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### Supreme Court Justice Brett Kavanaugh: 2023 Notre Dame Law Review Federal Courts Symposium

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Brett Kavanaugh

*United States Supreme Court*

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# Supreme Court Justice Brett Kavanaugh: 2023 Notre Dame Law Review Federal Courts Symposium

Jan 26, 2023 [NOTRE DAME LAW SCHOOL](#)

**Transcript – English (auto generated)**

*Errors have not been corrected.*

0:00

good afternoon and welcome to the Notre Dame law reviews federal court Symposium keynote address  
I am Nicholas DeAndre

0:08

editor-in-chief of the Notre Dame law review as a reminder please refrain from taking

0:13

photos or videos during this Keynote today's remarks are being recorded and will be available after the  
conclusion

0:20

of the event if you would like to submit a question for our q a portion please do so via the

0:26

QR code QR code that you received on the way in today The larva view has the pleasure of

0:32

welcoming nine esteemed authors to Notre Dame to discuss their scholarship on the history and judicial  
review of the

0:39

administrative procedure act which is forthcoming in the Notre Dame law reviews Annual issue on  
federal courts

0:45

practice and procedure the panels today are featured engaging and academically rigorous discussion  
and

0:51

the law of you and I are grateful to the authors for their time and contributions before setting the stage  
for today's

0:57

keynote address I'd like to welcome Justice and sepsa of the African court on human and people's rights  
who is

1:03

visiting Notre Dame law school is a distinguished Global Juris in Residence Justice and sepsa welcome

1:16

[Applause] our moderate moderator today will be Dean G Marcus Cole dean of the Notre

1:23

Dame law school who'll be fielding questions for our keynote speaker thank you Dean Cole for being here and for

1:29

your support of the law review next I'll introduce today's keynote speaker associate Justice Brett

1:35

Kavanaugh Kavanaugh received his BA from Yale College and JD from Yale law school he

1:40

began his legal career clerking for Judge Stapleton on the Third Circuit Judge Kaczynski on the Ninth Circuit and

1:45

for Justice Kennedy on the Supreme Court after clerking he was an attorney in the office of the solicitor general and the

1:52

office of independent Council then from 2001 to 2003 he was associate associate

1:58

Council and then Senior associate Council to President George W. Bush he was a partner at a Washington DC law

2:04

firm from 97 to 98 and again from 99 to 2001. from 2003 to 2006 he was assistant

2:11

to the president and staff secretary for President Bush he was appointed as a judge to the D.C. circuit in 2006 in 2018

2:19

he was nominated and took his seat on the U.S. Supreme Court he is married to his wife Ashley with whom he has two

2:25

daughters Justice Kavanaugh is new stranger to the Notre Dame law review as he has taken part in Symposium issues for both volume

2:32

89 and volume 92 while he was serving as a judge on the DC circuit today we are

2:37

honored to host him again as an associate Justice for the U.S. Supreme Court please stand and join me in welcoming Justice Brett Kavanaugh

2:44

[Applause]

2:50

[Applause]

2:58

so the Justice cabinet needs to know assistance from me I'll quickly provide

3:03

an overview of our Symposium topic and then hand it over to Dean Cole and Justice Kavanaugh as I mentioned earlier

3:10

the larvuse federal courts issue will include scholarship on the history and judicial view of the administrative procedure act or the APA in the 76 years

3:18

since the passage of the administrative procedure act the American administrative state has grown and

3:23

developed in ways that APA drafters may not have originally foreseen this has contributed to a rising tide in of

3:29

interest in revisiting the foundations of the APA which some have dubbed a quasi-constitution of the administrative

3:35

state recently new research from professors Emily Bremmer and Katie Kovacs has offered the first comprehensive

3:41

collection of the APA's legislative history shedding light on a traditionally opaque record this

3:47

scholarship yields questions that are both novel and persistent in administrative laws such as what methodology should courts employ when

3:53

interpreting the APA does the APA compel or allow some form of APA common law

3:58

what are the implications of This research on judicial review of agency actions and the remedies of federal courts May Grant

4:04

just Kavanaugh of course has published several pieces on administrative law and we are eager to hear his remarks on both

4:10

administrative law and his judicial experience on both the DC circuit and the Supreme Court thank you again

4:16

Justice Kavanaugh and dinkle I will pass it over to you to kick off today's conversation

4:21

well at first I want to welcome Justice Kavanaugh you're always welcome here at Notre Dame and we're always excited to

4:27

have you here so thank you for for coming well thank you Dean Cole for having me and thank you for the

4:32

introduction and uh it's wonderful to be back at Notre Dame this is uh one of the

4:38

finest law schools in America with a spectacular faculty and wonderful

4:43

students uh in this Symposium to be back at this which Professor Barrett then uh

4:49

started I guess student Barrett started it uh when she was on the law review herself uh and um I did it in 2014 and

4:58

2017. I was introduced in 2017 by Professor Barrett I was on the DC

5:05

circuit I'm confident that neither of us had any idea what was to happen to the two of us over the next few years and

5:12

it's wonderful to be her colleague what a great representative of Notre Dame law school and of Notre Dame uh that she is

5:18

and a great friend and a spectacular a judge and colleague being back in

5:25

Notre Dame I've hit it all in the last I've been here 24 hours and I uh came in

5:30

and I think I've hit the the Notre Dame experience I went to the women's basketball game yesterday uh which is a

5:36

great team I went to the 10 p.m mass in in Pangborn Hall last night which is

5:41

part of the experience and then today and it reflects Notre Dame academic Excellence uh the spiritual Foundation

5:48

the Catholic tradition of service to others and the school spirit reflected in the sports program so in 24 hours I

5:55

feel like I'm touching all thank you for having me again Dean call and thank you for everything Dean Cole's doing to lead

6:00

this uh fantastic law school I appreciate all that you've done well thank you thank you for that

6:06

advertisement as well I could go on for an hour I think that might show up on our

6:12

website so um I want to ask you uh the first

6:19

question is that the the the breaking news on CNN this morning was that the

6:25

court was issuing um uh opinions for the first time in three months and uh there was all kinds

6:33

of speculation as to the delay and why it's taken so long uh to issue her

6:38

opinion and I was wondering if you could just comment on the news of the day well we're off and running opinion

6:44

issued by Justice Breyer today I am confident they'll all be out by the end of June

6:51

so I don't think anyone needs to worry it's I don't I don't view that as news

6:56

it's just coincidence of which mix of cases were in October and November and I

7:01

don't think it's they'll be out by the end of June uh they'll be out and we're off and running today so you're saying

7:06

it's a slow news day uh at least on that topic yes okay well I want to ask uh the

7:13

questions that have been um uh uh submitted by people in our audience so

7:20

Devin Humphries asks does your decision in *Aha* versus *Becerra* to stop at using

7:27

traditional tools of statutory interpretation uh return to the letter of *Chevron* or rejected *Spirit* great

7:36

question about *Chevron* of course a case at the heart of administrative law

7:42

scholarship and decision making over many decades now and I think there's two

7:49

ways to look at *Chevron* and two ways it's applied um and this is going to get into the

7:55

weeds but we're at an administrative law conference so I think that's okay so you're either a footnote nine *Chevron*

8:02

person or you're a non-footnote 9 *Chevron* person and I'm a footnote nine

8:09

*Chevron* person which means that footnote 9 in *Chevron* says that you apply all the

8:15

traditional tools of statutory construction to try to resolve any ambiguity in the statute and the way

8:21

I've applied it for 12 years on the DC circuit and on the Supreme Court is once you apply all the traditional tools of

8:28

statutory construction you get an answer uh uh at least unless it's a term in the

8:35

statute like reasonable or appropriate or feasible in which case that's actually more of a *State Farm* issue to

8:41

really get in the weeds but uh of of uh administrative law and so uh I think

8:47

*American Hospital* in other cases to me reflect the way I've uh applied uh the

8:54

doctrine which is use the tools of statutory construction to resolve ambiguities when you do that you usually

9:00

get an answer if it's a term like reasonable or feasible or appropriate then that's a question of did the agency

9:08

act within the uh Authority granted to it by Congress in other words was it

9:13

reasonable reasonably explained and you're a little more deferential in that in that realm so I view our job as the

9:22

Chief Justice famously said like being an Umpire like being a referee our job

9:28

is always to think about our place and the separation of hours but to police the line between the executive and

9:34

Congress and to make sure that Congress that the executive is not exceeding the boundaries set by Congress I don't think

9:42

we should be too aggressive or too deferential I think we should just try to do in footnote nine of Chevron

9:47

instructed us to do to use the traditional tools of statutory construction figure out the best reading

9:53

of the statute figure out then whether the executive crossed that and that will you know the key to being a good judge

10:00

one key is to be consistent to apply that no matter who the parties are no

10:06

matter which Administration it is uh and no matter what the issue is environmental issue labor issue

10:12

immigration issue what have you and to try to be consistent over time there are non-footnote nine Chevron judges who I

10:19

think look at statues say that's complicated I'm deferring to the agency uh uh that's a simplistic overstatement

10:27

but that's you know that's kind of the philosophy I think you sometimes hear associated with Chevron but I to me

10:33

that's from day one on the DC circuit that's never been the way I've approached it I've I've taken footnote

10:39

nine related to that on our deference a similar uh Doctrine for interpretation

10:44

of regulations on a Case called Kaiser a few years ago we emphasized footnote 9

10:50

from Chevron by analogy uh and uh emphasize that you should really try to

10:56

resolve the ambiguities and the regulation using the traditional tools of interpretation as well so uh I guess

11:04

that means I don't think Chevron plays much of a role in a lot of cases

11:10

well along those lines an anonymous questioner asks um uh with regard to Chevron that the

11:18

court has been reticent to to cite Chevron um recently and uh wants to know why if

11:26

there's a reason why that is well I think we started footnote nine

11:31

um uh I think I think

11:37

the judges on the court uh have recognized that the first thing you do

11:44

is make an effort at resolving the ambiguity every statute has some at

11:50

least cases we get are not gonna we don't get easy cases uh so every case we get is going to have some confusion in

11:57

the drafting mistake in the drafting ambiguity compromise in the legislation that we have to resolve or at least

12:03

interpret um and I think all the judges realize well we don't just throw up our hands at

12:09

the start we go through the process of trying to resolve it using the traditional tools and some judges might

12:15

stop short of where I would but I would use all the traditional tools and try to figure out the best meeting of the

12:21

statute and I think that's why I don't think it's been really used in the way

12:26

some people think it applies since before I got on the court so well

12:33

speaking of ambiguity uh Peter Oliveto asks

12:38

in in West Virginia versus EPA the major questions Doctrine was applied without

12:44

explicitly uh finding that the statute was ambiguous does the doctrine require

12:50

ambiguity so I think uh the way um the major questions Doctrine as I

12:58

understand it has been applied and I wrote about it on the DC circuit so for me it did not start with West Virginia

13:03

versus EPA it started long before you could start it with the Benzene case in

13:09

the 1980s is a simple principle and I know there's particularly the academy a

13:16

fair amount of criticism of the principle I understand that but I think it's a principle rooted in common sense

13:21

and one that's rooted in the Court's case law and it's a clear statement rule that

13:27

before we allow an agency to resolve some major question and this bracket

13:34

there's going to be debate about what qualifies as a truly major question some massive new regulation some critically

13:42

expensive new regulation that Congress have clearly delegated that authority to

13:48

the agency and I think it's rooted in the a couple ideas

13:54

constitutional values and our own ideas and understanding from each of our own experience about how Congress operates

14:00

so both of those I think inform the major questions Doctrine and the idea is Congress

14:07

doesn't ordinarily hide elephants and mouse holes and then heard that phrase a lot if you've read our cases in other

14:13

words do some massive new authorization in some ancillary provision or some

14:19

provision that's vaguely worded and I think we've also been very leery of uh

14:26

okaying some massive new regulation that's based on a very old statute that

14:33

was vaguely worded when the Congress that enacted that statute couldn't possibly have been thinking about the

14:40

issue or the thing that the agency has done and we think that's rooted again

14:45

both in constitutional values and also in our understanding of how Congress operates it's within a tradition in in

14:53

my view consistent with other plain statement and clear statement rules that the court applies that I think

15:00

coexist with textualism and are part of what I think is proper statutory

15:05

interpretation so for example the presumption of men's rail a lot of times statutes criminal statutes don't require

15:11

any men's Raya do we just say no men's red is required of course not uh we always and I'm I'm very Vigilant about

15:19

that among my colleagues about the presumption of men's Raya we don't assume Congress meant to uh

15:26

incarcerate people to allow people to be convicted if they didn't have the requisite mental state presumption

15:32

against retroactivity we apply that very vigorously as well in civil cases the assumption that Congress didn't mean to

15:39

make illegal what you did yesterday when when you did it it was legal uh the

15:44

presumption that's one way to describe it at least presumption against retroactivity uh we will require a clear

15:51

statement uh presumption against extra territorial application of statutes again reflecting constitutional values

15:57

and our Assumption of how Congress operates that we don't presume a statute's meant to apply to conduct

16:03

committed abroad unless Congress has clearly stated that so there are a variety of well-rooted clear statement

16:09

rules in statutory interpretation that I think are entirely proper that Congress relies on uh that Congress assumes uh

16:19

and I've from my experience in the White House worked with Congress on legislation and the philosophy of the

16:24

courts will clean this up is is a little too prevalent I realize but they do not rely on the Court's principles and the

16:31

backdrop and I think the major questions Doctrine the clear statement rule fits in with those other clear statement

16:37

rules and reflects to my mind common sense and reflects to my mind constitutional values and I wrote at

16:44

length about that on the DC circuit and I thought the West Virginia case obviously I joined the majority opinion

16:49

and uh I think that was correctly decided so um uh I have a second year

16:55

student here who is asking a question and I think is trying to pick a fight with you okay is this why you're not

17:02

giving that he's not giving the name no I'll get the name I'll freely you don't have to give them

17:08

very much I think I think it's important to to give the name because I think he's

17:13

trying to create some tension between you and and Justice Gorsuch here so his

17:18

name's PJ Amato uh did you want to raise his hand yeah

17:24

there he is there you go so so PJ asked so in in writing the dissent of uh of

17:31

denial of cert in Buffington versus McDonough Justice Gorsuch wrote the Chevron Doctrine should be reconsidered

17:38

now you've in your answers to the previous questions suggested that you are essentially a Justice who applies

17:45

Chevron and so should Chevron be considered I mean are

17:51

is there is there daylight between you and Justice gorsucher well I'm not going to preview uh

17:56

future cases on that I think the way I described Chevron was probably different

18:02

than some people use the term Chevron in other words you applying footnote 9

18:09

means you apply the traditional tools of statutory construction and when you when those don't resolve it it's usually

18:14

because it's a term that's more of a State Farm issue than a that a Chevron is should again get back into the weeds

18:20

of that so I um and Justice Gorsuch and I uh uh we've

18:26

known each other since we were 14 years old Holtz we went to high school together we clerked together uh we

18:32

thought it was a big coincidence when our clerking together for justice Kennedy and we said isn't this crazy with both clerks here went to the same

18:37

high school and that turned out to be pretty minor coincidence compared to

18:44

my friends with a long time and he's a great judge and when I was here in 2017 was a few days after he was nominated

18:50

and I do remember Professor Barrett then Professor Barrett introduced me and I started by speaking about Justice

18:56

Gorsuch and how uh how proud I was of that he was nominated and uh my

19:04

prediction that he would be a great Justice in the tradition of a Jackson or Scalia and I uh continue with that

19:09

prediction even on those occasions where we disagree although I'm not sure again I'm not gonna respond specifically to the future but

19:17

my description of Chevron I'm not sure is that much different from his okay so

19:23

since you raised it about your relationship with Justice Gorsuch in

19:28

your education uh father Matt kazora who is a third year student here asked the

19:34

question about the role of Catholic Education in shaping your legal

19:39

perspective uh both uh yours and and uh justice gorsuch's and if you see any

19:47

challenges to to Catholic Education today that are coming to the surface

19:54

well I think on the first part of that I think I'll tackle that uh I went to

20:00

Catholic School from first grade through 12th grade important part of my life my

20:05

best friends in the world are still those people that I knew then uh and that I still

20:12

rely on one of my best friends just texted me five minutes ago are you at Notre Dame

20:18

he went to Notre Dame and um I think the values I learned there do

20:25

inform me one of the things you think about when you are on the Supreme Court at least that I think about is I want to

20:31

be good at the job I want to be as good as I possibly can it's an awesome responsibility it's a great honor uh but

20:37

but I think more about the responsibility and how can I be as good as whatever my potential is how can I

20:43

reach that and be as good as I possibly can and I think about the adjectives that you want people to use to describe

20:49

you I talk to students about that and I think I go back to the foundation for my Catholic Education so my Latin teacher

20:55

father Byrne I don't remember a ton of Latin I will concede so but I do

21:01

remember when he told us be prepared be prepared you can't go wrong as you go

21:06

along if you are prepared so that's 40 years later I got that down pat I guess we were not always fully prepared but um

21:13

he was and that turns out you know really important to being a good judge

21:18

be prepared be well prepared what you want the lawyers walking out of the courtroom and say be well prepared I

21:24

think about my English teacher Chris Abel who reading To Kill a Mockingbird I

21:29

have the version in my office that he taught us that on the inside cover in my handwriting from back then has written

21:34

the phrase stand in someone else's shoes and that's what he taught us was the lesson of To Kill a Mockingbird and I

21:41

think to be a good judge and to be a good person it's important to understand other people's perspectives and when you're on

21:48

our court you need to be thinking about their 330 million people in this country who have a lot of differences on a lot

21:53

of big issues and try you're not going to please all the people all the time to State the obvious but to try to

22:00

understand their perspectives to try to make sure they realize that you're at least listening to them and I think

22:06

about that lesson I got from my Catholic Education from Chris Abel standing in

22:11

someone else's shoes I try to reflect that in my opinions that I understand the arguments from both sides I try to

22:16

reflect that at oral argument I do not believe in pouncing on the attorneys at oral argument I don't believe in kind of

22:23

being too harsh on the attorneys at oral argument I try to avoid that I'm sure I slip and fall short but that's that's a

22:29

goal and I I think constantly about standing in someone else's shoes and trying to understand their perspective

22:35

then last Catholic Education one of the things uh that my music teacher Gary Dom taught us uh was uh Be not Afraid and

22:44

that's really important uh to be a judge Be not Afraid be not afraid to do the right thing if you're not afraid to

22:51

adhere your principles know that you're going to get criticized I work for President Bush for five and a half years

22:56

I saw him take just a ton of abuse and he was always optimistic and positive

23:02

and a great lesson for me of being not afraid I watch a ton of sports too and I

23:07

my kids both my high school daughters both play sports and by analogy to the

23:12

referee umpire I mean what you know you're going to take a lot as a judge

23:18

what just go to a game and watch all the abuses the referees take from the parents uh and sometimes I think to

23:25

myself who would want to do that job it's just unbelievable the things that

23:32

are said in high school gyms to referees and it is very see you gotta have a thick skin and it is very similar in

23:38

that sense you've got to be able to do the right thing to make the make the call that's gonna some sometimes draw

23:44

some negative reaction from the crowd and to be and that's the same thing as a

23:49

judge so those Catholic lessons I learned in Catholic school I think still

23:54

ground me today when I come in the office uh in the morning and more broadly the ethos at Notre Dame reflects

24:01

that I learned as well motto my Jesuit High School was men for others all boys school and I've tried throughout my life

24:08

I devoted almost all my career to Public Service uh into serving others through

24:14

my job and also I realize that's not just enough I I volunteer I've

24:20

consistently volunteered at serving meals for the homeless with Catholic Charities that's an important part of my

24:26

life too of constantly trying to live up to that ethos of service and so those I

24:31

guess by that long answer the answer is uh a lot of what I learned in the Catholic schools still in forms not my

24:38

jurisprudence so I don't want to confuse the issue not my jurisprudence but just how I try to treat other people and how

24:43

I can think of my role in public service so if you follow up on that um there's

24:50

been criticism in the press and elsewhere that we as Catholics are over represented on the court and I was

24:57

wondering if your Catholic background your your Catholic Education shapes your relationship with your your

25:05

colleagues on the court well I think only in the sense uh not just prudentially again it does not

25:11

reflect it reflects how I try to deal with my colleagues and one of the things I think is important for the students to

25:18

know here uh because you read about the court uh and one of the things you

25:23

adjust to when you get on the court is you just spend an enormous amount of time with these eight other people and

25:29

only with these eight other people uh you eat lunch with them and after every

25:34

oral argument in conference and you put do the math that's about 65 lunches a year with just imagine picking eight

25:41

other people at random say we're gonna have lunch not once 65 times this year that's a lot of lunch and you can't and

25:49

you can't talk about work at lunch so you talk about the things that you would talk about with your friends you

25:54

talk about your kids you talk about movies you talk about books you talk about War Stories again and again you

26:02

talk um you know when Justice Breyer comes you talk about things you don't know

26:08

anything about meaning I don't know anything about he

26:13

knows a lot about a lot of things and uh you become through those lunches

26:18

uh friends and and we have my experience with the court in my four and a half

26:24

years and at this moment is they're great relations among all nine justices

26:29

both personally and professionally we will I think we disagree we get tough we only get tough cases we disagree on some

26:36

of those I think that's more nuanced than sometimes is portrayed and I'll get into that but um uh but we work well

26:43

together and we get along well together so we have those lunches conference you know once a week two and a half three

26:49

hours just the nine of us in a room oral arguments it's not like the court of appeals where you sit in panels of three

26:55

and you might be sitting with different judges and might not sit with a particular judge for six months it's

27:00

every oral argument the same folks and you get to know each other really well and to respect uh your colleagues and to

27:08

understand them and to know and my goal is to you know treat them with respect

27:13

and as friends and when they disagree to understand like I said stand in their shoes why do why do we disagree on this

27:20

and know that there's some things you're just going to disagree on are not going to be able to find common ground but you

27:25

move on to the next case but maintain your great respect for for your colleague who has a different view on a

27:32

different case when I got there Ruth Ginsburg and Steve Breyer were on the

27:38

court and were amazing colleagues in welcoming me as you walk into that place uh at least for me and I think for

27:44

almost all of us all of us probably you walk in and you're want to try to fit in

27:50

and you want to make sure you're doing things the right way and make sure that your colleagues think you're doing

27:57

things the right way and Ruth Ginsburg and Steve Breyer couldn't have been better at welcoming me to the Court

28:04

Justice Ginsburg publicly would talk about me a lot during my first term she

28:09

didn't have to do that and she did it I'll never forget that it was very meaningful to me what she said I

28:15

remember number about six weeks into the job it happened to be a 5-4 case where she was the senior Justice and the

28:20

majority and I was with with her in the majority the Apple versus pepper case and she pulled me aside after conference

28:27

and said I want you to write the majority opinion and I was owned okay

28:33

welcome to the NFL and I remember as I did that first year

28:38

I immediately got back to the office and called Justice Kagan who was my etiquette advice did I say the right thing I said yes she's like yeah you

28:45

said the right thing and then I said well and then she's added just get it out quickly Ruth likes

28:51

speed I was like all right and and we did sell but that was a great you know great honor a great moment for me and

28:58

the Things She Said publicly Steve and uh Steve Pryor's just an amazing colleague as well always trying to reach

29:05

consensus always positive always optimistic always uh friendly always

29:11

trying to reach out from his Senate experience to to understand each other's perspectives and a great role model for

29:18

me we miss him but we have two great new colleagues Amy Barrett of course not so new anymore who I was friends with

29:24

before and uh is an amazing person I I describe her at the welcome dinner the

29:29

newest Justice gets a welcome dinner from the previous newest justice so after then I threw a welcome dinner for

29:35

justice Barrett and all the colleagues and spouses and I gave the toast and one of the things I said about her was that

29:42

she was an unusually good person and I think that sums up a lot about her

29:49

she's just an excellent colleague at oral argument her opinions her thoughtfulness her dedication how well

29:56

prepared she is and now we have katanji Jackson who was my thing about be

30:01

prepared she is fully prepared thoroughly prepared the number one thing that I mentioned that I think uh makes a

30:07

good judge and she's off to a great start and I've known her for a while not as well as I knew Justice Barrett but

30:14

known her for a while too and she's thoroughly prepared and hit the ground running and it's great to have new

30:20

colleagues we miss Justice Ginsburg of course and Justice Pryor but it's there's turnover and it's wonderful to

30:27

have two new colleagues who have fit in in my judgment fit in well with the group well speaking of your colleagues

30:33

uh Josh Lacoste asks whether when you're writing a Judicial opinion who are you

30:39

considering as your relevant audience is it is it your colleagues is it are at the lower courts uh the legal Academy

30:46

the public at large Who Who Are You focused on when you're writing an opinion all the above so let me take it

30:52

in order when you're writing an opinion uh first of all may be consistent with something I just said I want the losing

30:59

party this can be hard but I want the losing party to understand uh why we disagreed why I disagreed with

31:07

them and they're going to not be happy with the decision by definition but I want them to read it and say okay well

31:13

they at least treated our arguments with respect and fairly so that's number one I think over time that's systemically if

31:20

you treat that party well to our argument and that party well in the opinion over time that builds respect I

31:26

think for the what we're doing uh for the rule of law so that's one two the

31:31

lower courts are going to have to apply this I was a DC Circuit Judge for 12 years I remember saying what does this

31:38

footnote mean what are they doing and I try so I try to avoid writing footnotes

31:43

or text in my opinions that is going to cause the lower courts to be confused to

31:49

not understand now nine people have to come together or at least five and so there's going to be compromises

31:54

sometimes they'll be uh maybe deliberate fuzziness and opinions but I try to

31:59

bring Clarity the opinions for the lower courts Clarity is an important value and opinions also for the affected parties

32:06

the businesses the agencies the government parties that have to order their businesses their Affairs their

32:13

regulations around what we say to Congress so that they understand whether it's uh Canon's of statutory

32:19

construction or what have you to the American public who is uh interested in reading it I want it to be

32:25

understandable and clear and as clear as I can make it for people

32:31

who are going to want to know what what we're doing and why we're doing it and uh so it's a lot of different audiences

32:39

writing an opinion like that is hard work and writing generally is hard for the

32:46

students here I like to say there's no good writers they're only good rewriters you gotta rewrite and rewrite and

32:52

rewrite and think about all the holes in it and it's I was with Justice Scalia on a panel one time actually in Germany and

33:00

um the European judges were fawning as they should have been over Justice Scalia and

33:06

saying oh you're a wonderful writer Justice Scalia you must love writing and in his typical way he looked at him said

33:12

I hate writing writing's hard it hurts it's Agony it's paying physically

33:18

painful and I and I thought to myself about Justice Scalia oh thank God there is you know if it's he's one of the

33:25

greatest writers who ever served on the Supreme Court and for him to say that I thought that underscores that it's it's

33:31

hard work to try to write an opinion with Clarity that people are going to respect but you keep at it and keep at

33:37

it and keep at it but I have a lot I don't have just one audience in mind I know people sometimes say you're writing

33:43

for x I think you're writing for you know ABCD a lot of different audiences

33:49

and you have to keep them all in mind I think when you're writing the opinion and I will I try to I try to do that in

33:56

my opinions as as best I can I also try to avoid uh justice Kennedy is a role

34:02

model for me in so many ways if I clerk for him and uh he's a role model on how

34:07

he conducted himself on as a Justice and how he wrote his opinions and if you ask

34:13

yourself what's the harshest thing Justice Kennedy wrote in an opinion in his 30 years

34:18

that's a very short conversation because there really is is not any uh and I am

34:25

sure I fall short of this but my goal is to try to be like that and show respect for the the other judges and the other

34:33

parties and I try to do the best I can on that again I'm sure I fall short but try to constantly uh live up to that

34:39

standard that Justice Kennedy set at the same time uh appealing to or trying to

34:45

think about the audiences that I mentioned to you so I've got um several questions from Anonymous

34:53

questioners the thing that you have in common is that they are all

34:58

administrative law geek questions good so so I'm just gonna speak in my language yeah so I'm gonna

35:05

there you go so the first one is that do you think the arbitrary and capricious Doctrine has changed since uh State

35:12

State Farm or do you think it's uh applied consistently in the same way

35:17

I think it's usually applied pretty consistently I've had a formulation that I used on the DC circuit and have now

35:23

used in Supreme Court opinions uh that agency action under the State Farm standard must be reasonable and

35:29

reasonably explained and I think that formulation captures what we're looking

35:34

for in agency action I've also emphasized as has the court that that should be applied deferentially in the

35:42

context of State Farm we're just looking at the policy determinations within the law within the delegation granted by

35:48

Congress to make sure the policy determination the choice made by the agency is reasonable and reasonably

35:54

explained and within that realm I have a strict divide between law and policy

36:00

footnote nine Chevron I mentioned where I come down on law on policy I think we need to be quite deferential and I think

36:08

the court generally is I did disagree uh in the DACA repeal case on I thought the

36:15

agency had given a sufficiently reasonable and thorough explanation there was a dispute about whether you

36:21

considered both agency explanations or only the earlier one it's probably two in the weeds even for this but anyway as

36:28

a general matter I think it is consistently applied with deference to the agency just to make sure they

36:34

haven't done something completely off the rails and have to make sure they've explained something sufficiently a

36:40

really common don't say tactic but common result on the DC circuit for the years I was there is if you thought

36:47

there was some question about it just remanded the agency for for additional explanation which led to a whole debate

36:54

about remand with or without vacatur which I know um is is also a subject of some some

36:59

debate but in any event uh deferentially applied reasonable and reasonably explained and

37:07

I think it's pretty consistently applied but I think it is risky because I think

37:13

it's easy to say I don't like the policy and therefore I think it's unreasonable

37:18

and you got to be careful you got to guard against that as a judge if you're being an honest consistent Fair judge

37:25

and I think one of the ways you test yourself on this and I try to do this all the time is when you get it especially when you get an agency case

37:32

when I get any kind of case you say what if all the parties were flipped here would I be doing the exact same thing

37:38

and you've got to be able to answer that question yes you got to be able to look yourself in the mirror and say yes I would be doing the exact same thing if

37:45

everyone was uh was flipped in this situation and that's the test and you're

37:51

you gotta look inside yourself and make sure that is again like the Umpire when when people are yelling at refs and

37:58

basketball games in my experience one of the most common things that has yelled is you didn't call it that way down

38:03

there be consistent uh and so as a judge you need to be consistent uh as well and

38:10

make sure you're doing that and there's a little bit of a risk because of the fuzziness of State Farm that and

38:15

sometimes I disagree on the DC circuit but I think everyone was well motivated but that's the risk in it in our court I

38:22

think it's pretty good so since you're using Sports analogies the next question is do you

38:29

think your concurrence in NCAA versus Alston could cover fields and bodies Beyond

38:35

college football for example like law journals or the Notre Dame law review

38:50

I can't even understand the question I will say NCAA versus all set if you

38:57

ask me you know you've been on the court four years what's your favorite opinion uh the pinion you think

39:03

you know you like the most it would be no surprise that NCAA versus Austin my concurrence in that would be right at

39:09

the top of my list probably also with uh flowers versus Mississippi majority opinion ramas versus Louisiana

39:15

concurrence those are the ones that I look back on so far and say you know I

39:21

think I think I made a contribution with those cases and I think I did a reasonably decent job in those cases the

39:27

concurrence in NCAA versus Austin I thought was important to say because I

39:33

was concerned and you know this would probably be a question but why do you write concurrences I always

39:38

ask myself the same question is this really worth it and I've thrown I've got

39:44

a good book of unpublished opinions sitting out there that I've never that I've thrown away as not being worth it

39:50

that one I thought it was worth it because I thought there was a risk that you could read the majority opinion and

39:55

think well everything else is hunky dory and I did not think that in terms of the

40:01

restrictions on student athletes and I thought that needed to be said and I

40:08

thought it needed to be said clearly and directly and succinctly and I spent a lot it's

40:13

five pages uh but I put a lot of time into the into exactly how to phrase the things there

40:20

and I just thought uh you know I want to a group of uh organizations is coming

40:26

together and making a lot of money and agreeing to um suppress the money that goes to the

40:33

people who are the actual athletes generating all the money many of whom are from low income uh families many of

40:40

whom are African-American that there's something really quite wrong with that picture both legally and and otherwise

40:47

and I thought it was important to say that in the NCAA case so I'm going to interpret that answer as saying that the

40:54

larva editor should not be coming to me for a name image and like it there's a huge Market out there for law

41:01

review and image yeah it's right up there with the judge Damon

41:08

so another question is that a lot of your uh fellow justices work for the

41:13

federal government in the executive branch and does that shape the way that uh or inform your jurisprudence in uh in

41:22

cases like the uh the EPA case right so two things on that first I think we have

41:27

a pretty good diversity of professional experiences currently represented on the court public defender prosecutors people

41:33

have worked in the different branches of the government people have had backgrounds as trial judges uh as

41:40

appellate judges uh so I think it's never perfect uh you never can cover

41:46

everything in terms of professional experiences but I think we have a pretty good range of experiences represented

41:51

among the nine of us right now and and geographically diverse as well in terms

41:56

of where this wasn't the case even a few years ago but in terms of where people come from and Justice Jackson from Miami

42:02

Justice Barrett Louisiana uh the chief from Indiana Justice courses Colorado

42:07

I don't help the cause on that but I'm from DC but anyway uh but that that's

42:13

good too because I think a lot of where you grew up through age 18 informs a lot of kind of who you are uh and your

42:20

understanding of different parts of the country uh which I think is important again when we're thinking about 330

42:25

million uh Americans so then for me uh my White House experience uh for five

42:32

and a half years is really quite Central to my thinking about a lot of topics and

42:37

I work for two and a half years in the council's office and three years as staff secretary and for those who don't

42:44

know what that position is you're the Clearing House for the paper that goes the president the draft speeches the policy memos and you farm them out to

42:51

make sure the president's getting a good product that represents consensus views and if there's disagreement that those

42:57

disagreements are flacked so no one can kind of get their own paper into the president without going through you it's

43:03

very important uh role to make sure that it's kind of refereeing it was good operation for being a judge to referee

43:09

disputes among policy advisors to the president including Secretary of Defense CIA in some some Heavy Hitters to put in

43:18

Miles like and those were that was an important job but but um and one I've learned so much from

43:24

President Bush personally but also traveling the world with him uh and you know whether in Afghanistan or Russia or

43:30

China or Buckingham Palace or the Vatican uh and to see the world and to

43:36

see the country with him and to see the demands that are placed on the president so I think being a judge Justice on our

43:43

court is a difficult position but and I think being a member of Congress is a difficult position I think those things

43:49

pale in comparison to the difficulty of being president no matter who's President and I saw that firsthand for

43:55

three years with President Bush the enormous responsibility that you have that starts every morning with the

44:00

national security briefing and ends every night with thinking about at least at that time but still potential

44:05

terrorist attacks on the country and knowing that if something bad happens it's going to be all on one person's

44:12

shoulders and and he came into the Oval Office on September 12 2001 uh and

44:18

essentially said this will not happen again uh and everything he did for the

44:23

next seven years seven and a half years in my judgment was motivate well motivated by this will not happen again

44:29

including some controversial decisions for what she took a lot of criticism but I think it was all motivated by he

44:36

understand the central importance of the presidency and his role in doing that

44:43

and um I think I learned a lot about the presidency which informs I think my

44:50

understanding of national security policy Congress has an important role I'm not saying that but the president's

44:55

role and what the the nature of the presidency and the decisions the president has to make I also saw

45:00

separately how the agency process works and so this may inform a little bit of my understanding of administrative law

45:06

but when you run for president you're in the snow in Iowa or New Hampshire you're not going out there and saying I'm

45:12

running for president so I can get in there and follow that statute exactly yeah yeah you're like I'm gonna go

45:18

reform immigration law and Health Care law and environmental policy and I'm

45:24

gonna I'm gonna go in there and do X Y and Z on that and then you get into office and it's hard to get things

45:30

through Congress and then there's a lot of pressure put on the agencies to try to do as much as they can to achieve the

45:37

president's goals this is completely bipartisan phenomenon that I'm describing and you try to do what you

45:44

can within the existing statutory Authority and it's a lot of pressure on the agencies to push the envelope well

45:50

that's where I think the courts come in and saying uh wait a second as a matter of separation of powers that's beyond

45:57

the existing Authority you have you have to go back to Congress to get additional Authority for that but I think what I

46:02

saw in that process convinced me that it's important that the courts police that that because the executive bring

46:09

all the incentives in the executive branch are to push Beyond existing Authority do what they can to solve the

46:15

environmental problem or to help better Securities regulation or better labor

46:21

regulation or immigration as we've seen over and over where presidents have trouble getting legislation passed to

46:27

want to push forward on legislation so both in understanding the presidency the demands out at the National Security

46:33

demands and then understanding the agency process I learned so much uh in

46:40

those five and a half years I think you know you listen to oral arguments even recent oral arguments you can tell that

46:45

I'm that that's not far from my mind and then I'll add one last thing just going

46:51

around with President Bush for three years I got the gnome extremely well personally and like justice Kennedy just

46:57

President Bush is a tremendous role model for me in how he conducted himself how he treated other people uh even when

47:05

he was criticized he was always optimistic I keep a painting above my

47:11

desk and my former clerks got gave to me when I was confirmed to this court that's a painting that's a replica of a

47:17

painting President Bush had in the Oval Office all eight years it was called Sunrise side of the mountain and it has the quote underneath it live on the east

47:25

side of the mountains the time it's the side to see the day that is coming not the day that it's gone and President

47:31

Bush used to always talk about living on the sunrise side of the mountain and staying optimistic despite all the

47:36

criticism that comes on the presidency despite all the demands he was always generous to other people always great to

47:43

his staff and I try to live up to that and you know we get a lot of criticism

47:48

we get a lot of heat as as judges and I constantly think about being optimistic

47:53

I'm optimistic about the court I'm optimistic about the country I'm optimistic about my colleagues uh I I

48:01

remember those lessons from President Bush I think those are really helpful to me on a daily basis to kind of think

48:08

through okay don't worry about today's criticism because uh just stay optimistic uh about the future so I

48:14

credit him uh for uh helping reinforce that in me well in keeping on this theme

48:20

of how you treat other people um second year student Carissa Cox asked

48:26

a question about how the court has come under uh criticism for losing a spirit

48:31

of compromise can you comment on uh the extent to

48:37

um how you engage in conciliation with each other or when you're in the process of assembling an opinion sure

48:45

um I think there's a lot of collegiality and talk among all of us and I'm going to

48:52

give you a few examples obviously on some cases you just end up with disagreement

48:57

and you talk about it but you end up with this agreement in the end of the day some some cases don't lend

49:04

themselves to that and there are some big cases of course that that fall into that category and there's some small

49:10

cases as well smaller cases that fall into that category but on a lot of cases uh we are able to uh either Forge

49:19

consensus Justice Breyer I mentioned earlier was a master at that but also cases that I think don't follow what

49:25

might be perceived by some students or others as the typical pattern just to

49:31

think about last term which was obviously a term with some tough cases and people paid a lot of attention to

49:37

them as I understand and completely respect that we had a lot of cases that

49:42

did not follow the usual pattern that were big cases so chief justice Roberts wrote a immigration opinion on the

49:49

return to Mexico policy that ruled for the Biden Administration that was a five four six three case depending on how you

49:55

think about it now it's part of the majority with chief justice Roberts and Justice Kagan Justice Pryor Justice

50:01

Sotomayor on that he wrote the the Ramirez case uh as well that was a case

50:07

about uh chaplains in the execution room which we have been kind of struggling with for a few years the eroded case

50:13

about the right of someone on death row to have a chaplain in the execution room not not necessarily what you expect

50:19

Justice Breyer wrote an important 5-4 decision on state sovereign immunity I was part of the majority with Chief

50:25

Justice Roberts in that case um Justice Sotomayor wrote two really important 5-4 decisions last year one 50:33

was a First Amendment case about Austin sign ordinance I was in the majority with her and chief justice Roberts and

50:40

Justice Kagan and Justice Breyer in that one and then another was about the first

50:45

step back criminal proceedings under the first step act and I was in dissent in that one but she was in the majority

50:52

with Justice Thomas Justice Gorsuch Justice Kagan and Justice Breyer really important case you know if you running

50:58

to Justice Sotomayor she'll she'll talk to you about that case that's an important case and that's not following

51:04

some kind of usual usual perceived lineup Justice Kagan wrote an important 5-4 on the method of uh the statutory

51:11

route for uh challenging method of execution uh claims which has been an

51:16

important issue in the court for decades now and that was a 5-4 decision uh I was

51:22

in the majority in that one just a lot of cases that were important I realize those don't get attention I'm not

51:27

complaining about that at all totally understand but just so students get a more nuanced understanding that the the

51:34

docket is larger than you might suspect and when you get into that

51:39

docket you see I think methodological consistency by us but with results that

51:45

you might think I didn't expect that result that's been true my whole four years whether it's uh you know cases the

51:52

DACA case or the Ramos case where we overruled president and said non-unan Anonymous juries are no longer

51:58

permissible the Bostock case was Justice Gorsuch wrote there have been a lot of

52:05

cases over my four years that might not fit some kind of perception again just

52:10

so you have a broader picture for some of the students here I think it's important to think about those cases as

52:16

well and those underscore in all those cases were all working together with different groups of people on the

52:22

majority and so I might be working with Justice Sotomayor on one case and and we

52:28

might be in disagreement on the other but we're working together on the one and that we're not going to let the

52:33

relationship on the one suffer because we might disagree on the other and I

52:39

think all nine of us do that and it's very friendly at conference and uh you know people disagree on the issues they

52:46

care about but it's just my perspective I think the relationships are quite good and they

52:51

result in cases that don't get a lot of attention but that are really important where the lineups are not not

52:56

necessarily what you might think so speaking of your relationships with the people that you work with a student

53:03

Teresita Rios um notes that you worked in the white house with our professor Bill Kelly and

53:11

she wants to know if you have any dirt on him

53:16

of course not I work with Phil I work with Bill Kelly in three separate jobs in the solicitor General's office and

53:22

the independent council's office and the White House and I said when I was here in 2014 he

53:28

introduced me in 2014. for this for this speech and I said

53:33

there's no finer man than Bill Kelly and that is I that is a true as he would say

53:39

true story and I I've benefited from his friendship

53:46

and advice in difficult times that I've had he has been a great source of advice and reassurance and in Good Times he's

53:54

been a great source of keeping me on a Level Playing uh and uh he's just a

54:00

great friend a great scholar I'm teaching with him in a few weeks uh for a few days a course and uh you know I

54:07

think he represents Notre Dame law school so well this is as I said at the beginning a fantastic law school and I

54:13

think of Bill Kelly as someone who has uh helped form the foundation of all the

54:19

success that you're leading now at this law school so great friend can't say enough good things about him got nothing

54:24

got nothing for you sorry so this would not be a law review

54:30

Symposium if large and and these are all asked anonymously

54:35

um but there are several questions that are similar um and you can tell they come from

54:40

um who are a few members um what do you look for in law clerk uh

54:48

so the law clerk relationship is really special and you have four each year

54:54

and you spend so much time with them so you spend a lot of time with your eight colleagues and then a lot of time with

54:59

your four law clerks and you spend more time with both those groups than your family uh oftentimes uh because you're

55:06

at work all day long so it's really important to have like I've already described the colleagues but with the

55:12

law clerks as well so I think kind of obvious things and then non-obvious things the obvious things

55:19

are ability to write well to edit well to research well to analyze well all of

55:26

which you get recommendations from law professors how they did in law school recommendations from judges they might

55:31

have clerked for on the courts of appeals or state Supreme Courts or where have because there's a lot of work to do

55:37

and you want they can spend by definition for much times as much time

55:42

on every case than you can and so you need them sometimes to help do research

55:47

to help find things a little plug for law reviews while we're at it since it was a law review question which is one

55:53

of the things I'm constantly asking my law clerks is there's got to be some good law review articles on this and I

55:59

use a lot of view articles I'm not one of the members of the Court who is dismissive of All Views I I they're

56:05

always required in the binders that they prepare with all the background material

56:10

for me so anyway good researchers a little plug for the law review um and then

56:15

uh in especially in our court the law clerks need to work with all eight other Chambers I'm insistent on that you've

56:21

got it you can't be like Oh I'm not you know My Views are I can't deal with no

56:26

you've got to be able to deal with all 32 other clerks and deal with them well and deal with them fairly and deal with

56:33

them respectfully and so I'm looking for people who get along well with other

56:39

people and that's That's essential essential uh for me and and people who

56:44

are going to deal well with the other three code clerks in the chambers and with me as well uh and and know that

56:51

when I tell them in the interview we go through a lot of drafts I'm understating it uh we just and they always get there

56:58

and like yeah cool another draft yes and yes another draft I told you in the interview it's going to be a lot of

57:03

drafts so the writing process is really intensive and someone who can uh participate in that with the kind of

57:10

optimistic spirit that uh in Good Nature that I want it's really important though that the one thing that might not be

57:16

obvious is the getting along well with other Chambers you have to represent me and I'm insistent that that be a person

57:24

who's not going to cause problems in the court and uh and one of my colleagues

57:29

said to me when I got there you know if any one of us hires a bad apple and it infects the whole place and so it's

57:36

important to try to try to avoid doing that the recommendations from professors

57:41

and judges your grades are important the kind of Basics but that intangible

57:47

I did have I realized by saying this is going to happen all the time now but I'll say it anyway a clerk who came into

57:53

me two years ago or three years ago for the interview and and she concluded the interview by saying I just want you to

58:00

know like I got a lot of grit and whatever that's all I call her now is grits

58:06

uh it works whatever I might have been gimmicky but it worked I hired her she

58:11

was an awesome clerk she was with me last year which was a very obviously difficult year uh at the court and she

58:18

was awesome so I now realize every interview is going to end with I got a lot of grits

58:24

but that was a good thing that's I like that you know in in life and uh you know

58:29

someone who's willing it really should stick intuitiveness and you know and she was she was fantastic so one thing you

58:36

commented on earlier was the fact that we have um uh uh balance on the faculty

58:42

here at Notre Dame do you look for the same kind of thing in your in your Chambers as far as law clerks or are you

58:48

looking people who reflect the kinds of judgments you make about law and policy yes uh I've had Clerks of

58:58

a pretty broad range especially if you go back to the DC circuit a little less so on the Supreme Court it's got to be

59:03

people who are comfortable with my general approach and at this

59:08  
point I've got 16 years of cases and I think you can tell where I'm coming from

59:14  
on a lot of things and so there's some self-selection in that I suppose but also people who are not

59:21  
going to be having concerns obviously they'll disagree I don't want it's not

59:26  
helpful to hire four clerks who just say yes yes yes yes your ideas great that's not so helpful for me so to get

59:33  
differing views is helpful for me but it's got to be someone within the

59:39  
umbrella of comfortable with my general approach to constitutional statutory

59:44  
decision making so there's probably a little uh it's probably not quite it was wide

59:50  
in umbrella as it was on the DC as the DC circuit um but I've definitely had clerks who

59:57  
disagree with me including on disagree with me on big things and uh that's good I mean that's not that's that's going to

1:00:04  
happen it's long again that that essential personality requirement respectfully that they're going to be

1:00:10  
you know okay about it and and deal well with me and deal well with others in the

1:00:15  
chambers about it when that happens so it's a little bit of a muddle dancer I suppose on that one but uh I think it's

1:00:22  
pretty pretty broad range so another question from an anonymous questioner is

1:00:27  
on a really sensitive perhaps hot button topic but also relates to the hiring of

1:00:34  
law clerks and that's the the they want to get your opinion on what's happening with the U.S news and World Report

1:00:40  
rankings what's Notre Dame said about the USS

1:00:48  
I know my audience that's Notre Dame said well we haven't

1:00:53  
said anything because we're focused on our Catholic Mission and doing what we do

1:00:59  
um and we will let the chips fall where they may all right well I'll just wing it and say what I think here which I've

1:01:05

done with my other answers but on this one I was potentially going to pull my punches but also

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I think those ratings are very problematic I think they're based on

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things from what I understand that are very amorphous very subjective very

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um Word of Mouth factors that don't correlate well with the education that you're actually

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receiving and uh I find them highly problematic

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the reputation score that's kind of a joke isn't it I mean that's who who

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who has the knowledge of all the different scores that's a judge to give anything approaching a good analysis of

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that and some of the as I understand it um I should probably stop but I'm going

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to say it anyway they look at how much money is spent on this versus that and the library you

1:02:01

know is that really show whether a student's getting a better education at school a

1:02:07

or score School B and I think I think they're very problematic and they cause

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as I understand it again I'm a judge I don't know everything like you all might know on this but it seems to cause all

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sorts of perverse incentives to kick in at law schools uh transfer policy seems

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to be affected uh dramatically at some schools I'm familiar with by trying not

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to hurt their U.S news ranking and um you got anything else I mean I'm down on

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them I just don't think they accurately reflect what you know you think about

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what are you trying to accomplish at a law school you take a group of people and try to get them like I was talking

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about me as a judge I want to get as close as I can to whatever my potential is wherever that is you want to take a group of people and try to get them as

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lawyers as close as they can be to whatever their potential is in three years and that's very hard U.S news is

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not measuring that and that's really an analysis of the kind of professors you have how much time they put in with the

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individual students how much mentorship goes on how much writing they're teaching you uh what kind of

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extracurriculars like the Symposium uh in law review are going on and I just

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don't think that's measured as I understand again I could be wrong I'm going to get a letter from U.S news but anyway

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I could be wrong I just don't think that's measured you know it's like if you measured a good coach by you know

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how much money he spends on shoes like well no that's not really relevant does the coach get the team to play together

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and get the team to achieve its potential and bring out the best in each player and that's what I'm thinking law

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schools should be doing and I think Notre Dame is doing and I don't think the rankings quite uh capture that and I

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think they just have gone on too long okay no not at all but a follow-up to

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that question was whether you take them into account when you're looking at law Clerks now

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that's a good answer because I haven't mentioned it yet I've

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had two in my four years on the Supreme Court have had uh two uh spectacular

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Notre Dame law clerks Lexi baltus who was with me last year and Audrey Beck who's there with me in my second year

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and was actually worked on the Symposium when I was here I guess in 2017 so I first got to know her then in Lexi uh

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and Lexi was there last year which obviously again was a was a a challenging year in terms of our

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caseload and she was just both of them were just fantastic representatives of Notre Dame law school Great Law clerks

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great friends just worked both of them the one thing I would say about both of them they just worked so hard Lexi last

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year I had to tell her you better take several months off when you walk out the door here and just go wander around the

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world and I think she did that uh because she she gave it her all and I thought that both of them reflected very

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well on Notre Dame law school in terms of what they knew do wall wise and how they approach the job but also and also

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their their work ethics as well so I think that there's a cue for me to wrap

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it up here but several of the questions that have come in several of them um pick up on your affection for sports

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and so um I've got a couple sports questions for you so they want to know of it they

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want to know what after adlaw that's kind of a sweet one they want to know what your opinion is

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on expansion of the college football playoffs as well as what your thoughts

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are with regard to Notre Dame joining a conference I'm not getting near the ladder

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whatever Father John and the administration decides I'm sure wise decisions that's usually my answer

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yeah uh but it will be complicated I know college sports uh is uh

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got a lot of pressure on it and a lot of changes are coming but I'm not gonna um I don't think I'm

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I don't think I want to get into that on the college football playoff I'm not going to say what I want but I think

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it's it's an inevitable that it's going to expand because I think the bowl games right now a lot

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of the good players for the teams are not playing in the bowl games because they want to preserve themselves for the

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NFL draft uh and that makes the bowl games uh that's gonna put a lot of

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pressure on the bowl games because the viewership will go down the money will go down and

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just guessing here but I think that plus the excitement of the NCAA basketball tournament to the extent you can kind of

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translate that into football the problem obviously in football is you don't want the kids playing too many weeks because

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the injury ratio is so much higher in football and so you want to be careful about over

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scheduling them but I think the excitement that the NCAA basketball tournament men's and women's has had for

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so many years uh if you could bottle that and bring it to

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football that would probably be something good for football good for the colleges bring more schools into the

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into the process I don't think it's great to just have four every year necessarily but probably getting outside

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my Lane uh there well I will say on the NCAA um you know going to the Notre Dame game

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yesterday was awesome I think uh My Girl My Girls both play sports uh they're

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Junior and freshman in high school my older one plays varsity basketball at Georgetown visitation the young one's now playing ice hockey they both play

1:07:42

lacrosse on Sidelines or on the side of court or bought uh and so uh one thing I'll

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say going to the women's game here at Notre Dame yesterday my daughters and I have had a tradition for many years we go to the women's final four basketball

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tournament and we were there when Notre Dame beat UConn Enrique gumbawale hit

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that shot we were right there and just great memories with my daughters of going to those games and watching the

1:08:08

development of particularly women's college basketball over the last few years has been extraordinary I think and

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that's got I mean I think that's just on a real upward trajectory and watching Notre Dame yesterday the crowd was

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awesome uh Neil Ivey is a great new coach here and uh prayer for Dara Mabry

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who I had a bad knee injury yesterday uh that was tough to watch uh uh very I've

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seen that ACL before uh on the sidelines and on the court and uh that did not

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look good yesterday I hope it's not the worst but in the event she's she's an awesome player and a great great person

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to watch the whole team's great to watch but anyway the sports you learn a lot of lessons from playing sports I learned so

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much from playing sports and I now from the bond I have with my daughters over

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Sports has just been fantastic the trips we've taken the games we've watched uh

1:09:00

being on the sidelines uh at all their games and one good thing about being an appellate judge is usually you don't

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have oral argument for in the afternoon or five or seven at night and so I can make uh I'm gonna make most of the games

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yeah I I that that's I talked to the law review staff earlier and they asked me about work-life balance and one of the

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things I said is you just block out the time so on my schedule game uh is that

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time is not I don't violate that time I make it to the games it's really really fun and great to watch and so Sports is

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a great part of this this institution is well in the lessons you learn about teamwork I talk about the Supreme Court

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as being my approach to that being part of a team of nine and I've tried to underscore today with some of my

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comments I think obviously we have difficult cases we disagree passionately on some but I I

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personally think that I try to participate thinking about a team of nine and I think my colleagues uh do the

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same it's great honor to be part of it well I don't know if there's a parallel to the college football playoffs

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bringing excitement to college football but speaking as a finance person you've

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brought tremendous excitement to administrative law for me

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for you being here and I want to do is there a name image like this

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thank you thank you

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[Applause]

1:10:34

[Applause]

English (auto-generated)