

**Testimony of Professor Timothy Meyer
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Before the United States Senate Committee on the Judiciary

On the

**Nomination of Judge Neil M. Gorsuch to be Associate Justice of the United States
Supreme Court**

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Mr. Chairman, Senator Feinstein and Members of the Committee. Thank you for the invitation to testify today. My name is Timothy Meyer, and I am a Professor of Law at Vanderbilt University Law School. I had the honor to clerk for Judge Gorsuch from 2007 to 2008 and I am here today to enthusiastically support his nomination to the Supreme Court. Judge Gorsuch is a brilliant, fair, principled, and independent jurist. He is also the epitome of a gentleman. You will never in your life meet a kinder public servant.

One of the biggest risks a judge takes each year is inviting a few recent law school graduates into his or her chambers. Judges use law clerks as sounding boards for ideas; to spot flaws in arguments and reasoning, including their own; and to find and help analyze past precedent. More than that, though, judges work side by side with these young lawyers every day. Judges thus often become the most important mentors young lawyers have. This mentoring role is not the most important that judges play. It does, however, provide a window into a judge's temperament and approach to the law.

I could not have hoped for a better mentor than Judge Gorsuch, and the country could not hope for a better teacher for its brightest legal minds. I could say much about Judge Gorsuch: how he welcomes his clerks to Colorado and into his family, or about the hours he has spent over the years counseling me on career choices and personal tragedies. I could talk about his love of being a lawyer, the joy he takes in the give and take of legal argument, or how much he cares for the integrity of our judicial system. Instead, though, I want to spend my time today talking about what Judge Gorsuch has taught me about writing.

By the time I arrived in Judge Gorsuch's chambers, I had been in school for 21 years and had written thousands of pages, including most of a doctoral dissertation. But I didn't learn to write until I worked for the Judge. Through conversation, reading the Judge's work, and reading his careful suggestions on my work, I learned the importance of clarity in legal writing. The Judge spends hours and many drafts on just the introductory paragraphs to his opinions. These sentences, he taught the clerks, are the most important. Lawyers need to know how the court thought the Constitution, statutes, and regulations applied to the facts of the case. But even non-lawyers, the Judge taught me, should be able to understand the stakes in a court case and the basic reason a case came out as it

did. The litigants themselves deserve an explanation that does not require a lawyer to interpret. I have taken this lesson with me at each stop along my career.

An example from my time clerking for the Judge highlights the importance he places on making the work of the courts accessible. *Dudnikov v. Chalk and Vermilion Fine Arts, Inc.*¹ involved a husband-and-wife team that earned their livelihood by selling knick-knacks on eBay. An out-of-state company asked eBay, located in California, to take down the couple's auction because some of the products allegedly infringed the company's copyrights. The husband and wife sued the company in Colorado *pro se*, seeking a declaration that their wares did not infringe the company's intellectual property rights. The district court dismissed the case for lack of personal jurisdiction over the company, agreeing with the company that it did not have any contacts with Colorado. It had no operations in Colorado and its letter to eBay had been directed to California.

Writing for a unanimous panel, Judge Gorsuch reversed and ruled for the couple. The company's letter, the Judge wrote, was like a bank shot in basketball. Just as a basketball player intends to hit the backboard only in the service of making a basket, so too the company had sent a letter to California in order to cancel the couple's auction that it knew was in Colorado. Such an intended effect satisfied the standard the Supreme Court has established for the exercise of personal jurisdiction over an absent defendant. This analogy translated a complicated area of jurisprudence into every day terms that litigants – including private citizens proceeding without the assistance of lawyers against well-represented companies, like the plaintiffs in this case – could easily understand.

Judge Gorsuch's care for writing is important in its own right, because the written word is the primary medium through which judges communicate. But the Judge's emphasis on writing is part of his broader concern for the process due litigants who seek the protection of our courts. As a clerk, I had the opportunity to observe over and over again Judge Gorsuch's respect for litigants and the care he took to make sure he fairly and fully evaluated and addressed all of their claims. The federal courts receive a very high number of *pro se* habeas corpus petitions from prisoners seeking to collaterally attack their convictions. For many of these petitioners, the Anti-Terrorism and Effective Death Penalty Act, passed by Congress in 1996, sets a bar to relief that they cannot clear. Consequently, many courts dispense with these petitions summarily.

Yet when I worked for Judge Gorsuch, he insisted that each petitioner receive a written decision explaining how the court had resolved his claim. Each inmate, he told me, is entitled to an explanation he can understand, no matter how far off the mark his claim for relief. And to be frank, many of the claims we received, prepared without the aid of counsel, were hard to understand. No matter. The Judge reminded we clerks of the courts' duty to liberally construe – that is, to give the benefit of the doubt to – the claims of those who appear on their own behalf seeking the protection of the law.

¹ 514 F.3d 1063 (10th Cir. 2008).

In the decade since I clerked for him, Judge Gorsuch has authored several hundred written decisions and participated in hundreds more cases. His jurisprudence cannot be reduced to a few brief words. In my time working for him, and in reading much of his work since then, I see two common threads. First, Judge Gorsuch's faithful application of the law, as written by the people's representatives, to the specific facts of the case before him. Second, a concern that the average person have fair notice of the law and a meaningful chance to defend his rights.

His decisions protecting immigrants' rights are of particular note. You have no doubt had the chance to discuss his decisions in *De Niz Robles v. Lynch*² and *Gutierrez-Brizuela v. Lynch*.³ In both of those cases, Judge Gorsuch ruled that the Board of Immigration Appeals could not retroactively deprive immigrants of the right to petition the government to remain in the United States. Each of these decisions found that the government owes those within its jurisdiction basic fair notice of what the law requires.

I want to tell you about a different case that raises similar themes. When I clerked for him, Judge Gorsuch authored the 10th Circuit's decision in *United States v. Hasan*.⁴ That case involved a Somali teenager who came to the United States in 1997, fleeing the civil war in his home country of Somalia. Years later, the defendant, for whom English was a second language, was indicted and convicted of perjury based on his allegedly inconsistent statements about the persecution he faced in Somalia. The inconsistent statements came in two different appearances, months apart, before a grand jury. The record indicated that throughout his grand jury testimony, the defendant had expressed his difficulty with the English language and understanding the questions posed.

On appeal, Judge Gorsuch's opinion held that the district court had "plainly erred" – the most difficult standard of review for an appellant to satisfy – in not reevaluating whether the defendant was entitled to an interpreter during his grand jury testimony. Congress, the Judge wrote, had provided defendants who struggle with English the right to an interpreter in the Court Interpreters Act. And Congress had expressly made that right applicable to grand jury testimony.

The lessons I learned from working with the Judge on this case echoed those I heard throughout my clerkship. As in so many of his decisions, Judge Gorsuch paid careful attention to the arguments the litigants had actually made. Courts, Judge Gorsuch told me repeatedly, cannot reach out to decide questions not properly raised by the litigants. In our democratic system, that rule serves as a critical check on the power of the courts. At the same time, when Congress has spoken on an issue the courts must apply the law as written. Indeed, the courts must do so even when the government vigorously objects. The judge's duty is to enforce the protections against government overreach that the people's representatives have enshrined in the Constitution and statutes. I never once saw the

² 803 F.3d 1165 (10th Cir. 2015).

³ 834 F.3d 1142 (10th Cir. 2016).

⁴ 526 F.3d 653 (10th Cir. 2008).

Judge shy away from doing so. The United States would be well served by someone with that kind of courage on the Supreme Court.

With that, I would be happy to answer any questions you may have.