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Editor

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I am writing in response to Mark Belling's December 10 editorial that Wisconsin Supreme Court candidate Randy Koschnick has no credibility as a judicial conservative because he represented Ted Oswald.

The legal system requires different roles. The hard-charging district attorney who prosecuted Oswald was Paul Bucher, a high profile conservative whose views certainly haven't changed now that he practices criminal law. After the trial, Bucher even wrote a letter to Koschnick commending his conduct in representing his client.

So the real the question for 2009 is not who Judge Koschnick represented, but rather what kind of justice he would be compared to Chief Justice Abrahamson, whom he is challenging.

The most helpful insight to date is from *State v. Knapp*, the "bloody sweatshirt" case that received so much attention in the Gableman-Butler race earlier this year. Judge Koschnick was the trial judge, and Justice Abrahamson voted in two different opinions on appeal.

At trial, the state introduced Knapp's sweatshirt, which was stained with the blood of the woman he murdered with a baseball bat. Knapp moved to suppress because the police didn't give him a Miranda warning before seizing the evidence. Judge Koschnick denied the motion, and Knapp was convicted.

On appeal, Justice Abrahamson voted with the majority to reverse Judge Koschnick. Knapp's motion was based on the federal Fourth Amendment, so the state appealed to the United States Supreme Court. The high court reversed, affirming Judge Koschnick's original decision.

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Prior to *Knapp*, the state supreme court interpreted Wisconsin and federal search and seizure provisions to mean the same thing because their texts are so similar. But when the case returned to Wisconsin, Justice Abrahamson voted with Justice Butler to suppress the sweatshirt anyway, holding that the state constitution requires giving Knapp a Miranda warning, even though the federal constitution doesn't.

Judge Koschnick and Justice Abrahamson are both talented jurists who applied the law in *Knapp* as they saw it, but their conclusions differed because their judicial philosophies are miles apart. Judge Koschnick's resembles Justice Scalia's "textual" approach, while Justice Abrahamson's is more in keeping with Justice Brennan's view of the state and federal constitutions as "living documents."

When the race begins in earnest next year, most informed commentators will describe Judge Koschnick as "conservative" and Justice Abrahamson as "liberal" or "progressive."

Belling is right in one sense though, and there will be irony aplenty to prove it. Interest groups who just months ago were crying foul at "Loophole Louie" in the Gableman-Butler contest will be blasting Koschnick for defending Oswald, and other groups who made that name a household word will be begging people to ignore labels and vote based on the candidates' views and decisions.

In that welter of contradiction, voters would be better served by commentary more informed than Belling's.

Sincerely,

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