

CHRISTMAS EVE REMEMBRANCES

Yeargh, I bollixed this up. Meant to post this several hours ago, and told Marcy I was going to, but instead had a giant nap on the couch with an overly large puppy right beside.

We deal with a lot of hard subjects here on this blog, and do so daily, if not sometimes hourly. The people, you, are what makes it worth it. Thank you. Every year we are separated from some. Sometimes we know, sometimes we only know because they are conspicuously no longer around.

This year, one we know is gone is John Casper (early on known as Boo Radley). Another soul we knew from not just Emptywheel, but even before. There are undoubtedly others that we are not so aware of, but who have filled our comments with intellect and passion over time.

So, on this Christmas Eve, thank you to all here, from not just me, but Marcy, Jim White, Rayne, Ed Walker, Roving Reporter Rosalind and Quinn Norton. And thank you to those that have been here and left us. There are too many of the latter. This time of remembrance started in 2011 with our fellow contributor, Mary Beth Perdue, who literally passed on a long ago Christmas Eve. It has kind of been a tradition to go back to that as an honorarium to all friends gone, and so here we go:

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all are. Things often get a tad scarce this time of year, but we would like to say Hi, Happy Holidays, Merry Christmas, Happy Hanukkah, Mele Kalikimaka and any other greeting applicable. Thank you for being here with us.

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They are gone, but not forgotten heading into this Christmas Eve. But this always, at least for me, Marcy too, comes back into focus on this date because of our friend and beloved colleague, Mary Perdue. Mary passed away on Christmas Eve 2011. She, like all the others, was the best of what this blog had, and has, to offer. So, in memory of all who are gone, but

never forgotten, here is the original *in memorium* for Mary.

You all, each and every one, rock. Thank you for being here and supporting us. Happy Holidays everyone:

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dogs and cats. She was involved in numerous equestrian sports and organizations.

Here at Emptywheel, she was just Mary; and she was so much more than a simple obituary can convey. She was funny, kind, and, most of all, razor sharp in analysis of extremely complex issues surrounding torture, indefinite detention, international human rights, illegal wiretapping and executive branch overreach. Mary had a steel trap index in her mind for even obscure torture and rendition cases and facts. To the day she died, Mary was one of the very few people commenting in America that remembered, and would never miss a chance to point out, how the children and extended families of Khalid Sheikh Mohammed and Aafia Siddiqui were used and/or disappeared by the US as pawns in our immoral torture in the name of the so called "war on terror". Mary's dissection of Jack Goldsmith terrorist detention policy, complete with with a comparison to the Ox Bow Incident, was a thing of passion and beauty.

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that her friends and family had little idea of the true depth and importance of her knowledge and dedication to the interests she expressed here, both in front page posts authored, and in her consistent critical contribution in the discussion comments. But, make no mistake, Mary was not just an invaluable contributor, and affected not just me and Marcy, but key players in the larger discussion. I know for a fact, because I talk to the different people and discussed it with them; Mary's posts and comments were seen and known by actors from the ACLU, to EFF, to other think tanks and attorneys in the field. She left a mark.

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inclined, give to your local chapter and let them know it is for Mary.

Emptywheel will not be the same without Mary Beth Perdue, but her work and memory will live in our hearts, minds and archives as a testament to who and what she was and stood for. We shall close with the picture Mary never got the opportunity to see, but would have been the epitome of the horses, animals and children which she truly loved, Rachel Alexandra and foal.

Vaya con dios Mary, you will be missed.



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Cheers to all, and to all a good night and wonderful Christmas Day.

CLEAR THE SHELTERS DAY IS AUGUST 17

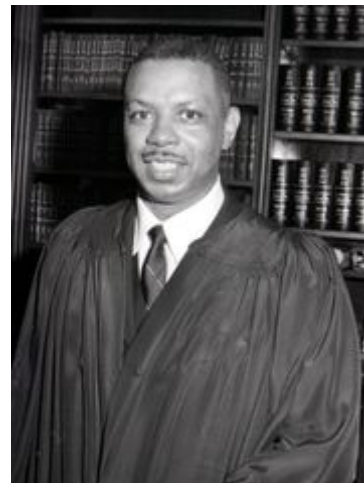
There are many things going on these days, but you can save a dog's life this weekend, and gain a best friend. You should.

AHAB AS RANDIAN HERO

Ahab, driven by some unknown force, chases a whale into his own watery grave, and takes the crew with him.

RIP DAMON KEITH, THE ONCE AND FOREVER CRUSADER FOR JUSTICE

It is with a heavy heart I report that one of the finest, and most righteous, judges in American history has passed away. Judge Damon Jerome Keith was a giant. In a field of giants, Judge Keith stood tall as a special giant. I wish I knew a better and



smarter way to put it, but I do not. Damon Keith was not just born on the Fourth of July, but literally tutored by Thurgood Marshall, and never forgot the lessons he learned.

From the Detroit News (Please, do read the whole obituary; you will be glad you did):

Long-serving federal Judge Damon Keith, who decided cases that involved some of America's most controversial political and social issues, died early Sunday morning, family members said. He was 96.

Keith, a grandson of slaves whose judicial career spanned five decades and

10 presidents, decided cases that involved some of America's most controversial political and social issues, from school desegregation to government surveillance of citizens.

I will come back to it in a bit, but Damon Keith was central to a lot of what this blog did when we started.

One of Keith's rulings, in 1970, led to the busing of students in the Pontiac schools to racially desegregate the district, sparking a backlash.

Keith recalled receiving death threats, and the year after his decision, 10 Pontiac school buses were firebombed by members of the local Ku Klux Klan.

Keith also ordered the U.S. government, under President Richard Nixon, to stop wiretapping defendants without judicial approval in a case involving the anti-war group the White Panthers and the bombing of a CIA building in Ann Arbor.

Damon Keith issued a lot of decisions, up until nearly his dying day, as evidenced by his participation in a Sixth Circuit decision finding tire chalking to be a 4th Amendment violation, issued just a mere six days ago. When he was 96 years old. Damon Keith was a stand up man and judge, that never flinched up to the end. That is a hero.

A few of you have been around long enough to remember when Marcy and I used to occasionally do Book Salons while we were still at FDL. The proudest one I ever did was shortly before we left, and was hosting the Salon and discussion for "Crusader For Justice", the incredible book by Trevor Coleman and Peter Hammer, about the life, and love of law of Damon Keith. It is an incredible book about an incredible man. Please find it and read it, you will be a better person for having done so.

As Professor Henry Louis (Skip) Gates said in his blurb for *Crusader For Justice*:

No one will ever forget Judge Keith's bold declaration in *Detroit Free Press v. Ashcroft*: "Democracies die behind closed doors". Nor will they forget his contributions to achieving social justice and racial justice through his decisions involving discrimination, national security, and civil liberties. Judge Keith came from humble roots in Detroit. Having suffered racial injustice first hand, he had the bravery to take the phrase "equal justice under law" literally. Life experience matters, which is why diversity on the bench cannot be forsaken. *Crusader For Justice*, above all else, is the story of judicial courage – the story of a man unafraid to do what he knew was right.

As I said back in 2011 in the intro to that Book Salon:

Fittingly, Damon Jerome Keith was born on the Fourth of July, in 1922. But *Crusader For Justice* opens with Keith, a graduate of Howard University Law School, working as a janitor while studying for the bar exam. The humble willingness to work to achieve is a mirror for the subsequent journey through the childhood, family background, military service in WWII and educational progression of a social justice giant. But the true Damon Keith starts to emerge with his work with the Detroit NAACP, which he helped grow to stability and significance.

From a friendship with a young Senator from Massachusetts named John F. Kennedy through the pain of the ashes from the Detroit fires and riots of 1967 summer, Coleman and Hammer portray the growing conscience for justice and equality in

Keith that leads to his appointment in late 1967 to the federal bench in the Eastern District of Michigan by Lyndon Johnson.

From there, the real heart of the judicial lion roars.

Again, this is from when we did a Book Salon for “Crusader For Justice”. I cannot tell you what a great and important book it is, about a truly great and important man.

Okay, now, just for a moment, going to get back to why Damon Keith was so important to this blog. It was not just me and Marcy. Nope. It was Mary. And it is pretty fitting that, as we approach Derby Day, we get back to Mary. She wrote a three part explainer on the “Keith Case”. The formal caption was always “United States v. United States District Court”. That IS the “Keith Case”. Because of Judge Damon Keith. Here are the pertinent, and seminal, posts from Mary back in 2010.

Part One

Part Two

Part Three

There is a lot to digest here. I understand this. But, if you do, you will be better off for having done so.

Thank you. Thanks forever to Mary. And thank you Judge Damon Jerome Keith. This nation owes you a debt of gratitude.

THE STRONGBAD BITE, ACK!: KAGAN’S NEOCON

HYPOCRISY

Imagine Robert Kagan's recent op-ed on authoritarian strongmen as a cheesy, sweeping space opera.

THE GHOSTS OF CHRISTMAS EVES PAST

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Cheers to all, and to all a good night and

wonderful Christmas Day.

KAVANAUGH CONFIRMATION STANDARDS OF NONSENSE



Okay, in case you have not already guessed, Marcy is away, mostly, for a couple of

days. Even a prolific presence like her is entitled to that. So, you get me for today. Sorry!

Now, because I have been a little involved in trying to figure what is the “real standard of proof” for people in the shoes of, say, Susan Collins and Jeff Flake, I have been a tad predisposed this morning. But let us for now go back to Blasey Ford, Kavanaugh, Collins, Flake, Grassley and the “standard of proof”.

An executive branch nomination is NOT a criminal trial. Any talk about “presumed innocent” and “beyond a reasonable doubt” is asinine and duplicitous. There is no set standard for a nomination consideration, much less one for the Supreme Court. Senators, especially those on the screening Senate Judiciary Committee, get to make their own individual assessments. In a perverse kind of way, it is like impeachment’s “high crimes and misdemeanors”, it is easy for people to argue, but the net result is that it

is whatever strikes Congress as being applicable.

Frankly, I think the argument over what Susan Collins' standard was is kind of silly and diversionary. Collins stated on the record:

"This is not a criminal trial, and I do not believe that claims such as these need to be proved beyond a reasonable doubt. Nevertheless, fairness would dictate that the claims at least should meet a threshold of more likely than not as our standard."

This is bullshit. As David Graham, again, pointed out:

Citing the lack of corroboration of Ford's account as well as lacunas in Ford's own recollection, Collins said she did not believe the "more likely than not" standard had been met.

Although she did not use the phrase, the standard that Collins offers appears to be the same as "the preponderance of the evidence," which is the burden of proof required in civil trials—as opposed to the beyond-a-reasonable-doubt standard in criminal cases. This is also the standard that many colleges now use in evaluating sexual-violence claims under Title IX. Obama-era guidance required schools to use a preponderance-of-evidence standard, though the Trump Education Department has granted schools greater leeway, instructing that "findings of fact and conclusions should be reached by applying either a preponderance of the evidence standard or a clear and convincing evidence standard."

So, what is the relevant standard? As propounded earlier, there is no set one in these circumstances. It certainly is not "beyond a

reasonable doubt” as is in criminal trials. Anybody using that language, including most of the geriatric white geezers in the SJC, is lying.

“Clear and convincing evidence”? Nope, there is no precedent for that either. Preponderance of the evidence/more likely than not? Again, there is scant authority to establish that as a relevant standard. Bottom line is Susan Collins manufactured her own “standard” and then cynically applied it, all without any legitimate basis. And, maybe, that is the kind of intellectual malleability these SJC determinations engender, but, if so, people like Collins, and the journalists that cover her charade, should acknowledge it.

So, what is the real “standard”? Again, there is none I can find. But if the course and scope of “background investigations” conducted by the FBI at the behalf of an Article II Executive Branch request is any indication, it is far different than being duplicitously portrayed by both the White House and Senate Judiciary Republicans.

Here is a specialist in clearance and background investigation issues, Brad Moss:

Um, not totally true. It happens for high level national security operatives working for the NSC and related White House components. Those individuals have to hold TS/SCI access and often times can be subject to invasive polygraph screenings.

Actual vetting, not that Kushner BS.

Here is another, Kel McClanahan, of National Security Counselors:

The White House can’t order @FBI to just rummage through a random person’s life. They can definitely AUTHORIZE FBI to rummage through a person’s life who has agreed to be subjected to a background investigation.

If this is true, it was McGahn & not Trump who was playing games...

Yes. Exactly. And, as a Senator who was one of the maybe 115 American citizens able to actually read the "FBI Investigation" work product, for Susan Collins and Jeff Flake to blithely sign off on the limited, restricted and choked off nonsense, is beyond craven. It is straight up duplicitous. And the New York Times article is kind compared to the chicanery that was clearly afoot from Don McGahn, a close friend and Federalist Society gang member for decades with Brett Kavanaugh.

In short, it is NOT about the relative "standard of proof" used by Susan Collins. She used "more likely than not" standard (effectively a preponderance of evidence standard). When she said that was the standard, she was lying. It never has been, and never will be. That was manufactured bullshit.

People have also argued that the standard should have been "reasonable accusation" or "credible accusation". And those are even lesser than the preponderance/more likely than not" standard Collins artificially, self servingly and cynically utilized.

Is clearance on a Background Investigation warranted? Does anybody, including the high holy Brett Kavanaugh, have any god given right to have a clean BI and be elevated to the Supreme Court? Of course not (See Title 32 of the CFR), that is gibberish propounded by old white conservative and misogynistic demagogues, like Grassley, Hatch, Cornyn and Graham in the Senate Judiciary Committee. And it is pure rubbish.

And, so too is the manufactured "standard" Susan Collins magically announced in her drama queen dog and pony show yesterday that seemed to narcissistically go on forever.

The bottom line is that whether under Collins' manufactured and elevated standard, or even lesser ones such as reasonable or credible

allegations, Brett Kavanaugh was not fit for passage and subsequent confirmation.

As Mark J. Stern detailed in Slate, Susan Collins' manifesto announced with all the drama of a royal wedding, was in incredible bad faith. Her "standard" was nonsense and nowhere close to any applicable standard. It was a joke.

But, even more so, under ANY standard Susan Collins could have cited, her "finding" thereunder was garbage. Even in criminal sex cases, not just occasionally, but often, finders of fact (usually juries), decisions come down to weighing the relative credibility of an accuser versus the accused. And, given the relentless series of outright lies Brett Kavanaugh stated under oath, there is no way that a sentient human could see his testimony as more credible than the measured, and admitting as to gaps, honesty of Dr. Christine Blasey Ford. And, again, credibility of witnesses is what criminal trials, much less less than even civil litigation burdens, as here, are decided by every day.

This is because there are usually zero other witnesses to such kidnapping, molestation and attempted rape cases as Dr. Christine Blasey Ford credibly alleged, but also because time and reticence of victims is often a factor. And, yet, cases are filed and determinations made on just such "he said/she said" allegations every day. The implication by Susan Collins, Chuck Grassley, the other wrinkled old entitled white men like Hatch in the SJC, not to mention their cynically hired criminal prosecutor, Rachel Mitchell, are complete baloney.

Somebody go ask Rachel Mitchell, and the sad old men that hired her before they fired her, how many times she has operated off of an accuser's words. The answer will be a lie, because it happens all the time. And, yeah, that is enough to generate a full and meaningful "background investigation" despite the bullshit being proffered by the White House, Don McGahn and the SJC.

FOOD FOR THOUGHT

Volunteering for Operation BBQ Relief to help feed flood victims in Wilmington, NC prompted some thoughts on whether it is too late for empathy and compassion to ever reunite a country riven by opposing ideals.

THE MOUSE THAT ROARED, THE BIGOTRY ROSEANNE PERPETRATED AND IGNORANT RACISM OF TRUMP

No, it is not enough that ABC and Disney canned the ignorant bigot Roseanne, the media needs to stop propagating the Salena Zito fraud that “Real America” supports ignorance and racism.

WHAT HAPPENED TO THE CULTURAL ELITES: CHANGES IN THE CONDITIONS OF

PRODUCTION

The production of culture is largely under the control of corporations and institutions. Brain workers do not control their own production.