

DEAR JUDGE KAVANAGH,

CONGRATULATIONS ON BEING NOMINATED BY THE PRESIDENT TO SERVE AS AN ASSOCIATE JUSTICE ON THE SUPREME COURT OF OUR NATION.

FROM EVERYTHING THAT I'VE BEEN ABLE TO READ, YOU ARE AN EMINENTLY QUALIFIED CANDIDATE. I MAY NOT LIKE ALL YOUR POSITIONS; I MAY NOT LIKE ALL YOUR POLITICS, BUT IF WE LIVED IN NORMAL TIMES, INSTEAD OF IN THE HIGHLY CHARGED AND POLITICIZED ATMOSPHERE THAT IS NOW ENDEMIC, YOUR NOMINATION WOULD SAIL THROUGH THE JUDICIARY COMMITTEE'S ADVISE PROCESS, AND THE SENATE, WOULD CONSENT IN NEAR UNANIMOUS ACCLAMATION BY A VOICE VOTE. TO BE FAIR, I HOPE YOU WOULD ADMIT, THAT JUDGE MERRICK GARLAND WOULD

1 HAVE BEEN EQUALLY DESERVING OF THAT TREATMENT AND APPROVAL BY THE SENATE.

I LONG FOR THE RESPECT AND COLLEGIALITY AMONG OUR LEGISLATORS — INDEED, AMONG ALL OUR FELLOW CITIZENS — THAT ONCE PREVAILED IN THIS COUNTRY. I HOPE YOU LONG FOR IT TOO. AND IT WASN'T THAT LONG AGO WHEN A TEE-TOTALING SEN. ORRIN HATCH COULD HAVE A RICH AND AFFECTIONATE RELATIONSHIP WITH A BOOZY SEN. TED KENNEDY, OR WHEN JUSTICE ANTONIN SCALIA WEPT OPENLY IN THE SUPREME COURT CHAMBERS DURING THE EULOGIES FOR JUSTICE RUTH BADER GINSBURG'S LATE HUSBAND, MARTIN.

YESTERDAY MORNING I READ THIS INSPIRING STORY IN THE WRITINGS OF ALAN DERSHOWITZ:

“WHEN LEGENDARY JUSTICE OLIVER WENDELL HOLMES RETIRED, PRESIDENT HERBERT HOOVER ASKED HIS ATTORNEY GENERAL, WILLIAM D. MITCHELL, TO SUPPLY

HIM A LIST OF TEN NAMES TO FILL THE SEAT OF THIS GREAT JUSTICE. THE LIST CONTAINED NINE REPUBLICAN NAMES, BUT AT THE BOTTOM WAS THE NAME OF ONE DEMOCRAT – AND OUTSTANDING NEW YORK JUDGE NAMED BENJAMIN CARDOZO. WHEN PRESIDENT HOOVER SAW THE LIST, HE REPORTEDLY SAID TO HIS ATTORNEY GENERAL, "IT'S A GREAT LIST BUT YOU HAVE IT UPSIDE DOWN. CARDOZO'S NAME SHOULD BE ON THE TOP BECAUSE HE IS THE MOST DISTINGUISHED SITTING JURIST IN THE COUNTRY." THE ATTORNEY GENERAL REPORTEDLY RESPONDED THAT CARDOZO WAS A DEMOCRAT, A JEW (THERE WAS ALREADY ONE JEW ON THE SUPREME COURT, LOUIS BRANDEIS) AND A NEW YORKER, AND HIS APPOINTMENT WOULD NOT SERVE THE POLITICAL INTEREST OF THE PRESIDENT OR HIS PARTY. BUT HOOVER NOMINATED CARDOZO WHO SERVED WITH DISTINCTION ON THE HIGH COURT."

I HOPE THAT YOU WILL ASPIRE TO ALWAYS EMBODY FELLOW REPUBLICAN HERBERT HOOVER'S EXAMPLE OF INDEPENDENCE AND INTEGRITY IN YOUR DELIBERATIONS AND DECISIONS. YOUR REPUTATION AND YOUR LEGACY WILL ONLY BE BURNISHED IF YOU ARE KNOWN AND CHARACTERIZED AS AN INDEPENDENT.

I HOPE THAT WHEN YOU ASSUME YOUR POSITION AS AN ASSOCIATE JUSTICE OF THE SUPREME COURT, YOU'LL DO EVERYTHING IN YOUR POWER TO ACHIEVE GREATER HARMONY ON A PREDICTABLY DIVIDED COURT THAT SADLY REFLECTS THE DIVISIONS AND ATTITUDES IN OUR HOPELESSLY DIVIDED COUNTRY. AS DERSHOWITZ WROTE, "PARTISAN VOTES ARE SUPPOSED TO TAKE PLACE IN CONGRESS, NOT IN THE CHAMBERS OF OUR HIGHEST COURT."

**PAUSE PAUSE PAUSE**

**PAUSE**

**ALMOST EVERYTHING ABOUT YOU AND YOUR FAMILY WILL NOW BE SUBJECT TO SCRUTINY THAT WILL MAKE THE PROCESS BY WHICH YOU WERE ELEVATED TO THE FEDERAL BENCH SEEM LIKE CHILD'S PLAY. THE ONLY JUDGMENT OF YOURS THAT I QUESTION IS RACKING UP HUGE CREDIT CARD DEBT OUT OF, WHAT I CONSIDER TO BE A MISPLACED LOYALTY TO THE WASHINGTON NATIONALS. THE NATIONALS? REALLY? THIS DOES MAKE ME QUESTION YOUR JUDGMENT AND LACK OF PERSONAL SELF-CONTROL, BUT I IMAGINE THAT IF ONE MUST HAVE A VICE, SPENDING MONEY ON A BASEBALL TEAM — NOT BETTING ON THEM — IS PRETTY HARMLESS, AS THINGS GO.**

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**YOU SEEM TO BE NOT ONLY A SMART MAN — PERHAPS BRILLIANT — BUT ALSO A NICE MAN. AND JUST AS IMPORTANT TO ME, YOU ALSO SEEM TO HAVE A GOOD SENSE OF HUMOR AND WIT.**

**PAUSE**

**AND I DON'T GIVE A WHIT ABOUT YOUR RELIGION. AS A MATTER OF FACT, I'M MORE IMPRESSED BY YOUR HAVING GONE TO A JESUIT HIGH SCHOOL THAN THE IVY LEAGUE. I ADMIRE THE JESUIT ORDER AND HAVE THE UTMOST RESPECT FOR THE INTELLECT AND ACUMEN OF THE JESUIT CLERGY WITH WHOM I'VE HAD THE PRIVILEGE TO INTERACT. I RESPECT YOUR RELIGIOUS COMMITMENT AND HOW THAT MANIFESTS ITSELF IN YOUR PRIVATE LIFE AND VOLUNTARY UNDERTAKINGS.**

**WITHOUT INTENDING TO DELVE FURTHER INTO YOUR PRIVATE LIFE, I TAKE COMFORT FROM THE FACT THAT YOU AND YOUR WIFE HAVE TWO DAUGHTERS — ONLY TWO, AND THAT YOU SEEM TO REVEL IN THEIR**

**ACCOMPLISHMENTS. I TAKE COMFORT FROM THE FACT THAT YOU DIDN'T TRY FOR THREE, HOPING FOR A SON. AND I TAKE FURTHER COMFORT FROM THE FACT THAT YOU DON'T HAVE SIX OR SEVEN CHILDREN, INFERRING FROM THAT, THAT YOU'RE NOT AS FRUM OR FEBRENTE A CATHOLIC, AS SOME FEAR.**

**PAUSE**

**I HOPE THAT YOU WILL ALWAYS MAINTAIN AN OPEN MIND — A MIND AS OPEN AS IT IS INQUISITIVE — TO ALL THE CASES THAT WILL COME BEFORE YOU.**

**I AM FAR FROM QUALIFIED TO VOICE AN OPINION ON JUST ABOUT EVERY CASE THAT WILL COME BEFORE YOU, EXCEPT THOSE THAT DEAL WITH CAPITAL MATTERS, BECAUSE MY RELIGION — AND YOURS — HAS SOMETHING TO SAY ABOUT THEM.**

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**AS YOU READ THE WORDS I'M ABOUT TO WRITE, I HOPE THAT YOU WILL KEEP YOUR OPEN MIND, AND ALSO BEAR IN MIND SOMETHING THAT YOU SAID LAST MONDAY NIGHT IN YOUR ACCEPTANCE SPEECH: "AND A JUDGE MUST INTERPRET THE CONSTITUTION AS WRITTEN, INFORMED BY HISTORY AND TRADITION AND PRECEDENT."**

**AS A CONSTITUTIONAL ORIGINALIST — WHAT I GREW UP CALLING A STRICT CONSTRUCTIONIST, ONE WHO TRIES TO DETERMINE WHAT THE FRAMERS OF THE CONSTITUTION MEANT BY THEIR WORDS IN THEIR ORIGINAL CONTEXT — I ASK YOU TO ENGAGE IN A BIT OF ORIGINALIST BIBLE STUDY WITH ME.**

**EXODUS CHAPTER 21, VERSE 22 — PAGE 461 IN THE HUMASH IF YOU'D LIKE TO FOLLOW ALONG...**

**“WHEN MEN FIGHT, AND ONE OF THEM PUSHES A PREGNANT WOMAN AND A MISCARRIAGE RESULTS, BUT NO OTHER DAMAGE ENSUES, THE ONE RESPONSIBLE SHALL BE FINED ACCORDING AS THE WOMAN’S HUSBAND MAY EXTRACT FROM HIM...”**

**NOW, LET’S SAY THAT THE COMBATANT PUSHED INTO THE PREGNANT WOMAN CAUSING THE MISCARRIAGE ACCIDENTALLY. IF THIS WERE A CASE OF ACCIDENTAL MURDER, THEN ACCORDING TO BIBLICAL LAW, NO FINE SHOULD BE IMPOSED IN PUNISHMENT FOR THE MISCARRIAGE. RATHER, ONE WHO COMMITS MURDER ACCIDENTALLY MUST FLEE TO A CITY OF REFUGE, WHERE HE WOULD BE PROTECTED FROM REVENGE BY THE RELATIVES OF THE WOMAN WHO LOST HER FETUS.**

- 5 TAKING THE OPPOSITE TACK, LET’S SAY THAT THE COMBATANT PUSHED INTO THE PREGNANT WOMAN DELIBERATELY CAUSING HER TO MISCARRY. (MAYBE SHE WAS HIS OPPONENT’S WIFE, AND HE WANTED TO FURTHER INFURIATE HIS ADVERSARY... MAYBE THE GRUDGE WASN’T JUST A PERSONAL ONE, BUT AGAINST THE OTHER GUY’S WHOLE FAMILY... MAYBE HE WAS LOSING THE FIGHT, AND BECAUSE OF HER INJURY, THE FOCUS WOULD SHIFT TO THE PREGNANT WOMAN, AND HE WOULD BE SAVED FROM A HUMILIATING DEFEAT...)**
- WHATEVER THE CASE, LET’S SAY IT WAS A DELIBERATE PUSH. WERE THIS A CASE OF WILLFUL MURDER, THEN BIBLICAL LAW WOULD DEEM THE PAYMENT OF A FINE TO BE AN INSUFFICIENT PUNISHMENT; LIFE FOR LIFE IS TO BE EXACTED. THE COMBATANT WHO CAUSED THE MISCARRIAGE SHOULD BE EXECUTED.**

**PAUSE**

SO FROM THIS REAL-LIFE EXAMPLE IN THE BOOK OF EXODUS, IT FLOWS LOGICALLY THAT ACCORDING TO THE BIBLICAL TEXT, ACCORDING TO BIBLICAL LAW, AND PERHAPS MOST IMPORTANTLY, ACCORDING TO THE BIBLICAL CONTEXT, ABORTION IS NOT MURDER. ABORTION IS NEVER MURDER, IF THE PUNISHMENT IS ONLY A FINE, AND NEVER EITHER EXECUTION OR INCARCERATION IN A CITY OF REFUGE.

PAUSE

NOW, THAT IS NOT TO SAY THAT JUDAISM LOOKS APPROVINGLY ON ABORTION ON DEMAND, OR UPON ABORTION AS A LAST RESORT MEANS OF BIRTH CONTROL. A FETUS IS NOT LIFE; IT CANNOT, BY BIBLICAL DEFINITION BE LIFE — BUT IT IS POTENTIAL LIFE, AND THAT IS NOT TO BE TAKEN LIGHTLY.

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PAUSE

I'LL STOP THERE — BUT I DO HAVE MUCH MORE TO SAY, ESPECIALLY IN THE TOPIC OF ORIGINAL SIN, A CONCEPT THAT IS FOREIGN TO JUDAISM BECAUSE OF A FINE POINT IN BIBLICAL HEBREW GRAMMAR THAT IS NOT OBVIOUS — NOT FROM A TRANSLATION, AND NOT TO MOST HEBREW SPEAKERS. AS AN ORIGINALIST, YOU WOULD FIND THIS ANALYSIS FASCINATING; BUT AS A FAITHFUL CATHOLIC WOULD FIND THIS CHALLENGING, TO SAY THE LEAST.

PAUSE

JUDGE CAVANAGH: I WISH YOU WELL. I WISH YOU WISDOM AND DISCERNMENT IN YOUR CAREER ON THE SUPREME COURT, AND I HOPE THAT OUR BIBLE STUDY WILL GIVE YOU NOT ONLY FOOD FOR THOUGHT, BUT WILL ALSO BE REFLECTED IN YOUR APPROACH TO CHALLENGES TO ROE VERSUS WADE. PLEASE REALIZE

**THAT THE FREE EXERCISE OF THE JEWISH RELIGION  
WOULD BE CURTAILED UNDER ANY CIRCUMSTANCES IN  
WHICH JUDAISM AND JEWISH LAW WOULD EITHER  
PERMIT OR EVEN REQUIRE AN ABORTION, BUT THE  
RESTRICTIVE LAW OF THE LAND, WOULD PROHIBIT IT.  
SINCERELY AND RESPECTFULLY YOURS...**