

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NOMINEE TO THE SUPREME COURT

PUBLIC

1. **Name:** State full name (include any former names used).

Brett Michael Kavanaugh

2. **Position:** State the position for which you have been nominated.

Associate Justice, Supreme Court of the United States

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

E. Barrett Prettyman United States Courthouse and William B. Bryant Annex
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Residence:

Chevy Chase, Maryland

4. **Birthplace:** State year and place of birth.

1965; Washington, D.C.

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1987 – 1990: Yale Law School; J.D., 1990

1983 – 1987: Yale University; B.A. (*cum laude*), 1987

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2006 – present

United States Court of Appeals for the District of Columbia Circuit

E. Barrett Prettyman United States Courthouse and William B. Bryant Annex
333 Constitution Avenue, N.W.
Washington, D.C. 20001
Circuit Judge

2008 – present
Harvard Law School
1563 Massachusetts Avenue
Cambridge, Massachusetts 02138
Lecturer on Law

2011
Yale Law School
127 Wall Street
New Haven, Connecticut 06511
Lecturer on Law

2007
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001
Adjunct Professor

2001 – 2006
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500
Assistant to the President and Staff Secretary (2003 – 2006)
Senior Associate Counsel to the President (2003)
Associate Counsel to the President (2001 – 2003)

1997 – 1998; 1999 – 2001
Kirkland & Ellis LLP
655 15th Street, N.W.
Washington, D.C. 20005
Partner

1994 – 1997; 1998
Office of the Independent Counsel
1001 Pennsylvania Avenue, N.W., Suite 490-N
Washington, D.C. 20004
Associate Counsel

1993 – 1994
Honorable Anthony M. Kennedy
Supreme Court of the United States

One First Street, N.E.
Washington, D.C. 20543
Law Clerk

1992 – 1993
Office of the Solicitor General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Attorney

1992
Munger Tolles & Olson LLP
350 South Grand Avenue, 50th Floor
Los Angeles, California 90071
Summer Associate

1991 – 1992
Honorable Alex Kozinski
United States Court of Appeals for the Ninth Circuit
Richard H. Chambers Courthouse
125 South Grand Avenue
Pasadena, California 91105
Law Clerk

1990 – 1991
Honorable Walter K. Stapleton
United States Court of Appeals for the Third Circuit
J. Caleb Boggs Federal Building
844 North King Street, Unit 18
Wilmington, Delaware 19801
Law Clerk

1990
Williams & Connolly LLP
725 12th Street, N.W.
Washington, D.C. 20005
Summer Associate

1989
Covington & Burling LLP
850 10th Street, N.W.
Washington, D.C. 20001
Summer Associate

1989

Miller Cassidy Larocca & Lewin
Later acquired by Baker Botts LLP
The Warner
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Summer Associate

1988
Pillsbury Winthrop Shaw Pittman LLP
Formerly Pillsbury Madison & Sutro
1200 17th Street, N.W.
Washington, D.C. 20036
Summer Associate

Other Affiliations

2017 – present
Washington Jesuit Academy
900 Varnum Street, N.E.
Washington, D.C. 20017
Director

2010 – 2016
The Historical Society of the District of Columbia Circuit
E. Barrett Prettyman United States Courthouse and William B. Bryant Annex
333 Constitution Avenue, N.W.
Washington, D.C. 20001
Director

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I timely registered for Selective Service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Honorary Degree and Commencement Speaker, The Catholic University of America Columbus School of Law (2018)

Defender of the Constitution Award, The Heritage Foundation (2017)

Green Bag “Exemplary Legal Writing” Honoree (2013)

Commencement Speaker, George Mason University School of Law (2011)

Samuel Williston Lecturer on Law, Harvard Law School (2009 – present)

Outstanding White House Service on September 11, 2001 (2001)

Adat Shalom Synagogue Award for Pro Bono Representation (2000)

40 Lawyers Under 40, Washingtonian Magazine (1998)

Graduation Speaker, Mater Dei School (1993)

Notes Editor, Yale Law Journal (1989 – 1990)

Degree from Yale University conferred *cum laude* (1987)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Administrative Conference of the United States (2010 – present)

Liaison Representative, Judicial Review Committee (2011 – present)

American Bar Association (1990s (approximate); 2008 – 2012)

Section of Administrative Law and Regulatory Practice, *Ex Officio* Member (2008 – 2012)

American Law Institute (2009 – present)

Adviser, Principles of the Law, Election Administration (2011 – present)

Member, Regional Advisory Group (2013)

Bar Association of the District of Columbia, Honorary Member (2006 – present)

Commission on the Future of Maryland Courts (1996)

Research Associate to the Chairman

District of Columbia Bar Association (1992 – present)

Dwight D. Opperman Foundation Devitt Award Selection Committee (2016 – 2017)

The Edward Coke Appellate Inn of Court (2000 – 2017)

President (2011 – 2012)

Vice President (2010)

President-Elect (2010 – 2011)

The Edward Bennett Williams Inn of Court (2015 – present)

Federalist Society for Law and Public Policy Studies (1988 – present)
Co-Chair of School Choice Subcommittee, Religious Liberties Practice Group (1999 – 2001)

Judicial Conference of the United States (2009 – present)
Advisory Committee on Rules of Appellate Procedure (2015 – present)
Judicial Branch Committee (2009 – present)

Maryland State Bar Association (1990 – 2006)

Montgomery County Bar Association (1990s – 2000s) (The Montgomery County Bar Association does not have membership records pre-dating 2014.)

United States Court of Appeals for the District of Columbia Circuit (2006 – present)
Circuit Judicial Council (2017 – present)
Procedures Committee, Liaison Judge (2008 – present)
Judicial Wellness Committee (2018)
Criminal Justice Act Panel, Chair (2013 – 2018)
Criminal Justice Act Voucher Review Committee (2013 – 2018)

10. **Bar and Court Admission:**

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. List any state in which you applied for reciprocal admission without taking the bar examination and the date of such admission or refusal of such admission. Please explain the reason for any lapse in membership.

Maryland (1990 – 2006)
District of Columbia (1992 – present)

Upon joining the federal bench, I resigned from the Maryland Bar and took judicial status in the District of Columbia.

My membership in the District of Columbia Bar lapsed for a brief period in 2002 when my renewal form was delivered to an incorrect home address. There have been no other lapses in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States (1994)
United States Court of Appeals for the Third Circuit (1991)
United States Court of Appeals for the Fourth Circuit (1997)

United States Court of Appeals for the Fifth Circuit (1993)
United States Court of Appeals for the Sixth Circuit (1999)
United States Court of Appeals for the Seventh Circuit (1999)
United States Court of Appeals for the Eighth Circuit (1996)
United States Court of Appeals for the Ninth Circuit (1999)
United States Court of Appeals for the Tenth Circuit (1999)
United States Court of Appeals for the Eleventh Circuit (2000)
United States Court of Appeals for the District of Columbia Circuit (1993)
United States Court of Appeals for the Federal Circuit (1998)
United States District Court for the District of Columbia (2000)
United States District Court for the District of Maryland (2000)

I chose not to renew my membership in the bar of the United States Court of Appeals for the Fifth Circuit in 2000 because I did not actively litigate in that court. I also chose not to renew my membership in the bars of the United States Court of Appeals for the Eleventh Circuit and the United States District Court for the District of Maryland in 2006, as I joined the bench and no longer litigate.

I also have been admitted *pro hac vice* at various times to several lower federal courts, including the United States District Court for the Eastern District of Virginia and the United States District Court for the Eastern District of Arkansas.

11. **Memberships:**

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, or in which you have participated, from the beginning of law school. Provide dates of membership or participation, and indicate any office you held. "Participation" means consistent or repeated involvement in a given organization, membership, or regular attendance at events or meetings. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications. Describe briefly the nature and objectives of each such organization, the nature of your participation in each such organization, and identify an office or other person from whom more detailed information may be obtained.

Blessed Sacrament School (1996 – 1997; 2014 – 2018)

Coach

I have coached 4th grade girls basketball teams and 5th – 6th grade girls basketball teams. I also have coached a 6th grade boys basketball team. For more information, contact Marilyn Campbell, Athletic Director, at mcampbell@blessedsacramentdc.org.

Catholic Charities, Archdiocese of Washington (2015 – present)

Volunteer

Catholic Charities is the social ministry outreach of the Archdiocese of Washington. As a volunteer, I have regularly served meals as part of the St. Maria's Meals program in Washington, D.C. For more information, contact Monsignor John Enzler or the D.C.

office at communications@cc-dc.org.

Chevy Chase Club (2016 – present)

Member

The Chevy Chase Club is a recreational club. We joined because the club has an outdoor hockey rink and a girls ice hockey program, and because of its gym and sports facilities. For more information, contact the Club at (301) 652-4100.

Classics AAU (2015 – present)

Coach

Classics AAU is an organization that provides opportunities for young athletes to play basketball at highly competitive levels. I have coached 2nd, 3rd, and 4th grade girls basketball teams. For more information, email info@classicbasketball.com.

Congressional Country Club (1986 – 2017)

Junior Non-Voting Member (1986 – 2000)

Member (2000 – 2017)

The Congressional Country Club is a recreational club. My family and I used the club's gym and sports facilities. For more information, contact the Club at (301) 469-2000.

Georgetown Prep Alumni Association (1990s – present)

Member

The Georgetown Prep Alumni Association is an organization made up of Georgetown Prep School alumni of all generations. For more information, contact Georgetown Preparatory School at (301) 493-5000.

The Historical Society of the District of Columbia Circuit (2010 – 2016)

Director

The Historical Society preserves the history of the U.S. Court of Appeals for the District of Columbia Circuit and the U.S. District Court for the District of Columbia. As Director, I have been active in developing ideas for events, including an annual reception for all former clerks of the D.C. Circuit and the D.C. District Court. For more information, contact Linda J. Ferren, Executive Director, at (202) 216-7346.

The John Carroll Society (2006 – present)

Member

The John Carroll Society is a service organization of Catholic professionals. As a member, I have spoken at and attended some of the organization's events, including the annual Red Mass in Washington, D.C., and an event with young lawyers. For more information, contact the John Carroll Society at (301) 654-4399 or johncarrollsociety1951@gmail.com.

Lawyers Club of Washington, D.C. (2007 – present)

Member

The Lawyers Club of Washington, D.C., is an organization of lawyers and judges who meet periodically. As a member, I attend lunches and annual dinners. For more

information, contact Secretary and Treasurer Philip L. O'Donoghue at (301) 652-6880.

Montgomery County Recreation (2015 – present)

Coach

I have coached a variety of girls basketball teams when my daughters were on the teams. For more information, contact Montgomery County Recreation at (240) 777-6840.

Washington Jesuit Academy (2017 – present)

Director

The Washington Jesuit Academy's mission is to provide a tuition-free, high-quality, and comprehensive education to boys of all religions from low-income communities. The students are almost all minorities from Washington, D.C., and Prince George's County, Maryland. As a Board Member, I participate in meetings where the Board deals with various issues, including educational decisions. For more information, contact the D.C. office at (202) 832-7679.

Yale Law School Class of 1990

Class Secretary (2000 – 2001)

This organization is made up of Yale Law School alumni from the Class of 1990. As Class Secretary, I collected and organized the class notes for the Yale Law Report. For more information, contact (203) 432-1690 or alumni.law@yale.edu.

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Years before I became a member of the Congressional Country Club and the Chevy Chase Club, it is my understanding that those clubs, like most similar clubs around the country, may have excluded members on discriminatory bases that should not have been acceptable to people then and would not be acceptable now.

Except as set forth above, to the best of my knowledge, none of the above organizations currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin either through formal membership requirements or the practical implementation of membership policies.

c. List all conferences, symposia, panels, and continuing legal education events you have attended since you joined the United States Court of Appeals for the District of Columbia Circuit. For each event, provide the dates, a description of the subject matters addressed, the sponsors, and whether any funding, gifts or travel reimbursements were provided to you by the sponsors or other organizations.

Please see the attached Appendix 11.c.

12. **Published Writings and Public Statements:**

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet, regardless of whether it was published in your name, another name, or anonymously. Supply four (4) copies of all published material to the Committee.

Congress and the President in Wartime, Lawfare (Nov. 28, 2017, 3:00 PM), <https://www.lawfareblog.com/congress-and-president-wartime> (book review). Copy supplied.

From the Bench: The Constitutional Statesmanship of Chief Justice William Rehnquist (American Enterprise Institute 2017). This is a published version of my September 18, 2017, speech at the American Enterprise Institute noted in response to Question 12.d. Copy supplied.

Keynote Address: Two Challenges for the Judge as Umpire: Statutory Ambiguity and Constitutional Exceptions, 92 Notre Dame L. Rev. 1907 (2017). This is a published version of my February 23, 2017, speech at Notre Dame Law School noted in response to Question 12.d. Copy supplied.

One Government, Three Branches, Five Controversies: Separation of Powers Under Presidents Bush and Obama, Marquette Lawyer Magazine, Fall 2016, at 8. This is a published version of my March 3, 2015, speech at Marquette University Law School noted in response to Question 12.d. Copy supplied.

With Bryan A. Garner et al., *The Law of Judicial Precedent* (2016). Copy supplied.

Fixing Statutory Interpretation, 129 Harv. L. Rev. 2118 (2016) (book review). Copy supplied.

The Judge as Umpire: Ten Principles, 65 Cath. U. L. Rev. 683 (2016). This is a published version of my March 30, 2015, speech at the Catholic University Columbus School of Law noted in response to Question 12.d. Copy supplied.

Our Anchor for 225 Years and Counting: The Enduring Significance of the Precise Text of the Constitution, 89 Notre Dame L. Rev. 1907 (2014). This is a published version of my November 1, 2013, speech at Notre Dame Law School noted in response to Question 12.d. Copy supplied.

The Courts and the Administrative State, 64 Case W. Res. L. Rev. 711 (2014). This is a published version of my October 1, 2013, speech at Case Western Reserve Law School noted in response to Question 12.d. Copy supplied.

Remarks at the Opening Session of the American Law Institute 90th Annual Meeting (2013). This is a published version of my May 20, 2013, speech delivered to the American Law Institute noted in response to Question 12.d. Copy supplied.

Separation of Powers During the 44th Presidency and Beyond, 93 Minn. L. Rev. 1454 (2009). This is a published version of my October 17, 2008, speech at the University of Minnesota Law School noted in response to Question 12.d. Copy supplied.

With Robert J. Bittman & Solomon J. Wisenberg, *To Us, Starr Is an American Hero*, Wash. Post, Nov. 15, 1999. Copy supplied.

Opinion, *Are Hawaiians Indians? The Justice Department Thinks So*, Wall St. J., Sept. 27, 1999, at A35. Copy supplied.

Letter to the Editor, *Indictment of an Ex-President?*, Wash. Post, Aug. 31, 1999, at A12. Copy supplied.

Letter to the Editor, *Starr Report*, N.Y. Times, Aug. 1, 1999, § 7, at 2. Copy supplied.

Letter to the Editor, *We All Supported Kenneth Starr*, Wash. Post, July 1, 1999, at A28. Copy supplied.

What a Difference a Year Makes; Experts Draw Lessons, for Our Politics and Our Culture, from the Impeachment and Acquittal of William Jefferson Clinton, American Spectator, Apr. 1999. Copy supplied.

First Let Congress Do Its Job; A Deep Structural Flaw in the Independent Counsel Statute, Wash. Post, Feb. 26, 1999. Copy supplied.

The President and the Independent Counsel, 86 Geo. L.J. 2133 (1998). Copy supplied.

Defense Presence and Participation: A Procedural Minimum for Batson v. Kentucky Hearings, 99 Yale L.J. 187 (1989). Copy supplied.

While an undergraduate at Yale University, I regularly wrote news stories on the sports beat for the Yale Daily News. I prepared the below list based on my records and searches of publicly available records conducted by others on my behalf.

Search Still on to Replace Yale Head Hoop Man, Yale Daily News, May 6, 1986. Copy supplied.

Ivy Title Hopes Snuffed in Penn Loss, Yale Daily News, Feb. 24, 1986. Copy supplied.

Ailing Elis Hope to Get Well in Penn, Tigers Weekend Games, Yale Daily News, Feb. 21, 1986. Copy supplied.

Elis Tame Lions, Lose to Big Red, Yale Daily News, Feb. 17, 1986. Copy supplied.

Lions, Big Red, Fear Eli Repeat Performance, Yale Daily News, Feb. 14, 1986. Copy supplied.

Yale Erases 23 Years of Tiger Frustration, Yale Daily News, Feb. 10, 1986. Copy supplied.

Bulldogs Head South to Home of Ivy Crown, Yale Daily News, Feb. 7, 1986. Copy supplied.

Dartmouth Rally Upends Streak, Yale Daily News, Feb. 3, 1986. Copy supplied.

Yale Looks To Continue Streak, Yale Daily News, Jan. 31, 1986. Copy supplied.

Elis Trounce Jaspers, Yale Daily News, Jan. 30, 1986. Copy supplied.

Elis Hang on, Beat Army, 54-51, Yale Daily News, Jan. 24, 1986. Copy supplied.

Dudley Leads Bulldogs in Split, Yale Daily News, Jan. 20, 1986. Copy supplied.

Lackluster Yale Needs a Boost, Yale Daily News, Jan. 15, 1986. Copy supplied.

Brown Triumphs, 68-65, Yale Daily News, Jan. 14, 1986. Copy supplied.

Clark Upsets Elis, 78-70, Yale Daily News, Dec. 16, 1985. Copy supplied.

Eli Cagers Drop Two in California Tourney, Yale Daily News, Dec. 11, 1985. Copy supplied.

Hoopsters Head West, Yale Daily News, Dec. 6, 1985. Copy supplied.

Yale Nets Two of Three, Yale Daily News, Dec. 3, 1985. Copy supplied.

Men's Basketball Shoots for Ivy Championship, Yale Daily News, Nov. 21, 1985. Copy supplied.

Ivy Basketball Predictions, Yale Daily News, Nov. 21, 1985. Copy supplied.

PBS Brings 'Carmen,' Cozza to Living Room, Yale Daily News, Oct. 30, 1985. Copy supplied.

Ivy League Roundup, Yale Daily News, Oct. 28, 1985. Copy supplied.

TV Moves Game to 1 p.m., Yale Daily News, Oct. 25, 1985. Copy supplied.

TenBrink Vital to Elis' Success, Yale Daily News, Sept. 18, 1985. Copy supplied.

Crimson Defeats Eli Freshmen 14-7, Yale Daily News, Nov. 19, 1983. Copy supplied.

Unbeaten Freshman Team Is a Good Sign for Cozza, Yale Daily News, Oct. 25, 1983. Copy supplied.

I provided assistance in the preparation of the following book:

Ken Starr, *First Among Equals* (2002). Copy supplied.

b. Supply four (4) copies of any reports, memoranda, policy statements, minutes, agendas, legal filings, or other materials you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member or in which you have participated as defined in 11(a). Include reports, memoranda, policy statements, or legal filings of any advisory board on which you served or working group of any bar association, committee, or conference which produced a report, memorandum, policy statement, or legal filing even where you did not contribute to it. If you do not have a copy of a report, memorandum, policy statement, or legal filing, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

To my recollection and through searches of my records and publicly available databases by persons acting on my behalf, I have found the following responsive materials.

Advisory Committee on Appellate Rules, *Report of Advisory Committee on Appellate Rules*, May 22, 2018. Copy supplied.

Advisory Committee on Appellate Rules, *Report of Advisory Committee on Appellate Rules*, Dec. 6, 2017. Copy supplied.

United States Court of Appeals for the District of Columbia Circuit, Advisory Committee on Procedures, *Minutes of December 2017 Meeting* (Dec. 5 – 6, 2017) (statements made as member of Committee). Copy supplied.

Advisory Committee on Appellate Rules, *Draft Minutes of Fall 2017 Meeting* (Nov. 8, 2017) (statements made as member of Committee). Copy supplied.

Advisory Committee on Appellate Rules, *Addendum to the Report of Advisory Committee on Appellate Rules*, June 11, 2017. Copy supplied.

Advisory Committee on Appellate Rules, *Report of Advisory Committee on Appellate Rules*, May 22, 2017. Copy supplied.

Advisory Committee on Appellate Rules, *Minutes of Spring 2017 Meeting* (May 2, 2017)

(statements made as member of Committee). Copy supplied.

Advisory Committee on Appellate Rules, *Report of Advisory Committee on Appellate Rules*, Dec. 7, 2016. Copy supplied.

Advisory Committee on Appellate Rules, *Minutes of Fall 2016 Meeting* (Oct. 18, 2016) (statements made as member of Committee). Copy supplied.

Advisory Committee on Appellate Rules, *Report of Advisory Committee on Appellate Rules*, May 18, 2016. Copy supplied.

Advisory Committee on Appellate Rules, *Minutes of Spring 2016 Meeting* (Apr. 5, 2016) (statements made as member of Committee). Copy supplied.

American Law Institute, *Principles of the Law, Election Administration: Non-Precinct Voting and Resolution of Ballot-Counting Disputes (Tentative Draft No. 1)*, Apr. 15, 2016. Copy supplied. I did not contribute to, or participate in the drafting of, this document.

American Law Institute, *Principles of the Law, Election Administration: Non-Precinct Voting and Resolution of Ballot-Counting Disputes (Council Draft No. 2)*, Dec. 16, 2015. Copy supplied. I did not contribute to, or participate in the drafting of, this document.

Advisory Committee on Appellate Rules, *Report of Advisory Committee on Appellate Rules*, Dec. 14, 2015. Copy supplied.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials, including during your time in the Office of the Independent Counsel.

To my recollection and through searches of my records and publicly available databases by persons acting on my behalf, I have found the following responsive materials.

On July 9, 2009, I participated in a public hearing of the United States Sentencing Commission on a panel entitled, "View from the Appellate Bench." Transcript supplied.

On April 27, 2004, and May 9, 2006, I testified before the Senate Judiciary Committee in confirmation hearings to be a circuit judge. I also received Questions for the Record and provided responses. Copies of my Questionnaire for Judicial Nominees, testimony, and responses to Questions for the Record are supplied. A video of the 2006 hearing is available at: <https://www.c-span.org/video/?192420-1/brett-kavanaugh-testifies-dc-circuit-confirmation-hearing-2006>. A video of the 2004 hearing is available at: <https://www.c-span.org/video/?181538-1/judicial-nominations>.

Statement of Independent Counsel Kenneth W. Starr Before the Committee on the Judiciary, U.S. House of Representatives, Nov. 19, 1998. Copy supplied. I, along with others, assisted in the preparation of the Independent Counsel's prepared statement to the House Judiciary Committee in its impeachment proceedings.

Referral from Independent Counsel Kenneth W. Starr in Conformity with the Requirements of Title 28, United States Code, Section 595(c) (Sept. 11, 1998). Copy supplied. I, along with others, assisted in the preparation of the grounds section of the Independent Counsel's report setting forth possible grounds for impeachment.

Report on the Death of Vincent W. Foster, Jr. by the Office of Independent Counsel, *In re Madison Guar. Sav. & Loan Ass'n* (D.C. Cir.) (filed July 15, 1997; leave to publish granted Oct. 10, 1997). Copy supplied.

On July 14, 1995, I participated in a deposition as counsel to Independent Counsel Kenneth Starr. A transcript of this deposition was later published by the Senate Committee on Banking, Housing, and Urban Affairs' Special Committee to Investigate Whitewater Development Corporation and Related Matters. Copy supplied.

d. Supply four (4) copies, transcripts or event-sponsored recordings of all speeches or talks delivered by you including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, symposia, panels, continuing legal education events, and question-and-answer sessions. Include the date and place where they were delivered, and readily available non-duplicative press reports about the speech or talk. If you do not have a copy of the speech or a transcript, or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

To my recollection and through a review of my calendars and searches of publicly available databases by persons acting on my behalf, I have found the following responsive materials.

July 9, 2018: Speaker, Introduction as Nominee to the United States Supreme Court, The White House, Washington, D.C. Video available at:
<https://www.youtube.com/watch?v=a4-4vRixwIo>.

May 25, 2018: Speaker, "Commencement Address," Catholic University of America, Columbus School of Law, Washington, D.C. Video available at:
<https://www.youtube.com/watch?v=sggWPCe-Ugk>. Press reports supplied.

May 11, 2018: Speaker, Georgetown Prep Alumni Breakfast. I reflected on my education and how it has affected me. I have no notes, transcript, or recording. The address of Georgetown Preparatory School is 10900 Rockville Pike, North Bethesda, Maryland 20852.

April 26, 2018: Moot Court Judge, Sixth Annual National Virtual Supreme Court Competition for high school students, the Constitutional Sources Project and the Harlan Institute, Georgetown University Law Center, Washington, D.C. I have no notes, transcript, or recording. The address of the Constitutional Sources Project and the Harlan Institute is 9100 Westheimer Road, Apartment 226, Houston, Texas 77063. Press report supplied.

April 20, 2018: Speaker, Yale Law School Black Law Students Association, Yale Law School, New Haven, Connecticut. I spoke about clerkships and provided advice for aspiring clerks. I have no notes, transcript, or recording. The address of Yale Law School is 127 Wall Street, New Haven, Connecticut 06511.

April 19, 2018: Speaker, “Welcome Dinner with Judge Kavanaugh,” Yale Law School Federalist Society Student Chapter, New Haven, Connecticut. I have no notes, transcript, or recording. The address of Yale Law School is 127 Wall Street, New Haven, Connecticut 06511.

April 12, 2018: Speaker, “Swearing-In Ceremony for U.S. Attorney John Bash,” Austin, Texas. Notes and press report supplied.

April 11, 2018: Speaker, University of Texas School of Law, Austin, Texas. I spoke together with Professors Chesney and Vladeck about issues of national security law. I have no notes, transcript, or recording. The address of the University of Texas School of Law is 727 East Dean Keeton Street, Austin, Texas 78705.

March 27, 2018: Speaker, Harvard Law School Black Law Students Association, Cambridge, Massachusetts. I spoke about clerkships and provided advice for aspiring clerks. I have no notes, transcript, or recording. The address of the Harvard Law School Black Law Students Association is 1563 Massachusetts Avenue, Cambridge, Massachusetts 02138.

March 27, 2018: Panelist, “The Craft of Judicial Opinion Writing: A Conversation with Judge Kavanaugh, Judge Watford, and Chief Judge Saris,” Harvard Law Review, Cambridge, Massachusetts. I have no notes, transcript, or recording. The address of Harvard Law Review is 1511 Massachusetts Avenue, Cambridge, Massachusetts 02138.

February 23, 2018: Speaker, “A Judge’s Role: A Conversation with Judge Brett Kavanaugh and Professor William Kelley,” Notre Dame Law School Federalist Society Student Chapter, South Bend, Indiana. Notes supplied.

December 7, 2017: I spoke to high school students from Hawken School in the U.S. Courthouse, Washington, D.C., as part of their course, “Pursuing Justice.” I discussed my role as a judge. I have no notes, transcript, or recording. The address of the Hawken School is 5000 Clubside Road, Lyndhurst, Ohio 44124.

November 16, 2017: Speaker, Yale Law School Alumni Luncheon, Federalist Society

2017 National Lawyers Convention, Washington, D.C. I reflected on my time at Yale and discussed my service as a judge. I have no notes, transcript, or recording. The address of the Yale Law School Federalist Society Student Chapter is 127 Wall Street, New Haven, Connecticut 06511.

November 16, 2017: Moderator, “The Future of Antitrust: Is the Consumer Welfare Standard Still Up to the Task or Is It Time for a ‘Better Deal’?,” Federalist Society 2017 National Lawyers Convention, Washington, D.C. Video available at: <https://www.youtube.com/watch?v=DLqzv6-xX2Y>.

November 6, 2017: Speaker, “The Judge as Umpire,” William & Mary Law School Supreme Court Seminar, Washington, D.C. I spoke on judging and answered questions from students. I have no notes, transcript, or recording. The address of the William & Mary Law School is 613 South Henry Street, Williamsburg, Virginia 23185. Press report supplied.

November 2, 2017: Panelist, “The Judicial Perspective,” the Georgetown Law Journal, Symposium: The Law of Nations and the United States Constitution, Washington, D.C. I participated in a panel discussion of Anthony Bellia and Bradford Clark’s book, *The Law of Nations and the United States Constitution*. I have no notes, transcript, or recording. The address of the Georgetown University Law Center is 600 New Jersey Avenue, N.W., Washington, D.C. 20001. Press report supplied.

October 27, 2017: Panelist, “A Conversation with Federal Judges about Federal Courts,” Harvard Law School Bicentennial, Cambridge, Massachusetts. Video available at: <https://www.youtube.com/watch?v=xkT9NeT6s3A>.

October 25, 2017: Speaker, “The Judiciary’s Role in Maintaining the Separation of Powers,” Joseph Story Distinguished Lecture, Heritage Foundation, Washington, D.C. Video available at: https://www.youtube.com/watch?v=s_rR6518w3I. Press report supplied.

October 13, 2017: Guest Lecturer, Judicial Decisionmaking Class, New York University School of Law, New York, New York. I spoke about the process of preparing judicial opinions. I have no notes, transcript, or recording. The address of New York University School of Law is 40 Washington Square South, New York, New York 10012.

September 18, 2017: Speaker, “The Constitutional Statesmanship of Chief Justice William Rehnquist,” Walter Berns Constitution Day Lecture, American Enterprise Institute, Washington, D.C. Video available at: <http://www.aei.org/events/2017-walter-berns-annual-constitution-day-lecture/>. A published version of this speech is provided in response to Question 12.a.

September 15, 2017: Panelist, “Lessons Learned from the FISC and the Guantanamo Habeas Litigation,” University of Texas School of Law Courts at War Conference. I have no notes, transcript, or recording. The address of the University of Texas School of

Law is 727 East Dean Keeton Street, Austin, Texas 78705.

September 13, 2017: Speaker, “A Conversation with Dean Jennifer Collins,” Southern Methodist University Dedman School of Law. I answered questions about a wide range of issues related to my service as a judge. I have no notes, transcript, or recording. The address of the Southern Methodist University Dedman School of Law is 3315 Daniel Avenue, Dallas, Texas 75205.

July 6 – 12, 2017: Moderator, “Justice & Society Program Summer Seminar,” the Aspen Institute. I have no notes, transcript, or recording. Together with Professor Robert Post, I served as a moderator for a week-long series of discussions where participants debated a variety of topics related to legal issues and philosophy. The address of the Aspen Institute is 2300 N Street, N.W., Suite 700, Washington, D.C. 20037.

June 26, 2017: I spoke to students in my chambers about the U.S. Constitution and the role of judges. The event was organized by the U.S.–Asia Institute. I have no notes, transcript, or recording. The address of the U.S.–Asia Institute is 232 East Capitol Street, N.E., Washington D.C. 20003. Press report supplied.

May 27, 2017: Panelist, “The First Amendment,” Yale College Alumni Weekend, New Haven, Connecticut. I have no notes, transcript, or recording. The address of Yale College is 344 College Street, New Haven, Connecticut 06511.

April 21, 2017: Speaker, Yale Law School Black Law Students Association, New Haven, Connecticut. I spoke about clerkships and provided advice for aspiring clerks. I have no notes, transcript, or recording. The address of the Yale Law School Black Law Students Association is 127 Wall Street, New Haven, Connecticut 06511.

April 20, 2017: Speaker, Yale Law School Federalist Society Student Chapter, New Haven, Connecticut. I reflected on my time at Yale and discussed my service as a judge. I have no notes, transcript, or recording. The address of the Yale Law School Federalist Society Student Chapter is 127 Wall Street, New Haven, Connecticut 06511. Press report supplied.

April 3, 2017: Speaker, “A Conversation with Judge Brett Kavanaugh on the Separation of Powers and the Role of the Article III Judge,” Harvard Law School Federalist Society Student Chapter. I have no notes, transcript, or recording. The address of the Harvard Law School Federalist Society Student Chapter is 1563 Massachusetts Avenue, Cambridge, Massachusetts 02138.

February 3, 2017: Speaker, Notre Dame Law Review Federal Courts Symposium, Notre Dame Law School. A published version of this speech is provided in response to Question 12.a.

December 12, 2016: Participant, “Romeo and Juliet Wrongful Death Mock Trial,” Shakespeare Theatre Company, Washington, D.C. Video available at: <https://www.c->

span.org/video/?419930-1/federal-judges-discuss-romeo-juliet. Press report supplied.

December 7, 2016: Speaker, Swearing-In of Justice Britt Grant, Georgia Supreme Court, Atlanta, Georgia. Notes supplied.

December 4, 2016: Speaker, Georgetown Visitation School Father-Daughter Mass and Brunch, Washington, D.C. Notes supplied.

November 14, 2016: Panelist, “National Security and Government Service: Perspectives from the D.C. Circuit, the Executive Branch, and the Academy – A Conversation with Judge Brett Kavanaugh (D.C. Cir.), Caroline Krass (General Counsel of the CIA), and Prof. Jack Goldsmith,” Yale Law School Federalist Society Student Chapter, New Haven, Connecticut. I have no notes, transcript, or recording. The address of the Yale Law School Federalist Society Student Chapter is 127 Wall Street, New Haven, Connecticut 06511.

November 3, 2016: Speaker, Former Law Clerks Reception, Historical Society of the District of Columbia Circuit, Washington, D.C. Notes and press report supplied.

October 4, 2016, Speaker, “Constitutional Exceptions,” Eighth Annual Justice Anthony Kennedy Lecture Series, Lewis & Clark Law School, Portland, Oregon. My remarks were substantially similar to my speech at Notre Dame Law School on February 3, 2017, for which a published version is supplied.

September 20, 2016: Panelists, “Barbarians at the Gate, Part 2: The Attack on Professionalism,” International Bar Association Annual Conference. I have no notes, transcript, or recording. The address of the International Bar Association’s North American office address is 1667 K Street, N.W., Suite 1230, Washington, D.C. 20006.

September 14, 2016: Speaker, “Reception at the Top of the Town,” John Carroll Society, Arlington, Virginia. I spoke about my faith and my career. I have no notes, transcript, or recording. The address of the John Carroll Society is Post Office Box 454, Glen Echo, Maryland 20812. Press report supplied.

June 2, 2016: Speaker, “Remembering Justice Scalia,” George Mason University Antonin Scalia Law School, Arlington, Virginia. Video available at: https://vimeo.com/169758593?utm_source=email&utm_medium=vimeo-cliptranscode-201504&utm_campaign=28749. Press reports supplied.

May 25, 2016: Speaker, Federalist Society D.C. Lawyers Chapter. I spoke about my role as a judge, the D.C. Circuit, and my experiences in the Bush White House. I have no notes, transcript, or recording. The address of the Federalist Society is 1776 I Street N.W., Washington, D.C. 20006.

April 13, 2016: Speaker, “On the Issues with Mike Gousha, Judge Brett Kavanaugh & Ted Ulyot,” Marquette University Law School, Milwaukee, Wisconsin. Video available

at: <https://www.youtube.com/watch?v=dJMM1WrRwQw>. Press report supplied.

April 13, 2016: Judge, Moot Court Competition, Marquette University Law School, Milwaukee, Wisconsin. Video available at: <https://law-media.marquette.edu/Mediasite/Play/3845ecbb83c24188bac70238027731e91d>. Press report supplied.

April 1, 2016: Moderator, “Presidential Power in an Era of Polarized Politics,” Harvard Law School, Cambridge, Massachusetts. Audio available at: https://www.youtube.com/watch?v=-sAzs_uAi9Q.

March 31, 2016: Participant, “Federal Courts & Public Policy,” American Enterprise Institute, Washington, D.C. Video available at: https://www.youtube.com/watch?time_continue=1&v=GCtR0OyHiK8. Press reports supplied.

March 2, 2016: Guest Teacher, Public Law Workshop Class, Harvard Law School, Cambridge, Massachusetts. I spoke about my law review article on statutory interpretation referred to in Question 12.a.

February 23, 2016: Speaker, Georgetown University Law Center, Washington, D.C. I spoke to Viet Dinh and Paul Clement’s class about the separation of powers. I have no notes, transcript, or recording. The address of the Georgetown University Law Center is 600 New Jersey Avenue, N.W., Washington, D.C. 20001.

January 21, 2016: Moot Court Judge, 2016 Van Vleck Constitutional Law Moot Court Competition, George Washington University Law School, Washington, D.C. I have no notes, transcript, or recording. A video in which I discuss the competition is available at: <https://www.youtube.com/watch?v=gpgKlogLO8w>. Press report supplied.

November 17, 2015: Speaker, Harvard Law School Federalist Society Student Chapter, Cambridge, Massachusetts. I spoke about my service as a judge. I have no notes, transcript, or recording. The address of the Harvard Law School Federalist Society Student Chapter is 1563 Massachusetts Avenue, Cambridge, Massachusetts 02138.

November 16, 2015: Speaker, 2015 Law Clerk Reception, the Historical Society of the District of Columbia Circuit. I spoke about the various activities of the Historical Society. I have no notes, transcript, or recording. The address of the Historical Society of the District of Columbia Circuit is E. Barrett Prettyman United States Courthouse, 333 Constitution Avenue, N.W., Room 4714, Washington, D.C. 20001. Press report supplied.

November 14, 2015: Panelist, “Life on the Bench,” Federalist Society 2015 National Lawyers Convention, Washington, D.C. Video available at: <https://www.youtube.com/watch?v=rW9V4IIOTX0>.

November 12, 2015: Moderator, “Federalism: Deference Meets Delegation: Which is the Most Dangerous Branch?,” Federalist Society 2015 National Lawyers Convention, Washington, D.C. Video available at: <https://www.youtube.com/watch?v=Ae3etb8ieKM>.

October 22, 2015: Speaker, “Judge Kavanaugh & Jane Ostrager ’16: A Conversation About the D.C. Circuit,” Yale Law School Federalist Society Student Chapter, New Haven, Connecticut. I discussed a wide range of legal issues related to my service on the D.C. Circuit. I have no notes, transcript, or recording. The address of the Yale Law School Federalist Society Student Chapter is 127 Wall Street, New Haven, Connecticut 06511.

October 6, 2015: Speaker, “Separation of Powers,” Harvard Law School Federalist Society Student Chapter, Cambridge, Massachusetts. I spoke about the division of the legislative, executive, and judicial functions. I have no notes, transcript, or recording. The address of the Harvard Law School Federalist Society Student Chapter is 1563 Massachusetts Avenue, Cambridge, Massachusetts 02138.

July 16, 2015: Speaker, “A Conversation with Judge Bill Pryor and Judge Brett Kavanaugh,” Federalist Society D.C. Young Lawyers Chapter, Washington, D.C. I participated in a discussion of a wide range of issues related to my service as a judge. I have no notes, transcript, or recording. The address of the Federalist Society is 1776 I Street, N.W., Washington, D.C. 20006. Press report supplied.

June 24, 2015: Panelist, “The Constitutional Convention of 1787,” D.C. Circuit Judicial Conference, Philadelphia, Pennsylvania. I have no notes, transcript, or recording. The address of the D.C. Circuit is E. Barrett Prettyman U.S. Courthouse and William B. Bryant Annex, 333 Constitution Avenue, N.W., Washington, D.C. 20001.

April 7, 2015: Speaker, Yale Law School Black Law Students Association, New Haven, Connecticut. I spoke about clerkships and provided advice for aspiring clerks. I have no notes, transcript, or recording. The address of Yale Law School is 127 Wall Street, New Haven, Connecticut 06511.

April 7, 2015: Speaker, “Judging on the D.C. Circuit: A Conversation with Judges Kavanaugh and Srinivasan,” Yale Law School Federalist Society Student Chapter and the Yale American Constitution Society, New Haven, Connecticut. I participated in a discussion of legal issues related to, and practice before, the D.C. Circuit. I have no notes, transcript, or recording. The address of the Yale Law School Federalist Society Student Chapter and the Yale American Constitution Society is 127 Wall Street, New Haven, Connecticut 06511.

April 6, 2015: Moot Court Judge, Orison S. Marden Moot Court Board Competition, New York University School of Law, New York, New York. I have no notes, transcript, or recording. The address of New York University School of Law is 40 Washington Square South, New York, New York 10012. Press report supplied.

March 30, 2015: Speaker, “The Judge as Umpire,” Pope John XXIII Lecture Series, the Catholic University of America, Columbus School of Law. Video available at: https://www.youtube.com/watch?list=PL_aRAkHbV7Gv8S87bQgQaIwdtLVFFYdbF&v=SXXKX_whwVzs. A published version of this speech is provided in response to Question 12.a. Press report supplied.

March 3, 2015: Speaker, E. Harold Hallows Lecture, “Separation of Powers Controversies in the Bush and Obama Administrations: A View from the Trenches,” Marquette University Law School, Milwaukee, Wisconsin. Video available at: <https://law-media.marquette.edu/Mediasite/Play/9a65034002ad4003b9c00cec7dd2e9171d>. Press report supplied. A published version of this speech is provided in response to Question 12.a.

January 20, 2015: Speaker, Harvard Law School, Cambridge, Massachusetts. I spoke to Thomas Goldstein’s class about the D.C. Circuit and the Supreme Court. I have no notes, transcript, or recording. The address of Harvard Law School is 1563 Massachusetts Avenue, Cambridge, Massachusetts 02138.

November 24, 2014: Participant, “Trial of Lysistrata,” Shakespeare Theatre Company, Washington, D.C. I have no notes, transcript, or recording. The address of the Shakespeare Theatre Company is 610 F Street, N.W., Washington, D.C. 20004. Press report supplied.

November 18, 2014: Speaker, Harvard Law School Federalist Society Student Chapter, Cambridge, Massachusetts. I spoke about my service as a judge and the separation of powers. I have no notes, transcript, or recording. The address of the Harvard Law School Federalist Society Student Chapter is 1563 Massachusetts Avenue, Cambridge, Massachusetts 02138.

November 6, 2014: Panelist, American Bar Association 24th Annual Review of the Field of National Security Law CLE Conference, Washington, D.C. Audio available at: [http://www.americanbar.org/content/dam/aba/multimedia/law_national_security/24thannualreview/podcasts/Day1/Panel2\(Day1\)-final.mp3](http://www.americanbar.org/content/dam/aba/multimedia/law_national_security/24thannualreview/podcasts/Day1/Panel2(Day1)-final.mp3). Press report supplied.

April 23, 2014: Speaker, Yale Law School Federalist Society Banquet, New Haven, Connecticut. Notes supplied.

April 15, 2014: Speaker, American University Washington College of Law, Washington, D.C. I guest taught Professor Vladeck’s class and discussed issues of national security law and the federal courts. I have no notes, transcript, or recording. The address of American University Washington College of Law is 4300 Nebraska Avenue, N.W., Washington, D.C. 20016.

April 10, 2014: Panelist, “The Approach of Courts to Foreign Affairs and National

Security,” American Society of International Law, Washington, D.C. I have no notes, transcript, or recording. The address of the American Society of International Law is 2223 Massachusetts Avenue, N.W., Washington, D.C. 20008. Press report supplied.

March 28, 2014: Panelist, “The Law of Nations as Constitutional Law,” Virginia Law Review Centennial Symposium, Charlottesville, Virginia. Video available at: https://www.youtube.com/watch?v=2gBMB_E05LM.

March 13, 2014: Speaker, “Judging on the D.C. Circuit,” George Washington Federalist Society Student Chapter, Washington, D.C. I have no notes, transcript, or recording. The address of the George Washington University Law School is 2000 H Street, N.W., Washington, D.C. 20052. Press report supplied.

March 7, 2014: Speaker, “Judicial Wisdom,” Sidley Austin Supreme Court Clinic, Northwestern University Pritzker School of Law. I spoke about judging. I have no notes, transcript, or recording. The address of the Northwestern University Pritzker School of Law is 375 East Chicago Avenue, Chicago, Illinois 60611. Press report supplied.

March 5, 2014: Panelist, “Sub-Regulating Elections,” University of Chicago Law School, Visiting Judges Sidebar Series. I have no notes, transcript, or recording. The address of the University of Chicago Law School is 1111 East 60th Street, Chicago, Illinois 60637.

February 24, 2014: Panelist, “Lunch with Judges, Picking/Using Clerks,” Duke University School of Law, Durham, North Carolina. I spoke about how I select and use law clerks. I have no notes, transcript, or recording. The address of the Duke University School of Law is 210 Science Drive, Durham, North Carolina 27708.

February 24, 2014: Judge, “Dean’s Cup Moot Court Competition,” Duke University School of Law, Durham, North Carolina. I have no notes, transcript, or recording. The address of the Duke University School of Law is 210 Science Drive, Durham, North Carolina 27708.

February 7, 2014: Moot Court Judge, Kirkwood Moot Court Competition Finals, Stanford Law School, Stanford, California. I have no notes, transcript, or recording. The address of Stanford Law School is 559 Nathan Abbott Way, Stanford, California 94305.

February 7, 2014: Panelist, “A Conversation with the Kirkwood Moot Court Finals Judges,” Stanford Law School, Stanford, California. I along with other judges discussed our paths to the bench, the judicial nomination and appointments process, and advice to future law clerks. I have no notes, transcript, or recording. The address of Stanford Law School is 559 Nathan Abbott Way, Stanford, California 94305.

January 31, 2014: Panelist, “Life on the D.C. Circuit – A Conversation with Judge Tatel and Judge Kavanaugh,” Harvard Law School Federalist Society Student Chapter and the Harvard Law School American Constitution Society Chapter, Cambridge, Massachusetts. I spoke about judging, offered general career advice, and answered questions. I have no

notes, transcript, or recording. The address of Harvard Law School is 1563 Massachusetts Avenue, Cambridge, Massachusetts 02138. Press report supplied.

January 30, 2014: Speaker, “A Clerkship Conversation with D.C. Circuit Judge Kavanaugh,” Harvard Law School. I spoke about clerking, its value, and the application process. I have no notes, transcript, or recording. The address of Harvard Law School is 1563 Massachusetts Avenue, Cambridge, Massachusetts 02138.

January 30, 2014: Speaker, Yale Law School Black Law Students Association, New Haven, Connecticut. I spoke about clerkships and provided advice for aspiring clerks. I have no notes, transcript, or recording. The address of Yale Law School is 127 Wall Street, New Haven, Connecticut 06511.

November 19, 2013: Speaker, New York University School of Law. I spoke to a class about issues of national security law. I have no notes, transcript, or recording. The address of New York University School of Law is 40 Washington Square South, New York, New York 10012.

November 18, 2013: Panelist, “The Role of the Courts in Intelligence and National Security,” The Center on Law and Security, New York University School of Law, New York, New York. Video available at: https://www.youtube.com/watch?v=xX6T41_r3ss. Press report supplied.

November 14, 2013: Panelist, “The FCC vs. the First Amendment,” Federalist Society 2013 National Lawyers Convention, Washington, D.C. Video available at: <https://www.youtube.com/watch?v=O10fo9dDS0w>.

November 1, 2013: Speaker, “Our Anchor for 225 Years and Counting: The Enduring Significance of the Precise Text of the Constitution,” 2013 Notre Dame Law Review Symposium, Notre Dame Law School, South Bend, Indiana. A published version of this speech is provided in response to Question 12.a. Press reports supplied.

November 1, 2013: Speaker, Notre Dame Law School Federalist Society Student Chapter, Notre Dame Law School. I spoke about my role as a judge. I have no notes, transcript, or recording. The address of the Notre Dame Law School Federalist Society Student Chapter is 110 Eck Hall of Law, Notre Dame, Indiana 46556.

October 29, 2013: Speaker, Yale Law School, New Haven, Connecticut. I spoke to Professor Cristina Rodriguez’s class. I have no notes, transcript, or recording. The address of Yale Law School is 127 Wall Street, New Haven, Connecticut 06511.

October 29, 2013: Speaker, Yale Law School Black Law Students Association, New Haven, Connecticut. I spoke about clerkships and provided advice for aspiring clerks. I have no notes, transcript, or recording. The address of Yale Law School is 127 Wall Street, New Haven, Connecticut 06511.

October 28, 2013: Speaker, Yale Law School, New Haven, Connecticut. I spoke about the intersection of national security and the law. I have no notes, transcript, or recording. The address of Yale Law School is 127 Wall Street, New Haven, Connecticut 06511.

October 1, 2013: Speaker, "The Courts and the Administrative State," 2013 Sumner Canary Lecture, Case Western Reserve University School of Law, Cleveland, Ohio. Video available at <https://www.youtube.com/watch?v=mJRwdcRE7fg>. A published version of this speech is provided in response to Question 12.a.

July 25, 2013: Speaker, Summer Reception with Judge Brett Kavanaugh, Federalist Society D.C. Young Lawyers Chapter, Washington, D.C. I offered general career advice and answered questions. I have no notes, transcript, or recording. The address of the Federalist Society is 1776 I Street, N.W., Suite 300, Washington, D.C. 20006. Press report supplied.

July 15, 2013: Speaker, "The Decisional Process," New Appellate Judges Seminar, New York University School of Law, New York, New York. I have no notes, transcript, or recording. The address of New York University School of Law is 40 Washington Square South, New York, New York 10012.

May 20, 2013: Speaker, Opening Session of the 90th Annual Meeting of the American Law Institute, Washington, D.C. Video available at: <https://www.youtube.com/watch?v=kR8SXsmeXIU>. A published version of this speech is provided in response to Question 12.a.

May 13, 2013: Participant, "Coriolanus Mock Trial," Shakespeare Theatre Company, Washington, D.C. I have no notes, transcript, or recording. The address of the Shakespeare Theatre Company is 610 F Street, N.W., Washington, D.C. 20004. Press report supplied.

April 5, 2013: Speaker, George Washington University Law School, Washington, D.C. I spoke to Professor Bradford Clark's class about the D.C. Circuit. I have no notes, transcript, or recording. The address of George Washington University Law School is 2000 H Street, N.W., Washington, D.C. 20052.

March 20, 2013: Speaker, Appellate Law Panel, Practising Law Institute, New York, New York. I spoke on an appellate law panel to attorneys. I have no notes, transcript, or recording. The address of the Practising Law Institute is 1177 Avenue of the Americas, New York, New York 10036.

November 29, 2012: Panelist, "Role of the Courts in National Security Law: Past, Present and Future," American Bar Association 22nd Annual Review of the Field of National Security Law, Washington, D.C. Audio available at: https://www.americanbar.org/content/dam/aba/multimedia/law_national_security/22ndAnnualReview/panel_1.authcheckdam.mp3.

November 17, 2012: Panelist, “The Administrative State After the Health Care Cases,” Federalist Society 2012 National Lawyers Convention, Washington, D.C. Video available at <https://www.youtube.com/watch?v=zRImAibJOt8>.

October 26, 2012: Panelist, “D.C. Circuit Judge Panel,” American Bar Association Administrative Law Conference, Washington, D.C. I have no notes, transcript, or recording. The address of the American Bar Association is 1050 Connecticut Avenue, N.W., Suite 400, Washington, D.C. 20036.

July 10, 2012: I spoke to students in my chambers about the U.S. Constitution and the role of judges. The event was organized by the U.S.–Asia Institute. I have no notes, transcript, or recording. The address of the U.S.–Asia Institute is 232 East Capitol Street, N.E., Washington D.C. 20003. Press report previously supplied for June 26, 2017 event.

June 19, 2012: Speaker, the Edward Coke Appellate Inn of Court, Washington, D.C. As President, I offered end of the year remarks. I have no notes, transcript, or recording. The address of the American Inns of Court is 225 Reinekers Lane, Suite 770, Alexandria, Virginia 22314.

May 26, 2012: Panelist, Yale College Alumni Weekend, New Haven, Connecticut. I spoke about my service as a judge. I have no notes, transcript, or recording. The address of Yale College is 344 College Street, New Haven, Connecticut 06511.

May 10, 2012: Panelist, “Administrative Law & Regulatory Practice, Arguing and Deciding Administrative Law Cases in the D.C. Circuit,” American Bar Association, Administrative Law and Regulatory Practice Institute. I have no notes, transcript, or recording. I spoke about administrative law cases, procedures, and outcomes. The American Bar Association’s address is 1050 Connecticut Avenue, N.W., Suite 400, Washington, D.C. 20036.

April 30, 2012: Participant, “Much Ado About Nothing Mock Trial,” Shakespeare Theatre Company, Washington, D.C. I have no notes, transcript, or recording. The address of the Shakespeare Theatre Company is 610 F Street, N.W., Washington, D.C. 20004. Press reports supplied.

April 24, 2014: Speaker, Yale Law School Black Law Students Association, New Haven, Connecticut. I spoke about clerkships and provided advice for aspiring clerks. I have no notes, transcript, or recording. The address of Yale Law School is 127 Wall Street, New Haven, Connecticut 06511.

April 24, 2012: Moot Court Judge, Thurman Arnold Prize Finals, Yale Law School, New Haven, Connecticut. Video available at: <https://vimeo.com/43395106>. Press report supplied.

April 20, 2012: Panelist, “Effective Appellate Advocacy: Views from the Bar and Bench,” the Edward Coke Appellate Inn of Court, Dwight D. Opperman Institute of

Judicial Administration at NYU School of Law, and the American Academy of Appellate Lawyers, Washington, D.C. I participated in two panels and discussed effective written and oral advocacy. I have no notes, transcript, or recording. The address of the American Inns of Court is 225 Reinekers Lane, Suite 770, Alexandria, Virginia 22314.

April 17, 2012: Speaker, Medical Group, Chevy Chase, Maryland. I spoke to a dinner group of doctor friends regarding my service as a judge. I have no notes, transcript, or recording. The address of the Chevy Chase Club is 6100 Connecticut Avenue, Chevy Chase, Maryland 20815.

March 28, 2012: Speaker, Georgetown University Law Center, Washington, D.C. I spoke to Paul Clement and Viet Dinh's class about the separation of powers. I have no notes, transcript, or recording. The address of the Georgetown University Law Center is 600 New Jersey Avenue, N.W., Washington, D.C. 20001.

March 2, 2012: Panelist, "The Rule of Law and the Administrative State," Federalist Society 2012 Annual Student Symposium, Stanford, California. Video available at: <https://www.youtube.com/watch?v=t3njQn0ls9c>.

February 29, 2012: Speaker, Federalist Society Berkeley Student Chapter, U.C. Berkeley School of Law, Berkeley, California. I spoke about judging on the D.C. Circuit. I have no notes, transcript, or recording. The address of the Federalist Society Berkeley Student Chapter is University of California, Berkeley School of Law, Boalt Hall, 225 Bancroft Way, Berkeley, California 94720.

February 21, 2012: Moderator, "The Upside-Down Constitution," American Enterprise Institute, Washington, D.C. Video available at: https://www.youtube.com/watch?time_continue=3&v=5YQdjQv5sK8. Press report supplied.

February 1, 2012: Speaker, "Separation of Powers in the Bush & Obama Administrations," Federalist Society Student Chapter, University of Kansas School of Law. Notes supplied.

January 24, 2012: Moderator, "Litigation Issues Arising From the War on Terror 10 Years Since September 11," the Edward Coke Appellate Inn of Court, Washington, D.C. I have no notes, transcript, or recording. The address of the American Inns of Court is 225 Reinekers Lane, Suite 770, Alexandria, Virginia 22314.

January 17, 2012: Speaker, Harvard Law School Federalist Society Student Chapter, Cambridge, Massachusetts. Professor Jack Goldsmith and I spoke about a wide range of legal issues. I have no notes, transcript, or recording. The address of the Harvard Law School Federalist Society Student Chapter is 1563 Massachusetts Avenue, Cambridge, Massachusetts 02138.

January 7, 2012: Speaker, "War, Terror, and the Federal Courts, Ten Years After 9/11,"

Association of American Law Schools 2012 Annual Meeting, Washington, D.C.
Transcript and press report supplied.

November 18, 2011: Panelist, “Administrative Law Goes to War,” American Bar Association Administrative Law Conference, Washington, D.C. Recording supplied.

November 11, 2011: Panelist, “Judicial Decision-Making,” American Bar Association Appellate Judges Education Institute 2011 Summit, Washington, D.C. Video available at: <https://www.c-span.org/video/?302639-1/judicial-decision-making>. Press report supplied.

November 11, 2011: Moderator, “Attorneys Fees in Class Actions,” Federalist Society 2011 National Lawyers Convention, Washington, D.C. Video available at: https://www.youtube.com/watch?v=Y7mMVDwJ_AE.

November 4, 2011: Panelist, “A Dialogue with Federal Judges on the Role of History in Interpretation,” George Washington Law Review Conference Commemorating the 100th Anniversary of Farrand’s Records of the Federal Convention, Washington, D.C.
Transcript supplied.

September 16, 2011: Speaker, the Mentor Group Conference, Rome, Italy. I discussed United States Supreme Court jurisprudence related to privacy and data protection. I have no notes, transcript, or recording. The address of the Mentor Group is 160 Commonwealth Avenue, Boston, Massachusetts 02116.

September 8, 2011: Panelist, “Competitive Debate and Oral Advocacy, Film Screening of Fast Talk,” Georgetown University Law Center, Washington, D.C. Videos available at: <https://vimeo.com/31415911>, <https://vimeo.com/31416044>, <https://vimeo.com/31416174>, <https://vimeo.com/31416229>, and <https://vimeo.com/31416520>.

July 16, 2011: Speaker, Federalist Society Student Leadership Conference, Arlington, Virginia. Notes and press report supplied.

May 21, 2011: Speaker, Commencement Address, George Mason University School of Law, Arlington, Virginia. Notes supplied.

May 19, 2011: Panelist, “A View from the Appellate Bench,” United States Sentencing Commission Annual National Seminar on the Federal Sentencing Guidelines, San Diego, California. I have no notes, transcript, or recording. The address of the United States Sentencing Commission is One Columbus Circle, N.E., Suite 2-500, South Lobby, Washington, D.C. 20002.

May 3, 2011: Panelist, “Government Performance Improvement – The First Two Years of the Obama Administration’s Initiative and Perspectives from Prior Administrations,” American Bar Association 7th Annual Administrative Law and Regulatory Practice

Institute. I have no notes, transcript, or recording. The address of the American Bar Association Administrative Law and Regulatory Practice Institute is 1050 Connecticut Avenue, N.W., Suite 400, Washington, D.C. 20036.

April 11, 2011: Participant, "Mock Trial: The Robert Chiltern Affair: An Ideal Husband's Dilemma," the Shakespeare Theatre Company, Washington, D.C. I have no notes, transcript, or recording. The address of the Shakespeare Theatre Company is Sidney Harman Hall, 610 F Street, N.W., Washington, D.C. 20004. Press report supplied.

March 31, 2011: Speaker, "The Courts in Wartime," Yale Law School Federalist Society Student Chapter, New Haven, Connecticut. I spoke about the use of international law in interpreting the Authorization for Use of Military Force. I have no notes, transcript, or recording. The address of the Yale Law School Federalist Society Student Chapter is 127 Wall Street, New Haven, Connecticut 06511.

March 27, 2011: Moot Court Judge, 36th Annual Irving Kaufman Memorial Securities Law Moot Court Competition, Fordham University Law School, New York, New York. I have no notes, transcript, or recording. The address of Fordham University Law School is 150 West 62nd Street, New York, New York 10023. Press report supplied.

March 19, 2011: Speaker, Eleventh Annual William Matthew Byrne, Jr. Judicial Clerkship Institute, Pepperdine University Law School, Malibu, California. I spoke on career choices and lessons learned. I have no notes, transcript, or recording. The address of Pepperdine University Law School is 24255 Pacific Coast Highway, Malibu, California 90263.

March 10, 2011: Moot Court Judge, Eighth Annual Williams Institute Moot Court Competition, UCLA School of Law, Los Angeles, California. I have no notes, transcript, or recording. The address of UCLA School of Law is 385 Charles E. Young Drive East, 1242 Law Building, Los Angeles, California 90095.

March 5, 2011: Panelist, "A Moot Court: Miranda and Public Safety," Peter Jennings Project for Journalists and the Constitution, Philadelphia, Pennsylvania. Video available at: http://library.fora.tv/2011/03/05/A_Moot_Court_Miranda_and_Public_Safety.

February 26, 2011: Panelist, "The Welfare State and American Exceptionalism," Federalist Society 2011 Annual Student Symposium, Charlottesville, Virginia. Video available at: https://www.youtube.com/watch?v=mztl4_WUNvA.

February 21, 2011: Moot Court Judge, Dean's Cup Final Round, Duke University School of Law, Durham, North Carolina. Video available at: https://www.youtube.com/watch?time_continue=1&v=nHQWuOYeVBQ.

November 19, 2010: Panelist, "Free Speech: Anonymity and the First Amendment," Federalist Society 2010 National Lawyers Convention, Washington, D.C. Video available at: <https://www.youtube.com/watch?v=WZkLrVLBdA0>.

November 5, 2010: Panelist, “Can’t We All Just Be Reasonable? Simplifying Judicial Review Doctrine,” American Bar Association 2010 Administrative Law Conference, Washington, D.C. I have no notes, transcript, or recording. The address of the American Bar Association is 1050 Connecticut Avenue, N.W., Suite 400, Washington, D.C. 20036.

October 28, 2010: Speaker, “Franklin Roosevelt’s Legacy and Administrative Law,” D.C. Bar Administrative Law and Agency Practice Section, Washington, D.C. I have no notes, transcript, or recording. The address of the D.C. Bar is 901 4th Street, N.W., Washington, D.C. 20001. Press report supplied.

October 8, 2010: Panelist, Yale Law School Reunion Event, Yale Law School, New Haven, Connecticut. I discussed my service as a judge and my experiences in the Bush White House. I have no notes, transcript, or recording. The address of Yale Law School is 127 Wall Street, New Haven, Connecticut 06511.

June 10, 2010: Panelist, “The Roberts Court and Administrative Law,” D.C. Circuit Judicial Conference, Washington, D.C. I have no notes, transcript, or recording. The address of the D.C. Circuit is E. Barrett Prettyman U.S. Courthouse and William B. Bryant Annex, 333 Constitution Avenue, N.W., Washington, D.C. 20001.

June 1, 2010: Panelist, “Rulemaking and the Courts,” American Bar Association, Sixth Annual Administrative Law and Regulatory Practice Institute. I have no notes, transcript, or recording. The address of the American Bar Association is 1050 Connecticut Avenue, N.W., Suite 400, Washington, D.C. 20036. Press reports supplied.

May 17, 2010: Speaker, Supreme Court Dinner, the Edward Coke Appellate Inn of Court, Washington, D.C. Notes supplied.

April 15, 2010: Speaker, Yale Law Journal Banquet, New Haven, Connecticut. Notes supplied.

April 15, 2010: Speaker, “Roosevelt’s Black Monday at 75: The Tangled Legacies of *Humphrey’s Executor* and *Schechter Poultry*,” Yale Law School Federalist Society Student Chapter, New Haven, Connecticut. I have no notes, transcript, or recording. The address of the Yale Law School Federalist Society Student Chapter is 127 Wall Street, New Haven, Connecticut 06511.

April 14, 2010: Guest Lecturer, Columbia Law School, New York, New York. Professor Gerken and I spoke to Professor Huang’s class about a paper by Professor Gerken addressing federalism. I have no notes, transcript, or recording. The address of Columbia Law School is 435 West 116th Street, New York, New York 10027.

April 13, 2010: Moot Court Judge, Orison S. Marden Moot Court Competition, New York University School of Law, New York, New York. I have no notes, transcript, or recording. The address of New York University School of Law is 40 Washington Square

South, New York, New York 10012.

March 31, 2010: Panelist, "Review of Agency Rules in the D.C. Circuit: Back to the Future," the Historical Society of the District of Columbia Circuit, Washington, D.C. Video available at: <http://dcchs.org/news/agencyrules.html>.

March 23, 2010: Panelist, "The Judge's Perspective: Is the Court Taking the 'Right' Cases?," Yale Law School Conference, New Haven, Connecticut. I have no notes, transcript, or recording. The address of Yale Law School is 127 Wall Street, New Haven, Connecticut 06511.

March 20, 2010: Speaker, Tenth Annual William Matthew Byrne, Jr. Judicial Clerkship Institute, Pepperdine University Law School, Malibu, California. I spoke on career choices and lessons learned. I have no notes, transcript, or recording. The address of Pepperdine University Law School is 24255 Pacific Coast Highway, Malibu, California 90263.

March 16, 2010: Participant, "Judgment at Agincourt," the Shakespeare Theatre Company, Washington, D.C. Video available at: <https://www.c-span.org/video/?292554-1/judgment-agincourt>.

February 27, 2010: Panelist, "A Moot Court: Rationing Health Care," Peter Jennings Project for Journalists and the Constitution, the National Constitution Center, Philadelphia, Pennsylvania. Video available at: <https://www.c-span.org/video/?292300-2/moot-court-rationing-health-care>.

February 12, 2010: Speaker, Evening Honoring Judge Stapleton, Federal Bar Association, Wilmington, Delaware. Notes and press report supplied.

November 13, 2009: Moderator, "Religious Liberties: Religious Liberty and the Limits of Government Power," Federalist Society 2009 National Lawyers Convention, Washington, D.C. Video available at: <https://www.youtube.com/watch?list=PL579DE3ACAF0565EB&v=-kRN.W.YdO3X0>.

October 29, 2009: Speaker, D.C. Bar CLE Appellate Advocacy Program, Washington, D.C. Judge Rogers and I offered our perspectives as judges and provided attendees with advice about appellate advocacy. Notes and press report supplied.

October 22, 2009: Panelist, "Administrative Law," American Bar Association, Washington, D.C. I have no notes, transcript, or recording. The address of the American Bar Association is 1050 Connecticut Avenue, N.W., Suite 400, Washington, D.C. 20036.

October 16, 2009: Panelist, "Environmental Law," Yale Law School Alumni Weekend, New Haven, Connecticut. I have no notes, transcript, or recording. The address of Yale Law School is 127 Wall Street, New Haven, Connecticut 06511.

September 18, 2009: Speaker, the Mentor Group Conference, Berlin, Germany. I discussed significant historical antitrust cases that the D.C. Circuit had decided. I have no notes, transcript, or recording. The address of the Mentor Group is 160 Commonwealth Avenue, Boston, Massachusetts 02116.

June 10, 2009: Panelist, "Effective Appellate Advocacy in Agency Rulemaking and Adjudication Cases: The Judicial Perspective," Fifth Annual Administrative Law and Regulatory Practice Institute. Notes and press reports supplied.

April 6, 2009: Participant, "Mock Trial: Malvolio's Revenge," the Shakespeare Theatre Company, Washington, D.C. I have no notes, transcript, or recording. The address of the Shakespeare Theatre Company is Sidney Harman Hall, 610 F Street, N.W., Washington, D.C. 20004. Press reports supplied.

March 4, 2009: Panelist, National Association of Attorneys General Annual Spring Meeting, Washington, D.C. I participated in a panel discussion about legal issues related to cybercrime, Internet safety, and data security. I have no notes, transcript, or recording. The address of the National Association of Attorneys General is 1850 M Street, N.W., 12th floor, Washington, D.C. 20036

February 28, 2009: Moderator, "Separation of Powers in American Constitutionalism, *Medellin v. Texas*," Federalist Society 2009 Annual Student Symposium, New Haven, Connecticut. I have no notes, transcript, or recording. I moderated a panel on separation of powers. The address of the Yale Law School Federalist Society Student Chapter is 127 Wall Street, New Haven, Connecticut 06511.

January 19, 2009: Speaker, Harvard Law School Federalist Society Student Chapter, Cambridge, Massachusetts. I spoke about the role of a judge. I have no notes, transcript, or recording. The address of the Harvard Law School Federalist Society Student Chapter is 1563 Massachusetts Avenue, Cambridge, Massachusetts 02138.

November 22, 2008: Panelist, "The FCC and the First Amendment," Federalist Society 2008 National Lawyers Convention, Washington, D.C. I have no notes, transcript, or recording. The address of the Federalist Society is 1776 I Street, N.W., Suite 300, Washington, D.C. 20006. Press report supplied.

November 21, 2008: Moot Court Judge, George Mason University School of Law Moot Court Competition, Washington, D.C. I have no notes, transcript, or recording. The address of the George Mason University Antonin Scalia Law School is 3301 Fairfax Drive, Arlington, Virginia 22201.

November 14, 2008: Moot Court Judge, University of Georgia School of Law Moot Court Competition, Athens, Georgia. I have no notes, transcript, or recording. The address of the University of Georgia School of Law is 225 Herty Drive, Athens, Georgia 30602.

October 30, 2008: Panelist, “D.C. Circuit Panel,” D.C. Bar Association, Washington, D.C. Judge Edwards and I discussed appellate advocacy. I have no notes, transcript, or recording. The address of the D.C. Bar is 901 4th Street, N.W., Washington, D.C. 20001.

October 17, 2008: Speaker, “Separation of Powers During the 44th Presidency and Beyond,” University of Minnesota Law Review Symposium, University of Minnesota Law School, Minneapolis, Minnesota. Video available at: <http://www.startribune.com/watch-supreme-court-nominee-brett-kavanaugh-s-2008-speech-at-university-of-minnesota/488057311/>. A published version of this speech is provided in response to Question 12.a.

October 16, 2008: Panelist, “Arbitrary and Capricious Review Revisited: *State Farm v. Vermont Yankee* at Last,” American Bar Association 2008 Administrative Law Conference. I have no notes, transcript, or recording. The address of the American Bar Association is 1050 Connecticut Avenue, N.W., Suite 400, Washington, D.C. 20036.

September 23, 2008: Moderator, “Stockholders at the Wheel: Shareholder Access Rule,” Federalist Society Corporations, Securities & Antitrust Practice Group, Washington, D.C. Video available at: <https://www.youtube.com/watch?v=WSpRUUzqFNg>.

September 17, 2008: Speaker, “Constitution, Courts, Checks and Balances,” Georgetown University Law Center. I have no notes, transcript, or recording. The address of the Georgetown University Law Center is 600 New Jersey Avenue, N.W., Washington, D.C. 20001. Press report supplied.

September 16, 2008: Participant, “The Trial of Socrates,” Shakespeare Theatre Company, Washington, D.C. I have no notes, transcript, or recording. The address of the Shakespeare Theatre Company is 610 F Street, N.W., Washington, D.C. 20004. Press reports supplied.

June 5, 2008: Moderator, “The Impact of Legal Blogs,” D.C. Circuit Judicial Conference, Farmington, Pennsylvania. I have no notes, transcript, or recording. The address of the D.C. Circuit is E. Barrett Prettyman U.S. Courthouse and William B. Bryant Annex, 333 Constitution Avenue, N.W., Washington, D.C. 20001.

May 20, 2008: Panelist, Discussion with Judge J. Frederick Motz and Judge Tim Lewis, the Edward Coke Appellate Inn of Court, Washington, D.C. I spoke about appellate practice in the D.C. Circuit. I have no notes, transcript, or recording. The address of the American Inns of Court is 225 Reinekers Lane, Suite 770, Alexandria, Virginia 22314.

May 16, 2008: Speaker, “May D.C. Luncheon with Brett M. Kavanaugh,” Federalist Society Washington D.C. Lawyers Chapter, Washington, D.C. Notes supplied.

May 5, 2008: Moot Court Judge, the Thurman Arnold Prize Finals – Morris Tyler Moot Court of Appeals, Yale Law School, New Haven, Connecticut. I have no notes,

transcript, or recording. The address of Yale Law School is 127 Wall Street, New Haven, Connecticut 06511.

May 5, 2008: Speaker, Yale Law School Federalist Society Student Chapter, New Haven, Connecticut. I reflected on my experience at Yale, my service as a judge, and my time in the Bush White House. I have no notes, transcript, or recording. The address of the Yale Law School Federalist Society Student Chapter is 127 Wall Street, New Haven, Connecticut 06511.

May 1, 2008: Panelist, "Judicial Review of Guidance," American Bar Association Fourth Annual Administrative and Regulatory Law Institute. I have no notes, transcript, or recording. The address of the American Bar Association is 1050 Connecticut Avenue, N.W., Suite 400, Washington, D.C. 20036.

April 15, 2008: Speaker, Judicial Prayer Breakfast, E. Barrett Prettyman U.S. Courthouse and William B. Bryant Annex, Washington, D.C. Notes supplied.

March 27, 2008: Moot Court Judge, Campbell Moot Court Finals, University of Michigan Law School, Ann Arbor, Michigan. I have no notes, transcript, or recording. The address of the University of Michigan Law School is 625 South State Street, Ann Arbor, Michigan 48109. Press report supplied.

March 18, 2008: Moot Court Judge, Fifty-Seventh Annual Beaudry Moot Court Competition, Georgetown University Law Center, Washington, D.C. Video available at: https://www.youtube.com/watch?v=9pp-C_xjSiI.

February 21, 2008: Speaker, American Bar Association Appellate Practice Seminar, Washington, D.C. I have no notes, transcript, or recording. The address of the American Bar Association is 1050 Connecticut Avenue, N.W., Suite 400, Washington, D.C. 20036.

November 17, 2007: Moderator, "Intellectual Property: American Exceptionalism or International Harmonization?," Federalist Society 2007 National Lawyers Convention, Washington, D.C. Audio available at: <http://www.fed-soc.org/multimedia/detail/intellectual-property-american-exceptionalism-or-international-harmonization-event-audio>.

October 27, 2007: Speaker, "A Critique of the International Legal Academy," Federalist Society New York City Lawyers Chapter, New York, New York. I have no notes, transcript, or recording. The address of the Federalist Society is 1776 I Street, N.W., Suite 300, Washington, D.C. 20006.

October 26, 2007: Panelist, "International Law, the U.S. Constitution and Counterterrorism," International Law Weekend 2007, International Law Association, Washington, D.C. I have no notes, transcript, or recording. The address of the International Law Association, American Branch is Georgetown University Law Center, 600 New Jersey Avenue, N.W., Washington, D.C. 20001.

October 24, 2007: Speaker, Clinton School of Public Service Speaker Series, University of Arkansas, Little Rock, Arkansas. Video available at: <https://www.clintonschoolspeakers.com/lecture/view/us-court-appeals-judge>. Press report supplied.

June 20, 2007: Speaker, "Judging on the D.C. Circuit," Federalist Society Baltimore Lawyers Chapter, Baltimore, Maryland. I spoke about my service as a judge and my time in the Bush White House. I have no notes, transcript, or recording. The address of the Federalist Society is 1776 I Street, N.W., Suite 300, Washington, D.C. 20006.

June 2, 2007: Speaker, Yale College Class of 1987 20th Reunion, Association of Yale Alumni, New Haven, Connecticut. I spoke about my career, including my experience at the White House. I have no notes, transcript, or recording. The address of the Association of Yale Alumni is Post Office Box 209010, New Haven, Connecticut 06520.

May 4, 2007: Speaker, Yale Law School Federalist Society Student Chapter, New Haven, Connecticut. I reflected on my experience at Yale, my service as a judge, and my time in the Bush White House. I have no notes, transcript, or recording. The address of the Yale Law School Federalist Society Student Chapter is 127 Wall Street, New Haven, Connecticut 06511.

April 12, 2007: Speaker, Harvard Law School Federalist Society Student Chapter, Cambridge, Massachusetts. I spoke about my career, including my experience at the White House. I have no notes, transcript, or recording. The address of the Harvard Law School Federalist Society Student Chapter is 1563 Massachusetts Avenue, Cambridge, Massachusetts 02138.

April 11, 2007: Moot Court Judge, Harlan Fiske Stone Moot Court Finals, Columbia Law School, New York, New York. Video available at: http://www.law.columbia.edu/media_inquiries/news_events/2007/april07/mootcourt. Press report supplied.

March 31, 2007: Moot Court Judge, William Minor Lile Moot Court Competition, University of Virginia School of Law, Charlottesville, Virginia. I have no notes, transcript, or recording. The address of the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903. Press reports supplied.

March 30, 2007: Speaker, "Discussion of Life on the D.C. Circuit Court of Appeals," Federalist Society University of Virginia Student Chapter, Charlottesville, Virginia. I spoke about the importance of oral argument to a court's deliberation and also urged the students to consider careers in public service. I have no notes, transcript, or recording. The address of the Federalist Society University of Virginia Student Chapter is 580 Massie Road, Charlottesville, Virginia 22903. Press report supplied.

March 25, 2007: Speaker, "Judging on the D.C. Circuit," Georgetown University Law

Center Federalist Society Student Chapter, Washington, D.C. I have no notes, transcript, or recording. The address of Georgetown University Law Center Federalist Society Student Chapter is 600 New Jersey Avenue, N.W., Washington, D.C. 20001. Press report supplied.

February 23, 2007: Guest Teacher, Ethics of Lawyering in Government, Washington University of St. Louis School of Law. I have no notes, transcript, or recording. The address of the Washington University of St. Louis School of Law is One Brookings Drive, St. Louis, Missouri 63130

February 23, 2007: Speaker, Exchange with European Judges, United States Judiciary, Washington, D.C. I participated in remarks on administrative law. I have no notes, transcript, or recording. The address of the United States Court of Appeals for the District of Columbia Circuit is E. Barrett Prettyman U.S. Courthouse and William B. Bryant Annex, 333 Constitution Avenue, N.W., Washington, D.C. 20001.

November 17, 2006: Moderator, "Civil Rights in the 21st Century," the Federalist Society 2006 National Lawyers Convention. I have no notes, transcript, or recording. The address of the Federalist Society is 1776 I Street, N.W., Suite 300, Washington, D.C. 20006. Press report supplied.

September 27, 2006: Speaker, Investiture as a Circuit Judge, Washington, D.C. Speech supplied.

June 1, 2006: Speaker, Swearing-In to the United States Court of Appeals for the District of Columbia Circuit, Washington, D.C. Video available at: <https://www.c-span.org/video/?192795-1/judge-kavanaugh-swearing-ceremony>. Press reports supplied (quotations reprinted in multiple outlets).

May 9, 2003: Panelist, Meeting with Log Cabin Republicans, the White House, Washington, D.C. I spoke to a group of gay and lesbian Republicans to discuss Bush Administration policies. I have no notes, transcript, or recording. The address of the Log Cabin Republicans is 1090 Vermont Avenue, N.W., Suite 850, Washington, D.C. 20005. Press report supplied.

March 21, 2003: Speaker, "The Judicial Confirmation Crisis," the Republican National Lawyers Association, Washington, D.C. I have no notes, transcript, or recording. I spoke about judicial confirmations. The address of the Republican National Lawyers Association is Post Office Box 18965, Washington, D.C. 20036.

January 2003 (precise date unknown): Speaker, Yale Law School Association of Washington, D.C. I spoke about judicial appointments. The address of the Yale Law School Association of Washington, D.C., is c/o Yale Law School Office of Alumni Affairs, Post Office Box 208294, New Haven, Connecticut 06520. Press report supplied.

December 13, 2002: Panelist, Federal Practice Seminar, Iowa State Bar Association, Des

Moines, Iowa. I spoke as a part of a panel on federal judicial selection. I have no notes, transcript, or recording. The address of the Iowa State Bar Association is 625 East Court Avenue, Des Moines, Iowa 50309.

May 17, 2002: Speaker, "The Roles and Responsibilities of the Executive and Legislative Branches in the Federal Judicial Selection Process," American Judicature Society, Washington, D.C. Video available at: <https://www.c-span.org/video/?170130-1/role-responsibilities-executive-branch>. Press report supplied.

April 19, 2002: Speaker, "Republican Legal Issues," Republican National Lawyering Society, Washington, D.C. Video available at: <https://www.c-span.org/video/?169679-1/republican-legal-issues>.

April 8, 2002: Speaker, "Welcome on Behalf of President Bush," U.S. Court of Appeals for the Federal Circuit 20th Anniversary Judicial Conference, Washington, D.C. Transcript supplied.

March 2, 2002: Moderator, "Originalism and Historical Truth," Federalist Society 2002 Annual Student Symposium, New Haven, Connecticut. I have no notes, transcript, or recording. The address of the Yale Law School Federalist Society Student Chapter is 127 Wall Street, New Haven, Connecticut 06511. In my 2004 Questionnaire, this event was inadvertently listed as having occurred in 2001.

May 3 – 5, 2000: Speaker, "Ninth Annual Federal Sentencing Guidelines Seminar," Federal Bar Association, Clearwater Beach, Florida. I have no notes, transcript, or recording. The address of the Federal Bar Association is 1220 North Fillmore Street, Suite 400, Arlington, Virginia 22201.

February 18, 2000: Panelist, "The Clinton Impeachment," Duke University School of Law Distinguished Speaker Series, Durham, North Carolina. I have no notes, transcript, or recording. The address of the Duke University School of Law is 210 Science Drive, Durham, North Carolina 27708. Press reports supplied. In my 2004 Questionnaire, this event was inadvertently listed as having occurred in 1999.

November 30, 1999: Speaker, "Kenneth Starr Appreciation Dinner," Washington, D.C. Video available at: <https://www.c-span.org/video/?153930-1/kenneth-starr-appreciation-dinner>.

February 22, 1998: Panelist, "Independent Counsel Act," Georgetown University Law Center, Washington, D.C. Video available at: <https://www.c-span.org/video/?101056-1/independent-counsel-statute-future>.

February 19, 1998: Speaker, "Independent Counsel Structure and Function," Washington, D.C. Video available at: <https://www.c-span.org/video/?101055-1/independent-counsel-structure-function>.

June 1993: Speaker, Mater Dei School Graduation, Bethesda, Maryland. I spoke to the graduating class. I have no notes, transcript, or recording. The address of Mater Dei School is 9600 Seven Locks Road, Bethesda, Maryland 20817.

In addition to remarks noted above, the following events were listed on the Senate Judiciary Questionnaire I submitted in conjunction with my nomination to serve as a circuit judge. I have no further records regarding these events.

2001 – 2003: During this time period, I spoke with groups of historians about presidential recordkeeping practices.

2003: Remarks to the American Forest and Paper Association on a variety of legal issues. The address of the American Forest and Paper Association 1101 K Street, N.W., Suite 700, Washington, D.C. 20005.

2003: Remarks to Federalist Society Southern Leadership Conference. The address of the Federalist Society is 1776 I Street, N.W., Washington, D.C. 20006.

2002: Remarks to National Conference of Women's Bar Associations about judicial appointments. The address of the National Conference of Women's Bar Associations is Post Office Box 82366, Portland, Oregon 97282.

2002: Panel member at Yale Law School about judicial appointments. The address of Yale Law School is 127 Wall Street, New Haven, Connecticut 06511.

2002: Panel member in discussion on judicial appointments sponsored by the New York City Bar Association. The address of the New York City Bar Association is 42 West 44th Street, New York, New York 10036.

2002: Panel member in discussion on judicial appointments sponsored by the Washington Council of Lawyers. The address of the Washington Council of Lawyers is 601 Massachusetts Avenue, N.W., Suite 5409, Washington, D.C. 20001.

2001: Remarks at Yale Club of Pittsburgh about the independent counsel law and role of White House Counsel's Office. The address of the Yale Club of Pittsburgh is c/o Allegheny HYP Club, 619 William Penn Place, Pittsburgh, Pennsylvania 15219.

2000: Moderator, Federalist Society panel on First Amendment. The address of the Federalist Society is 1776 I Street, N.W., Washington, D.C. 20006.

2000: Remarks at American Bar Association panel on Internet regulation. The address of the American Bar Association is 1050 Connecticut Avenue, N.W., Washington, D.C. 20036.

2000: Participant in symposium sponsored by Georgetown Journal of Legal Ethics. The address of the Georgetown University Law Center is 600 New Jersey Avenue, N.W.,

Washington, D.C. 20001.

2000: Moderator, Federalist Society panel on charitable choice. The address of the Federalist Society is 1776 I Street, N.W., Washington, D.C. 20006.

2000: Participant in Federal Bar Association symposium on federal Sentencing Guidelines. The address of the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

In addition to the events listed above where I spoke to the Republican National Lawyers Association (RNLA), I believe I may have spoken at other RNLA events during my service for President George W. Bush. I do not have records of these events, and a search of publicly available records on my behalf has not produced further information.

Finally, in addition to the events listed above, during my service for President George W. Bush, I spoke in an official capacity to interested groups, typically at the White House. I do not have dates for these events. I did not have prepared texts for these informal talks, but I occasionally spoke from short written points that I did not retain.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Through searches of publicly available databases by persons acting on my behalf, we have found the following interviews.

Examining What Anthony Kennedy's Retirement Means (NPR radio broadcast, June 28, 2018). This interview was conducted several years earlier for use when Justice Kennedy left the Court. Transcript provided.

Guillermo Contreras, *District's Top U.S. Attorney Outlines Priorities; Border Security Is No. 1, Bash Says*, San Antonio Express-News, Apr. 13, 2018, at A3. Copy supplied.

Tony Mauro, *Shut Out: SCOTUS Clerks Still Mostly White and Male*, Palm Beach Daily Bus. Rev., Dec. 12, 2017. Copy supplied. This article was reprinted in multiple outlets.

Adam Liptak & Nicholas Fandos, *How Gorsuch the Clerk Met Kennedy the Justice: A Tale of Luck*, N.Y. Times, March 3, 2017. Copy supplied.

Washington Ng {Newcomer's Guide}, Washingtonian, Jan. 2017. Copy supplied.

Mike Scarcella, *Flying Robes*, Nat'l L.J., May 21, 2012. Copy supplied.

Sheldon Goldman et al., *W. Bush's Judicial Legacy: Mission Accomplished*, Judicature, May – June 2009. Copy supplied.

In response to news stories about my confirmation hearings, on June 27, 2007, a spokesperson at the D.C. Circuit issued a statement on my behalf. This statement was reprinted in multiple news stories. I have supplied representative examples of these news stories.

Debra J. Saunders, *Slap Them Silly*, S.F. Chron., Oct. 25, 2005, at B7. Copy supplied.

Todd S. Purdum, *Colleagues Find it Hard to Pinpoint Miers's Influence*, Int'l Herald Trib., Oct. 17, 2005, at 4. Copy supplied. Reprinted in multiple outlets.

Bill Adair, *Miers' Mind a Mystery – Except Toward Bush*, St. Petersburg Times (Fla.), Oct. 16, 2005, at 1A. Copy supplied. Reprinted in multiple outlets.

Todd S. Purdum, *Colleagues Praise Nominee's Work but aren't Specific*, Ventura County Star (Cal.), Oct. 16, 2005, at 11. Copy supplied. Reprinted in multiple outlets.

Miers Fights to Win, Friends Say; the Supreme Court Nominee Is Described As More than Just an Admirer of President Bush, Wilkes-Barre Times Leader (Penn.), Oct. 16, 2005, at A9. Copy supplied.

Donna Cassata, *High Court Nominee Is Tough, Ambitious Lawyer Who Has Been Trusted Adviser to Bush*, Associated Press, Oct. 15, 2005. Copy supplied. Reprinted in multiple outlets.

Amy Goldstein & Peter Baker, *For Miers, Proximity Meant Power; Longtime Bush Confidante Became Gatekeeper of Access to the President*, Wash. Post, Oct. 13, 2005, at A1. Copy supplied.

T.R. Goldman, *Down to the Last Detail*, Legal Times, Dec. 13, 2004. Copy supplied. Reprinted in multiple outlets.

Sheldon Goldman et al., *W. Bush Remaking the Judiciary: Like Father Like Son?*, Judicature, May – June 2003. Copy supplied.

The World Today (CNN television broadcast Dec. 11, 2000). Transcript supplied.

In the weeks before the Supreme Court's decision in *Bush v. Gore*, I was interviewed by MSNBC and perhaps other media outlets in connection with the litigation that concluded with that decision. I do not have more precise records and I, and others acting on my behalf, have been unable to locate recordings or transcripts.

Burden of Proof (CNN television broadcast June 29, 2000). Transcript supplied.

Bill Hatfield, *Lawyers Look Back at Impeachment*, Chronicle (Duke University), Feb. 21, 2000. Copy supplied.

Jeff Shear, *Farewell to All That – The Demise of the Independent Counsel Statute*, Washington Lawyer, November/December 1999, at 24. Copy supplied.

Warren Richey, *New Case May Clarify Court's Stand on Race*, Christian Sci. Monitor, Oct. 6, 1999, at 3. Copy supplied.

Burden of Proof (CNN television broadcast Sept. 9, 1999). Transcript supplied.

Burden of Proof (CNN television broadcast June 30, 1999). Transcript supplied.

Lawyers' Roundtable: Attorney-Client Privilege, Washington Lawyer, Jan.–Feb. 1999, at 34. Copy supplied.

20/20 (ABC television broadcast Nov. 25, 1998). Transcript supplied.

Ruth Marcus, *Probe Bogs Down in Tangle of Privilege; As Starr's Subpoenas Proliferate, So Do Claims of Special Protection*, Wash. Post, Feb. 26, 1998, at A11. Copy supplied.

Books

I provided interviews for the following books:

Jan Crawford, *Supreme Conflict* (2007).

Benjamin Wittes, *Starr: A Reassessment* (2002).

Peter Baker, *The Breach: Inside the Impeachment and Trial of William Jefferson Clinton* (2001).

Susan Schmidt and Michael Weisskopf, *Truth At Any Cost: Ken Starr and the Unmaking of Bill Clinton* (2000).

Bob Woodward, *Shadow: Five Presidents and the Legacy of Watergate* (1999).

Michael Isikoff, *Uncovering Clinton: A Reporter's Story* (1999).

In addition to the interviews listed above, I have also spoken to reporters on background as appropriate or as directed.

f. If, in connection with any public office you have held, there were any reports, memoranda, or policy statements prepared or produced with your participation, supply four (4) copies of these materials. Also provide four (4) copies of any resolutions, motions, legislation, nominations, or other matters on which you voted as an elected official, the corresponding votes and minutes, as well as any speeches or statements you

made with regard to policy decisions or positions taken. "Participation" includes, but is not limited to, membership in any subcommittee, working group, or other such group, which produced a report, memorandum, or policy statement, even where you did not contribute to it. If any of these materials are not available to you, please give the name of the document, the date of the document, a summary of its subject matter, and where it can be found.

As Assistant to the President and Staff Secretary, Senior Associate Counsel to the President, and Associate Counsel to the President, I was involved in the process related to the preparation of various reports, memoranda, and policy statements, as well as the process related to the drafting of some statements made by the President. Those documents are in the custody of the George W. Bush Library.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I was appointed a Circuit Judge for the United States Court of Appeals for the District of Columbia Circuit in 2006. I was nominated by President George W. Bush in 2003 and ultimately confirmed by the United States Senate in 2006.

The United States Court of Appeals for the District of Columbia Circuit has jurisdiction as set forth principally at 28 U.S.C. §§ 1291 & 1292, as well as in various other sections of the United States Code.

a. Approximately how many cases have you presided over that have gone to verdict or judgment?

Because I have not been a trial judge, I have not presided over any cases as a single trial judge. As a Circuit Judge, I have participated in the disposition of approximately 2,700 cases. I have also sat as a member of a three-judge district panel pursuant to the Voting Rights Act and campaign finance statutes on several occasions.

Of these, approximately what percent were:

- i. jury trials: N/A
bench trials: N/A
- ii. civil proceedings: 92%
criminal proceedings 8%

b. Provide citations for all opinions, dispositive orders, and orders affecting injunctive relief you have written, published and unpublished, including concurrences and dissents. If any of the opinions listed are not available on Westlaw, provide copies of the opinions.

A list of citations to opinions I have written, together with copies of opinions not available on Westlaw, is included at Appendix 13.b.

c. Provide citations to all cases in which you were a panel member, but did not write an opinion. If any of the opinions listed are not available on Westlaw, provide copies of the opinions.

A list of all cases in which I was a panel member but did not write an opinion, together with copies of opinions not available on Westlaw, is included at Appendix 13.c.

d. For each of the 10 most significant cases over which you sat, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel of record, designating which counsel was principal counsel; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported and not available on Westlaw).

I have listed the first nine cases below because the position expressed in my opinion (either for the court or in a separate writing) was later adopted by the Supreme Court. I have listed the tenth case because of what it says about anti-discrimination law and American history.

1. *Free Enterprise Fund v. Public Company Accounting Oversight Board*, 537 F.3d 667 (D.C. Cir. 2008) (Kavanaugh, J., dissenting), *reversed in relevant part*, 561 U.S. 477 (2010).

A non-profit organization and an accounting firm contended that the structure of the Public Company Accounting Oversight Board, an independent agency in the Executive Branch, violated Article II of the Constitution. A D.C. Circuit panel on which I sat rejected that challenge and upheld the Board's structure as lawful. I dissented. In my view, a key feature of the Board's structure—that its members were removable only “for cause” by the Securities and Exchange Commission, whose members were removable only “for cause” by the President—unconstitutionally limited the President's Article II authority to supervise the Executive Branch. I explained that the Board's double for-cause removal structure had no basis in historical practice and was inconsistent with Supreme Court precedent. The Supreme Court reversed the panel decision. The Supreme Court agreed with and cited my dissent.

Counsel for Appellants

Michael A. Carvin
Jones Day
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
(202) 879-7643

Counsel for Public Company Accounting Oversight Board

Jeffrey A. Lamken
MoloLamken LLP
600 New Hampshire Avenue, N.W.
Washington, D.C. 20037
(202) 556-2010

Counsel for United States

Mark B. Stern
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 514-2000

2. *Bluman v. Federal Election Commission*, 800 F. Supp. 2d 281 (D.D.C. 2011),
affirmed, 565 U.S. 1104 (2012).

Foreign citizens working in the United States challenged the federal ban on election contributions and express-advocacy expenditures by foreign nationals, claiming that it violated their First Amendment rights. I wrote an opinion for a unanimous three-judge district court rejecting their constitutional challenge and upholding the statutory ban. My opinion explained that the ban would pass even the strictest level of constitutional scrutiny because it was narrowly tailored to advance a compelling interest in limiting the participation of non-Americans in the activities of democratic self-government. My opinion also relied on Supreme Court precedent upholding restrictions on participation by foreign nationals in other aspects of American self-government. The Supreme Court unanimously agreed with and affirmed my opinion for the court.

Counsel for Plaintiffs (Bluman & Steiman)

Principal counsel:
Warren Postman
Then with the U.S. Chamber of Commerce
Keller Lenkner LLC
150 North Riverside Plaza, Suite 2570
Chicago, Illinois 60610
(202) 749-8334

Co-counsel:
Yaakov (Jacob) M. Roth
Jones Day
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
(202) 879-7658

Counsel for Defendant (Federal Election Commission)

Principal counsel:

Adav Noti

Then with the Federal Election Commission

Campaign Legal Center

1411 K Street, N.W., Suite 1400

Washington, D.C. 20005

Co-counsel:

David Brett Kolker

Then with the Federal Election Commission

Campaign Legal Center

1411 K Street, N.W., Suite 1400

Washington, D.C. 20005

Kevin Deeley

Federal Election Commission

1050 First Street, N.E.

Washington, D.C. 20463

(202) 694-1650

Steve Nicholas Hajjar

Federal Election Commission

1050 First Street, N.E.

Washington, D.C. 20463

(202) 694-1546

Principal counsel for Amicus Illinois Coalition for Immigrant & Refugee Rights

Erin Elizabeth Murphy

Then with Bancroft PLLC

Kirkland & Ellis LLP

655 15th Street, N.W.

Washington, D.C. 20005

(202) 879-5036

3. *White Stallion Energy Center, LLC v. EPA*, 748 F.3d 1222 (D.C. Cir. 2014) (Kavanaugh, J., dissenting), *reversed in relevant part by Michigan v. EPA*, 135 S. Ct. 2699 (2015).

A broad range of advocacy groups petitioned for review of an EPA rule setting standards for regulation of hazardous air pollutants emitted from electric utility steam generating units. EPA acted pursuant to a statute that allowed it to regulate those units if the Administrator found that the regulation was “appropriate and necessary.” EPA argued that it need not consider costs in determining whether regulation was “appropriate and

necessary” under the statute. A D.C. Circuit panel on which I sat upheld the EPA’s approach. I dissented from that part of the decision. In my view, it was unreasonable—and therefore unlawful under the Administrative Procedure Act—for EPA not to consider the costs imposed by regulations in determining whether such regulations were “appropriate and necessary.” The Supreme Court reversed the panel decision. All nine Justices agreed with my position that the statute requires consideration of costs. The Supreme Court’s majority opinion agreed with and cited my dissent.

Counsel for State Petitioners

Neil D. Gordon
Office of the Attorney General for the State of Michigan
525 West Ottawa Street
Post Office Box 30212
Lansing, Michigan 48909
(517) 373-1110

Counsel for Industry and Labor Petitioners

Lee B. Zeugin
Hunton & Williams LLP
2200 Pennsylvania Avenue, N.W.
Washington, D.C. 20037
(202) 955-1500

Counsel for Respondent

Eric G. Hostetler
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 514-2000

Counsel for State and Local Government Intervenors

Melissa Hoffer
Assistant Attorney General of Massachusetts
One Ashburton Place
Boston, Massachusetts 02108
(617) 963-2322

Counsel for Industry Intervenors

Brendan K. Collins
Ballard Spahr LLP
1735 Market Street

Philadelphia, Pennsylvania 19103
(212) 665-8500

4. *Jones v. United States*, 625 F.3d 766 (D.C. Cir. 2010) (Kavanaugh, J., dissenting from denial of rehearing en banc), *panel decision affirmed on other grounds*, 565 U.S. 400 (2012).

Antoine Jones appealed his criminal conviction for participation in a drug-trafficking conspiracy. He argued that the district court improperly admitted evidence obtained through the warrantless installation of a GPS tracker on his vehicle. A D.C. Circuit panel concluded that installation of the GPS tracker violated the Fourth Amendment. The court denied rehearing en banc. I wrote a separate opinion suggesting that the court should have considered Jones's alternative argument that the police violated his Fourth Amendment rights by trespassing on his property in order to install the tracker on the vehicle. The Supreme Court agreed with the position espoused in my separate opinion.

Counsel for Appellant

Stephen C. Leckar
Then with Sainis & Peltzman Chartered
Kalbian Hagerty LLP
888 17th Street, N.W., Suite 1000
Washington, D.C. 20006
(202) 223-5600

Hon. Sri Srinivasan (Supreme Court counsel)
Then with O'Melveny & Myers LLP
U.S. Court of Appeals for the D.C. Circuit
333 Constitution Avenue, N.W.
Washington, D.C. 20001
(202) 223-5600

Hon. Walter Dellinger (Supreme Court counsel)
O'Melveny & Myers LLP
1625 I Street, N.W.
Washington, D.C. 20006
(202) 383-5319

Counsel for Appellee

Hon. Roy W. McLeese, III
Then with the U.S. Department of Justice
District of Columbia Court of Appeals
430 E Street, N.W., Suite 208
Washington, D.C. 20001
(202) 879-2762

5. *Wesby v. District of Columbia*, 816 F.3d 96 (D.C. Cir. 2016) (Kavanaugh, J., dissenting from denial of rehearing en banc), *panel decision reversed*, 138 S. Ct. 577 (2018).

D.C. police officers arrested late-night partygoers for trespassing in a vacant house. After prosecutors decided not to pursue charges, the partygoers sued the officers and the District for false arrest, claiming that the police lacked probable cause to arrest them. The district court held that the officers lacked probable cause and that the officers were not entitled to qualified immunity from suit. A jury then awarded the partygoers and their lawyers almost \$1 million in damages and attorney's fees. A D.C. Circuit panel affirmed, and the court denied rehearing en banc. I dissented from the denial of rehearing en banc. I wrote that the panel opinion contravened clear Supreme Court precedent on qualified immunity because it was not clearly established that the police officers' conduct was unconstitutional. In my view, the officers were not subject to damages, and the jury verdict should have been reversed. The Supreme Court unanimously reversed the panel's decision, concluding that the officers were entitled to qualified immunity. The Supreme Court agreed with and cited my dissent.

Counsel for Appellants (District of Columbia, Campanale, Parker, Espinosa, Newman & Khan)

Principal counsel:

Carl J. Schifferle

Office of the Attorney General, District of Columbia

441 4th Street, N.W., Suite 600 South

Washington, D.C. 20001

(202) 727-3400

Co-counsel:

Loren L. AliKhan

Office of the Attorney General, District of Columbia

441 4th Street, N.W., Suite 600 South

Washington, D.C. 20001

(202) 727-3400

Todd S. Kim

Then with the Office of the Attorney General, District of Columbia

Reed Smith

1301 K Street, N.W., Suite 1000

Washington, D.C. 20005

(202) 414-9290

Irvin B. Nathan

Then with the Office of the Attorney General, District of Columbia

Retired

Counsel for Appellees (Wesby, Cole, Hood, Stribling, Baldwin, Louis, Colbert, Gordon, Davis, Mayfield, Willis, Taylor, Chittams, Gayle, Hunt, Banks & Richardson)

Gregory L. Lattimer
Law Offices of Gregory L. Lattimer
1200 G Street, N.W., Suite 800
Washington, D.C. 20005
(202) 434-4513

6. *United States v. Papagno*, 639 F.3d 1093 (D.C. Cir. 2011).

Papagno pled guilty to stealing computer equipment from his employer. The government argued that the Mandatory Victims Restitution Act required him to reimburse his employer for the costs of its internal investigation of the crime. The district court agreed and ordered him to pay about \$160,000 in restitution. I wrote an opinion for a unanimous three-judge panel reversing the district court. My opinion for the court explained that the text of the Act, which authorizes restitution for “necessary” expenses “incurred during participation in the investigation or prosecution of the offense,” does not authorize restitution for the costs of an *internal* investigation, at least when the internal investigation was neither required nor requested by the government. Many other courts of appeals disagreed with my interpretation of the statute. But in a later case presenting the same question, *Lagos v. United States*, 138 S. Ct. 1684 (2018), the Supreme Court cited and agreed with my opinion for the court in *Papagno*.

Counsel for Appellee (United States of America)

Principal counsel:
Jeremy Scott Barber
Then with the United States Attorney's Office for the District of Columbia
Wilkinson Walsh + Eskovitz
130 West 42nd Street, Suite 1402
New York, New York 10036
(929) 264-7765

Co-counsel:
Ronald C. Machen, Jr.
Then with the United States Attorney's Office for the District of Columbia
WilmerHale
1875 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 663-6000

Hon. Roy W. McLeese, III
Then with the United States Attorney's Office for the District of Columbia
District of Columbia Court of Appeals

430 E Street, N.W.
Washington, D.C. 20004

Elizabeth Trosman
United States Attorney's Office for the District of Columbia
555 Fourth Street, N.W.
Washington, D.C. 20530
(202) 252-6775

Mary B. McCord
Then with the United States Attorney's Office for the District of Columbia
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001
(202) 662-9000

Counsel for Appellant (Papagno)

Principal counsel:
Beverly Gay Dyer
Then with the Office of the Federal Public Defender for the District of Columbia
No current address available.

Co-counsel:
A.J. Kramer
Federal Public Defender for the District of Columbia
625 Indiana Avenue, N.W.
Washington, D.C. 20004
(202) 208-7500

Neil H. Jaffee
Then with the Office of the Federal Public Defender for the District of Columbia
Vertigo Charitable Foundation, LLC
13005 Dunhill Drive
Fairfax, Virginia 22030
(703) 408-7713

7. *Priests for Life v. U.S. Department of Health & Human Services*, 808 F.3d 1 (D.C. Cir. 2015) (Kavanaugh, J., dissenting from denial of rehearing en banc), *panel opinion vacated by Zubik v. Burwell*, 136 S. Ct. 1557 (2016).

The Affordable Care Act requires most employers to provide certain health insurance coverage for their employees. Federal regulations exempted religious non-profit organizations from the mandate to provide contraceptive coverage, but required them to submit information that would facilitate the provision of contraceptive coverage (including contraceptive methods that they believed operated as abortifacients) to their

employees. A religious organization, Priests for Life, challenged that requirement as a violation of the Religious Freedom Restoration Act. Like other religious organizations challenging the requirement, including the Little Sisters of the Poor and the University of Notre Dame, Priests for Life believes that life begins at conception and objected in particular to facilitating what they viewed as the destruction of human life. They did not object, however, to their employees' receiving contraceptive coverage through other means.

A panel of the D.C. Circuit rejected the challenge, and the court declined to rehear the case en banc. I dissented from the denial of rehearing en banc. In my view, the case was largely governed by the text of the Religious Freedom Restoration Act and Supreme Court precedent, namely *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014). Under the reasoning of *Hobby Lobby*, the requirement that religious organizations provide a form that facilitates the provision of contraceptive coverage imposed a substantial burden on their religious exercise. Moreover, such a requirement was not the least restrictive means of achieving the government's asserted interest, because the government could facilitate the provision of contraceptive coverage, including abortifacients, for the employees of religious organizations without making those organizations participate in the process. In my view, under that binding Supreme Court precedent, the requirement therefore violated the Religious Freedom Restoration Act. The Supreme Court vacated the D.C. Circuit panel's opinion and remanded for further analysis.

Counsel for Appellants (Priests for Life, Pavone, King & Morana)

Principal counsel:

Robert Joseph Muise
American Freedom Law Center
Post Office Box 131098
Ann Arbor, Michigan 48113
(855) 835-2352

David Eliezer Yerushalmi
Then with American Freedom Law Center
123 West Chandler Heights Road, Unit 11205
Chandler, Arizona 85248
(646) 262-0500

Counsel for Appellants (Roman Catholic Archbishop of Washington, Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Archbishop Carroll High School, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Victory Housing, Inc., Catholic Information Center, Inc., The Catholic University of America & Thomas Aquinas College)

Principal counsel:

Robert Joseph Muise
American Freedom Law Center
Post Office Box 131098
Ann Arbor, Michigan 48113
(855) 835-2352

Co-counsel:
Eric S. Dreiband
Anthony Dick
Jones Day
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
(202) 879-3720

Counsel for Appellees (U.S. Department of Health & Human Services, U.S. Department of the Treasury, U.S. Department of Labor, Burwell, Price, Sebelius, Lew, Mnuchin, Hugler & Perez)

Principal counsel:
Adam C. Jed
U.S. Department of Justice, Civil Division
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 514-2000

Co-counsel:
Megan Barbero
Joshua M. Salzman
Patrick G. Nemeroff
Alisa B. Klein
Mark B. Stern
U.S. Department of Justice, Civil Division
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 514-2000

Stuart F. Delery
Then with the U.S. Department of Justice
Gibson Dunn & Crutcher
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500

Ronald C. Machen, Jr.
WilmerHale
1875 Pennsylvania Avenue, N.W.

Washington, D.C. 20006
(202) 663-6000

Principal counsel for Amici Curiae American Association of University Women, American Federation of State, County & Municipal Employees, Ibis Reproductive Health, MergerWatch, NARAL Pro-Choice America, National Organization for Women Foundation, National Partnership for Women & Families, National Women's Law Center, Planned Parenthood Federation of America, Planned Parenthood of Maryland, Inc., Planned Parenthood of Metropolitan Washington, D.C., Inc., Population Connection, Raising Women's Voices for the Health Care We Need & Service Employees International Union

Charles Edward Davidow
Paul, Weiss, Rifkind, Wharton & Garrison LLP
2001 K Street, N.W.
Washington, D.C. 20006
(202) 223-7300

Counsel for Amici Curiae Association of Rescue Gospel Missions, Prison Fellowship Ministries, Association of Christian Schools International, American Bible Society, National Association of Evangelicals, Ethics & Religious Liberty Commission of the Southern Baptist Convention, Institutional Religious Freedom Alliance, Lutheran Church—Missouri Synod & Christian Legal Society

Kimberlee Wood Colby
Christian Legal Society
8001 Braddock Road, Suite 302
Springfield, Virginia 22151
(855) 257-9800

Counsel for Amici Curiae Public Health Association, Asian & Pacific Islander American Health Forum, Asian Americans Advancing Justice, Black Women's Health Imperative, California Women's Law Center, Forward Together, HIV Law Project, Ipas, National Asian Pacific American Women's Forum, National Family Planning & Reproductive Health Association, National Health Law Program, National Latina Institute for Reproductive Health, National Women & AIDS Collective, National Women's Health Network & Sexuality Information & Education Council of the U.S.

Martha J. Perkins
National Health Law Program
200 North Greensboro Street, Suite D-13
Carrboro, North Carolina 27510

Principal counsel for Amici Curiae Americans United for Separation of Church & State, & American Civil Liberties Union

Richard Brian Katskee
Americans United for Separation of Church and State
1310 L Street, N.W., Suite 200
Washington, D.C. 20005
(202) 466-3234

8. *Republican National Committee v. Federal Election Commission*, 698 F. Supp. 2d 150 (D.D.C. 2010), *affirmed*, 561 U.S. 1040 (2010).

The Republican National Committee and other plaintiffs brought a number of First Amendment challenges to the Bipartisan Campaign Reform Act's restrictions on political-party fundraising. I wrote an opinion for a unanimous three-judge district court rejecting their challenges and upholding the statutory restrictions. My opinion explained that the Supreme Court's decision in *Citizens United v. Federal Election Commission*, 588 U.S. 310 (2010), did not disturb the relevant parts of the Supreme Court's earlier decision in *McConnell v. Federal Election Commission*, 540 U.S. 93 (2003), which had rejected a challenge to the BCRA's limits on contributions to political parties. We therefore were bound as a lower court to adhere to the *McConnell* precedent. I emphasized that, as a lower court, we could not "clarify" or "refine" *McConnell* in the manner suggested by the plaintiffs. The Supreme Court affirmed my decision without dissent (three Justices would have set the case for full argument).

Counsel for Plaintiffs (Republican National Committee & Duncan)

Principal counsel:

James Bopp, Jr.
The Bopp Law Firm, PC
1 South 6th Street
Terre Haute, Indiana 47807
(812) 232-2434

Co-counsel:

Richard E. Coleson
The Bopp Law Firm, PC
1 South 6th Street
Terre Haute, Indiana 47807
(812) 232-2434

Kaylan L. Phillips

Then with Bopp, Coleson & Bostrom
Public Interest Legal Foundation
32 East Washington, Suite 1675
Indianapolis, Indiana 46204
(317) 203-5599

Clayton J. Callen

Then with Underwood Perkins, P.C.
Hartline Dacus Barger Dreyer
8750 North Central Expressway, Suite 1600
Dallas, Texas 75231
(214) 267-4294

Counsel for Plaintiffs (California Republican Party & Republican Party of San Diego County)

Principal counsel:
James Bopp, Jr.
The Bopp Law Firm, PC
1 South 6th Street
Terre Haute, Indiana 47807
(812) 232-2434

Co-counsel:
Charles H. Bell, Jr.
Bell, McAndrews & Hiltachk, LLP
455 Capitol Mall, Suite 600
Sacramento, California 95815
(916) 442-7757

Richard E. Coleson
The Bopp Law Firm, PC
1 South 6th Street
Terre Haute, Indiana 47807
(812) 232-2434

Kaylan L. Phillips
Then with Bopp, Coleson & Bostrom
Public Interest Legal Foundation
32 East Washington, Suite 1675
Indianapolis, Indiana 46204
(317) 203-5599

Clayton J. Callen
Then with Underwood Perkins, P.C.
Hartline Dacus Barger Dreyer
8750 North Central Expressway, Suite 1600
Dallas, Texas 75231
(214) 267-4294

Counsel for Plaintiff (Michael Steele)

Principal counsel:

Bobby Roy Burchfield
King & Spalding LLP
1700 Pennsylvania Avenue, N.W., Suite 200
Washington, D.C. 20006
(202) 626-5524

Co-counsel:
James Bopp, Jr.
Richard E. Coleson
The Bopp Law Firm, PC
1 South 6th Street
Terre Haute, Indiana 47807
(812) 232-2434

Kaylan L. Phillips
Then with Bopp, Coleson & Bostrom
Public Interest Legal Foundation
32 East Washington, Suite 1675
Indianapolis, Indiana 46204
(317) 203-5599

Clayton J. Callen
Then with Underwood Perkins, P.C.
Hartline Dacus Barger Dreyer
8750 North Central Expressway, Suite 1600
Dallas, Texas 75231
(214) 267-4294

Counsel for Appellee (Federal Election Commission)

Principal counsel:
Adav Noti
Then with the Federal Election Commission
Campaign Legal Center
1411 K Street, N.W., Suite 1400
Washington, D.C. 20005

Co-counsel:
Kevin Deeley
Federal Election Commission
1050 First Street, N.E.
Washington, D.C. 20463
(202) 694-1650

David Brett Kolker
Then with the Federal Election Commission

Campaign Legal Center
1411 K Street, N.W., Suite 1400
Washington, D.C. 20005

Counsel for Intervenor-Defendant (Van Hollen, Jr.)

Principal counsel:
Donald Jay Simon
Sonosky, Chambers, Sachse, Endreson & Perry, LLP
1425 K Street, N.W., Suite 600
Washington, D.C. 20005
(202) 682-0240

Co-counsel:
Seth Paul Waxman
Wilmer Cutler Pickering Hale and Dorr
1875 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 663-6800

Francesco Valentini
Then with Wilmer Cutler Pickering Hale and Dorr LLP
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 598-2337

Lauren E. Baer
Then with Wilmer Cutler Pickering Hale and Dorr LLP
Candidate for Congress
6231 PGA Boulevard, Suite 104-211
Palm Beach Gardens, Florida 33418

Honorable Randolph D. Moss
Then with Wilmer Cutler Pickering Hale and Dorr LLP
United States District Court for the District of Columbia
333 Constitution Avenue, N.W.
Washington, D.C. 20001
(202) 354-3020

Counsel for Intervenor-Defendant (Democratic National Committee)

Principal counsel:
Marc Erik Elias
Perkins Coie LLP
700 13th Street, N.W., Suite 600

Washington, D.C. 20005
(202) 628-6600

Co-counsel:
Robert Felix Bauer
Then with Perkins Coie LLP
New York University School of Law
40 Washington Square South
New York, New York 10012
(212) 998-6112

Andrew H. Werbrock
Remcho Johansen & Purcell LLP
1901 Harrison Street, Suite 1550
Oakland, California 94612
(510) 346-6200

Counsel for Amici Curiae McCain, Feingold, Shays & Meehan)

Joseph Gerald Hebert
Then with Law Offices of Joseph Gerald Hebert
Campaign Legal Center
1411 K Street, N.W., Suite 1400
Washington, D.C. 20005
(703) 628-4673

Principal Counsel for Amici Curiae Brennan Center for Justice at NYU School of Law,
Common Cause, Demos, League of Women Voters of the United States & U.S. Public
Interest Research Group

Monica Youn
Then with the Brennan Center for Justice
Princeton University
122 Alexander Street
Princeton, New Jersey 08544
(609) 258-1500

9. *Doe v. Exxon Mobil Corp.*, 654 F.3d 11 (D.C. Cir. 2011) (Kavanaugh, J., dissenting).

Foreign plaintiffs sued Exxon Mobil under the Alien Tort Statute for alleged torts committed overseas. The district court dismissed the claims. A D.C. Circuit panel on which I sat reversed. I dissented. I would have affirmed the dismissal of the ATS claims for several independent reasons, including: (1) under the presumption against extraterritoriality, the ATS does not apply to conduct that occurred abroad, and (2) the ATS does not apply to claims against corporations. In *Jesner v. Arab Bank, PLC*, 138 S.

Ct. 1386 (2018), the Supreme Court agreed with my dissent as to foreign corporations. In *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108 (2013), the Supreme Court agreed with and cited my dissent as to extraterritoriality.

Counsel for Appellants (Doe VIII, Doe IX, Doe X & Doe XI)

Principal counsel:

Agnieszka Fryszman
Cohen Milstein Sellers & Toll PLLC
1100 New York Avenue, N.W., Suite 500
Washington, D.C. 20005
(202) 408-4600

Co-counsel:

Terrence Collingsworth
Then with Conrad & Scherer, LLP
International Rights Advocates
621 Maryland Avenue, N.E.
Washington, D.C. 20002
(202) 527-7997

Kathleen M. Konopka
Then with Cohen Milstein Sellers & Toll PLLC
Office of the New York State Attorney General
Social Justice Division
The Capitol
Albany, New York 12224

Paul L. Hoffman
Schonbrun DeSimone Seplow Harris Hoffman & Harrison LLP
723 Ocean Front Walk
Venice, California 90291
(310) 396-0731

Counsel for Appellees (Exxon Mobil Corporation, Exxon Mobil Oil Indonesia, Inc., Mobil Corporation & Mobil Oil Corporation)

Principal counsel:

Hon. Sri Srinivasan
Then with O'Melveny & Myers LLP
United States Court of Appeals for the District of Columbia Circuit
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Co-counsel:

Alex Young Kyong Oh

Paul, Weiss, Rifkind, Wharton & Garrison, LLP
2001 K Street, N.W.
Washington, D.C. 20006
(202) 223-7300

Theodore V. Wells, Jr.
Paul, Weiss, Rifkind, Wharton & Garrison, LLP
1285 Avenue of the Americas
New York, New York 10019
(212) 373-3000

Hon. Walter Dellinger
Jonathan Hacker
Anton Metlitsky
O'Melveny & Myers LLP
1625 I Street, N.W.
Washington, D.C. 20006
(202) 383-5300

Martin James Weinstein
Willkie Farr & Gallagher LLP
1875 K Street, N.W.
Washington, D.C. 20006
(202) 303-1122

Counsel for Amicus Curiae EarthRights International

Marco Simons
EarthRights International
1612 K Street, N.W., Suite 401
Washington, D.C. 20006
(202) 466-5188

Counsel for Amici Curiae Chemerinsky, Casto, Alexander, Hershkoff, Ides, Loffredo,
Miller, Neuborne & Orth

Muneer Iftikhar Ahmad
Jerome N. Frank Legal Services Organization
Yale Law School
Post Office Box 209090
New Haven, Connecticut 06520
(203) 432-4716

Counsel for Amicus Curiae Chamber of Commerce of the United States of America

Alan E. Untereiner

Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP
1801 K Street, N.W., Suite 411L
Washington, D.C. 20006
(202) 775-4500

Counsel for Amici Curiae National Association of Manufacturers, National Foreign Trade Council, Inc., United States Council for International Business & USAEngage

Jeffrey Alan Lamken
Robert Kelsey Kry
MoloLamken LLP
600 New Hampshire Avenue, N.W.
Washington, D.C. 20037
(202) 639-7700

Counsel for Amici Curiae International Human Rights Clinic, University of Minnesota, Avery, Blum, Flaherty, Rudovsky, Stephens, Vladeck & Weissbrodt

Jennifer M. Green
University of Minnesota Law School
229 19th Avenue South
Minneapolis, Minnesota 55455
(612) 625-7247

Principal Counsel for Amicus Curiae Washington Legal Foundation

Richard A. Samp
Washington Legal Foundation
2009 Massachusetts Avenue, N.W.
Washington, D.C. 20036

10. *Ayissi-Etoh v. Fannie Mae*, 712 F.3d 572 (D.C. Cir. 2013).

Placide Ayissi-Etoh, a pro se litigant, worked at Fannie Mae. He was terminated shortly after filing a discrimination complaint with the Equal Employment Opportunity Commission in which he alleged (among other things) that a company executive had created a hostile work environment by calling him the n-word. The district court granted summary judgment to Fannie Mae. A D.C. Circuit panel on which I sat reversed, holding that a reasonable jury could find that Fannie Mae unlawfully discriminated against, harassed, and retaliated against Ayissi-Etoh. I joined the majority opinion and also wrote a separate concurrence to explain that calling someone the n-word, even once, creates a hostile work environment. My opinion explained: “No other word in the English language so powerfully or instantly calls to mind our country’s long and brutal struggle to overcome racism and discrimination against African-Americans.”

Pro Se Appellant

Magloire K. Placide Ayissi-Etoh

Counsel for Appellees

Damien G. Stewart
Fannie Mae
3900 Wisconsin Avenue, N.W.
Washington, D.C. 20016
(202) 752-6871

e. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published (if not available on Westlaw); and (3) the names and contact information for counsel of record.

Please see my answer to Question 13.d. above, which provides this information.

f. Provide a list of all cases in which you participated, where certiorari to the Supreme Court of the United States or other relief was requested or granted.

A list of all cases in which I participated where certiorari to the Supreme Court of the United States or other relief was requested or granted is included at Appendix 13.f.

g. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions (if not available on Westlaw).

Only one opinion has been reversed in part by the Supreme Court.

EME Homer City Generation, LP v. EPA, 696 F.3d 7 (D.C. Cir. 2012), *reversed in part and remanded*, 134 S. Ct. 1584 (2014).

In *EME Homer City Generation LP v. EPA*, various States, local governments, industry groups, and labor organizations petitioned for review of an EPA rule requiring emissions reductions by certain upwind States. I wrote a majority opinion for the D.C. Circuit granting that petition. In relevant part, we reasoned that the EPA had exceeded its statutory authority under the Clean Air Act by requiring upwind States to reduce emissions by more than their own significant contributions to pollution in downwind States.

The Supreme Court reversed that decision in part and remanded in a 6-2 decision (with Justices Scalia and Thomas in dissent agreeing fully with my majority opinion). The Court “agree[d] with” my opinion that the EPA rule violates the statute when it “requires

an upwind State to reduce emissions by more than the amount necessary to achieve attainment in *every* downwind State to which it is linked.” (Emphasis in original). But the Supreme Court concluded that such potential “over-control” did not “justif[y] wholesale invalidation of the” rule. The Court stated instead that upwind States could bring “particularized, as-applied” challenges to the rule. On remand, several States in fact brought as-applied challenges of that nature, and I wrote an opinion for a unanimous panel invalidating numerous aspects of EPA’s rule.

h. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

All opinions I have issued are available in the court records maintained by the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit or (for those cases in which I have issued opinions in special Voting Rights Act Panels or campaign-finance related panels of the District Court for the District of Columbia) the Clerk of Court for the United States District Court for the District of Columbia. These opinions are generally available through PACER.

As of July 11, 2018, the records of the Administrative Office for the United States Court list me as the author of 307 opinions (including concurrences and dissents) in my own name. The Westlaw database includes all but one of these opinions (>99%).

i. Provide citations for significant opinions, dispositive orders, and orders affecting injunctive relief you authored and issued on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

Beyond the cases described in Question 13.d. above, I have authored the following significant constitutional opinions.

1. *Heller v. District of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011) (Kavanaugh, J., dissenting).
2. *Newdow v. Roberts*, 603 F.3d 1002 (D.C. Cir. 2010) (Kavanaugh, J., concurring in the judgment).
3. *PHH Corp. v. CFPB*, 881 F.3d 75 (D.C. Cir. 2018) (Kavanaugh, J., dissenting).
4. *United States v. Nwoye*, 824 F.3d 1129 (D.C. Cir. 2016).
5. *Hamdan v. United States*, 696 F.3d 1238 (D.C. Cir. 2012).
6. *Uthman v. Obama*, 637 F.3d 400 (D.C. Cir. 2011), *cert. denied*, 567 U.S. 905 (2012).

7. *Al Bahlul v. United States*, 767 F.3d 1 (D.C. Cir. 2014) (Kavanaugh, J., concurring in the judgment in part and dissenting in part).
8. *Garza v. Hargan*, 874 F.3d 735 (D.C. Cir. 2017), *cert. granted, judgment vacated sub nom. Azar v. Garza*, 138 S. Ct. 1790 (2018).
9. *United States Telecom Association v. FCC*, 855 F.3d 381 (D.C. Cir. 2017) (Kavanaugh, J., dissenting from denial of rehearing en banc).
10. *Emily's List v. FEC*, 581 F.3d 1 (D.C. Cir. 2009).
11. *Al-Bihani v. Obama*, 619 F.3d 1 (D.C. Cir. 2010) (Kavanaugh, J., concurring in denial of rehearing en banc), *cert. denied*, 563 U.S. 929 (2011).
12. *Seven-Sky v. Holder*, 661 F.3d 1 (D.C. Cir. 2011), *abrogated by National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012).
13. *Carpenters Industrial Council v. Zinke*, 854 F.3d 1 (D.C. Cir. 2017).
14. *United States v. Burwell*, 690 F.3d 500 (D.C. Cir. 2012) (en banc) (Kavanaugh, J., dissenting).
15. *Cablevision v. FCC*, 597 F.3d 1306 (D.C. Cir. 2010) (Kavanaugh, J., dissenting).
- j. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I sat by designation but did not author an opinion in my name or join a dissent in the following cases:

Vo v. Holder, 472 F. App'x 425 (9th Cir. 2012).

Long v. Holder, 472 F. App'x 652 (9th Cir. 2012).

United States v. Ruiz-Apolonio, 657 F.3d 907 (9th Cir. 2011).

United States v. Parker, 651 F.3d 1180 (9th Cir. 2011).

United States v. Rodriguez-Mepfords, 433 F. App'x 557 (9th Cir. 2011).

Davidson v. Vasquez, 431 F. App'x 607 (9th Cir. 2011).

Zurich Specialties London Ltd. v. Bickerstaff, Whatley, Ryan & Burkhalter, Inc., 425 F. App'x 554 (9th Cir. 2011).

14. **Recusal:** Identify the basis by which as a judge you have assessed the necessity or propriety of recusal. (If your court employs an “automatic” recusal system by which you may be recused without your knowledge, please include a general description of that system and a list of cases from which you were recused.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself *sua sponte*.

- a. Identify each such case, and for each provide the following information:
 - i. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself *sua sponte*;
 - ii. a brief description of the asserted conflict of interest or other ground for recusal;
 - iii. the procedure you followed in determining whether or not to recuse yourself;
 - iv. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.
- b. Explain whether you will follow the same procedures for recusal if you are confirmed to the Supreme Court as you have followed on the Circuit Court. If not, please explain the procedure you will follow in determining whether to recuse yourself from matters coming before the Supreme Court, if confirmed.

In the D.C. Circuit, judges may have the Clerk’s office automatically recuse them from cases subject to clear recusal, such as where they hold stock in a party or have close friends or relatives who are parties or partners in law firms representing parties. To the best of my knowledge, I have not been automatically recused in any cases without my also separately reviewing the case. I review all cases myself, including those in which the Clerk’s office identifies a potential conflict. I recuse myself in cases as required by law, and I also recuse myself in my discretion consistent with the law from cases that present sufficient appearance issues. Those issues may not be sufficiently apparent to warrant recusal at the beginning of a case, and they may disappear before the end of a case.

The D.C. Circuit does not require judges to list their reasons for *sua sponte* recusals, which are left to each judge’s discretion. As a consequence, and because the court’s data systems often do not contain the reasons for recusals, I am unable to reconstruct with sufficient certainty the reasons for recusals in all cases. Consistent with the practice of prior nominees from this circuit, I have therefore indicated in Appendix 14 the reasons for my recusal in the set of cases from which I have been recused, to the extent that I can best reconstruct the reasons.

Litigants or parties have filed motions to recuse me in the following cases. The motions were resolved as described below.

No. 05-5420, *Mitchell v. Federal Bureau of Prisons*: Mitchell, a pro se prisoner, appealed the district court's orders revoking his in forma pauperis status and dismissing his complaint. Mitchell also moved to disqualify the entire D.C. Circuit on the ground that the court had conspired with the Bureau of Prisons to torture and murder him. A motions panel (Judges Ginsburg, Rogers, and Garland) denied the motion to recuse with respect to its members. The merits panel (Judges Williams, Tatel, and Brown) and the en banc court never voted on the motion to disqualify.

No. 05-5457, *Newby v. Bush*: Newby appealed the district court's dismissal of her pro se complaint seeking to enjoin the confirmation of John G. Roberts, Jr. as Chief Justice. Newby then moved to recuse all judges of the D.C. Circuit because of the judges' association with then-Judge Roberts. A panel (Judges Ginsburg, Randolph, and Tatel) denied the motion to recuse with respect to its members. After Judge Roberts was appointed as Chief Justice, another panel (Judges Ginsburg, Garland, and Rogers) dismissed Newby's appeal as moot. Newby then requested rehearing by the panel and by the en banc court. She also renewed her request that the entire court be recused. I recused myself from the en banc vote, but not for the reasons offered by Newby. I recused myself because Newby's claim focused in part on procedures by which the Executive Branch produced information to the Senate in connection with the Roberts nomination, which was an issue on which I might have had "personal knowledge of disputed evidentiary facts," 28 U.S.C. § 455(b)(1), as a result of my prior Executive Branch work.

No. 05-5185, *Baker Hostetler v. Department of Commerce*: Baker Hostetler sought certain documents related to the Department of Commerce's investigation of Canadian softwood lumber imports under the Freedom of Information Act. The district court granted summary judgment to the Department of Commerce. Baker Hostetler appealed the district court's decision. Baker Hostetler also moved for my recusal if, in my prior work for President George W. Bush, I "personally participated on issues relating to the *Softwood Lumber* dispute between the United States and Canada." I denied the motion because during my service in the Executive Branch, I did not participate in, express an opinion about, or have personal knowledge of the Baker Hostetler litigation. Nor did any rare or extraordinary circumstances arising out of my prior government employment otherwise justify recusal. Recusal therefore was not supported by or appropriate under 28 U.S.C. § 455(a) or (b). *See Baker & Hostetler v. Department of Commerce*, 471 F.3d 1355 (D.C. Cir. 2006).

No. 06-5195, *Karim-Panahi v. Warner*: Karim-Panahi sued the entire D.C. Circuit, alleging a conspiracy to destroy Iranian and Middle Eastern-educated professionals. A panel of which I was a member (with Judges Brown and Griffith) was composed of judges who were not yet on the court when the motion was filed. We recused ourselves, and the case was then referred to another circuit.

No. 06-5282, *Harbury v. Hayden*: Harbury, a pro se litigant, appealed the district court's dismissal of her tort claims against various U.S. Government officials. A panel of which I was a member (along with Judges Randolph and Williams) was assigned Harbury's appeal. Harbury moved that I recuse myself from the case. I denied the motion for the reasons given in *Baker Hostetler v. Department of Commerce*, 471 F.3d 1355 (D.C. Cir. 2006) (opinion of Kavanaugh, J.).

No. 06-7197, *Plotzker v. ABU*: Plotzker, a pro se litigant, sought review of the district court's denial of his third motion for relief under Rule 60(b). A special panel of which I was a member (with Judges Henderson and Griffith) granted the motions for summary affirmance filed by appellees George Washington University and the American Board of Urology. Plotzker then filed a petition for rehearing, arguing, among other things, that I should have recused myself from the case because of apparently unknown prior involvement in the case by my former law firm. I agreed and recused myself. The remaining members of the special panel voted to vacate the original order and to reissue an otherwise identical order reflecting my recusal. The special panel later denied Plotzker's petition for rehearing, which included a request that the panel members and I resign from the bench. The en banc court finally denied Plotzker's motion for reconsideration, in which he argued, among other things, that I acted as an agent of the appellees in voting to grant their motions for summary affirmance and that Judges Henderson and Griffith were tainted by their participation with me and should have recused themselves.

No. 07-5025, *Newby v. Bush*: Newby, a pro se litigant, sought to enjoin the confirmation proceedings of now-Justice Alito and then-CIA Director nominee Michael Hayden. Newby's motions to recuse the district court and for a temporary restraining order to enjoin Hayden's confirmation proceedings were denied. Newby then appealed two more of the district court's interlocutory orders and moved to recuse the entire D.C. Circuit. A special panel (Judges Randolph, Tatel, and Garland) denied the motion with respect to the members of the panel. Newby then filed a motion for reconsideration. Another special panel (Judges Tatel, Garland, and Brown) then denied Newby's motion to recuse with respect to the members of the panel. The motions to recuse were never presented to the full court. The en banc court eventually denied Newby's petition for rehearing en banc.

No. 07-5366, *Johnson v. Department of Veterans Affairs*: Johnson, a pro se prisoner, appealed the district court's dismissal of his complaint. Johnson also filed a motion to recuse the entire D.C. Circuit. Johnson's appeal was eventually dismissed by the Clerk's order for failure to prosecute, so the recusal motion was never presented to the full court.

No. 08-5069, *Rogers v. Schapiro*: Rogers, a pro se prisoner, appealed the district court's dismissal of his action against the chairmen of the SEC, the CFTC, and the U.S. Parole Commission. Rogers moved to recuse me and four other members of the court (Judges Sentelle, Ginsburg, Henderson, and Griffith). A panel of which I was a member (with Judges Ginsburg and Garland) denied the motion to recuse as to its two members who

were the subject of the motion. A later panel of which I was a member (with Judges Garland and Griffith) affirmed the district court's dismissal of Rogers's action. Rogers then sought rehearing of the dispositive order and moved in the alternative to disqualify the members of the panel that had issued that order, on the ground that we had engaged in acts of sedition. A panel of which I was a member (with Judges Garland and Brown) denied the petition for rehearing and the motion to disqualify because it was unwarranted.

No. 08-5523, *In re Henry T. Sanders*: Sanders, a pro se litigant, filed a mandamus petition to overturn a filing injunction that the district court had entered against him. A panel (Judges Sentelle, Ginsburg, and Rogers) denied the mandamus petition. Sanders then requested rehearing and rehearing en banc and also sought disqualification of the en banc court. The same panel denied the petition for rehearing and the motion for disqualification because it was unwarranted.

No. 08-7124, *Wallace v. Hastings*: Wallace, a pro se litigant, appealed the district court's order denying the removal of her case from the Oklahoma Supreme Court to the District Court for the District of Columbia. A panel of which I was a member (with Judges Tatel and Griffith) summarily affirmed the district court's order. Wallace then requested rehearing en banc and recusal of all members of the en banc court. The court denied the petition for rehearing and the motion for recusal because it was unwarranted.

No. 09-5280, *Trescott v. Federal Highway Administration*: Trescott appealed the district court's dismissal of his claim that a Federal Highway Administration rule was arbitrary and capricious. A panel of which I was a member (along with Judges Garland and Brown) granted the Federal Highway Administration's motion for summary affirmance of the district court's decision. Trescott then petitioned for rehearing en banc. He also argued that I should have recused myself from this case because I worked for the President at the same time that the Administrator of the Federal Highway Administration was appointed. The panel denied the petition for rehearing, along with the request for my recusal, because both were meritless.

No. 09-5069, *Sibley v. Samuel Alito, Jr.*: Sibley, a pro se litigant, appealed the district court's dismissal of his complaint against the Justices of the Supreme Court and a deputy clerk of the Supreme Court. A panel of which I was a member (with Judges Ginsburg and Garland) denied Sibley's motion to proceed in forma pauperis after concluding that the district court correctly certified that the appeal was not taken in good faith. Sibley then moved to recuse the members of the panel because of our ruling on his motion, and also moved for reconsideration. We denied both motions because they were unwarranted, and we summarily affirmed the district court's order.

No. 11-5027, *In re Don Benny Anderson*: Anderson, a pro se litigant, filed a petition for a writ of habeas corpus in the D.C. Circuit. A panel dismissed Anderson's petition for lack of jurisdiction, explaining that he had to bring his habeas claims in the district court in the first instance. Anderson then petitioned for rehearing and for rehearing en banc. Those petitions were likewise denied. Anderson moved to recuse the "federal

corporation judges” that had ruled on his petition for rehearing en banc. The en banc court denied the recusal motion because it was unwarranted.

No. 13-1038, *Rodriguez v. Commissioner of Internal Revenue*: Irene and Isidoro Rodriguez, pro se litigants, appealed a U.S. Tax Court decision finding them liable for tax deficiencies and penalties. The appellants also sought to disqualify all judges of the D.C. Circuit, the Second Circuit, the Third Circuit, the Fourth Circuit, the Tenth Circuit, the Federal Circuit, and the U.S. District Court for the District of Columbia, as well as certain Supreme Court justices. A panel of which I was a member (along with Judges Rogers and Brown) denied the recusal motion with respect to the members of the panel because it was unwarranted. The panel also granted the Commissioner’s motion to transfer the appeal to the Fourth Circuit on venue grounds.

No. 14-5071, *Partington v. Houck*: Partington sued various Navy officials, alleging violation of his constitutional rights in an administrative decision that suspended him from practice before naval courts. A panel of which I was a member (with Judges Tatel and Sentelle) affirmed the district court’s order entering summary judgment against Partington as to part of the action and dismissing the rest. Partington later filed a motion in the district court requesting that the district court declare our judgment void for lack of subject matter jurisdiction. The district court denied the motion. Partington appealed. Partington also moved to recuse the original panel of which I was a member. A panel (Judges Tatel, Brown, and Wilkins) denied the motion to recuse because the appeal did not present a circumstance in which the impartiality of the judges could reasonably be questioned. The panel also granted the appellees’ motion for summary affirmance. Partington’s later motions for rehearing and for rehearing en banc were denied.

No. 14-5180, *Smith v. Scalia*: Smith, a pro se litigant, sued the United States and 23 federal judges in a case stemming from the Colorado Supreme Court’s denial of his application for admission to the Colorado Bar. Smith’s complaint named Judges Rogers, Brown, and Sentelle (among others) as defendants. The district court granted the defendants’ motion to dismiss, and Smith appealed. Smith also moved to recuse the entire D.C. Circuit on the ground that the judges could not be impartial because three of their colleagues were named defendants. A panel of which I was a member (with Judges Griffith and Wilkins) denied the recusal motion with respect to the members of the panel because the case did not present a circumstance in which the impartiality of the judges could reasonably be questioned. The panel also granted the appellees’ motions for summary affirmance. Smith’s later petition for rehearing en banc did not seek recusal. The en banc court denied the petition; only the judges named in Smith’s complaint recused themselves.

No. 15-7045, *United States ex rel. Stephen Yelverton v. Federal Insurance Co.*: Yelverton, a pro se litigant, appealed the district court’s dismissals of his bankruptcy appeals. Yelverton also moved to designate a panel of judges from another circuit in order to avoid the appearance of judicial bias in favor of the U.S. Trustee’s Office, which is located within the territory of the D.C. Circuit. A panel (Judges Henderson, Rogers, and Pillard) denied the motion to the extent that it sought recusal of members of the

panel. A merits panel (Judges Srinivasan, Millett, and Wilkins) later affirmed in part and reversed in part the district court's dismissals. Yelverton's later motions for rehearing and for rehearing en banc were denied.

No. 16-5177, *Rochon v. Sessions*: Rochon, a pro se litigant, appealed the district court's order granting summary judgment to the FBI. A panel of which I was a member (with Judges Tatel and Millett) granted the FBI's motion for summary affirmance. Rochon then filed a petition for rehearing, which the same panel denied. Rochon then filed a petition for rehearing en banc, which the en banc court denied. Rochon then filed a "motion to reopen case due to circuit's recusal failure and remove appeal to another jurisdiction," alleging that the panel was biased. The panel denied Rochon's motion because Rochon failed to demonstrate that the panel was biased.

No. 16-5372, *Gorbey v. United States*: Gorbey, a pro se prisoner, appealed the district court's denial of his motion for leave to file without prepayment of fees. A panel ordered the appellant to pay the filing fee. The appellant then submitted a petition for rehearing en banc together with a motion to recuse the members of the panel. We denied the motion to recuse because recusal was not warranted.

15. **Public Office, Political Activities and Affiliations:**

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

Appointed by Solicitor General Kenneth W. Starr as an attorney in the Office of the Solicitor General, U.S. Department of Justice, 1992 – 1993.

Appointed by Judge Kenneth W. Starr as Associate Counsel in Office of Independent Counsel, 1994 – 1997, 1998.

Appointed by President George W. Bush as Associate Counsel, 2001 – 2003, and Senior Associate Counsel, 2003.

Appointed by President George W. Bush as Assistant to the President and Staff Secretary, 2003 – 2006.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party, election committee, or President-elect transition team. If you have ever held a position or played a role in a political campaign, including the 2000 presidential campaign and Florida recount, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities. Please supply four (4) copies of any memoranda analyzing issues of law or public policy that you wrote on behalf of or in connection with a President-elect

transition team.

Lawyers for Bush Cheney 2000

Member & Regional Coordinator for Pennsylvania, Maryland, Delaware, and
District of Columbia

I participated in legal activities on behalf of the Bush/Cheney 2000 Campaign related to
2000 election recount in DeLand, Florida.

c. List all political events for which you were on the host committee, including the
date, location, which candidate or organization it benefitted, and how much was raised at
the event.

None.

16. **Legal Career:** Answer each part separately.

a. Describe in reverse chronological order your law practice and legal experience
after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge,
the court and the dates of the period you were a clerk;

From 1993 to 1994, I served as a law clerk to the Honorable Anthony M.
Kennedy, Associate Justice of the United States Supreme Court.

From 1991 to 1992, I served as a law clerk to the Honorable Alex Kozinski,
United States Court of Appeals for the Ninth Circuit.

From 1990 to 1991, I served as a law clerk to the Honorable Walter K. Stapleton,
United States Court of Appeals for the Third Circuit.

ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

iii. the dates, names and addresses of law firms or offices, companies or
governmental agencies with which you have been affiliated, and the nature of
your affiliation with each.

2001 – 2006

The White House

1600 Pennsylvania Avenue, N.W.

Washington, D.C. 20500

Assistant to the President and Staff Secretary (2003 – 2006)

Senior Associate Counsel to the President (2003)

Associate Counsel to the President (2001 – 2003)
1997 – 1998; 1999 – 2001
Kirkland & Ellis LLP
655 15th Street, N.W.
Washington, D.C. 20005
Partner

1994 – 1997; 1998
Office of the Independent Counsel
1001 Pennsylvania Avenue, N.W., Suite 490-N
Washington, D.C. 20004
Associate Counsel

1992 – 1993
Office of the Solicitor General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Attorney

1992
Munger Tolles & Olson LLP
350 South Grand Avenue, 50th Floor
Los Angeles, California 90071
Summer Associate

1990
Williams & Connolly LLP
725 12th Street, N.W.
Washington, D.C. 20005
Summer Associate

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or arbitrator.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

Office of the Solicitor General:

I served for one year as an attorney in this office from 1992 to 1993. I was

responsible for preparing briefs in opposition to certiorari petitions and appeal recommendations. In addition, I assisted the Solicitor General and his Deputies and Assistants in preparing briefs and in preparing for oral arguments before the Supreme Court. I also handled two court of appeals cases, writing the briefs in both cases and arguing one in the U.S. Court of Appeals for the Fifth Circuit. The government prevailed in both cases.

Office of Independent Counsel:

In the summer of 1994 I joined the Office of Independent Counsel. In that Office, I performed six main functions during the course of my service.

First, I was a line attorney responsible for the Office's investigation into the death of former Deputy White House Counsel Vincent W. Foster, Jr. This assignment required management and coordination with a number of FBI agents and investigators, FBI laboratory officials, and outside experts on forensic and psychological issues. I was responsible for conducting and assisting with interviews of a wide variety of witnesses with respect to both the cause of death and Mr. Foster's state of mind. I was responsible for preparing a draft of the report on his death. The investigation and report resolved questions about the cause and manner of Mr. Foster's death, concluding that he committed suicide in Fort Marcy Park, Virginia.

Second, I was one of two line attorneys responsible for conducting the investigation into possible obstruction of justice in the wake of Mr. Foster's death, including whether documents had been unlawfully removed from his office or otherwise concealed from investigators. This was an extensive grand jury investigation. I conducted numerous interviews and grand jury sessions and, with another attorney, prepared a memorandum of more than 300 pages summarizing the matter. At the time, this matter also was being investigated by the Senate. The Office conducted a thorough investigation of the facts and did not seek criminal charges against any individuals.

Third, I was substantially responsible for writing briefs and conducting oral arguments regarding privilege and other legal matters that arose frequently during the investigation. These included cases about the government attorney-client privilege, Secret Service privilege, executive privilege, and private attorney-client privilege. I argued once before the Supreme Court of the United States and twice before the U.S. Court of Appeals for the D.C. Circuit.

Fourth, I served as a legal adviser on a variety of issues facing the Office. I and several other attorneys sometimes served a function roughly equivalent to that of attorneys in the Office of Legal Counsel in the Justice Department. This required analysis of, for example, statutory reporting requirements, Rule 6(e) obligations, FOIA disclosure rules, and issues related to interaction with Congress.

Fifth, I was part of the team that prepared that part of Judge Starr's 1998 report to Congress, submitted pursuant to statute, that outlined information that "may constitute grounds" for impeachment. Although many volumes of evidence were provided to the House of Representatives under seal, the report as publicly released by the House of Representatives was divided into two parts. The first part was a summary of facts known as the "narrative" section. I did not draft that part of the report. The second part was a description of possible grounds for impeachment that identified areas where the President may have made false statements or otherwise obstructed justice. I drafted portions of that part of the report. This is a matter of some continuing controversy. As I have stated publicly before, I regret that the House of Representatives did not handle the report in a way that would have kept sensitive details in the report from public disclosure (as had occurred with the House's handling of the Special Prosecutor's report in 1974) or, if not, that the report did not further segregate certain sensitive details. The House of Representatives voted to publicly release the report without reviewing it beforehand.

Sixth, I was an attorney primarily responsible for assisting Judge Starr with preparation of his two-hour statement to the House Judiciary Committee, which he submitted in written form and delivered orally on November 19, 1998. The statement identified and discussed the investigation and evidence.

Kirkland & Ellis:

At Kirkland & Ellis, I worked primarily on appellate and pre-trial briefs in commercial and constitutional litigation. My most significant corporate clients were firm clients Verizon, America Online, General Motors, and Morgan Stanley. I represented them in a variety of litigation and administrative matters. I also represented individuals and non-corporate entities in litigation matters. I prepared pro bono briefs in several Supreme Court cases. I also represented pro bono a synagogue that was involved in a zoning dispute with Montgomery County, Maryland. In all of the matters, I was part of a larger litigation team.

Office of Counsel to the President:

I assisted with some of the wide variety of issues that confront the Office. I worked on the nomination and confirmation of federal judges. I assisted on legal policy issues affecting the tort system, such as airline liability, victims' compensation, terrorism insurance, medical liability, and class action reform. I worked on issues of separation of powers, including issues involving congressional and other requests for records and testimony. I worked on various ethics issues. I also monitored and worked on certain litigation matters, including those involving the White House.

Assistant to the President and Staff Secretary:

I performed the standard duties of the Staff Secretary. The Staff Secretary's Office traditionally coordinates the staffing and presentation of speeches and documents for the President, among other responsibilities.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

While serving in the Office of the Solicitor General, my client was the United States.

While serving in the Office of the Independent Counsel, my client was the United States.

While serving in the Office of the Counsel to the President and as Staff Secretary, my client was the United States.

At Kirkland & Ellis, I worked primarily on appellate and pre-trial briefs in commercial and constitutional litigation. My most significant corporate clients were firm clients Verizon, America Online, General Motors, and Morgan Stanley. I also represented individuals and non-corporate entities in litigation matters, including several pro bono matters.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

I appeared in court occasionally. In both public service and private practice, I argued a number of appellate matters and conducted legal arguments in district court.

i. Indicate the percentage of your practice in:

- | | | |
|----|--------------------------|-------------------|
| 1. | federal courts: | 90% (approximate) |
| 2. | state courts of record: | 10% (approximate) |
| 3. | other courts: | 0% |
| 4. | administrative agencies: | 0% |

ii. Indicate the percentage of your practice in:

- | | | |
|----|-----------------------|-------------------|
| 1. | civil proceedings: | 50% (approximate) |
| 2. | criminal proceedings: | 50% (approximate) |

d. List, by case name, all cases in courts of record, including cases before administrative law judges, you tried or litigated to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel. For each such case, include the docket number and provide any opinions and filings available to you.

None, as I have not been a trial lawyer. I have worked on legal issues and appeals in both public service and private practice and argued in court, including the Supreme Court of the United States, the U.S. Court of Appeals for the D.C. Circuit, the U.S. Court of Appeals for the Fifth Circuit, federal district courts, and state courts.

i. What percentage of these trials were:

1. jury: %
2. non-jury: %

Not applicable.

e. Describe your practice, if any, before the Supreme Court of the United States, the highest court of any state, or any state or federal courts of appeals. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice. Give a detailed summary of the substance of each case, outlining briefly the factual and legal issues involved, the party or parties whom you represented, the nature of your participation in the litigation, and the final disposition of the case. Also provide the individual names, addresses, and telephone numbers of co-counsel of record and principal counsel of record for each of the other parties.

1. *Good News Club v. Milford Central School*, 533 U.S. 98 (2001).

I represented an amicus curiae, Sally Campbell, and filed an amicus brief.

The case involved a Free Speech Clause and Free Exercise Clause challenge to the community use policy of a school district in New York. The policy excluded religious organizations from using public school facilities after school hours. (Ms. Campbell had challenged a similar policy in Louisiana.) The question in the case was whether the exclusion of religious organizations was permitted under the Religion and Free Speech Clauses of the First Amendment. The amicus brief filed on behalf of Ms. Campbell argued that the policy was neither required nor permitted by the Constitution. The Supreme Court agreed in a 6-3 decision.

Principal counsel for Petitioner (Good News Club)

Hon. Thomas Marcelle
Then with Marcelle Law
Cohoes City Court
97 Mohawk Street
Cohoes, New York 12047
(518) 453-5501

Principal counsel for Respondent (Milford Central Schools)

Frank W. Miller
Law Firm of Frank W. Miller
6575 Kirkville Road
East Syracuse, New York 13057
(315) 234-9900

2. *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000).

I filed a brief on behalf of amici curiae Congressman Steve Largent and Congressman J.C. Watts in support of the petitioner.

Students and parents alleged that a high school's policy allowing student-led, student-initiated prayer before football games, violated the Establishment Clause. The amicus brief argued that the school's policy was neutral because it neither required nor prevented students from invoking God's name or uttering religious words. Therefore, the policy satisfied the Constitution. The brief also argued that upholding the challenge would require schools to monitor and censor religious words – behavior that would be hostile to religion and would not be permitted under the Religion Clauses of the First Amendment.

The Supreme Court disagreed with the amicus brief and held that the school's policy of permitting student-led invocations before football games was impermissibly coercive. Chief Justice Rehnquist, joined by Justices Scalia and Thomas, dissented and argued that the Court's opinion was not faithful to the meaning of the Establishment Clause.

Principal counsel for Petitioner (Santa Fe Independent School District)

Jay A. Sekulow
American Center for Law and Justice
201 Maryland Avenue, N.E.
Washington, D.C. 20002
(202) 546-8890

Principal counsel for Respondent (Jane Doe)

Anthony P. Griffin
Then with the Law Offices of Anthony P. Griffin
Retired

3. *Geier v. American Honda Motor Co., Inc.*, 529 U.S. 861 (2000).

I filed a brief on behalf of amici curiae Alliance of Automobile Manufacturers and the Association of International Automobile Manufacturers, Inc.

An injured motorist sued an automobile manufacturer under District of Columbia law. The motorist argued that the manufacturer was negligent because the manufacturer did

not equip the automobile with a driver's side airbag. The question presented in the case was whether the lawsuit was preempted by federal law. The amicus brief argued that two provisions in the National Traffic and Motor Vehicle Safety Act of 1966 expressly preempted state safety standards that would mandate the installation in vehicles when the applicable federal standard made airbags optional. The Supreme Court held that the suit was preempted by a Department of Transportation standard that required manufacturers to place driver's side airbags in some but not all 1987 automobiles.

Co-counsel for Amicus Curiae (Alliance of Automobile Manufacturers and the Association of International Automobile Manufacturers, Inc.)

Richard A. Cordray
Then with Kirkland and Ellis
Cordray/Sutton for Ohio
Post Office Box 7910
Columbus, Ohio 43207
(614) 505-9334

Principal counsel for Petitioners (Geiers)

Arthur H. Bryant
Public Justice
1620 L Street, N.W., Suite 630
Washington, D.C. 20036
(202) 797-8600

Principal counsel for Respondents (American Honda Motor Co., Inc.)

Malcolm E. Wheeler
Wheeler Trigg O'Donnell LLP
370 17th Street, Suite 4500
Denver, Colorado 80202
(303) 244-1870

4. *Rice v. Cayetano*, 528 U.S. 495 (2000).

I filed a brief on behalf of amici curiae Center for Equal Opportunity, New York Civil Rights Coalition, Carl Cohen, and Abigail Thernstrom in support of the petitioner.

A Hawaiian citizen challenged the eligibility requirement for voting for trustees for the Office of Hawaiian Affairs. Only "Hawaiians," as defined by state law, could vote in the elections. The amicus brief argued that Hawaii's racial voting qualification clearly violated the Fifteenth Amendment, which prohibits racial classifications except when those classifications are necessary and narrowly tailored to serve a compelling government interest. The Supreme Court agreed, and held that Hawaii's denial of the petitioner's right to vote in the elections violated the Fifteenth Amendment.

Co-Counsel for Amicus Curiae (Center for Equal Opportunity)

Theodore W. Ullyot
Then with Kirkland and Ellis
Retired

Principal counsel for Petitioner (Rice)

Hon. Theodore B. Olson
Gibson, Dunn & Crutcher
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8668

Principal counsel for Respondent (Cayetano)

Hon. John G. Roberts, Jr.
Then with Hogan & Hartson
Supreme Court of the United States
One First Street, N.E.
Washington, D.C. 20543
(202) 479-3000

5. *Gonzalez v. Reno*, 215 F.3d 1243 (11th Cir. 2000) (denying petition for rehearing en banc), *cert. denied*, 530 U.S. 1270 (2000).

I represented pro bono the American relatives of Elian Gonzalez in their petition for rehearing en banc in the U.S. Court of Appeals for the Eleventh Circuit, application for stay in the Supreme Court of the United States, and petition for writ of certiorari in the Supreme Court. The case came into my law firm through a contact made to an associate in the firm. The associate then asked me if I would be willing to work on the petition for rehearing en banc, application for stay, and petition for writ of certiorari. I agreed to do so.

The American relatives of Elian Gonzalez argued that the INS's decision to deny an asylum hearing or interview to Elian Gonzalez contravened both the Due Process Clause and the Refugee Act of 1980. The case also raised an important question about the appropriate amount of judicial deference to decisions of administrative agencies.

The Eleventh Circuit initially had granted an injunction pending appeal on the ground that the Gonzalez family had made a compelling case that the Refugee Act of 1980 requires a hearing for alien children who may apply for asylum. The Eleventh Circuit's subsequent decision on the merits (Judges Edmondson, Dubina, and Wilson) held, however, that the INS's contrary interpretation of the statute was entitled to deference from the courts. The Gonzalez family filed a petition for rehearing en banc, arguing, in

essence, that the court's original decision granting an injunction pending appeal had analyzed the issues correctly and that deference to the INS was not warranted. The Eleventh Circuit denied the petition for rehearing en banc. The Gonzalez family then filed an application for stay and petition for writ of certiorari in the Supreme Court. The Supreme Court denied both the application and the petition.

Co-counsel for Respondent (Gonzalez)

Jeffrey Clark
Kirkland & Ellis
655 15th Street, N.W.
Washington, D.C. 20005
(202) 879-5960

Kendall Coffey
Coffey Burlington
2601 South Bayshore Drive
Penthouse One
Miami, Florida 33133
(305) 858-5261

Principal counsel for Petitioners (Reno)

Edwin Kneedler
Office of the Solicitor General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 514-2203

6. *Rubin v. United States*, 525 U.S. 990 (1998).

I represented the United States (Office of Independent Counsel) in the Supreme Court proceedings in which the Office of Independent Counsel opposed a petition for writ of certiorari filed by the Secretary of the Treasury and Director of the Secret Service.

The question presented was whether the federal courts should recognize a new "protective function" privilege in federal criminal proceedings that would prevent Secret Service agents from testifying in the grand jury. The U.S. Court of Appeals for the D.C. Circuit ruled in favor of the Office of Independent Counsel (Judges Williams, D.H. Ginsburg, and Randolph). The Secretary of the Treasury filed a petition for writ of certiorari and sought a stay of enforcement of the subpoena. The Supreme Court denied a stay and then denied the petition for writ of certiorari (over the dissents of Justices Ginsburg and Breyer).

Co-counsel for Respondents (United States)

Hon. Kenneth W. Starr
Then with United States Office of Independent Counsel
Retired

Principal counsel for Petitioner (Rubin)

Edwin Kneedler
Office of the Solicitor General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 514-2203

7. *Swidler & Berlin v. United States*, 524 U.S. 399 (1998), *reversing*, 124 F.3d 230 (D.C. Cir. 1997).

I represented the United States and argued and briefed this case in both the Supreme Court of the United States and the United States Court of Appeals for the District of Columbia Circuit. The court of appeals decision was in 1997, and the Supreme Court decision was in 1998.

The case presented the question whether the attorney-client privilege continues to apply in federal criminal proceedings when the client is deceased and therefore no longer available to testify. A federal grand jury issued a subpoena for communications that occurred between Vincent W. Foster, Jr., and his attorney James Hamilton nine days before Mr. Foster's suicide. Mr. Hamilton challenged the subpoena, arguing that the attorney-client privilege continued to apply after the death of the client and that he was not permitted to disclose what Mr. Foster had told him. The United States, represented by the Office of Independent Counsel, sought to enforce the grand jury subpoena, arguing that the attorney-client privilege did not apply with full force in federal criminal proceedings when the client was deceased. Many legal treatises, including the American Law Institute's Restatement of the Law, had agreed with the position advocated by the Office of Independent Counsel. The U.S. Court of Appeals for the D.C. Circuit, in an opinion by Judge Patricia Wald and Judge Stephen Williams, ruled in favor of the Office of Independent Counsel. Judge Tatel dissented. The Supreme Court then granted certiorari and ruled 6-3 in favor of Mr. Hamilton in an opinion by Chief Justice Rehnquist. The dissent written by Justice O'Connor and joined by Justices Scalia and Thomas agreed with the position of the Office of Independent Counsel.

Co-counsel for Respondents (United States)

Hon. Kenneth W. Starr
Then with the United States Office of Independent Counsel
Retired

Craig Lerner
Then with the United States Office of Independent Counsel
Antonin Scalia Law School
George Mason University
3301 North Fairfax Drive
Arlington, Virginia 22201
(703) 993-8080

Principal counsel for Petitioner (Swidler and Berlin)

James Hamilton
Then with Swidler Berlin Shereff Friedman
Morgan Lewis
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 373-6026

8. *United States v. Clinton*, 524 U.S. 912 (1998).

I represented the United States (Office of Independent Counsel) in this case. We argued that the Supreme Court should grant certiorari before judgment even though the President had already withdrawn his claim of executive privilege over certain information because the facts justifying Supreme Court review had not changed. The Supreme Court denied the petition for a writ of certiorari and stated that it assumed the Court of Appeals would proceed expeditiously to decide the case.

Co-counsel for Petitioner (United States)

Then with the United States Office of Independent Counsel
Hon. Kenneth W. Starr
Retired

Hon. Joseph Ditkoff
Then with the United States Office of Independent Counsel
Massachusetts Appeals Court
John Adams Courthouse
One Pemberton Square, Room 1200
Boston, Massachusetts 02018
(617) 725-8106

Principal counsel for Respondent (Clinton)

Then with Howrey & Simon LLP
Neil Eggleston
Kirkland & Ellis
655 15th Street, N.W.

Washington, D.C. 20005
(202) 879-5016

Timothy K. Armstrong
Then with Howrey & Simon LLP
University of Cincinnati College of Law
2540 Clifton Avenue
Cincinnati, Ohio 45221
(513) 556-0171

9. *In re Lindsey*, 158 F.3d 1263 (D.C. Cir. 1998), *cert. denied*, *Office of the President v. Office of Independent Counsel*, 525 U.S. 996 (1998).

I represented the United States (Office of Independent Counsel) in this case. I briefed and argued the case in the U.S. Court of Appeals for the D.C. Circuit and worked on the brief in opposition to the petition for writ of certiorari in the Supreme Court of the United States. I also had worked on a petition for writ of certiorari before judgment to the Supreme Court.

This case arose out of a federal grand jury subpoena issued to Bruce R. Lindsey, an attorney employed in the White House. President Clinton asserted a government attorney-client privilege in response to the subpoena. The Office of Independent Counsel sought to have the subpoena enforced. The D.C. Circuit (Judges Randolph and Rogers for the majority; Judge Tatel in dissent) ruled in favor of the Office of Independent Counsel. The Office of the President then filed a petition for writ of certiorari in the Supreme Court. The Supreme Court denied the petition.

Co-counsel for Respondent (Office of Independent Counsel)

Then with the United States Office of Independent Counsel
Hon. Kenneth W. Starr
Retired

Hon. Joseph Ditkoff
Then with the United States Office of Independent Counsel
Massachusetts Appeals Court
John Adams Courthouse
One Pemberton Square, Room 1200
Boston, Massachusetts 02018
(617) 725-8106

Counsel for Petitioner (Office of the President)

David Kendall
Williams & Connolly
725 12th Street, N.W.

Washington, D.C. 20005
(202) 434-5145

Neil Eggleston
Then with Howrey & Simon LLP
Kirkland & Ellis
655 15th Street, N.W.
Washington, D.C. 20005
(202) 879-5016

Douglas Letter
Then with the U.S. Department of Justice
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001
(202) 662-9000

10. *In re Grand Jury Subpoena Duces Tecum*, 112 F.3d 910 (8th Cir.), *cert. denied*, *Office of the President v. Office of Independent Counsel*, 521 U.S. 1105 (1997).

I represented the United States (Office of Independent Counsel) in this case. I primarily wrote the brief in the U.S. Court of Appeals for the Eighth Circuit and worked on the brief in opposition to the petition for writ of certiorari in the Supreme Court of the United States. I also briefed the case in the United States District Court for the Eastern District of Arkansas.

This case arose out of a federal grand jury subpoena issued to the White House Office of Counsel to the President for documents of a government attorney employed in the White House. President Clinton asserted a government attorney-client privilege in response to the subpoena. The Eighth Circuit (Judges Bowman and Wollman for majority; Judge Kopf in partial dissent) ruled in favor of the United States, represented by the Independent Counsel. The Office of the President then filed a petition for writ of certiorari in the Supreme Court. The Supreme Court denied the petition.

Co-counsel for Respondent (Office of Independent Counsel)

Hon. Kenneth W. Starr
Then with the United States Office of Independent Counsel
Retired

Hon. John Bates
Then with the United States Office of Independent Counsel
United States District Court for the District of Columbia
333 Constitution Avenue, N.W.
Washington, D.C. 20001
(202) 354-3430

Principal counsel for Petitioner (Office of the President)

David Kendall
Williams & Connolly
725 12th Street, N.W.
Washington, D.C. 20005
(202) 434-5145

Lawrence Robbins
Robbins, Russell, Englert, Orseck, Untereiner & Sauber, LLP
1801 K Street, N.W., Suite 411L
Washington, D.C. 20006
(202) 775-4501

Andrew Frey
Mayer Brown
1999 K Street, N.W.
Washington, D.C. 20006
(202) 263-3291

Miriam Nemetz
Then with the White House Counsel's Office
Mayer Brown
1999 K Street, N.W.
Washington, D.C. 20006
(202) 263-3253

11. *Lewis v. Brunswick*, No. 97-288 (Supreme Court of the United States) (1997)
(dismissed as moot because of settlement after oral argument).

I represented General Motors in filing an amicus brief in the Supreme Court. The question presented in the case was whether the Boat Safety Act preempted a state common-law requirement that recreational boats be equipped with propeller guards. Because of the similarity of the question to a question under the National Traffic and Motor Vehicle Safety Act, General Motors filed an amicus brief. The Supreme Court subsequently dismissed the case after oral argument because the parties settled.

Co-counsel for Amicus Curiae (General Motors)

Paul T. Cappuccio
Then with Kirkland & Ellis
WarnerMedia
One Time Warner Center
New York, New York 10019
(212) 484-8000

Richard A. Cordray
Then with Kirkland & Ellis
Cordray/Sutton for Ohio
Post Office Box 7910
Columbus, Ohio 43207
(614) 505-9334

Principal counsel for Petitioner (Lewis)

David E. Hudson
Hull Barrett
801 Broad Street, Suite 700
Augusta, Georgia 30901
(706) 722-4481

Principal counsel for Respondent (Brunswick)

Kenneth S. Geller
Mayer Brown
1999 K Street, N.W.
Washington, D.C. 20006
(202) 263-3225

12. *United States v. Bonetti*, 277 F.3d 441 (4th Cir. 2002).

In 2000, I briefly represented a pro bono criminal defendant on appeal to the Fourth Circuit. The defendant had been convicted of conspiracy to harbor an alien and harboring an alien. I filed an appearance in the Fourth Circuit on behalf of the defendant but withdrew from the case before any briefs were filed. I withdrew because I had taken a new job at the White House in January 2001.

Counsel for the United States

Mythili Raman
Now with Covington & Burling LLP
One CityCenter
850 10th Street, N.W.
Washington, D.C. 20001
(202) 662-5929

Co-counsel for the Defendant

Paul F. Kemp
Ethridge, Quinn, Kemp, McAuliffe, Rowan & Hartinger
33 Wood Lane

Rockville, Maryland 20850
(301) 762-1696

13. *MediaOne Group, Inc. v. County of Henrico, Va.*, 257 F.3d 356 (4th Cir. 2001).

I represented several telecommunications entities collectively referred to as Verizon, which had intervened in support of the County of Henrico, Virginia, in a suit brought by a cable television franchisee. The plaintiff challenged the validity of a county ordinance that conditioned the approval of a transfer of a cable television franchise on the franchisee's granting other Internet service providers access to its cable modem platform. The district court found that the county ordinance was preempted by federal law, and the Fourth Circuit agreed, ruling that the ordinance was "inconsistent with the federal Communications Act," and therefore preempted. I assisted with briefing at the Fourth Circuit.

Primary counsel for Plaintiffs

David W. Carpenter
Sidley Austin LLP
One South Dearborn
Chicago, Illinois 60603
(312) 853-7237

Counsel for Henrico County
Edward J. Fuhr
Hunton & Williams
951 East Byrd Street
Richmond, Virginia 23219
(804) 788-8201

Principal counsel for amici curiae Virginia Citizens Consumer Council, Consumer Federation of America & Center for Media Education

Harold Feld
Public Knowledge
Suite 410
1818 N Street, N.W.
Washington, D.C. 20036
(202) 861-0020

Counsel for amici curiae District of Columbia, City of Tacoma, Montgomery County, U.S. Conference of Mayors, National League of Cities, National Association of Counties, National Association of Telecommunications Officers & Advisors, Virginia Association of Telecommunications Officers & Advisors, Texas Association of Telecommunications Officers & Advisors & Minnesota Association of Telecommunications Officers & Advisors

William Robert Malone
Then with Miller & Van Eaton, PLLC
Retired

Principal counsel for amicus curiae Hands off the Internet

Tanya Lee Forsheit
Then with Proskauer Rose, LLP
Frankfurt Kurnit Klein + Selz PC
2029 Century Park East
Suite 1060
Los Angeles, California 90067
(310) 579-9615

Principal counsel for amicus curiae Federal Communications Commission

James M. Carr
Federal Communications Commission
Office of General Counsel
445 12th Street, S.W.
Washington, D.C. 20554
(202) 418-1762

Principal counsel for amici curiae National Cable Television Association, Virginia Cable Telecommunications Association, West Virginia Telecommunications Association, Cable Telecommunications Association of Maryland, Delaware & the District of Columbia, North Carolina Cable Telecommunications Association & South Carolina Television Association

Daniel L. Brenner
Then with National Cable Television Association, Inc.
Deceased

14. *Communications Telesystems International v. Mercury Communications, Ltd.*, 202 F.3d 277 (9th Cir. 1999) (table decision) (per curiam).

I represented Mercury Communications in the Ninth Circuit. The district court had entered a preliminary injunction enjoining Mercury from proceeding in a suit it had filed in England against Communications Telesystems. I helped draft the opening and reply briefs at the Ninth Circuit, which affirmed the district court's decision in a per curiam memorandum decision.

Co-Counsel

Robert Krupka

Now of Krupka Law Group, P.C.
1870 Mango Way
Los Angeles, California 90049
(310) 889-1990

Andrew W. Paris
Alston & Bird LLP
333 South Hope Street, 16th Floor
Los Angeles, California 90071
(213) 576-1119

Primary counsel for Communications Telesystems

Carl W. Sonne
Then with Communications Telesystems International
California Department of Justice
600 West Broadway, Suite 1800
San Diego, California 92101
(619) 738-9423

15. *GTE South, Inc. v. Morrison*, 199 F.3d 733 (4th Cir. 1999).

I represented the plaintiff GTE South in a challenge to utility rates set by the Virginia State Corporation Commission. We argued that the Commission's pricing decisions did not meet the requirements of the Telecommunications Act of 1996. The district court granted summary judgment to defendants, and the Fourth Circuit affirmed. I assisted with GTE South's opening and reply briefs at the Fourth Circuit.

Co-counsel for Appellant (GTE South)

Paul T. Cappuccio
Then with Kirkland & Ellis LLP
WarnerMedia
One Time Warner Center
New York, New York 10019
(212) 484-8000

Steven G. Bradbury
Then with Kirkland & Ellis LLP
Office of General Counsel for the Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590
(202) 366-4702

Principal counsel for Appellees (Morrison, Moore, Miller, Cox Fibernet Commercial Services, Inc., AT&T Communications of Virginia, Inc., MCI Telecommunications Corp.)

& MCImetro Access Transmission Services of Virginia, Inc.)

Hon. Donald B. Verrilli, Jr.
Then with Jenner & Block
Munger Tolles & Olson LLP
1155 F Street, N.W.
Washington, D.C. 20004
(202) 220-1100

Robert A. Dybing
Thompson McMullan PC
100 Shockoe Slip, 3rd Floor
Richmond, Virginia 23219
(804) 698-6248

16. *Broussard v. Meineke Discount Muffler Shops, Inc.*, 155 F.3d 331 (4th Cir. 1998).

I represented Meineke in the Fourth Circuit. Several franchisees sued Meineke, its in-house advertising agency, three officers of Meineke, and its corporate parent. The plaintiffs alleged that Meineke's advertising practices breached the parties' franchise agreements. The district court certified a class, and a jury returned a verdict in favor of the plaintiffs. I assisted with the reply brief at the Fourth Circuit, where Meineke argued that the district court had erred by certifying a class and also by allowing plaintiffs to rely on improper theories of tort and statutory liability. The Fourth Circuit agreed with Meineke on these issues, reversed the judgment in its entirety, and remanded the case to the district court.

Principal co-counsel for Appellants

Hon. Kenneth W. Starr
Then with Kirkland & Ellis LLP
Retired

Steven G. Bradbury
Then with Kirkland & Ellis LLP
Office of General Counsel for the Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590
(202) 366-4702

Christopher Landau
Then with Kirkland & Ellis LLP
Quinn Emanuel Urquhart & Sullivan, LLP
1300 I Street, N.W., Suite 900
Washington, D.C. 20005
(202) 538-8000

Principal counsel for Appellees

Charles J. Cooper
Then with Cooper & Carvin PLLC
Cooper & Kirk, PLLC
1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 220-9660

17. *Smith v. General Motors (In re General Motors)*, Nos. 00-3835, 00-8023, 01-1024
(8th Cir.) (voluntarily dismissed because of settlement before oral argument).

In this case, I represented Kirkland's longtime client General Motors in several proceedings at the Eighth Circuit. The plaintiff, Tammi Smith, brought tort claims against General Motors. At the Eighth Circuit, I assisted with drafting a petition for a writ of mandamus, which was denied, and also with a subsequent petition to appeal under 28 U.S.C. § 1292(b). Before the court ruled on the petition, the parties settled, and General Motors dismissed the appeal.

Principal co-counsel for Defendant

Jay Lefkowitz
Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
(212) 446-4970

Jordan B. Cherrick
Sidley Austin LLP
One South Dearborn
Chicago, Illinois 60603
(312) 853-7826

Matthew S. Darrough
Jeffrey R. Fink
Thompson Coburn LLP
One U.S. Bank Plaza
St. Louis, Missouri 63101
(314) 552-6552

Principal counsel for Plaintiff

William W. Francis, Jr.
Then with Placzek & Francis
Missouri Court of Appeals, Southern District

300 Hammons Parkway
Springfield, Missouri 65806
(417) 895-6811

18. *Bush v. Holmes*, 767 So. 2d 668 (Fla. Dist. Ct. App. 2000), *appeal after remand*, 886 So. 2d 340 (Fla. Dist. Ct. App. 2004) (en banc), *overruled by* 919 So. 2d 392 (Fla. 2006).

In this series of cases, several individuals and groups sued then-Governor Jeb Bush and several other Florida officials after Florida adopted the Opportunity Scholarship Program. The trial court ruled that the Program violated Florida's Constitution. While at Kirkland, I assisted with drafting the briefs for Governor Bush's appeal to the intermediate Florida court of appeals, which reversed the trial court's decision and held that the Program did not violate Florida's Constitution. After I left Kirkland, the en banc court of appeals and the Florida Supreme Court held that the Program violated Florida's Constitution.

Principal co-counsel for Governor Bush

Jay Lefkowitz
Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
(212) 446-4970

Frank R. Jimenez
Then Acting General Counsel to Governor Jeb Bush
Raytheon Company
870 Winter Street
Waltham, Massachusetts 02451
(781) 522-3000

Principal counsel for the Attorney General of Florida

Thomas E. Warner
Then with the Office of the Florida Attorney General
Carlton Fields Jordan Burt, P.A.
CityPlace Tower
Okeechobee Boulevard, Suite 1200
West Palm Beach, Florida 33401
(561) 650-0331

Principal counsel for Plaintiffs

Ronald G. Meyer
Then with Meyer & Brooks, P.A.
Meyer, Brooks, Demma and Blohm, P.A.

131 North Gadsden Street
Tallahassee, Florida 32301
(850) 656-6750

19. *General Motors v. Green*, 709 A.2d 205 (N.J. Super. Ct. App. Div. 1998).

General Motors was a significant institutional client of my former firm, Kirkland & Ellis. In this particular case, I was asked to represent General Motors and conduct oral argument on its behalf in the Appellate Division of the New Jersey Superior Court before Judges Dreier, Levy, and Wecker. The case was a design defect products liability case involving an alleged roof design defect. At trial, the jury had found General Motors liable and awarded plaintiff \$25 million. General Motors appealed on numerous grounds, challenging both the liability judgment and damages award. The Appellate Division affirmed the liability judgment but substantially reduced the damages award.

Co-counsel for Petitioner (General Motors)

Paul T. Cappuccio
Then with Kirkland & Ellis LLP
WarnerMedia
One Time Warner Center
New York, New York 10019
(212) 484-8000

Thomas F. Tansey
Then with Tansey, Fanning, Haggerty, Kelly, Convery and Tracy
Retired

Principal counsel for Respondent (Green)

Maurice Donovan
Then with Benjamin M. Delvento, P.A.
70 South Orange Avenue, Suite 135
Livingston, New Jersey 07039
(973) 758-1801

20. *United States v. Clark*, 24 F.3d 299 (D.C. Cir. 1994).

While at the Office of the Solicitor General, I assisted with drafting the brief for the United States in the D.C. Circuit. The defendant entered a conditional guilty plea and appealed his conviction for drug possession on the ground that the district court had erroneously denied his motion to suppress drugs found in his car and that the officers' use of force converted the stop into an arrest unsupported by probable cause. The D.C. Circuit rejected these arguments and affirmed the conviction.

Co-counsel for Appellee (United States)

Thomas G. Hungar
Then with U.S. Department of Justice
United States House of Representatives, Office of General Counsel
219 Cannon House Office Building
Washington, D.C. 20515
(202) 225-9700

Jay B. Stephens
Then with the United States Attorney's Office
Kirkland & Ellis LLP
655 15th Street, N.W.
Washington, D.C. 20005
(202) 879-5265

Hon. John R. Fisher
Then with the United States Attorney's Office
District of Columbia Court of Appeals
430 E Street, N.W., Room 115
Washington, D.C. 20001
(202) 879-2700

Principal counsel for Appellant (Clark)

Howard B. Katzoff
717 D Street, N.W., Suite 310
Washington, D.C. 20004
(202) 783-6414

21. *United States v. Mora*, 994 F.2d 1129 (5th Cir. 1993).

While at the Office of the Solicitor General, I briefed and argued this case in the Fifth Circuit. Four defendants were found guilty at trial of conspiracy to possess with intent to distribute marijuana, and possession and aiding and abetting the possession of marijuana with intent to distribute it. On appeal, the defendants raised various claims, including entrapment, discovery abuses, and sufficiency of the evidence. The Fifth Circuit affirmed the convictions.

Co-counsel for Appellee (United States)

Richard L. Durbin, Jr.
United States Attorney's Office
601 Northwest Loop 410, Suite 600
San Antonio, Texas 78216
(210) 384-7100

Ronald F. Ederer
Then with the United States Attorney's Office
Texas Racing Commission
8505 Cross Park Drive #110
Austin, Texas 78754
(512) 833-6699

Principal counsel for Appellant (Mora)

Thomas E. Stanton
Then in solo practice
Texas Methodist Foundation
11709 Boulder Lane, Suite 100
Austin, Texas 78726
(800) 933-5502

Principal counsel for Appellant (Medina)

Hon. Henry Bemporad
Then with the Public Defender's Office
United States District Court for the Western District of Texas
655 East Cesar E. Chavez Boulevard
San Antonio, Texas 78206
(210) 472-6363

Principal counsel for Appellant (Sosa)

Jose Juarez
Then in solo practice
Deceased

Principal counsel for Appellant (Lira)

Rafael Salas
Then in solo practice
Salas & Salas LLP
1500 Montana Avenue
El Paso, Texas 79902

Copies of the briefs in the cases above are supplied, with the exception of a few cases for which, after extensive efforts, representatives on my behalf have thus far been unable to locate copies.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the

nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
 - b. the name of the court and the name of the judge or judges before whom the case was litigated; and
 - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
1. *Swidler & Berlin v. United States*, 524 U.S. 399 (1998), *reversing*, 124 F.3d 230 (D.C. Cir. 1997).

I represented the United States and argued and briefed this case in both the Supreme Court of the United States and the United States Court of Appeals for the District of Columbia Circuit. The court of appeals decision was in 1997, and the Supreme Court decision was in 1998.

The case presented the question whether the attorney-client privilege continues to apply in federal criminal proceedings when the client is deceased and therefore no longer available to testify. A federal grand jury issued a subpoena for communications that occurred between Vincent W. Foster, Jr., and his attorney James Hamilton nine days before Mr. Foster's suicide. Mr. Hamilton challenged the subpoena, arguing that the attorney-client privilege continued to apply after the death of the client and that he was not permitted to disclose what Mr. Foster had told him. The United States, represented by the Office of Independent Counsel, sought to enforce the grand jury subpoena, arguing that the attorney-client privilege did not apply with full force in federal criminal proceedings when the client was deceased. Many legal treatises, including the American Law Institute's Restatement of the Law, had agreed with the position advocated by the Office of Independent Counsel. The U.S. Court of Appeals for the D.C. Circuit, in an opinion by Judge Patricia Wald and Judge Stephen Williams, ruled in favor of the Office of Independent Counsel. Judge Tatel dissented. The Supreme Court then granted certiorari and ruled 6-3 in favor of Mr. Hamilton in an opinion by Chief Justice Rehnquist. The dissent written by Justice O'Connor and joined by Justices Scalia and Thomas agreed with the position of the Office of Independent Counsel.

Co-counsel for Respondent (United States)

Hon. Kenneth W. Starr
Then with the United States Office of Independent Counsel
Retired

Craig Lerner
Antonin Scalia Law School
Then with the United States Office of Independent Counsel

George Mason University
3301 North Fairfax Drive
Arlington, Virginia 22201
(703) 993-8080

Principal counsel for Petitioners (Swidler & Berlin, & Hamilton)

James Hamilton
Then with Swidler Berlin Shereff Friedman
Morgan Lewis
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 373-6026

2. *Concerned Citizens of Carderock v. Hubbard & Adat Shalom Reconstructionist Congregation*, 84 F. Supp. 2d 668 (D. Md. 2000).

I represented pro bono Adat Shalom, a synagogue in Bethesda, Maryland, in the United States District Court for the District of Maryland (Judge Andre Davis). The district court decided the case in 2000.

Plaintiffs sued Montgomery County and Adat Shalom, arguing that Montgomery County's zoning ordinance violated the Establishment Clause by granting religious entities an exemption from the county's special exception zoning process. Adat Shalom argued that the ordinance was neutral between religious and non-religious entities and thus constitutional. In particular, Adat Shalom contended that the ordinance exempted several non-religious entities in addition to religious entities and therefore did not reflect a preference for religion. Judge Davis ruled in favor of Adat Shalom and the county. The court found that the ordinance was neutral toward religion and consistent with the Establishment Clause.

Co-counsel for Defendant (Adat Shalom Reconstructionist Congregation)

Jay P. Lefkowitz
Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
(212) 446-4970

John Wood
Then with Kirkland & Ellis LLP
U.S. Chamber of Commerce
1615 H Street, N.W.
Washington, D.C. 20062
(202) 659-6000

Counsel for Plaintiffs (Concerned Citizens of Carderock)

Stanley D. Abrams
Abrams & West
4550 Montgomery Avenue, Suite 760N
Bethesda, Maryland 20814
(301) 951-1524

Principal counsel for Defendant (Montgomery County)

Charles W. Thompson
Then with County Attorney's Office for Montgomery County
International Municipal Lawyers Association
51 Monroe Street, Suite 404
Rockville, Maryland 20850
(202) 466-5424

Edward B. Lattner
County Attorney's Office for Montgomery County
101 Monroe Street, 3rd Floor
Rockville, Maryland 20850
(240) 777-6700

3. *America Online 5.0 Litigation* (1999 – 2000), consolidated case reported at 168 F. Supp. 2d 1359 (S.D. Fla. 2001).

I represented America Online (AOL) in a series of class-action lawsuits. In particular, I filed briefs and conducted oral arguments for AOL in a number of federal district courts around the country. I also argued a proceeding before the Judicial Panel on Multidistrict Litigation and a motion to dismiss in a related case in the Circuit Court for Baltimore City. The complaints in these cases alleged that AOL had engaged in a variety of deceptive tactics and antitrust violations in designing and marketing AOL Version 5.0.

Principal co-counsel for AOL

Thomas Yannucci
Eugene Assaf
Kirkland & Ellis LLP
655 15th Street, N.W.
Washington, D.C. 20005
(202) 879-5000

Principal counsel for Plaintiffs

A. J. De Bartolomeo
Then with Girard Gibbs LLP

Milberg Tadler Phillips Grossman LLP
One Pennsylvania Plaza, 19th Floor
New York, New York 10119
(415) 710-7273

4. *In re Lindsey*, 158 F.3d 1263 (D.C. Cir. 1998), *cert. denied*, *Office of the President v. Office of Independent Counsel*, 525 U.S. 996 (1998).

I represented the United States (Office of Independent Counsel) in this case. I briefed and argued the case in the U.S. Court of Appeals for the D.C. Circuit and worked on the brief in opposition to the petition for writ of certiorari in the Supreme Court of the United States. I also had worked on a petition for writ of certiorari before judgment to the Supreme Court.

This case arose out of a federal grand jury subpoena issued to Bruce R. Lindsey, an attorney employed in the White House. President Clinton asserted a government attorney-client privilege in response to the subpoena. The Office of Independent Counsel sought to have the subpoena enforced. The D.C. Circuit (Judges Randolph and Rogers for the majority; Judge Tatel in dissent) ruled in favor of the Office of Independent Counsel. The Office of the President then filed a petition for writ of certiorari in the Supreme Court. The Supreme Court denied the petition.

Co-counsel for Respondent (Office of Independent Counsel)

Hon. Kenneth W. Starr
Then with the United States Office of Independent Counsel
Retired

Hon. Joseph Ditkoff
Then with the United States Office of Independent Counsel
Massachusetts Appeals Court
John Adams Courthouse
One Pemberton Square, Room 1200
Boston, Massachusetts 02018
(617) 725-8106

Counsel for Petitioner (Office of the President)

David Kendall
Williams & Connolly
725 12th Street, N.W.
Washington, D.C. 20005
(202) 434-5145

Neil Eggleston
Then with Howrey & Simon LLP

Kirkland & Ellis LLP
655 15th Street, N.W.
Washington, D.C. 20005
(202) 879-5016

Douglas Letter
Then with the U.S. Department of Justice
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001
(202) 662-9000

5. *Gonzalez v. Reno*, 215 F.3d 1243 (11th Cir. 2000) (denying petition for rehearing en banc), *cert. denied*, 530 U.S. 1270 (2000).

I represented pro bono the American relatives of Elian Gonzalez in their petition for rehearing en banc in the U.S. Court of Appeals for the Eleventh Circuit, application for stay in the Supreme Court of the United States, and petition for writ of certiorari in the Supreme Court. The case came into my law firm through a contact made to an associate in the firm. The associate then asked me if I would be willing to work on the petition for rehearing en banc, application for stay, and petition for writ of certiorari. I agreed to do so.

The American relatives of Elian Gonzalez argued that the INS's decision to deny an asylum hearing or interview to Elian Gonzalez contravened both the Due Process Clause and the Refugee Act of 1980. The case also raised an important question about the appropriate amount of judicial deference to decisions of administrative agencies.

The Eleventh Circuit initially had granted an injunction pending appeal on the ground that the Gonzalez family had made a compelling case that the Refugee Act of 1980 requires a hearing for alien children who may apply for asylum. The Eleventh Circuit's subsequent decision on the merits (Judges Edmondson, Dubina, and Wilson) held, however, that the INS's contrary interpretation of the statute was entitled to deference from the courts. The Gonzalez family filed a petition for rehearing en banc, arguing, in essence, that the court's original decision granting an injunction pending appeal had analyzed the issues correctly and that deference to the INS was not warranted. The Eleventh Circuit denied the petition for rehearing en banc. The Gonzalez family then filed an application for stay and petition for writ of certiorari in the Supreme Court. The Supreme Court denied both the application and the petition.

Co-counsel for Respondent (Gonzalez)

Jeffrey Clark
Kirkland & Ellis LLP
655 15th Street, N.W.
Washington, D.C. 20005

(202) 879-5960

Kendall Coffey
Coffey Burlington
2601 South Bayshore Drive
Penthouse One
Miami, Florida 33133
(305) 858-5261

Principal counsel for Petitioners (Reno, Meissner, Wallis, United States Immigration & Naturalization Service, & U.S. Department of Justice)

Edwin Kneedler
Office of the Solicitor General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 514-2203

6. *In re Grand Jury Subpoena Duces Tecum*, 112 F.3d 910 (8th Cir.), *cert. denied*, 521 U.S. 1105 (1997).

I represented the United States (Office of Independent Counsel) in this case. I primarily wrote the brief in the U.S. Court of Appeals for the Eighth Circuit and worked on the brief in opposition to the petition for writ of certiorari in the Supreme Court of the United States. I also briefed the case in the United States District Court for the Eastern District of Arkansas.

This case arose out of a federal grand jury subpoena issued to the White House Office for documents of a government attorney employed in the White House. President Clinton asserted a government attorney-client privilege in response to the subpoena. The Eighth Circuit (Judges Bowman and Wollman for majority; Judge Kopf in partial dissent) ruled in favor of the United States, represented by the Independent Counsel. The Office of the President then filed a petition for writ of certiorari in the Supreme Court. The Supreme Court denied the petition.

Co-counsel for Respondent (Office of Independent Counsel)

Hon. Kenneth W. Starr
Then with the United States Office of Independent Counsel
Retired

Hon. John Bates
Then with the United States Office of Independent Counsel
United States District Court for the District of Columbia
333 Constitution Avenue, N.W.

Washington, D.C. 20001
(202) 354-3430

Principal counsel for Respondent (Hillary Clinton)

David Kendall
Williams & Connolly
725 12th Street, N.W.
Washington, D.C. 20005
(202) 434-5145

Principal counsel for Petitioner (Office of the President)

Andrew Frey
Mayer Brown
1999 K Street, N.W.
Washington, D.C. 20006
(202) 263-3291

7. *Good News Club v. Milford Central School*, 533 U.S. 98 (2001).

In this case, I represented an amicus curiae, Sally Campbell, and filed an amicus brief.

The case involved a Free Speech Clause and Free Exercise Clause challenge to the community use policy of a school district in New York. The policy excluded religious organizations from using public school facilities after school hours. (Ms. Campbell had challenged a similar policy in Louisiana.) The question in the case was whether the exclusion of religious organizations was permitted under the Religion and Free Speech Clauses of the First Amendment. The amicus brief filed on behalf of Ms. Campbell argued that the policy was neither required nor permitted by the Constitution. The Supreme Court agreed in a 6-3 decision.

Principal counsel for Petitioner (Good News Club)

Hon. Thomas Marcelle
Then with Marcelle Law
Cohoes City Court
97 Mohawk Street
Cohoes, New York 12047
(518) 453-5501

Principal counsel for Respondent (Milford Central Schools)

Frank W. Miller
Law Firm of Frank W. Miller
6575 Kirkville Road

East Syracuse, New York 13057
(315) 234-9900

8. *Rubin v. United States*, 525 U.S. 990 (1998).

I represented the United States (Office of Independent Counsel) in the Supreme Court proceedings in which the Office of Independent Counsel opposed a petition for writ of certiorari filed by the Secretary of the Treasury and Director of the Secret Service.

The question presented was whether the federal courts should recognize a new “protective function” privilege in federal criminal proceedings that would prevent Secret Service agents from testifying in the grand jury. The U.S. Court of Appeals for the District of Columbia Circuit ruled in favor of the Office of Independent Counsel (Judges Williams, D.H. Ginsburg, and Randolph). The Secretary of the Treasury filed a petition for writ of certiorari and sought a stay of enforcement of the subpoena. The Supreme Court denied a stay and then denied the petition for writ of certiorari (over the dissents of Justices Ginsburg and Breyer).

Co-counsel for Respondent (United States)

Hon. Kenneth W. Starr
Then with United States Office of Independent Counsel
Retired

Principal counsel for Petitioners (Rubin & Merletti)

Edwin Kneedler
Office of the Solicitor General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 514-2203

9. *General Motors v. Green*, 709 A.2d 205 (N.J. Super. Ct. App. Div. 1998).

General Motors was a significant institutional client of my former firm, Kirkland & Ellis. In this particular case, I was asked to represent General Motors and conduct oral argument on its behalf in the Appellate Division of the New Jersey Superior Court before Judges Dreier, Levy, and Wecker. The case was a design defect products liability case involving an alleged roof design defect. At trial, the jury had found General Motors liable and awarded plaintiff \$25 million. General Motors appealed on numerous grounds, challenging both the liability judgment and damages award. The Appellate Division affirmed the liability judgment and substantially reduced the damages award.

Co-counsel for Petitioner (General Motors)

Paul T. Cappuccio
Then with Kirkland & Ellis LLP
WarnerMedia
One Time Warner Center
New York, New York 10019
(212) 484-8000

Thomas F. Tansey
Then with Tansey, Fanning, Haggerty, Kelly, Convery and Tracy
Retired

Principal counsel for Respondent (Green)

Maurice Donovan
Then with Benjamin M. Delvento, P.A.
70 South Orange Avenue, Suite 135
Livingston, New Jersey 07039
(973) 758-1801

10. *Lewis v. Brunswick*, No. 97-288 (Supreme Court of the United States) (1997)
(dismissed as moot because of settlement after oral argument).

I represented General Motors in filing an amicus brief in the Supreme Court. The question presented in the case was whether the Boat Safety Act preempted a state common-law requirement that recreational boats be equipped with propeller guards. Because of the similarity of the question to a question under the National Traffic and Motor Vehicle Safety Act, General Motors filed an amicus brief. The Supreme Court subsequently dismissed the case after oral argument because the parties settled.

Co-counsel for Amicus Curiae (General Motors)

Paul T. Cappuccio
Then with Kirkland & Ellis LLP
WarnerMedia
One Time Warner Center
New York, New York 10019
(212) 484-8000

Richard A. Cordray
Then with Kirkland & Ellis LLP
Cordray/Sutton for Ohio
Post Office Box 7910
Columbus, Ohio 43207
(614) 505-9334

Principal counsel for Petitioner (Lewis)

David E. Hudson
Hull Barrett
801 Broad Street, Suite 700
Augusta, Georgia 30901
(706) 722-4481

Principal counsel for Respondent (Brunswick)

Kenneth S. Geller
Mayer Brown
1999 K Street, N.W.
Washington, D.C. 20006
(202) 263-3225

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation, including your time in the Office of the Independent Counsel. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Office of Independent Counsel:

In the summer of 1994 I joined the Office of Independent Counsel. In that Office, I performed six main functions during the course of my service.

First, I was a line attorney responsible for the Office's investigation into the death of former Deputy White House Counsel Vincent W. Foster, Jr. This assignment required management and coordination with a number of FBI agents and investigators, FBI laboratory officials, and outside experts on forensic and psychological issues. I was responsible for conducting and assisting with interviews of a wide variety of witnesses with respect to both the cause of death and Mr. Foster's state of mind. I was responsible for preparing a draft of the report on his death. The investigation and report resolved questions about the cause and manner of Mr. Foster's death, concluding that he committed suicide in Fort Marcy Park, Virginia.

Second, I was one of two line attorneys responsible for conducting the investigation into possible obstruction of justice in the wake of Mr. Foster's death, including whether documents had been unlawfully removed from his office or otherwise concealed from investigators. This was an extensive grand jury investigation. I conducted numerous interviews and grand jury sessions and, with another attorney, prepared a memorandum of more than 300 pages summarizing the matter. At the time, this matter also was being investigated by the Senate. The Office conducted a thorough investigation of the facts and did not seek criminal charges against any individuals.

Third, I was substantially responsible for writing briefs and conducting oral arguments regarding

privilege and other legal matters that arose frequently during the investigation. These included cases about the government attorney-client privilege, Secret Service privilege, and private attorney-client privilege. I argued once before the Supreme Court of the United States and twice before the U.S. Court of Appeals for the D.C. Circuit.

Fourth, I served as a legal advisor on a variety of issues facing the Office. I and several other attorneys sometimes served a function roughly equivalent to that of attorneys in the Office of Legal Counsel in the Justice Department. This required analysis of, for example, statutory reporting requirements, Rule 6(e) obligations, FOIA disclosure rules, and issues related to interaction with Congress.

Fifth, I was part of the team that prepared that part of Judge Starr's 1998 report to Congress, submitted pursuant to statute, that outlined information that "may constitute grounds" for impeachment. Although many volumes of evidence were provided to the House of Representatives under seal, the report as publicly released by the House of Representatives was divided into two parts. The first part was a summary of facts known as the "narrative" section. I did not draft that part of the report. The second part was a description of possible grounds for impeachment that identified areas where the President may have made false statements or otherwise obstructed justice. I drafted portions of that part of the report. This is a matter of some continuing controversy. As I have stated publicly before, I regret that the House of Representatives did not handle the report in a way that would have kept sensitive details in the report from public disclosure (as had occurred with the House's handling of the Special Prosecutor's report in 1974) or, if not, that the report did not further segregate certain sensitive details. The House of Representatives voted to publicly release the report without reviewing it beforehand.

Sixth, I was an attorney primarily responsible for assisting Judge Starr with preparation of his two-hour statement to the House Judiciary Committee, which he submitted in written form and delivered orally on November 19, 1998. The statement identified and discussed the investigation and evidence.

Kirkland & Ellis:

At Kirkland & Ellis, I worked primarily on appellate and pre-trial briefs in commercial and constitutional litigation. My most significant corporate clients were firm clients Verizon, America Online, General Motors, and Morgan Stanley. I represented them in a variety of litigation and administrative matters. I also represented individuals and non-corporate entities in litigation matters. I prepared pro bono briefs in several Supreme Court cases. I also represented pro bono a synagogue that was involved in a zoning dispute with Montgomery County, Maryland. In all of the matters, I was part of a larger litigation team.

Office of Counsel to the President:

I assisted with some of the wide variety of issues that confront the Office. I worked on the nomination and confirmation of federal judges. I assisted on legal policy issues affecting the tort system, such as airline liability, victims' compensation, terrorism insurance, medical liability,

and class action reform. I worked on issues of separation of powers, including issues involving congressional and other requests for records and testimony. I worked on various ethics issues. I also monitored and worked on certain litigation matters, including those involving the White House.

Assistant to the President and Staff Secretary:

I performed the standard duties of the Staff Secretary. The Staff Secretary's Office traditionally coordinates the staffing and presentation of documents for the President, among other responsibilities.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, compensation received, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus for each year or term the course was taught, provide four (4) copies to the committee.

Harvard Law School

Separation of Powers (2008–2015). Syllabi supplied.

This course examined the structure of our national government and our system of separated powers with checks and balances.

The Supreme Court Since 2005 (2014, 2016, 2017, 2018). There was no syllabus for the 2014 class; available syllabi supplied.

This course analyzes and discusses important Supreme Court opinions that have been issued since 2005 when John Roberts became Chief Justice.

I was compensated by Harvard Law School in the following amounts for the relevant years:

2008	\$22,508.50
2009	\$22,508.50
2010	\$22,512.75
2011	\$22,512.75
2012	\$26,950.00
2013	\$26,950.00
2014	\$26,950.00
2015	\$27,220.00
2016	\$27,220.00
2017	\$27,490.00
2018	\$27,765.00

Yale Law School

National Security and Foreign Relations Law (2011). Syllabus supplied.

This seminar examined the constitutional and statutory law that governs U.S. national security activities and U.S. foreign relations.

I received \$4,400.00 compensation.

Georgetown University Law Center

Constitutional Interpretation (2007). Syllabus supplied.

This course examined how the United States Congress and Executive Branch interpret the Constitution.

I received \$12,000 compensation.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I plan to receive approximately \$28,045 from Harvard Law School in 2019 as part of my agreement to teach at the school in 2019.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I have an agreement to continue teaching at Harvard Law School in 2019.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

Please see the attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

Please see the attached Statement of Net Worth.

24. **Potential Conflicts of Interest:**

a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I would resolve any conflict of interest by looking to the Code of Conduct

for United States Judges (although it is not formally binding on members of the Supreme Court of the United States); the Ethics Reform Act of 1989, 28 U.S.C. § 455; and any other relevant prescriptions. I would seek guidance from judicial ethics officials to structure my limited financial investments to minimize the potential for conflicts. And I would recuse myself from matters in which I participated while a judge on the court of appeals.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association’s Code of Professional Responsibility calls for “every lawyer, regardless of professional prominence or professional work load, to find some time to participate in serving the disadvantaged.” Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

As a lawyer in private practice, I represented several clients pro bono, most notably Adat Shalom synagogue and Elian Gonzalez’s American relatives. I also filed pro bono amicus briefs in several significant Supreme Court cases involving religious liberty. And I participated in community work on occasion, such as participating in an all-day playground build in Washington, D.C.

The majority of my legal career, however, has been spent in public service for the United States Government in a variety of capacities. Many of these positions, including particularly my service on the D.C. Circuit, have limited my opportunities to engage in traditional pro bono legal work. Nonetheless, I have sought, and will continue to seek, other avenues by which I can live up to the professional obligation of an attorney to help the less fortunate.

Since my youth, I have devoted significant time to helping the disadvantaged. My goal has always been to be, in the words of my high school’s motto, a “man for others.” In high school, I served meals at soup kitchens and tutored intellectually disabled children at the Rockville public library. In college, I tutored children at Roberto Clemente Middle School. In law school, I participated at times in the Green Haven Prison Project, which involved visiting and discussing issues with inmates at a New York prison.

For many years, I have been a volunteer basketball coach. Although many of the girls and boys on my teams would not qualify as financially disadvantaged, I have devoted particular attention to several players who experienced emotional hardships – one boy whose father had died, a girl whose father died during the time when I was coaching her, and two sisters whose mother had died in a car accident. I continue to coach those three girls.

As a judge, I have tutored at J.O. Wilson School and the Washington Jesuit Academy. I now serve as a director of the Washington Jesuit Academy. For the last several years, I have regularly served meals to the homeless at Catholic Charities in D.C.

26. **Selection Process**:

a. Describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and any interviews in

which you participated). List all interviews or communications you had with anyone in the Executive Office of the President, Justice Department, President-elect transition team, or presidential campaign. Additionally, list all interviews or communications you had regarding your nomination or your potential nomination by the current President with outside organizations or individuals at the behest of anyone in the Executive Office of the President, Justice Department, President-elect transition team, or presidential campaign. List all persons present, participating, or otherwise involved in such interviews or communications. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

Counsel to the President Don McGahn called me in the late afternoon on Wednesday, June 27, 2018. I met with Mr. McGahn on Friday, June 29. I interviewed with President Trump on Monday, July 2, with Mr. McGahn present. I interviewed with Vice President Pence on Wednesday, July 4, with Mr. McGahn and counsel for the Vice President present. I spoke to President Trump by phone on the morning of Sunday, July 8. On the evening of Sunday, July 8, I met with President Trump and Mrs. Trump at the White House. During that meeting, the President offered me the nomination, and I accepted. I also spoke later that evening with Mr. McGahn. I have also been in regular contact with members of the White House Counsel's Office and the Department of Justice.

b. Has anyone involved in the process of selecting you for this nomination (including, but not limited to anyone in the Executive Office of the President, the Justice Department, the President-elect transition team, presidential campaign, or the Senate and its staff) ever discussed with you any currently pending or specific case, legal issue, or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully. Identify each communication you had prior to the announcement of your nomination with anyone in the Executive Office of the President, the Justice Department, the President-elect transition team or presidential campaign, outside organization or individual (at the behest of anyone working in the Executive Office of the President, the Justice Department, President-elect transition, or presidential campaign), or the Senate or its staff referring or relating to your views on any case, issue, or subject that could come before the Supreme Court of the United States, state who was present or participated in such communication, and describe briefly what transpired.

No.

c. Did you make any representations to any individuals or organizations as to how you might rule as a Justice, if confirmed? If you know of any such representations made by the White House or individuals acting on behalf of the White House, please describe them, and if any materials memorializing those communications are available to you, please provide four (4) copies.

No.