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## MR. TRUMP COURTS THE RIGHT

The Federalist Society has spent nearly four decades building a movement to reshape the federal judiciary.

Brett Kavanaugh would shift the balance of constitutional jurisprudence on the U.S. Supreme Court to the right, creating a solid right-wing majority on the court possibly until the second half of the 21st century.

Supreme Court nominees used to sail through the Senate on voice votes. That was another era, when the major parties weren't as polarized as they are now, and the justices' votes often broke down in unpredictable ways. Today, there is essentially no overlap between the conservative justices, all appointed by Republican presidents, and the liberals, all appointed by Democratic presidents. The increasing polarization undermines the crucial role the court needs to play in our democracy, acting as a neutral arbiter that checks the elected branches.

There are structural fixes, like term limits, that could counteract this trend. When the Constitution's framers decided to give Supreme Court justices lifetime appointments, the life expectancy for a free white male was roughly 35 years — less than half what it is today, and equal to the entire tenure of Justice John Paul Stevens, who retired in 2010 and is still going strong at 98.

One proposal would limit justices to 18-year terms, which would create an opening on the court every two years, and reduce some of the political gamesmanship that surrounds open seats today. But any change to the justices' tenure would require a constitutional amendment, and so is a longer debate for another day.

In the meantime, what should senators ask Judge Kavanaugh?

First, the questions everyone wants answered: What is his judicial philosophy? How does he approach interpreting the Constitution and statutes? Does he agree with the decision in landmark Supreme Court cases like, say, *Brown v. Board of Education*, which outlawed racial segregation in public schools, or *Griswold v. Connecticut*, which established a constitutional right to privacy? There's no reason, despite their protestations, that nominees for the highest court in the land can't give the public straight answers to these questions and many more like them — several, including Chief Justice Roberts himself, did so in the past.

But Senate Democrats and others who believe in the importance of an independent and nonpartisan judiciary also need to treat these hearings as a public-education opportunity. Where once these sorts of hearings served to inform Americans about the finer points of constitutional law, now they might be used to alert them to cynical tactics of power politics. For starters, that would mean making it clear that Monday's nomination belongs not to Mr. Trump so much as to the conservative legal activists at the Federalist Society, who have spent nearly four decades building a movement to reshape the federal judiciary and rewrite whole sections of constitutional law.

During the 2016 campaign, Mr. Trump publicized a list of possible Supreme Court nominees preapproved by the Federalist Society and the Heritage Foundation, another conservative group. It was scrubbed of any squishes along the lines of David Souter, Anthony Kennedy or even Chief Justice Roberts, all of whom have been deemed insufficiently committed to the cause for failing to vote in lock step with the radical right's agenda. (Judge Kavanaugh was left off the original list but was added later.)

The Federalist Society claims to value the so-called strict construction of the Constitution, but this supposedly neutral mode of constitutional interpretation lines up suspiciously well with Republican policy preferences — say, gutting laws that protect voting rights, or opening the floodgates to unlimited political spending, or undermining women's reproductive freedom, or destroying public-sector labor unions' ability to stand up for the interests of workers.

In short, Senate Democrats need to use the confirmation process to explain to Americans how their Constitution is about to be hijacked by a small group of conservative radicals well funded by ideological and corporate interests, and what that means in terms of the rights they will lose and the laws that will be invalidated over the next several decades.

We're witnessing right now a global movement against the idea of liberal democracy and, in places like Hungary and Poland, its grounding in an independent judiciary. Mr. Trump and Senate Republicans appear happy to ride this wave to unlimited power. They will almost certainly win this latest battle, but it's a victory that will come at great cost to the nation, and to the court's remaining legitimacy.

Americans who care about the court's future and its role in the American system of government need to turn to the political process to restore the protections the new majority will take away, and to create an environment where radical judges can't be nominated or confirmed. As those tireless conservative activists would be the first to tell you, winning the future depends on deliberate, long-term organizing in the present, even when — especially when — things appear most bleak.

# For gays, the worst is yet to come. Again.

Larry Kramer

I was recently honored for my birthday with an all-star reading of my play "The Destiny of Me." It was obviously a very emotional experience for me. I'm supposed to be dead by now. Most of the guys who got infected with H.I.V. in the 1980s are long dead.

The play is about a middle-aged man infected with H.I.V. undergoing an experimental treatment at the National Institutes of Health. In his hospital room he finds himself remembering his life since childhood. He realizes his entire life has been one long battle to be accepted as a homosexual:

"Every social structure I'm supposed to be a part of — my family, my religion, my straight friends, my university, my city, my state, my country, my government, my newspaper, my TV, my many shrinks . . . tells me over and over and over that what I feel and see and think and do is sick."

We've come a certain distance from such a blanket suffocation.

But by the time a modicum of acceptance by the outside world starts to arrive, we are visited with a plague. It is a plague of disease, and with our new president it continues to be a plague of hate. There is not one cabinet member who has supportive or welcoming words for us. Every week, it seems, Mr. Trump appoints another judge who is on record as hating us. They will serve for many years. A new Supreme Court will further echo this disdain.

Meanwhile, Ronald Reagan's astonishing negligence regarding the crisis back in the '80s undoubtedly contributed to H.I.V. infections and deaths ballooning into a worldwide plague.

I know I'm lucky to be alive. I have fought very hard to get here. I have

had a liver transplant. I've lived long enough to see an antiretroviral therapy become available. I have been able to legally marry the man I've loved for many years.

Why then do I still feel so destitute and abandoned? Surely all gay people fall into the same category as I.

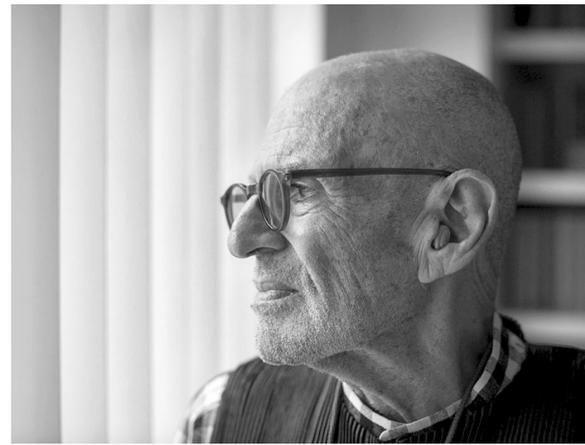
I know I am getting closer to death and this frightens me. I still have too much work to do. I know one is meant to wake up each day with the positive thought of gratitude that I'm still here for another day. But I wake up each day and realize that I am sad.

I am constantly being thanked, even by people in the street stopping me, for

what I have done to save my people. Such thanks make me uncomfortable. I don't think I have done anything that any person could not also have done. Throughout the worst of these plague years we had at the most only several thousand of us fighting all over the country. Out of some 20 million or so of us.

Act Up, one of the organizations I helped start, fought for the drugs to save us, and we got them. (Drugs, I might add, that have many side effects and are prohibitively expensive.) Once we got the life-extending medicines, most of my fellow warriors returned to their lives of trying to be happy, and invisible.

I have never been able to answer one question: Why have relatively few of us — out of so many millions — been willing to fight for their lives? I still can't answer it and I continue to be very sad because of it. And the biggest fight for our lives is ahead of us.



Larry Kramer at home in his Fifth Avenue apartment in New York.

I still can't see enough of us, in all our numbers and our splendor and our magnificence. Our activist organizations are a diminished presence. We still have no respected and accepted leaders who can speak for us as a people. And what little power we do have, lobbying or otherwise, in Washington or anywhere else, is woefully inadequate.

Our billionaires are funding concert halls and public parks and retirement homes for primates, but not gay rights. If it weren't for such stalwart defenders as Lambda Legal Defense and the A.C.L.U., we'd probably be jailed by our enemies.

The enemies that the leading character in "The Destiny of Me" rails against have never gone away. And they never will. We will always have enemies. Is

that why we're so invisible as a powerful fighting force? Because too many of us are still afraid to be seen or heard?

Millions of women and straight people are marching on Washington and in other cities and towns and protesting in the offices of elected officials every week of the year. Where are the millions of gay people being angry and vocal and visibly fighting back?

Are we prepared to fight the many fights piling up against us? Right now, I don't think so. The worst is yet to come. Again. Yes, it makes me very sad. And still imploringly angry.

LARRY KRAMER is a writer and activist, and a founder of Gay Men's Health Crisis and Act Up. Volume Two of his "The American People" is forthcoming.



A crowd of Act Up activists march down a Manhattan street during the 25th anniversary celebration of the Stonewall uprising, on June 26, 1994.

## At World Cup, remember the Russians

Musa Okwonga

These are thrilling times, aren't they?

On Tuesday, France, my pretournament pick for winner, faced a surging Belgium. On Wednesday, England (I wrote about my complicated relationship with the country last week) played Croatia. But it's Croatia's most recent opponent that's on my mind right now: Russia.

No one really believed Russia — the second-worst-ranked team at the start of the tournament — would make it to the quarterfinals. But the Russian players put up a heroic effort, with an especially impressive defense, which carried them through until Croatia beat them on penalty kicks last week.

Off the field, though, you could say that Russia has already won. It's not just that the country got to host the tournament under somewhat dubious conditions. It's that the seeming success of the games is proving to be a huge public relations victory for Russia's president, Vladimir Putin.

"Many stereotypes about Russia have been broken down," Mr. Putin said in a recent televised meeting at the Kremlin with Gianni Infantino, the head of FIFA. "People have seen that Russia is a hospitable country."

I'm curious which "stereotypes" Mr. Putin was referring to. Maybe visitors have found the locals more welcoming than they anticipated. But Russia's government — accused of killing journalists and infamous for imprisoning political opponents — seems to be meeting expectations. Anyone who could cause it any headaches is being brutally silenced.

I wanted to get a better sense of what this World Cup has meant for Russians in Moscow, St. Petersburg, Yekaterinburg and the other cities, so I asked people living there.

They told me about their pride in their team's performance, joy in the general atmosphere around the event, and excitement at the chance to communicate with a diverse crowd of visitors. But they also shared a discontent with the state of affairs in Russia. (For their own security, most asked me to use only their first initials.)

R., a woman in her mid-20s who works in the arts, told me that the World Cup has been used as a cover for raising the retirement age and increasing taxes. "We as citizens cannot do anything," she said. "Protests are forbidden." Another woman, L., who is 25,

told me she was frustrated that the cosmetic improvements have been made to her city to impress visitors, while more important issues, like infrastructure, are being left unaddressed.

Andrey Baranchuk, a 54-year-old executive, told me in a message, "Behind the external bright facade of the World Cup lies a cruel and ruthless regime of political repression."

We need to listen to these Russians. I'm afraid that the tourists, athletes and journalists who are in Russia for the World Cup will come away thinking all is well and good just because they had a great time watching some matches.

That would be to forget how authoritarianism so often works: Everything seems well and good — until you challenge the status quo.

Friends returning from Russia have told me about the warm welcome they received from Russians who are proud of their country. They should have expected nothing less, said M., a 33-year-old photographer. "We just want to live our normal lives, in spite of Mr. Putin and his gang, and hope someday things will change," he said.

For the last few days of this tournament, M. and his friends will, like the rest of us, enjoy the games, even with their home team having been eliminated. But when the stars pack up their cleats and the announcers leave Moscow behind, M. will push on, trying to fight for a better country.

MUSA OKWONGA is a poet and writer based in Berlin. He is the author of two books on football, "A Cultured Left Foot" and "Will You Manage?"

This article is part of *Offsides*, a newsletter on the broader issues and hidden stories around the World Cup.