

## A Conversation With Justice Neil Gorsuch on The Human Toll of Too Much Law

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**[00:00:02.3] Jeffery Rosen:** Hello, friends. I'm Jeffrey Rosen, President and CEO of the National Constitution Center, and welcome to We the People, a weekly show of constitutional debate. The National Constitution Center is a non-partisan non-profit chartered by Congress to increase awareness and understanding of the Constitution among the American people. In this episode, I'm thrilled to share a conversation I had on Constitution Day with Supreme Court Justice Neil Gorsuch and his co-author Janie Nitze, who's about their new book, *Over Ruled: The Human Toll of Too Much Law*. Enjoy the conversation. Hello, friends. Happy Constitution Day! It is so exciting to welcome you to the National Constitution Center and to welcome Justice Gorsuch and Janie Nitze.

**[00:01:05.8] Jeffery Rosen:** Let's begin, as we always do when we have the privilege of convening in this sacred space, by gazing at the words of the First Amendment, which are behind me, and now look at Independence Hall, where it all happened, the Declaration and the Constitution were drafted, and just look at it for a moment feel the energy. Kindling passion in the ideals of the declaration and the constitution is what this day is all about. It's been an amazing day, which started with a ceremony for new citizens, and there's nothing more inspiring than any of us has the privilege of doing than watching new citizens take the oath, and it included a great town hall with Justice Gorsuch and Janie Nitze, with teachers who are introducing into the classroom the new Constitution 101 class that we launched today with Khan Academy.

**[00:02:15.7] Jeffery Rosen:** And it's just a thrill to see this remarkable class and the caliber of the scholars and historians that we've assembled to teach the essence of the Constitution free to high school students across the country, the depth of the primary sources. I'm so proud to be part of the amazing team that put this together, and we think it's gonna transform civic education in America. And now we have the great privilege of talking with the Justice and Janie about his new book, *Overruled*. I should say how compelling it is in telling human stories of people who encountered the toll of too much law, and we're just gonna begin with the obvious question. Justice Gorsuch, why did you decide to write this book?

**[00:03:16.8] Honorable Neil M. Gorsuch:** Well, first of all, can I say thank you? Jeffrey, thank you. Thank you for having me and Janie here today. We, in addition to meeting with teachers from around the country, some of whom I see in the audience, we met with students. And you held a wonderful session with a bunch of students in your auditorium where we got to talk about the Declaration and the Constitution today. And watching what you do on Constitution Day, it's like Christmas in this building. It really is. It's fabulous.

**[00:03:53.8] Honorable Neil M. Gorsuch:** Ben Franklin was wandering around telling stories. There was a Constitution cake and games out on the lawn. It's inspiring the work you do here, Jeffrey. And I just wanna say thank you from the bottom of my heart. Because if there is hope for this country, and I am hopeful, it comes from places and people like this and you.

**[00:04:17.2] Jeffrey Rosen:** Thank you. Thank you very much.

**[00:04:24.3] Honorable Neil M. Gorsuch:** The second thing is I wanna introduce three people real quick. First, Janie, who you've just heard about. Janie is one of the most remarkable young women of her generation that I've ever encountered. Her family came to this country from Czechoslovakia, escaping communism in 1968. First generation of this country, an immigrant. And three degrees from Harvard, one in physics, another in statistics, and the last one in law. Now, where she went wrong on that course, I don't know. She clerked not just for me, but also for my colleague, Justice Sotomayor. She's held a Senate-confirmed, presidentially-appointed post, and she has with her two of her three children here, or with us tonight.

**[00:05:19.3] Honorable Neil M. Gorsuch:** Claudia. Claudia and Ann. And we have had a lovely Constitution Day, haven't we? We even got a tour of Independence Hall together, and it has been a lot of fun. So thank you for allowing me to make that introduction. You had a question.

**[00:05:38.1] Jeffrey Rosen:** The question is, why did you write the book?

**[00:05:40.7] Honorable Neil M. Gorsuch:** Why did we write the book?

**[00:05:41.8] Jeffrey Rosen:** Why did you write the book?

**[00:05:42.4] Honorable Neil M. Gorsuch:** Well, I love our Constitution, and I know you do, and that's why you're here. And thank you for coming out tonight. This is not exactly everybody's idea of a date night, but it apparently is some of yours. So thank you. I've been a judge for 18 years or something like that, and I had just come to see too many cases where ordinary Americans are just trying to go about living their lives, secure the blessings of liberty for themselves and their families, trying to hurt no one, who've just been caught up in ways that you can't even imagine without really appreciating the depths of their stories in laws that they didn't foresee, couldn't have foreseen in many cases, and their lives were just ruined.

**[00:06:38.4] Honorable Neil M. Gorsuch:** And whether it's a veteran who's seeking benefits for his disability, who follows the letter of the law to a T, but it turns out there's a regulation that everyone concedes is inconsistent with the law. He doesn't follow that, and he's still denied disability benefits. Whether it's an immigrant to this country who follows not just the law, but the judicial precedent about the law, and then is told by an agency later that now that doesn't count, we disagree with the judicial precedent, ignore it, and now you have to start all over again and spend 10 years out of the country when you have four children here in the United States. Or whether it's a company, small home healthcare company in Kansas. I used to sit on the Tenth Circuit in the western United States.

**[00:07:29.1] Honorable Neil M. Gorsuch:** It's accused of Medicare fraud. Well, that's a big deal, and I take that very seriously, and that can ruin your business. That can kind of be it. And it turns out that they followed all, not just the statute, but all the regulations under the statute perfectly, the ones that were in effect at the time they provided the services and were being accused of violating regulations that were enacted or adopted only later. And it takes six years of litigation before the case makes it all the way up to my court and people figure that out. The agency is so confused by the number of regulations that it produces that it just got mixed up. And I just saw too many of those cases, too, too many of those cases. And I thought it was time for me to explore what's going on with our law and whether maybe we need to think about some of the changes that have happened in our law in our lifetime. And that's why we sat down to write the book.

**[00:08:28.8] Jeffrey Rosen:** Well, your passion comes through, and Janie, you work with the justice. What did you learn in the course of helping him tell all these stories?

**[00:08:39.8] Janie Nitze:** I'll back up even further than that, if it's alright with you. I didn't come from a family of lawyers, and didn't know a whole lot about law when I went to law school first. And I always, when learning about the Constitution, understood it by virtue of the powers and the rights, but I never fully appreciated until I started to clerk for the justice just how much everything came down to is all about the individual. Every word in the Constitution that is there is really written to protect the individual, and it is our government, and it's for self-government, all that.

**[00:09:11.7] Janie Nitze:** And so when the justice came to me and said, what about this book that tells the stories of individuals, I sort of thought how perfect 'cause it really takes me back 15 years to when I was first clerking for him in Denver. And so there's this very common thread of who he is as a justice and how he views the law, that he never loses sight that there is an individual behind it. And just writing the book with him, I not only learned so much from working with him, but it was really incredible to talk to some of the people who lived the cases that I had once read just as Supreme Court opinions and read through the lens of law, and sort of take Sandra and John Yates, who I'm sure the justice will talk about. Really talking to Sandra Yates and hearing from her what they went through, it made so much more real what the law can do, both for good and for not so good for people in this country.

**[00:10:14.3] Honorable Neil M. Gorsuch:** So just to follow up on that. Here's what we found when we started digging in. You have this anecdotal sense there's something going on, but you wanna check your work. You wanna see if you're right. We all think Congress isn't busy these days, they should do more. Does anyone know that they write two to three million words of new law every year? That's Congress. And guess what? That's just the tip of the iceberg. Agencies, federal agencies promulgate regulations, 60,000 to 70,000 pages of new regulations every year. That's new. That number is new. And it's happened really since about 1970 is what we've discovered. This isn't a New Deal thing, this isn't a 1950s thing, this is about 1970, if I had to peg it.

**[00:11:09.8] Honorable Neil M. Gorsuch:** There are 6000 maybe federal criminal laws on the books. In fact, nobody really knows how many federal criminal laws there are. They gave up counting them in the 1980s. It's gone like this. And that too is the tip of the iceberg. There are by, again, estimates 'cause nobody can count them all, maybe 300,000 federal regulatory crimes that agencies have promulgated through their regulations. And this is a feature of the law that has changed in my lifetime, it turns out. And so that's really, if you wanna know what we found out, that's what we found out. And chances are pretty good, according to people who are really quite thoughtful about this and not joking, that you have probably committed a federal felony today, each and every one of you.

**[00:12:03.3] Jeffrey Rosen:** There's a Constitution Center exemption, so everyone is safe. It's such a powerful argument. Why did law explode in the '70s and '80s?

**[00:12:13.8] Honorable Neil M. Gorsuch:** Well, I think we could maybe point to many. There are undoubtedly many causes. But one thing that I can't help but come back to time and time again, and I think I'd like you to talk about this too, is social trust. When Tocqueville came to this country in the 1830s, he marveled that where a great project had to be undertaken in Britain, a lord would lead it. In France, a government would lead it. In America, people just got together and did it. Whether you needed a new hospital or a new school or new charity needed to be undertaken, people just got together and did it. It was that voluntary association that he said separated America from the old world. And I think, and this is not a disparagement of government or law. I'm a lawyer. I serve as a judge. I've chosen that life, hardly. It's just a question about, is there a golden mean in most things in life? Is there maybe in law as well? You don't wanna have too much. You don't wanna have too little. Just right? Okay. And those are the sorts of things that we wanted to look at in the book. Go ahead, Janie.

**[00:13:32.6] Jeffrey Rosen:** I wanna hear your thoughts, Janie, but that's a powerful thesis. Tocqueville predicts in the 19th century that overregulation might in the future come to infiltrate America because of a decline in civic virtue.

**[00:13:46.8] Honorable Neil M. Gorsuch:** Yeah.

**[00:13:47.2] Jeffrey Rosen:** Did it happen in the '70s and '80s because of a decline of trust?

**[00:13:51.4] Janie Nitze:** Again, I think there's sort of probably many factors at stake, but we did find when we were looking at sort of certain surveys had been taken over the years, sometimes by the same organization, and you can sort of track a lack of trust in one another that seems to coincide with the rise of law. And as we say in the books, if you can't trust your neighbor, if you can't trust yourself, if you can't trust your local officials, your local school to make these decisions, so where is there to turn to but law? And I think we saw some of this in COVID, which we talk about in the book, where there are certain inclinations for less to trust our neighbors and communities and schools and more of an inclination to turn to law to answer sort of some fairly profound questions for us.

**[00:14:35.2] Honorable Neil M. Gorsuch:** Well, you look at some statistics. Increasingly, polls show that we think of the people who are of the other political persuasion, not just as wrong, fair

enough. That's why we have elections, but as evil, as evil. And those numbers have gone like this. You ask young people today, the polls increasingly show that they think it's acceptable to silence people with whom they disagree on college campuses. And of course, that's not limited to college campuses. I don't mean to pick on the college students here. Young people also increasingly say, like a third of them will say, that it's not very important to live in a democracy. And so I do think, and Tocqueville did talk about this. He says, well, what happens when we lose these intermediate associations, these connections that bind us? Whether it's our bowling league, our church, the Kiwanis club, whatever. And he said that if we become so self-absorbed and less connected with one another, we might become like a flock of timid sheep looking for a shepherd to lead us wherever we go. And he said that's the end of America. That was in his mind, the end of American exceptionalism. And I'm an encourageable optimist. I don't think we're there yet. But I do think it's worth asking, did Tocqueville have a finger on something?

**[00:16:06.8] Jeffrey Rosen:** Well, just one more beat on this 'cause it's so important. Tocqueville says that when we lose intermediate associations, we risk losing the republic. And the solution is two things, self-interest properly understood, which is self-mastery and civic virtue, and then the spirit of religion. Thoughts?

**[00:16:25.6] Janie Nitze:** We'll let you take this one, Justice.

**[00:16:29.3] Honorable Neil M. Gorsuch:** Yeah. I do think when we isolate ourselves, we are less apt to see those with whom we disagree as equal and as intelligent and as thoughtful. And the whole point of democracy is to get us all in a room and have us debate rather than fight, and trust that the best solution will emerge. The wisdom of the masses was kind of the idea. Francis Galton in England went to a county fair. And he noticed there was a guess about the weight of the ox contest. And he noted down all of the guesses by the experts. And then he averaged up all the guesses by the ordinary people. And guess which was closest? The average of ordinary people. And I do think that's how Madison tried to set up our legislative process, to bring to bear the wisdom of the masses, to get us all in a room. We have to debate. We have to disagree in order to get the best ideas and distill them down and make law. And when we can't do that anymore, we look for somebody to answer those questions for us.

**[00:17:43.6] Jeffrey Rosen:** The great power of the book is the stories. And you illustrate these ideas by telling them. And let's begin with Sally and John Yates.

**[00:17:53.8] Honorable Neil M. Gorsuch:** You wanna tell this one?

**[00:17:54.3] Janie Nitze:** No, you tell this one.

**[00:17:56.3] Honorable Neil M. Gorsuch:** Okay. So John and Sandra were high school sweethearts. And John loved fishing. And he wanted to make a life as a commercial fisherman. So they moved down to Florida, also to be near family. And John works his way up from just deckhand to the captain of his own small crew. He's out one day for red grouper. And he's actually been out for a while. How long, Janie?

**[00:18:25.4] Janie Nitze:** Oh, a good two weeks I think.

**[00:18:26.5] Honorable Neil M. Gorsuch:** Two weeks, maybe. Okay, he's got a lot of fish. And a young man comes up, and he's a state official, but he's cross-deputized with NOAA, a federal agency. And he says, I'd like to measure your fish to make sure they're the right size. And regulations at that time, federal regulations, said they have to be 20 inches. And John says, I got an awful lot of fish in the hold. And he says, I've got all day. So he brings out a stick to measure the red grouper. And there's immediately a little disagreement because red grouper apparently have a lower jaw that sticks out.

**[00:19:02.6] Honorable Neil M. Gorsuch:** And this fellow, according to John, was measuring from the nose to the tail, not from the lower jaw. And so his measurements were a little short, John thought. The agent disagreed. Oh, okay. He finds, by way of his measurements, 72 red grouper that are under 20 inches. All of them are over 18 and 3 quarters inches. That's important for him. You'll see in a minute. Well, he says, segregate those fish and I'll deal with you when you get back to the dock. John says, okay. I'm gonna get a citation, whatever. I'll deal with it. Gets back to dock a couple of days later. The fellow says, I'd like to measure those fish in the crate again. He measures them, but this time he only finds 69 that are under 20 inches. And he's very suspicious. Strangely, though, he does nothing. John hears nothing about this incident for three years.

**[00:19:55.6] Honorable Neil M. Gorsuch:** Three years later, agents surround his house, armed. The whole thing. His wife's doing laundry. They say, where's John? She has no idea what this is about. And John's out crabbing, it turns out. But he comes straight in. They arrest him. Don't tell him what's going on. They take him two hours to Fort Myers and book him, and there, charge him with violating the Sarbanes-Oxley Act. Now, the lawyers in the room are laughing 'cause the Sarbanes-Oxley Act, folks, was adopted after the Enron accounting scandal. And it was dealt to address accountants who destroyed documents when a federal investigation was impending. And the law reads something like this. Thou shalt not intentionally destroy, mangle, blah, blah, blah, records, financial documents, accounting spreadsheets, yada, yada, and other tangible objects when a federal investigation is impending. You guessed it. Red Grouper are the other tangible objects. Okay. Sarbanes-Oxley charge carries up to 20 years in federal prison.

**[00:21:09.4] Honorable Neil M. Gorsuch:** It's a federal felony. And John says, this is crazy. I'm not guilty of the Sarbanes-Oxley Act. I'm happy to pay a citation, maybe not. And maybe he wants to talk about the jaws, whatever. And so he proceeds to trial. Most people today can't afford to proceed to trial for a variety of reasons I'm sure we'll get into. Over 97% of federal criminal cases plead out. He takes it to trial. Very brave, courageous move. By the time he goes to trial, guess what the size limit for Red Grouper is? 18 inches. 18 inches. And the federal government still spends money to pursue John. He loses. He says, can I spend my prison term? Can I start it after Christmas? The judge happily only sentences him to 30 days. But he's got to wear the bracelet for a while, the DNA, the registration, all that stuff for years. And of course, no. So he spends Christmas in jail. He wanted to spend Christmas at home 'cause he was raising two of their grandchildren. He appeals. He loses again. He takes it all the way to the Supreme Court of the United States. The case is taken by the Supreme Court of the United States, and he wins by one vote, five to four. Justice Ginsburg, including Justice Alito, say other tangible objects have to be sort of like the ones that are listed.

**[00:22:44.6] Honorable Neil M. Gorsuch:** You can't just say everything. What isn't a tangible object? Pluto's a tangible object. Four dissenters, including Justice Kagan and Justice Scalia, disagree. They have a very good argument. Both sides have a good legal argument. The divide isn't along ideological lines. He wins all the vindication a man can win in our legal system today. But what's happened to him? He's lost his fishing boat. He's lost his ability to support his family. They're now dependent on his wife's job, and they live in a trailer having lost their home.

**[00:23:23.8] Honorable Neil M. Gorsuch:** That's what I wanted to talk about in this book. One can make a very good legal argument either way. But what are we doing with laws that capture somebody like John and make him a federal felon? There's a little footnote to the end of the story. Afterwards, after Justice Ginsburg wrote the majority opinion, the Department of Commerce, which oversees NOAA, decided to do an internal investigation. An inspector general did a report, wanting to see if they're being maybe too tough on commercial fishermen, throwing Sarbanes-Oxley at 'em. Found, yeah, maybe they are. But he also told Congress that he had difficulty conducting his investigation because one of the agents involved destroyed all of his documents. And to the best of our knowledge, no Sarbanes-Oxley charges were brought against him.

**[00:24:16.4] Jeffrey Rosen:** Janie, that story appears in the first chapter, An Introduction to Law's Empire. And you talk about how difficult it is to hold federal officials accountable. Many of these regulations are passed through executive order, and some can't be challenged at all. What are the broader points you're trying to bring out in the introduction?

**[00:24:38.6] Janie Nitze:** I think our introduction was really trying to briefly summarize some of the issues that we're facing today in the country. And one of the things that struck me was just in part through this story that it used to take our federal criminal laws. It used to be that without reading anything, you would sort of just know what was prohibited criminally 'cause it was like do not kill, do not steal, things of that sort. Do not kidnap, and things that you were sort of taught or should have been taught from a young age. And our laws, take just our criminal laws, have exploded so much that no one really knows anymore what is in our criminal laws.

**[00:25:27.3] Janie Nitze:** No one really knows what is in our civil laws. And it's John, Sandra, Sandra was actually a legal assistant at one point, and she had never heard of Sarbanes-Oxley, and were bringing to bear laws against individuals that not only did they not know about, but no reasonable person could have expected them to know about. And I think it's sort of that disconnect of what we think of nowadays as fair notice or just flat sort of fairness that has been lost. But one follow-up to the Yates story, I think it's in many ways a very depressing and sad story, but there's a little bit of optimism in it in the sense that Sandra Yates, who really in a way is the heroine of the book, she was the one who at each step said we're not gonna give up. At one point after John had served his time in prison, this was before they had filed a cert petition before the Supreme Court, he wanted to end it. He'd already served time in prison. There was nothing more that he could personally gain from continuing on. And she said, no, we have to sort of continue on for all the other fishermen. And so what I do like is that even in these sad stories, we did find a lot of optimism and sort of lights of hope.

**[00:26:46.3] Honorable Neil M. Gorsuch:** And the courage.

**[00:26:47.1] Janie Nitze:** And courage, and courage.

**[00:26:48.5] Honorable Neil M. Gorsuch:** Incredible courage of somebody like Sandra Yates who says, no. No, we're gonna stand up to this and we're gonna pursue it all the way. And I gotta tell you, she's still a little bit angry she didn't get more than five votes.

**[00:27:01.4] Jeffrey Rosen:** Well, that's the power of following up on the court record with the interviews. And it really helps bring the stories to life. The second chapter is Far From Home. And you also tell a really important historical story about Connie Buck and eugenics. Why'd you choose to tell that story?

**[00:27:21.4] Honorable Neil M. Gorsuch:** Well, everybody knows the story of Buck versus Bell, or if you don't, you'll read it in the book. But if you care to. The point of that chapter though is, we start looking at, okay, how has this happened? What exactly has happened? And there are two moves that I think in general the book describes. The first is the movement of a lot of our legislative authority, our lawmaking, from the local level. Where you can participate, there are thousands upon thousands, I can't remember how many, tens of thousands of elected jobs in this country.

**[00:28:02.8] Janie Nitze:** Yeah, Over 50,000.

**[00:28:04.1] Honorable Neil M. Gorsuch:** Over 50,000. And you can volunteer and you can participate. Our lawmaking used to be primarily at the state level, and it has really moved up to the federal level. And then the other piece we document is how it's changed within the federal level, and I'm sure we'll get to that. Now, the move from the states to the federal government in our lawmaking has certain virtues. Uniformity, good. Good. Everybody knows what the rule is and they can cross states. And that actually facilitates commerce too. Race to the bottom, you prevent races to the bottom by states. You get rid of discriminatory and inappropriate laws that are popular maybe in one section of the country or another. So there's a lot of good things about nationalization, but is there a cost when you take things away from people? Possibly. Possibly. And the story of Carrie Buck, just in brief, is that story. There was in the early part of the last century, a move toward eugenics and a belief that it was okay to sterilize people who were considered in that time as feeble-minded. And Carrie Buck was one such person.

**[00:29:19.4] Honorable Neil M. Gorsuch:** That never really took off in America the way it did later in Nazi Germany. It happened in some states, but not in others. Others recognized this is not a place we should be. And even in the states where it took off, it often got rejected by governors who vetoed the legislation or by judges in state courts who stopped it under state constitutional law and said no. Okay. Then Carrie Buck was a test case, as it turns out, out of Virginia by those who promoted sterilization. They thought they were losing badly in the states and they had to fight 50 battles. So maybe they could win one that would rule them all. And they took that to the Supreme Court of the United States where Oliver Wendell Holmes, one of our most famous jurists, wrote an opinion saying, among other things, that three generations of imbeciles is enough. And that reignited the move toward sterilization and eugenics in this country. And many



more people died and were sterilized as a result. Okay? So it's a story about being careful what you move to the federal level. Maybe there's some virtue in our laboratories of experiment, as Justice Brandeis called our states.

**[00:30:39.8] Honorable Neil M. Gorsuch:** Maybe you can stop things or start good ideas. We talk about good ideas, too, that come out of the state level and percolate up. And you don't wanna destroy federalism. You just wanna make sure, again, you have the right balance between the two. You don't wanna destroy the federal government, you need both. Madison knew this. It's that tension that improves our thinking. It's ambition against ambition. But when there's one person or one group that answers for everybody, you sometimes get good answers and you sometimes get very bad answers, like you did in *Buck versus Bell*. The good news is because it was never purely a federal issue, we never did what Nazi Germany did. There is a single powerful state and one decider. And of course, their record on eugenics was far, far worse than ours. So if there's a silver lining in *Carrie Buck's* story, it's that. Not much of one, but there it is.

**[00:31:41.2] Jeffrey Rosen:** It was so striking that you told that story. You quoted Justice Brandeis on *Laboratories of Democracy*, and you also used Justice Brandeis as your epigraph. Those who won our independence by revolution were not cowards. They did not exalt order at the cost of liberty. A quotation from his famous *Whitney* case, which you also quote. I'm a huge fan of Justice Brandeis. Do you admire him as well?

**[00:32:08.2] Honorable Neil M. Gorsuch:** What do you think?

**[00:32:09.1] Jeffrey Rosen:** Great, excellent. It's wonderful. Janie, the chapter on federalism is so powerful. During our student town hall, the students were great in defining separation of powers, but it was a little tougher to sum up federalism. Why is federalism important, and what are you trying to tell about it in this chapter?

**[00:32:28.6] Janie Nitze:** I sympathize with where they're coming from because they say so much in the last 30, 40 years in the span of their lifetime, my lifetime. So much has moved to the national level that I think for folks who are younger, certainly my kids, they were asking me today, well, what's state versus federal government? They see everything being pushed nationally. And in the Department of Education in the early 1970s, there was not a cabinet level Department of Education. Today it has 4000 employees, a budget of I think \$70 billion, and a lot of that money is being given to states with certain conditions attached to it. And Justice tells a funny story about a governor of Nebraska, Ben Nelson, I think was his name.

**[00:33:21.3] Honorable Neil M. Gorsuch:** Ben Nelson. Yeah.

**[00:33:22.9] Janie Nitze:** Who said, I took this job and I sometimes didn't realize I would just be sort of a federal branch manager of the federal government. And I think we've moved so far in recent decades, again, seemingly since the '70s in really shifting power up to the federal government. And so in the chapter, we want to remind readers of some of the reasons why our founders thought federalism was a good thing. Some of it was if *Buck v. Bell*, if you answer things at a federal level, once and for all, you sort of lose the laboratories of democracies, the ability to have good ideas sort of percolate up and sort of potentially stop bad ideas from

percolating up. Some of it is really just going back to Tocqueville and the idea of community association. Like there's only so many people who can be a federal congressman or president. But there's lots of people who can sit on a board of education or their local school board, sorry, their local school board or town council. And it really gets back to I think the gift our founders gave us of self-rule. And it's just so much more possible at a local level.

**[00:34:37.1] Jeffrey Rosen:** Well, you really make that case and show that this is a non-partisan issue. Recently Dean Heather Gerken of Yale Law School came to defend federalism and state constitutions as being able to help liberals as well as conservatives. Judge Jeff Sutton has made the same case and you make it very powerfully in this book. The next chapter is *Bureaucracy Unbound*, and you tell the great story of Marty the Magician. So tell that story.

**[00:35:05.8] Honorable Neil M. Gorsuch:** So if we're losing something by losing our opportunity to connect with one another at the local level by elevating everything up to the federal government, and again, it's not that we shouldn't do some of that, it's a matter of balance. What's happened at the federal level? That's what this chapter is about. And it's about how so much of our lawmaking authority, which was vested in Article I in the Congress composed of two houses of elected representatives, we the people acting through our representatives bring to bear the collective wisdom of the masses. And in a way, that bicameralism and presentment, which we all know is difficult, is designed to ensure that minority voices can be heard in particular because they often are at the fulcrum of decision-making. You need to get to 50 plus one. You gotta make compromises to get that 50 plus one in two houses. What happens when you move that lawmaking power to the executive branch? To a president who's accountable directly to the people to be sure, but he only cares about his electoral responsibility.

**[00:36:15.8] Honorable Neil M. Gorsuch:** He cares about 50 plus one of the nation as a whole. Do you have that same deliberative care and process that you might have in the legislative branch? Is there a loss there? And we tell the story of Marty the Magician. Marty does children's shows. He loves magic. The guy loves magic. Janie can tell you just how much he loves to read a book about Harry Houdini as a kid. That was it. And he's doing a show one day and somebody comes up to him at the show and flashes a badge and says, I'm here from the US Department of Agriculture. Do you have a license for your rabbit? Right out of the hat. And he says, why, no. I do not have a license for my rabbit. Do I need one? Why, yes, you do. There was a law that Congress passed, no doubt a good law, well, certainly well intended, that says circuses and zoos with certain animals need to have a license and other animal exhibitors. There's that phrase. And they wrote a regulation saying basically not just zoos and carnivals and obvious things where you might care about the elephants, but Marty the Magician with his rabbit needs a federal license. We the people didn't vote on that. Our elected representatives, well, they did write and other animal exhibitors, but one has to wonder what they had in mind at any rate. Marty's a law-abiding citizen.

**[00:37:55.3] Honorable Neil M. Gorsuch:** He got his license. Though, something happened after that. Hurricane Katrina happened shortly after that. And they rewrote their regulations and said, well, now you have to have an emergency preparedness plan as well. He had to hire an expert in emergency preparedness plan writing, and he wrote a 28-page document. Now, the emergency preparedness plan expert thought that was rather short and he wasn't sure it was

gonna fly. And you had to detail everything you do from chemical spills to hurricanes. And Marty's like, as he told one agent, I live in Missouri. We have tornadoes, and I do worry about tornadoes and I have a plan. I'm gonna get the family in the basement and the dog and the cat. And then if there's time, I'll get the rabbit. The agent said, no. I don't care about any of that. It's the rabbit that has to go first. They didn't see the humor in it. Marty also then started asking other questions like, well, okay, rabbits are covered, but what about like other things? What if I had an iguana I pulled out of the hat? That's not covered, by the way. You can have an iguana without a federal license, but a rabbit, don't ask me why. Don't ask. And it's only if you're exhibiting the rabbit.

**[00:39:21.3] Honorable Neil M. Gorsuch:** So Marty said, that means if I wanted to have the rabbit for stew tonight, I wouldn't need a license? You wouldn't need a license, though. Okay, all right. Now, there are home inspections, too, that come with federal licensing. And during one home inspection, the inspector comes in and wants to see the cage where he carries the rabbit to the shows. And Marty shows him the cage. It's a cage. And the inspector says, but it doesn't have any this way up stickers. So how do you know how to carry the rabbit? And Marty said, why, there's a handle on it. So not good enough. You have to have the stickers. He says, where do I get the stickers? I'll send you some. Two weeks later, he got 200 stickers in the mail from the federal government.

**[00:40:11.2] Honorable Neil M. Gorsuch:** Your tax dollars at work. That's what's going on. That's a humorous story. And it has a happy ending. Ultimately, administrations change and the regulation gets dropped that covers people like Marty. But isn't there something in that, too, that rather than we the people deciding how far this good idea should go. Whoever's president can flip flop the requirements every four years based on what they think. And it only requires them to think so. Now, I don't doubt the value that there are great experts at the US Department of Agriculture and in all of our agencies, and they have much to add in advising us, we the people, and how to rule ourselves. But what happens when we give up the responsibility and the opportunity to rule ourselves and hand it to one unelected group of people to change their minds every four years? That's a question we pose in the book through Marty.

**[00:41:13.2] Jeffrey Rosen:** And Janie, what struck you in that Bureaucracy Unbound chapter about the costs of federalizing everything?

**[00:41:20.8] Janie Nitze:** Well, certainly one of the costs, and we talk about this in a later chapter, and I'm reminded every time we talk about Marty, is really the cost and equality. And so when there are so many rules being churned out, sort of who wins and who loses, who can keep up with it, who can't keep up with it. When decisions are made behind closed doors, who has more access to those decision makers, who doesn't? And I'm reminded of one of the stories we tell in the equality chapter of a family farm, an apple farm, apple orchard farm. And actually, the New York Times did a profile on them a number of years ago and discovered, according to the New York Times estimate, there are 5000 rules that apply to this orchard at the federal level alone. And the orchard owner said, the number of rules on ladders alone, and there were rules, regulations on sort of the tilt that the ladder had to have against the tree. And there were rules on every morning, someone had to sort of scour the orchard to look for mice droppings in the event that someone stepped on the mouse dropping, stepped on the ladder, put their hand on the ladder

that they stepped on then touched an apple, someone will eat the apple without washing it. So if we live in that world, then who's going to best be able to understand the 5000 rules and abide by it?

**[00:42:40.8] Janie Nitze:** The small orchard owner or a larger organization? And so certainly that's one of the things that struck me in the bureaucracy chapter. Other things that I had not fully appreciated before, we quote a professor, Jonathan Turley, who said, you are 10 times more likely to end up in a case before an agency than federal court. And I think that seeing my kids now and what they're learning or not learning, you learn so much about federal courts, but really so much of the action is happening in agencies now. And it's sort of happening in a way that I think is not necessarily so visible to us, unless you are actually the one before the agency. So some of those few things that struck me.

**[00:43:23.0] Honorable Neil M. Gorsuch:** Can I follow up on that? So, yeah, what does it mean? What are these agency adjudications? So if Marty violates a rule or the apple orchard or whatever, the agency that brings the charges against, who writes the rule, kind of an act of legislation, if you will, also decides if you violated the rule and prosecutes you for it, kind of the executive branch traditionally understood. And then they have employees who judge you. They used to be called hearing officers, but now they like to call themselves administrative law judges. And that's fine by me. That's okay. They're good people and they're trying hard. But they're usually employed by either the agency or by another federal agency with some protections. They vary. In some agencies, they have very few protections, others more. But it's all just the law that can change that. The rules can change on that, too. Some agencies, if the boss doesn't like your decisions, he can fire you. He can move you around. He can rehear the case. In any event, you're being tried not by somebody who has life tenure and doesn't care whether he's popular or not, he's gonna give you your rights, period, full stop, tried to at his best.

**[00:44:41.8] Honorable Neil M. Gorsuch:** I don't answer to the prosecutor. I don't answer to the legislator. This person does. This person does. And no surprise that the win rate that agencies have before their own employees is a lot higher than it is in federal court. Beyond that, you lose some things along the way. You lose the right to confront your accuser often. Instead of cross-examination, you're given a report. How do you cross-examine a report? You can't talk to the person who wrote it. No, sometimes you can, sometimes you can't. It's up to the agency. You don't get a jury. No jury of your peers. And yeah, you can eventually get to federal court, but you have to appeal from that administrative judge up to the agency. The commissioners of the agency, those are the ones who voted to bring the charges against you, by the way. You can imagine how that usually goes. Then if you're lucky and you have enough time and money 'cause this takes years and fortunes, you can go to federal court. However, there, you're greeted with two things.

**[00:45:52.3] Honorable Neil M. Gorsuch:** One, on the facts, we have a rule. It's an interesting rule. I'm not gonna talk a lot about it. That says if there's substantial evidence in the record, we're not gonna review the facts ourselves. Now, that standard sounds pretty good, substantial evidence. But it's been interpreted by courts to mean more than a mere scintilla. Now, I don't know what that means. I'm still not sure. Let's say we know what a mere scintilla is. If it's more than a mere scintilla, we won't look at the facts. And then on the law, let's say you have a good

argument about the law, like Marty did about whether that should cover magicians. Up until recently, you guys may have heard of Chevron. Courts would defer to the agency's interpretation of ambiguous statutes as well. So your opportunities for getting judicial review are virtually non-existent in a world like that. That's what's happened.

**[00:46:58.9] Jeffrey Rosen:** And is that why it was important to overturn Chevron so that people could get judicial review?

**[00:47:04.8] Honorable Neil M. Gorsuch:** Well, I think it was important to overturn Chevron because Chevron was a mistaken decision and a gravely mistaken decision. And I've been writing about this for a long time. And I just came to see how it impacted individual after individual. I'll tell the story of Mr. Denise Robles real quick. I alluded to it earlier. Here's a guy who's in this country. He's married to an American. He has four American children. And there are two statutes about him becoming a citizen. One says, you can apply for admission immediately and seek relief from the attorney general. The other says, no, you gotta wait outside the country for 10 years. And they seem to conflict with these two statutes. And in fact, they do. That's another problem. Two conflicting statutes. And the Tenth Circuit, my old court, had to look and decide which one controlled. And it said, well, the first one does. So people in his shoes can go ahead and apply. They don't have to leave the country for 10 years to apply. And he relied on that judicial precedent. He relied on that and he made his application. The agency sits on it for six years?

**[00:48:12.0] Janie Nitze:** Six years.

**[00:48:12.8] Honorable Neil M. Gorsuch:** Six years. Application sits for six years. And then they come back to the man and say, the Tenth Circuit is incorrect. These are ambiguous statutes. We believe the second one trumps the first. So now he has to spend 10 years outside of the country and start all over again. That's what Chevron did to ordinary Americans in cases I saw day in and day out. And listen, again, who's gonna win in a situation where agencies can shift the meaning of laws like that? Who's best able to deal with it? I'm not worried about the big companies. When they're perfumed lawyers and they're legions of lobbyists, okay? They can figure it out and they can, in fact, influence the agency and maybe capture the agency. But what about Mr. Denise Robles, who can do none of those things, and who's relying on the law as written and as interpreted by the courts of this country? What about him?

**[00:49:16.7] Jeffrey Rosen:** The next chapter is The Sword of Damocles. This is about over-criminalization. And you tell this sad story of Aaron Swartz.

**[00:49:27.3] Honorable Neil M. Gorsuch:** I'd like Janie to tell this one.

**[00:49:30.3] Janie Nitze:** So Aaron Swartz was a child prodigy, really. He taught himself to read at age three. He built his first computer by age six, something like that. Homeschooled for a good portion of his life. Went to Stanford, dropped out of Stanford. Was a co-founder of Reddit, sold it for millions of dollars, but didn't care very much about money and believed very much in the freedom of information. And so early on, he thought that documents on PACER, so court documents, should be free and should not be charged for 10 cents a page or something like that.

And so he sort of did some movements to try to free some documents from PACER. And the FBI followed him for a time being, surveilled his parents, but then ultimately decided no laws had been broken, so he sort of moved on.

**[00:50:23.7] Janie Nitze:** He becomes a fellow, maybe in his early 20s, becomes a fellow at Harvard. Becomes close from back in his Stanford days, actually with Lawrence Lessig, who's now a professor at Harvard Law School. Again, they have sort of this common movement of really sort of freeing the internet. And one day, he decides to connect his computer to the MIT network where his father for a time worked and had gone to school there, connect to the MIT network. MIT has a long history of hacking, and he starts downloading millions and millions of articles from JSTOR, which is a collection of academic articles. And for a time, there was like a sort of cat and mouse game where JSTOR notices these millions of articles being downloaded, contacts MIT, there's some technical things happening, basically a cat and mouse game.

**[00:51:20.0] Janie Nitze:** And he's eventually caught. JSTOR says that he returns the articles. Didn't have any copies, returns the only copies he had, then JSTOR says, listen, we prefer no charges be brought. This matter is settled. State brings some trespass charges against him, and also drops them. Federal prosecutors have other ideas, I can't remember the exact, maybe six or seven felony charges against him, carrying a prison term of about 30 years in prison. And they say, no problem, though, you can plead guilty to sort of four or six months or so in prison, but you'd still plead guilty to being a felon. And in interviews with his girlfriend at the time, he just really believes that he didn't really do anything wrong, or at least not wrong by law and certainly not wrong enough to sit in jail.

**[00:52:22.4] Janie Nitze:** So he says no, I'm not gonna take that plea bargain. Federal government says fine and adds five more felony charges. Ups the potential prison time to 50 years in jail. His mom becomes sick, his money's dwindling, and he eventually commits suicide a few weeks before going to trial. And, again, interviews from his family at the time and girlfriend at the time, they all say that he just couldn't stomach the idea of being called a felon and going to jail. And the prior year of interacting with the federal prosecutors just essentially broke him. And Lawrence Lessig wrote a very moving piece that essentially said, listen, his methods are not my methods and I get wrong, but I also get proportionality.

**[00:53:19.4] Janie Nitze:** And if you don't get both, you don't deserve to have the power of the federal government behind you. And so right here was a kid, and did he deserve this for 50 years in prison? That's what the federal government brought against him. So it was a piece that we included in the book, in particular in the plea bargaining chapter, the chapter on plea bargaining showing just sort of the immense rise in plea bargaining, again, just in the last few decades. To the point where now the statistic is 97% of felony cases at the federal level and something like 94% at the state level end in a plea bargain. And Aaron Swartz's story is really demonstrative of sort of what happens often in these plea bargaining cases, which is that there's immense pressure to bear to plea bargain. And if you don't accept the plea bargain, there's often more pressure to bear on you.

**[00:54:15.7] Jeffrey Rosen:** And the substitution of plea bargaining for jury trial means you lose all of your constitutional rights at trial. And Justice, was the Aaron Swartz case a result of an

overbroad law or of lack of prosecutorial discretion? And how did we get to the point where plea bargains replaced jury trials?

**[00:54:35.4] Honorable Neil M. Gorsuch:** Yes and yes. It's hard to ignore the fact that when you have 6000 federal statutes, criminal statutes on the books, how many do we have for fraud? We gave up counting.

**[00:54:52.2] Janie Nitze:** Oh gosh, I can't remember. A lot.

**[00:54:53.3] Honorable Neil M. Gorsuch:** A lot.

**[00:54:54.3] Janie Nitze:** And every year they propose new ones.

**[00:54:56.4] Honorable Neil M. Gorsuch:** Yeah. We got wire fraud. We got mail fraud. I get that. But now we have something called honest services fraud. And nobody, this has been on the books for 20, 30 years, nobody knows what it means. We've got another one on identity theft. Nobody wants identity theft. But it's written so broadly that if you round up your hours as a lawyer, you might be guilty of it. If you charge somebody for tuna but you serve them trout, a little upcharge there, you're a federal identity thief. Okay? Yeah, I'm not kidding. It's real. It's real. Go read the US reports. I know he doesn't believe me. It's true. We have so many laws that cover so much terrain and that carries incredibly and ever harsher penalties. What are you going to do? You're going to plead. You're going to plead like Aaron Swartz. You can see the pressure. We incarcerate today in this country more than almost anybody else on the planet. We incarcerate people for longer than almost anywhere else on the planet. There are more people today serving life sentences in prison than there were serving for any duration in 1970.

**[00:56:33.3] Honorable Neil M. Gorsuch:** Think about that. That's happened in my lifetime. And it's just part of the explosion of laws. And does it lead to questions about prosecutorial discretion? Or do you say that's a vigorous prosecutor enforcing the laws? I don't know. That's all in the eye of the beholder. But does it lead to a world in which we come close or should we worry about someday coming close to what Stalin's police chief said? Show me the man, I'll show you the crime.

**[00:57:10.8] Jeffrey Rosen:** There's another powerful story about overcriminalization in the Three Freedoms chapter, and that's the story of the criminal hairdresser Isis Brantley. Who wants to tell that one?

**[00:57:22.3] Honorable Neil M. Gorsuch:** You wanna do Isis?

**[00:57:23.4] Janie Nitze:** Go for it.

**[00:57:24.6] Honorable Neil M. Gorsuch:** Go for it.

**[00:57:25.5] Janie Nitze:** Okay. So Isis Brantley is a hair braider. She learned braiding from her mom, I think at the age of six. She grew up poor and it was a way to make money, really. And her daughter worked her way out through college hair braiding. And she really built a following.

She believed not only in braiding hair, but in teaching hair braiding. She viewed it as her real ancestral art form. And she's in her salon one day, salon does only hair braiding. And as she describes it, seven police officers, five wearing uniforms and two undercover, raid her salon, like a strong force, she described, and handcuff her. And she has no idea what's going on. And they say, we're taking her to jail. And they do in fact take her to jail. And there she learns that she's in jail because she is hair braiding without a license. This is in Texas.

**[00:58:29.4] Janie Nitze:** And she says, license? Why do I need a license? And they said, well, you need a barber license. She says, barber? I'm not a barber. I braid with my hands. I don't cut it. I don't use chemicals. And on top of it, your barber schools don't teach hair braiding. So what would I be doing in a barber school? And the barber school costs thousands of dollars and hundreds of hours of time, time that she does not have. She decides to fight this, much like Sandra Yates. She ends up homeless, five kids in tow, as she fights 'because she loses her job. And eventually, she wins. And the state legislature says, okay, fine. There's an exception for hair braiders. And she says, wonderful. But the story's not quite done. And that took her maybe 10, 15 years. Super long, long time. They said, but you can't teach because you need to have another license to teach. You need to be a barber with a barber shop license. And she said, but I'm not a barber. So a barber shop requires something like chairs with sinks and certain spacing. And then she said, 'I just need a chair 'cause all I do is braid hair.

**[00:59:43.0] Janie Nitze:** And so she enters another battle of another several years until she also wins that too. She's another sort of heroine of that chapter. I think it took her in all 20 years until finally she persuaded the state to remove license requirements for hair braiders. But again, what did it cost her? She was homeless. She lost her business. And it took her sort of many, many, many years to sort of build it all back up again. She's an inspiring story. And we talk about in that section of the chapter just how much the need for licenses in states has just really exploded again since the '70s. And there's pushback on it now. We talk a little bit about that in chapter seven, where some optimism and green shoots in the States. But now you need a variety of licenses for all manner of work. And we tell another story of eyebrow threaders also in the state of Texas, also who had a multi-year fight in order to not require, again, a cosmetology license in that space.

**[01:00:53.5] Jeffrey Rosen:** Wonderful. Well, our time is up. And like the Supreme Court, we end our NCC programs on time, but Justice, your last chapter is-

**[01:01:01.3] Honorable Neil M. Gorsuch:** That's a pretty depressing note to end on.

**[01:01:03.7] Jeffrey Rosen:** No, no, no. We're gonna make a little exception. You're gonna bring it home.

**[01:01:07.8] Honorable Neil M. Gorsuch:** Okay.

**[01:01:08.4] Jeffrey Rosen:** And I want you to really, really bring it home.

**[01:01:11.3] Honorable Neil M. Gorsuch:** Well, I've got a lot of work to do.



**[01:01:13.5] Jeffrey Rosen:** You can do it.

**[01:01:13.8] Honorable Neil M. Gorsuch:** Digging a deep hole here, Jeffrey.

**[01:01:15.2] Jeffrey Rosen:** The amazing last chapter, The Spirit of Liberty, quotes the great Judge Learned Hand about how the spirit of liberty has to live in the hearts and minds of the people.

**[01:01:23.8] Honorable Neil M. Gorsuch:** Yeah.

**[01:01:24.0] Jeffrey Rosen:** You say some really nice things about the NCC and the importance of civic education. And we're so honored to have you as our honorary co-chair. And please take as much time as you want. Please tell our audience on Constitution Day.

**[01:01:38.4] Honorable Neil M. Gorsuch:** There are some people who have got reservations for dinner.

**[01:01:41.0] Jeffrey Rosen:** No, no, no. This is very important. Why is civic education so urgently important and what can citizens do to resurrect the spirit of liberty?

**[01:01:50.3] Honorable Neil M. Gorsuch:** So Learned Hand gave the speech and said basically what I believe to be true, that no judge, certainly no judge, no law, no elected representative can preserve the spirit of liberty in this country. It requires it to live in your hearts. So what do we do about this? If you're as thoroughly depressed as I am at the end of this hour, what do we do about it? And I think the answer is, first of all, there's a lot you can do at the state level to deal with this. Look at what Isis did in her world on hair braiding. She got rid of those licensing requirements. And now, in fact, there's a movement in part inspired by stories like her to say, if you have a license for something in one state, shouldn't it transfer to another presumptively unless there's a good reason? How about that? How about that?

**[01:02:50.7] Honorable Neil M. Gorsuch:** Okay? And who's doing the licensing requirements? Should we revisit those 'cause is it sometimes maybe the barbers who are writing the barber school licenses to protect barbers, regulatory capture? I got a story about monks and caskets in the book about that. Maybe we should revisit who's doing the licensing rules. Okay? And there's a lot going on at the state levels where this is happening. Idaho, for example, said, the legislature said, we hereby abolish the entire administrative code of the state except for those sections that the governor in a due amount of time says are necessary.

**[01:03:29.8] Honorable Neil M. Gorsuch:** Wow. Now, I'm not saying you have to go that far, but it's interesting, isn't it? Texas has a sunset law provision that says agencies end unless they are affirmatively renewed within a period of years. New York, New Jersey have commissions now on studying old laws and whether some of them can be taken off the books. How about that? Sensible? Can we all agree on that? Can those things be bipartisan? They are. And at the federal level, in case you think it's hopeless, let me tell this story briefly about my colleague, my former colleague, Steve Breyer, and my current co-chair and a dear friend. Before he came onto the Supreme Court, he was a legislative aide to Senator Kennedy back in the '70s. And there was

an agency called the Civil Aeronautics Board. And the Civil Aeronautics Board was a big deal. You couldn't start a new airline without a license from them. You couldn't change your fares without their approval.

**[01:04:33.6] Honorable Neil M. Gorsuch:** You couldn't offer a new route without approval as well. And Steve Breyer, this started during the Ford administration, it was bipartisan. They looked at this and they said, this is inhibiting competition in a way that is impairing the ability of the American people to fly. It was very expensive. It was nice. If you flew on Pan Am and if you're old enough, it was nice, but it was incredibly expensive. And who wanted this agency? And it turned out there were only two groups who wanted the agency, the agency and the large industries because they knew it created a barrier to entry from anybody else. Okay? And he said, this is nuts. He said, this agency should go. And he went and talked to a very famous economist, George Stiglitz, who said, that's never gonna happen. It's impossible to break the iron triangle of lobbyists, agencies, and industry. When they want it, you can't get rid of it. And you know what? They did it. They abolished an entire federal agency. Ted Kennedy, Steve Breyer, Gerald Ford, Jimmy Carter did it. And if they can do it, we can do it too. All right? And now we all fly. It's incredibly uncomfortable and you have to pay extra for everything. It's people, the number of people flying went like this.

**[01:06:03.3] Honorable Neil M. Gorsuch:** It changed our ability to stay connected with family, to do business. It changed everything in our lives. And it can be done. So ultimately, though, how do you get the spirit of liberty going? And I think it is civic education and what this man is doing. Okay? And it's really important to me that young people learn we have three branches of government, not four, not seven. We've got three. And why do we have three, why do they pick the legislative branch to be the people? An executive in one hand. Judges with life tenure. Now, I'm not saying you have to like them. Just why? Why? And before you start throwing around new ideas, maybe you just understand what we have. And you may wanna change it. That's up to we, the people. Those words are on here somewhere. But to understand what you have, I agree with Daniel Webster that said what happened in that hall was a miracle. It was a miracle. The notion that people can govern themselves while respecting inalienable rights of each person and with the aspiration that we should all be treated equally under law. That happened there.

**[01:07:17.3] Honorable Neil M. Gorsuch:** Those promises were made. That's our national report card. We have some work to do on all those fronts. But that's our hope. And I think it's essential that we all have that in our hearts and turn to one another again and look at those who would disagree. And as Steve loves to say, if you listen to somebody else talk long enough, you're likely to find something you can agree on. And maybe we should start there.

**[01:07:53.5] Jeffery Rosen:** Today's episode was produced by Tanaya Tauber, Lana Ulrich, Samson Mostashari and Bill Pollock. Was engineered by Advanced Staging Productions, David Stotz and Bill Pollock. Research was provided by Samson Mostashari, Cooper Smith, and Yara Daraiseh. Please recommend the show to friends, colleagues, or anyone anywhere who's eager for a weekly dose of constitutional illumination and debate. Sign up for the newsletter at [constitutioncenter.org/connect](http://constitutioncenter.org/connect). Friends, check out the new Constitution 101 class that I mentioned in the show and that the NCC just launched with Khan Academy. You can find it on Khan's website and I can't wait to hear what you think about it. It is so deep and rich and

exciting, and I took the quizzes. They're tough, they're challenging, but totally worth it, and I know you'll ace them as well. And while you're at it, support the mission by becoming a member at [constitutioncenter.org/membership](https://constitutioncenter.org/membership). Or give a donation of any amount in honor of Constitution Day to support our work, including the podcast at [constitutioncenter.org/donate](https://constitutioncenter.org/donate). On behalf of the National Constitution Center, happy Constitution Day. I'm Jeffrey Rosen.