

U.S. DISTRICT JUDGE JOHN L. KANE

Judges are no different from anybody else. Like you, we have social, political and religious views, whether the product of culture and upbringing, or the result of education, predilection or intellectual or philosophical pursuit. To don the robe, however, is to surrender the freedom to act on those views so justice may be served.

The discipline of deciding irrespective of one's personal beliefs is the essence of judicial integrity. Being consciously aware of one's views and setting them aside at the start of every case is no easy task, nor should it be. The question for any nominee is, does he or she have the discipline to do that and decide each case according to the rule of law? I believe Judge Gorsuch does, and his opinions prove it.

Long ago I gave up identifying judges as "liberal" or "conservative". Because those words seem to mean whatever the user wants, they have no common understanding and provoke no further analysis. However one might pigeonhole either of us, the fact is Judge Gorsuch and I share few of the same social, political or religious views. In evaluating fitness for the bench, the real question is, does the nominee embrace the discipline of the robe? Do his or her opinions reflect any sort of ideological bias? Is the judge fair? Judge Gorsuch is not a monk, but neither is he a missionary or an ideologue.

I read a great many appellate opinions, from circuit courts throughout the United States. To the extent that a judge can be judged by his opinions, the ones written by Judge Gorsuch tell me a great deal. His are clear, cogent and mercifully to the point. I have been both affirmed and reversed by him, and each time I thought he was fair and right. He treats the parties and the trial judge's rulings with respect; he does not ridicule them or take cheap shots, nor does he insult or

demean other judges who might disagree with him. His writing is filled with grace and wit. But does he know the difference between his personal views and those of the court?

Judge Gorsuch is the only judge of whom I am aware who has written both majority opinions and concurring opinions in the same case. The majority opinions were the opinions of a three-judge court; the concurring opinions were his separate, additional perspectives. He has done this at least twice.

Judge Gorsuch's opinions also make clear his concern for the separation of powers and his keen awareness of the judiciary's independence. He has written that legislation belongs to Congress and adjudication belongs to the courts. He has disagreed with the late Justice Scalia by suggesting there is far too much adjudicative activity in the executive branch's administrative agency rulings. He has questioned the value of the *Chevron* doctrine, which asserts the judiciary should defer to agency interpretations of statutes. The *Chevron* doctrine intrudes equally upon the authority and prerogatives of the legislative branch.

As is often the case, Justice Oliver Wendell Holmes said it best. In his dissent in *Lochner v. New York*, Holmes wrote:

The case is decided upon an economic theory which a large part of the country does not entertain. If it were a question whether I agreed with that theory, I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I strongly believe that my agreement or disagreement has nothing to do with the right of the majority to embody their opinions in law.

Like Justice Holmes, Judge Gorsuch knows that his social, political and religious views have no place on the bench. In embracing the discipline of the robe, dedicating himself to the separation of powers, and consistently devoting himself to being fair, Judge Gorsuch has earned the right to be considered by you for the highest bench in the land. I hope you will judge him with the fairness and integrity with which he himself has served.