



## Supreme Court Justice Neil Gorsuch decries lack of access to justice for many Americans

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Lawyers cost too much. Getting to trial takes too long. Juries promised by the Constitution are rarely used. And just try counting all the criminal laws on the books.

Those are among the provocative criticisms made by the Supreme Court's youngest associate justice, Neil Gorsuch, in a USA TODAY interview and his new book, "A Republic, If You Can Keep It."

Gorsuch, 52, is convinced that warning – reportedly issued by Benjamin Franklin after the Constitutional Convention – can be met, and the republic will be preserved. But the problems he observes in the justice system and what he describes as the nation's "crisis in civility" are obstacles he would like to see removed.

That Gorsuch would highlight civility and kindness as prescriptions for what ails us might seem counterintuitive. His was the seat that Senate Republicans blocked President Barack Obama from filling in a vituperative, year-long battle in 2016. The president who chose him, Donald Trump, berates in harsh tones the federal judges Gorsuch extols.

The book is, like the justice himself, a study in contrasts. Folksy and self-deprecating, the court's lone westerner came from Colorado in 2017 with rhetorical guns blazing, amply filling the late conservative Associate Justice Antonin Scalia's seat on the bench. It took him only two terms to lead his colleagues in dissents.

At the same time, Gorsuch has made peace with the court's liberals, often siding with Associate Justices Sonia Sotomayor and Ruth Bader Ginsburg in defense of the "little guy" being surveilled, accused, tried or convicted of a crime.

Gorsuch doesn't offer solutions for all the problems he identifies in the book. But he expresses confidence that his judicial methodology – strictly following the words in the Constitution and federal laws rather than his preferred policies – is winning the day. It's a method decried by many liberals as a means to produce conservative results, to which Gorsuch has a simple reply: "Rubbish!"

"We got this thing called a Constitution, right? And it starts with the three words, 'We the People' – not 'We the judges,' not 'We in Washington,' not 'We nine old folks' are going to rule the country," he says.

Gorsuch's nomination to the high court became headline news within days of Trump's inauguration. His Senate confirmation ended a 14-month conflagration dating back to Scalia's

death and federal appeals court Judge Merrick Garland's doomed nomination that divides Republicans and Democrats to this day.

But his fellow conservative Associate Justice Brett Kavanaugh's contentious confirmation last year amid allegations of decades-old sexual misconduct pushed Gorsuch off the front page. Now the precarious medical condition of Ginsburg, who's been treated this year for pancreatic and lung cancers, could portend an even more titanic battle for the seat of the court's leading liberal.

Less attention is just fine by Gorsuch, who professes to be uncomfortable with the media blitz his book requires – though perhaps not with the \$225,000 in royalties it produced before publication, according to his 2018 financial disclosure report.

As he sees it, the public's perception of the court as just another political branch of government is best combatted by a nose-to-the-grindstone approach to handling cases. Or as he puts it: "Do our job, stick to our lane, do the judge thing, do it really well, not answer your questions about headlines."

Those questions – duly unanswered – include any misgivings Gorsuch may have about Trump's contribution to incivility. And early on in the book, he reprises a speech he gave to new citizens at a naturalization ceremony, which he calls "a reminder to us of the wonder of our country" even as the president seeks to curtail legal immigration.

Yet Gorsuch is anything but a go-along-to-get-along guy, as made clear by his expressed desire to fix what ails the nation's justice system.

Most Americans can't afford to hire a lawyer – "I couldn't afford my own services when I was in private practice," he writes – nor endure months or years of legal wrangling to reach trial. Too often, he says, defendants are forced to cut a deal with prosecutors or accept a judge's ruling rather than face a jury of their peers.

In a span of seven weeks last term, Gorsuch dissented twice from the court's refusal to hear Sixth Amendment challenges to criminal prosecutions. One involved evidence he said was not subjected to proper testing and cross-examination. The other involved a decision on restitution based on findings by a judge, not a jury. He was joined both times by Sotomayor, perhaps the court's most liberal justice.

'The Great Dissenter'

Adorning Gorsuch's Supreme Court chambers is a portrait of Associate Justice John Marshall Harlan, the 19th century jurist known as "The Great Dissenter." Harlan was the lone justice to dissent from the court's ignominious 1896 decision in *Plessy v. Ferguson*, which upheld the "separate but equal" doctrine permitting segregation.

It's the sort of courageous independence Gorsuch admires. He notes that his Colorado predecessor on the court, Associate Justice Byron White, for whom Gorsuch served as a law clerk a quarter century ago, dissented frequently from the court's refusal to hear cases. A bust of White sits on the mantel below Harlan's portrait.

Still, Gorsuch has been a reliable member of the court's five-man conservative majority in major cases over the past two terms. Those include 5-4 decisions upholding Trump's ban on travel from several majority-Muslim nations, barring public employee unions from collecting "fair share"

fees from non-members, and removing federal courts from policing even the most extreme partisan election maps.

And when Chief Justice John Roberts joined the court's four liberal justices to deny the Trump administration's effort to add a question on citizenship to the 2020 census, Gorsuch joined the other conservatives in dissent.

During the interview, however, he highlighted cases in which he sided with liberals or when the justices' votes were jumbled beyond ideological explanation. In most years, he notes, about 40% of cases are decided unanimously.

"Get nine people to agree on where to go to lunch!" he dares his inquisitor. "It happens through collegiality and hard work and persuasion and thoughtfulness."

His votes align most often with Associate Justice Clarence Thomas, the court's most conservative member, but Gorsuch eschews labels. Ilya Shapiro of the Cato Institute cites his "libertarian streak." Jonathan Adler of Case Western Reserve University School of Law says he's "more willing to question precedent" than many of his colleagues.

Gorsuch's self-examination is simpler.

"What I'm doing is not my preference. I am trying to follow the law," he says. "Nobody's telling me what to do."