

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

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

Jeffrey Adam Rosen

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

Deputy Attorney General 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.

Office:
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Residence:
McLean, Virginia

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

1958
Boston, Massachusetts

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.

Harvard Law School, 1979 – 1982, J.D., Magna Cum Laude, received 1982

Northwestern University, 1976 – 1979, B.A. with Highest Distinction, received 1979

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.

April 2017 – Present
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, DC 20590
Senior Advisor to the Secretary, April 2017 to May 2017
Deputy Secretary, May 2017 to Present

April 2009 – March 2017
Kirkland & Ellis LLP (and Kirkland & Ellis International)
655 Fifteenth Street, N.W.
Washington, DC 20005
Partner

July 2006 – January 2009
Office of Management & Budget, Executive Office of the President
1650 Pennsylvania Avenue, N.W.
Washington, DC 20503
General Counsel and Senior Policy Advisor

October 2003 – June 2006
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, DC 20590
Senior Advisor to the Secretary, October 2003 – December 2003
General Counsel, December 2003 – June 2006

June 1982 – October 2003
Kirkland & Ellis LLP (and Kirkland & Ellis International)
655 15th Street, N.W.
Washington, DC 20005
Partner, October 1988 – October 2003
Associate, June 1982 – October 1988

January 1996 – September 2003
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, DC 20002
Adjunct Professor

June 1981 – August 1981
Dewey Ballantine LLP
1301 Avenue of the Americas
New York, NY 10019
Summer Associate

June 1980 – August 1980

Lord Bissell & Brooke
111 South Wacker Drive
Chicago, IL 60606
Summer Law Clerk

1976 – 1979 (summers)
Apparel Buying Company (now defunct)
One Century Circle
Braintree, MA 02184
Summer warehouse employee

Other Affiliations (uncompensated unless otherwise indicated):

1998 – 2003, 2009 – 2017
Board of Visitors
Weinberg College of Arts & Sciences
Northwestern University
1918 Sheridan Road
Evanston, IL 60208
Member

2011 – 2016
Board of Directors
Free State Foundation
6259 Executive Blvd.
Rockville, MD 20852
Member

2012 – 2017
U.S. Chamber of Commerce
Government Operations, Oversight, & Consumer Affairs Committee
1615 H Street, NW
Washington, DC 20062
Member

2011 – 2017
Advisory Board
National Federation of Independent Business Small Business Legal Center
1201 F Street, NW Suite 200
Washington, DC 20004
Member

1996 – Present
Jeffrey Adam Rosen Revocable Living Trust
Trustee

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 U.S. military. I was born in 1958 and therefore was not subject to the selective service registration requirement, which requires all male U.S. citizens born after December 31, 1959, to register.

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.

Top-rated 'AV' Preeminent, Martindale-Hubbell, approx. 2004 – 2019

Washington, D.C. "Super Lawyer," 2012 – 2016

Washington, D.C. "Top Lawyers," 2012 – 2016

Who's Who in American Law, Marquis

Who's Who in America, Marquis

American Law Institute, Member, 1996 – Present

Phi Beta Kappa Honor Society, Northwestern University Chapter, approx. 1979

Deru Honor Society, Northwestern University, approx. 1979

Honors in Economics, Northwestern University, 1979

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
Public Member (2013 –2017)

American Bar Association
Member (1983 – 2003; 2009 – Present)
ABA Section of Administrative Law & Regulatory Practice
Chair (2015 – 2016)
Vice-Chair (2013 – 2014)
Chair-Elect (2014 –2015)
Last Retiring Chair (2016 – 2017)
Section Fellow (elected in 2017)

American Law Institute
Member (1996 – Present)

D.C. Circuit Historical Society
Member (2009 –Present)

Defense Research Institute
Member (approx. 1990 –1995)

Federal Bar Association
Member (2003 –2009)

U.S. Supreme Court Historical Society
Member (1990 – Present)

10. Bar and Court Admission:

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

District of Columbia; December 13, 1982

There has been no lapse 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, April 2, 1986

U.S. Court of Appeals for the Third Circuit, November 20, 1996

U.S. Court of Appeals for the Fourth Circuit, October 24, 1994

U.S. Court of Appeals for the Sixth Circuit, June 12, 1990

U.S. Court of Appeals for the Eleventh Circuit, June 8, 1988

U.S. Court of Appeals for D.C. Circuit, April 8, 1983

U.S. Court of Appeals for the Federal Circuit, March 1, 1983

U.S. District Court for the District of Columbia, March 12, 1983

U.S. District Court for the Northern District of Illinois, October 20, 1999

U.S. District Court for the Eastern District of Michigan, June 16, 1994

District of Columbia Court of Appeals, December 13, 1982

There have been no lapses in membership of which I am aware.

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, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

To the best of my recollection and available records, in addition to organizations listed in response to Questions 9 and 10 above, other organizations of which I have been a member are listed below:

Arlington Historical Society (1991 – 1994)

Ashburn Extreme Youth Hockey Club (2007 – 2011)
Assistant Coach (2007 – 2008)

Association for the Advancement of Automotive Medicine (approx. 1990 – Present)

Chesterbrook Community Association (1994 – 2015)

Chesterbrook Woods Citizens Association (1993 – Present)

Fairfax County Historical Society (1997 – Unknown)

Fairfax Genealogy Society (2015 – 2016)

Free State Foundation (2011 – 2016)
Board of Directors (2011 – 2016)

Library of Congress Associates (approx. 1995 – 2001)

McLean Community Association (approx. 1994 – 2002)

McLean Racquet Club (1994 – 2003; 2008 – 2016)

National Association of Scholars (approx. 1995 – 2004; 2012 – Present)

National Trust for Historic Preservation (approx. 1995 – 2002)

National Federation of Independent Businesses' Small Business Legal Center
Advisory Board (2011 – 2017)

Northern Neck of Virginia Historical Society (2014 – Present)

Northwestern University Alumni Club (1983 – Present)

Northwestern University College of Arts & Sciences Board of Visitors (1998 –
2003; 2009 – 2017)

Phi Beta Kappa (1978 – Present)

Reston Raiders Hockey Club (1998 – 2004)

Assistant Coach (2002 – 2004)

Society of Automotive Engineers (approx. 1990 – 2009)

U.S. Chamber of Commerce's Government Operations, Oversight & Consumer
Affairs Committee (2012 – 2017)

Virginia Historical Society (1991 – Present)

White Point Yacht Club (2014 – Present)

In addition, I have made financial contributions to charitable organizations over the years. Such organizations may list me as a member by virtue of my financial contribution. I have not listed above any organization to which I gave funds but did not otherwise participate in programmatic activities.

- b. 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.

To my knowledge, none of these organizations 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.

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. Supply four (4) copies of all published material to the Committee.

See Appendix 12a.

- b. Supply four (4) copies of any reports, memoranda or policy statements, 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. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

See Appendix 12b.

- 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.

See Appendix 12c.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available 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.

See Appendix 12d.

- 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.

See Appendix 12e.

13. 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.

I have never been a candidate for elective office.

I have held the following appointed positions:

Member, Arlington County (VA) Historical Affairs and Landmark Review Board, March 1991 – March 1993. I was appointed to this position by the Arlington County Board.

General Counsel, United States Department of Transportation, 2003 – 2006. I was nominated by President Bush for this position in October 2003 and was confirmed by the unanimous consent of the United States Senate. The President appointed me to the position in December 2003.

Deputy Secretary, United States Department of Transportation, 2017 – Present. I was nominated by President Trump for this position in March 2017 and was confirmed by a majority vote of the United States Senate in May 2017. The President appointed me to that position in May 2017.

I also received the following nominations (ultimately, I was not appointed to these positions):

Nomination to be United States District Judge for the District of Columbia, June 2008. I was nominated by President Bush and received a rating of “well-qualified” from the American Bar Association but was afforded neither a committee hearing nor a vote in the United States Senate before the nomination lapsed at the end of the 110th Congress.

Nomination to be a Governor of the United States Postal Service, March 2016. I was nominated by President Obama and received unanimous approval by voice-vote from the U.S. Senate Committee on Homeland Security and Governmental Affairs in April 2016. However, my nomination lapsed at the end of the 114th Congress.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

While in college, I worked on a classmate’s campaign for Alderman in the city of Evanston, Illinois. The candidate was Michael Kuchta, and the campaign occurred in the spring of 1979.

During the 1980’s, I served in small roles with local political committees in Cambridge, MA, and Arlington, VA, and attended one state convention.

In 2012, I served as chief legal counsel to the Platform Committee of the Republican National Convention.

In both 2012 and 2016, I assisted with the Republican Presidential candidates' transition planning teams.

14. Legal Career: Answer each part separately.

- a. Describe chronologically 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;

I have not clerked for a judge.
 - ii. Whether you practiced alone, and if so, the addresses and dates;

I have not 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.

I have listed the positions in which I practiced law with a firm, company, or governmental agency below. In addition to their legal nature, these positions also involved significant managerial responsibilities.

June 1982 – October 2003
Kirkland & Ellis LLP
655 15th Street, N.W.
Washington, DC 20005
Partner, October 1988 – October 2003
Associate, June 1982 – October 1988

October 2003 – June 2006
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, DC 20590
Senior Advisor to the Secretary, October 2003 – December 2003
General Counsel, December 2003 – June 2006

July 2006 – January 2009
Office of Management & Budget, Executive Office of the President
1650 Pennsylvania Avenue, N.W.
Washington, DC 20503

General Counsel and Senior Policy Advisor

April 2009 –March 2017
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Washington, DC 20005
Partner

- 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 not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

Before my current role as the chief operating officer of a Cabinet Department, my professional career consisted of nearly thirty years of private practice as a general litigator in a national law firm in Washington, DC (Kirkland & Ellis LLP), and more than five years as the General Counsel of two government agencies in Washington, DC (Department of Transportation and the Office of Management and Budget). Additionally, I have served as an adjunct professor at a national law school (Georgetown University).

During my years at Kirkland & Ellis, I had a national litigation practice, with some cases in Washington, DC, Virginia, and Maryland, but a majority of my cases in other jurisdictions around the country. I appeared in federal and state courts in more than twenty states nationwide and was involved in the full range of dispute resolution, such as jury trials, injunction and other bench evidentiary hearings, arbitrations, dispositive motions, and appellate arguments. I was trial and appellate counsel in a wide range of business litigation matters involving antitrust, RICO, securities, trade secrets, business torts, contracts, administrative law, government enforcement actions, and product liability, as well as class actions. Though a significant portion of my practice came from the transportation and energy sectors, the cases I handled involved a wide variety of industries, such as real estate development, hotels, computer systems, power plant construction, fiber optic telecommunications, internet advertising, fertilizer, and financial services, among others.

Throughout those years in private law practice, I managed sizable

teams of lawyers who were assembling facts and records, researching the law, drafting briefs, preparing and presenting evidentiary cases, and sometimes negotiating settlements. I also served in various roles in the management of one of the world's largest law firms, including a period of service on its global management committee and as co-head of the firm's Washington, DC, office.

While serving in the federal government from 2003 to 2009, I had only one client—the United States. While at the Department of Transportation (DOT) and the Office of Management and Budget (OMB), I had a wide array of responsibilities. My primary roles included providing legal advice to the Cabinet Officers for whom I worked, managing the lawyers who reported to me in providing legal analysis and advice to others in the agencies, and coordinating legal and regulatory issues within the Executive Branch and in consultation with the Congress. Beyond litigation, those roles involved international legal issues, legislative issues, statutory construction, appropriations law, administrative law, regulatory enforcement, and a variety of other public law issues.

In the latter half of my career, including my time in the government and thereafter, I developed significant expertise in administrative law, though I continued to work primarily as a litigator after returning to private practice in 2009.

As an adjunct professor at Georgetown University Law Center, I taught Professional Responsibility/Legal Ethics. Prior to teaching this course, I served on the Professional Responsibility Committee for my former law firm, Kirkland & Ellis LLP.

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

Over the course of my nearly 30 years in private practice, I represented a large variety of clients, the majority being corporations. An illustrative list of these clients includes AOL, Inc. (Dulles, VA); PG&E National Energy Group (Bethesda, MD); Qwest Communications Corp. (Denver, CO); CF Industries, Inc. (Long Grove, IL); Marriott Corp. (Bethesda, MD); and Raytheon Corp (Waltham, MA).

During my years of government service at the U.S. Department of Transportation and Office of Management and Budget, my client was the United States. I reported directly to Secretary of Transportation Norman Mineta and then to OMB Directors Robert Portman and James Nussle.

Throughout my years of practice, I have functioned more as a generalist than as a specialist, although my private sector litigation practice was heavily focused on complex litigation of various types (e.g., antitrust, securities, class actions). During my government service, I dealt with a wide variety of federal laws related to government agencies and programs, administrative law, Constitutional law, ethics law, fiscal law, and legislation, among others.

- 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.

During my years in private practice, more than 90% of my practice involved litigation. During the years that I was a law firm partner in private practice, I appeared in court with some regularity for motions and discovery hearings and participated in contested evidentiary hearings of various types (e.g. trials, arbitrations, injunction hearings, fairness hearings). In addition, I had several instances of major cases that settled the day the trial started. Accordingly, those cases were not tried to a verdict.

While working in government, I did not appear in court, as the Department of Justice (DOJ) represents both DOT and OMB in court cases. When I was general counsel at DOT, approximately 20% of my work involved litigation of various types or enforcement cases.

At OMB, approximately 5% of my work involved matters in litigation. Nevertheless, while at OMB, I worked closely with the Department of Justice on at least two major cases involving large potential risks for the budget of the United States. While serving as general counsel and senior policy advisor at OMB, I also coordinated with DOJ on a range of important topics, such as Presidential Executive Orders and Statements of Administration Policy, as well as DOJ's departmental budget and its proposed and final regulations.

The percentages below are estimates with regard to private practice over the years:

- i. Indicate the percentage of your practice in:
 1. federal courts: 60%
 2. state courts of record: 20%
 3. other courts (arbitrations): 20%
 4. administrative agencies: 0%
- ii. Indicate the percentage of your practice in:
 1. civil proceedings: 100%
 2. criminal proceedings: 0%

- d. State the number of 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.

I tried approximately fourteen (14) cases to verdict or judgment. I served as lead counsel in eleven (11) of those and as associate counsel in three (3).

- i. What percentage of these trials were:

1. jury: 25%
2. non-jury: 75%

- e. Describe your practice, if any, before the Supreme Court of the United States. 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.

I have not presented oral argument before the Supreme Court. I have appeared as co-counsel in several cases before the Supreme Court. I have done my best to identify such cases through a search of publicly available electronic databases. I have identified five cases in which I appeared as co-counsel before the Supreme Court while in private practice and seven cases in which I appeared as co-counsel before the Supreme Court during my tenure as General Counsel of the U.S. Department of Transportation, which are listed below.

Ruckelshaus v. Monsanto Co., No. 83-196 (1983)

Rothenberg v. Amalgamated Sugar Co., No. 87-697 (1987)

DOT v. Public Citizen, No. 03-358 (2004)

Norfolk Southern Ry. Co. v. Kirby, No. 02-1028 (2004)

Spector v. Norwegian Cruise Line Ltd, No. 03-1388 (2004)

Mid-Con Freight Sys. v. Michigan PSC, No. 03-1234 (2005)

American Trucking Assn v. Michigan PSC, No. 03-1230 (2005)

Whitman v. DOT, No. 04-1131 (2005)

City of Vancouver v. Western States Paving Co., No. 05-591 (2005)

UARG v. EPA, No. 12-1146 (2013)

Susan B. Anthony List v. Driehaus, No. 13-193 (2014) (amicus)

Yates v. United States, No. 13-7451 (2015) (amicus)

15. 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.

I selected the following significant litigated matters from among a large number of cases that I have handled over nearly thirty years of private law practice, (not including litigated matters that I was involved in during my time in public service):

1. *Netscape Communications Co. v. Microsoft Corp.*, No. 02-CV-97 (MDL 1332, D. Md. filed Jan. 2002) (Judge: Motz)

I represented the plaintiff Netscape as lead counsel, bringing antitrust claims against the defendant software company following an earlier Government civil suit. My client obtained a court ruling that collateral estoppel would apply, and the case settled for payment of \$750 million and other consideration in 2003.

Co-Counsel:
Evan Chesler
Cravath Swaine & Moore
825 Eighth Avenue
New York, NY 10019
212-474-1000

Opposing Counsel:
David Tulchin
Marc De Leeuw
Sullivan & Cromwell
125 Broad Street
New York, NY 10004
212-558-4000

Charles Douglas

David Graham
Sidley Austin Brown & Wood LLP
Bank One Plaza, 10 South Dearborn Street
Chicago, IL 60603
312-853-7000

James F. Bendernagel, Jr.
Karen A. Popp
Sidley Austin Brown & Wood LLP
1501 K Street, NW
Washington, DC 20005
202-736-8000

2. *CSX Transportation Inc. v. Qwest Communications Corp.*, No. 99-412-Civ-J-21C (M.D. Fla. filed in 1999) (Judge: Nimmons)

I represented the defendant Qwest as lead counsel in a high-dollar contract dispute concerning the payment provisions of an agreement regarding the use of railroad rights-of-way for placement of fiber optic telecommunications conduits. The case settled after the selection of the jury in May 2002.

Co-Counsel:
Rutledge R. Liles
Liles, Gavin & Constantino
225 Water Street
Jacksonville, FL 32202
904-634-1100.

Opposing Counsel:
Richard McMillan Jr.
Crowell & Moring LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004
202-624-2920

Andrew H. Marks (formerly with Crowell & Moring LLP)
Coffey Burlington
2602 South Bayshore Drive
Penthouse One
Miami, FL 33133
305-858-2900

George E. Schultz Jr.
Holland & Knight
50 N. Laura Street, Suite 3900
Jacksonville, FL 32202
904-353-2000

3. *Hotjobs.com, Ltd. v. Digital City, Inc.*, Chancery No. 164-237 (Va. Cir. Ct. filed Dec. 1999) (Judge: Ney)

I represented the defendant online city guide as lead counsel in a bench trial, defending against a claim in which an advertiser sued for wrongful termination of an online advertising agreement. Despite an initial adverse ruling, the case was ultimately resolved by dismissal with no relief awarded to the plaintiff.

Co-Counsel:
Craig C. Reilly
Richards McGettigan Reilly & West P.C.
225 Reinekers Lane, Suite 700
Alexandria, VA 22314
703-549-5353

Opposing Counsel:
John B. Missing
Brobeck Phleger & Harrison LLP
701 Pennsylvania Avenue, NW
Washington, DC 20004
202-220-5212

Gregory A. Markel
Brobeck Phleger & Harrison LLP
1633 Broadway, 47th floor
New York, NY 10019
212-237-2592

4. *Texaco v. PG&E Generating Co.*, No. 1220019318 (Cal. 1999), JAMS (Judicial Arbitration and Mediation Services) (Judge: Lucas)

This was an arbitration conducted as a bench trial before the Hon. Malcolm Lucas, formerly Chief Justice of the California Supreme Court. I represented an independent power developer as lead counsel in defending a major commercial contract dispute. The arbitration hearing resulted in a decision on the merits in favor of my client.

Opposing Counsel:
Daniel Murphy
Loeb & Loeb
10100 Santa Monica Blvd, Suite 2200
Los Angeles, CA 90067
310-282-2215

5. *In re GM Pickup Truck Fuel Tank Litigation*, MDL 961 (E.D. Pa.), 134 F.3d 133 (Judge: Yohn), and *Joseph White v. General Motors* (La. Dist. Ct. 1999)

(Judge: Marionneaux)

In these cases, I served as lead counsel to the defendant truck manufacturer with regard to 26 consolidated federal cases purporting to assert class action claims of breach of warranty and violation of the Magnuson-Moss statute, and fraud and deceptive practices, with respect to approximately five million vehicles sold between 1972 and 1987. I also served as lead defense counsel in ten state court class actions. *See* 134 F.3d 133 (3d Cir. 1998); 1998WL387552 (La. App. 1st Cir. 1998). All of these cases were resolved by a global settlement. That was followed by additional litigation challenging the settlement, but I led a successful defense of the challengers' efforts to enjoin the settlement in federal court.

Co-Counsel:

David G. Radlauer
Jones Walker Waechter Poitevent Carrere & Denegre LLP
201 St. Charles Avenue, 51st Floor
New Orleans, LA 70170
504-582-8210.

Opposing Counsel:

Diane Nast
RodaNast PC
801 Estelle Drive
Lancaster, PA 17601
717-892-3000

Elizabeth J. Cabraser
Lieff Cabraser Heimann & Bernstein LLP
275 Battery Street, 30th Floor
San Francisco, CA 94111
415-956-1000

Michael G. Crow
The Crow Law Firm
1100 Poydras Street, Suite 1175
New Orleans, LA 70163
504-599-5770

6. *Marriott v. AMR Corporation; AMR Corporation v. Marriott, Hilton, and Budget Rent-A-Car*, No. 96366 (Md. Cir. Ct) and No. 92-11628-B (Tex. Dist. Ct. filed 1992) (Judge: Tyson)

I represented Marriott in one of the largest computer software system litigation disputes, a lawsuit asserting that AMR Corporation had breached a computer software development contract and joint venture fiduciary duties with regard to the development and construction of a major computer reservation system for hotels and rental cars. This case resulted in a large settlement recovery for my

client on the eve of trial, as was reported in Business Week.

Co-Counsel:

Fred H. Bartlit Jr.
Bartlit Beck Herman Palenchar & Scott
54 West Hubbard Street
Chicago, IL 60610
312-494-4400

Kenneth R. Wynne
Wynne & Maney
2730 Texas Commerce Tower
Houston, TX 77002
713-227-8835

Opposing Counsel:

Hugh Hackney
Stephen S. Maris
Karl Dial
Dan D. Davison
Fulbright & Jaworski
2200 Ross Avenue
Dallas, TX 75201
214-855-8000

Paul M. Wolff
F. Lane Heard III
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005
202-434-5114

7. *AACP v. Cunard Line, Ltd. et al.*, 1988-2 Trade Cas. (CCH) ¶ 68,325 (D.D.C.)
(Judge: Johnson)

In this case, I represented one of the defendant cruise lines (Cunard Line) against antitrust group boycott and price fixing claims filed by a travel agency against ten cruise lines and two trade associations. Following extensive discovery, we obtained a court ruling dismissing Cunard Line from the suit.

Opposing Counsel:

Paul C. Warnke
John G. Calendar
Clifford & Warnke
815 Connecticut Avenue, NW
Washington, DC 20006
(firm no longer exists)

Harold E. Kohn
Joseph C. Kohn
Kohn Savett Klein & Graf (now Kohn Swift & Graf)
One South Broad Street, Suite 2100
Philadelphia, PA 19107
215-238-1700

8. *Hampton v. General Motors Corp.*, No. 625061 (Cal. Sup. Ct. 1992) (Judge: Kapiloff)

In this case, I represented the defendant auto manufacturer as lead counsel. After a seven-week jury trial, we obtained a defense jury verdict rejecting allegations of design defects in the steering wheel and seat belts of all Chevrolet S10 Blazers.

Co-Counsel:
Kenneth D. Huston
Huston & McEwen
San Diego, CA
615-595-1735
(firm may no longer exist)

Opposing Counsel:
Robert Rochelle
John C. Wynne
Walter Lindstrom
Duckor Spradling Metzger & Wynne
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619-209-3000.

9. *Amalgamated Sugar Co. v. NL Industries, Inc.*, 644 F. Supp. 1229 (S.D.N.Y. 1986). Also, *Rothenberg v. Amalgamated Sugar Co.*, 667 F. Supp. 87 (S.D.N.Y. 1987), *aff'd*, 825 F.2d 634 (2d Cir. 1987), *cert. denied*, 108 S. Ct. 511 (1987) (District Judge: Broderick) (Circuit Judges: Oakes, Meskill, & Pratt)

As a senior associate representing the acquiring company, I played a significant role in this major corporate takeover litigation. Our litigation team obtained preliminary and permanent injunctions invalidating the target company NL's "poison pill" antitakeover plan under New Jersey law, enabling our client to obtain control of NL Industries. Thereafter, when a dissident shareholder filed suit in state court, our litigation team obtained an injunction barring the stockholder from relitigating the validity of NL's "poison pill" in New Jersey state courts and precluding a collateral attack on the previous federal court final judgment.

Opposing Counsel:

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New York, NY 10171
202-371-9200

10. *Washington Consulting Group v. Raytheon*, 2013 D.C. Super. LEXIS 5 (D.C. Super. Ct.), 760 F.Supp.2d 94 (Judge: Josey-Herring)

This case involved claims of trade secrets theft and tortious interference with an existing contract to supply training services. As counsel for defendant Raytheon, we were able to obtain summary judgment against the plaintiff's claims, resulting in the termination of the case.

Opposing Counsel:
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Emily Alexander
Mark Forrester
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Leoncio E. de la Peña
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16. 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. 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.)

For the most part, the most significant legal activities in my career have involved litigation. I have not been paid to lobby on behalf of any organization or individual. Accordingly, my non-litigation legal activities largely relate to my public service roles advising Executive Branch officials.

With regard to litigation, there are several categories of additional activities that I will mention:

First, there are several cases that I tried as lead counsel that are not included above. For example, I tried a multi-week jury trial in New York, a one-week jury trial in Atlanta, and a multi-week commercial arbitration trial in Philadelphia, all of which resulted in favorable outcomes for my clients.

Second, there are at least three significant cases I handled that settled after the selection of the jury and, therefore, were not tried to verdict. One was a securities class action in federal court in Los Angeles in 1989; the second was a products liability case in state court in Philadelphia in 1998; and the third was a commercial contract dispute in federal court in Orlando in 2002. I was lead counsel in the latter two and second chair in the 1989 case.

Third, over the years, I handled at least ten cases in which my clients won summary judgments, without the need for trial.

Fourth, I have personally argued appellate cases before the U.S. Courts of Appeals for the D.C. Circuit, the Third Circuit, and the Sixth Circuit.

In addition, because the position for which I am nominated involves substantial management responsibilities, it may be helpful to note that both my private sector and public sector legal positions have involved significant management roles throughout the majority of my professional career.

- 17. 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, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

“Professional Responsibility,” Adjunct Professor, Georgetown University Law Center, 1996, 1997, 1999, and 2001. I taught this required legal ethics course and covered a variety of topics including the duty of confidentiality, conflicts of interest, “revolving door” limitations, litigation ethics, client perjury, and other topics under the Model Rules of Professional Conduct. The course was co-taught with a friend who was a federal prosecutor. Copy of Course Syllabus (2001) supplied.

“Kirkland Institute of Trial Advocacy,” Instructor, Kirkland & Ellis LLP, 1988 to 2003, intermittent years from 2010 to 2017. Each year the law firm presented a course in trial practice for its associates nationwide, modeled on the program used by the National Institute of Trial Advocacy. Litigation partners from all offices served as judges and

instructors, and I participated in that capacity on numerous occasions.

- 18. 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 have no such arrangements except the retirement benefits that are identified on my financial disclosure report. Among these, I note that my previous law firm (Kirkland & Ellis LLP) has a longstanding defined benefit pension plan. Due to the length of my service (1982 – 2003 and 2009 – 2017), I am entitled to receive a pension as a matter of right. Thus, I receive monthly payments under that pension plan.

- 19. Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service? If so, explain.

None.

- 20. 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 my 278-E as provided by the Office of Government Ethics.

- 21. Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

Please see the attached Net Worth Statement.

- 22. Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements, or other factors 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.

I do not anticipate any likely conflicts of interest, as I have been serving in my current federal position for close to two years. In the event of a potential conflict of interest, I will consult with the appropriate Department of Justice ethics officials and act consistent with governing regulations, policies, and procedures.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In the event of a potential conflict of interest, I will consult with the appropriate Department of Justice ethics officials and act consistent with governing regulations, policies, and procedures.

23. 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. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

During my time at Kirkland & Ellis LLP, particularly when I served in management roles, I provided management support and assistance to the firm's pro bono program and pro bono coordinator. For example, I participated in efforts to create a law firm pro bono program to assist the federal public defender's office.

While at the Department of Transportation (DOT), I provided leadership assistance in DOT's effort to enable its government lawyers to participate in pro bono activities. Each year when I was general counsel, I was a speaker at our annual event, in which my office invited provider organizations to come to DOT and enlist attorney pro bono assistance, which proved to be a very successful program.

I provided direct pro bono legal services in the case of *Mary Johnson v. Magne Seal Door Corp.*, No. 10486-83 (Sup. Ct. D.C. 1983). Based on a referral from the Legal Counsel for the Elderly, I served as pro bono counsel for the plaintiff in a suit alleging consumer fraud and violations of the D.C. Consumer Protection Act in credit sales of doors. In this case, I negotiated a favorable settlement agreement with the defendant company.

More recently, I represented an organization pro bono as an amicus party to a case before the Supreme Court involving First Amendment rights. The amicus party was the Foundation for Individual Rights in Education, and the case was *Susan B. Anthony List v. Driehaus*, No. 13-193 (2014).

While serving as an adjunct professor at Georgetown University Law Center, I donated my stipend back to the University each year. In effect, my teaching was provided on a pro bono basis.

Over the years, I have made charitable contributions to organizations that provide pro bono legal services. Examples include the D.C. Bar's Pro Bono Program and the National Legal Aid & Defender Association.