staunch Democrats and Republicans were fairly dug in from the start and that women and independents generally had a much higher propensity to oppose Kavanaugh’s confirmation.

Additionally, the 2018 midterm elections experienced a “blue wave,” which could indicate that the persuasive attack influenced voters, if not senators. Democratic candidates won the overall popular vote by a larger margin than the Republicans did in the red waves of 1994 and 2010 as “voters picked Democrats to run congress by a huge margin” (Yglesias, 2018). Jim Manley, previously an aide to former Senators Harry Reid and the late Ted Kennedy, said: “This is a great night for Democrats no matter what you want to call it. I’m more than willing to call it a blue wave” (Siddiqui, 2018b). Another election night narrative that may speak to the effectiveness of persuasive attacks during the confirmation hearings is the success of Democratic gubernatorial candidates in the three big states of Pennsylvania, Wisconsin, and Michigan. These three states were critical to Donald Trump’s electoral college victory in 2016, helping him to overcome deficiencies in the popular vote; yet, Democratic candidates were able to retake these seats in 2018 (Yglesias, 2018). On the other hand, the attacks against Brett Kavanaugh seemed to mobilize Republican voters in Indiana, North Dakota, Missouri, Florida, Montana, and West Virginia as many voters indicated that the refusal of Democratic incumbents to vote to confirm Kavanaugh “weighed significantly” in their vote choices (Severino, 2018). Many factors likely contributed to the 2018 midterm election outcomes (including the “#MeToo” movement), however, it seems that the attack on Kavanaugh was a salient issue in the minds of many voters as they went to the polling booths.

This analysis underscores the utility of the Theory of Persuasive Attack, with its inclusion of categories related to the character of the accused. Because of the infancy of these new character categories and what they suggest about the importance of character traits as a topic of persuasive attack, more research should be conducted that explores character assassination. Although the precise effects of Ford and Senate Democrats’

persuasive attack on Kavanaugh are unknown due to the many variables at play during a given election cycle, we suggest that the political gains made by Democrats could have tremendous implications in the future. Kavanaugh was confirmed by a very close party-line vote of 50 to 48 and with the recent health scares of Supreme Court Justice Ruth Bader Ginsburg's, political operatives in Washington are already "laying the groundwork for an unprecedented battle set to ensue if she leaves the bench ahead of the 2020 presidential election" (Schwartz & Higgins, 2019). The ideological makeup of Congress at the time of the next Supreme Court confirmation will be vital to people on both sides of the political spectrum. Additionally, the implications of the highly visible and polarizing persuasive attack on Kavanaugh may have social and cultural ramifications for years to come. Barajas and Bush (2018) argue that the whole spectacle demonstrates a "shift in how lawmakers and legal experts approach and talk about issues of sexual misconduct in the era of #MeToo" (Bush & Barajas, 2018). Attacks—especially those involving allegations of sexual abuse—will increasingly put actions and character on trial in very public face-to-face and online forums.

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