

LECTURE

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The Cardinal Virtues of Good Judging

The Honorable Kevin Newsom

Abstract: *Let us be warriors for the jurisprudential values and ideals that matter most, among which I count objectivity—as enforced through faithful, rigorous attention to text and history—and humility, as evidenced by a genuinely modest, Hamiltonian sense of the judge’s role in society. But let us be happy, winsome warriors, fighting fairly and with the common decency that the people of this great country have a right to expect from their judges.*

Before I get into the meat of my talk, allow me one tiny digression. For a long time now—initially as a law student, then as a law clerk and practicing lawyer, now as a judge—and always as a citizen—I have cared deeply about the country’s justice system and its courts. The Heritage Foundation, the Federalist Society, and a number of other similar groups have long played a vital role—perhaps never more so than during the last few years—in identifying and promoting truly outstanding candidates for the federal bench. I couldn’t be prouder to be even a bit player on the team of judges that this Administration—with your able assistance—has identified, nominated, gotten confirmed, and installed in the nation’s courts.

It started with a bang, of course, with the appointment of Justice Neil Gorsuch to the Supreme Court. I was fortunate enough to be among the first appointees to the courts of appeals—a group that also included my friends Amul Thapar, Amy Barrett, Joan Larsen, and David Stras. And since then, the hits have just kept on coming with the nominations and confirmations of people like Stephanos Bibas, Allison Eid, Jim Ho, and Don Willett. As I look around, I’m so honored to be in the company of such fine legal minds and people—and thrilled to bask in their glow. So to this Administration and to

KEY POINTS

- As the Latin maxim goes, *omne trium perfectum*—“everything that comes in threes is perfect.” The “holy trinity” of virtues comprises the following qualities, all of which are necessary to good and effective judging: (1) objectivity, (2) humility, and (3) civility.
- Objectivity entails a commitment to both evenhandedness—that is, impartiality—and an “intrinsic rightness.”
- Humility pertains both to: (1) the good judge’s appraisal of his own ability, knowledge, and certitude, and (2) the good judge’s sense of his own place—and the judge’s role more generally—in the constitutional order.
- Civility is less substantive, or jurisprudential, than the first two, but a necessary complement to them. By virtue of their status—and the trust reposed in them—judges have a heightened “be nice” obligation.

This paper, in its entirety, can be found at <http://report.heritage.org/hl1291>

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you, I say “thank you” for caring, as I do, about the future of the courts, and for doing something about it.

The Three Cardinal Virtues

I’d like to talk to you about what I consider to be the three cardinal virtues of good judging. Why three? Because as the Latin maxim goes, *omne trium perfectum*—“everything that comes in threes is perfect.” And because, for those in my generation, as we learned from Schoolhouse Rock, “three is a magic number.” And because, well, I actually think—in my relatively limited experience—that there are in fact three. The “holy trinity” of virtues that I’d like to discuss comprises the following qualities, all of which I believe are necessary to good and effective judging: (1) objectivity, (2) humility, and (3) civility.

Objectivity

Let’s talk first about objectivity, which has two related but distinct aspects or phases, or incarnations. The first, and perhaps more obvious, is what I’ll call “objectivity as evenhandedness”—that is, impartiality, the opposite of prejudice or bias. This is the stuff of the umpire metaphor, famously explained by Chief Justice John Roberts during his confirmation hearing. The judge is a neutral arbiter; he calls balls and strikes as he sees them. Evenhandedness, of course, is a critically important—essential—value in our justice system. It is, as I said during my own hearing, an “absolute expectation.” But to be clear, it’s only half of the objectivity equation. Objectivity also, and just as importantly, denotes, entails, and embodies truth—rightness, reality, actuality. An umpire-judge isn’t fully “objective,” it seems to me, if he’s just calling balls and strikes as he sees them. In order to be fully objective, he must call balls and strikes as they actually *are*.

In saying that, I realize that I’m exposing myself as a Boy-Scout-ish believer in the rather quaint, outdated notion that the “law” is identifiable, knowable, demonstrable, and coherent. Law is not, I insist—in spite of my Ivy League training—infinately malleable. Law is not what the judge ate for breakfast. Law is not just politics by another name. Law is not an exercise in raw power. Law is not—or certainly shouldn’t be—an “ends justify the means” endeavor. If law were any of those things, I’d find another profession.

Now, I’m not quite so naïve as to believe that in every case there is one and only one permissible answer, exclusive of all other possibilities. There are

close cases, of course. But it has long been my view, which has not been beaten out of me yet and which my time as a judge has actually confirmed, that there are almost always objectively “better” and “worse” answers.

Law is not just politics by another name. Law is not an exercise in raw power. Law is not—or certainly should not be—an “ends justify the means” endeavor.

At my confirmation hearing, Senator Dick Durbin (D-IL) asked me what I thought was a fair and thoughtful question that bears on this “objectivity as truth” theme: Isn’t each judge really just the collection of his own experiences, and doesn’t he necessarily bring those experiences (and with them a perspective, a world-view) to the bench? My answer was, and remains, that of course a judge, like all human beings, is a collection of his own experiences, and that of course he can be assumed to have a perspective. I would even go so far as to acknowledge that we are all tempted from time to time to give in, and to try to use the law to impose our perspectives on others. The key, I told Senator Durbin, is self-awareness. Like anyone fighting an addiction, the good judge has to acknowledge his perspective, and his temptation—and then rage against it with every fiber of his being. The truly dangerous characters are the ones who either don’t realize or won’t admit that they have a perspective, or that they might be tempted to try to force-feed it to others.

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So make no mistake: the Sirens are singing. Like Odysseus, therefore, we have to tie ourselves to the mast. But with what? What are the ropes, the bindings? The two biggies, it’ll surprise no one to hear

me say, are text and history. Without turning this into a sort of speech that you've probably heard a few too many times, let me briefly explore each of those—and the constraints that they very usefully impose.

First, text. Overwhelmingly, modern law is written, in the Constitution, in statutes, in regulations, and even in private agreements. Despite the post-modernists' efforts to persuade us otherwise, the words that comprise those texts are not empty vessels—and they are not infinitely malleable. For the most part—and particularly when proper attention is given to the context in which they are situated—those words have common, agreed-upon, and discernible meanings. A judge's first and most important task when confronting a written text, therefore, is to rigorously attend to and enforce the ordinary meaning of the words on the page, with the aid, of course, of settled linguistic and grammatical rules and, where necessary, traditional interpretive canons.

Not all that long ago, this “text first” view would have been derided as a retrograde, outlier position. But then Justice Antonin Scalia happened. He almost singlehandedly changed the way an entire generation of lawyers and judges—my generation—thinks about the law. Gone are the bad old *Holy Trinity* days, where a court, let alone the Supreme Court, could with a straight face say that “a thing may be within the letter of the statute and yet not within the statute, because not within its spirit.”¹ I can still vividly recall my own Statutory Interpretation professor telling us students back in 1996—or more accurately, lamenting and bemoaning—that today, in the A.S. (After Scalia) era, every self-respecting lawyer and judge begins his argument, or his opinion as the case may be, by acknowledging and wrestling with the constitutional, statutory, or regulatory language at issue. And indeed, today, nearly everyone agrees—contra *Holy Trinity*—that where a provision's language is clear, the interpretive enterprise is over. A judge should not—may not—range beyond a written text's plain meaning to find and enforce an unwritten “spirit,” which frequently (and not coincidentally) will mirror the judge's own preferred outcome.

So we should all celebrate what Justice Elena Kagan famously acknowledged just a few years ago: “We're all textualists now.”²

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So the first and most important means by which judges must maintain their objectivity, in both the “evenhandedness” sense and the “intrinsic rightness” sense, is to faithfully read and interpret, and then rigorously enforce, the written law that governs the cases before them.

Second, history. I was a history major, and I remain a student—and lover—of history. My principal chambers dictionary, Webster's Second (not Third), defines “history” as “the branch of knowledge that records and explains past events as steps in human progress” and “the study of the character and significance of [those] events.” Events, that is, things that actually happened. History, then, like text, is not constructed, it is unearthed, discovered. It, too, has objectively verifiable content. It, too, is an anchor.

Now I'll be the first to admit that “doing” history the right way is exceedingly difficult. As many of you know, my longtime friend and now colleague Bill Pryor is my across-the-hall neighbor back in Birmingham. One of his former law clerks, now clerking for Justice Clarence Thomas, got off a great line earlier this year. “Originalism,” he said to me, referring to the interpretive methodology that relies heavily on history to understand the original meaning of words in written legal texts, “is a failed experiment—it's just too doggone hard.” He was joking, of course. At least, that is, about the failure of the experiment. But not about the difficulty of doing history the right way. Finding historical crumbs and tidbits to

1. *Rector of Holy Trinity Church v. United States*, 143 U.S. 457, 459 (1892).

2. Justice Elena Kagan, *The Scalia Lecture: A Dialogue with Justice Kagan on the Reading of Statutes* at 8:28 (Nov. 17, 2015), <https://today.law.harvard.edu/in-scalia-lecture-kagan-discusses-statutory-interpretation/>.

support a preconceived view is easy-peasy. Understanding the entire history of a particular topic, from the bottom up, so to speak, is really, really hard. But—and this is the important part—the payoff is huge, because history, if done right (like text, if read faithfully), provides the good judge with an essential objective marker, and thus helpfully constrains the judge’s discretion.

Let me give you an example, which, to be absolutely clear, I sought and obtained permission to share. As many of you know, following my clerkship with Judge Diarmuid O’Scannlain on the Ninth Circuit, I spent a year clerking at the Supreme Court for Justice David Souter. During that term, the Court tackled a case that presented the question whether the Fourth Amendment prohibits police from effecting a full-scale custodial arrest (complete with handcuffs, a trip downtown in a squad car, and a brief incarceration) for a misdemeanor, fine-only traffic offense.

Although the parties sparred over modern notions of “reasonableness,” whether, in effect, it made sense to authorize or forbid officers to make arrests for minor offenses, the history of English and colonial constables’ common-law arrest authority took center stage in the case. The question, in particular, was whether, at common law, a peace officer’s arrest authority was limited to violent crimes—those that constituted “breaches of the peace.” Justice Souter was assigned to write the opinion for a sharply divided Court, in particular, and interestingly, for himself and the Court’s four more conservative members: Chief Justice William Rehnquist and Justices Antonin Scalia, Anthony Kennedy, and Clarence Thomas. Although Justice Souter felt pretty confident about his vote, he (to his credit) wanted to be sure, absolutely sure, so he gave me a daunting assignment: “Kevin, go figure out what the history really says. I need you to go all the way down—much deeper than the parties have gone. It’s not going to be easy, but if there’s a clear answer, I have to know what it is.”

I spent the ensuing weeks holed up in the Supreme Court library reading dusty old English and Colonial-era statute books and case reporters. Not, mind you, the glamorous wood-paneled library that you see on the tour, but rather a poorly lit annex

where they keep the stuff that few people ever have a need or inclination to read. I read Blackstone’s *Commentaries*, Hale’s *Pleas of the Crown*, and assorted other old English treatises. I read a bunch of ancient English cases, including one widely reported 17th-century decision called *Holyday v. Oxenbridge*³—can you imagine a more English caption?—that held that a constable needed no warrant to arrest a “common cheater” whom he discovered “cozening with false dice.” I read scads of parliamentary statutes, beginning with the Statute of Winchester, dated 1285, which authorized night watchmen to arrest any “stranger” out on the roads during the wee hours, and then including, just by way of example, and rolling the tape forward: a 16th-century statute authorizing warrantless arrests of individuals playing “unlawful games” like bowling, tennis, and cards; a 17th-century law permitting arrests of “hawkers, pedlars, and petty chapmen” found trading without a license; and an 18th-century law authorizing arrests of jugglers and palm readers. And then, of course, there were lots and lots of statutes, on both sides of the Atlantic, permitting police to arrest anyone found “travelling unnecessarily on the Sabbath.”

So, to cut to the chase, the history—once one took the time to probe it deeply, to follow it all the way down—actually did provide a pretty definitive answer. At common law, and thus at the time of this country’s founding, a police officer had broad authority to arrest anyone who committed a crime in his presence, however minor the offense, and even if it didn’t amount to a violent “breach of the peace.” And so, the Court held, correctly, it seems to me, that absent some overwhelmingly compelling reason to justify a departure from that accepted historical understanding, the Fourth Amendment shouldn’t be interpreted to embody a broader limitation.

I use this case—*Atwater v. City of Lago Vista*⁴—not only because it is personal to me, but also because it so helpfully demonstrates history’s constraining influence. Everyone in that case agreed that the plaintiff, young mother Gail Atwater, had a very sympathetic story: She had been arrested, after all, for a petty offense (a seatbelt violation, for crying out loud) and, to make matters worse, in front of her terrified 3- and 5-year-old children. Everyone

3. Cro. Car. 234, 79 Eng. Rep. 805 (K.B. 1631).

4. 532 U.S. 318 (2001).

also agreed that the arresting officer had acted like an A-double-scribble, yelling at and mouthing off to Atwater as he went about his business. As the Court summarized: “In [Atwater’s] case, the physical incidents of arrest were merely gratuitous humiliations,” “pointless indignity,” “imposed by a police officer who was (at best) exercising extremely poor judgment.”⁵ So everyone, in short, probably wanted Gail Atwater to win. But cases aren’t decided—or shouldn’t be, anyway—based on how the judges want them to come out. They’re decided based on what the law requires. Yes, the objective, capital-L “law.” And the *Atwater* case demonstrates that history can be, and often is, an invaluable tool for discerning what it is, precisely, that the law requires.

Now, it’s easy to talk about these mast-tying tools in the abstract. But, the objection goes, aren’t they just cover for judges deciding cases according to their own preferred outcomes and policy preferences? No, no, no. And the proof’s in the pudding. While I understand, of course, that my 10-month tenure provides only a limited sample from which to generalize, let’s just take a quick look at the results in some of the opinions that I’ve authored, keeping in mind that I actually believe what I’ve been saying—namely, that the law has objectively verifiable content that does and should constrain judges’ decision making. Just a few examples: I’ve seen two taxpayers lose in cases against the IRS, an immigrant win in a case against the Attorney General, a bankruptcy debtor lose in a case against a pawnbroker, a bankruptcy debtor win in a case against a debt-relief agency, a criminal defendant lose in a case against the government, pension beneficiaries win in a case against their former employer, a vulture fund lose in a case against a bank, and an insurance policyholder win in a case against a big insurer.

As you follow along, are you finding it hard to discern a pattern, at least one that can be boiled down to a bumper-sticker slogan about Newsom favoring one “side” or the other? Good. It seems to me that’s exactly as it should be. Good judging isn’t about picking winners and losers. It’s about finding, understanding, and enforcing the law “objectively”—that is, both evenhandedly and as it really and truly “is.”

Let me highlight two particular cases from my own brief experience that neatly illustrate law’s constraining power. In one of the tax cases I mentioned, it seemed pretty clear—to me, anyway—that Congress might well have “intended” to do something quite different from what it actually did in the text it enacted. Was there some temptation to go all “*Holy Trinity*” and just reconstruct the statute to match and capture Congress’ “true” intent? I suppose so.

But we resisted the Sirens’ song: We swallowed hard and enforced the statute as written. In closing the opinion, we said the following: “Now it may well be...[that] Congress stubbed its toe between the hearing room and the House and Senate floors. Even so, it’s not our place or prerogative to bandage the resulting wound.... If Congress thinks that we’ve misapprehended its true intent—or, more accurately, that the language that it enacted...inaccurately reflects its true intent—then it can and should say so by amending the Code.”⁶

It is hard to be the ones who play by the rules, but that is the price we pay for standing on and for principle.

A second example—the case I mentioned that pitted a hapless Chapter 13 debtor against a pawnbroker. Without boring you with all the details, the case asked, in essence, whether despite the debtor’s filing of a bankruptcy petition, a previously pawned automobile dropped out of the estate and vested in the pawnbroker when the debtor failed to “redeem” it in accordance with state law. Reluctantly, we concluded that it did. In closing, we emphasized that we felt constrained to reach that suboptimal (or as the kids would say, “cringey”) result: “[N]eedless to say, we find no particular joy in concluding that a pawnbroker now owns the car that Mr. Wilbur once drove. For better or worse, that’s simply the result that, on our reading, the law requires.”⁷

So, does the law—rigorous attention to text, history, and other objective markers—actually constrain judges’ decision making? I’ve always believed,

5. *Id.* at 346–347.

6. *CRI-Leslie, LLC v. Commissioner of Internal Revenue*, 882 F.3d 1026, 1033 (11th Cir. 2018).

7. *In re: Jonathan Northington*, 876 F.3d 1302 (11th Cir. 2017).

as an “outsider,” so to speak, that it can and should. I’m happy to report that my experience on this side of the bench has confirmed that belief.

In concluding my remarks about objectivity, let me issue one word of caution: We will be tempted from time to time to cut corners, and to forsake all of this benign constraint in favor of a more aggressive, freewheeling approach. We’ll look around and see other judges engaged in result-oriented activism—and we’ll see them winning, winning, and winning. The natural inclination might be to say, “Hey, if they’re going to play, we need to play too.” Banish that thought. It *is* hard to be the ones who play by the rules, but that’s the price we pay for standing on and for principle—for embracing objectivity. And, I submit, it’s a price worth paying.

Humility

The second virtue I’d like to explore is humility. Like objectivity, humility has (at least) two incarnations. We’ll call them individual and systemic. In particular, I’d like to talk about humility as it pertains both to: (1) the good judge’s appraisal of his own ability, knowledge, and certitude and (2) the good judge’s sense of his own place—and the judge’s role more generally—in the constitutional order.

Let’s start, briefly, with individual humility. I have a very sober, clear-headed appreciation of my own abilities—and more importantly, my limitations. Making an object lesson of myself, I constantly remind my kids (two boys, ages 12 and 15) that not only was I not the smartest kid in my graduating class at Harvard Law School, I wasn’t even the smartest kid in my graduating class at my public high school. What matters, I tell them, is that I’ve always cared—desperately—about excellence, and I’ve almost always been willing to work harder than the folks around me in order to chase it. Let me be clear, I’m not engaging in cheesy “aw-shucks-ism” here. No particular thanks to me, by the grace of God or sheer dumb luck, I’m in the “smart enough” category. And, back to my teaching moment, so are my kids. But I’ve never thought that raw brilliance is a lawyer’s—or judge’s, or really anyone’s—most important character trait. I’ve known plenty of truly brilliant people; many of them were insufferable, many were lazy, and many have turned out not to be particularly influential.

No, once you’re “smart enough,” boys—the lesson continues—what really matters is how much you care. As between the double-Ivy, Nobel Prize-winning

Rhodes Scholar whose heart really isn’t in [it]—who, at the end of the day, just really isn’t all that committed to things being done the right way—and the “smart enough” grinder who cares passionately about excellence and will work as hard as necessary to achieve it, I’ll take the latter every day of the week and twice on Sundays. And I’m sure that I choose to surround myself with grinding overachievers because, as I’ve said, and as I’ve told my kids, I’m one of them.

So how does personal humility manifest itself, and why do I think it’s such an important trait for a judge? First, if I want to be a good judge, I have to be prepared to admit that sometimes—lots of times—I just don’t know. (The three hardest words for some uber-achievers to utter: “I. Don’t. Know.”) The great myth about lawyers and judges, of course, which I’m sure we, as a group, have perpetuated, is that we know all this stuff. Stuff, stuff, and more stuff. As a descriptive matter, that’s just not right. And as a normative matter, we shouldn’t even want it to be right. Rote memorization may be the calling card of some professions, but it’s not the skill that we have trained to learn and master. What we bring to the table isn’t knowledge as much as it is wisdom, reason, and commitment to principle.

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Second, and relatedly, I have to be ready to admit that I can learn a lot from other people, most notably, in my role, from my colleagues and from the five young lawyers who populate my chambers and help me do my job. Two of the greatest joys of my current situation are: (1) serving alongside such interesting and intelligent colleagues and (2) interacting with my clerks and staff. Like it says in the book of Proverbs, “As iron sharpens iron, so one man sharpens another.” But it takes a dose of humility for a judge to admit that he often needs help to understand a case’s every angle and nuance.

Now, none of this is to suggest, of course, that a judge should be a blank slate or that he shouldn’t have firmly held convictions. Far from it. Judges certainly should, and I certainly do. We’ve already talked about one of mine—that in all events, a judge must be committed to objectivity, both in the evenhandedness

sense and in the intrinsic-rightness sense. Another conviction of mine, perhaps ironically, bears on the other aspect of humility that I'd like to highlight.

The good judge must have a humble sense of his own role—and the judiciary's role more generally—in the constitutional order. According to the Framers' design, of course, so eloquently explained by Alexander Hamilton in *Federalist No. 78*, the judiciary was to be “beyond comparison the weakest of the three departments of power.”⁸ It was to serve a very limited (humble) function, namely, checking obvious abuses of the political branches within the context of discrete cases brought before it. And yet, less than 50 years after the Constitution's ratification, Tocqueville wrote that “[s]carcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question.”⁹ Today, more than ever, it seems, we live in Tocqueville's world, not Hamilton's.

Courts—and particularly the Supreme Court—have captured the popular imagination precisely because they are so powerful, because they ultimately resolve all of life's most pressing questions. That state of affairs, a far cry from the Framers' much more “humble” vision for the judiciary, is bad for democracy in at least two respects.

The good judge must have a humble sense of his own role—and the judiciary's role more generally—in the constitutional order.

First, it has the effect of robbing the other branches of their duly appointed constitutional roles. Although the political branches are undoubtedly constitutional actors—their members swear oaths to the Constitution just like judges do—it seems fair to say, as a descriptive matter, that they don't, routinely, anyway, think big thoughts about the Constitution. When Congress enacts a statute, it gives plenty of attention, as it should, to questions of public policy, but in the main, anyway, it seems to give very little attention to questions of constitutional authority.

Do we really have the power under the Commerce Clause to enact this legislation? Might this statute violate the First Amendment?

The same is true of many modern Presidents. Recent Presidents have issued signing statements all but acknowledging that particular bills were unconstitutional—and then gone ahead and signed them anyway, with the understanding, expressed explicitly in one such statement, that “the courts will resolve these legitimate legal questions as appropriate under the law.”¹⁰ Clearly, the cause of the political branches' inattention to constitutional issues is a belief, which has insidiously crept into our collective consciousness, that it's not “really” their job to attend to such niceties: The courts will simply sort them out.

Inattention within the political branches isn't the worst of it, though. Even more pernicious, it seems to me, is inattention—one might even call it laziness—within and among the citizenry. “We the People” don't really think big thoughts about constitutional issues anymore either, and for the same reason: We don't need to; the courts will eventually tell us what the answers are, and we'll just get in line. That attitude, I worry, risks sapping democracy of its vigor and vitality. There was a time when robust civic engagement was the order of the day, but as the courts bite off more and more, they leave less and less for people to debate in the newspapers, on the airwaves, and even in the streets. I would prefer a world closer to the one the Framers envisioned, in which courts—humbly—do less, and the people, of necessity, do more.

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Civility

Okay, so we've covered the first two cardinal virtues, the first two “-ities.” The third, to my way of thinking, is civility—less substantive, or jurisprudential, than the first two, but a necessary complement

8. The *Federalist No. 78*, at 402 (Alexander Hamilton) (George W. Carey and James McClellan eds., 2001).

9. Alexis de Tocqueville, *Democracy in America* at 270 (J.P. Mayer ed. and George Lawrence trans., 1969).

10. Presidential Statement on Signing the Bipartisan Campaign Reform Act of 2002 (Mar. 27, 2002), available at <https://www.gpo.gov/fdsys/pkg/PPP-2002-book1/pdf/PPP-2002-book1-doc-pg503.pdf>.

to them. In my house, we have a sign above the door that leads from the garage into the basement that reads, “Work Hard, Be Nice.” That, it seems to me, is a pretty good life philosophy. Oftentimes, though, we, and in particular we judges, excel at the “work hard” part of the conjunction but stink at the “be nice” part.

Rightly or wrongly, judges enjoy something of an elevated status in society’s eyes. That, I fear, can lead to an entitlement mentality and, with it, a diminished sense of civility. That, it seems to me, is precisely backwards. By virtue of their status—and the trust reposed in them—judges have a heightened “be nice” obligation. Toward one another, toward the lawyers and parties who appear before them, and perhaps most importantly toward what I’ll call “ordinary citizens.”

Let me begin, briefly, with civility among judges. This, as we know, can be challenging. During the course of what I hope will be a long career, I am going to have plenty of disagreements with my colleagues—vigorous, vehement disagreements—about all manner of things, a few of which I’ve emphasized tonight. Some of my colleagues will doubtlessly think that my commitment to objectivity, as enforced through rigorous attention to text and history, is old-fashioned, outmoded, or just plain naïve. Some surely won’t—and don’t—share my modest, humble conception of the judiciary’s role in our constitutional system. But to me, those are non-negotiables. They’re what make judges judges and judging worth doing. So I will fight tooth and nail on behalf of those and other core values and principles.

What I won’t do, I hope ever, is personalize that fight. Goodwill is not the exclusive province of any one party, viewpoint, or judicial philosophy. My colleagues who see the law and the judge’s role differently than I do may be wrong—wink, wink—but they are still my colleagues, and until they prove otherwise, I will always presume that they are operating in the utmost good faith. There are so many wonderful examples of judges bridging, and even forming warm bonds across, the jurisprudential divide. Undoubtedly the most famous pan-ideological friendship in recent years was the one between Justices Antonin Scalia and Ruth Bader Ginsburg. During my time clerking at the Supreme Court, I also witnessed firsthand the bond that Justices David Souter and

Clarence Thomas shared. And just recently, we heard Justice Sonia Sotomayor tell an audience at Vanderbilt about Justice Thomas, perhaps the Justice with whom she disagrees most often and most forcefully: “I just love the man as a person.”¹¹

My own colleagues on the Eleventh Circuit have set a wonderful example for me in this regard. As I relayed at my investiture, within days of my nomination—not my confirmation, mind you, but my initial nomination—every single active judge of my court, Republican and Democrat appointees alike, reached out to welcome me and to offer their congratulations, encouragement, and assistance. And since then, having gotten to know each of them a bit better, it has settled in that their outpouring was heartfelt. These are civil, collegial, “be nice” people.

Judges’ obligation of civility, though, extends beyond their immediate peers to the lawyers who appear before them. Maybe it’s because it hasn’t been all that long since I was one, but I really believe that for the most part, overwhelmingly, lawyers representing clients in court are doing their level best. Now sometimes a lawyer’s level best is really quite good. Sometimes it’s not very good at all. But there is no place—none—for judges berating or humiliating the lawyers who appear before them. I’ve seen it happen, and frankly, I just don’t understand it. It’s not the right way to treat people, and it reflects poorly on the judiciary as a whole.

Finally, and perhaps most importantly of all, judges have an obligation to be decent to ordinary citizens, those outside the system, so to speak. One of the highest compliments that I’ve been paid since starting my new job was relayed to me secondhand by one of my law clerks. She said that she overheard two of the court security officers talking to one another down by the front door of the courthouse. One of them apparently said to the other something like, “Hmm, Judge Newsom. I don’t know if I’ve met him yet,” to which the other responded, “Sure you have: He’s the one who doesn’t act like a judge.” Now whether she meant that as a compliment or not, I took it that way.

I tell people all the time, for better or worse, “I only know how to be one way.” That “way” may not always seem particularly “judgey.” If you call chambers, it may just be me who answers the phone, but I hope it’s decent. As grateful as I am to have been nominated

11. Amy Wolf, *Candid Conversation With Supreme Court Justice Sonia Sotomayor Inspires Students*, Vanderbilt News (Apr. 4, 2018), <https://news.vanderbilt.edu/2018/04/04/candid-conversation-with-supreme-court-justice-sonia-sotomayor-inspires-students/>.

and confirmed to my current post, I really don't feel a bit different than I did when I was a practicing lawyer—and I didn't feel much different then than when I was a law clerk. And I didn't feel much different then than when I was a wide-eyed, first-year student at Harvard Law School. Today, I may have a fancy title, but I don't feel like a particularly fancy guy—nor, frankly, do I want to.

Conclusion

In sum: Let us be warriors for the jurisprudential values and ideals that matter most, among which I count objectivity—as enforced through faithful, rigorous attention to text and history—and humility, as evidenced by a genuinely modest, Hamiltonian sense of the judge's role in society. But let us be happy, winsome warriors, fighting fairly and with the common decency that the people of this great country have a right to expect from their judges. Thank you very, very much for having me. I hope you've enjoyed yourselves even a fraction as much as I have.

—*The Honorable Kevin Newsom is a Judge on the U.S. Court of Appeals for the Eleventh Circuit.*