

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).

Neil McGill Gorsuch

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.

Office: Byron White U.S. Courthouse, 1823 Stout Street, Denver, CO 80257

Residence: Boulder, CO

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

1967 in Denver, CO

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.

Doctorate:

Oxford University (1992-1993, 1994-1995); D.Phil. (2004)

Law School:

Harvard Law School (1988-1991); JD (1991)

College:

Columbia University (1985-1988); BA (1988)

University of Colorado at Denver (Summer 1986, no degree)

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.

Adjunct Professor, University of Colorado Law School (2009 to present)  
2450 Kittredge Loop Drive, Boulder, CO 80309

U.S. Court of Appeals, Tenth Circuit, Circuit Judge (2006 to present)  
Byron White U.S. Courthouse, 1823 Stout Street, Denver, CO 80257

U.S. Department of Justice, Office of the Associate Attorney General, Principal Deputy  
Associate Attorney General (2005-2006)  
950 Pennsylvania Avenue, N.W., Washington, D.C. 20530

Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC, Partner (1998-2005), Associate  
(1995-1997)  
1615 M Street, N.W., Suite 400, Washington, D.C. 20036

Supreme Court of the United States, Law Clerk to Hon. Byron R. White and Hon.  
Anthony M. Kennedy (1993-1994)  
1 First Street, N.E., Washington, D.C. 20543

U.S. Court of Appeals, D.C. Circuit, Law Clerk to Hon. David B. Sentelle (1991-1992)  
E. Barrett Prettyman U.S. Courthouse, 333 Constitution Avenue, N.W., Washington, D.C.  
20001

Sullivan & Cromwell, Summer Associate (Summer 1991)  
1700 New York Avenue, N.W., Suite 700, Washington, D.C. 20006

Harvard Government Department, Head Teaching Fellow for political philosophy course  
(1990-1991)  
1737 Cambridge Street, Cambridge, MA 02138

Cravath, Swaine & Moore LLP, Summer Associate (Summer 1990)  
825 Eighth Avenue, New York, NY 10019

Harvard Government Department, Teaching Fellow for political philosophy course (1989-  
1990)  
1737 Cambridge Street, Cambridge, MA 02138

Davis, Graham & Stubbs LLP, Summer Associate (Summer 1989)  
1550 Seventeenth Street, Suite 500, Denver, CO 80202

Walden Group, LLC (2005 to present). I am a member of this LLC. Walden Group owns  
title to a mountain cabin.

All of the above positions were paid, except Walden Group, LLC.

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 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.

Edmund J. Randolph Award, U.S. Department of Justice (for outstanding service to the Department)

Joseph E. Stevens Award, Harry S. Truman Foundation (for outstanding public service)

United Kingdom – United States Legal Exchange, Delegate

Marshall Scholarship to Oxford University

Harry S. Truman Scholar at and *cum laude* graduate of Harvard Law School

Phi Beta Kappa and *cum laude* graduate of Columbia University

Council on Foreign Relations

Harry S. Truman Scholarship Selection Committee, Chairman, Rocky Mountain region

Green Bag Award for exemplary legal writing

Traphagen Distinguished Alumni Award, Federalist Society, Harvard Law School

Listed in *Who's Who in America*, *Who's Who in American Law*, and *Who's Who in the World*

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.

Advisory Committee on Appellate Rules, U.S. Judicial Conference, Chairman (2016 to present)

Advisory Committee on Civil Rules, U.S. Judicial Conference, Pilot Project Working Group Member (approx. 2015 to present), Liaison Member (2015-2016)

Standing Committee on Rules of Practice and Procedure, U.S. Judicial Conference, Member (2010-2016)

Federal Judges Association, Executive Committee Member, Board of Directors (2009-

2015)

Tenth Circuit Judicial Council, Member (2008-2010, 2013-2015)

Tenth Circuit Judicial Council's Court Reporter and Court Rules Committee, Member (2008-2010, 2013-2015)

American Bar Association, including its Litigation and Antitrust sections (approx. 2002-2006), Member of Judicial Division, Rule of Law and International Courts Committee (2008-2009)

American Trial Lawyers Association (approx. 2002-2006)

Selection Committee, Member, Federal Public Defender, Kansas (2008)

Selection Committee, Member (or Chair), Federal Public Defender, Colorado and Wyoming (2013)

Selection Panel for United States Bankruptcy Judge, Chairman, Colorado (2014)

American Inns of Court

Charles Fahy Inn of Court (approx. 1997-1999)

Judge William E. Doyle Inn of Court (2007 to 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. 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.**

New York (1992) (retired status from 2009-2012; currently active status)

Colorado (1994) (currently in inactive status)

District of Columbia (1997) (currently in judicial status)

My admissions to the Colorado and D.C. bars were by reciprocal admission without taking the bar exam.

Since becoming a judge I have generally not sought to renew my bar memberships as I no longer provide legal advice. I unintentionally returned to active status in New York in 2013 by paying the bar's biennial registration fee; though, as a full-time judge, I am retired from the practice of law within the meaning of 22 NYCRR §118.1(g).

- 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 (1998)  
U.S. Court of Appeals for the Second Circuit (2004) (lapsed in 2009 for not having entered an appearance in a case in the court for five years)  
U.S. Court of Appeals for the Third Circuit (1998) (inactive since approx. 2003 for not having entered an appearance in a case in the court for five years)  
U.S. Court of Appeals for the Fourth Circuit (1997)  
U.S. Court of Appeals for the Sixth Circuit (2000)  
U.S. Court of Appeals for the Seventh Circuit (2006)  
U.S. Court of Appeals for the Tenth Circuit (2005)  
U.S. District Court for the District of Colorado (1996)  
U.S. District Court for the District of Columbia (2001) (lapsed in 2011; chose not to renew membership)  
U.S. District Court for the Southern District of New York (2002)  
U.S. District Court for the Eastern District of New York (2002)

Since becoming a judge I have generally not sought to renew my court admissions as I no longer litigate.

**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. "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.**

To my recollection:

University of Chicago Law School, Visiting Committee Member (2014-2016). Members help the Law School's leadership decide on its strategic vision for the school's future. For more information, contact Geertrui Spaepen, Associate Secretary of the University of Chicago, at [spaepen@uchicago.edu](mailto:spaepen@uchicago.edu), or 773-702-8925.

Phi Beta Kappa (1998 to present). Phi Beta Kappa is an academic honor society of which I have been a member since college. Its main office is located at 1606 New

Hampshire Avenue, N.W., Washington, D.C. 20009. For more information, contact Phi Beta Kappa at 202-265-3808.

Colorado Bar Association (periodic attendance to give talks). The Colorado Bar Association is a voluntary organization of Colorado lawyers. I have been an instructor at various of its continuing legal education events. For more information, contact CBA at (303) 860-1115.

Faculty of Federal Advocates (periodic attendance to give talks). The Faculty of Federal Advocates is a voluntary organization of Colorado lawyers. I have been an instructor at various of its continuing legal education events. For more information, contact FFA at ahoffman@facultyfederaladvocates.org.

Colorado Chief Justice's Commission on the Legal Profession, Member (2011-2013). The Chief Justice's Commission on the Legal Profession (currently known as the Commission for Professional Development) identifies and addresses ways to improve the legal profession. I attended Commission meetings and participated in various work groups to advance the Commission's objectives. For more information, contact the Commission at 720-625-5150.

Oklahoma City University Law School, Visiting Jurist (2010). As a visiting jurist, I gave lectures, spoke in classes, and spoke with students and faculty. For more information, contact the law school at 405-208-5337.

Harry S. Truman Scholarship Selection Committee (approx. 2006 to present). The Truman Foundation supports Americans from diverse backgrounds in public service by awarding scholarships. As a member of the Selection Committee, I review applications, conduct interviews, and participate in selection decisions. For more information, contact the Foundation at 202-395-4831.

Association of Marshall Scholars (1992 to present). The Association of Marshall Scholars fosters personal and professional relationships among Marshall Scholars to strengthen the relationship between the United Kingdom and the United States. As a member of the Association, I sometimes attend social events and meet with other Marshall Scholars. For more information, contact the Association at 917-818-1267 or admin@marshallscholars.org.

Republican National Lawyers Association (prior to 2005). The RNLA is the principal national organization of Republican lawyers and, as I understand it, has four missions: advancing professionalism; advancing open, fair, and honest elections; advancing career opportunity; and advancing Republican ideals. To my recollection, I wrote op-ed pieces and attended meetings. For more information, contact Brittany Walker at 202-802-0437 or walker@republicanlawyer.net.

Trout Unlimited (periodic). Trout Unlimited strives to protect cold-water fisheries and promote conservation. I paid dues but, to my recollection, was not otherwise active. For more information, contact the organization at 303-440-2937 or

JFlorence@tu.org.

Westwood Country Club (prior to 2006). Westwood offers social opportunities to its members in a family-oriented atmosphere. I used the club's facilities. The Club can be reached at 703-938-2300

University Club (prior to 2006). The University Club hosts social events and is a meeting spot for members, both national and international, from a variety of professions. I participated in social events and used the club's facilities. The Club's Director of Membership is Ms. Kathleen Keenan: 202-824-1380, kkeenan@universityclubdc.com.

Columbia University Alumni Representative Committee (periodic). The Committee represents Columbia to prospective students. My responsibilities as a representative included interviewing applicants and answering their questions about Columbia University. For more information, email arcinfo@columbia.edu.

Council on Foreign Relations (2004-2009). The Council on Foreign Relations is a nonpartisan organization that seeks to inform others of foreign policy concerns. As a member, I attended, helped organize, or participated in occasional meetings. For more information, contact the Washington office at 202-509-8400.

Judge William E. Doyle Inn of Court (2007 to present). The American Inns of Court promotes the rule of law by adhering to high standards of professionalism. I have attended meetings, which usually feature guest speakers on a current legal topic. I have been leader of a pupillage group and in that role have mentored a small group of lawyers. For more information, contact Kari Elizalde at kari.elizalde@judicial.state.co.us.

Bridge Project (2007). The Bridge Project prepares a path to high school graduation for youth in public housing neighborhoods. I gave advice on college and academic choices to a high school student. For more information, call 303-871-2651.

Federal Judges Association (2009-2015), Member of Executive Committee. The Federal Judges Association is a volunteer organization comprising United States federal judges who seek to promote an independent judiciary and civics education. I attended board meetings and gatherings to promote various legal issues. I also helped guide the organization's amicus participation in cases related to the restoration of judicial cost of living adjustments. For more information, contact Executive Director Beth Palys at fja@federaljudgesassoc.org or 301-358-4442.

Federal Rules Committees: Standing Committee on Rules of Practice and Procedure, Advisory Committee on Civil Rules, and Advisory Committee on Appellate Rules (2011-2017). These committees exist to suggest improvements to the rules of procedure governing federal court litigation. I attended meetings and helped draft amendments to rules. I also participated in helping to develop pilot

projects to facilitate civil litigation reform efforts. For more information, contact the Public Affairs Office at the Administrative Office of the United States Courts (AO) at 202-502-2600.

The Federalist Society for Law and Public Policy Studies (periodic attendance to give speeches). The Federalist Society is an organization of conservative and libertarian attorneys that aims to promote principles of separation of powers and an independent judiciary. I have attended and spoken at some of the organization's gatherings. I have also sometimes spoken to individual Federalist Society chapters at various law schools. For more information, contact the D.C. office at 202-822-8138 or [info@fed-soc.org](mailto:info@fed-soc.org).

Boulder Country Day School, Member of Board of Directors (2011-2013). As a Board Member, I participated in meetings where the Board dealt with various issues facing the school, including academics, finances, and student activities. For more information, contact the school at 303-527-4931 or [info@bouldercountryday.org](mailto:info@bouldercountryday.org).

- 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.**

To my knowledge, none of the organizations listed above 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 Department of Justice. For each event, provide the dates, a description of the subject matters addressed, the sponsors, and whether any funding was provided to you by the sponsors or other organizations.**

The following list was compiled after persons acting on my behalf performed a thorough review of my calendar and archived emails and is accurate to my recollection.

Unless otherwise noted with an asterisk, any funding for these events came, to my recollection, from me or the government. Any funding consisted of reimbursement for my expenses. In addition, I received a teaching fee of \$2,500 from the Oklahoma City University.



D.C. Bar Event (06/21/2005)

Dinner event honoring John C. Cruden, president of the D.C. Bar.

Lawsuits and Liberty Conference (06/27/2005 – 06/28/2005)

Conference studying the civil justice system and its relationship to the overall liberty of American citizens. Sponsored by Common Good.

Orientation of 2005–06 Class of AAAS Science & Technology Policy Fellows (9/14/2005)

Presentation on the challenges faced by the legal system in dealing with cases that are marked by increasing technical complexity. Sponsored by American Association for the Advancement of Science (AAAS).

Marshall Scholars Orientation (9/20/2005)

Keynote Speaker at British Embassy event.

Council on Foreign Relations (12/1/2005)

Event where Attorney General spoke on U.S. foreign policy.

St. Louis Family Justice Center Grand Opening (01/2006)

Opening of center designed to provide a one-stop resource for women and families looking to escape domestic violence and abuse. Sponsored by Area Resources for Community and Human Services.

Council on Foreign Relations (01/24/2006 – 01/25/2006)

Event on the McCain-Graham amendment and war on terror interrogation and detainee treatment issues.

Council on Foreign Relations (02/28/2006)

Event on the McCain-Graham amendment and war on terror interrogation and detainee treatment issues.

D.C. Circuit Court Judicial Conference (06/06/2006 – 06/10/2006)

Meeting of the D.C. bar, with presentations by judges and legal experts.

Tenth Circuit Judicial Conference (09/06-2006-09/10/2006)

Bench and Bar Conference.

Colorado Bar Association (11/09/2006)

CLE Event: Appellate Practice in Federal and State Courts. (Denver CO).

Tenth Circuit Meeting (11/28/2006-11/29/2006)

Investiture of Judge Jerome Holmes.

Tenth Circuit Meeting (12/03/2006-12/06/2006)

Meeting of Tenth Circuit Judges in Santa Fe, NM.

Kansas City Metropolitan Bar Association (03/08/2007)  
Discussion on legal writing.

Tenth Circuit Judicial Conference (07/11/2007-07/14/2007)  
Meeting of Tenth Circuit Judges.

Washburn University School of Law (03/09/2007)  
Panel discussion on Appellate Advocacy.

Harvard Law School (03/20/2007-03/22/2007)\*  
Federalist Society Lunch. Sponsored by Harvard Law School.

Stevens Award for Outstanding Public Service in the Field of Law (06/06/2007)\*  
Sponsored by Truman Foundation.

Federal Judicial Center Program (07/08/2007-07/11/2007)  
New Appellate Judges Seminar.

National Lawyers Association Meeting (09/10/2007)  
(Denver, CO).

American Bar Association (09/29/2007)\*  
AJEI Summit, Panel on Oral Advocacy.

American College of Trial Lawyers (10/12/2007)  
Meeting of Judicial Fellows. (Denver, CO).

Federal Judicial Center Program (09/27/2007-09/30/2007)  
Summit for Appellate Judges.

Wake Forest University (11/15/2007-11/17/2007)\*  
Moot Court. Sponsored by Wake Forest University.

Federal Judicial Center Program (02/26/2008-02/28/2008)  
2008 Orientation for Appellate Judges.

Federalist Society (04/17/2008-04/19/2008)\*  
Visited University of Chicago and University of Michigan chapters. Sponsored  
by Federalist Society.

Florida State University (05/02/2008-05/03/2008)\*  
Commencement Speech. Sponsored by Florida State University.

Tenth Circuit Judicial Conference (09/03/2008-09/09/2008)  
Bench and Bar Conference.

Federal Bar Association (10/23/2008)\*  
Mock Oral Argument. Sponsored by Oklahoma City Chapter of Federal Bar Association

Federal Judicial Center Program (11/05/2008-11/07/2008)  
FJC Symposium for U.S. Court of Appeals Judges.

Yale Federalist Society (02/04/2009-02/05/2009)\*  
Visited Yale Law School chapter. Sponsored by Yale Federalist Society.

University of Southern California (03/05/2009-03/06/2009)\*  
Moot Court. Sponsored by University of Southern California.

Harvard Federalist Society (04/15/2009-04/16/2009)\*  
Traphagen Distinguished Alumni Lecture Series. Sponsored by Harvard Federalist Society.

Princeton University (04/16/2009-04/18/2009)\*  
Conference on Law and Religion: Philosophical and Historical Perspectives.  
Sponsored by Witherspoon Institute of Princeton University.

University of Colorado (04/21/2009)  
Faculty Talk (Boulder, CO).

Colorado Bar Association (05/20/2009)  
2009 Colorado Employment Law Conference. (Denver, CO).

Capital Habeas Progress Meeting (10/26/2009-10/28/2009)  
A meeting of judges and practitioners to discuss improving the quality of representation death row inmates receive in their federal habeas proceedings.

Federal Bar Association (12/14/2009-12/15/2009)\*  
William J. Holloway, Jr. Lecture. Sponsored by Federal Bar Association, Oklahoma City Chapter.

Oklahoma City University (02/09/2010-02/12/2010)\*  
Moot Court and Lecture. Sponsored by Oklahoma City University.

University of Michigan (04/06/2010-04/08/2010)\*  
Moot Court. Sponsored by University of Michigan.

Federalist Society (04/21/2010)\*  
Moot Court and meeting with Federalist Society.  
Sponsored by the University of Chicago Law School Federalist Society.

Federal Judges Association Meeting (05/22/2010-05/26/2010)\*  
Sponsored by Federal Judges Association.

Tenth Circuit Judicial Conference (08/25/2010-08/29/2010)  
Bench and Bar Conference.

University of Texas (03/31/2011-04/02/2011)\*  
Sponsored by University of Texas at Austin.

Federal Judges Association Meeting (04/12/2011-04/14/2011)\*  
Meeting of FJA. Sponsored by Federal Judges Association.

University of Notre Dame (09/08/2011-09/10/2011)\*  
Festschrift launch for John Finnis. Sponsored by University of Notre Dame.

Tenth Circuit Judicial Conference (09/20/2011-09/24/2011)  
Meeting of Tenth Circuit Judges.

Institute for the Advancement of the American Legal System (12/2011)  
Meeting. (Denver, CO).

Harvard University (04/03/2012-04/05/2012)\*  
Attended Howard Vaughan Academic Program and met with Federalist Society.  
Sponsored by Harvard University.

Chaves County Law Day (04/26/2012-04/27/2012)\*  
Law Day celebration in Roswell, NM. Sponsored by Chaves County Bar  
Association.

University of Colorado (09/19/2012)  
Bench and Bar Conference. (Boulder, CO).

Federalist Society (11/15/2012-11/18/2012)\*  
2012 National Lawyers Convention. Sponsored by Federalist Society.

University of Colorado Law School (02/09/2013)  
Colorado Marshall-Brennan Moot Court Competition. (Boulder, CO).

Federal Judges Association (04/24/2013-04/25/2013)\*  
Meeting of FJA. Sponsored by Federal Judges Association.

Tenth Circuit Judicial Conference (08/28/2013-08/30/2013)

Tenth Circuit Meeting (10/11/2013)  
Investiture of Judge Gregory Phillips.

Faculty of Federal Advocates (11/12/2013)  
A Brown Bag with the Honorable Timothy M. Tymkovich and the Honorable  
Neil M. Gorsuch. (Denver, CO).

Federalist Society (11/15/2013-11/16/2013)\*  
2013 National Lawyers Convention. Sponsored by Federalist Society.

Yale University (12/08/2013-12/10/2013)\*  
Moot Court. Sponsored by Yale University.

Colorado Bar Association (12/13/2013)  
CLE Event: Brief Writing. No funding. (Denver, CO).

New York University (04/06/2014-04/08/2014)\*  
Moot court. Sponsored by New York University.

Federal Judges Association Meeting (05/03/2014-05/04/2014)\*  
Sponsored by Federal Judges Association.

University of Chicago Visiting Committee (10/29/2014-10/31/2014)\*  
Annual Meeting of the Visiting Committee. Sponsored by University of Chicago.

Colorado Bar Association (12/12/2014)  
CLE Event on appellate practice. No funding. (Denver, CO).

Tenth Circuit Meeting (04/22/2015-4/24/2015)  
Meeting of Tenth Circuit Judges.

Tenth Circuit Judicial Conference (05/17/2015-05/21/2015)

Renaissance Weekend (07/02/2015-07/06/2015)\*  
Interdisciplinary conference. Sponsored by Renaissance Weekend.

UK-US Legal Exchange (09/03/2015-09/11/2015)\*  
Meeting of UK and US jurists and attorneys. Sponsored by the American College of Trial Lawyers.

Case Western Reserve University (04/06/2016-04/08/2016)\*  
2016 Sumner Canary Lecture. Sponsored by Case Western Reserve University.

UK-US Legal Exchange (09/16/2016-09/23/2016)\*  
Meeting of UK and US jurists and attorneys. Sponsored by the American College of Trial Lawyers.

Tenth Circuit Bench & Bar Conference (09/03/2016)

Institute for the Advancement of the American Legal System (10/21/2016)  
Discussion on access to justice.

Israel Academic Exchange (12/10/2016-12/19/2016)\*

Gathering of legal scholars and judges from various nations in Israel. Sponsored by Academic Exchange.

Federalist Society (01/21/2017)  
Lunch Talk. (Denver, CO).

A review of my emails and calendar suggests that I may have attended the events listed below; however, I have no recollection of such attendance and am unable to locate any other records that might confirm my attendance.

ABA Task Force Meeting re: Attorney-Client Privilege (9/08/2005)

Council on Foreign Relations (11/10/05 – 11/11/05)  
Tenth Annual Term Member Conference, New York.

Council on Foreign Relations (12/7/2005)  
Meeting with President George W. Bush.

Council on Foreign Relations Roundtable (12/12/2005)  
Discussion of detainee treatment.

Council on Foreign Relations (1/09/2006)  
“Iraq: The Way Forward” Event with Robert M. Kimmitt.

Council on Foreign Relations (1/13/2006)  
“Lessons Learned” Event with Judge William Webster.

Council on Foreign Relations (1/23/2006)  
Term Member Trip to Capitol Hill.

Inaugural Georgetown National Law Forum on Intercepting Al Qaeda,  
Georgetown University Law Center (1/24/2006)  
Attended speech by AG Gonzales on efforts to combat terrorism.

National District Attorneys Association Capital Conference (1/31/2006)

Heritage Foundation Luncheon (4/26/2006)  
Roundtable discussion on the Patriot Act, specifically Terrorism  
Prosecution/Civil Liberties issues that accompany the Act; judicial confirmations;  
and sentencing issues.

NIJ Terrorism Research Conference (5/12/2006-5/13/2006)

Council on Foreign Relations (9/6/2006)  
Roundtable on CFIUS Reform.

Council on Foreign Relations (10/10/06)

**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.**

To my recollection and through searches of publicly available databases by persons acting on my behalf, I have found the following works that I authored or co-authored since law school. Copies of these materials are attached as Appendix 12(a).

*The Law of Judicial Precedent* (Thomas West 2016).

*Of Lions and Bears, Judges and Legislators, and the Legacy of Justice Scalia*, 66 Case W. Res. L. Rev. 905 (2016).

*Access to Affordable Justice: A Challenge to the Bench, Bar, and Academy*, 100 Judicature, no. 3, Aug. 2016, at 46.

*Law's Irony*, 37 Harv. J.L. & Pub. Pol'y 743 (2014).

*Intention and the Allocation of Risk, in Reason, Morality, and Law* (Oxford University Press 2013).

*A Reply to Raymond Tallis on the Legalization of Assisted Suicide and Euthanasia*, 28 J. Legal Med. 327 (2007).

*The Future of Assisted Suicide and Euthanasia* (Princeton University Press 2006).

Letter to the Editor, *Nonpartisan Fee Awards*, Washington Post, March 18, 2004.

*Liberals 'N' Lawsuits*, National Review Online (Feb. 7, 2005).

*No Loss, No Gain*, Legal Times (Jan. 31, 2005) (co-authored with Paul B. Matey).

*Settlements in Securities Fraud Class Actions: Improving Investor Protection*, Washington Legal Foundation (Apr. 2005) (co-authored with Paul B. Matey).

*The Legalization of Assisted Suicide and the Law of Unintended Consequences: A Review of the Dutch and Oregon Experiments and Leading Utilitarian Arguments for Legal Change*, 2004 Wis. L. Rev. 1347 (2004).

Letter to the Editor, *High Court Clerks and Appellate Lawyers Decry Vanity Fair Article*, Legal Times (Sept. 27, 2004) (one of multiple signatories).

*Justice White and Judicial Excellence*, UPI (May 3, 2002).

*The Right to Assisted Suicide and Euthanasia*, 23 Harv. J.L. & Pub. Pol'y 599 (2000).

*Will the Gentlemen Please Yield? A Defense of the Constitutionality of State-Imposed Term Limits*, 20 Hofstra L. Rev. 341 (1991) (co-authored with Michael Guzman) and Cato Institute Policy Analysis No. 178 (1992) (co-authored with Michael Guzman).

*The Constitutional Case for Term Limits*, Wall Street Journal, Nov. 4, 1992, at A15 (co-authored with Michael Guzman).

Searches of publicly available databases by persons acting on my behalf have yielded the following materials I either wrote or edited in college.

*The State Department v. Afghanistan*, The Morningside Review (Winter 1986) (associate editor).

*In Lumine Tuo...*, The Morningside Review (Spring 1986) (associate editor).

*A Tory Defense*, The Morningside Review (October 1986) (associate editor).

*U.S. Cubans Defy Castro*, Daily Spectator (September 16, 1985).

*Band Is not 'Disgraceful', But ...*, Daily Spectator (October 1, 1985).

*Poor Dartmouth Clone*, Daily Spectator (April 4, 1986).

Untitled, Daily Spectator (March 19, 1986).

*Let's Let the Commander in Chief Lead*, Daily Spectator (January 28, 1987).

*Counterpoint, Just Say Yes*, Daily Spectator (February 13, 1987).

*Comment, Going Crazy Over Coors, Fed Up With the Rites of Spring*, Daily Spectator (March 23, 1987).

*Comment, a Movement Goes Astray, Fighting Racism, Not Making Revolution*, Daily Spectator (April 8, 1987).

*Comment, College and Core Connote CU*, Daily Spectator (February 5, 1988).

*Comment, Student Council Elections Ignore Inanity, Investigate Issues*, Daily



Spectator (March 23, 1988).

*Comment, "Progressives" Where Have All the Protests Gone?*, Daily Spectator (April 11, 1988).

*Comment, Taking a Stand: The University Steps Into the Real World, Overcoming a Hegemony of Ideas*, Daily Spectator (February 25, 1987).

The Federalist Paper (February 27, 1987) (co-founder, editor).

The Federalist Paper (October 6, 1987) (co-founder, editor).

The Federalist Paper (October 26, 1987) (co-founder, editor).

The Federalist Paper (November 23, 1987) (co-founder, editor).

*Co-Ed Fraternity Debate, Con*: The Federalist Paper (March 7, 1988) (co-authored with Michael Behringer) (co-founder, contributor).

The Federalist Paper (April 6, 1988) (co-founder, contributor).

The Federalist Paper (May 4, 1988) (co-founder, contributor).

- b. Supply four (4) copies of any reports, memoranda, policy statements, minutes, agendas, 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, or policy statements of any advisory board on which you served or working group of any bar association, committee, or conference which produced a report, memorandum, or policy statement, even where you did not contribute to it. 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.**

As noted in my response to Question 9, I have served on various legal or judicial-related committees. To my recollection and through searches of publicly available databases, persons acting on my behalf have compiled materials related to my service on those committees in Appendix 12(b).

- 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.**

To my recollection and through searches of publicly available databases,

persons acting on my behalf have compiled materials responsive to this question in Appendices 12(a), 12(d), and 12(f).

In addition, I testified at my confirmation hearing to be United States Circuit Judge for the Tenth Circuit on June 21, 2006. And I delivered a speech at the EEO diversity symposium while working at the Department of Justice. Copies of these materials are included as Appendix 12(c).

- 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, symposia, panels, continuing legal education events, 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.**

Other than what is supplied in Appendix 12(c), to my recollection and through searches of publicly available databases, persons acting on my behalf have found the following remarks delivered by me:

The Federalist Society, *Getting Legal Ethics Right* Luncheon, Denver, CO, Jan. 27, 2017. The presentation substantially repeated the Feb. 2010 presentation, *But My Client Made Me Do It: The Struggle of Being a Good Lawyer and Living a Good Life*, for which a copy of the presentation has been supplied.

Tenth Circuit Bench & Bar Conference, *Life and Legacy of Supreme Court Justice Antonin Scalia*, Colorado Springs, CO, Sept. 3, 2016, video recording available at <https://www.c-span.org/video/?414086-1/life-legacy-supreme-court-justice-antonin-scalia>.

Case Western Reserve University School of Law, 2016 Sumner Canary Lecture, Apr. 7, 2016, published as *Of Lions and Bears, Judges and Legislators, and the Legacy of Justice Scalia*, 66 Case W. Res. L. Rev. 905 (2016).

United Kingdom-United States Legal Exchange, London, England, Sept. 2015, published as *Access to Affordable Justice: A Challenge to the Bench, Bar, and Academy*, 100 Judicature, no. 3, Aug. 2016, at 46.

The Federalist Society, 2013 National Lawyers Convention, Barbara K. Olson Memorial Lecture, Nov. 22, 2013, published as *Law's Irony*, 37 Harv. J.L. & Pub. Pol'y 743 (2015), and video recording available at <http://www.fed-soc.org/multimedia/detail/13th-annual-barbara-k-olson-memorial-lecture-event-audiovideo>.

The Federalist Society, *Dodd-Frank: Act Two and What's Next in Financial*

*Services Laws and Regulations?*, Nov. 19, 2012, video recording available at <http://www.fed-soc.org/multimedia/detail/dodd-frank-act-two-and-whats-next-in-financial-services-laws-and-regulations-event-audiovideo>.

University of Colorado Law School, Commencement Speech, May 11, 2012.

Chaves County Bar Association, Law Day, *The Majesty of the Law*, Roswell, NM, Apr. 26, 2012.

Harvard Law School, Cambridge, MA, Apr. 4, 2012.

Institute for the Advancement of the American Legal System, Denver, CO, Dec. 2011.

University of Notre Dame Law School, *Intention and the Allocation of Risk*, South Bend, IN, Sept. 2011.

Oklahoma City University School of Law, *But My Client Made Me Do It: The Struggle of Being a Good Lawyer and Living a Good Life*, Oklahoma City, OK, Feb. 2010.

Federal Bar Association, William J. Holloway, Jr. Lecture, *(How) Do Judges Think?*, Oklahoma City, OK, Dec. 11, 2009.

University of Colorado School of Law, Faculty Talk, *Musings on the State (Disrepair?) of the Bench-Academy Relationship*, Boulder, CO, Apr. 21, 2009.

Traphagen Distinguished Alumni Speakers Series, Harvard Law School, Cambridge, MA, Apr. 15, 2009. The presentation substantially repeated the May 3, 2008 presentation, *Ten Things to Do in Your First Ten Years of Practice*, for which a copy of the presentation has been supplied.

Florida State University Law School, Commencement Speech, *Ten Things to Do in Your First Ten Years of Practice*, Tallahassee, FL, May 3, 2008.

University of Denver Law School, Denver, CO, Jan. 31, 2008.

Marshall Scholar Gathering, Denver, CO, Dec. 5, 2007.

American College of Trial Lawyers, Judicial Fellows, Denver, CO, Oct. 12, 2007.

National Lawyers Association, *A Brief Reply to Raymond Tallis on the Legalization of Assisted Suicide and Euthanasia*, Denver, CO, Sept. 10, 2007.

American Association for the Advancement of Science, AAAS Science & Technology Policy Fellows Orientation, Washington, D.C., Sept. 14, 2005.

Federal Trade Commission Workshop, *Protecting Consumer Interests in Class Actions*, Sept. 2004. In a questionnaire I submitted to the Senate in connection

with my judicial nomination in 2006, I listed this speech as *Ensuring Class Action Fairness*, but I have no current memory of that title.

Unless otherwise noted, copies of the speeches above as well as available press reports are attached as Appendix 12(d).

In addition, I have given other talks for which I have not kept notes and do not have transcripts or recordings. For these talks, I have indicated the dates, the address of the group, and the subject matter to my recollection and where such information was available through a search of publicly available databases by persons acting on my behalf. Some of these remarks have touched on legal issues; others have not.

American Bar Association, Panel on Oral Argument, AJEI Summit, Sept. 29, 2007. The address of the group is 1050 Connecticut Ave. N.W., Suite 400, Washington, D.C. 20036.

American College of Trial Lawyers 2016 Annual Meeting, Moderator for Panel on *UK – US Legal Exchange: Access to Justice*, Sept. 9, 2016. The address of the group is 19900 MacArthur Blvd. #530, Irvine, CA 92612.

American College of Trial Lawyers, Oct. 12, 2007. Meeting of Judicial Fellows. This event took place in Denver, CO.

American Inns of Court. The address of the group is 225 Reinekers Lane, Suite 770, Alexandria, VA 22314.

British Marshall Scholarship Commission, 2007. The address of the group is Marshall Aid Commemoration Commission, Woburn House, 20-24 Tavistock Square, London, WC1H 9HF, UK.

Capital Habeas Progress Meeting, Oct. 26-28, 2009. A meeting of judges and practitioners to discuss how to improve the quality of representation death row inmates receive in their federal habeas proceedings.

Colorado Bar Association, *Appellate Practice*, Nov. 9, 2006. The address of the bar association is 1900 Grant St. # 900, Denver, CO 80203.

Colorado Bar Association, *Effective Appellate Advocacy*, May 20, 2009. The address of the bar association is 1900 Grant St. # 900, Denver, CO 80203.

Colorado Bar Association, *Effective Brief Writing*, Dec. 13, 2013. The address of the bar association is 1900 Grant St. #900, Denver, CO 80203.

Colorado Bar Association, *Appellate Practice*, Dec. 12, 2014. The address of the bar association is 1900 Grant St. # 900, Denver, CO 80203.

Common Good. The address of the group is One Metrotech Center, Suite 1703, Brooklyn, NY 11201.

Council on Foreign Relations, Moderator, Event on the McCain-Graham amendment and war on terror interrogation and detainee treatment issues, Jan. 24-25, 2006. The address of the group is 1777 F St. N.W. #100, Washington, D.C. 20006.

Council on Foreign Relations, Moderator, Event on the McCain-Graham amendment and war on terror interrogation and detainee treatment issues, Feb. 28, 2006. The address of the group is 1777 F St. N.W. #100, Washington, D.C. 20006.

Faculty of Federal Advocates, A Brown Bag with the Honorable Timothy M. Tymkovich and the Honorable Neil M. Gorsuch, Nov. 12, 2013. The address of the group is 700 Colorado Blvd., #420, Denver, CO 80206.

Federal Bar Association, Mock Oral Arguments, Oct. 23, 2008. The address of the group is 1220 North Fillmore St., Suite 444, Arlington, VA 22201.

Federal Judges Association Meetings, May 22-26, 2010, Apr. 12-14, 2011, Apr. 24-25, 2013, May 3-4, 2014.

Federalist Society National Lawyers Convention, Nov. 15-17, 2012. The address of the group is 1776 I St., N.W., Suite 300, Washington, D.C. 20006.

Federalist Society, University of Chicago Law School, Apr. 21, 2010. The address of the group is 1111 East 60th St., Chicago, IL 60637.

Federalist Society, Apr. 17-19, 2008. Visited University of Chicago and University of Michigan chapters. The addresses of the groups are, respectively, 1111 East 60th St., Chicago, IL 60637, and 625 South State St., Ann Arbor, MI 48109.

Federalist Society, *An Argument Against Consequentialism*, Yale Law School, Feb. 4, 2009. The address of the group is 127 Wall Street, New Haven, CT 06511.

Finnis Festschrift, University of Notre Dame, Sept. 9, 2011. The event took place at 1100 Eck Hall of Law, Notre Dame, IN 46556.

Florida State University School of Law Commencement Speech, May 3, 2008. The event took place at 425 West Jefferson St., Tallahassee, FL 32301.

Harry S. Truman Scholarship Foundation, 2006. The address of the group is 712 Jackson Place, N.W., Washington, D.C. 20006.

Harry S. Truman Scholarship Foundation, Recipient of Stevens Award, June 6, 2007. The address of the group is 712 Jackson Pl., N.W., Washington, D.C. 20006.

Harvard Law School, Mar. 20-22, 2007. Federalist Society event and lunch. The event took place at 1563 Massachusetts Ave., Cambridge, MA 02138.

Harvard Law School, Moot Court, Apr. 4, 2012. The event took place at 1563 Massachusetts Ave., Cambridge, MA 02138.

Israel Academic Exchange, Dec. 10-19, 2016.

Kansas City Metropolitan Bar Association, Mar. 8, 2007. Discussion on legal writing. The address of the organization is 2300 Main St. #100, Kansas City, MO 64108.

Lawsuits and Liberty Conference, June 27-28, 2005. Conference studying the civil justice system and its relationship to the overall liberty of American citizens.

Marshall Scholars Orientation, Sept. 2005. Keynote Speaker at British Embassy event.

National Lawyers Association Meeting, Sept. 10, 2007. The event took place in Denver, CO.

National White Collar Crime Center. The address of the group is 5000 NASA Blvd., Suite 2400, Fairmont, WV 26554.

New York University School of Law, Moot Court, Apr. 7, 2014. The event took place at 40 Washington Square South, New York, NY 10012.

Oklahoma City University. Informal discussions with students about clerkships and other legal issues, Feb. 9-12, 2010. The law school is located at 2501 N Blackwelder Ave., Oklahoma City, OK 73106.

Phil Anschutz Annual Dove Hunt. Discussion about the rule of law, Sept. 1, 2010. Eagle Nest Ranch, CO. I believe I spoke at similar events, including related fishing trips, in 2012 or 2013 and 2015.

Princeton University Witherspoon Institute, James Madison Program, Conference on Law and Religion, Apr. 16-18, 2009. The address of the group is 16 Stockton St., Princeton, NJ 08540.

Tenth Circuit Judicial Conference Panel, Life and Legacy of Justice Scalia, Sept. 3, 2016. The address of the group is 1823 Stout St., Denver, CO 80202.

Renaissance Weekend, Interdisciplinary Conference, July 2-6, 2015.

Tenth Circuit Judicial Conference, Aug. 25-29, 2010. Bench and Bar Conference.

University of Southern California Law School, Moot Court Competition, Mar. 5-6, 2009. The address of the school is 699 Exposition Blvd., Los Angeles, CA 90089.

University of Chicago Law School, Moot Court Competition, Apr. 21, 2010. The address of the school is 1111 East 60th St., Chicago, IL 60637.

University of Chicago Law School, Law Review Banquet, Apr. 22, 2010. The address of the school is 1111 East 60th St., Chicago, IL 60637.

University of Chicago Law School, Annual Meeting of the Visiting Committee, Oct. 29-31, 2014. The address of the school is 1111 East 60th St., Chicago, IL 60637.

University of Colorado Law School, Marshall-Brennan Moot Court Competition, Feb. 2013. The event took place at Wolf Law Building, 401 UCB, Boulder, CO 80309.

University of Colorado Law School, Bench and Bar Conference, Sept. 19, 2012, Boulder, CO. The event took place at Wittemeyer Courtroom, Colorado Law, Boulder, CO 80305.

University of Colorado Law School, Faculty Talk, Apr. 21, 2009. The address of the school is 2450 Kittredge Loop Dr., Boulder, CO 80309.

University of Illinois College of Law, Moot Court, Apr. 10, 2013. The event took place at 504 East Pennsylvania Ave, Champaign, IL 61820.

University of Michigan Law School, Moot Court, Apr. 7, 2010. The event took place at 625 South State St., Ann Arbor, MI 48109.

University of Texas Law School, Judicial Clerkship Workshop, Court of Appeals Panel Discussion, Apr. 1, 2011. The event took place at 727 E Dean Keeton St, Austin, TX 78705.

University of Southern California Gould School of Law, Moot Court, Mar. 6, 2009. The event took place at 699 Exposition Blvd, Los Angeles, CA 90089.

Wake Forest Law School, Moot Court, Nov. 15-17, 2007. The event took place at 1834 Wake Forest Rd, Winston-Salem, NC 27109.

Washburn University School of Law, Writing to Win Symposium, Mar. 9, 2007. The address of the law school is 1700 S.W. College Ave., Topeka, KS 66621.

Washington, D.C. Bar Association, 1997. The address of the group is 1101 K Street N.W., Suite 200, Washington, D.C. 20005.

Washington Legal Foundation, Supreme Court Mid-Term Preview, Feb. 11, 2004. The address of the group is 2009 Massachusetts Ave., N.W., Washington, D.C. 20036.

Wilder Elementary School, Littleton, Colorado, May 14, 2009. The event took place at 4300 West Ponds Cir., Littleton, CO 80123.

Wisconsin Bar Association. The address of the group is 5302 Eastpark Blvd., Madison, WI 53718-2101.

Yale Law School, Moot Court Competition, Harlan Fiske Stone Finals, December 9, 2013. The event took place at 127 Wall St., New Haven, CT 06511.

- 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.**

While I was in private practice (before mid-2005), I was interviewed by Prime Time Radio on the subject of assisted suicide. Around 2007, I was interviewed by a Denver-area sports channel for a piece about Justice Byron White's career. Prior to becoming a judge, I occasionally answered a reporter's questions, usually as background information about an ongoing case. After searching publicly available databases, I have not found transcripts of these interviews and discussions, except for one article in which I am quoted discussing *NCRIC v. Columbia Hospital for Women* and another article in which I am quoted discussing *Dura Pharmaceuticals, Inc. v. Broudo*. Copies of these articles are supplied in Appendix 12(e). To my recollection, I have not given interviews to the press since becoming a judge in 2006.

- 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.**

To my recollection and based on searches of publicly available databases by persons acting on my behalf, my calendar, and my archived emails, I have compiled materials responsive to this question in Appendix 12(f). During my tenure as Principal Deputy Associate Attorney General, other U.S. Department of Justice components generated certain reports that passed through the Office of the Associate Attorney General. While I do not recall whether those reports were prepared or produced with my participation, I included them in Appendix 12(f).

**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.**

U.S. Court of Appeals for the Tenth Circuit, Circuit Judge (2006 to present)

- a. **Approximately how many cases have you presided over that have gone to**



**verdict or judgment?**

According to a February 9, 2017 Westlaw search, I understand that appellate panels on which I have been a member have issued opinions in approximately 1,800 criminal cases and 1,200 civil cases. Because some cases involve both civil and criminal issues, the sum of these figures is slightly higher than the total number of decisions issued by panels of which I was a member (approximately 2,750). During my tenure as a court of appeals judge, I have not presided over a trial.

Of these, approximately what percent were:

- i. jury trials: N/A  
bench trials: N/A
  - ii. civil proceedings: approximately 40%  
criminal proceedings: approximately 60% [total 100%]
- b. Provide citations for all opinions 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.**

Please see the attached 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.**

Please see the attached Appendix 13(c).

- d. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).**

The names, affiliations, phone numbers, and addresses of counsel listed below represent the last known contact information I possess.

(1) *Gutierrez-Brizuela v. Lynch*, 834 F.3d 1142 (10th Cir. 2016).

Nature of the Case: This case addressed the conflict between two provisions of immigration law. The first provision granted the Attorney General discretion to accord lawful resident status to non-citizens who illegally entered the United States. The second said non-citizens who illegally reenter must wait ten years

before obtaining lawful residency. Which takes precedence?

In 2005, the Tenth Circuit said the Attorney General retains her discretion to award legal status notwithstanding the second provision. Then, in 2007, the Board of Immigration Appeals disagreed and said the second provision strips away that discretion. The Supreme Court has instructed federal courts to defer to reasonable agency interpretations of ambiguous statutory language — even interpretations contradicting prior judicial precedents. So in 2011 the Tenth Circuit overruled its earlier decision and adopted the Board’s reading. Sometime between 2007 and 2011, the petitioner, relying on the Tenth Circuit’s original decision, applied to the Attorney General for discretionary relief. The Board said that its interpretation applied starting in 2007 even though the law on the books was the Tenth Circuit’s original 2005 ruling.

Disposition: The panel held the petitioner was entitled to rely on the Tenth Circuit’s original 2005 ruling because the court’s interpretation of law, not the Board’s, controlled until the court itself overruled that decision. Because the petitioner could not predict whether the Tenth Circuit would find the Board’s interpretation entitled to deference and reject its prior precedent, prior precedent protected his reasonable reliance on the court’s precedent.

In a separate concurrence, I questioned judicial deference to agency legal interpretations. My opinion noted that the Administrative Procedure Act vests the courts with the power and duty to interpret statutory provisions, that deferring to an agency’s interpretation may be in tension with Congress’s statutory directive, and that this practice may raise due process (fair notice) and separation of powers concerns.

For petitioner-appellant (Gutierrez-Brizuela):

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For respondent-appellee (Lynch):

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(2) *United States v. Carloss*, 818 F.3d 988 (10th Cir. 2016).

Nature of the Case: This case concerned the limits of warrantless searches of residences. Without a warrant, officers approached a house that had several “No Trespassing” signs placed in and near the home’s curtilage. Eventually the officers won admission and found drugs. The defendant filed a motion to suppress. The district court denied that motion and the defendant appealed.

Disposition: The court of appeals held that the officers did not violate the Fourth Amendment by entering the home’s curtilage because they had “implied consent” to do so. In a dissenting opinion, I noted that the area immediately surrounding the home is protected by the Fourth Amendment under Supreme Court precedent. I explained as well that, under Supreme Court precedents, there is no “implied consent” to enter a home’s curtilage when it and the path to it contain repeated “no trespassing” warnings explaining that entry is not permitted. I noted that the officers would have been free to enter with a warrant or in emergency circumstances.

For defendant-appellant (Carloss):

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For plaintiff-appellee (United States):

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(3) *Caplinger v. Medtronic, Inc.*, 784 F.3d 1335 (10th Cir. 2015).

Nature of the Case: The defendants produced a device that repairs damaged vertebrae. The FDA permitted the sale of the device but required the defendants to include a warning label that the device should be implanted via an anterior surgical approach. The plaintiff alleged that despite the label the defendants promoted the device for use in a posterior surgical approach. She sued under various state law claims. The district court dismissed these state law claims as preempted by federal law, claiming that the Medical Device Amendments (MDA) prevent states from establishing requirements for medical devices that are different from federal requirements.

Disposition: After discussing Supreme Court precedent on preemption and the MDA, the panel held that a plaintiff may bring a state law claim for highly regulated medical devices if she demonstrates that the duty from the state law is narrower than the related federal regulation specific to that particular device. Because the plaintiff failed to identify parallel federal requirements that her state law claims were narrower than, the panel affirmed the district court's dismissal.

For plaintiff-appellant (Caplinger):

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For defendants-appellants (Medtronic, Inc.):

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For amicus curiae (The Product Liability Advisory Council, Inc.):

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(4) *United States v. Rentz*, 777 F.3d 1105 (10th Cir. 2015) (en banc).

Nature of the Case: 18 U.S.C. § 924(c) enhances the sentence of “any person who, during and in relation to any crime of violence or drug trafficking crime . . . uses or carries a firearm . . . .” The defendant fired a single shot that hit and injured one victim and struck and killed another. The government sought to charge the defendant with two violations of § 924(c) for two separate crimes of violence, even though the defendant “used” the gun only once. The defendant moved to dismiss one of the charges and the district court granted the motion. A panel of the Tenth Circuit reversed, holding that two charges of § 924(c) could be brought from a single use of the firearm. The full Tenth Circuit then voted to grant rehearing en banc.

Disposition: The en banc court held that each charge under § 924(c) requires a separate “use” of a firearm. Looking at the statutory text, the court concluded that

the phrase “during and in relation to any crime of violence or drug trafficking crime” modifies the phrase “uses or carries a firearm,” and an individual cannot use a firearm during and in relation to crimes of violence more than the total number of times he or she uses a firearm. To the extent any ambiguity remained in the statutory language, the court employed the rule of lenity to resolve it — a tool of statutory construction that compels courts to interpret ambiguities in criminal statutes in favor of the defendant. The court found that the rule of lenity was especially appropriate here because the government itself had argued in another en banc case before another circuit that the number of “uses,” not the number of “crimes of violence,” limits the number of available charges.

For plaintiff-appellant (United States):

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For defendant-appellee (Rentz):

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(5) *MHC Mut. Conversion Fund, L.P. v. Sandler O’Neill & Partners, L.P.*, 761 F.3d 1109 (10th Cir. 2014).

Nature of the Case: In this dispute, the court was asked to consider when a defendant can be sued for securities fraud for opinions it issues. Seeking to conduct a secondary stock offering after the financial crisis in 2008, the defendant informed potential investors in its securities filings that it had investments in mortgage-backed securities. It also stated that based on internal analyses and independent consultations it predicted that the number of defaults on the underlying mortgages would level off. This prediction did not pan out, and the plaintiffs sued the defendants under section 11 of the Securities Act of 1993, which imposes liability when a registration statement contains an untrue statement of material fact. The district court dismissed the suit and the plaintiffs appealed.

Disposition: The panel held that entities can be liable under section 11 for an opinion if the plaintiff shows that the opinion is objectively false and the speaker did not believe it. Although section 11 is only triggered for an “untrue statement of a material fact,” an opinion qualifies as a factual claim of the speaker’s state of mind — and so an opinion can be a false statement of fact if the speaker does not

actually believe it. Further, because no harm results from relying on an opinion that proves true, the statement must also be objectively false. The plaintiffs in this case failed to make any allegations that the company disbelieved the opinion it issued. Accordingly, the panel affirmed the district court. The Supreme Court, in a separate, subsequent opinion, similarly held that opinions can be grounds for liability under section 11, because opinions can convey facts about the speaker's basis for forming that view. *Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund*, 135 S. Ct. 1318, 1328-31 (2015).

For plaintiffs-appellants (MHC Mutual Conversion Fund, L.P.):

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For defendants-appellees (Sandler O'Neill & Partners, L.P.):

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(6) *Yellowbear v. Lampert*, 741 F.3d 48 (10th Cir. 2014).

Nature of the Case: Mr. Yellowbear, a state prisoner, sued prison officials under the Religious Land Use and Institutionalized Persons Act (RLUIPA). RLUIPA prohibits the government from imposing a substantial burden on a person's religious exercise unless the burden furthers a compelling governmental interest and is the least restrictive means of doing so. Mr. Yellowbear sought use of the prison's sweat lodge for prayer but the prison denied him access. The sweat lodge was located in the general prison yard and Mr. Yellowbear, due to threats against him, was housed in a special protective unit. Prison officials claimed that the cost of security accompanying him to the sweat lodge was unduly burdensome. The prison moved for summary judgment, which the district court granted. Mr. Yellowbear appealed.

Disposition: The panel vacated the district court's grant of summary judgment. Mr. Yellowbear demonstrated that access to a sweat lodge is a form of religious exercise in his Northern Arapaho faith and the prison's denial of access to the sweat lodge was a substantial burden on that religious exercise. The prison failed to carry its burden of establishing a compelling interest because it asserted only that the costs were "unduly burdensome" while failing to quantify those costs in any way. The prison also failed to show that a complete denial of access to the sweat lodge was the least restrictive means of accommodating its concerns. This opinion was quoted by Justice Sotomayor's concurrence in a separate RLUIPA case. *Holt v. Hobbs*, 135 S. Ct. 853, 867 (2015) (Sotomayor, J., concurring).

For plaintiff-appellant (Yellowbear):

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For defendants-appellees (Lampert):

Melissa E. Westby  
Office of the Attorney General for the State of Wyoming  
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Cheyenne, WY 82002  
(307) 777-7841  
mwestb@state.wy.us

(7) *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114 (10th Cir. 2013).

Nature of the Case: This case concerned whether the Religious Freedom Restoration Act (RFRA) protected two companies and their owners from certain requirements of the Affordable Care Act. RFRA prevents the federal government from imposing a substantial burden on a person's religious exercise unless the burden furthers a compelling governmental interest and is the least restrictive means of doing so. The Greens owned and operated Hobby Lobby Stores, Inc., an arts and crafts chain, and Mardel, Inc., a Christian book store. The Greens objected to providing insurance coverage for contraceptives that would prevent implantation of a fertilized egg (but not other contraceptives that prevent fertilization). Under the Affordable Care Act, their companies would have been liable for millions of dollars each year in regulatory taxes. The Greens and the companies sued to enjoin the government from enforcing the contraceptive-coverage requirement.

Disposition: The en banc court held that the companies had standing to sue and reversed the district court's denial of a preliminary injunction. The en banc majority, which I joined, concluded that the companies had demonstrated a

likelihood of success on their RFRA claim and satisfied the irreparable harm requirement. In a concurring opinion, I explained why the Greens, as individuals, also had standing to sue and were entitled to relief. I also explained that the Anti-Injunction Act did not apply.

For plaintiffs-appellants (Hobby Lobby, Inc.):

S. Kyle Duncan  
(former) The Beckett Fund  
(current) Schaerr Duncan LLP  
1717 K Street N.W., Suite 900  
Washington, D.C. 20006  
(202) 787-1060  
kduncan@schaerr-duncan.com

For defendants-appellees (Sebelius):

Alisa B. Klein  
Appellate Staff, Civil Division  
U.S. Department of Justice  
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Washington, D.C. 20530  
(202) 514-1597  
alisa.klein@usdoj.gov

(8) *Lee v. Max Int'l, LLC*, 638 F.3d 1318 (10th Cir. 2011).

Nature of the Case: The central question in this case was when a court may sanction parties for abuses of the discovery process. The plaintiffs failed to produce documents in response to a discovery request and subsequently violated two judicial orders compelling production. The district court dismissed the case as a sanction for this misconduct and the plaintiffs appealed the dismissal.

Disposition: The panel held that the district court did not abuse its discretion in dismissing the case for failure to comply with several orders compelling production of the same discovery materials. The panel explained that a litigant should not count on more than three chances to make good a discovery obligation before incurring repercussions.

For plaintiffs-appellants (Lee):

Stuart Mark Miller  
Law Office of Stuart Mark Miller  
2441 I Ridge Route Drive, Suite 200  
Laguna Hills, CA 92653  
(949) 580-3737  
stuartmiller@earthlink.net

For defendant-appellee (Max International, LLC):

James T. Blanch



(former) Parsons, Behle & Latimer  
(current) Judge, Third Judicial District of Utah  
Matheson Courthouse 450 South State Street  
P.O. Box 1860  
Salt Lake City, UT 84114  
(801) 238-7112

(9) *Kay Elec. Coop. v. City of Newkirk*, 647 F.3d 1039 (10th Cir. 2011).

Nature of the Case: This case concerned the immunity that state and municipal governments sometimes enjoy from federal antitrust laws. The City of Newkirk, Oklahoma, provided electricity to consumers inside its boundaries while Kay, a rural electric cooperative, served those on the outside. When a new jail was built just outside Newkirk, both the city and the cooperative offered to provide it with electricity. Newkirk — the only provider of sewage services in the area — said it would refuse to provide any sewage services to the jail unless the jail also purchased its electricity. Faced with this threat, the jail chose to buy electricity from the city even though Kay offered better terms. Kay then brought suit against Newkirk for anticompetitive behavior, but the district court dismissed the case, finding the city immune from federal antitrust laws.

Disposition: The Tenth Circuit reversed. While states generally enjoy immunity from the Sherman Act until Congress says otherwise, that immunity does not always extend to municipal governments. Instead, a municipality is exempt from antitrust laws only when its parent state clearly authorizes it to engage in anticompetitive conduct. In this case, the Oklahoma state legislature never permitted the city to engage in such anticompetitive conduct. Indeed, the most specific statutes on point showed the state's clear preference for, not against, competition in the provision of electricity. The Supreme Court, in a unanimous opinion, later cited this opinion and approved its reasoning. *FTC v. Phoebe Putney Health Sys., Inc.*, 133 S. Ct. 1003 (2013).

For plaintiffs-appellants (Kay Electric Coop.):

Douglas A. Rice  
Derryberry & Naifeh LLP  
4800 North Lincoln Boulevard  
Oklahoma City, OK 73105  
(405) 708-6784  
drice@derryberrylaw.com

For defendants-appellees (City of Newkirk):

Andrew W. Lester  
(former) Lester, Living & Davies, P.C.  
(current) Spencer Fane  
9400 N. Broadway Extension, Suite 600  
Oklahoma City, OK 73114  
(405) 844-9900

alester@spencerfane.com

For amicus curiae (Oklahoma Association of Electric Cooperatives):

Michael Burrage  
Whitten Burrage  
1215 Classen Drive  
Oklahoma City, OK 73103  
(405) 516-7800  
mburrage@whittenburragelaw.com

(10) *United States v. Dolan*, 571 F.3d 1022 (10th Cir. 2009), *aff'd*, 560 U.S. 605 (2010).

Nature of the Case: The defendant assaulted a hitchhiker. Although the hitchhiker survived, the assault left him with over \$100,000 in medical expenses. The defendant was convicted of assault. In addition to a prison sentence, the district court ordered restitution payments to the victim under the Mandatory Victims Restitution Act (MVRA). The MVRA sets a 90-day timeline after sentencing for the court to make a final determination of the victim's losses. And although the district court indicated within 90 days of sentencing that restitution was available, it did not make a final determination of restitution until after the 90 days had passed. On appeal, the defendant argued that the district court did not have jurisdiction to enter the final amount because it was past the 90-day deadline.

Disposition: The panel held that the MVRA's deadline is not a jurisdictional bar and the district court did not abuse its discretion in deciding the amount of monthly restitution payments. The Supreme Court subsequently granted the defendant's petition for a writ of certiorari and affirmed, holding that even if a sentencing court misses the 90-day deadline it still retains the power to order restitution, at least where (as here) the court clearly stated within the 90-day window that it would order restitution.

For defendant-appellant (Dolan):

Sara N. Sanchez  
(former) Sheehan, Sheehan & Steltzner, P.A.  
(current) Steltzner, Winter, Warburton, Flores, Sanchez and Dawes, P.A.  
302 Eighth Street N.W., Suite 200  
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For plaintiff-appellee (United States):

Terri J. Abernathy  
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District of New Mexico  
555 South Telshor, Suite 300  
Las Cruces, NM 88011

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- 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; and (3) the names and contact information for the attorneys who played a significant role in the case.**

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

- f. **Provide a list of all cases in which certiorari was requested or granted.**

Please see attached 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.**

To my recollection, no opinion I have authored has been reversed by a reviewing court or affirmed with significant criticism. In one instance, the Supreme Court vacated an opinion I wrote and remanded for further consideration in light of its newly issued opinion in *Gall v. United States*, 552 U.S. 38 (2007). *United States v. Gonzales*, 252 F. App'x 900 (10th Cir. 2007), *cert. granted, judgment vacated, and remanded sub nom. Sanchez v. United States*, 552 U.S. 1278 (2008).

The panel opinions I have joined written by other judges that have been reversed or vacated include, to my recollection:

*Direct Mktg. Ass'n v. Brohl*, 735 F.3d 904 (10th Cir. 2013), *cert. granted*, 134 S. Ct. 2901 (July 1, 2014), *rev'd*, 135 S. Ct. 1124 (2015).

Colorado enacted notice and reporting requirements to increase the collection of use taxes imposed on residents who purchase tangible items from out-of-state retailers. The plaintiff sued, seeking to enjoin the enforcement of the requirements as a violation of the dormant Commerce Clause, and the district court agreed. On appeal and applying circuit precedent, the Tenth Circuit held that the Tax Injunction Act (TIA) precluded federal jurisdiction and ordered the district court to dismiss the claims. The Supreme Court reversed, holding that the enforcement of the notice and reporting requirements was not an "assessment, levy or collection" within the scope of the TIA. On remand, the Tenth Circuit reached the merits of the case and found that the Colorado law does not violate the dormant Commerce Clause. The losing party sought review on the merits in the Supreme Court. That Court denied review. *Direct Mktg. Ass'n v. Brohl*, 814 F.3d 1129 (10th Cir. 2016), *cert. denied*, No. 16-267, 137 S. Ct. 591 (Mem.) (Dec. 12, 2016).

*United States v. Trotter*, 483 F.3d 694 (10th Cir. 2007), *cert. granted and judgment vacated*, 552 U.S. 1090 (Jan. 07, 2008).

The defendants were convicted of various conspiracy, drug, and firearm charges. On appeal they argued, among other things, that the district court erred in calculating their sentences by failing to impose a sentence below the Guidelines range because of the disparity in punishment between powder cocaine and crack cocaine offenses. The Tenth Circuit affirmed, relying on prior precedent rejecting this argument. The Supreme Court granted the petition for writ of certiorari and vacated and remanded for further consideration in light of *Kimbrough v. United States*, 552 U.S. 85 (2007), which had recently held that district courts may find that the disparity between the Guidelines range for powder cocaine and crack cocaine offenses yields a sentence greater than necessary. On remand, the Tenth Circuit asked the district court to clarify why it refused defendants' request to impose a below-guidelines sentence. *United States v. Trotter*, 518 F.3d 773 (10th Cir. 2008). The district court stated it had exercised the discretion described in *Kimbrough* and so maintained its original sentence. The Tenth Circuit then dismissed the defendants' subsequent appeal as untimely. The Supreme Court denied review. *United States v. Trotter*, 379 F. App'x 735 (10th Cir. 2010), *cert. denied*, 562 U.S. 991 (Oct. 18, 2010).

- 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.**

According to a February 9, 2017 Westlaw search, I understand that panels of which I have been a member have issued approximately 2,750 opinions: roughly 600 published and 2,150 unpublished. So about 22% of my decisions have been published and 78% unpublished. By way of comparison, during my time as a judge, I understand that the Tenth Circuit published around 21.5% its decisions and released around 78.5% as unpublished opinions. The unpublished opinions are generally available on Westlaw and other online databases.

- i. Provide citations for significant opinions 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.

*United States v. Ackerman*, 831 F.3d 1292 (10th Cir. 2016).

*Cordova v. City of Albuquerque*, 816 F.3d 645, 661 (10th Cir. 2016) (Gorsuch, J.,

concurring in the judgment).

*United States v. Spaulding*, 802 F.3d 1110, 1127 (10th Cir. 2015) (Gorsuch, J., dissenting).

*United States v. Nichols*, 784 F.3d 666, 667 (10th Cir. 2015) (Gorsuch, J., dissenting from the denial of rehearing en banc).

*Kerr v. Hickenlooper*, 759 F.3d 1186, 1193 (10th Cir. 2014) (Gorsuch, J., dissenting from the denial of rehearing en banc).

*Riddle v. Hickenlooper*, 742 F.3d 922, 930 (10th Cir. 2014) (Gorsuch, J., concurring).

*United States v. Nicholson*, 721 F.3d 1236, 1246 (10th Cir. 2013) (Gorsuch, J., dissenting).

*Bustos v. A & E Television Networks*, 646 F.3d 762 (10th Cir. 2011).

*Williams v. Jones*, 571 F.3d 1086, 1094 (10th Cir. 2009) (Gorsuch, J., dissenting); 583 F.3d 1254, 1256 (10th Cir. 2009) (Gorsuch, J., dissenting from the denial of rehearing en banc).

*Green v. Haskell Cty. Bd. of Comm'rs*, 574 F.3d 1235, 1243 (10th Cir. 2009) (Gorsuch, J., dissenting from the denial of rehearing en banc).

- 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.**

While sitting by designation, I authored an opinion in the following cases:

*Blausey v. U.S. Trustee*, 552 F.3d 1124, 1134 (9th Cir. 2009) (Gorsuch, J., dissenting).

A bankruptcy court dismissed the debtors' case because the debtors failed to include a \$4,000 per month disability insurance benefit in their current monthly income calculation. Including the monthly payments would have disqualified them from a Chapter 7 discharge. The debtors argued that the Bankruptcy Code's definition of "current monthly income" incorporated the definition of "gross income" under the Internal Revenue Code, and so did not require them to include disability payments. The Ninth Circuit rejected this argument and affirmed the district court. I dissented, suggesting that the court of appeals could not hear the case because the debtors did not request permission to appeal within the 10-day window Congress prescribed by statute.

*Salmon v. Astrue*, 309 F. App'x 113, 116 (9th Cir. 2009) (Gorsuch, J., dissenting).

The plaintiff sought review of the Commissioner of Social Security's determination that she was not entitled to disability insurance benefits. The Ninth Circuit held that the administrative law judge failed to weigh the evidence properly because it favored one evaluation of mental impairment over another without offering an explanation. I dissented, suggesting that the district court had properly found the Commissioner's conclusions satisfied the deferential substantial evidence standard applicable to the case.

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

*Dumas v. New United Motor Mfg., Inc.*, 305 F. App'x 445 (9th Cir. 2008).

*Grillo v. Cal. Dep't of Corr.*, 308 F. App'x 63 (9th Cir. 2009).

*Howard v. Campbell*, 305 F. App'x 442 (9th Cir. 2008).

*Ikbal v. United States*, 304 F. App'x 604 (9th Cir. 2008).

*Kastl v. Maricopa Cty. Cmty. Coll. Dist.*, 325 F. App'x 492 (9th Cir. 2009).

*Meier v. United States*, 310 F. App'x 976 (9th Cir. 2009).

*United States v. Hernandez-Caudillo*, 304 F. App'x 543 (9th Cir. 2008).

*United States v. Njai*, 312 F. App'x 953 (9th Cir. 2009).

*United States v. Uriarte-Acosta*, 304 F. App'x 551 (9th Cir. 2008).

*Rodriguez v. Editor in Chief, Legal Times* 285 F. App'x 756 (D.C. Cir. 2008).

*Rodriguez v. Editor in Chief, Legal Times*, No. 07-5234, 2008 WL 2396189 (D.C. Cir. Feb. 25, 2008).

*Rodriguez v. Editor in Chief, Legal Times*, No. 07-5234, 2008 WL 2396188 (D.C. Cir. Apr. 23, 2008).

*Hurt v. U.S. Court of Appeals for the Dist. of Columbia Circuit Banc*, 264 F. App'x 1 (D.C. Cir. 2008).

*Hurt v. U.S. Dist. Court Judges*, 258 F. App'x 341 (D.C. Cir. 2007).

*Rodriguez v. Editor in Chief, Legal Times*, No. 07-5234, 2007 WL 5239004 (D.C. Cir. Dec. 19, 2007).

**14. Recusal:** If you are or have been a judge, identify the basis by which 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. Identify each such case, and for each provide the following information:

- a. 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;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. 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.

I have sought to take seriously the admonition that that a judge should "disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455. The recusal procedure that I follow in the Tenth Circuit is broader than the recusal procedure adopted in the Supreme Court, which I would follow should I assume the position to which I have been nominated (see Question 24). In the Tenth Circuit, the clerk's office conducts a review of each case before placing it on a judge's calendar. That review checks case information the parties provide against each judge's recusal list (a list which includes family, friends, former clients, personal financial investments, and the like). Once a case is tentatively placed on a judge's calendar, each judge or his personal staff then independently reviews the matter for potential conflicts. If a case is screened out, either by the clerk's office or after review in chambers, the judge is generally assigned a new case in its place so that workloads are unaffected. When I was in private practice, my firm worked with a significant roster of clients, some of whom appear often in federal court. As a judge, my general practice has been to recuse from such cases. When I served as Principal Deputy Associate Attorney General, I helped supervise certain of the Justice Department litigating components. During my first two years on the bench, my general practice was to recuse from cases arising from these components. It has also been my practice to recuse when my financial interests might be affected or when my friends, family members, or former firm may have interests at stake. I do not retain records concerning such cases, but have attached a table of screened cases prepared by the clerk's office and those acting on my behalf together with my input and to my recollection, see Appendix 14. To my recollection, in over a decade on the bench, I have never received a motion from a party or litigant requesting that I remove

myself from a case based on partiality.

**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.**

I have never been a candidate for or held an elective public office. Since law school, I have held the following appointed positions:

Law clerk for the U.S. Court of Appeals, D.C. Circuit, Hon. David B. Sentelle, 1991-1992. Appointed by Judge Sentelle.

Law clerk for the Supreme Court of the United States, Hon. Byron R. White and Hon. Anthony M. Kennedy, 1993-1994. Appointed by Justices White and Kennedy.

U.S. Department of Justice, Principal Deputy Associate Attorney General, 2005-2006. Appointed by the Attorney General and Associate Attorney General.

- 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, 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.**

Prior to becoming a judge, I volunteered on various political campaigns, including for President Ronald Reagan, President George H.W. Bush, and President George W. Bush, and participated in groups such as "Lawyers for Bush-Cheney." I have not held an office in any campaign. To my recollection, I have not authored memoranda analyzing issues of law or public policy on behalf of or in connection with a President-elect transition team.

- 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.**

To my recollection, I have not been on the host committee for a political event.



**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;**

Law Clerk for the Supreme Court of the United States, Hon. Byron R. White and Hon. Anthony M. Kennedy, 1993-1994.

Law Clerk for the U.S. Court of Appeals, D.C. Circuit, Hon. David B. Sentelle, 1991-1992.

**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.**

U.S. Department of Justice, Office of the Associate Attorney General, Principal Deputy Associate Attorney General, 2005-2006  
950 Pennsylvania Avenue, N.W., Washington, D.C. 20530

Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC, Partner, 1998-2005, Associate, 1995-1997  
1615 M Street, N.W., Suite 400, Washington, D.C. 20036

Sullivan & Cromwell, Summer Associate, Summer 1991  
1700 New York Avenue, N.W., Suite 700, Washington, D.C. 20006

**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.**

Immediately after law school, I spent the summer working for the law firm of Sullivan & Cromwell, where I assisted with corporate transactional work while studying for the bar. Thereafter, I served as a law clerk to the U.S. Court of Appeals for the D.C. Circuit with Judge David Sentelle from 1991 to 1992. In that capacity, I wrote bench memos and assisted with the preparation of opinions and dissents in matters ranging from criminal law to constitutional and administrative law. It was an intensive immersion into federal appellate law and practice. In addition, during the summer of 1992, Judge Sentelle sat by designation on the U.S. District Court for the Western District of North Carolina. There I assisted the court with several criminal trials and the disposition of civil matters.

From 1993 to 1994, I was fortunate to serve as law clerk to the Hon. Byron R. White. Justice White had just resigned from the Supreme Court and I served as his first law clerk in retirement and his only law clerk that year. Despite his "retirement," Justice White took on a heavy load of appellate cases, sitting by designation on the Tenth Circuit. I assisted Justice White with his work on the Tenth Circuit, preparing bench memos prior to argument and helping with opinions. Justice White also asked me to assist another sitting Justice, and Justice Kennedy kindly agreed to allow me to help in his chambers.

During my clerkships, approximately half of the cases I worked on were civil matters and half were criminal matters. Most involved federal appeals but, of those that involved trials, all were criminal trials.

Between my clerkships and again after them (1992-1993, 1994-1995), I attended Oxford University as a British Marshall Scholar studying for a doctorate in legal philosophy. My academic research and writing involved both criminal and civil law issues in proportions of roughly 60% criminal and 40% civil.

In 1995, I joined Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC. In 1998, I became a partner at the firm and I remained there through May 2005. During my time in private practice I was involved in matters large and small for clients ranging from individuals to non-profits to corporations. My cases ranged from simple breach of contract disputes to complex antitrust, RICO, and securities fraud matters. I tried cases, participated in injunctive and evidentiary hearings, and argued motions of all kinds, including case dispositive motions to dismiss and for summary judgment, discovery disputes, *in limine* motions in preparation for trial, and post-trial motions. I also took and defended depositions regularly, worked on appeals before federal and state courts of appeals across the country, and provided antitrust and other legal counsel to clients. I estimate that, during my time in private practice, roughly 70% of my litigated matters were in federal court and 30% in state courts. Approximately 90% of these

matters involved civil disputes, with the remainder involving criminal matters.

In June 2005, I was appointed Principal Deputy to the Associate Attorney General. In that capacity I assisted in managing the Department's civil litigating components (antitrust, civil, civil rights, environment, and tax). Major litigation decisions in certain cases — such as whether to file suit, what motions and defenses to bring, whether and how to settle significant cases on advantageous terms — are reviewed by the Office of the Associate Attorney General. I also spent a substantial amount of time reviewing and editing trial and appellate court legal briefs and developing case strategy. Virtually all of these matters were civil, though there were occasional criminal matters. I also acted as Associate Attorney General during periods when the Associate Attorney General was unavailable or recused and assisted in the development and implementation of a wide variety of initiatives and policies.

In 2006, I was confirmed to serve as a judge on the U.S. Court of Appeals for the Tenth Circuit.

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

As a practicing lawyer, I consciously sought to maintain a general litigation practice and to avoid specialization. While in private practice, my matters ranged from complex antitrust, securities, and class actions to relatively straightforward breach of contract and breach of fiduciary duty disputes. I sought to represent and enjoyed representing plaintiffs and defendants in roughly equal proportions, and my clients ranged from individuals to non-profits to small and large corporations. My work at the Department of Justice was, if anything, even more varied, involving cases and issues arising from each of the Department's civil litigating components.

**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.**

Most of my practice before I became a judge involved litigation. When I was in private practice, I appeared frequently in federal court and occasionally in state court.

**i. Indicate the percentage of your practice in:**

**1. federal courts:** approximately 70%

- 2. state courts of record: approximately 30%
- 3. other courts: 0%
- 4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:

- 1. civil proceedings: approximately 90%
- 2. criminal proceedings: approximately 10%

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.

i. What percentage of these trials were:

- 1. jury: 100%
- 2. non-jury: 0%

While in private practice, I tried four jury trials to verdict, two as chief counsel and two as associate counsel. Two of the trials involved damages claims in excess of \$1 billion; three were reported as among the top 100 verdicts for the years in which they were tried; all lasted between 2 and 6 weeks. To my recollection supported by my former law firm's records, I also participated in four non-jury injunctive proceedings that involved substantial evidentiary hearings and were litigated to final judgment. In a questionnaire I submitted to the Senate in connection with my judicial nomination in 2006, I referenced five non-jury injunctive proceedings, but my former law firm's records have confirmed that one of those proceedings ended after my client prevailed in temporary injunctive hearings and before judgment, and is therefore not encompassed by Question 16(d)'s request to produce related court filings. After a search of records retained by my former law firm, I have been able to identify the following matters responsive to Question 16(d):

- (1) *Conwood Co. v. United States Tobacco Co.*, No. 5:98-cv-00108-TBR (W.D. Ky.). This matter involved a jury trial to verdict.
- (2) *Conwood Co. v. United States Tobacco Co.*, No. 5:98-cv-00108-TBR (W.D. Ky.). In addition to a jury trial, this matter also involved a non-jury injunctive proceeding litigated to judgment.
- (3) *Coleman (Parent) Holdings Inc. v. Morgan Stanley*, No. 2003-CA-005045-OCAJ-MB (Fla. Cir. Ct.). This matter involved a jury trial to verdict.
- (4) *NCRIC Inc. v. Columbia Hospital For Women*, No. 2000 CA 007308 B (D.C. Super. Ct.). This matter involved a jury trial to verdict.

- (5) *Zachair Ltd. v. Driggs*, No. CAL-97-20084 (Md. Cir. Ct., PG Cty.). This matter involved a jury trial to verdict.
- (6) *Buntrock v. Terra*, No. 2000-CH-13859 (Ill. Cir. Ct.). This matter involved an injunctive proceeding.
- (7) *Doctors Health, Inc. v. NYL Care Health Plans of the Mid Atlantic, Inc.*, No. 03-C-98-009629 (Md. Cir. Ct., Balt. Cty.); *NYL Care Health Plans of the Mid Atlantic, Inc. v. Doctors Health, Inc.*, No. CAL-98-20126 (Md. Cir. Ct., PG Cty.). These two related matters involved a contested action for a temporary restraining order litigated to judgment and an injunctive proceeding.
- (8) *Doctors Health Inc. v. Chase Manhattan Bank*, No. 98-604436 (N.Y. Sup. Ct.). This matter involved a non-jury injunctive proceeding litigated to judgment.

Persons acting on my behalf undertook efforts to obtain opinions and unsealed filings of the cases listed above through online court filing systems such as PACER. Where online systems were unavailable or incomplete, persons acting on my behalf undertook efforts to obtain these documents from my former law firm's electronic or paper files. For all cases but *CPH v. Morgan Stanley*, persons acting on my behalf searched my former law firm's records for any filings or opinions in the case. No filings were located in the *Doctors Health, Inc.* proceedings that took place in Maryland. As for *CPH v. Morgan Stanley*, that case spanned five years and generated nearly 3000 filings that filled dozens of boxes of paper records. Persons acting on my behalf spent an estimated 150 combined hours searching the records in *CPH v. Morgan Stanley*. Due to the scope of the task, they focused their search on filings of a non-ministerial nature such as orders, motions, and pleadings. However, where ministerial filings were readily available, they were also collected. Appendix 16(d) contains all the unsealed filings and opinions located in these searches.

- 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 and of principal counsel for each of the other parties.**

While in private practice, I was predominantly a trial lawyer. But I also occasionally participated in appeals in state and federal courts. By way of example, I briefed and argued the *Zachair* case in the Maryland Court of Special Appeals and defended against a certiorari petition in the State Supreme Court. As

Principal Deputy Associate Attorney General, I also recall briefing three immigration cases before the federal courts of appeals, and presenting oral argument in two of those cases. To my recollection as well, my work before the Supreme Court included:

(1) *Washington v. Glucksberg*, 521 U.S. 702 (1997).

The question presented in this case was whether Washington's prohibition against causing or aiding a suicide violated the Fourteenth Amendment. Washington law provided that a person "is guilty of promoting a suicide attempt when he knowingly causes or aids another person to attempt suicide." Certain doctors (respondents) who treated terminally ill patients sought a declaration in federal court that the Washington law was, on its face, unconstitutional. The State of Washington and its Attorney General were the petitioners in this case.

I helped prepare an amicus brief on behalf of the American Hospital Association in support of the petitioners. Our client's position prevailed before the Supreme Court in a 9-0 vote. The Supreme Court held that Washington's law was not unconstitutional on its face.

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- (2) *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998).

The question presented in this case was whether a federal district court assigned to conduct pre-trial proceedings pursuant to statutes governing multidistrict litigation can assign the case to itself at the conclusion of the pre-trial proceedings. Lexecon, Inc. and one of its principals (petitioners) brought an action in the Northern District of Illinois against two law firms (respondents), claiming various tort violations. The suit was transferred by the Judicial Panel on Multidistrict Litigation to the District of Arizona for pre-trial proceedings. At the conclusion of pre-trial proceedings, petitioners requested that the case be remanded to the Northern District of Illinois. Petitioners filed a certiorari petition after their request for a remand was denied, and after the Ninth Circuit affirmed that denial.

I contributed to the petitioners' brief, which argued that the statutes governing multidistrict litigation and transfer foreclose the practice of "self-transfer" — the refusal to relinquish cases at the end of consolidated pre-trial proceedings. Our client's position prevailed before the Supreme Court in a unanimous opinion.

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- (3) (a) *Cal. Pub. Emps.' Ret. Sys. v. Felzen*, 525 U.S. 315 (1999).  
(b) *Devlin v. Scardelletti*, 536 U.S. 1 (2002).

My involvement in these two cases arose as a result of the desire of the Council of Institutional Investors and various of its state public employee pension fund members to establish the right of class members to object to class action and derivative suit settlements and pursue those objections on appeal. The Council and its members claimed that, due to dynamics associated with the class action mechanism, class action settlements sometimes benefit lead class members, their counsel, and defendants at the expense of other class members. Council members CalPERS and the Florida State Board of Administration (SBA), together with the United States Government, first pursued the issue before the U.S. Supreme Court in *Cal. Pub. Emps.' Ret. Sys. v. Felzen*. In that case, I wrote the successful petition for certiorari on behalf of CalPERS and SBA, helped convince the U.S. Government to participate in the case on the merits on the side of our clients, and helped prepare the merits briefs. *Felzen* resulted in a tie 4-4 vote, leaving the question of objector participation unresolved, but the issue emerged again three years later in *Devlin v. Scardelletti*. In *Devlin*, a retiree objected to a class action settlement relating to his retirement plan. The Council participated as amicus and I helped write the Council's brief. Holding in a 6-3 vote that a non-named class member who timely objected to a class action settlement could appeal without first intervening, the Court in *Devlin* resolved the question of objector standing to appeal in favor of the Council and its members.



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(5) *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336 (2005).

The question presented in this case was whether a plaintiff can bring a securities fraud claim by alleging that the price of the security on the date of purchase was inflated because of a misrepresentation. Respondents were

individuals who purchased stock in Dura Pharmaceuticals, Inc. As part of a class action, they sued Dura and several of its officers (petitioners), alleging that petitioners made false statements concerning Dura's profits and future Food and Drug Administration approval of an asthmatic spray device. Claiming damages from the purported misstatement about the spray device, respondents alleged that they paid artificially inflated prices for Dura's securities. Petitioners argued that respondents' inflated-price theory failed to satisfy the loss causation element of a securities fraud claim, because respondents did not allege that petitioners' misstatement was causally linked—directly or proximately—to a decline in market price.

I helped prepare an amicus brief in the Supreme Court of the United States on behalf of the Chamber of Commerce, arguing that plaintiffs in securities fraud class actions may only claim losses proximately caused by the fraud they allege. The brief argued that damages cannot be obtained, where plaintiffs can point to no actual market price reaction to a corrective disclosure. Our client's position prevailed before the Supreme Court in a unanimous opinion.

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- (6) *United States Tobacco Company v. Conwood Company, L.P.*, No. 02-603  
(Nov. 20, 2002)

The U.S. Court of Appeals for the Sixth Circuit upheld a \$1.05 billion treble damages award on behalf of my client, Conwood, against United States Tobacco Company (UST) after a jury concluded that UST had engaged in illegal monopolization. Conwood alleged that UST, which controlled nearly 80% of the U.S. market for moist snuff smokeless tobacco, had attempted to exclude competing products by entering into exclusive deals with retailers, removing competitors' sales racks, burying competitors' products in UST racks, and destroying point-of-sale advertising (the industry's primary marketing medium). The verdict, reached after a four-week jury trial, was believed to be the largest affirmed private damages award in the history of U.S. antitrust laws as of 2002. In its verdict, the jury also rejected UST's counterclaims seeking millions of dollars in damages. After trial, the court took additional evidence, conducted additional motions practice, and granted a four-year injunction against certain anticompetitive conduct by UST, a result also affirmed on appeal. UST petitioned for review in the Supreme Court, we opposed the petition, and the Supreme Court ultimately denied review.

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These briefs are attached as Appendix 16(e).

The names, affiliations, phone numbers, and addresses of counsel listed above represent the last known contact information I possess.

**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.**

For each of the matters below, the firm affiliation, phone numbers, and addresses of co-counsel and opposing counsel represent the last-known contact information from my records.

- (1) *NCRIC v. Columbia Hospital for Women*, No. 00-7308 (D.C. Super. Ct.) (Judge Anna Blackburne-Rigsby) (trial 2004).

NCRIC, an insurance company that provided medical malpractice insurance to doctors, sued my client, Columbia Hospital for Women. NCRIC claimed that Columbia failed to pay certain insurance premiums owed by the hospital on behalf of the hospital's OB/GYN physicians, and NCRIC sought recovery of approximately \$3 million dollars. Columbia denied NCRIC's allegations and counterclaimed, contending that NCRIC, not Columbia, owed money under the parties' contract. Columbia also contended that, when it brought this to NCRIC's attention and threatened to move its business to another insurance carrier, NCRIC began a multi-faceted campaign designed to induce doctors at Columbia to move their practices to other area hospitals where NCRIC was the exclusive malpractice insurance carrier. Columbia contended that NCRIC's conduct amounted to tortious interference with its business relations with its attending physicians, many of whom had served at the hospital for decades, and that the loss of so many doctors contributed to the closure of the hospital, a non-profit with more than 130 years of community service. After a two-week trial in which I served as lead counsel, the jury rejected NCRIC's breach of contract claim and found for Columbia on both its contract and its tortious interference counterclaims, awarding Columbia \$18.2 million. The matter was one of the top 100 reported verdicts of 2004.

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- (2) *Conwood Co. v. U.S. Tobacco Co.*, Case No. 5:98-CV-108-R (W.D. Ky), *aff'd*, 290 F.3d 768 (6th Cir. 2002), *cert. denied*, 537 U.S. 1148 (Jan. 13, 2003) (Judge Thomas Russell, W.D. Ky.) (1997-2003).

The U.S. Court of Appeals for the Sixth Circuit upheld a \$1.05 billion treble damages award on behalf of my client, Conwood, against United States Tobacco Company (UST) after a jury concluded that UST had engaged in illegal monopolization. Conwood alleged that UST, which controlled nearly 80% of the U.S. market for moist snuff smokeless tobacco, had attempted to exclude competing products by entering into exclusive deals with retailers, removing competitors' sales racks, burying competitors' products in UST racks, and destroying point-of-sale advertising (the industry's primary marketing medium). The verdict, reached after a four-week jury trial, was believed to be the largest affirmed private damages award in the history of U.S. antitrust laws as of 2002. In its verdict, the jury also rejected UST's counterclaims seeking millions of dollars in damages. After trial, the court took additional evidence, conducted additional motions practice, and granted a four year injunction against certain anticompetitive conduct by UST, a result also affirmed on appeal. UST petitioned for review in the Supreme Court, we opposed the petition, and the Supreme Court ultimately denied review. The case involved scores of depositions and massive discovery, as well as ancillary proceedings in several jurisdictions. I helped manage and run the case at all stages, from the pre-suit investigation through the drafting of the complaint; the discovery process; pre-trial motions practice; trial, where I served as second chair and handled many witnesses on direct and cross; post-trial motions practice; and the preparation of appellate briefs.

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- (3) *Zachair, Ltd. v. Driggs*, 762 A.2d 991 (Md. Ct. Spec. App. 2000), *cert. denied*, 768 A.2d 54 (Table) (Md. Mar. 9, 2001) (Judge Steven I. Platt) (1997-2001).

The defendants owned a valuable airport and mining facility. Plaintiff Zachair, my client, claimed that the defendants deliberately loaded the property with debt and ran it into bankruptcy. Zachair contended that the defendants then schemed to purchase the property fraudulently out of bankruptcy for an artificially low price, thereby “washing” the property of the debt associated with it. Zachair, unaware of this plan at the time, attended the bankruptcy auction as the only bidder unaffiliated with defendants, and won the auction when it bid the highest price. Zachair contended that the defendants then proceeded to engage in a pattern of conduct designed to defeat Zachair’s purchase and wrest control of the property from Zachair. According to Zachair, the defendants maliciously used and abused legal process by filing multiple baseless proceedings against Zachair; improperly refused to vacate the property after the auction was consummated and they were legally obliged to leave; and proceeded to denude the property of valuable minerals resources and airport revenues. The case involved substantial dispositive motions practice and discovery, which I handled. A two-and-a-half-week trial in which I served as lead counsel followed and the jury returned a verdict in favor of Zachair on counts including abuse of process, misuse of process, conversion, and tortious interference. The jury awarded approximately \$4.8 million in compensatory damages as well as punitive damages of approximately the same amount, substantially more in punitive damages than Zachair sought at trial. In post-trial motions practice, the trial judge affirmed the compensatory award of approximately \$4.8 million but granted the defendants’ motion to reduce the punitive award to \$775,000. On appeal, where I briefed and argued, the Maryland Court of Special Appeals affirmed the trial court’s judgment in all respects. The defendants then petitioned for review in the state Supreme Court and I prepared an opposition brief; the state Supreme Court denied review, thus sustaining Zachair’s award.

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- (4) *Automall v. Am. Express*, Civil Action No. 01-1705-A (E.D. Va.) (Chief Judge Hilton) (trial in 2002).

In this case, I was retained by defendant American Express approximately two weeks before trial to supplement existing lawyers from another firm and serve as lead counsel in a breach of contract jury trial. Prior to my firm's involvement, the court had decided under *Daubert* to permit plaintiffs' expert to testify to damages in excess of \$70 million. After our involvement, we crafted a new theory for exclusion of the expert witness and presented it to the court during trial toward the close of plaintiff's case. After reviewing our new theory for exclusion, the court encouraged the plaintiff to settle with my client, which it subsequently did on satisfactory terms.

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- (5) (a) *Cal. Pub. Emps. Ret. Sys. v. Felzen*, 525 U.S. 315 (1999).  
(b) *Devlin v. Scardelletti*, 536 U.S. 1 (2002).

My involvement in these two cases arose as a result of the desire of the Council of Institutional Investors and various of its state public employee pension fund members to establish the right of class members to object to class action and derivative suit settlements and pursue those objections on appeal. The Council and its members claimed that, due to dynamics associated with the class action mechanism, class action settlements sometimes benefit lead class members, their counsel, and defendants at the expense of other class members. Council members CalPERS and the Florida State Board of Administration (SBA), together with the United States Government, first pursued the issue before the U.S. Supreme Court in *Felzen*. In that case, I wrote the successful petition for certiorari on behalf of CalPERS and SBA, helped convince the U.S. Government to participate in the case on the merits on the side of our clients, and helped prepare the merits briefs. *Felzen* resulted in a tie 4-4 vote, leaving the question of objector participation unresolved, but the issue emerged again three years later in *Devlin*. This time the Council participated as amicus and I helped write the Council's brief. By a vote of 6-to-3, the Court resolved the question of objector standing to appeal in favor of the Council and its members.

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- (6) *Z-Tel v. SBC Commc'ns*, No. 5:03-CV-229 (E.D. Tex.) (Judge David Folsom and Magistrate Judge Caroline Craven) (2003-2005).

This case involved antitrust allegations against my client, SBC Communications. Plaintiff Z-Tel alleged that SBC sought to drive Z-Tel and other competitive local exchange carriers (CLECs) out of business by refusing to share certain allegedly essential elements of its network. Z-Tel sought damages in excess of \$1 billion under federal antitrust laws, federal communications laws, and various tort theories. In turn, SBC counterclaimed, alleging that Z-Tel was ailing financially due to a poor business plan and that it had sought to avoid failure by improperly shifting certain of its operating costs onto SBC. Certain portions of Z-Tel's complaint were dismissed at the outset of the case but other portions survived into discovery. Substantial discovery ensued with multiple rounds of motions practice as well as depositions and ancillary proceedings across the country before the case was settled on satisfactory terms. I directed the defense of the case on a day-to-day basis, drafting or editing extensive pleadings, arguing many motions, and taking and defending key depositions.

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- (7) (a) *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336 (2005).  
(b) *Lentell v. Merrill Lynch & Co.*, 396 F.3d 161 (2d Cir. 2005).

In these two cases, I helped prepare amicus briefs in the Second Circuit and the U.S. Supreme Court on behalf of the Chamber of Commerce. While the facts and questions presented in the two cases differed somewhat, broadly speaking both raised the question whether plaintiffs are permitted to sue in securities fraud class actions for losses not proximately caused by the fraud they allege. Our client's position, that such claims are not viable as a matter of law, prevailed before both the Second Circuit and the Supreme Court in unanimous opinions.

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- (8) *Teachers Ret. Sys. of La. v. Regal Entm't*, No. 444 (Del. Ch.) (Hon. William Chandler) (2004).

In this case, the plaintiff filed a shareholder derivative suit and motion for injunction challenging a \$710 million special dividend and concomitant capital restructuring by my client, a leading movie theater chain. The plaintiff contended that the dividend and restructuring amounted to a breach of fiduciary duty and self-dealing. The court set the case on an expedited discovery schedule and then held an extensive evidentiary hearing on the injunction motion before ruling on the merits in my client's favor. I directed our client's defense, wrote the briefs, defended and took depositions, and argued in court. After the hearing, plaintiff dropped the remainder of its suit.

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- (9) *Ashley v. Coopers & Lybrand Deloitte*, Law No. CL95-6466 (Albemarle Co., VA) (Judge Paul Peatross) (1995-1998).

With his late wife, Sir Bernard Ashley co-founded the Laura Ashley Company. As an outgrowth of that enterprise, Sir Bernard started a Laura Ashley-inspired country house hotel business and hired his longtime consultants, Coopers & Lybrand UK, to advise him on prospective hotel acquisitions and to manage the business. Sir Bernard alleged that his advisors eventually became more interested in their own financial advancement than his interests and led him into a hotel deal that they knew was not feasible in order to enrich themselves. He sued for, among other things, breach of fiduciary duty and fraud, claiming damages of approximately \$50 million. I was responsible for the handling of this case on a day-to-day basis; taking and defending depositions; responding to, preparing, and arguing motions; and preparing the matter for trial. During discovery the court barred defendant from presenting much of its case at trial after, the court found, defendant repeatedly refused to supply appropriate witnesses for deposition. After defendant's motion for mandamus to overturn the trial court's order barring its ability to put on evidence was denied by the Virginia Supreme Court, the case settled at the outset of trial on undisclosed terms.

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- (10) *Goff v. Ford Motor Co. and David Bickerstaff*, No. 2:97-0341 (S.D. W. Va.)  
(Judge John Copenhaver) (1997-2000).

In this case, we represented a former car designer and expert witness for Ford Motor Company against charges that he conspired with Ford to provide false testimony in prior cases brought by product liability plaintiffs, thereby improperly securing verdicts in Ford's favor. This individual, along with Ford, was charged with violations of RICO and was alleged to be personally liable for multiple millions of dollars in damages. We defeated the class action allegations early in the case but the case was permitted to proceed to trial. I wrote and edited various dispositive motions, the opposition to the motion for class certification, as well as motions *in limine* I argued prior to trial. Our client was dismissed from the case at the outset of the trial. During the ensuing trial against Ford, I provided strategic legal advice to defense counsel.

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- 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. 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.)**

While most of my time as a lawyer and judge has involved litigation, I have devoted a significant amount of time to legal matters that do not involve court appearances, including by way of example:

- (a) As a judge, I have devoted considerable time to the rules process, first as a member of the Standing Committee and now as chairman of the Appellate Rules Advisory Committee, attempting with colleagues to improve the quality of the rules and promote the goals of Fed. R. Civ. P. 1 (the “just, speedy, and inexpensive determination of every action”).
- (b) During my time as a judge, certain colleagues and I became concerned with the quality of representation death row inmates received in their federal habeas proceedings. Along with colleagues, led by now-Chief Judge Tymkovich, I participated in the effort to increase the quality of capital representation before the Tenth Circuit by attracting new attorneys and training existing ones.
- (c) Since becoming a judge, I have taught regularly at the University of Colorado Law School. For a description of courses, see Question 19.
- (d) Together with the president of the Federal Judges Association, I, along with Judge Raymond Kethledge and other colleagues, managed the FJA's role in litigation regarding the restoration of cost-of-living adjustments. The FJA participated as an amicus curiae in *Beer v. United States*, where the U.S. Court of Appeals for the Federal Circuit ultimately held that federal judges had been denied cost-of-living adjustments guaranteed by law. The FJA also supported a class action in the Court of Federal Claims, *Barker v. United States*, which led to a settlement under which the *Beer* decision was applied to all Article III judges.
- (e) As Principal Deputy Associate Attorney General, I helped oversee the Department of Justice's civil litigating units. Major litigation decisions in certain significant

cases — such as whether to file suit, what motions and defenses to bring, whether and how to settle significant cases on advantageous terms — are reviewed by the Office of the Associate Attorney General. I also spent a substantial amount of time reviewing and editing trial and appellate court legal briefs, developing case strategy, and assisting in the development and implementation of a wide variety of initiatives and policies.

- (f) While in private practice, I provided a substantial amount of antitrust counseling for small and large companies, including: (1) assessing the antitrust implications of contemplated mergers and acquisitions; (2) analyzing the antitrust consequences of certain proposed and existing courses of business (*e.g.*, sales and marketing techniques); and (3) assisting my clients with efforts before federal antitrust authorities, including the Department of Justice and the Federal Trade Commission, to contest acquisitions made by rival companies as violations of federal antitrust law.
- (g) I obtained a doctorate in legal philosophy at Oxford and have devoted a significant amount of time to the academic research and legal writings discussed above.
- (h) I served as a law clerk to three federal appellate judges, where my responsibilities included preparing bench memos analyzing cases prior to argument; preparing draft opinions; analyzing draft opinions written by others; and, in the case of the Supreme Court, assessing petitions for certiorari.

**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 of each course, provide four (4) copies to the committee.**

I have taught the following classes at the University of Colorado Law School. Syllabi, which include descriptions of the subject matter of and topics covered by these classes, are attached as Appendix 19.

*Advanced Appellate Advocacy* (2008, 2010)

*Antitrust Law* (2013-2015, 2017)

*Bioethics and the Law* (2010)

*Federal Courts* (2012)

*Legal Ethics and Professionalism* (2009, 2010-2013, 2015-2016)

I was compensated by the University of Colorado in the following amounts for the relevant years:

2008	\$19,000
2009	\$7,250
2010	\$14,500



2011	\$19,000
2012	\$20,000
2013	\$20,000 (plus \$3,000 backpay)
2014	\$26,000
2015	\$26,000
2016	\$26,000
2017	\$2,600

In 2010, I received \$2,500 from the Oklahoma City University School of Law for teaching in the law school's Jurist-in-Residence in February 2010.

- 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 have an agreement with Princeton University Press concerning annual royalties arising from the sale of my book, *The Future of Assisted Suicide and Euthanasia*.

- 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 no plans, commitments, or agreements to pursue outside employment in the future.

- 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 Net Worth Statement.

- 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.**

Actual or apparent conflicts of interest could arise in matters affecting, among other things, my former law firm, clients, friends, family members, or my own financial interests. A conflict of interest could also arise from any appeal of a decision issued by a panel of the Tenth Circuit that included me as a member. I expect that I would address such conflicts by in the manner described in response to the next question, 24(b).

**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 seek to follow the letter and spirit of the Code of Conduct for United States Judges (even though it is not binding upon Justices of the Supreme Court), the Ethics Reform Act of 1989, 28 U.S.C. § 455, the Ethics in Government Act of 1978, and all other relevant guidelines. Among other things, I would recuse myself from any cases in which I participated as a judge on the U.S. Court of Appeals for the Tenth Circuit and other cases that might give rise to an actual or apparent conflict of interest.

**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.**

In recent years, I have written and spoken on ways to encourage greater access to justice and legal services. A good example of this work is *Access to Affordable Justice: A Challenge to the Bench, Bar, and Academy*, 100 *Judicature*, no. 3, Aug. 2016, at 46. I have also spoken and written about problems in the legal system that affect ordinary people, problems like the complexity of modern civil litigation. A good example of this work is *Law's Irony*, 37 *Harv. J.L. & Pub. Pol'y* 743 (2014). I have worked on the rules committees to address such problems, see Question 18. Together with colleagues, I have also sought to enhance the quality of legal representation for death row prisoners in our circuit.

Beyond legal work, I have volunteered for, among other institutions, my children's school, and the Harry S. Truman Scholarship Foundation, which seeks to encourage university students to become change agents in government and society.

Prior to becoming a judge approximately 10 years ago, I spent approximately three additional years in public service. Also, as a lawyer in private practice I sometimes took

on matters for clients that could not afford my firm's normal hourly rates. In law school, I participated in legal aid clinics, the Harvard Prison Legal Assistance Project and the Harvard Defenders.

I have not attempted to keep records of the hours devoted to the matters described above.

**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 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 and 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.**

On about December 2, 2016, I was contacted by Leonard Leo, who was working with the President-elect transition team, regarding the Supreme Court vacancy. I had additional follow-up communications with Mr. Leo shortly thereafter. On January 5, 2017, I was interviewed in person by Donald McGahn, a member of the President-elect transition team who is now the Counsel to the President. Also that day, I was interviewed in person by Vice President-elect Michael Pence, and other members of the transition team: Steve Bannon (who is now Senior Advisor to the President), Mark Paoletta (who is now Counsel to the Vice President), and Reince Priebus (who is now Chief of Staff to the President); Mr. McGahn also was present. On January 6, 2017, I had a conversation with Makan Delrahim, who was working with the President-elect transition team (and who is now Deputy Counsel to the President). Sometime the following week, I had a telephone conversation with Mr. Leo. On January 14, 2017, I was interviewed in person by President-elect Donald Trump; Mr. McGahn also was present. Following that meeting, I had additional telephone conversations with Mr. McGahn and Mr. Delrahim. On January 27, 2017, I received a call from Mr. McGahn informing me that the President intended to nominate me for the Supreme Court vacancy. On January 30, 2017, I received a call from the President informing me that he would nominate me for the Supreme Court vacancy. During this period, I also had communications with James Burnham, who is now Senior Associate Counsel to the President, and may have had other communications with the individuals listed above, or groups of them.

- 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 interest groups 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.