

**Prepared Statement of Jamil N. Jaffer\***  
**on the Nomination of Neil M. Gorsuch to be an Associate Justice**  
**of the Supreme Court of the United States**  
**before the Senate Judiciary Committee**

**March 23, 2017**

Chairman Grassley, Ranking Member Feinstein, and distinguished Senators: thank you for inviting me to discuss the nomination of Judge Neil M. Gorsuch to be an Associate Justice of the Supreme Court of the United States.

I appreciate the opportunity to talk to the members of this Committee about my experience working with and for Judge Neil M. Gorsuch.

I've known Judge Gorsuch for more than a dozen years and have worked directly with him in a number of different capacities: briefly when he was a law firm partner at Kellogg Huber, a trial litigation boutique here in Washington, DC (now known as Kellogg Hansen), while I was a new associate at the firm; as a senior Justice Department official when I was a young lawyer in the Office of Legal Policy; and as a law clerk during his first four months on the bench when he was a brand-new Judge on the United States Court of Appeals for the Tenth Circuit.

I've also seen Judge Gorsuch up-close and personal as a nominee when he was first nominated and ultimately confirmed to his current seat on the Tenth Circuit and now as a nominee to be an Associate Justice of the United States Supreme Court.

And finally, over these dozen years, I've gotten to know Judge Gorsuch as a colleague, as a boss, as a friend, and as a mentor.

And in these many and varied capacities in which I've known Judge Gorsuch, one set of key facts became apparent very quickly: Judge Gorsuch is a serious scholar of the law, a talented advocate, a brilliant writer, a fine judge, and an amazingly caring, warm, kind, and decent human being who would be a credit to our nation if he is confirmed as an Associate Justice.

By the time of this testimony, the members of this Committee will have had the chance to take the measure of Judge Gorsuch through personal meetings in your offices, through close and thorough review of his ten-year record on the bench, and through detailed and incisive questioning over the past few days. As a result, there is perhaps only a limited amount I can offer you in my testimony today beyond what you've already learned.

---

\* Jamil N. Jaffer currently serves as an Adjunct Professor of Law, Founder of the National Security Institute, and Director, National Security Law & Policy Program at the Antonin Scalia Law School at George Mason University, where he teaches classes on national security, surveillance, counterterrorism, and cybersecurity. Mr. Jaffer is also a Visiting Fellow at the Hoover Institution and is affiliated with Stanford University's Center for International Security and Cooperation. Among other things, Mr. Jaffer previously served as Chief Counsel & Senior Advisor to the Senate Foreign Relations Committee, as an Associate Counsel to President George W. Bush, and as Counsel to the Assistant Attorney General for National Security in the U.S. Department of Justice.

For example, by now you surely know of his sterling academic record, including his degrees from Columbia University, Harvard Law School, and Oxford University (mostly earned on scholarships), and you've almost certainly heard about his penchant for fly-fishing and skiing. You've already perused his opinions and seen his lean and mean writing style that explains the law and his analysis of the case in a way that is sophisticated and yet accessible to most lay readers. You've seen his demeanor and seen a man who is genuine, patient, and calm, while still remaining passionate about the things he cares about, whether a principle of law, a great quote, a family member, or a friend.

You've likely also heard about his deep family roots in the West, including his mom, a tough-as-nails Assistant District Attorney in Denver (one of the first women in that job) who set up a unit to go after deadbeat dads and went on to be an award-winning state legislator and the first female Administrator of the EPA; his grandfather on his dad's side who paid his way through law school working as a street car operator in Denver; his grandfather on his mother's side who grew up in an Irish tenement and who initially worked as a red cap moving bags at a train station to provide for his family; his grandmother who grew up in small-town Wyoming and was one of the first women to graduate from the University of Denver; and his other grandmother who grew up on a Nebraska farm without a refrigerator.

You've also certainly heard about Judge Gorsuch's time as a young man working a range of jobs, from shoveling snow, mowing lawns, and moving furniture, to working the night shift at a Howard Johnson's hotel. And you've heard about his decision, after completing law school and finishing his Ph.D. classes at Oxford, to turn down offers from some of the best law firms in Washington, DC and New York to instead take a risk and go to a startup law firm, where he ultimately helped win the largest affirmed antitrust verdict in U.S. history at the time (over \$1 billion) and over \$18 million for Columbia Hospital for Women, a community hospital in the D.C. area.

It was after all this that I entered the story and where I might (hopefully) provide some useful information for the Committee. The Neil Gorsuch that I met when I first arrived at Kellogg Huber in late 2004 was a young partner who was known for being a tough litigator who pursued his client's interests with dogged passion, but who was also unfailingly polite to his co-counsel and was widely respected even amongst his most aggressive opponents. He was, in many ways, a lawyer's lawyer, at a law firm known for its trial prowess and expertise. And, in my experience, he was the (perhaps rare) kind of law firm partner who took genuine interest in the growth and mentorship of those around him. Indeed, those who knew him felt his warmth and caring for them and their families, and I was lucky to be among that group, albeit briefly.

I remember learning about his impending departure for the Justice Department and being jealous of his unique opportunity to go to what looked to me to be a pretty cool job. I remember talking to him about the new opportunity and hearing the sheer excitement in his voice about going to the Department of Justice and about his opportunity to serve the public interest. It was, in a word, infectious.

As it turns out, Judge Gorsuch's passion for engaging in public service at the Justice Department, which I picked up in a just a couple of short conversations with him in the late spring/early summer of 2005, was so infectious that it would—just a few months later—play a critical role in my chance to head to the Justice Department, albeit in a different office.

When I arrived at the Office of Legal Policy in the late summer of 2005 to work on the

confirmation of then-Judge John G. Roberts, Jr. to the U.S. Supreme Court, I remember going to see Judge Gorsuch to get his advice on this new adventure. Once again, his passion for the job he was doing, his excitement for me about my new opportunity, and his dedication to serving the public interest was infectious.

I came out of our first set of meetings even more pumped up than I already was to work on the SCOTUS nomination and the range of other projects that OLP was working on at the time. And that passion and fire for public service—which had been instilled in me from a young age by my dad—has been constantly relit and stoked by Judge Gorsuch’s own passion for the same and through his advice and mentorship over the dozen years I’ve known him.

But it wasn’t just his passion for public service that was infectious—it was the way he worked with people, the way he generated respect amongst his colleagues and those that worked for him, and the care and interest he took in the cases he worked on and the people involved in those cases, whether they were on his side or not. And while he was in a more senior management position at the Justice Department than he had been at the law firm—no longer trying cases in court—I could tell from the folks in the Associate Attorney General’s office whom I met along the way that he took the same approach at the Justice Department that he was known for at Kellogg Huber.

After Judge Gorsuch was nominated for the Tenth Circuit, less than a year after he had been at the Department and at the young age of 37, I spent a lot of time talking to him about the process of becoming a judge and what that meant to him, why he was doing it, and his plans if he were lucky enough to be confirmed by the U.S. Senate. Having just come off working on the successful confirmations of Chief Justice Roberts and Justice Samuel A. Alito, Jr. to the Supreme Court, I had turned to working on various district court and appellate nominees, and I was fascinated by the idea that a lawyer just seven years older than me had been nominated to a lifetime appointment and that he actually wanted to do it.

And what I learned in those early conversations about becoming a judge was that Judge Gorsuch not only has a passion for public service, but that he has an abiding passion for justice, for ensuring that the law is applied fairly and in an evenhanded manner to all that come before our courts. It is worth noting that at the time, Judge Gorsuch had no reason to try and convince me that he’d be a good or dedicated judge; by that point he had already been nominated by the Administration, and my role wasn’t to evaluate him.

At this point, we were just two friends—a mentor and a mentee—talking about why he wanted to take on this job at such an early point in his life. It was in those conversations that I realized that this was a man not just dedicated to being a great lawyer, to being a mentor and an example to those around him, and to being a strong but careful and disciplined advocate for his clients, but a man who was truly devoted to the rule of law, to the independence of the judiciary, and to the central role of the courts in ensuring the rule of law remains strong in our great nation.

After Judge Gorsuch got through the nomination process and was confirmed by the Senate, he asked me if I’d come clerk for him. Truth be told, at the time, I didn’t give it much thought. After all, I had already clerked for Judge Edith H. Jones, an amazing, terrific judge if there ever was one, so dropping everything to go clerk again out in Denver, Colorado seemed like a bridge too far. As it turns out, Judge Gorsuch is a pretty convincing guy, and within a few weeks, he had gotten me to change my mind. (It

might be worth noting that the winning argument he made had something to do with ski season in Denver coming up). Looking back, I can't believe I even had that conversation.

I distinctly remember the first day my co-clerk Mike Davis and I arrived in Denver because Judge Gorsuch took us alpine sledding. Seriously. He beat us down the mountain twice and never let us forget that even with nearly a decade on us, he could beat two young whippersnappers like us.

I served as a law clerk to Judge Gorsuch for the first months he was on the bench, and in that time period, I had the chance to watch a very unique transformation. I watched as Neil Gorsuch, tough private practice trial lawyer and Justice Department senior official, become Judge Neil Gorsuch. In doing watching this transformation, I saw a man who had been a strong, passion advocate for his clients become a strong, passionate advocate for the rule of law and the independence of our courts. The transformation was near-instantaneous. It was almost like putting on those black polyester robes (as he likes to describe them) actually had the semi-mystical effect they are designed to evoke. I saw a man who had argued fervently for the positions he represented on behalf of others turn into a man who sought to apply the law as it was written, not as he wanted it to be, but as the political branches had made it. And while it is true that he and I had talked about his views on the rule of law back when he was first nominated and again after he was confirmed, it was a very different thing to watch it actually put into practice. It was an awe-inspiring moment for a young lawyer to watch.

And since that day, when Judge Gorsuch first took the bench in Denver, I haven't seen him waver from the task of being a judge's judge. He is the kind of judge you can count on to give you a fair hearing in his courtroom, the kind of judge you can expect to ask tough questions of both sides, the kind of judge who demonstrates respect for all litigants that walk in the door of the federal courthouse, the kind of judge that will fiercely protect the independence of the judiciary and its role as a co-equal branch of government, and the kind of judge who isn't looking to mold the law into his own image, but simply looking to apply the words written by the political branches in a fair and evenhanded manner to the parties before him.

And given that we are now in heat of the confirmation process for a Supreme Court vacancy, it may be worth talking for just a moment about current state of the process. On the night of Judge Gorsuch's nomination, I was near the steps of the Supreme Court and saw a group of protestors carrying signs that read, "Oppose \_\_\_\_\_," with the blank to be filled in with the name of whomever the President nominated. By this time, of course, Judge Gorsuch had been nominated and I could see his name handwritten on these signs. A troubling sign of thing to come to be sure.

And having watched the near-immediate reaction from certain camps within a day or so of the nomination and more recent events, I continue to be concerned. While it is absolutely fair to closely examine a nominee's record and judicial philosophy—indeed, it is a critical part of this august body's role under our Constitution—cherry-picking a handful of cases out over 2,000 decisions that a judge has participated in without accurately representing the numerous cases that go the other way is simply unfair.

The reality is that in his ten years on the bench, Judge Gorsuch has carefully and fairly applied the law to all litigants before him, and the fact that those who oppose to his nomination can only find a handful of cases to point to is a testament to his care and wisdom as a judge. Indeed, Judge Gorsuch's record demonstrates exactly who he will be if this body chooses to confirm him to the Supreme Court,

and that is a careful judge who applies the law fairly to every litigant and party before him and his colleagues.

While the judicial confirmation process has, to be sure, become more challenging for those who go through it (and their families), it is a testament to our great nation that highly qualified and capable men and women are still willing to serve. It is likewise a testament to the rule of law in this nation that we still have judges like Judge Gorsuch who view their role not as being politicians in robes, but as fiercely independent servants of the law itself, including our Constitution, the preeminent symbol of freedom in human history. In my view, Judge Gorsuch is just the kind of judge that we should all want to serve on our nation's highest court and I sincerely hope that this body will give him the chance to do so.

Thank you for offering me the opportunity to participate in this important hearing. I look forward to your questions.