



ESSAY

**Before the Robe:
Judge Neil M. Gorsuch**

Mark C. Hansen*

The Honorable Neil M. Gorsuch was not the distinguished silver-haired jurist we see now when he walked through the doors of our start-up law firm in the fall of 1995. He was, like the other supremely talented young lawyers we hired to help us build a practice in the attorney-infested (or should I say shark-infested?) waters of our nation's capital, a bit diffident, perhaps nervous? His great successes in school and in landing clerkships were hardly a guarantee of success in the practice of law—and to his credit, he knew that.

Neil joined a firm that was only about two years old, an unknown financed from the three founders' savings and still uncertain about each month's payroll. It was a far cry from Columbia, Harvard, and Oxford. He had come to learn to be a lawyer, and we had promised a long bracing drink from the fire hose of litigation, at a firm comprised of young lawyers with stellar resumes and too much work to do.

Neil was not the only young star to find this tiny firm attractive. His peers included men and women who went on to become federal judges, law school deans and professors (David Freeman Engstrom of Stanford Law School as one example), high-ranking government officials, and leaders of corporate America. There were also those who stayed, as Neil did for ten years. They became our partners, handling fascinating trial and appellate work around the country and even, in some instances, around the world.

From the very start, Neil impressed us as a colleague who loved the law, had great energy and enthusiasm, and wanted to learn. Not for him the quiet library carrel: he wanted to be *out there*, helping clients, contending with adversaries, and arguing to courts. He accepted assignments willingly and did them well. He pitched in when—as was often the case—we were overwhelmed with the demands of high stakes litigation. He learned that for almost every client in almost every case, the litigation really is high stakes; it matters. And they want and need a lawyer who understands that. Neil was, for partners, the kind of associate you prize; for associates, the kind of colleague you enjoy working

* Partner, Kellogg, Hansen, Todd, Figel & Frederick, PLLC.

alongside; and for clients, the young, eager, and committed lawyer who inspires both affection and confidence.

Early in his time with us Neil had a dream assignment: the case of Sir Bernard Ashley (B.A.) against B.A.'s former financial advisors, who had induced him to invest in a failing real estate development outside Charlottesville, Virginia, called Keswick. B.A. was a robust six feet, four inches tall with an even larger personality, a commanding man who loved to hold court. Over tea he would tell wonderful stories of life in the famed Gurkha regiment of the British army and then as an entrepreneur bicycling printed tea towels over to Harrods. He and the eponymous Laura built a fashion empire that produced the largest IPO ever floated on the London stock exchange.

B.A. and his second wife Regine—Lady Ashley to us—took to Neil immediately. Watching Neil amble down the long hallway at Keswick Hall, B.A.'s country house hotel, Lady Ashley turned to me and remarked, in a heavy French accent, “That Neil, he is very ambitious.” She meant it in a good way.

Neil had a knack for understanding clients and establishing relationships that led them to trust him. And so it was that Neil found himself, less than a year into practice, examining key witnesses and arguing critical motions in B.A.'s case before the Albemarle County Circuit Court—on his own, no hand-holder there to prompt him. After the defendant's corporate representative claimed the defendant knew nothing about the facts of the case, when in fact the defendant had gathered witnesses at a conference center weeks before the representative's deposition to debrief them, Neil won a sanctions ruling that, in substance, precluded the defendant from calling witnesses at trial. The motion for reconsideration was held long into the night on the day before trial. There in the packed, elegant, colonial-style courtroom, the author of Virginia's leading civil procedure treatise warned the judge that the wily Gorsuch had led him into fatal error. But the judge stuck to his ruling, the Virginia Supreme Court denied the defendant's emergency mandamus petition, and the case settled the next day.

The following years brought other colorful and memorable trials, such the month-long *Conwood* case in the Western District of Kentucky before the Honorable Thomas B. Russell and a jury of twelve.¹ The result: the largest judgment ever affirmed and collected under the federal antitrust laws. In this era of bloated bills and “leverage” models of lawyering, it is perhaps worth noting that the case was won by a team of four lawyers. We worked from an abandoned Elks Lodge just a shout across the alley from the tiny federal courthouse in Paducah, with able assistance from our local counsel Dick Roberts. Of that team, Ben Powell went on to become the general counsel to the Director of National Intelligence and is now a distinguished practitioner in the field of cybersecurity; Neil went on to serve ten distinguished years on the Tenth Circuit before his recent nomination to the Court; and the two of us who remain, Michael Guzman

1. *Conwood Co. v. U.S. Tobacco Co.*, No. 5:98-CV-108-R, 2000 WL 33176054 (W.D. Ky. Aug. 10, 2000).

and I, regale our younger colleagues with stories of our many adventures—wins as well as losses—with these wonderful friends and comrades. Many of the stories are true, or mostly true.

As Neil prepares to assume the weighty responsibilities of an Associate Justice of the United States Supreme Court, those of us who practiced with him take real comfort from our knowledge that he is principled, practical, and experienced. His years on the front lines of active trial work sharpened his quill, and undoubtedly contributed to the elegant, lucid, and direct writing style for which he has become celebrated. But those years in the tumultuous arena of civil litigation also grounded him in the realities of life for a wide spectrum of clients, thickened his skin and honed his judgment, and probably did much to forge his character. It is telling that the lawyers who arguably know him best, the partners who practiced with Neil—forty Democrats, Republicans, and Independents—all joined in a letter to the Senate Judiciary Committee attesting to the intellect and character of this outstanding nominee for our nation’s highest court.