

A Gladiatorial Soap Opera

by Theodore Dalrymple



For an outsider with no particular emotional involvement, the confirmation hearings of Brett Kavanaugh, nominated to the United States Supreme Court, were an absorbing gladiatorial soap opera—a well-written soap opera, insofar as it contained so many subplots and suggested so many irresolvable practical and moral ambiguities. For those inclined to political philosophy, the hearings also raised questions about the separation of powers in a polity in which sharply divided, deeply partisan politicians appoint judges. During my career as a psychiatrist, I had prepared many court reports in both criminal and civil cases, and I could not help but regard the hearings as a civil action: *Blasey Ford v. Kavanaugh*. Ah, how I should love to have been retained to produce reports on one or the other, or on both, of the principals!

The hearings were not a trial in the strictest sense, being more of a public job interview (as we often heard them described). All the same, they resembled a trial in some

respects—a trial with distinctly Kafkaesque, or even *Alice in Wonderland*-like, qualities. Almost all of the senators—the “judges” in this case—had clearly made up their minds beforehand, without reference to the evidence. They appeared strictly to adhere to the glorious juridical principle “Sentence first—verdict afterward!” The hearings were, in effect, an elaborate political charade.

Was it certain that, if the allegations against Kavanaugh were true, they would or should automatically disqualify him from the position, assuming that no other true allegations against him emerged? My wife, once a feminist, thought not: an isolated indiscretion—or even a crime—at the age of 17, such as Kavanaugh had allegedly committed, should not be held against him forever. But if such an allegation, if true, *did* disqualify him, what was the standard of proof needed to substantiate it? Beyond reasonable doubt? On the balance of probabilities? On the merest whiff of suspicion, on the assumption that there is often no smoke without fire? These questions were left unanswered because they went unasked.

What was obvious was the polarization of opinion, not only among the *de facto* judges but, perhaps to an even greater extent, among the general public, in which there appeared to be an alarming number of Mesdames Defarges doing their knitting at the base of the scaffold. Most sinister was the call to believe the testimony of Christine Blasey Ford *ex officio*, just because she was a woman and self-proclaimed victim. The jurisprudential consequences of believing people merely because of the category into which they fall are obvious; but the radical feminists failed also to notice how auto-dehumanizing and demeaning to their own sex was the demand to believe a woman *qua* woman, inasmuch as the capacity to lie, dissemble, exaggerate, fantasize, and remember wrongly is inseparable from being fully human. And in the hearings, before Blasey Ford and Kavanaugh made their statements, the women disrupting the proceedings by screaming brought to mind

Andrei Vyshinsky and Roland Freisler at slightly higher vocal pitch. Due process, or process of any kind other than denunciation, seemed to have no role in their conception of justice.

Curiously, the two sides claimed that the same facts lent support to their cause. Thus, Blasey Ford's inability to recall so much of what had happened on the night in question, when Kavanaugh purportedly assaulted her, was taken by her supporters as evidence of her truthfulness and probity, inasmuch as she did not pretend to remember what she had forgotten, and fill in the gaps with lurid concoction. I couldn't help but recall a passage from the trial scene in *Alice in Wonderland*, in which the king acts as judge and Alice as a witness:

"What do you know about this business?" the King said to Alice.

"Nothing," said Alice.

"Nothing whatever?" persisted the King.

Nothing whatever," said Alice.

"That's very important," the King said, turning to the jury.

They were just beginning to write this down on their slates, when the White Rabbit interrupted: "Unimportant, your Majesty means, of course," he said in a very respectful tone, but frowning and making faces at him as he spoke.

"Unimportant, of course, I meant," the King hastily said, and went on to himself in an undertone, "important-unimportant-unimportant-important—" as if he were trying which word sounded best.

Some of the jury wrote it down "important," and some "unimportant."

My impression of Blasey Ford was that she was not simply and straightforwardly a liar. Impressions are important, which is why witnesses in trials must appear in person wherever possible: for the judge and jury must not only know *what* a witness has to say but also be able to see and hear *how* he says it. Impressions by themselves are not evidence, however; they may mislead, and I have known persons—to whom one would have entrusted one's life, so honest did they appear—who have nonetheless lied through their teeth; I have also known the shiftiest of characters to tell the truth and nothing but the truth. I wish I could say, with Gwendolyn in *The Importance of Being Earnest*, that my first impressions of people were never wrong, but after a lifetime of interviewing victims, perpetrators, plaintiffs, defendants, witnesses, lawyers, and others, I regret to report that my first impressions are as frequently mistaken as anyone else's, and almost as often as when I started out in life.

Against Blasey Ford it was sometimes argued that, since she emerged from Palo Alto University, an intellectual, cultural, and emotional environment that sacralizes victimization in its belief in the overwhelming importance of sexual harassment and abuse, and where the cause of militant feminism is deemed more important than truth itself, one may presume that she had an ax to grind. That she revealed nothing of the alleged assault to anyone for so many years was also held against her. Her presumed ulterior motive and her delay in coming forward supposedly cast doubt on the trustworthiness of her testimony.

I think that this is in error. I remember a case in which a 72-year-old man was accused by his sister of sexual abuse more than a half-century earlier. It was clear to me that her motive in making accusations so late in the day was to get hold of his life savings; and she alleged many consequences of his abuse that were either implausible or unprovable, the better to inflate her claims. Nevertheless, as the man eventually admitted, her account of the abuse was essentially

true. The ulterior motive of an allegation does not by itself disprove it.

Yet aspects of Blasey Ford's case were disturbing. I have spoken to numerous plaintiffs who alleged that some traumatic experience affected their ability to leave the house, travel far, and so on: and yet, when I examined their medical notes, I discovered, for example, that they had been immunized as a preliminary to going on holiday, often on their own, to places such as Brazil or South Africa—not the first destinations of the nervous. Of course, I have also seen people who seemed genuinely to have been frightened into a kind of agoraphobia: for example, a middle-aged woman, who, as a shop worker, was nearly strangled to death by one of three young thieves, the other two, analogous to Blasey Ford's purported experience, laughing the while. One would hardly have to be a psychologist, only a human being, to understand why my patient ventured out of her home as infrequently as possible afterward, and why she did not return to serving in the shop—all the more so because the criminal-justice system failed utterly, in its now-customary fashion, to take the crime seriously, even though (for once) the perpetrator was apprehended.

No doubt, a continuum exists between these two types—between, that is, those whose alleged symptoms are inconsistent and not clearly related to the alleged cause, and those whose symptoms are consistent and obviously the consequence of what they have endured. Nature does not slice populations into neat categories for us, and there must be intermediate cases. But Blasey Ford's supposed fear of flying, which delayed her testimony, clearly resembles the first scenario more than the second. Because of the human mind's capacity to believe six impossible things before breakfast—again, Alice, this time in *Through the Looking Glass*, illuminates the case—Blasey Ford may genuinely believe that she suffers from fear of flying, when actually what she feared more was her disagreeable

destination: speaking before the Senate.

In any proper investigation of her case, if she were engaged on a civil suit, her life history would need to be investigated in far greater detail than was possible for the Senate hearings to do. People often ascribe long-term consequences to traumatic events—especially those about which they are litigating—by forgetting or downplaying other things that have happened to them. They seek coherence and meaning in their lives; and their memories, or what they think are their memories, often serve the search for meaning. This is all the more the case when some advantage accrues to attributing effects to causes, and the supposed causative link grows stronger as the supposed cause is rehearsed over and over in the mind.

Blasey Ford's further claim of a link between installing a double front door to her home—to help keep her safe—and the alleged assault that took place decades earlier could not be taken at face value and, indeed, didn't even meet a loose criterion of plausibility. Had nothing happened to her in the intervening period to cause her anxiety? Was she chronically nervous, even before Kavanaugh's alleged attack? She herself said—on this occasion, plausibly—that recalling the incident made her feel worse. The magnitude of whatever happened—if anything did happen—may have grown with the recollection of it. This being so, psychotherapy might easily have made her worse and could even be the proximate cause of her installing double doors, surely a highly irrational thing to have done. It is not unknown for psychotherapists to put ideas into people's heads and provoke all kinds of symptoms that they did not have before.



Though Blasey Ford did not seem to be a liar, aspects of her testimony were questionable. (MELINA MARA/THE WASHINGTON POST/AP PHOTO)

Identification evidence is never, or at least ought never to be, sufficient to convict anyone of anything. "He lies like an eyewitness," goes an old Russian saying, and misidentification is common in both directions. Victims sometimes fail to recognize their assailant and sometimes recognize someone as their assailant who was not. This does not mean that identification is never of any value, or that no one ever recognizes an assailant correctly, but in Blasey Ford's case, her identification of Kavanaugh was the only evidence against him; such corroborative evidence as she claimed was refuted.

The vagaries of her memory also struck me as suspect. They were a mirror image of the vagaries of the memories of many murderers whom I have examined. These murderers remember everything with great clarity until moments before they kill: "And the next thing I knew, doctor, was that she was lying there, not breathing." As Louis Althusser, the French Marxist

philosopher who killed his wife, wrote in his memoir (for once in his life, doing so succinctly), *J'ai étranglé Hélène!* After these murderers "discover" the dead body, their memory soon returns to normal: they remember perfectly putting the body into the car afterward, or whatever it is that they did with it.

Different theories have arisen as to the cause of this type of circumscribed amnesia. One is that it is dissimulation, plain and simple; another is that the level of arousal at the time is so great that memories cannot be made in the brain. Perpetrators often suppose that amnesia for the events in question lessens their moral, and even legal, responsibility; but strangely, they often also claim to recover their memories when it comes time for parole, acknowledgment of their crime being a precondition of the granting of parole. But by then, it is possible that what they have been told or read about their actions may appear to them indistinguishable from memory. Or they might have been lying from the first.

With Blasey Ford, the memory loss is the reverse. She can remember the traumatic events, but almost nothing of the circumstances in which they took place. The events were like a terrifying flash of lightning in a darkened landscape. I have examined many people who have had traumatic experiences, many worse than hers, in fact, and have never encountered this pattern of amnesia, which—whether it explains her particular case or not—would be a convenient one for an accuser lacking corroboratory evidence. A colleague of mine, of much greater experience than I, has not encountered this pattern of amnesia, either. This is not to say that it is impossible—no one has experience of everything, and there is more in heaven and earth than is dreamed of in anyone's philosophy—but, in my estimation, it makes it less likely to be real in any straightforward way.

The phenomenon of islands or islets of memory exists, of course—for example, in states of intoxication and, indeed, in

normal recollection. People who can remember everything are few and not especially fortunate. But islands or islets of memory do not usually arrange themselves so conveniently, in such a way as to promote or refute a case. Blasey Ford says that she was not intoxicated, having had a beer or two—certainly not enough to cause amnesia. Even the amnesia that inevitably comes with the passage of time is not so cooperative with our later needs.

Assuming that Blasey Ford believed what she was saying, it is most likely, in my view, that, without realizing it, she was mistaking the content of her mind for memory. It is easily done, and most of us do it at some time or other.

Yet I did not find Brett Kavanaugh to be quite as impressive as many did who sided with him, and who (it seemed) were determined to find him impressive, come what might. My first objection to his performance was almost an aesthetic one. I thought his reference to his ten-year-old daughter who supposedly prayed for Blasey Ford was, at best, in bad taste, being a kind of religious kitsch—actually religiose rather than religious; and, at worst, emotionally exploitative of a child, like having a child at a political rally with a banner calling for something or other that the child cannot possibly understand. Children should not be instrumentalized in this way.

Kavanaugh's anger, however justified on the assumption of his innocence, was unjudicial. After his outburst against them, could he expect Democrats (who, after all, were more numerous than Republicans in the last election) to have faith in his future impartiality toward them? In fact, I believe a man of his standing and ability is fully capable of recovering his equilibrium, but I would not be surprised if others did not share my faith.

Of course, he was in an extremely difficult position, and if he had reacted coolly, he might have been accused of

arrogance, disdain, condescension, or intellectual hauteur. But if he had been calm and collected, rather than angry and rancorous, is it likely that those who ultimately voted to confirm him would not have done so? Besides, a judge ought to act judicially, however it plays with an audience, and if he loses his advancement or preferment in doing so, so be it.

If I were preparing a medical report, I would have wanted to go more deeply into his history of drinking. On his own admission, he did things when young that make him cringe today—as I suppose most of us did. But he was known as a heavy drinker, and Blasey Ford said that he was very drunk at the material time. Did he suffer from alcoholic blackouts—something he denied—and, if so, how frequently? In youths who drink heavily, these are common. In Britain, where excessive drinking by the young thankfully seems to be declining, I often used to hear them extol the glorious time they had had the night before, because they could remember nothing about it.

I had a number of patients, accused of criminal acts committed while drunk, who denied doing them, though they could remember nothing of the time in question. They said that they did not do them because they were the kind of thing that they did not do: but that was to assume an answer to the very question being asked. This is not to say that Kavanaugh had such blackouts, but if proper questioning or investigation showed that he did, it would reduce the force or evidential value of his categorical denials.

Still, Kavanaugh was in the impossible position of trying to prove a negative, when the only way of doing so would have been to establish conclusively that he spent the entire period in, say, the Amazon jungle. The allegations against him did not meet the civil, much less the criminal, standard of proof; and if everyone seeking high office had to prove his innocence beyond reasonable doubt of any accusation leveled by anyone against him, we should soon have no holders, or even seekers,

of high office.

So what, if any, are the lessons of this sordid—if, for an outsider, salaciously absorbing—business? First, that we live in curious times, in which unbridled licentiousness and fanatical censoriousness coexist in a dialectical relationship of what one might call hostile dependence. Second, it has revealed to what extent we now think tribally, confirmation bias being our main method of reaching conclusions. Third, that if we continue down the path that the Kavanaugh hearings opened up, it will not be the unexamined life alone that will not be worth living, but the examined one, also.

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