

The Ethics of the Kavanaugh Investigation

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Earlier in 2018, President Donald Trump had the responsibility of presenting a new Supreme Court Justice nominee to be voted on by the Senate due to a vacancy. After some consideration, Trump announced Brett Kavanaugh as his nominee. Shortly after his nomination, Dr. Christine Blasey Ford's accusations of sexual misconduct against Kavanaugh became public. The allegations sparked ethical questioning from the public of whether or not Kavanaugh should still be considered for the nation's highest judicial system. Donald Trump allowed the Federal Bureau of Investigation (F.B.I) to investigate the allegations before the Senate's vote to approve Brett Kavanaugh to be one of nine Supreme Court Justices. Considering the agency, the people involved, public opinion, and the involvement of the U.S. government, this case presents multiple ethical standpoints for each party involved. The Senate approved Brett Kavanaugh to join the United States Supreme Court, after having had three women come forward with sexual misconduct allegations against him.

### **Donald Trump**

On July 9, 2018, President Donald Trump announced his nominee for the United States Supreme Court as Brett Kavanaugh.

Donald Trump and Brett Kavanaugh share many of the same political and social views. Both are conservative Republicans who share very similar values and belief systems. Kavanaugh has been theorized to have received the backing of Trump for this position because of the commonalities of their view on the Republican party and the presidential responsibility. Dickinson reported that Kavanaugh has been given the title "presidential protector" (2018). President Trump who in the past has been, and is currently in, legal trouble began supporting Kavanaugh after he "pointedly refused to comment on whether a sitting president must respond to a subpoena or has the power to pardon himself" (Dickinson, 2018). Trump has been invested in Kavanaugh and how he fits into his own legal agenda from when he discovered that Kavanaugh had "repeatedly raised doubts about whether presidents are

accountable to other branches of government” (Dickinson, 2018). Kavanaugh, only 53 years old, would be an ideal candidate to carry out a conservative agenda in the Supreme Court for years to come (Newkirk, 2018).

On September 16, 2018, the sexual assault accusations against Kavanaugh brought to attention by Christine Ford went public. After that, two additional women came forward to make accusations, of their own, against Kavanaugh. Kavanaugh denied all allegations. When the allegations were made against Kavanaugh, Donald Trump came forward to still defend him as his choice for a Supreme Court nominee, a member of the judicial system, and a respected member of society. Trump expressed confidently that the allegations would be cleared and that his nominee would be successful in securing a spot on the nation's highest court. Donald Trump stood behind Kavanaugh.

According to Collins, Zeleny, Liptak, and Bash, by the time the third accuser came forth with allegations against Kavanaugh, Trump referred to the accusations as ‘ridiculous.’ Donald Trump began to put direct blame on the opposing political party, suggesting that Brett Kavanaugh’s Supreme Court nomination was "caught up in a hoax set up by the Democrats" (Malloy, 2018). Donald Trump claimed that the situation had been fabricated and created by the Democrats. Trump, in his continued defense of Kavanaugh, began to target lawyer, Michael Avenatti, discrediting him as a lawyer and a Democrat (Collins, Zeleny, Liptak, & Bash 2018). Michael Avenatti is an attorney who also happened to have represented Stormy Daniels during President Trump’s situation with the pornography actress who claimed to have had an affair with Trump, which he also denied. Avenatti is now representing one of the Kavanaugh accusers. Donald Trump said, "if you look at this lawyer [Avenatti] that came out he's a lowlife," Trump said, "he's a Democrat lawyer. Not a very good one" (Collins et al., 2018). Trump has even questioned Christine Ford as to why she did not report her sexual assault at the time if it was "as bad as she says" (Collins et al., 2018). However, sexual assault

is one of the most underreported crimes in the United States, as it is very difficult to prove, a deterrent that inhibits victims from coming forward. Donald Trump then attempted to discredit Deborah Ramirez, another accuser, by continuing to call attention to the fact that “she was intoxicated and doesn't remember parts of the alleged incident” (Collins et al., 2018).

Donald Trump has been disrespectful and aggressive against the allegations from the beginning, behavior which is not unprecedented, looking at his own history with women, sexual allegations made against him, and the way in which he handled those. In 2016, during the presidential campaign, more than a dozen women accused Trump of sexual misconduct, sexual assault, and sexual harassment. The women all came forward after a tape from 2005 was released that heard President Donald Trump referencing his view on women saying how that "when you're a star, they let you do it. You can do anything. ... Grab them by the p\*\*\*y. You can do anything" (Malloy, 2018). Donald Trump has denied all allegations often attempting to discredit the women, mitigating, or simply bypassing the claims. “The President has also voiced suspicion about the year-old #MeToo movement, complaining that allegations made decades later can ruin a man's life” (Malloy, 2018). Donald Trump has also publicly asked why a woman would wait so long to come forward if they claim to be telling the truth. (Malloy, 2018). He followed by expressing that he feels that it is “a very scary time for young men in America, where you can be guilty of something you may not be guilty of” (Malloy, 2018). Trump has claimed that the situation with Kavanaugh is way bigger than the Supreme Court nomination in further attempt to mitigate the situation and change the focus point. With Trump’s history, there is no surprise at how aggressively he has denied the allegations of Kavanaugh as well as how hard he worked to defend the name of his presidential protector.

From a deontological view, the act of Trump attempting to discredit women who are making sexual assault allegations towards a prestige member of society is wrong and is not what is expected from the President of the United States. From Trump's deontological viewpoint, the action was correct to defend his choice, stand by his word, and stand by the notion of innocent until proven guilty. However, the way in which he acted, attacked the defense verbally, and how insensitive he carried on throughout the few months over which the situation occurred was wrong. Overall, Trump has different values in regards to the sexual safety of women in society than many, which has been proven by his own allegations and comments. From our deontological viewpoint, morally Trump's backing of a potential sexual attacker was wrong. There is no moral good in Trump backing Kavanaugh and the manner in which he did so.

From a teleological standpoint, the negative choices made by the President of the United States ultimately have negative consequences for many. The desired outcome is that an adequate and respectable candidate will be chosen to fill the vacancy within the United States Supreme Court and that such will be chosen by the leader of the country. However, Donald Trump's decision to choose Kavanaugh further portrays that the only outcome he was concerned with was the one relating to his own agenda. He was not concerned with the outcomes of the defendants in the Kavanaugh's case, or women, or what message this might send to other sexual perpetrators. As a leader of the country, in this situation especially, it was important for Trump to make a utilitarianism decision, to act ethically, and conduct himself morally, all things of which he did not.

## **FBI**

On July 30, 2018, Dr. Christine Blasey Ford sent a letter to Senator Dianne Feinstein alleging that President Donald Trump's Supreme Court nominee, Brett Kavanaugh, physically and sexually assaulted her in high school (Kelly and Estepa, 2018). Her accusation

against Kavanaugh was made at a critical time socially and politically. In 2017, the #MeToo movement went viral igniting a conversation around the world about how sexual assault is defined and the way it is viewed today. Following Dr. Ford's allegations, multiple other sexual assault claims against Kavanaugh were released. Deborah Ramirez was another woman who came forward with a sexual misconduct claim against Kavanaugh from when they studied together at Yale (Mayer and Farrow, 2018). These accusations quickly stirred up complications within the White House, the media, and the public. Trump ordered an F.B.I. investigation that was to be "limited in scope and completed in less than a week" (Fandos and Stolberg, 2018). With only seven days to gather information from all sources involved, as well as any evidence, completing a full and in-depth investigation of the case was next to impossible. During the week of the case, there was outrage on both sides of the political spectrum. As the court case proceeded, Republicans claimed that the vetting process that Kavanaugh experienced was too intense, while Democrats held the argument that any conclusions made by the F.B.I. are illegitimate due to lack of time to fully investigate (Lucas, 2018). Due to lack of sufficient evidence, the F.B.I. could not conclude if the claims made against Kavanaugh were true or false. After the F.B.I. presented their report to both sides of the Senate, the Senate voted 50-48 in favor of Kavanaugh taking his seat in the Supreme Court (Abramson, 2018). The Senate's vote raised ethical questioning by the public. The accusations made by the women are serious and were expected not to be taken lightly. Although the allegations made against Kavanaugh could not be proven due to lack of physical evidence, one ethical dilemma is whether or not it was acceptable for the Senate's vote to approve Kavanaugh into his position with the history of allegations. In addition, during an emotional testimony, Kavanaugh outwardly accused Democrats of constructing this case as a political tactic against the Republican party, calling the hearing a "national disgrace" (Shabad, 2018). The then Supreme Court nominee expressed to the nation his

political bias. His belief that the democratic party was conspiring against him as a Republican, should have raised the question during the Senate's vote that Kavanaugh might not be able to separate his bias. This could potentially disrupt the Supreme Court process in future Supreme Court cases.

The seven-day time constraint that the F.B.I. was given to complete a full investigation was the biggest ethical dilemma for the F.B.I to face. The expectation that the F.B.I. would consider this case with the same level of importance given by the public was not met. There were dozens of people who were not interviewed by the F.B.I. (Caldwell and Przybyla, 2018). Dr. Ford and Kavanaugh were two of the people who the F.B.I. did not contact during their investigation. Important parts of the allegations were not looked into that could have had an influence on the Senate's decision. The F.B.I. is a government lead organization therefore, there can be no teleological outlook in the Bureau's interest. Moreover, because teleological ethics concern how a person's morals are affected by the choices that are made, a teleological goal for the F.B.I would be bias and corrupt. On the other hand, due to bias in public opinion, the F.B.I.'s deontological ethical standpoint is important for the population to understand. Deontologically, the F.B.I. has a duty to protect the American people from harm. Each investigation should be completed professionally and thoroughly to ensure proper proceedings in each case. A proper verdict based on accusations and testimonies made by the parties involved, combined with the lack of tangible and sufficient evidence the F.B.I. was unable to conclude if the verdict was guilty or not guilty. The F.B.I. carried out their duty to the U.S. Constitution.

### **Dr. Ford**

In July 2018, after it was announced that Brett Kavanaugh was one of the candidates on Donald Trump's Supreme Court nominee shortlist, a concerned Christine Blasey Ford contacted her Senator through an anonymous letter (CNN, 2018). This letter, addressed to Senator Dianne Feinstein, detailed the assault that Ford claimed to have happened in the early

1980s (CNN, 2018). Ford's letter served the purpose of calling the senators attention to the possible ethical concern and repercussions that this might have on the nation if Kavanaugh were to be confirmed into the Senate. According to her testimony, at this point in time, Ford wished to remain anonymous for reasons concerning her own safety as well as her family's. Additionally, as a professor at Palo Alto University, she knew that her life would never be the same once she went public with this information because of its controversial nature. Despite her fears of going public, she believed that telling her story on a national level was her civic duty, as she states in the opening remarks of her testimony. On September 16, 2018, the Washington Post published Ford's story and with her consent, named her, making her identity public (The Washington Post, 2018). During her testimony, Ford recounted the details from that night as she was able to remember. A lot of skepticism arose about the timeline of her coming forward with the allegations including from President Trump himself who openly expressed doubt of her testimony. Many people were also skeptical of her argument because of the lack of evidence. In an article that details the way our brains process trauma, Jonathan Foiles points out how our brains tend to suppress this trauma in an effort to protect us. "Flashbacks activate the amygdala, the part of the brain that monitors our surroundings for signs of danger and prepares us to take action, and repress Broca's area, the part of our brain responsible for putting our thoughts and feelings into words" (Foiles, 2018). During her testimony, Ford points out that although she was unable to answer many of the questions asked because of memory loss, the details that brought her to testify were unforgettable. She says "they have been seared into my memory and have haunted me episodically as an adult." She was visibly upset and obviously emotional while publically detailing the attack.

Apart from the assault itself, these last couple of weeks have been the hardest of my life. I have had to relive my trauma in front of the entire world, and have seen my life



picked apart by people on television, in the media, and in this body who have never met me or spoken with me (Ford, 2018).

Ford spoke about her experience of having her identity public. Some of the things Ford risked include her own safety, as well as that of her families. Ford also risked her career and reputation during this process.

There are many ethical theories about Ford's motives and the outcome of the testimony that could be explored. From a deontological standpoint, one can draw two possible conclusions. One might say that her purpose behind going public was to push her own liberal agenda. During the time that Ford's identity went public, it was mentioned by Emma Brown in the original Washington Post article, that Ford's political views were mainly democratic. Not only that, but Brown writes that Ford had made small donations to a multitude of political organizations. This sparked an uproar from the Republican community that snowballed conspiracy theories about Ford and where her motives fall. If this were truly the case, and Ford publicly spoke out to push her own political agenda, it would be ethically unsound. Although, with our knowledge of the hardship and many threats she has faced during this process, one cannot imagine an individual would desire so much negative attention. Ford detailed in her testimony that her family had to move four times and constantly have security guards around. The counter-argument would be that her reasoning was solely to bring public awareness to Kavanaugh's immoral actions. If this were the case, her reasoning behind going public would be ethical because of her principled intentions.

Teleologically analyzing the situation, we are also able to see different ethical views on the outcome of the case. One might think that because Kavanaugh won the Supreme Court vote, that this sends the wrong message to survivors of sexual assault and is a huge loss for victims and their advocates. Additionally, the harmful repercussions that this case has had on Ford, her family, her career, and her reputation are having their own negative long-lasting

impacts. This would mean that the outcome outweighs the purpose behind Ford coming forward. On the other hand, this case brought a huge amount of publicity and spotlight to sexual assault awareness. A GoFundMe page was created for Ford and her families security needs such as their home security system, and the multiple relocations her family had to face, as stated by Ford in her GoFundMe biography. The acceptance for donations closed on November 21, with Ford promising that “All funds unused after completion of security expenditures will be donated to organizations that support trauma survivors” (GoFundMe, 2018). After analyzing the different ethical standpoints, we assert that both teleologically and deontologically, Christine Blasey Ford’s case is ethically sound.

### **Kavanaugh**

After the allegations against Kavanaugh were made public, there was a downward spiral of other accounts of sexual assaults that began to infiltrate into the situation. The allegations had the public questioning how Kavanaugh would respond, and if it would turn into a situation that could eventually be overlooked. Through his testimony during the Senate hearing and personal claims that have been stated to multiple media outlets, his voice was clearly heard. During the hearing with the Senate, he was able to deliver his own personal testimony that he stated to have written without the help of outside sources and that it was solely from his point of view (NBC, 2018).

As Kavanaugh began to deliver to his speech in regards to the accusations, he mentions his feelings in reference to the Democratic agenda, Dr. Ford, and himself. Directed towards Dr. Ford he states, “you have replaced advice and consent with search and destroy,” he firmly believes that part of the accusations made against him was in response to past political issues surrounding the 2016 political election. The situation was referred to as a “political hit after the election and revenge on behalf of the Clintons”, in sight of Kavanaugh (NBC, 2018). Therefore there is no question as to why he would see them as liars who tried

to take him down but struggled in doing so because he did well during his hearings. (NBC, 2018). Kavanaugh also acknowledged the fact that he was willing to be compliant in any kind of investigation that needed to take place. In closing, Kavanaugh stated that “those who make sexual accusations deserve to be heard, but so do those that the accusations are made out to” (NBC, 2018). However, Democrats considered him to be a potential threat, if given a position of power regarding the entire situation. Due to the public nature of a Supreme Court Justice, millions of Americans listen to these political figures. The vote to approve Kavanaugh’s position in the Senate would create turbulence amongst those who believe Ford. Kavanaugh argues that it has destroyed his family and the reputation of his name, and it would affect not only his life but everyone else involved for years to come.

Alongside Kavanaugh’s personal Testimony, another claim in the process was his declaration of virginity throughout high school and leading into his early college years. The Huffington post discusses his virginity as a counterclaim to the sexual assault allegations against him. It was during an interview session with Fox News that he used this as a clutch. Stating that because of his virginity he would have never done such a thing (Madani & Miller, 2018). The party Ford acclaims to have attended 35 years ago when this supposedly occurred, could not have been accurate because of the lack of physical proof. “We’re talking about allegations of sexual assault. I have never sexually assaulted anyone,” Kavanaugh told Fox News. “I did not have sexual intercourse, or anything close to sexual intercourse, in high school or many years thereafter” (Madani & Miller, 2018). His virginity was called into question because of a history professor, Stephen Kantrowitz, who taught him at Yale during freshman year. He claimed to have heard a different story about the event. This brought into question Kavanaugh’s truthfulness since he admitted that during their conversation he mentioned losing his virginity that year. Moreover, he was compelled to share this as a piece

of evidence in order to have Kavanaugh's honesty and integrity considered before the vote to decide if he is worthy of taking a seat as Supreme Court Justice.

In terms of ethical perspectives in the eye's of the public, there are two ways in which Kavanaugh can be evaluated, in reference to the allegations made against him. Through a teleological lense, Kavanaugh chose to deliver his testimony without help from others, and that decision alone portrays how he wants to be authentic in his reaction. He handled himself well throughout the situation but could have been more aggressive in his actions against Dr. Ford. Although according to others it seemed too partisan of a response and in violation of rule 3(h)(1)(E) of the Judicial Court (Denning, 2018). By presenting his side in this manner it came off as too biased to a particular side and too politically targeted. In presenting his claim in this way, it made it seem as if the only thing that was important at the time was securing his nomination into the Supreme Court (Denning, 2018). His presentation of his political bias during this case affects his credibility as a potential leader. In considering all that has been said and done in regards to the whole situation, deontologically it isn't all that bad. Sexual assault accusations can be damaging to one's reputation. However at the same time, any kind of public good or bad can still put people in the spotlight of the media, and in the eyes of the public.

### **Conclusion**

The Kavanaugh case is one that will continue to be referenced to in the sexual misconduct conversations for the years to follow. These allegations appeared at a pivotal time in history during the #metoo movement concerning sexual misconduct and the way it is handled and viewed in society. People are more vocal on the subject of sexual assault than previous times and are expressing the importance of conversation now more than ever. Dr. Ford and Kavanaugh's reputations will be forever changed from this investigation and overall situation. The political spectrum seemed to be split more clearly during the week of the investigation leaving many Democrats in disapproval of the way the investigation was

handled. Republicans were left feeling victorious with a cloud potential vengeance after the claims made during Kavanaugh's testimony. This particular case presents multiple ethical standpoints that show how different people and agencies will react based on personal and political morals and values.

### **False Allegations**

After Kavanaugh was elected as Supreme Court Justice a woman admitted that her accusation against Brett Kavanaugh of sexual assault was untrue. Judy Munro-Leighton falsely claimed that she submitted an anonymous letter to Senator Kamala Harris that accused Kavanaugh and one of his friends of raping her in a car (Lapin, 2018). When investigators looked into the situation they found that she was not the anonymous accuser who wrote the letter. Situations like these hurt Dr. Ford's case, even after the verdict has been made, as well as other sexual assault victims.

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