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AN OPEN LETTER TO GOVERNOR JIM JUSTICE UPON THE PROSPECT OF SELECTING FROM ONE TO FIVE NEW JUSTICES FOR THE WEST (By G-d) VIRGINIA SUPREME COURT OF APPEALS

"I considered him a saint, by the only definition that makes sense to me: a man or woman whose company you leave feeling that you should become a better person." (Emphasis supplied.) Eminent Roman theologian Garry Wills, Book Review, The New York Review of Books, 7 June 2018, p.42

It was something over a year ago that the wunderkind Allen Loughry capped his meteoric rise from lowly law clerk (the product of an obscure out-of-state law school who practiced little if any law) to permanent Chief Justice of the Supreme Court fired Steve Caterberry, the head of the court's administrative office. By haunting the morgue at the then Charleston Gazette while he was working for then Attorney General McGraw, Loughry did a "scissors and paste" book about politics in the Mountain State. This self-published tome became his calling card when he ran for the Supreme Court in the same fashion that John Kennedy's ghost-written PT-109 underlay his political career.

To say that Loughry fired Caterberry is like saying that Bill Clinton only lusted after women in his heart. Shortly after getting two votes from other justices to change the Chief from a rotating honor, Loughry went out of his way to publicly humiliate Caterberry in the media by having the State Police come and escort him out of the building in a display of power before klieg lights. Loughry was a political neophyte, a man upon whom Dame Fortune smiled in a 100 ways, not the least of which was that he is the first beneficiary of the Legislature's decision to experiment with the public financing of elections. (Ironically, the other recipient was "Buckeye" Benjamin, who in his 2016 run for re-election was soundly trashed by Darrell McGraw. The other great liberal idea, i.e. non-partisan elections, had been pushed into law, e.g. by the Chamber of Commerce, precisely to prevent people like the BROTHERS McGRAW from every again winning political office in this State. If I have you confused, dear reader, that's because the people who are our masters want to keep you confused by tinkering with the rules, not me.)

The Pride of West Virginia, the people we have elected to represent us in the House of Delegates and the State Senate, have begun impeachment proceedings against Chief Justice Loughry. This is a "slam dunk", the equivalent of the beheading of Louis XIV. The question that is to be answered is similar to what happens with a hound dog first tastes chicken blood. During the French Revolution, there was a small cadre that met near a Dominican convent in Paris (the church of Saint-Jacques to be precise, hence the name "Jacobins") that instigated what would become "the Reign of Terror". Mob rule is not a pretty thing. It is the morality of a prison riot where no one inside the walls is safe from the mob. West Virginia's most famous bandito, a man who spent over 2 years on the FBI's most wanted list said of the 1980s riot at the old Penitentiary in Moundsville: "It was the most exciting moment of my life. For days no one knew who was going to die next."

Our Justices lived "high on the hog" during the Loughry era in a little world of its own issuing imperious decrees on a constitutionally unlimited budget. Our Founders believed that the way to preserve judicial independence was to let the Court write its own budget which the Legislature would then routinely accept. This worked tolerably well for years because of the self-restraint exhibited by the Court. Justice Loughry's behavior was like a diabetic in a candy store, an alcoholic at a distillery, a sex addict locked in a brothel. As I write this he has been indicted by one of those inveterate headline hunters, i.e. a United States Attorney, who is trying to build a political career with the press conferences. When a USA (they favor this abbreviation) gets a Don Blankenship or an Allen Loughry in their sights, you know that they are thinking headlines. See e.g. Booth Goodwin from the Southern District who ran for governor in 2016 and Bill Ihlenfeld who hopes to unseat State Senator Ryan Ferns in the 1st District. I rest my case. Justice is never blind in a federal prosecutor's office.

THUS, IT IS CLEAR BEYOND PERADVENTURE THAT GOV. JUSTICE WILL PICK AT LEAST ONE REPLACEMENT JUSTICE. WHO SHOULD BE HIS FIRST CHOICE? WHAT SORT OF QUALIFICATIONS SHOULD THIS PERSON HAVE?

SCOTUS nominee thinks it's OK to 'disappear' citizens when fighting terrorism

On July 9, President Donald Trump nominated D.C. Circuit Court Judge Brett Kavanaugh to fill retiring Justice Anthony Kennedy's seat on the U.S. Supreme Court. Kavanaugh once served as a law clerk for Justice Kennedy, who reportedly recommended him to Trump as a suitable replacement. Libertarians would appreciate aspects of his judicial record, which leans toward constitutional originalism on most issues, but Kavanaugh also has a significant dark side. He's willing to sacrifice our most fundamental liberties in the name of fighting terrorism.

"Unfortunately, Brett Kavanaugh has a troubling track record of giving a pass to excesses in the war on terrorism," said Libertarian National Committee Chair Nicholas Sarwark. "It's good that he's a Second Amendment supporter, but it's unacceptable that he's also willing to suspend the Fourth and Fifth Amendments when he deems it necessary."

The Constitution and Bill of Rights shall not be suspended even during time of war. When Amir Mohamed Meshal, a natural-born citizen of the United States, fled from Somalia's civil war into Kenya in 2007, he was captured by the U.S. Combined Joint Task Force. The American Civil Liberties Union complaint filed on his behalf claimed that Meshal was "interrogated more than thirty times by U.S. officials who failed to adhere to the most elementary requirements of the Fourth and Fifth Amendments and the Torture Victim Protection Act of 1991," and that "U.S. officials repeatedly threatened Mr. Meshal with torture, forced disappearance, and other serious harm."

Kavanaugh wrote a concurring opinion in *Meshal v. Higginbotham*, which said that although Meshal's allegations were "quite troubling," he had no standing to pursue claims that his constitutional rights were violated because he was overseas when it happened, and part of a terrorism investigation.

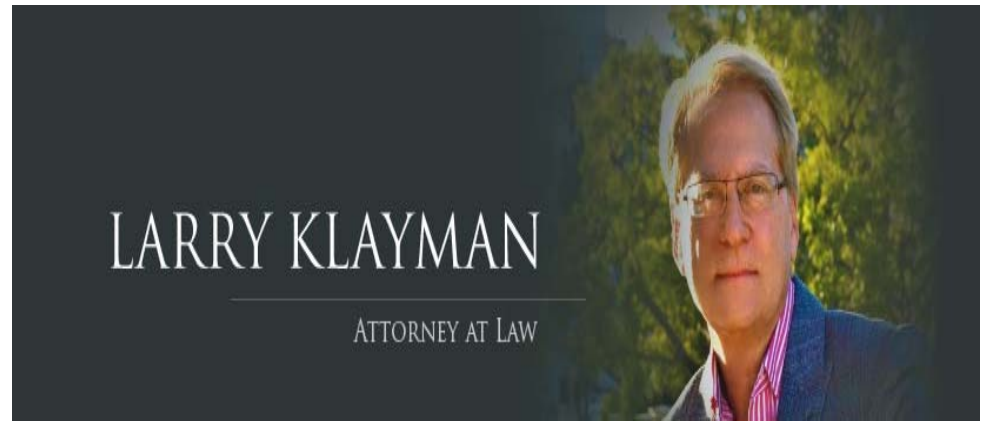
"Matters touching on national security and foreign policy fall within an area of executive action where courts hesitate to intrude absent congressional authorization," wrote Judge Janice Rogers Brown in her decision, with which Kavanaugh concurred.

"If the Torture Victim Protection Act of 1991 does not constitute 'congressional authorization,' I don't know what would," Sarwark said.

So, although conservatives may appreciate Kavanaugh's vetting by the Federalist Society and the Heritage Foundation, and feel a sense of nostalgia that Reagan Attorney General Ed Meese was in the room during his nomination announcement, they shouldn't overlook Kavanaugh's disturbing evisceration of the Bill of Rights.

"We like Kavanaugh's skepticism about the administrative state," Sarwark said. "It's long past time to do away with the Chevron doctrine of deference to bureaucracies. We're concerned, though, that a judge who claims to believe in interpreting the Constitution as written has apparently not read the Fourth and Fifth Amendments. Before confirming Kavanaugh, senators should question him closely on the provisions of the Bill of Rights that were ignored in *Meshal v. Higginbotham*."

Libertarians are running a record number of candidates for local, state, and federal office in 2018, and Libertarian elected officials can be counted on to appoint judges who will be faithful to all the provisions of the Bill of Rights, all the time.



THE JUDGE TRUMP MUST NOT PICK FOR SCOTUS

By Larry Klayman

Last Friday I went downstairs in the hotel I am currently staying at to ask the person stationed at the front desk to print out a document penned by Judge Brett Kavanaugh of the U.S. Court of Appeals for the District of Columbia Circuit). Interestingly, the desk clerk uncharacteristically gave me a hard time. Notwithstanding that I am an preferred member of this hotel chain, I at first could not understand her demand that I pay 15 cents per page to print out just a few pages.

Last week, the person in charge at my cleaners refused to quickly press and fold a few shirts, as I was hastily leaving town for work and needed them for court appearances. And, days before that I was treated nastily in another public place. Scratching my head, I finally figured it out. On all of these occasions I was either wearing a red jersey that said "TRUMP 45," or a windbreaker I had acquired attending the inaugural of the 45th president of the United States, Donald J. Trump. This jacket was emblazoned with a logo, with The Donald's signature below, celebrating his inauguration.

The hostile reception by these persons, all of minority descent or ethnicity, was troubling. For my part, I am a big advocate of minority rights, as long as they do not exceed and are equal to the rights of the rest of us. Indeed, as a Jew who is a believer in Jesus Christ and thus calls himself a "Jewish Christian," I am the member of a very small minority.

Above all, what this told me, particularly in the context of what occurred later – the forced removal of White House Press Secretary Sarah Sanders from a Virginian restaurant, coming on the heels of a similar attack by leftists on Secretary of Homeland Security Kirsten Nielsen at a Mexican restaurant in Washington, D.C. – was that there is an increasingly hateful and vindictive mindset among non-conservatives who despise anything or anyone associated with the president. This has been stoked by the media likes of CNN, MSNBC, the Washington Post, the New York Times and Los Angeles Times, as well as most Democrats and leftist groups, who have peddled falsely to the public that our 45th president is a racist.

If wearing a Trump jersey or jacket evokes this emotion, then one can even more readily understand the unhinged if not rabid reaction of the left to the news this week that President Trump will again get to fill a seat on the U.S. Supreme Court, after the announced retirement of Justice Anthony Kennedy. We conservatives and pro-Trump supporters of all political persuasions have a real problem to confront, one that thus far has resulted in tens of violent reactions and so-called protests, but ultimately can lead to a bloody civil war between left and right.

That said, it is time for we conservatives not only to confront this bigotry, but also sober up and not worry about the left's reaction to whoMever President Trump picks to fill the Kennedy seat. Like the president himself, we must plow ahead and do what we think is right, no pun intended.

The jurist who is being touted as a replacement, with publicity generated undoubtedly by him and is supporters akin to the run up to the Academy Awards, is the Honorable Brett Kavanaugh of the D.C. Circuit.

I have appeared before the relatively young Judge Kananaugh and found him to be likeable and also to project a good image. He also had been on the team that investigated the Clintons during the 1990s, having been picked by former judge at the time Kenneth Starr. Starr and he failed to bring the Clintons to justice – but then again thus far no one has save for the lone court ruling I obtained at Judicial Watch that Slick Willey had committed a crime in releasing the Privacy Act protected White House file of a woman he had sexually harassed in the Oval Office, Kathleen Willey. No one has thus far jailed this felonious less than dynamic Bonnie and Clyde duo of American politics.

Judge Kavanaugh is wrongly thought of as a "solid conservative" – though presently, thanks to public relations he undoubtedly has generated, he is the top candidate for the Kennedy seat.

Before running off on a honeymoon with Judge Kavanaugh, true conservatives and their allies in the libertarian and even liberal communities when it comes to civil liberties such as privacy, must consider what I am about to reveal to you before swallowing the Washington, D.C. "swamp PR Kool Aid."

In a case I successfully brought against the Obama deep state intelligence agencies styled *Klayman v. Obama* and the NSA, we at Freedom Watch obtained two preliminary injunctions ordering the cessation of what Judge Richard Leon called out as "almost Orwellian" mass surveillance. This illegal and unconstitutional mass surveillance against hundreds of millions of American citizens had initially been revealed by Edward Snowden and later whistleblowers I had represented. Judge Leon's rulings were not just landmark decisions, finding that the Fourth Amendment to the Constitution had been violated with unreasonable wholesale searches and seizures of cellphone records, but they provoked legislation intended to prevent this government tyranny from occurring again. The new law was called the USA Freedom Act.

As a result, when Judge Leon's orders were appealed by the Obama Justice Department, the D.C. Circuit, ruling though a panel of three judges, vacated his orders, feeling that the new law remedied this unlawfulness. I then appealed this to the full en banc panel of nine judges and asked them to reverse the ruling of the three-judge panel, as it was clear to me that the deep state's unconstitutional conduct would continue – which it has to this day. I argued that the preliminary injunctions should stay in place as a protection to the populace.

The nine-judge en banc panel, comprised of mostly leftist and government establishment jurists, did not grant my request, without a written opinion. However, Judge Kavanaugh, without solid procedural basis, gratuitously wrote one in which he grandstanded and pandered to the deep state intelligence agency establishment, validating this "almost Orwellian" mass surveillance. The opinion is linked here; I urge you to read it carefully.

As a result, it is clear to me that real conservatives, libertarians and liberals who believe in civil liberties and privacy rights cannot and should not support a nomination by the president of Judge Kavanaugh. As a jurist who thinks little of the Fourth Amendment prohibition against unreasonable searches and seizures by the government, he is unqualified and thus unsuited to serve on our nation's highest court.