

THE KAVANAUGH CONFIRMATION HEARINGS AS AN EXAMPLE OF POST-
TRUTH POLITICAL RHETORIC AND ITS RELIANCE ON *ETHOS* AND *PATHOS*

by

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DEDICATION

Evelyn,
You're going to change the world.
Do it with truth, kindness, and love.

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I. WAKING UP IN A POST-TRUTH POLITICAL ERA

Introduction: Waking up in a Post-Truth Political Era

Coming of age during the 2016 American presidential campaign was unlike anything I had experienced until or since. My grandparents are old enough to remember the Nixon presidency and all that came along with Watergate, while my parents remember all of the Bill Clinton scandals of the 1990s. But while Clinton was partaking in the Monica Lewinski scandal, I was busy learning to walk—I had bigger things to deal with than American politics. The first election I remember at all was during the 2000 election between George W. Bush and Al Gore. The polling place where my mom went to vote had a coloring station for kids, and we got to cast pretend ballots while our parents cast their official ones. In the 2012 election, between Barack Obama and Mitt Romney, though, was when I started actually becoming more aware of politics. At seventeen, I was starting to gain an interest in who was running my country, why, and what they cared about. Admittedly, the girl I was then had very different ideologies and priorities than the woman I am now, but it was my political awakening, nonetheless.

Growing up as a military kid in the Bible Belt, I identified, along with everyone around me, as an evangelical Republican. As such, the 2012 election caused quite a stir in my community when the choice was to vote for either a Mormon or a baby-killer. See, if the president doesn't believe in Hell, where is his moral compass? But if the president will allow abortions, he also must have no moral compass. The election seemed like a lose-lose. If only I had known then how much worse things could actually get.

In 2016, I was in the midst of my undergraduate studies in lower Alabama. I watched the political campaigns, rallies, and debates. I had a favorite candidate, who was

not chosen in the primaries; and I watched as Donald J. Trump beat out all the other Republican candidates who were far more qualified than he. I watched in disgust as he mocked disabled people and flaunted his sexual assaults as “locker room talk.” I knew that I was more likely to get assaulted than any of the men on my campus, and I felt sick at the thought of someone who could condone sexual assault leading the country. So, I watched in dismay at a Tex-Mex restaurant in Louisiana as state by state the votes came in, and it was close. I watched as red state after red state showed up on the map, and I didn’t finish my quesadillas. I lay in bed that night with my iPhone showing real-time election results and tears in my eyes, trying to convince myself to stop watching and go to sleep, but anxiously hoping things would turn blue. Obviously, that never happened.

Since the 2016 elections, I have often wondered how Trump could become the president of a nation that has claimed to value character, integrity, and honesty. As I became aware of the concept of post-truth, I realized how this could come to be. Although the term post-truth is generally used as a modifier, I also will refer to post-truth normatively as a cultural and rhetorical phenomenon unto itself. As their 2016 Word of the Year, the Oxford English Dictionary defines post-truth as “relating to or denoting circumstances in which objective facts are less influential in shaping political debate or public opinion than appeals to emotion and personal belief” (“post-truth adj.”). For the purposes of this thesis, post-truth is defined as a fundamentally rhetorical phenomenon that focuses on persuasion where truth and fact are irrelevant insofar as the audience is persuaded. While post-truth rhetoric, post-truth politics, post-truth discourse, and post-truth propaganda are all well known in the world of rhetoric and composition—and in academia as a larger whole—what I focus on in this project is how all of those types of

post-truth come together to form a larger movement similar to postmodernism. I argue that post-truth, marries *ethos* and *pathos* in an extraordinary match that severs the rhetorical triangle, empowers persuasion via deceit. I specifically examine the Brett Kavanaugh Supreme Court confirmation hearings from a theoretical perspective in search of how post-truth operates in the current political culture. As such, my goal is to use this thesis to help uncover some unfortunate and helpful truths about post-truth so that we, as scholars, teachers, and voting members of society, can better understand the political climate that we live in today, in 2020 America with another election looming on the horizon.

I began thinking about this research project as presidential candidates were just announcing their intent to run for office. As I have continued working on this project, so much has changed. Trump has been impeached, states are voting in the primary elections, and more corruption and examples of post-truth have come to light than I will ever be able to discuss in this thesis. I also cannot separate myself entirely from the world that I live in. So, while I will attempt to maintain a singular focus throughout this thesis, I go into the project with the knowledge that the president's impeachment, acquittal, and prospective reelection loom heavily over this project, myself, and society.

Statement of Purpose and Research Questions

The purpose of this thesis is to analyze the unique ways in which post-truth renegotiates standard notions of rhetoric. If, as post-truth scholars Bruce McComiskey and Lee McIntyre suggest, post-truth serves to sever the rhetoric triangle by removing *logos*, then the goal of this thesis is to better understand how rhetoric operates sans *logos*,

particularly in public and political discourses, specifically by marrying *ethos* and *pathos* rather than relying more heavily on one or the other as has been proposed elsewhere. In this thesis, I hope to fill a gap in the literature that tends to look at *pathos* and *ethos* independently as the sources of post-truth productivity. I instead focus on the exclusion of *logos* from the equation and combine the ideas of scholars that post-truth relies on *pathos* and *ethos* equally for its effectiveness.

My main research question is:

- As an example of post-truth political rhetoric, what is the relationship between *pathos* and *ethos* in the Kavanaugh hearings? If, as scholars suggest, post-truth relies so heavily on each of them in different ways, how do they function together irrespective of *logos* in regard to the Kavanaugh confirmation hearings?

In addressing that central issue, my supporting research questions are:

- How might post-truth rhetoric be best understood as based upon post-truth theories in philosophy and contemporary rhetorical theory?
- How is aggrievement constituted and performed in service of post-truth rhetoric during the Kavanaugh confirmation hearings?
- How is post-truth developed through central texts or performances as well as the contexts in which it is delivered?
- What are the implications for writing pedagogies in a time of post-truth discourse?

Significance of the Study

This study characterizes post-truth in a way that brings rhetorical history into the conversation by discussing how post-truth severs the rhetorical triangle. In essence, post-truth subverts Aristotle's notions of persuasion by removing *logos* from the equation. While post-truth scholars have previously looked at post-truth as it relates to *ethos* or *pathos*, I plan to argue that it is the marriage of the two that makes post-truth rhetoric so successful. This notion combines two current theories about post-truth into one that serves to retheorize how we look at the means of persuasion.

This retheorizing of post-truth forces us to reconsider how we view rhetoric. If, as Aristotle posits, rhetoric is “the faculty of observing in any given case the available means of persuasion,” and relies heavily on what we now consider the “rhetorical triangle”—*ethos*, *pathos*, and *logos*—how does rhetoric change if we remove one of the appeals from the situation, as post-truth has done (9)? This question is even more important right now, because of the looming election and larger trends in American and world political discourse. It is crucial that we, as scholars, teachers, and voting members of society, can better understand the political discourse environment that we live in today and make informed, rhetorical decisions in our lives, classrooms, and voting booths so that we might work in opposition to post-truth.

Research Methods

This study is a rhetorical analysis in which I will closely examine a key instance of post-truth in politics. Namely, I am interested in the Kavanaugh Supreme Court confirmation hearings. In examining these hearings, I will look for specific instances of

pathos and examine how those instances are supported by the *ethos* of the subject, establishing if and how *pathos* and *ethos* work together in the exclusion of *logos* and for the service of post-truth. The first chapter of this analysis will be a textual rhetorical analysis as defined by Jack Selzer as “analysis that concentrates more on texts than contexts [typically using] one or another kind of rhetorical terminology as a means of careful analysis of a single symbolic act considered on its own discrete terms” (283). The second chapter of the analysis will be a contextual analysis, which is an approach that:

emphasizes context over text [attempting] to reconstruct a rhetorical moment within a particular rhetorical event...took place, to create a thick description of the (sometimes complex) cultural environment that existed when that rhetorical event took place, and then to depend on that recreation to produce clues about the persuasive tactics and appeals that are visible in the performance in question.

(Selzer 283)

By approaching the Kavanaugh hearings both textually and contextually, I am able to explore more broadly what this rhetorical event has to offer on the subject of post-truth rhetoric. My contextual analysis will examine concurrent news reports on the hearings and reactions from opinion leaders in mainstream and social media. A textual and contextual rhetorical analysis will help me consider how post-truth rhetoric is a function of both the speaker’s performance as well as the larger setting of cultural values and venues in which that performance is received.

I start by gathering news articles and videos pertaining to the hearings as well as the most significant relevant documents and thoroughly evaluate them for instances of *pathos*. I then look at how the *ethos* of the subject supports their *pathos* for a successful

conclusion. I have chosen to focus on the Kavanaugh hearings due to the success of Kavanaugh's nomination despite the lack of *logos* used in his appeals. The Kavanaugh hearings also allows me to consider a prominent example of post-truth that is related to but not centered upon Trump's rhetorical performances, which are troubling and excessive in ways that could make a contained analysis more difficult.

After gathering information about the *pathos* and *ethos* for the case study, I will compare my findings with other post-truth scholars' ideas about the subject to see how they correspond. For example, McComiskey poses that post-truth is inherently *ethos* based, while McIntyre argues that it is *pathos* based. I apply both of their arguments to the given subject thereby connecting this post-truth in 21st century political rhetoric to the field of rhetoric and composition in very specific ways. I realize, however, that I cannot separate my rhetorical analysis from who I am and how I see the world—as a white cisgender woman. As such, my analysis is colored by my experiences and opinions, though I do my best to be fair and transparent in my process. While focusing on providing clear portrayal of the events and my considerations of them, I think it is equally important that I am a woman writing about these issues, as topics like #metoo and gendered *ethē* are inevitable when discussing the Kavanaugh hearings.

The outline of my thesis will be as follows:

- I. Introduction: Waking up in a Post-Truth Political Era
- II. Literature Review: Attending to Post Truth Rhetoric

In this literature review, I look at current work in rhetoric and composition as well as theories of post-truth from Philosophy. I use this section to explore definitions of terms such as post-truth in the field(s) and narrow down how I use those terms

in this thesis.

III. Aggrievement in the Kavanaugh Hearings

In this chapter, I am interested in issues of aggrievement in the Kavanaugh hearings. I define what aggrievement is and investigate, via textual rhetorical analysis, if it is an example of a post-truth emotion at play in government.

Because aggrievement is an emotion that is linked directly to status, I argue that it is a prime example of how *pathos* plays a role in post-truth politics.

IV. The Kavanaugh Hearings in Context

In this chapter, I look at the Kavanaugh hearings via a contextual rhetorical analysis. By putting Kavanaugh's words, as analyzed in the previous chapter, into conversation with other events, ideas, and speakers at the time, I examine how *ethos* contributed to Kavanaugh's confirmation to the Supreme Court.

V. Conclusion: Teaching Toward the Next Election

In this conclusion, I explore some of the possible pedagogical approaches that teachers of rhetoric and first year composition should develop as the 2020 election looms in the near future.

Review of the Literature

In this section, I draw on literature from areas of rhetoric and composition, philosophy, political science, and more to give an overview of post-truth and all that it encompasses, *ethos*, and *pathos*. Each of these sections serve to give a background and overview of the major themes of this thesis, and to highlight the theories which I will draw upon in the analysis chapters that follow.

Post-Truth

Academic interest in post-truth rhetoric has surged since the 2016 election. Although that work is still in its infancy, key texts in the field have established a foundation. In his 2017 monograph *Post-Truth Rhetoric and Composition*, Bruce McComiskey writes that his purpose is to “describe the unethical rhetoric that has emerged in our post-truth world, and [to] discuss some of the consequences of post-truth rhetoric for composition studies” (6). He goes on to say that his intent was not “to solve the problem of post-truth rhetoric, but only to define and describe it,” noting that it will be the job of writing instructors across the discipline to “solve the problem of post-truth rhetoric collectively and over time” (6). In this text, McComiskey focuses heavily on post-truth’s relation to *ethos*, though he does have a subsection dedicated to *pathos* as well. He also notes the differences between post-truth, bullshit, and fake news.

Lee McIntyre’s 2018 book *Post-Truth* has similar aims to McComiskey’s work but with a broader topic of post-truth in general, not only as it relates to the field of rhetoric and composition. McIntyre writes about post-truth as it existed in 2017—as a relatively new phenomenon. He provides case studies of post-truth in action such as science denial and the fake-news epidemic of 2016, while also positing that postmodernism may be the root of post-truth rhetoric. The main point of divergence between McComiskey and McIntyre lies in how they approach post-truth. While McComiskey approaches post-truth through the lens of rhetoric and composition, philosopher McIntyre looks at it from the angle of psychology, noting how cognitive bias plays a large role in how people choose to (or not to) believe post-truth rhetoric. These two books primarily describe the characteristics of post-truth rhetoric as a new

phenomenon without going much beyond identification and description of post-truth, although McIntyre does title his final chapter “Fighting Post-Truth.” In that final chapter he discusses ways that those of us in the academy might take a stand against the post-truth rhetoric that we encounter in our classrooms. Overall, though, these seminal texts on post-truth rhetoric only go so far.

Historian Heather Cox Richardson, in a podcast with David Parsons, argues that this decline into post-truth, where truth is less important than achieving goals, began nearly a century ago. She says that William F. Buckley Junior essentially created what he called “Movement Conservatives” to counter the “Capital L Liberals” that were essentially communists for supporting FDR’s New Deal and Eisenhower’s Middle Way—both of which were government programs designed to help the American economy, and both of which were supported by nearly all Americans (Parsons). In doing this, what these Movement Conservatives did, according to Richardson’s summary of Buckley’s book, was say, “we can’t trust the concept of the enlightenment...that you should put facts in front of people, and they’ll choose the right stuff, because they keep choosing the New Deal. So, they must not be able to choose what’s good for them” (Parsons 32:11-32:31). According to Buckley himself, he was vehemently against academic freedom because he “contended that the trustees of Yale, along with the vast majority of the alumni, [were] committed to the desirability of fostering both a belief in God and a recognition of the merits of our economic system. [He] therefore concluded that...it was the clear responsibility of the trustees to guide the teaching at Yale toward those ends” (xiv).

In a more modern frame, Ryan Skinnell and Mary E. Stuckey write about the

recently dubbed “fake news” and the rhetoric of Trump in their respective works.

Stuckey, especially, focuses on the rhetorical tactics that the Trump campaign and Donald Trump himself used during the 2016 election in her article “American Elections and the Rhetoric of Political Change: Hyperbole, Anger, and Hope in U.S. Politics.” The problem, however, is that post-truth scholars seem to disagree on whether post-truth rhetoric is a reliance on *ethos* or *pathos*. Because of the strong arguments made for each, it seems clear that post-truth relies equally on both, as I will prove through my case study in this project.

Taking a different approach to post-truth, Dana L. Cloud of Syracuse University critiques the idea that truth is the most important factor in a post-truth society in her book *Reality Bites: Rhetoric and the Circulation of Truth Claims in U.S. Political Culture*. As a communication and political rhetoric scholar, Cloud focuses on the relationship between post-truth and power. By positioning herself firmly against fact-checking as a reliable form of resistance, Cloud argues that post-truth “extends beyond Trump as an example of a challenge to truth telling in American politics,” and she posits that the most effective resistance against post-truth is acknowledgement and “full acceptance that knowledge is partial and partisan” (ix, xii). *Reality Bites* takes a turn away from the defining and describing of post-truth rhetoric that McComiskey and McIntyre accomplish in their books and instead answers the question “what do we do now?” as we face the reality of a post-truth society and seek to understand the rhetorical dynamics of such a society

Post-truth has a strong historical antecedent in propaganda, and we can look to work there in order to better understand the function of post-truth. Jason Stanley, in his

book *How Propaganda Works*, defines propaganda as “*the employment of a political ideal against itself*. Someone who presents subjective values, or self-interested goals, as the embodiment of objective scientific ideals is therefore producing...propaganda” (xiii). With this definition, which is how I, too, will define propaganda in the course of this thesis, it is clear how post-truth and propaganda are closely linked. While Stanley’s study of propaganda shows how self-interested goals can serve in the position of truth, it does not account for the function of *ethos* and *pathos* in post-truth discourses.

Obviously, I am not alone in my dismay at the success Trump has found with post-truth rhetoric during his election and presidency. Journals such as *Literacy in Composition Studies (LiCS)* and *Philosophy & Rhetoric* have recently dedicated special issues to post-truth and democracy and fake news. In his recent *College Composition and Communication* article entitled “Reaffirming Critical Composition Studies as an Antidote to Trumpian Authoritarianism,” Donald Lazere continues his scholarship on the role of composition and composition instructors in social and political spheres. In “Reaffirming Critical Composition Studies,” he argues for increased political and civil literacies. He quotes Richard D. Kahlenberg and Clifford Chaney, who write in *The Atlantic*, “Public schools are failing at what the nation’s founders saw as education’s most basic purpose: preparing young people to be reflective citizens who would value liberty and democracy and resist the appeals of demagogues.” Similarly, scholars of demagoguery, such as Patricia Roberts-Miller, are also interested in this new theme in rhetoric, and are pursuing scholarship on the relation between post-truth and demagoguery.

Ethos

As defined above, post-truth rhetoric relies on *ethos* and *pathos* for persuasion. It is paramount, therefore, that I fully explore and define what *ethos* is. Aristotle writes that *ethos* is “the most effective means of persuasion [an orator] possesses” (182). He says that audiences “believe good men more fully and more readily than others” because of the level of trust that audiences place in these “good men,” but cautions that audiences should not come into a rhetorical situation with the rhetor’s *ethos* preestablished in their minds, but should instead make assumptions about the speaker’s *ethos* based on what he says (182). While this is a noble suggestion, it is not practical. People come into rhetorical situations with their own thoughts, ideas, biases, and presumptions about the speaker, for better or for worse. Because of this, though, audiences also come into rhetorical situations with predetermined decisions about whether they will believe the speaker without question or look for error in their every statement. This is especially true when *ethos* begins to look more like power and prestige than moral character, as I will discuss further in the following chapter.

One of the key flaws with Aristotle’s explanation of *ethos* is that it fails to take into account that not all rhetors are men. When considering diverse groups of individuals, Kathleen J Ryan, Nancy Myers, and Rebecca Jones’ *Rethinking Ethos: A Feminist Ecological Approach to Rhetoric* defines *ethos* differently. They argue that “women rhetors find that there is no comfortable *ethos* to employ if they want to shift the dominant discourse on a particular topic [because] common normalizing *ethē*...ascribed to women do not lend themselves readily to public speaking” (2). That is, women in areas of public discourse, such as those in social justice or politics, must rely on different types

of credibility. They argue that “a new *ethē* must be created and defined to push against these socially determined *ethē*. Our feminist rhetorical perspective challenges us to examine women’s *ethos* with the acknowledgement that it is culturally and socially restrictive for women to develop authoritative *ethē*, yet acknowledges that space can be made for new ways of thinking and artful maneuvering” (2). In other words, women cannot expect to have the same level of credibility as men when the common *ethē* that they are given in society are those in the private sphere. When women seek to have credibility in the public sphere, they must develop a new form of *ethos* that is antithetical to the labels they have already been prescribed. Though issues of gendered *ethos* will come up regularly and powerfully in the following chapters, I want to suggest that this same framework can be applied to other minority groups as well. Race, gender, ability, and sexual orientation are all areas in which a rhetor must step out of the prescribed *ethos* and into a newly constructed *ethē* that takes their “otherness” into account and makes it a source of power rather than shame or subjugation.

When looking at *ethos* as it relates to post-truth rhetoric, then, it is crucial that we acknowledge and take into account that not all *ethos* is equal in the eyes of the audience. While Aristotle’s idealistic view is that the audience should avoid entering a rhetorical situation with their minds made up about a speaker’s *ethos*, Ryan, Myers, and Jones recognize that this view is unrealistic. By taking the rhetor’s “otherness” into account, Ryan, Myers, and Jones allow for a more wholistic view of how *ethos* should be considered when studying people who do not conform to the straight white male archetype.

Pathos

Pathos also plays a significant role in post-truth rhetoric. While Aristotle deems *ethos* the most effective means of persuasion, he does not discount the use of emotion. Rather, he spends considerably more time discussing emotions and their appeal than either *ethos* or *logos*. He argues that “our judgments when we are pleased and friendly are not the same as when we are pained and hostile” (182). When discussing emotions, Aristotle defines anger as “an impulse, accompanied by pain, to a conspicuous revenge for a conspicuous slight directed without justification towards what concerns oneself or towards what concerns ones’ friends” (214). Anger is an important emotion for this project, as it is the key base emotion that Kavanaugh uses throughout his testimony. What is important to note about Aristotle’s definition is that it is highly dependent on status. In his view, poor or otherwise lower-class people cannot feel anger in the same way that the upper class can because they do not risk losing their status of superiority when people treat them wrongly. Thus, because a rich man has more to lose than a poor man, he is more likely to be angry over a slight than the poor man would be. Emotion scholar Daniel M. Gross reframes this in a different way in his *The Secret History of Emotion: From Aristotle’s Rhetoric to Modern Brain Science*. Gross writes “Aristotle’s anger presumes a *contoured world of emotional investments*, where some people have significantly more liabilities than others. A man becomes angry both at those who belittle him and, interestingly, at those belittling others whom it would be shameful for him not to defend, such as parents, children, wives, or dependents” (3). This reframing refocuses Aristotle into more contemporary terms, allowing for a more modern context.

Later in his book, Gross writes about how emotions are political. This is akin to

Aristotle's notions of anger and status, but it extends further than Aristotle. In his analysis, he writes that "Hobbes follows Aristotle in sketching an economy of emotional scarcity, a zero-sum game where the emotional wealth of one social agent necessarily comes at the expense of another" (46). What this means is that, because the elite have a monopoly on emotions that the lower classes may not even have the vocabulary to describe, they are essentially hoarding those emotions for themselves. So while lower classes may feel emotions such as sadness, happiness, destitution, or pride, those with more social capital have a monopoly on emotions such as aggrievement and other passions and niche emotions.

II. KAVANAUGH AND AGGRIEVEMENT: A TEXTUAL ANALYSIS OF THE KAVANAUGH SUPREME COURT CONFIRMATION HEARINGS

Introduction

In 2020, aggrievement is an emotion that most are familiar with, whether or not they can call it by name. It is when someone seems unreasonably angry because their character, which they assume to be infallible, has been called into question by another person or entity. Though it can take many forms depending on the individual who feels aggrieved, Merriam-Webster defines aggrievement as “feeling anger because of unfair treatment” (“Aggrieved”). In order for one to feel aggrieved, then, it is important that they believe they have been treated unjustly. Because the base emotion at play here is anger, aggrievement often looks like dignified rage. What is interesting about aggrievement, though, is that it requires someone to be fully convinced that they have been treated unjustly. One would expect, then, that a minority would feel aggrieved at racism, sexism, or other discrimination. If, for example, a gay person was denied service because of their sexuality, they would feel aggrieved. In the Brett Kavanaugh Supreme Court confirmation hearings, however, aggrievement shows itself in a profoundly different way. It is not because Judge Kavanaugh is a minority who was unfairly discriminated against that he is feeling aggrieved--it is because he feels as though his *ethos* is being unfairly challenged. *Ethos* is built into Kavanaugh’s identity. He is a cisgender straight middle-aged white catholic male born into money in the United States. He could be the poster child for privilege in America. And yet, during his confirmation hearings, Kavanaugh is acting aggrieved.

In this chapter, I examine the Kavanaugh hearings in video form (as provided by

the *New York Times* via *YouTube*), and in written form (as provided by *The Washington Post*'s online transcript) using Selzer's method of textual rhetorical analysis. As I watch the video recording of the hearings, I look for clues of body language, facial expressions, and tone. When an instance of these arises, I use the written transcript to further analyze the text for specific language to analyze rhetorically. Using these texts synchronously, I gain a better understanding of the text as a whole, rather than using only the written transcript and trying to intuit tone or emotion from it. In this chapter, I argue that aggrievement is a by-product of privilege and will look at how Kavanaugh uses this emotional appeal to demonstrate his own *ethos* regardless of the facts, "truth," or logical arguments placed before him. Thus, Kavanaugh's aggrievement in his confirmation hearings are a prime example of a post-truth emotion at work in the United States government. I further argue that aggrievement in a post-truth society is a privileged emotion—that it is a tool of *ethos* used by those with entitlement to persuade and uphold their privilege against any question.

Confirmation hearings, as a genre, are as long established as the government itself and are a crucial facet to the balance of power within the United States' democratic republic. At their root, confirmation hearings are the Senate's way of determining that the President's nomination of an individual into a position of power within the United States government (such as cabinet members or federal judges), is in the best interest of the nation. Such hearings are, therefore, fairly routine. Confirmation hearings allow senators on both sides of the aisle to ask questions of the candidate and interrogate their character. The Senate's goal is to ensure that the people in positions of power will act justly and will enact their duties for the good of the nation. The individual in the position of being

confirmed, however, have a different goal: to gain their appointment. Through these hearings, Kavanaugh's overarching purpose remains the same: to become a member of the Supreme Court of the United States. His more specific purpose in these hearings, however, is to defend his tarnished reputation and clear himself of any and all allegations of sexual misconduct. For men like Kavanaugh, *ethos* is everything.

Ethos

According to Aristotle's principles of rhetoric and rhetorical analysis, as discussed in Chapter II, it is important to understand the author of a text in order to understand the text itself. As such, it is crucial to this analysis that I begin by describing, at least briefly, who Brett Kavanaugh is. Born in 1965 in Washington, DC to Everett and Martha Kavanaugh, Brett Michael Kavanaugh grew up with the elite. His father was a lobbyist, and his mother was a state court judge. Kavanaugh attended many private and preparatory schools throughout his childhood before attending Yale University, following in his late grandfather's footsteps, and later, Yale Law School ("Brett Kavanaugh"). Following his education, he held many positions within the United States federal court system as a clerk for various attorneys and judges, part of the legal team charged with investigating President Clinton during the Monica Lewinski scandal, part of the legal team in *Bush v Gore*, in independent law firms, in the White house as legal counsel to the president, and, eventually, a judge in the D.C. Circuit for twelve years before his nomination to the Supreme Court by President Trump ("Brett Kavanaugh").

As evidenced by his vast and prestigious education and career, it is clear that Kavanaugh never wanted for much in his life. High school tuition at his former school,

Georgetown Preparatory School, is nearly \$40,000 for the 2020-2021 academic year irrespective of the various fees and dues (“Tuition and Financial Aid”). Though this rate has likely changed since Kavanaugh’s stint in the 1980s, Georgetown Prep has never been an inexpensive place to attend. Yale, similarly, costs about \$75,000 per year for undergraduates and \$90,000 per year for law students without financial aid (“tuition and fees” and “student budget and cost of attendance”). Though it is unclear how much of his tuition was paid for by scholarships, grants, and other miscellaneous funding, what is clear is that Kavanaugh was able to attend some of the most prestigious schools that money can buy.

Irrespective of the financial burden of tuition, the schools that Kavanaugh attended in this adolescence and early adulthood are dripping with prestige. Georgetown Prep and Yale are amongst the most elite educational institutions in the country and, likely, the world. Students who are educated at institutions such as these leave with more than skills in their respective fields, they leave with elite connections and the know-how to succeed amongst the wealthy and privileged because they *are* the wealthy and privileged. It is this type of privilege that Kavanaugh puts on display during his confirmation hearings, and it is this same type of privilege that he feels is at risk in the wake of the sexual misconduct allegations. This privilege is what the committee members understand, and it is what is common within the SCOTUS. With educational backgrounds from Harvard, Yale, Cornell, Colombia, Stanford, Princeton, and Oxford, to name a few, SCOTUS justices are amongst the most elite in their educational backgrounds (“Current Members”). SCOTUS justices understand the feeling of having a lot of social capital to lose.

On day two of the confirmation hearings, Kavanaugh is sworn in under oath and gives his opening statement. Immediately, Kavanaugh tries to demonstrate his own credibility by stating that no one wrote his opening statement for him. In saying this, Kavanaugh is attempting to demonstrate his own competency and political independence. While his words say “Mr. Chairman, Ranking Member Feinstein, members of the committee, thank you for allowing me to make my statement. I wrote it myself yesterday afternoon and evening. No one has seen a draft, or it, except for one of my former law clerks. This is my statement,” his message is clear: I am capable of speaking for myself, without anyone to vouch for my credibility (“Kavanaugh Hearing: Transcript”). In order for this to be true, it is important that his audience views him as a credible source. But why would they not? He is just like most of them--rich, white, male. Nearly all of his peers in the Senate can identify with at least two of his dominant characteristics. His presence exudes power. Regardless of partisanship or ideology, Kavanaugh speaks to the nature of the Supreme Court of the United States (SCOTUS): privileged. With this privilege comes entitlement.

Throughout the confirmation hearings, Kavanaugh makes it clear, as shown below, that someone of his status should not be accused of something as shameful as sexual assault. He is so repulsed by the thought of the accusation that he refuses, in his opening statement, to even say the words. Instead, he defers to terms like “horrible things” or “shameful acts” instead of calling it what it is--sexual assault (“Kavanaugh Hearing: Transcript”). In his “Rhetoric,” Aristotle argues that an orator who has “good sense, good moral character, and goodwill” will be successful (179). That is, if a speaker has *ethos* people will believe them. As mentioned previously, Aristotle also says that

when *logos* is in question—such as when the facts are unclear or it is a he-said-she-said situation—*ethos* stands in as the most persuasive appeal (182). This seems to be incredibly true in Kavanaugh’s case. Because he has built up enough *ethos* to sustain himself and his career by virtue of being a wealthy white man, people are inclined to believe what he has to say, regardless of whether what he says is true or fair.

With this immense privilege that Kavanaugh inherently has comes an equal dose of entitlement. He clearly believes that he is entitled to the SCOTUS seat, and anyone who would question his right to that position makes him incredibly angry. This anger is palpable in the room and shows through just as powerfully in the video recordings. His facial expressions alone are evidence of his anger. As he furrows his brow, purses his lips and glares meaningfully around the room in the beginning of his opening statement alone, the audience knows full well that Kavanaugh is irate—and he has not even started yelling yet.¹ As Daniel Gross discusses in “Defending the Humanities with Darwin,” facial expressions have been used for decades to determine a person’s emotional state. As he points out, however, “emotions cannot be broken down into basic units—whether that means molecules, brain images, or facial expressions—without losing track of the phenomenon at hand” (42). That is, we cannot look at Kavanaugh’s face and decide that he feels aggrieved or angry unless we take into account the full rhetorical situation. We can, however, note that his facial expressions display anger, and go from there. In this case, Kavanaugh’s face says, “I am angry,” his words say, “I am credible and the accusations against me are unfair,” and from there we can draw a clear line to his actual emotion. Kavanaugh feels aggrieved because he does not believe that a man in his

¹ See Figure 1

position of power should have to defend himself against allegations of sexual assault. He believes that his status alone should give him the benefit of the doubt because his privilege gives him more *ethos* than Dr. Ford's gives her. Dr. Ford's testimony, though not the focus of this project, is in direct contrast to Kavanaugh's. While his words, expression, and tone ooze with emotional appeals, Dr. Ford relies heavily on *logos* for effective persuasion. Fortunately for Kavanaugh, *pathos* is *ethos*'s perfect companion for post-truth persuasion.

Kavanaugh's ethos on display

One of the key aspects of Kavanaugh's success with his *pathos* appeal is the fact that most of his peers on the committee can identify with his aggrievement. Their privilege in society has also led them to similar feelings of aggrievement when their *ethos* has been questioned. This is important because, in a post-truth society, *ethos* and *pathos* are both required, whereas *logos* is disregarded from Aristotle's coveted rhetorical triangle. Because of this, Kavanaugh's aggrievement is an ideal example of how post-truth political rhetoric uses emotions (*pathos*) to manipulate the audience because of the *ethos* that has already been established in the speaker (generally by their very existence in a position of privilege). As Gross mentions in his monograph, "emotion makes language and identity matter...Aristotle understood emotional investments as thoroughly rhetorical rather than simply a reflection of one's god-given, or even one's preordained, social status. Emotions are the contours of a dynamic social field manifest in what's imagined and forgotten, what's praised and blamed, what's sanctioned and silenced" (15). Thus, Kavanaugh's emotions in the hearings are not simply affective, they are deeply rhetorical

and should be treated as such. His anger at being accused of wrongdoing goes beyond being personally offended. It is a rhetorical tactic used by the elite to persuade others of their righteousness and blur the lines between what is real versus what is imagined. In the case of post-truth, what is real matters far less than what is *felt to be real* by the aggrieved.

Ethos at others' expense

After Kavanaugh's initial assertion of his own *ethos*, he then attempts to destroy the *ethos* of others. He is not only interested in discrediting the allegations made by Dr. Ford and his other accusers, but also of the democratic senators in the room with him. He says:

Since my nomination in July, there's been a frenzy on the left to come up with something, anything to block my confirmation. 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 publicly — publicly referred to me as evil — evil. Think about that word. It's said that those who supported me were, quote, "complicit in evil." Another Democratic senator on this committee said, quote, "Judge Kavanaugh is your worst nightmare." A former head of the Democratic National Committee said, quote, "Judge Kavanaugh will threaten the lives of millions of Americans for decades to come."

I understand the passions of the moment, but I would say to those senators, your words have meaning. Millions of Americans listen carefully to you. Given comments like those, is it any surprise that people have been willing to do

anything to make any physical threat against my family, to send any violent e-mail to my wife, to make any kind of allegation against me and against my friends. To blow me up and take me down. (“Kavanaugh Hearing: Transcript”)

He later says:

The behavior of several of the Democratic members of this committee at my hearing a few weeks ago was an embarrassment. But at least it was just a good old-fashioned attempt at Borking (sic).

Those efforts didn’t work. When I did at least OK enough at the hearings that it looked like I might actually get confirmed, a new tactic was needed.

Some of you were lying in wait and had it ready. This first allegation was held in secret for weeks by a Democratic member of this committee, and by staff. It would be needed only if you couldn’t take me out on the merits.

When it was needed, this allegation was unleashed and publicly deployed over Dr. Ford’s wishes. And then — and then as no doubt was expected — if not planned — came a long series of false last-minute smears designed to scare me and drive me out of the process before any hearing occurred.

Crazy stuff. Gangs, illegitimate children, fights on boats in Rhode Island. All nonsense, reported breathlessly and often uncritically by the media. (“Kavanaugh Hearing: Transcript”)

These passages illustrate the ways in which Kavanaugh attempts to discredit the opposing senators. He calls them liars, accuses them of inciting public rage, criticizes the media, and insinuates that Dr. Ford’s testimony (which they had heard only moments before) was fabricated by his opposition as a ruse. This insistence that the democratic

senators are trying to “take [him] out” through deception rather than on merit alone is telling, and shows a clear misunderstanding—or misrepresentation—of what these confirmation hearings are about (“Kavanaugh Hearing: Transcript”). By assuming that his opposition is trying to take him out, he is also assuming that he is somehow already “in” based on his status alone. This assumption is indicative of the role of status in the SCOTUS. Because Kavanaugh already assumes himself to be a peer to the other SCOTUS justices, he views the hearings as an attempt to dethrone him, rather than an interview to determine his eligibility for the position.

This is another example of how *ethos* and *pathos* work together in political rhetoric. Because of Kavanaugh’s aggrievement—because he feels unjustly and unfairly accused and is angry about it—he seeks to cause others in the room to feel the same way. Like a bully on the playground at recess, Judge Kavanaugh takes out his feelings of anger and frustration on those around him, hoping to incite the same anger and frustration from his opposition, and gaining the empathy of his supporters in the process. In this way, Kavanaugh’s aggrievement is a social emotion.

In most cases, aggrievement is one of the emotions that is essentially useless when the subject of the emotion is alone. That is, when someone feels aggrieved, they also feel the need to put that emotion on display for others. Aggrievement in private is simply anger. When it is brought forth to the public sphere, however, it becomes aggrievement and is, therefore, social. The social relationship that aggrievement requires binds the subject (in this case Kavanaugh) to the object of the emotion (in this case his accusers). Perhaps most importantly, the social nature of aggrievement is that, for Kavanaugh, his *ethos* is dependent on social position and social values. His elevated

status, and the elevated status of his peers, allows them to feel aggrieved more substantially than those with lower social capital because they have more to lose if the validity of his status is questioned. By portraying a social emotion to his audience, Kavanaugh is essentially ensuring that his audience will believe him and take his side rather than siding with Dr. Ford and believing her testimony of his sexual misconduct. In fact, Kavanaugh does little to credit Dr. Ford's *ethē* in any way. The only credit he gives her is that she "may have been sexually assaulted by some person in some place at some time. But I have never done that to her or to anyone" ("Kavanaugh Hearing: Transcript"). Instead, he uses evidence produced from his teenage calendar as proof that he was never at the alleged party. Instead, he argues, "If the party described by Dr. Ford happened in the summer of 1982 on a weekend night, my calendar shows all but definitively that I was not there" ("Kavanaugh Hearing: Transcript"). He also uses this opening statement to further build his own credibility as he insists that he "[intends] no ill will to Dr. Ford and her family. The other night, Ashley and my daughter, Liza, said their prayers. And little Liza — all of 10 years old — said to Ashley, 'We should pray for the woman.' It's a lot of wisdom from a 10-year old. We mean — we mean no ill will" ("Kavanaugh Hearing: Transcript"). This statement about his daughter is not the only mention of his children in his statement, but it is one of the most *ethos* enhancing, as he manages to bring in both family and religion into his defense. In the true "American Dream" fashion, this is highly effective.

Pathos

Kavanaugh's Anger

Though Aristotle argues that *ethos* is the most important appeal when *logos* is unreliable, that is not to say that *pathos* is unimportant. In fact, Stuckey argues that post-truth rhetoric relies most heavily on *pathos* for effective persuasion.² As evidenced in this chapter thus far, Kavanaugh has put his *ethos* to the test during the confirmation hearings, but he does so with a heavy dose of *pathos*. In fact, it is his aggrievement (an appeal to *pathos* via a strong emotion) is what makes his *ethos* such an important issue throughout the hearings. Because *ethos* and *pathos* work together so brilliantly in post-truth persuasion, it is important to look at how they are employed separately as well as together. If Kavanaugh's words in his opening statement are insufficient evidence of his anger, his facial expressions pick up any slack. In Figure 1, Kavanaugh's anger is written all over his face. From his creased brow and squinted eyes down to his snarling mouth and set jaw, Kavanaugh's expressions is riddled with anger, as he recounts the statement above, accusing Democrats of searching for ways to make him look bad and undermine his character.

As defined above, aggrievement's base emotion is anger, which is clearly evident throughout the hearings as Kavanaugh expresses his own anger both physically and verbally. First, however, it is important to understand the theory of anger and how it can be used as rhetorical device. Aristotle writes extensively about anger in Book II of his *Rhetoric*. He argues that anger is "an impulse, accompanied by pain, to a conspicuous revenge for a conspicuous slight directed without justification toward what concerns

² See Chapter II

oneself or toward what concerns one's friends" (214). In other words, anger is a person's desire for revenge when that person or their friends have been slighted in some way. Aristotle then goes on to describe different slights that may cause a person to be angry, one of which is insolence "since it consists in doing and saying things that cause shame to



Figure 1. Reynolds, Michael. Pool via AFP- Getty Images, Sept 27, 2018

the victim not in order that anything may happen to yourself or because anything has happened to yourself but simply for the pleasure involved" (214).

Insolence plays out in a few ways in the Kavanaugh hearings. First, because Kavanaugh himself believes he has been slighted in this way by Democrats, as seen above. Secondly, Kavanaugh believes that he has been slighted in this way by Dr. Ford (likely at a Democratic behest). Third, Kavanaugh's perceived slights have caused him to feel that those questioning him are being insolent, and he sets himself up to respond to this insolence with anger and contempt. To this effect, Aristotle argues:

that is why youths and rich men are insolent; they think themselves superior when they show insolence. One sort of insolence is to rob people of the honor due to them; you certainly slight them thus; for it is the unimportant, for good or evil, that has no honour paid to it...a man expects to be specially respected by his inferiors in birth, in capacity, in goodness, and generally in anything in which he is much their superior: as where money is concerned a wealthy man looks for respect from a poor man... (214-15)

For Kavanaugh, this is exactly what has happened. Because he views himself with such esteem, the very thought that his superiority was brought into question is a slight toward him, and has thus caused him to seek revenge by slighting his peers in the same way—by drawing their character into question. According to Aristotle, Kavanaugh is the epitome of anger. He displays it almost perfectly according to Aristotle's definition. Even as Aristotle continues, saying "a man looks for respect from those who he thinks owe him good treatment, and these are the people whom he has treated or is treating well, or means or has meant to treat well, either himself or through his friends, or through others at his request," Kavanaugh fits the mold perfectly. He is angry because he thinks he has treated everyone fairly—he says as much in his opening statement when he discusses how he has women who work for him and who claim he is good and fair—but someone is calling that into question and challenging him.

What is worse for Kavanaugh is that this slight has come from someone who has less *ethos* than him. In their anthology *Rethinking Ethos: A Feminist Ecological Approach to Rhetoric*, Ryan, Myers, and Jones argue that, because women have less established social *ethos* than men, theirs is an *ethē*, that is comprised of multiple

credibilities that attempt to “make up” for their sex. They argue that “Feminist ecological *ethē* open up new ways of envisioning *ethos* to acknowledge the multiple, nonlinear relations operating among rhetors, audiences, things, and contexts...generating a variety and plurality of *ethos* or *ethē*” (3). For Kavanaugh, his singular *ethos* holds more weight than Dr. Ford’s multiple *ethē* because of his sex and, therefore, he “expects to be specially respected by his inferiors in birth...” (Aristotle 214). It is clear that sexism plays an important role in this transaction of anger, which I explore more in the next chapter.

Kavanaugh’s aggrievement is not simply an emotion that he is feeling. Rather, it is a rhetorical device that he is employing to persuade, and he is using it quite effectively. If Kavanaugh had picked another emotion—straightforward anger, for example—it would have likely been a less effective rhetorical maneuver. Anger on its own is an easy enough emotion to empathize with, but when it is made more complex by the added issue of credibility, it becomes more effective. In *The Dark Side of Empathy*, Fritz Breithaupt writes, “We are more likely to empathize with people who show emotions. In a contest between a ‘cold’ rational player and a ‘hot’ temperamental one, the ‘hot’ person frequently wins because their emotions draw people to their perspective” (107). By making himself into a “hot” person with many emotions, Kavanaugh sets himself up to be easily empathized with, thus weaponizing the emotions of his empathizers. By using his extreme emotional state, he forces people to pick a side, and that is exactly what happened, as is evident in his eventual confirmation to the SCOTUS.

Logos

I would be remiss if I did not spend some time with *logos*, despite its apparent unimportance in post-truth politics and rhetoric. The issue in this case, however, is not that logic is entirely absent. In fact, Kavanaugh presents evidence and attempts to argue logically throughout much of his opening statement. The issue is that, when presented with the opportunity to tell the truth about his high school antics and boyhood mistakes, Kavanaugh chooses again and again to lie. It is his apparent disregard for the truth that renders *logos* irrelevant to his argument. Kavanaugh was not appointed to the SCOTUS because the senate (or anyone else for that matter) believed that he was ignorant to the lewd meanings behind the messages in his yearbook or that he happened to have a stomach virus at the same time that he was drinking beers at a party with his friends. Any logical and reasonable person knows that he was aware of the lewdness and participated anyway, and that he drank himself sick at his high school parties. What is interesting is that these blatant lies did not seem to have an effect on the outcome of the hearings. Kavanaugh's disregard for the truth *should* have spoken to his character. It *should* have made the committee, senate, and SCOTUS question his *ethos*. But he was appointed SCOTUS justice regardless. Thus, it is not Kavanaugh's disregard for *logos* that is the issue in post-truth rhetoric, it is that audiences have become so accustomed to the lies and deceit that they have disregarded the efficacy of *logos* entirely as a means of persuasion and instead rely on *ethos* and *pathos* in their search for "truth."

Conclusion

In most cases, the term “aggrievement” is associated with wrongdoing by a corporation to an individual and the aggrieved individual will make their grievances known and will be compensated accordingly. In the case of the Kavanaugh hearings, however, this is not what happened. Instead, the actually aggrieved—Dr. Ford—was not given any sort of recompense for her mistreatment but was rather publicly humiliated and shamed by her abuser. In this case, Kavanaugh took the emotion and perverted it for his own gains. This is what it means to use *pathos* in a post-truth society. If Kavanaugh had not already had credibility due to his privilege, he would not have been able to use such a heavily laden *pathos* appeal to persuade the committee of his innocence. By all accounts, a high school journal is not a credible source, and yet it was Kavanaugh’s evidence of his innocence. Logically, he should not have a seat on the SCOTUS, and yet he does. This illustrates the power that *pathos* has in a post-truth society. Where *logos* is irrelevant and *pathos* and *ethos* are intertwined via emotions that are only allowed to the elite, post-truth rhetoric is powerful and successful.

III: KAVANAUGH IN CONTEXT: A CONTEXTUAL ANALYSIS OF THE KAVANAUGH CONFIRMATION HEARING

Introduction

As discussed in the previous chapter, the Brett Kavanaugh confirmation hearings are a prime example of post-truth political rhetoric at play. By meshing *ethos* and *pathos* and avoiding *logos* at all costs, Kavanaugh uses post-truth rhetoric to his advantage to secure a seat on the SCOTUS. After looking at the hearings themselves, however, it is important to also look at the cultural and social contexts in which those hearings happened. In his essay “Signature, Event, Context” Jacques Derrida asserts that, without context, rhetoric is useless. For people in the United States in 2020, then, it is important to understand the full context of what was happening in the country that would spark such outrage and upheaval over the nomination of one SCOTUS justice.

2018 was a strange and tumultuous year, which is strange to write in 2020, as things have only gotten stranger and more tumultuous. 2018 began with Donald Trump’s veiled threat to start a nuclear war with North Korea, a government shut down over DACA, and the Stoneman Douglas High School shooting and ended with California wildfires, and the death of George H. W. Bush. In the midst of this, the #metoo movement was still a fighting force against sexual assault, with women around the world using the hashtag as their own banner of sexual harassment and assault survival.

The events of 2018 are all indicative of larger social movements and issues that had been festering and building for years, and that we are still fighting today. But it is impossible to discuss such a monumental event such as the Kavanaugh confirmation

hearings without taking into account the events of the world at that time. In order to fully understand how *ethos*, *pathos*, and *logos* were used in the hearings, it is crucial to examine how they were being used in similar situations during the time period, as well as how the public was reacting to those appeals. Larger debates about political and social issues related to the hearings all contributed to how the hearings were being perceived. In this contextual analysis, it becomes clear that as truth has become a partisan ideal in a post-truth society, *ethos* and *pathos* are increasingly important means of persuasion on both sides of the partisan line.

#MeToo and Matters of *Ethos*

The #metoo movement began with Tarana Burke's encounter with a young girl who had been sexually assaulted and how she had to come to terms with the strength and courage that it requires to be vulnerable and say "me too" when people tell us about their experiences with sexual assault ("The Inception"). From this experience, Burke founded a movement of women who would take to social media in droves to courageously claim their trauma and say "#metoo" to the world—creating a coalition of women who have similar experiences with sexual assault. Sexual What began with "young Black women and girls from low wealth communities" as "culturally-informed curriculum to discuss sexual violence within the Black community and society at large" and quickly became broader and more all-encompassing than anyone could have realized ("History and Vision").

In the Kavanaugh hearings, #metoo quickly began to pair with #IBelieveChristineBlaseyFord and #BelieveWomen to start a quasi-movement all its own

in which people, mostly women, claimed solidarity with Dr. Ford and urged others to consider their own biases toward sexual assault. Unfortunately, it also started the hashtag #himtoo in which wives and mothers posted about their sons and husbands, and worried that “false allegations” like those they claimed were tossed at Kavanaugh could send the men in their lives to jail. These competing narratives point to a bigger controversy in the Kavanaugh hearings—the purpose. As the hearings began, partisan lines were drawn around the overall goals of the day. For Republicans, Kavanaugh was on trial and, thus, “innocent until proven guilty” (Spakovksy). For Democrats, the hearings were a job interview and “Kavanaugh needs to make his case for why the Senate should hire him” (Gann). This issue of framing encapsulates much of the misunderstandings between individuals on either end of the political spectrum because of what the divergent views imply.

If Republicans are correct in their framing of the Kavanaugh hearings it is up to the Democrats to supply the burden of proof that Kavanaugh did commit crimes beyond a reasonable doubt. They must be able to prove that Kavanaugh assaulted Dr. Ford with testimony, evidence, witness statements, and so on. If Democrats are correct, however, in their framing of the hearings, then the burden of proof falls on Kavanaugh himself. It is up to him to defend his honor and prove that he is reputable and capable of serving on the SCOTUS. As discussed in Chapter III, the objective purpose of a confirmation hearing of any kind is to determine the character of a nominee for a given position and to verify that that individual will put the United States and her people above their own interests. The mis-framing of the Kavanaugh hearings by Republicans, then, forces a sexual assault victim to prove that she was assaulted, rather than forcing the perpetrator to prove that he

did not assault her. Additionally, the frame of the trial places Kavanaugh at an advantage and positions non-confirmation as an infringement of his rights, as though his background, social position, professional attainments, political connections, and nomination entitle him to a lifetime appointment to the most powerful court in the nation. In this framework, to not grant him that seat is to be prejudiced against him, whereas granting him the seat is providing him what he is due. The job interview framework, on the other hand, does not take as a starting point Kavanaugh's entitlement to the seat. It does not view him as having already earned it, as something he needs to be found guilty to lose, but instead views him as in application for a position that he must prove himself worthy of. This is an important distinction because, as mentioned in the previous chapter, when the facts are blurry and it becomes a he-said-she-said scenario, *ethos* reigns supreme—*ethos* that Kavanaugh has in spades.

Interestingly, 2018 was also the year of the Bill Cosby scandal. Cosby's trial—an actual trial wherein the accused is innocent until proven guilty and the burden of proof is on the accuser—had many similarities to the Kavanaugh hearings but was marked by incredibly different results. For Cosby, his reputation as a family man preceded him. He was Dr. Huxtable, a revered and loved doctor in *The Cosby Show*, a sit-com with a Black family at the center. When allegations of sexual assault began to arise in 2004, the first accusations were squashed. As years went by, though, the first accusations were followed by floods of others, eventually accumulating in fifty women who said they had been assaulted, drugged, or harassed in some way by Cosby. In April of 2018, Cosby was charged and jailed for his crimes. What is interesting about this is that Cosby was likely more loved and respected than Kavanaugh. Cosby was a household name in the 80s and

90s, and even through his trial in 2018, it was hard to find anyone who was unaware of his fame and reputation. Yet, Cosby lacks some of the social capital that Kavanaugh has for two main reasons: he does not come from a privileged family and he is a Black man.

As discussed at length in the previous chapter, Kavanaugh was born into money—his family has been wealthy for generations, and he will pass that wealth on to his children and grandchildren for generations to come. In contrast, Cosby was born to a maid and a sailor: his wealth, fame, and fortune were things he worked for over decades. He did not go to Ivy League schools; he went into the navy. That is not to say that his wealth did not provide him any advantage during his trial. On the contrary, he was able to afford the best lawyers money can buy and managed to hold his own in the courtroom far better than his younger, less affluent self would have been able to. What is different about the wealth of Kavanaugh and Cosby, however, is that Kavanaugh is “old money”—with all the benefits that provides. More important than wealth, though, is race. Race also plays a significant role in each man’s *ethos*. Cosby is a Black man, born in the 30s and raising Black children during the Civil Rights Movement of the 60s. He was, legally and socially, a third-class citizen for much of his life. Kavanaugh’s family has never been second-class anything.

Cosby’s case is, in many ways, irrelevant to the outcomes of the Kavanaugh hearings. In some ways, however, it is not. The way that the public responded to Cosby was markedly different than how they responded to Kavanaugh. When allegations of sexual assault came out against Cosby, people were in disbelief, which led into horror and sadness. Very few people adamantly claimed that he was innocent—they were sad and felt betrayed by a father-figure that they had admired for decades, but the overall

responses to his conviction were of sadness and acceptance (“Quotes, Reaction to Cosby’s Sentence of 3-10 Years in Prison”). This sentencing, which came only two days before the Kavanaugh hearings, was in the public consciousness as the hearings progressed. It is important to note that there is an undeniable historically racist difference in reactions to accusations of sexual assault. White women who report that they have been sexually assaulted by Black men are believed—they are given the benefit of the doubt, and they have more *ethos*—but when women of any race accuse white men of sexual assault, they are liars. Who juries, senators, committee members, and the public believe in cases of sexual assault always boils down to a question of *ethos* and, in this case, Kavanaugh has significantly more *ethos* than his accuser.

This comparison between Cosby and Kavanaugh is marked by more differences than similarities, including the magnitude and severity of Cosby’s crimes, but it is important to look at them together because of the ways that the public perceived the two events. Because of the back-to-back nature of Cosby’s sentencing and Kavanaugh’s confirmation hearings, it is hard to separate the two in people’s minds. For many, the Cosby trial and sentencing were proof that the system works, even if it takes a while—that in the end, justice will prevail and good always wins. It renewed some hope in a justice system that had released Brock Turner after only six months. This renewed faith in the system, though, put people at ease when it came to the Kavanaugh hearings because they viewed them in the same light. If the system could convict Cosby, then it could convict Kavanaugh too—despite the fact that Kavanaugh’s hearings were not a trial. If justice worked for Cosby, then surely it would also work for Kavanaugh too. The issue, of course, is that Kavanaugh could never go to jail for sexually assaulting Dr. Ford,

regardless of the evidence against him. The statute of limitations for his crime had long since passed. Instead, Kavanaugh's hearings were to determine if alleged sexual assault was enough to bar someone from the highest judicial system in the nation. As it turns out, the answer is a resounding "no."

Pathos, Gender, and #himtoo



Figure 2. Photo of Kavanaugh and Dr. Ford swearing in for the hearings. *Wall Street Journal*, Sep 27, 2018

Racial factors are not the only ones at play when discussing issues of sexual justice, though. Perhaps the greatest discrepancy in the Kavanaugh hearings was between Kavanaugh's and Dr. Ford's testimonies. While Kavanaugh's testimony gave voice to the aggrieved and afraid white male, as evidenced below, Dr. Ford's testimony struck a chord with women across the nation.

Unlike Kavanaugh's intense emotional displays, Dr. Ford remained fairly stoic throughout her testimony before the Senate committee. Even in their swearing in, the differences in their physical demeanor and facial expressions are astounding. As seen in

Figure 2 above, Dr. Ford appears sad, but calm and as relaxed as one could expect to be in a business suit in front of the United States Senate to recount the details of a personal sexual assault. Her facial features are relaxed, her arm is close to her body, and her fingers are together as she raises her hand to swear to tell the truth. Kavanaugh, however, is completely the opposite. His brow is furrowed, his lips are pursed, and his arm and fingers are away from his body, as if he is trying to keep this whole affair at arm's length. These marked differences in emotional displays began with their swearing in and continued throughout the entirety of each of their testimonies. Dr. Ford, throughout her testimony, only allowed herself to get emotional to the point of very brief tears when it was entirely unavoidable as she recounted her prior sexual trauma. Kavanaugh's testimony, however, as outlined in the previous chapter, was characterized by his complete lack of composure during his own emotional displays.

The lack of emotion shown by Dr. Ford throughout her testimony is not uncommon for women, when they have to give an account of anything against a man. Women throughout history have been ridiculed for their emotions. The notion that women cannot or should not serve in leadership positions in the government, such as the presidency, for example, is because women are considered hormonal and weak. The common adage that women cannot be president because they might "start a war while they are on their period" is just one example of how women are considered inherently hormonal and emotional, while men are viewed as rational and logical. In the Kavanaugh hearings, Dr. Ford's lack of emotional outburst demonstrates her understanding of these gendered ideas. As she remains composed, she recognizes that her emotional displays would wreck her credibility by playing into the gendered stereotypes that already exist

within society and government. Her control under pressure serves to build her *ethos* by placing her emotional volatility on the same level as a man's—supposedly nonexistent and inconsequential to the matter at hand.

For Kavanaugh, however, intense emotional displays are his go-to rhetorical appeals. Throughout the hearings Kavanaugh cries, yells, interrupts and berates others, sulks, laughs, and screams. His emotional outbursts are seemingly unprecedented as the hearings continue, but perhaps they are more preceded than they seem on the surface. As discussed in the previous chapter, Kavanaugh's aggrievement is an example of white male anger and ego on display. By foregrounding this aggrievement, he is able to win the sympathy of others, especially other white men, quickly and easily. This highlights the double standards set before Dr. Ford and Kavanaugh. As Dr. Ford seeks to minimize her own *pathos* appeals to avoid fulfilling the dramatic woman trope, Kavanaugh capitalizes on *pathos* to gain empathy from his audiences.

Kavanaugh's emotional displays throughout the hearings were ridiculed by Democrats on *Twitter*. @AHamiltonSpirit tweeted “Only because I’m not hearing enough people say it Kavanaugh behaved exactly as a guilty cornered, narcissist behaves. It was bombastic, argumentative, melodramatic and everything you’d expect to see from a sexual predator, he attacked them #KavanaughFordHearings #BelieveSurvivors” (@AHamiltonSpirit). These descriptions are poignant and laced with distrust, but the author is correct in many aspects. As mentioned in the previous chapter, Kavanaugh is weaponizing his emotions in order to force the Senate to pick a side—and as empathetic beings, humans tend to side with the person who shows the most emotion in a given scenario.

The emotions that many conservative men seem to display through their internet activity, however, shows that Kavanaugh was giving some men a public voice. While they feared a tarnished reputation over a woman's lies, Kavanaugh experienced this fear and emerged victorious from the ordeal. One user tweeted, "Never trust #Women never know when she can play victim card and screw #mans life #SaveMen #MeToo #HeToo #HimToo #Bravo to the player you've set an example and many will follow you. Being #Men is so difficult in this #genderbiased world" (@pkanthi). Despite the fact that false reporting of sexual assault is statistically negligible (between 2-8% according to the *National Sexual Violence Research Center*), these men were compelled by Kavanaugh and identified with his emotional display (Lonsway, Archambault, and Lisak 2). By relying on how Kavanaugh's emotional display made them feel, men like @pkanthi quickly bought into the lie that men were under attack by the feminist left who could, at a moment's notice, accuse them of sexual assault and ruin their lives forever. Moreover, Kavanaugh's aggrievement gave voice to a larger population of white men who felt themselves beginning to lose the privileges historically associated with their gender and race and were angry about it. Kavanaugh became their champion in a larger culture war to defend white male privilege.

Logos and Concluding Thoughts

What is perhaps most striking about the public response to the Kavanaugh hearings is how many individuals wanted the truth, but the people in positions of authority were content to rely on *ethos* and *pathos* to make their decisions despite Kavanaugh's evident disregard for truth-telling. On the day of the hearings, Dartmouth College government

professor Brendan Nyhan tweeted: “Blasey Ford’s testimony was credible and powerful but Kavanaugh pushed back and there’s no definitive evidence. Did any votes change? Unclear” and “The ‘he said’ ‘she said’ nature or [sic] the hearing was by design, tho: ‘The method Rs have used to defend Kavanaugh has consisted of suppressing most of the evidence that could be brought to bear in the hearing, & then complaining about the lack of evidence’” (@BrendanNyhan). The second tweet, in which he quote-tweeted a *New York Magazine* article titled “Why Brett Kavanaugh’s Hearings Convinced Me That He’s Guilty,” points to the larger issues at play with *logos* in the Kavanaugh hearings. Republicans in the Senate went out of their way to exclude evidence and then claimed that Kavanaugh could not possibly be guilty of any sexual assault because there was no evidence to support it. This is exactly what post-truth rhetoric does—it gets rid of *logos*, only to claim that, because *logos* is absent, *ethos* is the only solution. It is essentially a self-fulfilling prophesy. Despite the widespread dismissal of *logos* in this trial, though, the public was still interested in the truth.

Kavanaugh’s college roommate, James Roche, wrote a *Slate* article about his experiences with Kavanaugh. In it, he writes:

I am willing to speak with them about my experiences at Yale with both Debbie and Brett. I would tell them this: Brett Kavanaugh stood up under oath and lied about his drinking and about the meaning of words in his yearbook. He did so baldly, without hesitation or reservation. In his words and his behavior, Judge Kavanaugh has shown contempt for the truth, for the process, for the rule of law, and for accountability. His willingness to lie to avoid embarrassment throws doubt on his denials about the larger questions of sexual assault. (Roche)

Roche's argument against Kavanaugh is simple—if Kavanaugh cannot be trusted to tell the truth about trivial things like drinking games and liking spicy food, how can anyone expect him to tell the truth about larger issues of sexual assault when his career is on the line? This is further corroborated by Matthew Zeitlin in his article “Kavanaugh's explanations for His Racy yearbook References Do Not Pass the Smell Test.” Though it would be slightly embarrassing for Kavanaugh to admit to the Senate on live television (and streaming platforms) that he did actually participate in or joke about participating in a “devil's triangle” (a threesome with two men and one woman), it would have done far more for his credibility for him to be honest (Zeitlin). But whether or not Kavanaugh was willing to admit to a threesome from decades ago is only one item on the list of ridiculous lies that he told. While public reports such as the interview with Kavanaugh's college roommate sought to shed light on Kavanaugh's blatant lies and discredit his *ethos*, the Senate and committee were more than willing to vote based on their preconceived notions of his *ethos*.

IV. CONCLUSION

Implications for Rhetoric

While the Kavanaugh hearings are interesting to study on their own, it is equally important to note how they are an indication of larger issues of post-truth rhetoric as a whole. In Trump-era politics, Kavanaugh's displays of *ethos* and *pathos* are merely one example of how *logos* has been forgotten in unethical persuasion. Just as McIntyre writes about the Trump inauguration photo as an example of post-truth rhetoric, the Kavanaugh hearings offer another perspective of how post-truth is changing politics. Post-truth political rhetoric is not simply a Trump problem. Rather, the post-truth rhetoric that we see perpetrated by Trump and his administration is simply taking advantage of an existing infrastructure in rhetoric.

As it turns out, much of the public fear surrounding the Kavanaugh confirmation has proved to be true. In the midst of this writing, the SCOTUS ruled that it is unconstitutional to fire someone from their place of work on the basis of their gender identity or sexual orientation—much to the dismay of Kavanaugh, who voted with the minority. It seems as though the Democratic fear that Kavanaugh would place his religious beliefs and political grievances above his duty to the constitution and country are proving to be true.

Post-truth rhetoric has grown even more powerful during the current COVID-19 crisis, especially in the United States. From Trump suggesting that American citizens should consume disinfectants to protect themselves from the virus while Vice President Mike Pence paraded through hospitals without any PPE, to Trump's affinity for violent racist alliteration when he tweeted "when the looting starts, the shooting starts" in the

midst of protests against police brutality, the Trump administration has shown little regard for truth or reason, and has relied wholly on emotion and their own perceived credibility (@realDonaldTrump).

Implications for Composition

Finding a solution for post-truth as writing instructors is not an easy task. There are countless ways that one could approach the topic, and there is no way to know for certain which would be the most effective. Bruce McComiskey writes:

Post-truth rhetoric succeeds through bullshit, fake news, vicious social media posts, false denials, attacks on media, *ethos* and *pathos* at the expense of *logos*, and name-calling. These post-truth rhetorical strategies are anathema to every core value that writing teachers hold dear. However, I also believe that writing teachers have great potential to check and counter the negative influence of post-truth rhetoric in both composition classrooms and public discourse more generally. Writing teachers, perhaps better than anyone else, can prepare the next generation of voting citizens to recognize and fight against the kind of rhetoric that characterizes the current political climate, and we can teach students to use language that represents the values we already promote. (38)

If this is true and writing instructors are on the frontlines of anti-post-truth rhetoric, and I believe we are, it is critical that we teach students how to identify these post-truth rhetorical tactics and pursue ethical rhetorical strategies in their stead. One way that writing instructors could achieve this is by looking at examples of post-truth rhetoric, such as the Kavanaugh hearings, as I detailed above, and point out the logical fallacies and unethical treatment of truth. We must not be afraid of getting overly political in the

classroom when it is politics that is actively changing how our jobs operate and function in the outside world. If we are to teach students to be critical thinkers and critical writers, it is also important that we teach them to see through the “bullshit, fake news, vicious social media posts, false denials, attacks on media, *ethos* and *pathos* at the expense of *logos*, and name-calling” and call those things what they are (38).

In my experiences teaching composition to first-year students, I have found that they are enormously worried about issues of bias. It seems that their high school education focused so heavily on objectivity and providing an “unbiased report” in their writing that they have a fundamental lack of understanding about what biases actually are and, rather than knowing how to confront their own biases and understand the biases of other writers, they have added “bias” to their list of things not to do while writing, underneath comma splices and clichés. This lack of understanding of how personal and professional biases operate in writing has often led my students to assume that the only way to be sure that they are writing properly is by using “facts” such as hard data and statistics. The issue with this is that, as we know, numbers and statistics are only as unbiased as the people studying or writing about them. In my classrooms, therefore, I teach based on John Duffy’s argument that writing involves making ethical choices and when we teach writing “we are teaching, most of us, on most days, to most students, one way or the other, practices of ethical discourse” (145). In a post-truth society, making ethical choices often means examining who we cite—who we deem credible—and ensuring that they are also making ethical choices. Teaching students to evaluate sources for reliable information is only one aspect of ethical writing, teaching them to evaluate for reliable authors is another, and, I would argue, a more complex and important one.

There are some scholars who are arguably experts in their field, but their social media illustrate their lack of empathy for or support of oppressed and marginalized communities, so citing them without critique may not be an ethical choice. In the age of the internet, with such a technologically savvy generation in our classrooms, we have the ability to interrogate our sources beyond the text.

Furthermore, we must teach our students to examine and check their own biases. It is not enough that they know how to make ethical citation choices; it is crucial that they make ethical choices in their own writing processes as well. Ethical writing, in my view, means treating each subject fairly, without falsely rationalizing that both sides of an argument are equal. Even in this document, I have tried to be fair and ethical in my treatment of each individual, but I would be doing myself and my audience a huge disservice if I, for example, did not condemn sexual assault or tried to overly empathize with an abuser. Making ethical choices in writing often means recognizing that there is often a right side and a wrong side, and it is the job of writers throughout history and throughout the world to call out injustice as we see it. This is especially crucial for those of us in higher education and academia.

McIntyre argues that post-truth sprung from the academy's insistence on the postmodernism thought experiment (123). It is, therefore, all the more critical that those of us in the academy work to dismantle the system that we helped to create. If McIntyre is correct and post-truth flows directly from the ivory tower and into the White House, it is up to those same people in the ivory towers to dam up that flow. As it stands, post-truth is a threat to the reasoning and critical thinking that we work so hard in academia to promote, and it is up to us to stand against it and demand that our students, and ourselves,

do better than those before us and those in power over us.

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