

# THE SARATOGIAN

## **The ugly attacks on Ford were inevitable**

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Although many of the Supreme Court's decisions have been contested and even condemned, its justices have been remarkably successful in performing the role Alexander Hamilton assigned them in Federalist 78: to be "an essential safeguard against the effects of occasional ill humors in the society."

What Hamilton didn't count on was that the "occasional ill humors in the society" would infect how members of the court are chosen.

The moment during his presidential campaign when Donald Trump issued a list of potential Supreme Court nominees pre-screened by conservative ideologues guaranteed the extreme politicization we are witnessing.

Especially important: White evangelical Christians in large numbers were able to use Trump's promise to name judges friendly to their viewpoint as a rationale for downplaying all the ways in which the President (to be charitable) fell short of their moral standards. Give us the judges, they said, and all else will be forgiven.

The result is the festival of misdirection and ugliness that now dominates the effort to secure Judge Brett Kavanaugh's confirmation. The misdirection involves more moderate Republicans pretending that Kavanaugh's ideology is irrelevant when it is, in fact, everything. And the ugliness keeps reaching new depths.

It hit one of its lowest points when Ed Whelan, the president of the Ethics and Public Policy Center, sent out a tweet thread pushing a mistaken identity alibi to explain away Christine Blasey Ford's accusations of sexual assault against Kavanaugh. Whelan, a friend of Kavanaugh's who is in the thick of the strategizing on his behalf, actually named and posted photos of one of Kavanaugh's Georgetown Prep classmates as the possible perpetrator.

Ford blew the theory away. Noting in a statement that "I knew them both," she added: "There is zero chance that I would confuse them."

On Friday morning, Whelan took to Twitter to apologize for "an appalling and inexcusable mistake."

Think about it. The defense of Kavanaugh rests, finally, on the argument that he has been falsely accused by Ford. But Kavanaugh's backers are so eager to seize a Supreme Court majority that

they are perfectly ready to make utterly baseless charges against an innocent person who had nothing to do with any of this. It is now essential to learn what Kavanaugh himself knew about this calumny.

President Trump compounded the spitefulness with a tweet on Friday morning. "I have no doubt that if the attack on Dr. Ford was as bad as she says," he wrote, "charges would have been immediately filed with local Law Enforcement Authorities by either her or her loving parents."

Yikes! To state the obvious: most sexual assaults are never reported. A 2015 Washington Post-Kaiser Family Foundation survey found that 88 percent of women who experienced unwanted sexual contact did not tell the police or university authorities about the incidents. That was one nasty tweet, especially the gratuitous use of the word "loving."

But it's worth asking why Trump, who had shown restraint when Ford first spoke up, chose to escalate his rhetoric. One clue came from the evangelical conservative moment: They want Kavanaugh on the court, no matter what. "If Republicans were to fail to defend and confirm such an obviously and eminently qualified and decent nominee," Ralph Reed, the founder of the Faith and Freedom Coalition, told *The New York Times*, "then it will be very difficult to motivate and energize faith-based and conservative voters in November."

It's not clear that this is true. Emily Ekins, director of polling at the Cato Institute and a close student of evangelical politics, noted it's just as possible that a Kavanaugh defeat would bring religious conservatives to the polls to punish Democrats, since the Kavanaugh nomination is "exacerbating" the "tribal lines" in our society.

But those tribal feelings also mean that Republicans, including Trump, are under pressure to step up their barrage against Ford, even at the risk of alienating moderate voters, particularly women. Little wonder, because Pew Research Center found that the proportion of white evangelicals who strongly approve of Trump was double that of the country as a whole.

Note that Reed warned against the failure to "defend" Kavanaugh. Republicans intend to prove their willingness to stand up for him, even if doing so entails both unseemly and offensive conduct. And middle-of-the-road Republicans who could put a stop to all this have been unwilling to act decisively.

Nominating more moderate judicial candidates, the sort who win praise from leaders of both parties, might begin to temper the "ill humors" Hamilton described. Come to think of it, that sounds like Merrick Garland.