

Image Repair of Judge Brett Kavanaugh

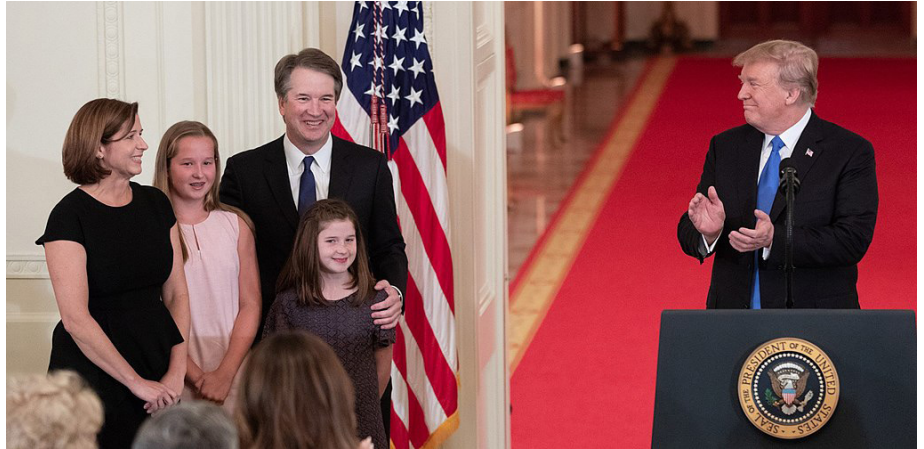


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INTRODUCTION

The nation's attention was firmly fixed on the nomination of Judge Brett Kavanaugh for the U.S. Supreme Court: The drama lasted from July 9, 2018, to October 6, 2018. 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.”¹ Attention to this fierce nomination struggle shouldered aside other news: a Google search for “Brett Kavanaugh Supreme Court” at the time yielded over 43 million hits. Journalist Patrick May observed that “social media lights up” during the hearing.²

Appointment and 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 has appellate jurisdiction on cases involving the constitution of the United States and federal law. *Marbury v. Madison*



The White House, Public domain, via Wikimedia Commons

(1803) established the Supreme Court’s power of judicial review, deciding whether a legislative or executive act is Constitutional.³ 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 subpoenas which the Trump administration ignored; only the third branch of government could resolve this conflict.⁴



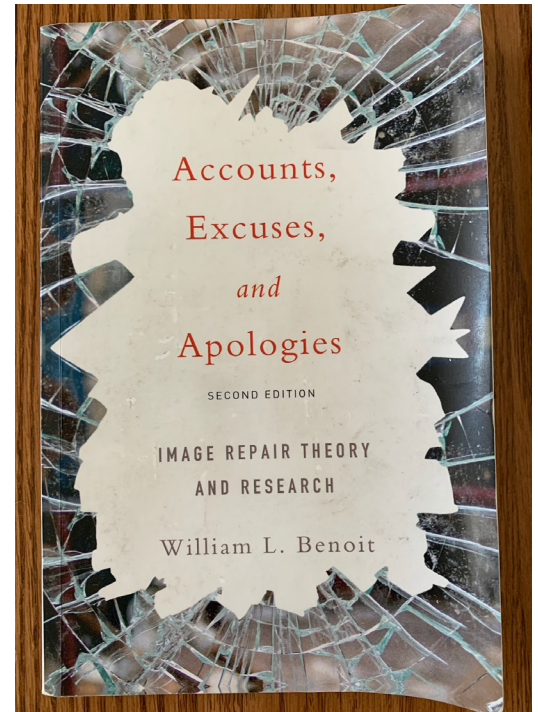
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Furthermore, the average length of time served by Supreme Court justices averages almost 17 years,⁵ giving individual justices the opportunity exert influence for over twice as long as any president can serve (two four-year terms), over eight times 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 the executive branch and on the 535 members of the House and Senate. This essay investigates the Kavanaugh nomination as an instance of persuasive defense or image repair.⁶ After describing the rhetorical method employed here, the political context of this event will be discussed. Then the attack on Kavanaugh will be identified and the defenses of Kavanaugh will be analyzed. Finally, implications of this analysis will be discussed.

IMAGE REPAIR DISCOURSE

Image Repair Theory was designed to provide a more comprehensive list of strategies for repairing an image than could be found in the literature.⁷ Benoit posits that a person's or organization's image, face, or reputation is extremely important.⁸ Three key sources help develop this theory.⁹ Threats to image are pervasive in contemporary society so it is imperative to understand persuasive messages that may help repair a tarnished image. Five general strategies of image repair discourse are identified; three have specific variants or tactics for a total of 14 options for image repair. Every accusation has two components: blame and offensiveness.¹⁰

The image repair strategies can address one or the other element of these two components (blame, offensiveness). It is also important to note that threats to an accused's reputation arise from audience perceptions of the accused and his or her actions. The accused's defense may well rely on information about the world and the people and events in it (commonly referred to as "facts") but what ultimately matters is the perceptions about the accusations held by the audience. Each of the 14 image repair strategies will be discussed in this section.



Denial

Simple denial is a basic image repair strategy. Those accused of wrong-doing can deny that the offensive act occurred or was actually harmful or deny that they are responsible for the offensive act. Furthermore, a rhetor can attempt to shift the blame for the offensive act to another person or organization. If another person (or group, or organization) actually committed the offensive act, the accused should not be held responsible for that act. These image repair strategies concern blame.

Evade Responsibility

This general approach to image repair can assume four forms. The accused may assert that the offensive act was a response to another offensive act committed by the alleged victim, so that the persuader's response should be considered a reasonable reaction to that provocation. Defeasibility claims that the persuader lacked the knowledge or ability to avoid committing the offensive act. A persuader can also argue that the offense was accident. Fourth, the accused can assert that the act had been performed with good intentions. Any of these strategies, if accepted by the audience, could reduce the accused's responsibility or blame for the offensive act.

Reduce Offensiveness

Six different arguments can be used to diminish the apparent offensiveness of the act. First, a persuader can bolster his or her own image to try to strengthen the audience's positive feelings toward him or her. Here the accused hopes that favorable feelings arising from bolstering can help offset the negative strategies feelings associated with the offensive act. Minimization argues that the act in question is not really as offensive as it seems. Differentiation attempts to distinguish the act in question from other actions that appear similar but are really more offensive than the accused's act. Transcendence tries to justify the act by placing it in a more favorable context, arguing that the act also furthers more important values. A persuader can attack his or her accusers, hoping to reduce the credibility of the accusations (or to imply the victim deserved what happened). The tactic of compensation offers the victim money, goods, or services to help reduce the negative attitudes toward the persuader. These six strategies may reduce the apparent offensiveness of the act, helping repair the accused's image.

Corrective Action

Corrective action is a proposal or proposals that are designed to repair the damage caused by the offensive act. This strategy can take one of two forms. The accused can promise to restore the state of affairs before the offensive act (repairing the damage) or to prevent recurrence of the offensive act (preventing future offensive acts).

Mortification

The final image repair strategy admits that the accused committed the offensive act. An apparently sincere apology could help restore the accused's image with the intended audience. This strategy can take various forms, including admitting guilt, asking for forgiveness, expressing regret or remorse, and apologizing. There is no accepted standard for which of these elements must be present for a defense to qualify as "an apology." Furthermore, in English the phrase "I'm sorry" is ambiguous. This phrase could be an expression of guilt ("I'm sorry I hurt you with my offensive act") but it could also be an expression of sympathy ("I'm sorry for what befell you"). Some persuaders may attempt to exploit this ambiguity, hoping that the audience will accept "I'm sorry" as an apology without actually confessing to any misdeeds. Arguably the weakest form of apology is a statement such as "I'm sorry if what I did offended you," which does not concede that the act in question was offensive (you may have been offended but I did nothing wrong). See Table 1 for definitions and examples of image repair strategies. Other examples of these strategies can be found in the literature.¹¹

Table 1. *Image Restoration Strategies*

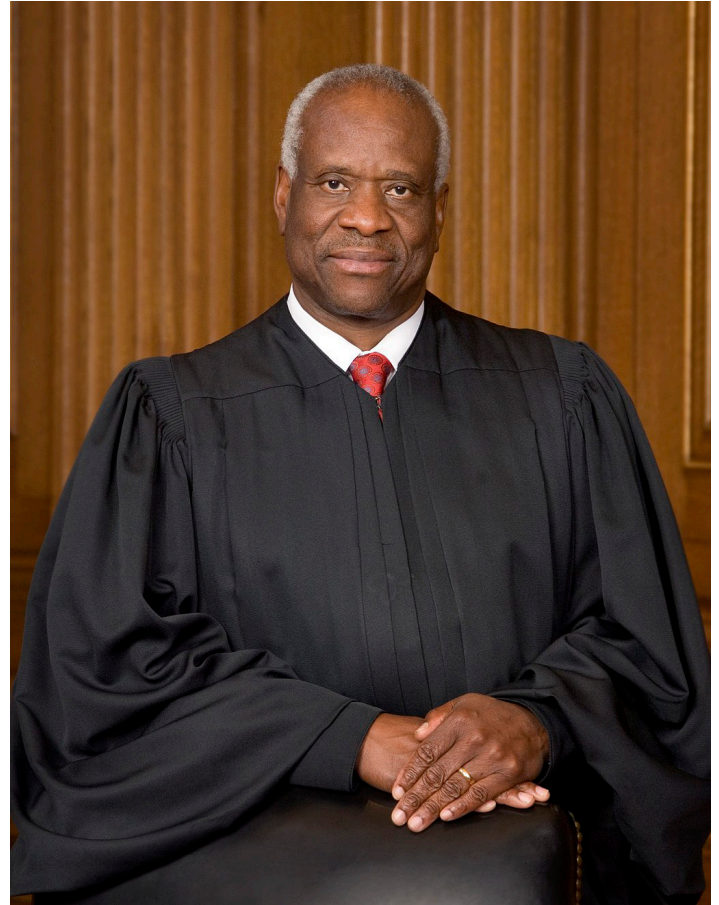
Strategy	Key Characteristics	Example
<i>Denial</i> Simple Denial Shift the Blame	did not perform act another performed act	I did not have sex with that woman. Pat rifled your purse.
<i>Evasion of Responsibility</i> Provocation Defeasibility Accident Good Intentions	responded to act of another lack of knowledge or ability mishap meant well	You insulted me so I keyed your car. Late to meeting: wasn't told location moved. I spilled my drink because I tripped on a rug. I planned to pick you up at the airport but I forgot.
<i>Reducing Offensiveness of Event</i> Bolstering Minimization Differentiation Transcendence Attack Accuser Compensation	stress good traits act not serious act less offensive than similar acts more important values reduce credibility of accuser reimburse victim	I may have embezzled funds but I have given a lot of money to charity. It's no big deal that I spilled a drink on your sweater; it was old and ugly. I didn't steal your bicycle, I borrowed it. I stole some food so I could feed my child. Don't believe my accuser, a known liar. We forgot your dessert so here is a coupon.
<i>Corrective Action</i>	plan to solve/prevent recurrence of problem	I will fix the damage I caused to your car. We will change procedures to prevent this from happening again.
<i>Mortification</i>	apologize	I regret insulting you. I apologize.

Source: Benoit (1995a; 2015a with new examples)

Image Repair Theory has also discussed the concept of third party image repair. The victim and the accused are the first and second parties in image repair; however, other rhetors – third parties – can offer defenses on behalf of the accused.¹² Theory and research establish that the perceptions of the source of a message influence the processing and effects of a message.¹³ It seems likely that an apology (mortification) would be more persuasive coming from the accused than from a third party. However, some third parties may appear more trustworthy than the accused employing mortification. Research also establishes that multiple sources advocating the same ideas can be more persuasive than single sources.¹⁴ Furthermore, some arguments would be more persuasive if voiced by a third party rather than the accused. An athlete usually should not blame teammates for his poor performance, but a third party might be effective offering this defense.¹⁵

Benoit and his colleagues have developed and applied Image Repair Theory in a variety of contexts. Some studies analyze image repair in the corporate world.¹⁶ Other research investigates persuasive defense in the realm of sports and entertainment.¹⁷ Some studies examined image repair in international affairs.¹⁸ A number of studies analyzed image repair in politics.¹⁹

Benoit and Nill analyzed image repair by Judge Clarence Thomas when he was nominated for the Supreme Court in 1991.²⁰ Thomas was accused of sexual harassment by Anita Hill. He denied the



Steve Petteway, Collection of the Supreme Court of the United States, Public domain, via Wikimedia Commons

accusations, bolstered his reputation, and attacked his accusers (the Democrats, not Professor Hill). Democrats had a majority in the Senate. Denial made it possible for some Democrats to defect; his attack – claiming that opposition to his confirmation would be proof of racism (characterizing the hearing as “lynching”). His implication that anyone who voted against him was a racist provided motivation for some Democrats to defect and confirm Thomas. As Ryan recognized,²¹ we must understand the attack in order to analyze the defense to that attack. The next section lays out the attacks on Judge Brett Kavanaugh.

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.²² Kavanaugh had served in the Bush White House and questions arose about his work there. However, Republicans “refused multiple requests by their Democratic colleagues to see more than one million documents covering his years as White House staff secretary to President George W. Bush.”²³ The confirmation hearing ended up focused on accusations of sexual assault against Kavanaugh. Similar accusations followed from other women, but Christine Blasey Ford was the only one to testify at the hearings.

Ford said that she attended a party in Bethesda, MD in summer of 1992. In the hearing, she gave her account of events, attacking Kavanaugh.

When I got to the top of the stairs [to go to the bathroom], I was pushed from behind into a bedroom across from the bathroom.... Brett and Mark came into the bedroom and locked the door behind them.... 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... Brett groped me and tried to take off my clothes. He... was very inebriated... I believed he was going to rape me. I tried to yell for help. When I did, Brett put his hand over my mouth to stop me from yelling.... It was hard for me to breathe, and I thought that Brett was accidentally going to kill me.²⁴

Several elements were entwined in this attack: Kavanaugh was inebriated, Ford was pushed to the bed, Kavanaugh laid on top of Ford, Kavanaugh groped Ford and tried to rape her, and Kavanaugh covered Ford's mouth making it difficult for her to breathe.



United States Senate Committee on the Judiciary,
Public domain, via Wikimedia Commons

IMAGE REPAIR BY AND FOR KAVANAUGH

In addition to the justifications offered earlier, this defense is interesting because it includes image repair messages from Kavanaugh (an interview on Fox as well as his statement and answers at the hearing) and others (Senate Majority Leader Mitch McConnell, President Donald Trump, and other Republican members of the Judiciary Committee). These messages will be addressed separately (to facilitate a contrast between self-image repair and third party image repair) and considered chronologically. Other messages addressed this accusation, but the ones selected for analysis here are among the most important, attracting most attention in the news.

Kavanaugh's Interview with Martha MacCallum on Fox 9/24

On September 24, three days before the hearing, Judge Kavanaugh sat for an interview on Fox (all quotations in this section are from Kavanaugh, 2018). The Judge made his intentions clear: "I just want an opportunity, a fair process where I can defend my integrity." He promulgated a defense in this discourse with two image repair strategies: denial and bolstering.



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Denial. Kavanaugh's statement was replete with denials of wrong-doing. Judge Kavanaugh declared that "The incident did not happen," and "I never had any sexual or physical activity with Dr. Ford." He characterized the accusation that he sexually assaulted Dr. Ford as "totally false and outrageous. I've never done any such thing." He broadened his denial by asserting that "I had never sexually assaulted anyone, not in high school, not ever." MacCallum

asked “was there ever a time where you drank so much that you couldn’t remember what happened the night before?” Kavanaugh replied “No, that never happened.” These statements worked together to assert his innocence, forcefully denying the accusations.

Kavanaugh reinforced his denial of inappropriate sexual behavior by declaring that the party where his assault was said to have occurred never happened. “The other people who are alleged to be present have said they do not remember any such party.” He continued this line of argument by noting that “the woman who’s alleged to be there, who’s her [Ford’s] friend, says that she doesn’t know me and doesn’t recall ever being at a party with me in her life.” He also cast doubt on the accusations by saying “[t]his is an allegation about a party in the summer of 1982.” He stressed the fact that “this allegation [was] from 36 years ago.” These statements reiterate the argument that the accusation is false, enacting denial.

Bolstering. Kavanaugh’s self-praise in this interview focused on his character. At one point he suggested his humility: “I am not perfect. I know that. None of us is perfect. I’m not perfect, but I’ve never, never done anything like this.” This statement does not clear his reputation, but if accepted it works to reinforce his image (and revisiting denial at the end of the statement). Bolstering in this statement stresses his personal character. Kavanaugh declared that “I’ve always treated women with dignity and respect.” He supported this argument with evidence, mentioning that 65 women who have known him since high school “signed a letter... saying I always treated them with dignity and respect.” His wife (Ashley Estes Kavanaugh) was present at the interview and related that “I know Brett. I’ve known him for 17 years. And this is not at all in character; it’s really hard to believe. He’s decent, he’s kind, he’s good. I know his heart. This is not consistent with... Brett.” These statements work to bolster his reputation.



Office of Senator Chuck Grassley, Public domain, via Wikimedia Commons

He reinforced the idea of his positive character by arguing that he has been a champion of women’s rights saying that he wants to defend “my life long record of promoting dignity and quality, starting with the women who knew me when I was 14 years old.” This argument is elaborated when he discussed his work as a Judge: “In my job as a judge for 12 years I’ve been promoting women’s equality. I am the leading federal judge in the country – the leader in the entire country of promoting women law clerks to get Supreme Court clerkships.” So Kavanaugh’s interview with Martha MacCallum employed two image repair strategies: simple denial and bolstering.

Mitch McConnell’s Remarks on Senate Floor 9/24

Senator Mitch McConnell, the Republican Majority Leader, posted a press release on this controversy on September 24 (all quotations in this section are from McConnell, 2018).²⁵ This message employed three strategies: simple denial, bolstering, and attacking the accusers (the Democrats generally and Democrats on the Senate Judiciary Committee specifically).

Denial. The Senate Majority Leader characterized the attacks opposing Kavanaugh as made “on the basis of decades old allegations that are unsubstantiated and uncorroborated.” He stressed the claim that these attacks were founded “an uncorroborated allegation.” He reinforced his denial with evidence, explaining that “This is an allegation of misconduct which all four supposed witnesses either flatly contradict or are unable to back up.” McConnell elaborated this argument by noting that “All the witnesses that Dr. Ford says were present at the party have told the Committee – on the record and under penalty of felony – all confirm that they do not remember any

such party, do not know Judge Kavanaugh, or have never seen him do anything remotely like what has been alleged.” McConnell flatly rejected the accusations as unfounded, denying wrong-doing here by Judge Kavanaugh.

Bolstering. Senator McConnell bolstered the accused’s reputation on two grounds. First, he declared that Kavanaugh is a “qualified, experienced, and mainstream nominee.” He elaborated the accused’s qualifications to serve on the highest court in the land: “It remains beyond reasonable dispute that Judge Kavanaugh’s legal brilliance and excellence on the bench make him one of the very most qualified Supreme Court

nominees in the history of our country.” Furthermore, McConnell did not neglect the topic of the Judge’s character. He asserted that “Hundreds of men and women who have known Brett Kavanaugh across his life have written or spoken out that he is a man of strong character and tremendous integrity. Numerous witnesses testified before the Judiciary Committee that he is a trusted mentor, a loyal friend, and a lifelong champion of women.” McConnell lauded Kavanaugh’s character but he also notes that the Judge had been a champion of women for his entire life. These are clear examples of bolstering in the Senator Majority Leader’s statement.

Attack Accuser. The Senate Majority Leader added a third strategy to the defense originated by Kavanaugh. He attacked the opposing party’s goals in his statement. McConnell reported that Senate Minority Leader Chuck Schumer declared that



Office of Senator Mitch McConnell, Public domain, via Wikimedia Commons



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“I’m going to fight this nomination with everything I’ve got.” Others pledged their opposition before he was even named. Before they’d heard a minute of testimony. The Democrats had already made up their minds and chosen their tactics: delay, obstruct, and resist.

McConnell impugned the Democrats’ motives: “Senate Democrats and their allies are trying to destroy a man’s personal and professional life.” He characterized their approach as “a choreographed smear campaign” He questioned their integrity by saying that “Democrats wouldn’t let a few inconvenient things – like a complete lack of evidence... – get between them and a good smear. It’s despicable.” He speculated that perhaps the Democrats opposed his nomination because he is such a qualified nominee. These statements served to tarnish the Democrats’ character and undermine their criticism of Kavanaugh.

President Donald Trump's Press Conference 9/26

The President of the United States joined McConnell's defense of Kavanaugh. Trump addressed the attacks on his nominee, Judge Brett Kavanaugh, during a press conference held by Trump on September 26 (all quotations in this section are from Reilly, 2018).²⁶ Trump's statements employed denial, bolstering, and attacking Kavanaugh's accusers (Democrats). Each will be discussed in turn in this section.



"President Trump Delivers Remarks" by The White House is marked with CC PDM 1.0

Denial. The president made a reference to how old the accusations were, saying that for "Thirty-six years, there's no charge. All of a sudden... rumors start coming out." He implicitly questioned the veracity of the accusations, which concern alleged events from 36 years ago. He also characterized the attacks as "rumors." These utterances rejected the accusations against the President's nominee.

Bolstering. Trump declared that Kavanaugh "is one of the highest quality people that I've ever met," "one of the most respected people in Washington." The President argued for Kavanaugh's qualifications to be a Supreme Court Justice:

"He's a tremendous man. He's a tremendous genius. He's a great intellect. He was, I believe, number one at Yale.... Number one in his class at Yale. He was a great student in law." Trump also bolstered Judge Kavanaugh when he asserted that Kavanaugh was "the most brilliant person, he's the most brilliant lawyer." These statements worked to enhance the accused's character both generally and as a qualified nominee.

Attack Accusers. President Trump criticized the Democratic Party, declaring that they "are actually con artists, because they know how quality this man is and they've destroyed a man's reputation, and they want to destroyed it even more." He characterized the criticisms of his nominee as "a big con job," "a big fat con job." Trump elaborated this charge by arguing that "George Washington would be voted against 100 percent by Schumer and the con artists." The President also asserted that the Democrats "fooled you all." Undermining the credibility of Democrats in the Senate with these attacks was meant to weaken their criticism of Kavanaugh.

Kavanaugh's Prepared Remarks at the Hearing, 9/27

On September 27 the hearing commenced. Kavanaugh continued to use denial and bolstering but added the strategy of attack accuser previewed by McConnell and Trump (all quotations below from Kavanaugh and Senate Judiciary Committee Republicans are taken from "Kavanaugh Hearing," 2018).

Denial. Judge Kavanaugh began his statement by arguing that "If the mere allegation – the mere assertion of the allegation, a refuted allegation from 36 years – is enough to destroy a person's life and career, then we will have abandoned the basic principles of fairness and due process that define our legal system and our country." This statement characterized



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the attack on Kavanaugh as a “mere allegation” and a “refuted allegation,” both characterizations rejecting the accusations – “a refuted allegation from 26 years” ago. This utterances undermined the attacks against the Judge. Judge Kavanaugh declared that the accusation was not true: “I was not at the party described by Dr. Ford.” The nominee pointed to his personal calendars, which do not record this party, as a source of evidence: “I have submitted to this committee detailed calendars recording my activities in the summer of 1982.... If the party described by Dr. Ford happened in the summer of 1982 on a weekday night, my calendar shows all but definitively that I was not there.” He also argued that “All four people allegedly at the event, including Dr. Ford’s longtime friend, Ms. Keyser, have said they recall no such event.” He broadened his denial beyond asserting that he did not attend the party where the assault allegedly occurred. “I’ve never sexually assaulted anyone. Not in high school, not in college, not ever.” He alluded to the fact that the accusations stem from an assault that allegedly occurred long ago, implicitly calling into doubt the source of these charges: “Dr. Ford’s allegation stems from a party that she alleges occurred during the summer of 1982, 36 years ago.” However, Kavanaugh noted that “I’m not questioning that Dr. Ford may have been sexually assaulted by some person in some place at some time. But I have never done this, to her or to anyone. That’s not who I am. It is not who I was. I am innocent of this charge.” The Judge’s defense denied the accusation in play here. Recall that other accusers came forward after Dr. Ford spoke out. Arguing that “I’ve never sexually assaulted anyone” denied the allegations against the Judge. He clearly rejected the attacks as completely unfounded.



"tasty beer" by MattHurst is licensed under CC BY-SA 2.0

His opening statement also discussed his taste for beer. “I drank beer with my friends. Almost everyone did. Sometimes I had too many beers. Sometimes others did. I liked beer, I still like beer, but I did not drink beer to the point of blacking out and I never sexually assaulted anyone.” This statement denied that he ever blacked out or sexually attacked anyone, thus working to undermine all of the accusations against Kavanaugh.

Bolstering. Kavanaugh bolsters his reputation in two ways. First, he defended his character generally. He stated that he “was captain of the varsity basketball team. I was wide receiver and defensive back on the football I ran track. . . I did my service projects at the school, which involved going to the soup kitchen downtown... and going to tutor intellectually disabled kids at the Rockville Library.” These statements functioned to bolster Kavanaugh’s reputation. Kavanaugh reinforced this strategy by stressing his positive treatment of women. At an early age, his parents “taught me the importance of equality and respect for all people.” He cites a letter “from 65 women who knew me in high school. They said that I always treated them with dignity and respect.” Kavanaugh also noted that “[a] majority of

my 48 law clerks over the last 12 years have been women.” These utterances highlight his positive treatment of women, bolstering his reputation.

The second element of bolstering concerned his suitability for the position: the Judge touted his competency to serve as a Supreme Court Justice. He observed that when he was nominated as a circuit court judge, “I was thoroughly vetted by the White House, the FBI, the American Bar Association, and this committee.” He also stressed his experience and ideals: “I’ve been a judge for 12 years. I have a long record of service to America and to the Constitution. I revere the Constitution.” These utterances reinforced his qualifications to serve as a Supreme Court justice.

Attack Accuser. Judge Kavanaugh’s statement also attacked his accusers. He focused his ire on



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Democrats: “[M]y family and my name have been totally and permanently destroyed by vicious and false... accusations.” He observed that “[t]here’s been a frenzy on the left to come up with something, anything, to block my nomination. Shortly after I was nominated, the Democratic Senate leader said he would, quote, ‘oppose me with everything he’s got.’” “A Democratic senator on this committee publically referred to me as ‘evil.’” He continued this thread when he declared that “[a]nother Democratic on this committee said, quote, ‘Judge Kavanaugh is your worst nightmare.’” He asserted that “The whole two-week effort has been a calculated and orchestrated political hit.” These statements all function to attack his Senate opposition, indicating that their criticism of him are politically motivated, not founded on a careful review of evidence about the nominee.

Judge Brett Kavanaugh’s Senate Judiciary Committee Testimony 9/27

As the hearing continued Judge Kavanaugh’s responses to questions reiterated his three defensive strategies of denial, bolstering, and attacking his accusers.

Denial. Kavanaugh said that he denied the accusations by Dr. Ford. He repeated the claim that he never attended a gathering as described by Dr. Ford. “I’m not even in D.C. on the weekends in the summer of 1992,” alluding to his calendars. He rejected the idea that he had ever been in a room alone with Dr. Ford and Mark Judge. He denied that he had ever “ground or rubbed” his genitals against Dr. Ford. He asserted that he never covered Dr. Ford’s mouth with his hand and never tried to remove her clothes. He declared that he had never engaged in sexual behavior with Dr. Ford. He stated that he never passed out from drinking. Kavanaugh



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also stated that “all four witnesses who were allegedly at the event said it didn’t happen, including Dr. Ford’s longtime friend, Ms. Keyser.” He made the argument that the four witnesses failed to corroborate the accusations three times. In response to a question from Senator Lindsay Graham Kavanaugh denied that he was a “gang rapist.” Judge Kavanaugh clearly and repeatedly rejected the allegations in his answers.

Kavanaugh’s answers to questions asked of him in the hearing continued his use of denial. The Republicans began their portion of the hearing with questions from Rachel Mitchell, a public prosecutor in Arizona. The Judge agreed that he denied the allegations by Dr. Ford. He was asked, and denied, that he was at the alleged party, that he ground his genitals on Ford, that he covered her mouth, that he tried to remove her clothes, that he had ever engaged in sexual activity with Ford. He declared that “I’m innocent. I’m innocent of the charge.” These statements all functioned to deny the accusation.

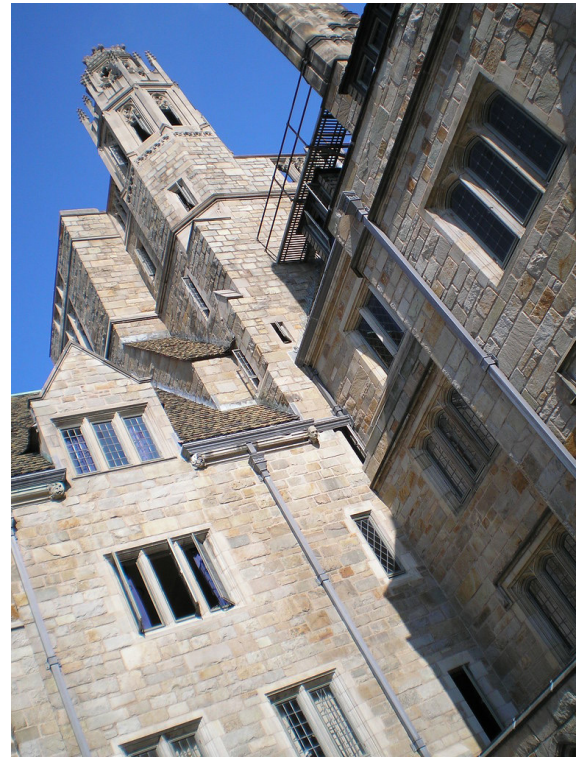
He deflected concerns about his personal behavior when he was in high school based on remarks in his yearbook. He was asked about whether he had the “Ralph Club” (vomiting), he declared his love for beer. When asked about “boofing” (slang for anal sex), he characterized it as “flatulence.” The Devil’s Triangle (sex in a threesome) was a “drinking game.” These statements worked to deny that Kavanaugh engaged in inappropriate drinking and sexual behavior.

Bolstering. Kavanaugh bolstered his personal character during the hearing. “I busted my butt in academics. I always tried to do the best I could. As I recalled, I finished one in the class, first in – you know, freshman and junior year.... I played sports, I was captain of the varsity basketball team.” He noted that he played

football and ran track. He also said that he did volunteer work, “going to the soup kitchen... going to tutor intellectually disabled kinds.” Later in the hearing he said that “I was at the top of my class academically, busted my butt in school. Captain of the varsity basketball tea. Got in Yale College... Got into Yale Law School. Worked my tail off.” These utterances tended to create a positive image of the Judge.

He also touted his love of beer. “We drank beer. My friends and I, the boys and girls. Yes, we drank beer. I liked beer. Still like beer. We drank beer... We drank beer. We liked beer.” Presumably he wanted to create the impression that he was just “one of the guys.” This characterization, however, does not look especially good when the accusations said he was drunk during the alleged assault.

The Judge also boasted of his legal qualifications in his answers; “For 12 years, everyone who has appeared before me on the D.C. Circuit Court has praised my judicial temperament.” He added that “I have the, well, unanimous, well-qualified rating from the American Bar Association.” These remarks bolstered his suitability for serving on the Supreme Court.



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Remarks by Republican Judiciary Committee Members 9/27

The Republican senators in this hearing plowed familiar ground in their observations and questions, using denial, bolstering, and attack accuser.



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These women wrote... that the allegations raised by Dr. Ford are completely, totally inconsistent with his character.” Republican Senators on this committee combined to reject the accusations against Judge Kavanaugh.

Bolstering. Some of the comments offered by Republicans addressed the Judge’s character. For example, Senator Graham declared that Kavanaugh’s “integrity is absolutely unquestioned. He is very circumspect in his personal conduct, harbors no biases or prejudices. He’s entirely ethical, is a really decent person. He is warm, friendly, unassuming... the nicest person.” Senator Hatch praised the nominee: His clerks love him. His students he teaches in law school as well, his students love him. His colleagues love him.” These remarks were meant to bolster the Judge’s character.

Republicans also praised Kavanaugh’s judicial qualifications. Senator Hatch said that “Judge Kavanaugh has been a federal judge for 12 years. And he’s been a federal judge on the second-highest court in the nation. He’s

Denial. Senator Ted Cruz echoed a component of the Judge’s statement, declaring that “all three of those fact witnesses have stated on the record under penalty of perjury..., that they do not recall what she [Dr. Ford] is alleging happening.” Republican Senator Orrin Hatch asserted that “This man is not a monster.” Senator Hatch also said that “He was an immature high schooler. So were we all. That he wrote or said stupid things sometimes does not make him guilty of every terrible thing that he’s recently been accused of.” Republican Senator Chuck Grassley noted that “I have a letter here from 65 women who knew Judge Kavanaugh between the years ‘79 and ‘83 – the years he attended Georgetown Prep High School.

earned a reputation for fairness and decency.” These senators praised the Judge’s suitability for this position.

Attack Accuser. Senator Graham criticized the Democrats’ motives: “What you want is to destroy this guys life, hold this seat open and hope you win in 2020.” He also developed a line of questioning meant to vilify his opponents; however, Kavanaugh does not appear to be on the same page as the senator.

GRAHAM: Do you consider this a job interview?

KAVANAUGH: The advice and consent role is like a job interview.

GRAHAM: Do you consider that you’ve been through a job interview?

KAVANAUGH: I’ve been through a process of advice and consent under the Constitution.

GRAHAM: Would you say you’ve been through hell?

KAVANAUGH: I’ve been through hell and then some.

GRAHAM: This is not a job interview. This is hell.

GRAHAM: This is not a job interview.

It is clear that Graham expected the Judge to say something like “This is not a job interview; it is an ordeal.” Clearly this “hell” referred to by the Senator was inflicted on Kavanaugh by Democrats. Similarly, Senator Thom Tillis reflected on past campaigns and smears, saying that the ordeal Kavanaugh was enduring “pales in comparison to what you’ve had to deal with.”

He asserted that this hearing is “just basically attack, attack, attack. It’s not advise and consent: It’s search and destroyed.” Senator Cruz declared that the Democrats on the Judiciary Committee “engaged in a profoundly unfair process.” These utterances criticized the Democrats, working to undermine the allegations against Kavanaugh. Contrasting the Senate’s responsibility to provide advice and give consent on nominees to “search and destroy” was clearly meant to become a sound bite in this controversy. Table 2 summarizes the defenses in this image repair effort.



"Senator of South Carolina Lindsay Graham at #FITN in Nashua, NH" by Michael Vadon is licensed under CC BY-SA 2.0

Table 2. *Summary of Image Repair by and on Behalf of Kavanaugh*

	Denial	Bolstering		Attack Accuser (Democrats)
		Character	Qualifications	
Kavanaugh 9/24	X	X		
McConnell 9/26	X	X	X	X
Trump 9/26	X	X	X	X
Kavanaugh Statement 9/27	X	X	X	X
Kavanaugh Testimony 9/27	X	X	X	
Republicans 9/27	X	X	X	X

EVALUATION AND IMPLICATIONS

I will address three questions here. First I take up the topic of third party image repair. Then I evaluate the likely effectiveness of the defense. Finally I look at the implications of this image repair effort.

This defense was a joint construction of three particular rhetors – Judge Kavanaugh, Senator McConnell, and President Trump – and a group – Republicans on the Senate Judiciary Committee. Of course, other rhetors were involved, but these are the key defenders. This defense was consistent, consisting of denial, bolstering, and attack accuser. Table 2 displays the consistency across defensive sources. As noted above, research found that a message attributed to multiple sources can be more persuasive than a message from a single source. These defenses were consistent in their stance. This does not mean the defense persuaded the entire audience; it is likely to have appealed to Republicans. It is clear that all four of these third party defenses were consistent (all employing the same image repair strategies), whereas Kavanaugh eschewed attacking his accusers in two of his three messages. Denial and bolstering worked particularly well together as image repair strategies. Attacking Kavanaugh's Democratic accusers seems odd until you consider that the Republicans held a majority of the Senate (Joe Manchin, a Democrat representing deeply red West Virginia, did vote to confirm the nominee).

Before evaluating this image repair effort it is vital to consider the nature of the audience in this case. In 2018 the United States was sharply divided on party lines. Abramowitz and Webster reported that “[r]ecent elections in the United States have been characterized by the highest levels of party loyalty and straight-ticket voting since the American National Election Studies first began measuring party identification in 1952.”²⁷ They also reported that “[d]uring the 1970s and 1980s... about a quarter of voters split their tickets—voting for presidential and congressional candidates for different parties. In recent elections, only about one voter in ten has cast a split-ticket ballot.”²⁸ Because so few voters cross party lines when they vote, politicians have little reason to appeal to the opposing party and clear reason to try to energize their supporters. This situation was quite different from the circumstances in Judge Thomas's nomination. Then, Democrats enjoyed a majority in the Senate in 1991 so a Republican nominee had to obtain at least some Democratic defections in the vote. In 2018, Republicans had a majority and did not require any partisan defectors in the vote. These accusations do not seem likely to sway many Republicans. After all, Donald Trump won the Electoral College in spite of the video tape of him saying he would “grab them by the p*ssy.”²⁹ I want to be clear that I do not argue that Republicans do not care about sexual misconduct; only that the defense persuaded them and/or other considerations (a Republican majority on the Court) outweighed any concerns about sexual abuse.

Evidence of the divide on this issue can be seen in the President Obama's recent Supreme Court nomination. In 2016 an opening occurred on the Supreme Court and President Barack nominated Merrick Garland. However, Elving reported that

Before Obama had named Garland, and in fact only hours after Scalia's death was announced, Senate Majority Leader Mitch McConnell declared any appointment by the sitting president to be null and void. He said the next Supreme Court justice should be chosen by the next president — to be elected later that year.³⁰

This episode clearly established how politicized the Senate has become. The Republicans in the Senate stridently opposed the 2016 Democratic nominee.

The partisan divide in the U.S. Senate was also exemplified in the appointment of Amy Coney Barrett to the Supreme Court. Justice Ruth Bader Ginsberg passed away on September 18, 2020. Less than 10 days later



"Protesting Brett Kavanaugh Chicago Illinois 10-4-18 4317" by www.cemillerphotography.com is licensed under CC BY-SA 2.0

(September 26, 2020) President Trump appointed Judge Barrett to the highest court in the land; the Senate voted to confirm Barrett on October 31, 2020, despite the fact that the presidential election was less than a week away. This put Democrats in a difficult position: Surely Democrats would want to see another woman on this court. Furthermore, although the Democrats attacked Republicans for hypocrisy in advancing Barrett's nomination when they refused to vote on Garland, they were in the position of opposing Barrett's nomination when they supported Garland's case. Not surprisingly, the 2020 presidential election was close and not decided on election day and Trump resorted to lawsuits to try to win the Oval Office.

In this case the reaction of Democrats to this defense is likely to be quite different from that of Republicans. Denial was a good choice for the defense, particularly for Republicans (I do not attempt to determine whether the accusations were in fact true; this analysis focuses on evaluating the likely persuasiveness of the defense. Denial rejects the accusations rather than attempting to reduce the offensiveness of the alleged act. The decision to focus the attacks on the Democratic opposition to Kavanaugh's nomination – with only a subtle critique of Dr. Ford (the accusations were old) – was a good choice. The Republicans had a majority in the Senate: 51 to 49 (the Democratic total included two Senators who were Independent). As long as those Republican Senators remained steadfast in their support of Kavanaugh (one could defect), the Democrats' opinions could not derail the nomination. A strong attack on Dr. Ford, which was avoided, would not have not proven the accusations of sexual assault but would have been consistent with those accusations. The Republicans stressed attacks but focused their ire on Democrats, not Dr. Ford. This image repair effort was likely to obtain a favorable reaction from Republicans – particularly in light of their goal of obtaining control of the Supreme Court.



"Merrick Garland" by Mark McClure @ PNWPhotoWalks is licensed under CC BY-NC-SA 2.0

This is not to say that the defense had no weaknesses. McConnell's attack on Democrats is undermined by his refusal to consider Obama's nominee (Garland) for the highest court. Kavanaugh's calendar is a conspicuously weak argument against the accusation. His repeated proclamation of his lover for beer may have been an attempt to show he was just "one of the guys," but it is hardly a great answer for the accusation of a drunken assault.

Implications can be considered from the standpoint of short and long term consequences. In the short term the defense was successful because Kavanaugh was confirmed. One long term effect is alluded to in the introduction is a Republican majority on the Supreme Court. I stress the fact that Democrats in the House subpoenaed the president for an impeachment investigation. There can be no doubt that the Supreme Court would play a key role in that event.



"President Donald J. Trump and Supreme Court Justice Brett Kavanaugh" by The White House is marked with CC PDM 1.0

However, another relatively long term effect is the "blue wave" that occurred in the 2018 mid-term election and which possibly could continue in the future. Republicans maintained their majority in the Senate in this election but Democrats wrested away control of the House. This shift was almost certainly caused by several factors (including widespread dislike of the Republican president and the MeToo movement). Sparks reports that "Almost every subgroup of women in CNN's national exit polls moved towards the Democratic Party, including white women, Latinas, white college-educated women, white non-college-educated women, Democratic women and independent women."³¹ Backlash among women voters over the Kavanaugh hearing is likely one factor in this shift (other factors include the President's low popularity and the MeToo movement).³²

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