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Judicial Ethics – and the US Supreme Court

July 2023

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Outline of Program

- The (regular) Code of Judicial Conduct
- Regulation of US Supreme Court Justices
- (Recent) Scandals of US Supreme Court Justices

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Code of Judicial Conduct (Missouri Rule 2)

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Canon 1

A Judge Shall ***Uphold and Promote*** the ***Independence, Integrity and Impartiality of the Judiciary***, and Shall ***Avoid Impropriety*** and the ***Appearance of Impropriety***.

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“Impropriety”

1. The quality or condition of being improper; incorrectness.
2. inappropriateness; unsuitableness.

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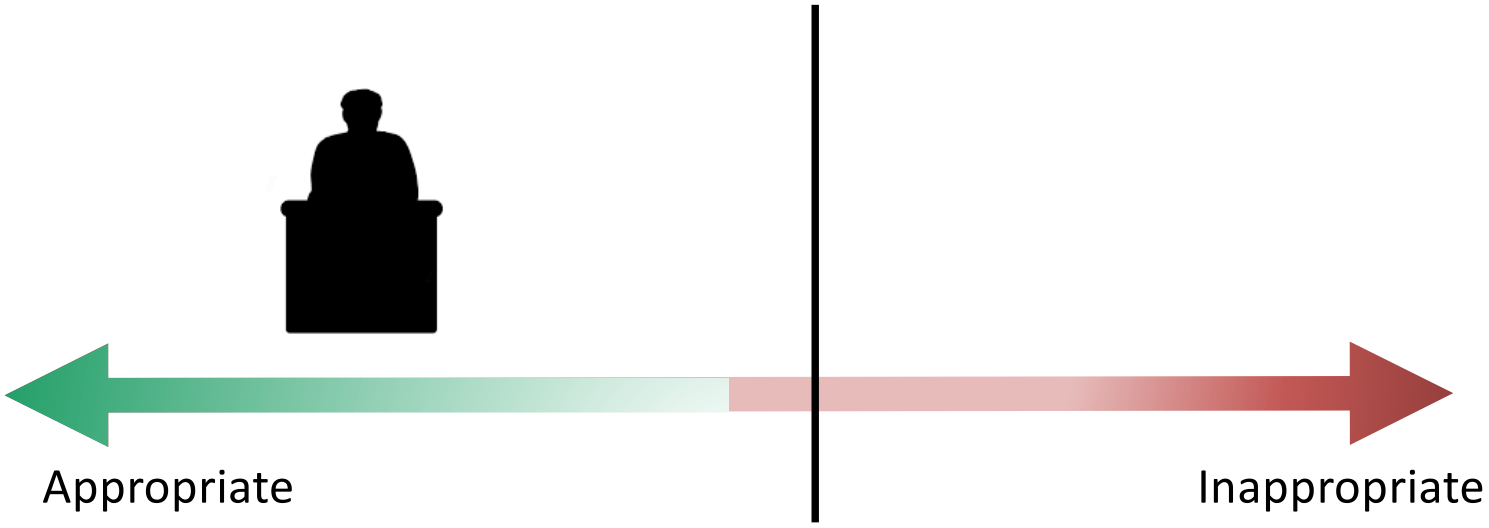
Basics of Judicial Ethics
"Appearance of Impropriety"



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Rules Under Canon 1

Rule 2-1.1 Compliance with the Law

Rule 2-1.2 Promoting Confidence in the Judiciary

Rule 2-1.3 Avoiding Abuse of the Prestige of Judicial Office

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Rule 2-1.1 – Compliance with the Law

A judge shall comply with the law, including the Code of Judicial Conduct.

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Rule 2-1.2 – Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

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Rule 2-1.3 – Avoiding Abuse of the Prestige of Judicial Office

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.

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Canon 2

A Judge Shall Perform the Duties of Judicial Office Impartially, Competently, and Diligently.

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Rules Under Canon 2

Rule 2-2.1 Giving Precedence to the Duties of Judicial Office

Rule 2-2.2 Impartiality and Fairness

Rule 2-2.3 Bias, Prejudice, and Harassment

Rule 2-2.4 External Influences on Judicial Conduct

Rule 2-2.5 Competence, Diligence, and Cooperation

Rule 2-2.6 Ensuring the Right to Be Heard

Rule 2-2.7 Responsibility to Decide

Rule 2-2.8 Decorum, Demeanor, and Communication with Jurors

Rule 2-2.9 Ex Parte Communications

Rule 2-2.10 Judicial Statements on Pending and Impending Cases

Rule 2-2.11 Recusal

Rule 2-2.12 Supervisory Duties

Rule 2-2.13 Administrative Appointments

Rule 2-2.14 Disability and Impairment

Rule 2-2.15 Responding to Judicial and Lawyer Misconduct

Rule 2-2.16 Cooperation with Disciplinary Authorities

Rule 2-2.1 – Giving Precedence to the Duties of Judicial Office

The duties of judicial office, as prescribed by law, shall take precedence over a judge's personal and extrajudicial activities.

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Rule 2-2.2 – Impartiality and Fairness

(A) A judge shall uphold and apply the law, and shall perform all duties of judicial office promptly, efficiently, fairly and impartially.

(B) A judge may make reasonable efforts, consistent with the law and court rules, to facilitate all litigants, including self-represented litigants, being fairly heard.

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Rule 2-2.4 – External Influences on Judicial Conduct

(A) A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

(B) A judge shall not permit family, social, political, religious, or other relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not convey or permit others to convey the impression that any person or organization is in a special position to influence the judge.

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Rule 2-2.7 – Responsibility to Decide

A judge shall hear and decide matters assigned to the judge, except when recusal is appropriate under this code or other law.

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Rule 2-2.9 Ex Parte Communications

(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

(2) A judge may obtain the written advice of a disinterested expert on the law applicable to a proceeding before the judge, if the judge gives advance notice to the parties of the person to be consulted and the subject matter of the advice to be solicited, and affords the parties a reasonable opportunity to object and respond to the notice and to the advice received.

(3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.

(4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge.

(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.

(B) If a judge inadvertently receives an unauthorized ex parte communication that the judge considers bears upon the substance of a matter, the judge shall take appropriate action.

(C) A judge shall not investigate facts in a matter independently and shall consider only the evidence presented and any facts that properly may be judicially noticed.

(D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule 2-2.9 is not violated by court staff, court officials, and others subject to the judge's direction and control.

Rule 2-2.10 – Judicial Statements on Pending and Impending Cases

(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

(B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office, unless the judge recuses under Rule 2-2.11(A)(4).

(C) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).

(D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.

(E) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.

Rule 2-2.11 – Recusal

(A) A judge shall recuse himself or herself in any proceeding in which the ***judge's impartiality might reasonably be questioned***, ***including but not limited to the following circumstances***:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer or knowledge of facts that are in dispute in the proceeding that would preclude the judge from being fair and impartial.

(2) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent, or child wherever residing, or any other member of the judge's family residing in the judge's household is:

(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(b) acting as a lawyer in the proceeding;

(c) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or

(d) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding.

(4) The judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(5) The judge:

(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

(b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

(c) was a material witness concerning the matter.

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(B) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or family members residing in the judge's household.

(C) A judge subject to recusal under this Rule 2-2.11, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's recusal and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive recusal. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge need not recuse, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

Rule 2-2.15 – Responding to Judicial and Lawyer Misconduct

(A) A judge having knowledge that another judge has committed a violation of this code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate disciplinary authority.

(B) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate disciplinary authority.

(C) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this code shall take appropriate action.

(D) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.

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Rule 2-2.16 – Cooperation with Disciplinary Authorities

(A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.

(B) A judge shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.

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Canon 3

A Judge Shall Conduct the Judge's Personal and Extrajudicial Activities to Minimize the Risk of Conflict with the Obligations of Office.

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Rules Under Canon 3

Rule 2-3.1 Extrajudicial Activities in General

Rule 2-3.2 Appearance before Governmental Bodies and Consultation with Government Officials

Rule 2-3.3 Testifying as a Character Witness

Rule 2-3.4 Appointments to Governmental Positions

Rule 2-3.5 Use of Nonpublic Information

Rule 2-3.6 Affiliation with Discriminatory Organizations

Rule 2-3.7 Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities

Rule 2-3.8 Appointments to Fiduciary Positions

Rule 2-3.9 Service as Arbitrator or Mediator

Rule 2-3.10 Practice of Law

Rule 2-3.11 Financial, Business, or Remunerative Activities

Rule 2-3.12 Compensation for Extrajudicial Activities

Rule 2-3.13 Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value

Rule 2-3.14 Reimbursement of Expenses and Waivers of Fees or Charges

Rule 2-3.15 Reporting Requirements

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Rule 2-3.1 – Extrajudicial Activities in General

A judge may engage in extrajudicial activities, except as prohibited by law or this code. However, when engaging in extrajudicial activities, a judge shall not:

(A) Participate in activities that will interfere with the proper performance of the judge's judicial duties;

(B) Participate in activities that will lead to frequent recusal of the judge;

(C) Participate in activities that would demean the judicial office or cast reasonable doubt on the judge's capacity to act impartially as a judge;

(D) Engage in conduct that would appear to a reasonable person to be coercive.

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Rule 2-3.7 – Participation in Educational, Religious, Charitable [and Other] Organizations and Activities

(A) A judge may serve as an officer, director, trustee, or nonlegal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice or of an educational, religious, charitable, fraternal, or civic organization, not conducted for profit, subject to the following limitations and the other requirements of this Rule 2.

(1) A judge may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds but shall not personally participate in the solicitation of funds or other fund raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority.

(2) A judge shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as permitted in Rule 2-3.7(A)(1), if the membership solicitation is essentially a fund-raising mechanism.

(3) A judge may make recommendations to public and private fund-granting organizations on projects and program concerning the law, the legal system or the administration of justice.

(4) A judge shall not serve as an officer, director, trustee or nonlegal advisor if it is likely that the organization:

(a) will be engaged in proceedings that would ordinarily come before the judge, or

(b) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(5) A judge as an officer, director, trustee or nonlegal advisor or as a member or otherwise shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

(B) A judge may encourage lawyers to provide pro bono publico legal services.

2-3.12 – Compensation for Extrajudicial Activities

A judge may accept reasonable compensation for extrajudicial activities permitted by this code or other law unless such acceptance would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

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Rule 2-3.13 – Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value

(A) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

(B) Unless otherwise prohibited by law, or by paragraph (A), a judge may accept, but must report if required by section 105.485, RSMo, the following without publicly reporting such acceptance:

(1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;

(2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending or impending before the judge would in any event require recusal of the judge under Rule 2-2.11;

(3) ordinary social hospitality, including wedding, engagement or shower gifts;

(4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;

(5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;

(6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;

(7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use; or

(8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, or other family member of a judge residing in the judge's household, but that incidentally benefit the judge.

(C) Unless otherwise prohibited by law or by paragraph (A), a judge may accept the following items, and must report such acceptance to the extent required by Rule 2-3.15:

(1) gifts incident to a public testimonial;

(2) invitations to the judge and the judge's spouse, or guest to attend without charge:

(a) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or

(b) an event associated with any of the judge's educational, religious, charitable, fraternal or civic activities permitted by this code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge; and

(3) gifts, loans, bequests, benefits, or other things of value, if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.

Rule 2-3.14 – Reimbursement of Expenses and Waivers of Fees or Charges

(A) Unless otherwise prohibited by Rules 2-3.1 and 2-3.13(A) or other law, a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this code.

(B) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judge and, when appropriate to the occasion, by the judge's spouse, or guest.

(C) A judge who accepts reimbursement of expenses or waivers or partial waivers of fees or charges on behalf of the judge or the judge's spouse, or guest shall publicly report such acceptance as required by Rule 2-3.15.

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Rule 2-3.15

A judge shall comply with the public reporting requirements of section 105.485, RSMo.

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Canon 4

A Judge or Candidate for Judicial Office Shall Not Engage in Political or Campaign Activity That Is Inconsistent with the Independence, Integrity, or Impartiality of the Judiciary.

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Rules Under Canon 4

Rule 2-4.1 Political Conduct of Judges and Judicial Candidates in General

Rule 2-4.2 Campaign Conduct of Judges and Judicial Candidates

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Regulation of US Supreme Court Justices

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Code of Conduct for United States Judges

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Quite Similar to ABA Model Canons, But Does Not Reach US Supreme Court

This Code applies to United States circuit judges, district judges, Court of International Trade judges, Court of Federal Claims judges, bankruptcy judges, and magistrate judges. Certain provisions of this Code apply to special masters and commissioners as indicated in the "Compliance" section. The Tax Court, Court of Appeals for Veterans Claims, and Court of Appeals for the Armed Forces have adopted this Code.

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An Act to Improve Judicial Machinery
Pub. L. 93–512

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28 U.S.C. § 455

(a) Any ***justice***, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his ***impartiality might reasonably be questioned***.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

(c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(1) “proceeding” includes pretrial, trial, appellate review, or other stages of litigation;

(2) the degree of relationship is calculated according to the civil law system;

(3) “fiduciary” includes such relationships as executor, administrator, trustee, and guardian;

(4) “financial interest” means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

(i) Ownership in a mutual or common investment fund that holds securities is not a “financial interest” in such securities unless the judge participates in the management of the fund;

(ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a “financial interest” in securities held by the organization;

(iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a “financial interest” in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) Ownership of government securities is a “financial interest” in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(e) No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate judge, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate judge, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

Ethics in Government Act of 1978
5 USC § 13101-46

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§ 310 Reporting Thresholds for Assets

(a) As a general rule, when reporting assets, a filer must list each asset that:

(1) exceeds $1,000 in value during the reporting period (see: § 315), or

(2) generated more than $200 in income during the reporting period (see: § 320).

(b) The income and value of each asset held in brokerage or managed accounts must be reported individually (see: § 315.30).

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§ 315.40 Transactions

(a) Transactions during the reporting period that involve any purchase, sale, or exchange of any property or asset (see: Guide, Vol. 2D, § 170) exceeding $1,000 must be reported.

(b) A filer must report the:

(1) type of transaction (e.g., buy, sell, redeem, etc.);

(2) date of the transaction;

(3) value of the consideration paid or received;

(4) opening of a bank account and closing of a bank account that has been reported on a prior report, and

(5) mandatory distributions from retirement accounts;

(c) If a reportable asset has been bought and sold during the same reporting period, you must provide the required information about both transactions.

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§ 330.10 Gifts

Except as indicated in Guide, Vol. 2D, § 210.30, each financial disclosure report must contain the identity of the source, a brief description, and the value of all gifts aggregating more than $415 in value that are received by the filer during the reporting period from any one source. For in-kind travel-related gifts, include travel locations, dates, and nature of expenses provided. (For exclusions, see: § 330.30.)

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§ 330.30 Exclusions

(a) Reports need not contain any information about gifts and reimbursements to which the provisions of this section would otherwise apply that are received from relatives (as defined in Guide, Vol. 2D, § 170) or during a period in which the filer was not a judicial officer or judicial employee.

(b) Any food, lodging, or entertainment received as "personal hospitality of any individual" (as defined in Guide, Vol. 2D, § 170) need not be reported.

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§ 360 Spouses and Dependent Children
§ 360.10 Special Disclosure Rules

Each report required under Guide, Vol. 2D, Ch. 2 must also include the following information with respect to the spouse or dependent children of the reporting individual:

(a) Income

For purposes of § 320, the filer must report the following income:

(1) Spouse Non-investment Income

(A) Non-investment income includes such items as salary, royalties, and lottery winnings.

(B) The filer must report the source but not the amount of the spouse's non-investment income (other than honoraria and investment income) exceeding $1,000 from any one source (other than from the spouse's current employment by the United States government).

(C) If items of earned income are derived from a spouse's self-employment in a business or profession, the filer must report the nature of the business or profession but not the amount of the earned income.

“Dependent Child”

When used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who is:

(1) unmarried, under age 21, and living in the household of the reporting individual; or

(2) a dependent of the reporting individual within the meaning of 26 U.S.C. § 152.

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"Gift"

A payment, advance, forbearance, rendering, or deposit of money, or anything of value, unless consideration of equal or greater value is received by the donor, including food and beverages consumed in connection with a gift of overnight lodging.

Note: A gift does not include:

(1) bequests and other forms of inheritance;

(2) suitable mementos of a function honoring the reporting individual;

(3) food, lodging, transportation, and entertainment provided by a foreign government within a foreign country or by the United States government, the District of Columbia, or a state or local government or its political subdivision;

(4) food and beverages that are consumed without a gift of overnight lodging;

(5) communications to the offices of a reporting individual, including subscriptions to newspapers and periodicals; and

(6) exclusions and exceptions as described in Guide, Vol. 2D, § 330.30 and § 330.40.

“Income”

All monies, compensation, and wages derived from whatever source, whether or not taxable for federal income tax purposes (e.g., municipal bond interest). Generally, income means “gross income” as determined under the Internal Revenue Service principles at 26 CFR 1.61-1 through 1.61-15 and 1.61-21.

Note: It includes but is not limited to the following items:

- earnings such as compensation for services, fees, commissions, salaries, wages, and similar items;
- gross income derived from business (and net income if the individual elects to include it);
- gains derived from dealings in property including capital gains (whether actually received or reinvested);
- income from rental property, even if a profit is not realized;
- interest;
- rents;
- royalties;
- dividends;
- annuities;
- income from the investment portion of life insurance and endowment

  contracts;
- pensions;
- income from discharge of indebtedness;
- distributive share of partnership income; and
- income from an interest in an estate or trust.

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“Personal Hospitality of Any Individual”

Hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his or her family or on property or facilities owned by that individual or his or her family.

Notes:

The personal hospitality gift reporting exemption applies only to food, lodging, or entertainment and is intended to cover such gifts of a personal, non- business nature. Therefore, the reporting exemption does not include:

• gifts other than food, lodging or entertainment, such as transportation that substitutes for commercial transportation;

• gifts extended for a business purpose;

• gifts extended at property or facilities owned by an entity, rather than by an individual or an individual’s family, even if the entity is owned wholly or in part by an individual or an individual’s family;

• gifts paid for by any individual or entity other than the individual providing the hospitality, or for which the individual providing the hospitality receives reimbursement or a tax deduction related to furnishing the hospitality; or

• gifts extended at a commercial property, e.g., a resort or restaurant, or at a property that is regularly rented out to others for a business purpose.

A judicial officer or employee is not permitted to solicit or accept anything of value from a person seeking official action from or doing business with the court or other entity served by the judicial officer or employee, or from any other person whose interests may be substantially affected by the performance or nonperformance of the judge’s official duties, but a judicial officer or employee may accept a gift authorized by the Judicial Conference’s regulations.

New Judicial Conference Definition
(March 2023)

Hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his or her family or on property or facilities owned by that individual or his or her family.

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The personal hospitality gift reporting exemption applies only to food, lodging, or entertainment and is intended to cover such gifts of a personal, non-business nature. Therefore, the reporting exemption does not include:

• gifts other than food, lodging or entertainment, such as transportation that substitutes for commercial transportation;

• gifts extended for a business purpose;

• gifts extended at property or facilities owned by an entity, rather than by an individual or an individual's family, even if the entity is owned wholly or in part by an individual or an individual's family;

• gifts paid for by any individual or entity other than the individual providing the hospitality, or for which the individual providing the hospitality receives reimbursement or a tax deduction related to furnishing the hospitality; or

• gifts extended at a commercial property, e.g., a resort or restaurant, or at a property that is regularly rented out to others for a business purpose.

(2) A judicial officer or employee is not permitted to solicit or accept anything of value from a person seeking official action from or doing business with the court or other entity served by the judicial officer or employee, or from any other person whose interests may be substantially affected by the performance or nonperformance of the judge's official duties, but a judicial officer or employee may accept a gift authorized by the Judicial Conference's regulations.

(Recent) Scandals of US Supreme Court Justices

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Disclosure of *Dobbs* Opinion

- On 5/2/2022, Politico published a copy of the draft majority opinion in *Dobbs v. Jackson Women's Health*
- Court ordered Marshall to investigate
- 100 people were interviewed but source of leak has not been identified

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Employment of Spouses

- Chief Justice Roberts' wife Jane Sullivan Roberts (disclosed per statute)
  - Left Pillsbury after husband joined Court in 2005
  - Became legal recruiter with Major Lindsey & Africa and now Macrae, often placing former government officials with firms that appear before the court – commissions exceed $10M
  - Example: placing Interior Secretary Keith Salazar with WilmerHale resulted in approximate $350K payment to Roberts, and WilmerHale involved in 27 cases before Court from 2013-17

- Justice Thomas's wife Ginni Thomas . . . (not disclosed timely)

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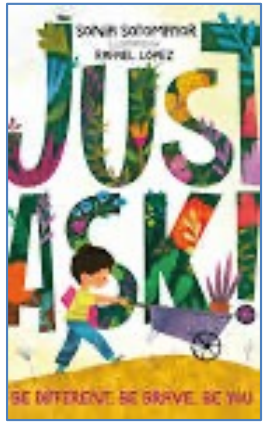
Publishing Contracts

- Justice Sotomayor
  - Penguin Books has paid Justice Sotomayor more than $3.7 million in advances and royalties (disclosed)
  - Sotomayor did not recuse on copyright cases where Penguin was party (but Breyer did)
- Other Justices also have book deals - Comey Barrett ($425K in 2022), Gorsuch ($250K in 2022), Thomas, Breyer . . .





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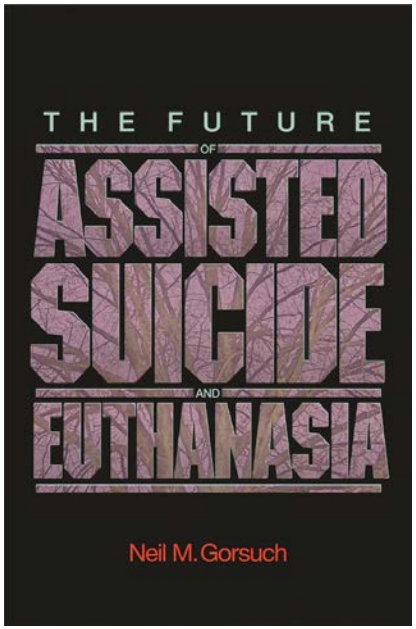
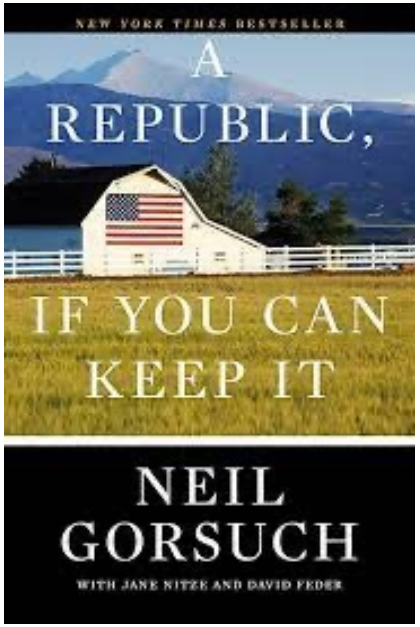
Justice Gorsuch's Royalties



Princeton $300

Harper Collins $250K



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Justice Sotomayor's Staff Encourages Sales (NYT)

- "For an event with 1,000 people and they have to have a copy of Just Ask to get into the line, 250 books is definitely not enough," [a Thomas aide] Anh Le[] wrote staffers at the Multnomah County Library. "Families purchase multiples and people will be upset if they are unable to get in line because the book required is sold out."
- At Clemson University in South Carolina, school officials offered to buy 60 signed copies before a 2017 appearance; Sotomayor's staff noted that most schools order around 400.
- Michigan State University asked Sotomayor to come to campus and in 2018 spent more than $100,000 on copies of her memoir, "My Beloved World," to distribute to incoming first-year students. The books were shipped to the Supreme Court, where copies were taken to her chambers by court workers and signed by her before being sent to the school.
- The University at Albany in New York bought about 3,700 copies before a 2017 appearance.
- Stony Brook University in New York ordered roughly 3,900 copies in 2018 for use in a first-year reading program.
- When the subject arose of how many Sotomayor books Clemson should purchase before a 2017 visit, school officials worried 60 might be too many to sign. Sotomayor's legal assistant reassured them it would not be a problem because "most institutions order in the ranges of 400 and up."

Teaching – Capped at $30,000

- University of Hawaii – Ginsburg, Kennedy, Breyer
- University of Notre Dame – Kavanaugh and Comey Barrett (London)
- George Mason – Gorsuch (Padua), Kavanaugh (London)
  - Gorsuch received $8313 for airfare and $5,359 for lodging, with trips to Bologna and Venice
- Penn State Dickinson School of Law – Alito (Florence)
- St. Mary's University (Austria) – Scalia
- Wake Forest University – Ginsburg (Venice and Vienna)
- Consortium for Innovative Legal Education ("CILE") – Roberts (Malta), Ginsburg, Kennedy, Scalia, Sotomayor (in Prague in 2020)

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Speaking Engagements

- Justices speak at numerous law school and other events
- Generally receive nice travel and accommodations
- Justices' appearances often used as fundraising opportunities

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Involvement with Non-Profits

- Ginsburg founded ACLU Women's Rights Project in 1972
- Federalist Society
- Justice Thomas and Horatio Alger Society

Thomas with CEOs of Aramark, Apex Oil and Teton Capital



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Property Sales

- Justice Gorsuch was 1/3-owner (thru Walden Group LLC) of a 40-acre property sold to the chairman of Greenberg Traurig for $1.8M in April 2017
  - 9 days after Gorsuch was confirmed
  - Gorsuch left identity of purchaser blank on disclosure form
  - GT has been involved in 22+ cases before Supreme Court
  - Gorsuch voted for GT's client in 8 of 12 cases (where his vote is recorded)
  - GT chair said he did not know Gorsuch was a seller
  - Property was originally listed for almost $2.5M in July 2015
- Justice Thomas . . . (not disclosed)

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Trips with Billionaires

- Justice Ginsburg hosted by billionaire Israeli businessman Morris Khan (disclosed)
- Justice Breyer took at least three Pritzker-funded trips in 2019, including a week in Ireland and Spain (disclosed)
- Justice Alito took “empty” seat on hedge fund billionaire Paul Singer’s private plane to Alaskan fishing trip (not disclosed)
- Justice Thomas . . . (not disclosed)



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Justice Thomas and Harlan Crow

- With wife, Crow donated approximately $9 million to Republican causes since 2014
- Befriended Justice Thomas in 1990s, and since then has
  - Provided numerous flights on private jet
  - Provided numerous vacations . . . including $500,000 vacation on superyacht around Indonesia, plus Greece and New Zealand
  - Paid approximately $100,000 for education of Thomas's grandnephew, whom Thomas raised
  - Purchased Thomas's mother's house for $133K (and the house of a troublesome neighbor) and spent $36K remodeling house where Thomas's mother now lives rent-free
  - Donated $175K to Savannah library and $105K to Yale's "Justice Thomas Portrait Fund"
  - Donated $500,000 to fund Liberty Central, firm founded by Ginni Thomas
- None of these gifts were disclosed, but Thomas disclosed $5,000 gift for grandnephew's education in 2002 from Earl and Louise Dixon

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Billionaire Harlan Crow's lawyer agrees to speak with Senate panel probing Clarence Thomas gifts

Judiciary Committee Chairman Dick Durbin indicated he's open to meeting but also said "all options are on the table" to get the information Democrats want from Crow.



Harlan Crow has come under scrutiny from congressional Democrats over his relationship with Justice Clarence Thomas. Chris Goodney / Bloomberg via Getty Images file

SAVE

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June 6, 2023, 10:40 AM CDT / Updated June 6, 2023, 4:07 PM CDT

By Laura Jarrett, Summer Concepcion and Rebecca Shabad

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Please see the following statement from Justice Clarence Thomas:

> Harlan and Kathy Crow are among our dearest friends, and we have been friends for over twenty-five years. As friends do, we have joined them on a number of family trips during the more than quarter century we have known them. Early in my tenure at the Court, I sought guidance from my colleagues and others in the judiciary, and was advised that this sort of personal hospitality from close personal friends, who did not have business before the Court, was not reportable. I have endeavored to follow that counsel throughout my tenure, and have always sought to comply with the disclosure guidelines. These guidelines are now being changed, as the committee of the Judicial Conference responsible for financial disclosure for the entire federal judiciary just this past month announced new guidance. And, it is, of course, my intent to follow this guidance in the future.

Public Information Office

Senator Ted Cruz
@SenTedCruz

Honored to attend Jim Ho's swearing in to the Fifth Circuit Court of Appeals today, alongside Justice Clarence Thomas & Judge Jerry Smith. I am confident my good friend Jim will be an extraordinary appellate judge and a principled jurist faithful to the law.



7:02 PM · Jan 4, 2018

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Ginni Thomas and January 6 (NYT)

Dustin Stockton, an organizer who worked with Women for America First, which held the permit for the Ellipse rally, said he was told that Ginni Thomas played a peacemaking role between feuding factions of rally organizers “so that there wouldn’t be any division around January 6.”

“The way it was presented to me was that Ginni was uniting these different factions around a singular mission on January 6,” said Dustin Stockton, who previously worked for Bannon. “That Ginni was involved made sense — she’s pretty neutral, and she doesn’t have a lot of enemies in the movement.”

Ginni Thomas, who turns 65 on April 25, did not respond to requests for comment, and Justice Thomas, who is 73, declined to comment through a court spokesperson. In a posting on a private Facebook group for her high school classmates, Ginni Thomas wrote that “a NYT reporter” might have “contacted you looking for stories, etc on me. This reporter seems to have been told to write a hit piece” and “has knocked on many doors and written many emails. They all contact me and are not responding. ” she wrote. “Whatever. ” (The message was forwarded by one of those classmates to the reporter in question.)

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In the year since the insurrection, a number of friends and allies of the Thomases, and even a former Thomas clerk, have received subpoenas from the congressional committee investigating the events of Jan. 6.

Ginni Thomas co-signed a letter in December calling for House Republicans to expel Representatives Liz Cheney and Adam Kinzinger from their conference for joining the Jan. 6 committee. Thomas and her co-authors said the investigation “brings disrespect to our country’s rule of law” and “legal harassment to private citizens who have done nothing wrong,” adding that they would begin “a nationwide movement to add citizens’ voices to this effort.”

A few weeks later, the Supreme Court ruled 8 to 1 to allow the release of records from the Trump White House related to the Jan. 6 attack. Justice Thomas was the sole dissenter.

POLITICS >

INCREASE FONT SIZE

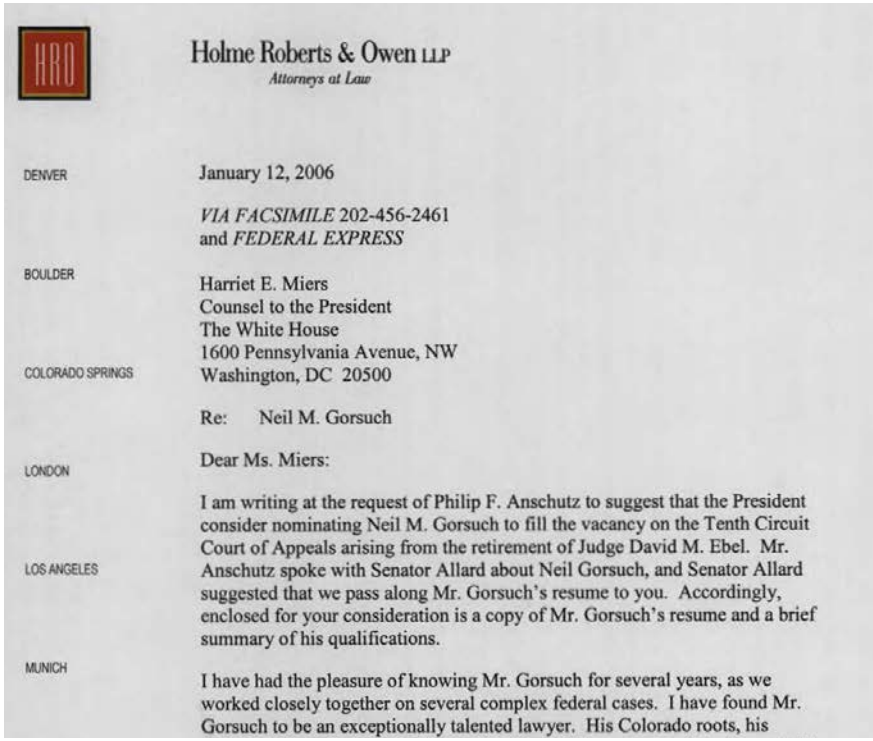
Posted **July 12** | Updated **July 13**

Another Clarence Thomas ethics story – and this one involves a Maine lawyer

Patrick Strawbridge of North Yarmouth sent money to Thomas' aide in connection to a 2019 Christmas party just months before he argued Donald Trump's tax return case before the Supreme Court, according to The Guardian newspaper.

Justice Gorsuch's Billionaire

- Denver Post reported George W Bush was considering three prominent CO conservative women for 10th Circuit
- Lawyer for billionaire (and GOP donor) Philip Anschutz wrote letter supporting Gorsuch
- Gorsuch was interviewed within a month and nominated four months later



Holme Roberts & Owen LLP
Attorneys at Law

DENVER
BOULDER
COLORADO SPRINGS
LONDON
LOS ANGELES
MUNICH

January 12, 2006

VIA FACSIMILE 202-456-2461
and *FEDERAL EXPRESS*

Harriet E. Miers
Counsel to the President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Re: Neil M. Gorsuch

Dear Ms. Miers:

I am writing at the request of Philip F. Anschutz to suggest that the President consider nominating Neil M. Gorsuch to fill the vacancy on the Tenth Circuit Court of Appeals arising from the retirement of Judge David M. Ebel. Mr. Anschutz spoke with Senator Allard about Neil Gorsuch, and Senator Allard suggested that we pass along Mr. Gorsuch's resume to you. Accordingly, enclosed for your consideration is a copy of Mr. Gorsuch's resume and a brief summary of his qualifications.

I have had the pleasure of knowing Mr. Gorsuch for several years, as we worked closely together on several complex federal cases. I have found Mr. Gorsuch to be an exceptionally talented lawyer. His Colorado roots, his

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The Supreme Court's Inadequate Recusal Policy

Justice Amy Coney Barrett declined to recuse herself in a case involving a nonprofit that spent over $1 million getting her confirmed to the Supreme Court.

BY STEVEN LUBET JULY 7, 2021



SUSAN WALSH/AP PHOTO

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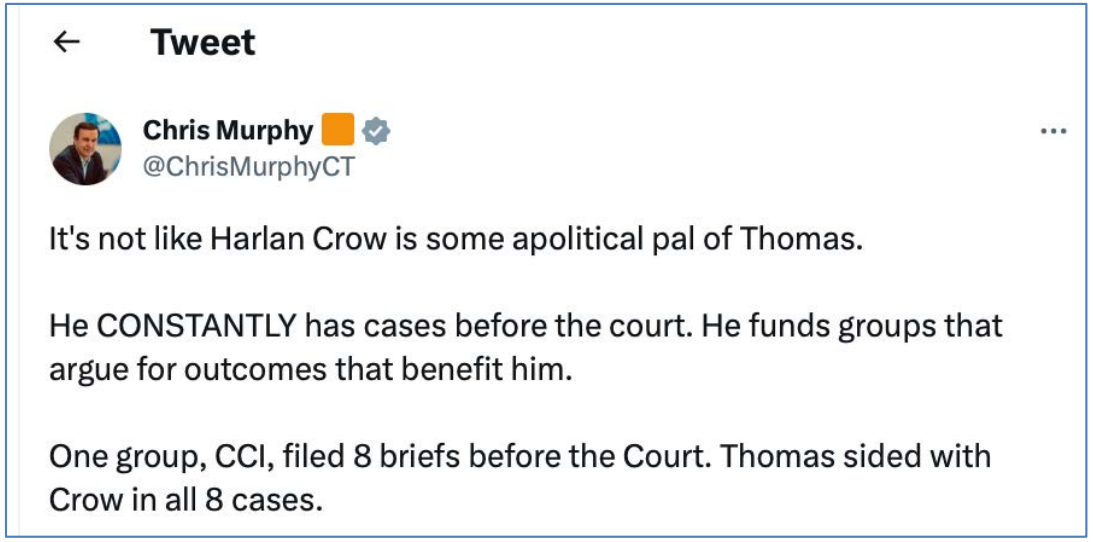
Cases Before Court?

- Billionaire and GOP-donor Paul Singer flew Justice Alito and Federalist Society leader Leo Leonard to a high-end Alaskan fishing trip
- Singer's hedge fund had 10 cases before the Court (including bond default decision that yielded $2.4B to hedge fund)
- Alito defended his action in a *Wall Street Journal* "prebuttal" before ProPublica article



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Justice Recusals

A recent analysis by Bloomberg Law found that the justices recused themselves in roughly 3 percent of appeals since 2018, with Justices Samuel Alito and Elena Kagan doing so most often.

The court also operates short-handed when there is a vacancy, as it did for over a year after Justice Antonin Scalia died in February 2016, until Neil Gorsuch was confirmed in April 2017.

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Crow's Trips (*ProPublica*)

During just one trip in July 2017, Thomas' fellow guests included executives at Verizon and PricewaterhouseCoopers, major Republican donors and one of the leaders of the American Enterprise Institute, a pro-business conservative think tank, according to records reviewed by ProPublica. The painting of Thomas at Topridge shows him in conversation with Leonard Leo, the Federalist Society leader regarded as an architect of the Supreme Court's recent turn to the right.

In his statement to ProPublica, Crow said he is "unaware of any of our friends ever lobbying or seeking to influence Justice Thomas on any case, and I would never invite anyone who I believe had any intention of doing that."

"These are gatherings of friends," Crow said.

Justice Thomas's Early Disclosures (NYT)

In his early years on the court, Justice Thomas disclosed about 20 private plane flights and an assortment of other gifts, including cigars, a Daytona 500 jacket, a silver buckle and a rawhide coat.

After The Los Angeles Times chronicled his gifts and travel in 2004, he stopped disclosing private flights and has seldom reported gifts or other benefits.

After the Crow revelations, the justice said that "colleagues and others in the judiciary" had advised him that he did not need to report the hospitality of good friends.

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Justice Thomas on Disclosures Generally

Justice Thomas dissented in 8-1 vote requiring disclosure of political donors in *Citizens United* (2010)

Justice Thomas also criticized disclosure requirements in *Doe v. Reed* (2010) related to petition signers

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Justice Thomas on Contribution Limits

Nixon v. Shrink Missouri (2000) (Dissenting)

In *Buckley*, the Court upheld contribution limits of $1,000 on individuals and $5,000 on political committees (in 1976 dollars). 424 U. S., at 28-29, 35-36. Here, by contrast, the Court approves much more restrictive contribution limitations, ranging from $250 to $1,000 (in 1995 dollars) for both individuals and political committees. . . . The disparity between Missouri's caps and those upheld in Buck ley is more pronounced when one takes into account some measure of inflation. . . .

Yet the Court's opinion gives not a single indication that the two laws may differ in their tailoring. See ante, at 395 (Missouri's caps are "striking [in their] resemblance to the limitations sustained in Buckley"). The Court fails to pay any regard to the drastically lower level of the limits here, fails to explain why political committees should be subjected to the same limits as individuals, and fails to explain why caps that vary with the size of political districts are tailored to corruption. I cannot fathom how a $251 contribution could pose a substantial risk of "secur[ing] a political quid pro quo." Buckley v. Valeo, supra, at 26. Thus, contribution caps set at such levels could never be "closely drawn" . . . to preventing quid pro quo corruption. The majority itself undertakes no such defense.

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Justices Alito and Comey Barrett Recusal Issues (American Prospect)

In a brief filed before the Court, ExxonMobil and Suncor's lawyers argued that the Boulder [climate chage] case is "an ideal vehicle for resolving the questions presented and is uniquely positioned among the climate-change cases currently headed to the Court." What makes this case such an ideal vehicle for resolving all the cases' claims? "[I]t involves a smaller set of defendants than those cases and is thus less likely to present recusal issues."

What's more, when the oil companies filed their subsequent petitions for SCOTUS review in the Baltimore, Hawaii, California, and Rhode Island cases, they suggested that the Court's decision in Suncor v. Boulder should determine how the rest of the cases proceed. "If the Court grants review in Suncor," the fossil fuel company lawyers argued in their Baltimore v. BP petition, "the petition here should be held pending a decision on the merits there and then disposed of as is appropriate."

Alito owns Conoco Phillips stock

Comey Barrett has recused from Shell case

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Comment from “Anthony (Brooklyn)” NYT 6-22-2023

Maybe the Justices did not see my invitation so here I go again: I am extending an open invitation to any SC Justice who wants to go fishing with me and my buddies. We usually go to the 69th Street Pier here in Brooklyn. We bring a few beers, shoot the breeze about tax policy, or property rights vs. religious freedoms, and always argue about the Mets' season. We can provide transportation to and from the Port Authority Bus Terminal, but you have to pay your own way from DC, and, there will be sandwiches from a local hero joint when you get here. We are certainly not billionaires but we feel it is our right to have the same access to the Justices as rich folk. You can see the Statue of Liberty from the pier, and on good days when the wind is blowing west, the smell from the sewage treatment plant is minimal. So Justices, whadda ya say?

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Justice Thomas on Pay (2001)

"The job is not worth doing for what they pay. The job is not worth doing for the grief. But it is worth doing for the principle."

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Supreme Court Salaries

- In 2001
  - Chief Justice salary -- $186,300
  - Associate Justice salary -- $178,300

- In 2023
  - Chief Justice salary -- $298,500
  - Associate Justice salary -- $285,400

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Binding Code of Ethics?

- 97% Yes of Judges (2022 National Judicial College Survey)
- 0 of 9 – Supreme Court action in 2023

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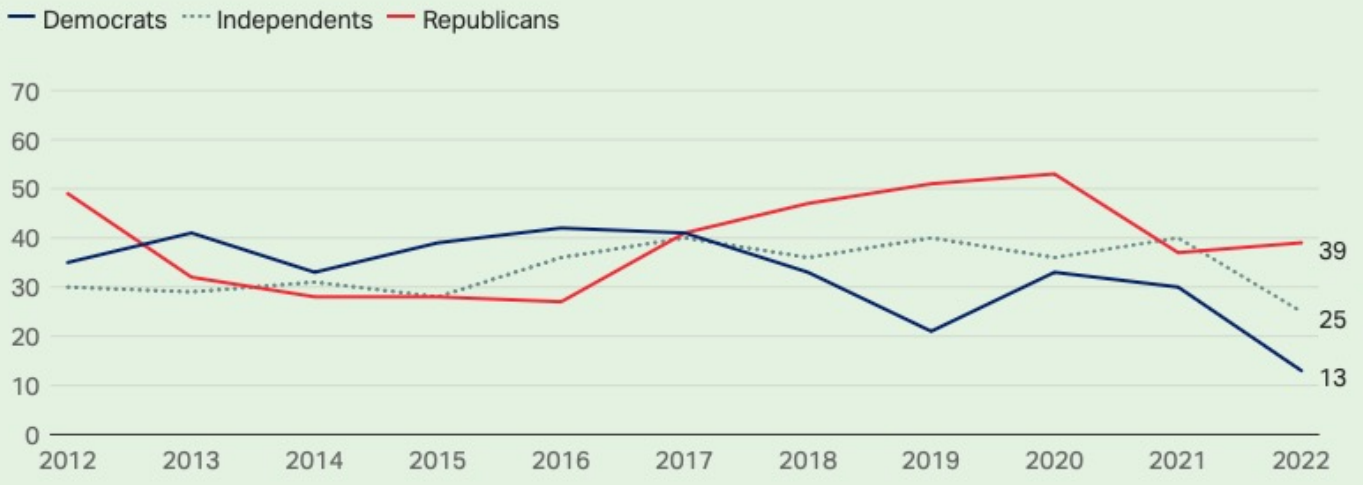
Confidence in the U.S. Supreme Court, Recent Trend, by Political Party

Now I am going to read you a list of institutions in American society. Please tell me how much confidence you, yourself, have in each one -- a great deal, quite a lot, some or very little. The U.S. Supreme Court
(% Great deal/Quite a lot)



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GALLUP

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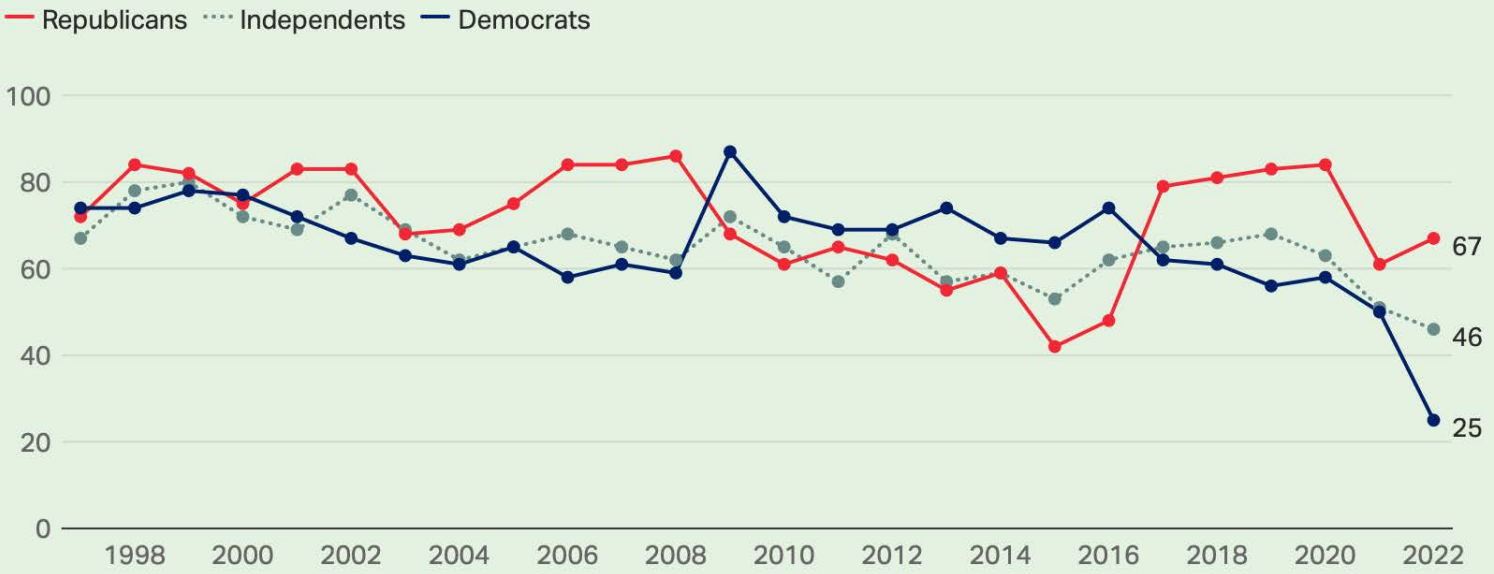
Trust in the Judicial Branch of the Federal Government, by Political Party

Figures are the percentage with a great deal or fair amount of trust



Figures for 1972-1976 not shown

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GALLUP

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Binding Supreme Court Ethics Code?

- Who would interpret it?
- Who would enforce it?
- What would we do if a justice were forced to recuse?

- Separation of powers issues

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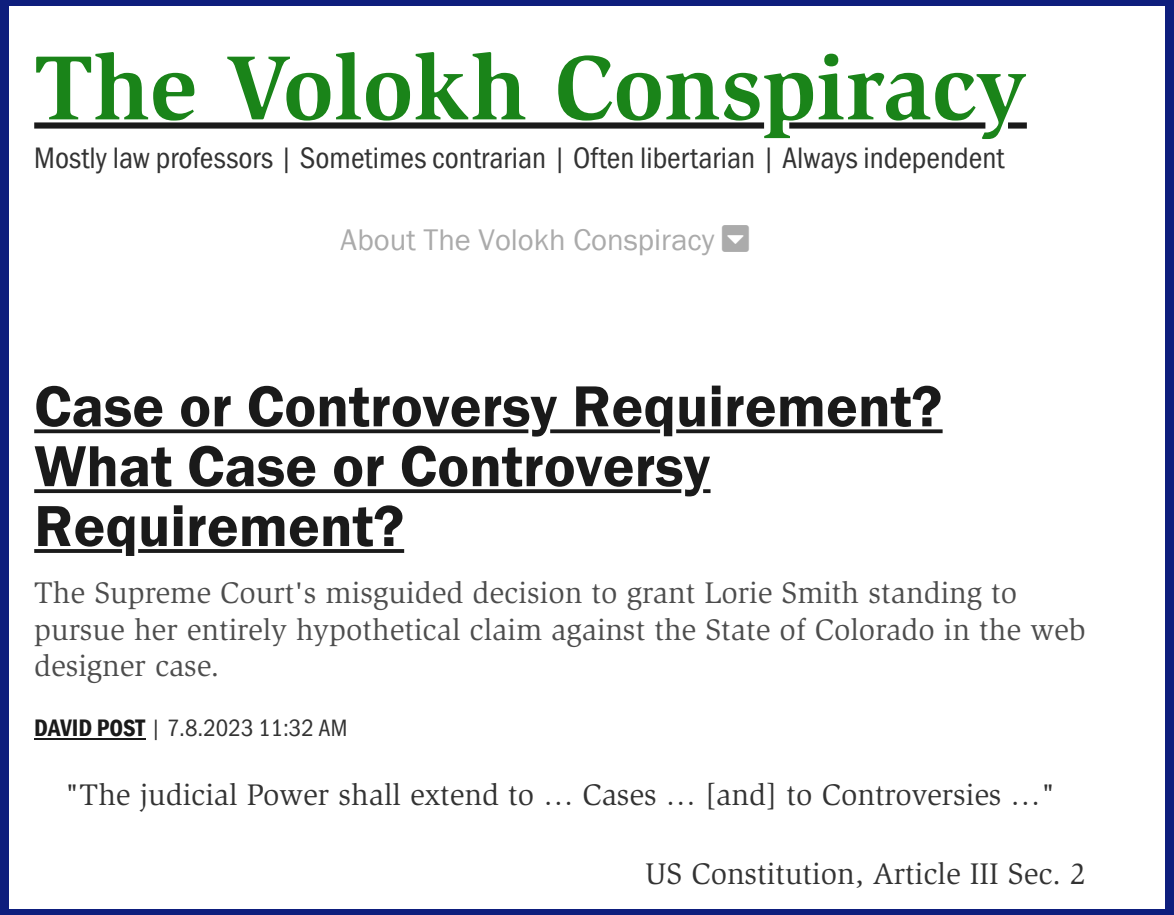
“Case or Controversy”



The Volokh Conspiracy

Mostly law professors | Sometimes contrarian | Often libertarian | Always independent

About The Volokh Conspiracy

Case or Controversy Requirement? What Case or Controversy Requirement?

The Supreme Court's misguided decision to grant Lorie Smith standing to pursue her entirely hypothetical claim against the State of Colorado in the web designer case.

DAVID POST | 7.8.2023 11:32 AM

"The judicial Power shall extend to … Cases … [and] to Controversies …"

US Constitution, Article III Sec. 2

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Control of Certiorari

- Before *Obergefell* (2015), lower federal court orders had rendered gay marriage legal in Alaska, Arizona, California, Colorado, Florida, Idaho (9th Circuit), Indiana (7th Circuit), Montana, Nevada, North Carolina, Oregon, Pennsylvania, South Carolina, Utah (10th Circuit), Virginia (4th Circuit), West Virginia, Wisconsin, Wyoming
- In *Brown v. Louisiana* (2023), the Court allowed a conviction in a capital case to stand against the petitioner, even though he provided evidence that the prosecution suppressed an accomplice's mitigating statement
- In *Clark v. Mississippi* (2023), the Court was unwilling to take up a case from Mississippi involving a claim that prosecutors precluded potential jurors from serving on the basis of their race. Justice Sotomayor in a dissent joined by complained the Court was unwilling to take even a "modest step to preserve the force of its own recent precedent."

Nationwide Injunctions
Arizona v. Mayorkas (US 2023)

Responding to the COVID pandemic, in March 2020 Trump administration implemented Title 42 policy allowing immigration officials to expel upon arrival certain non-citizens who would be held in congregate settings

In Louisiana, families seeking asylum challenged policy and won preliminary injunction, affirmed in part

In April 2022, CDC determined Title 42 policy was no longer necessary to protect human health

Certain states intervened in Louisiana, seeking to mandate enforcement of Title 42 policy, saying ending policy would violate Administrative Procedures Act

District Court entered summary judgment for original plaintiffs (ending policy) but stayed its order to allow federal government to formulate new policy

Federal government informed District Court would be vacated upon stay's expiration

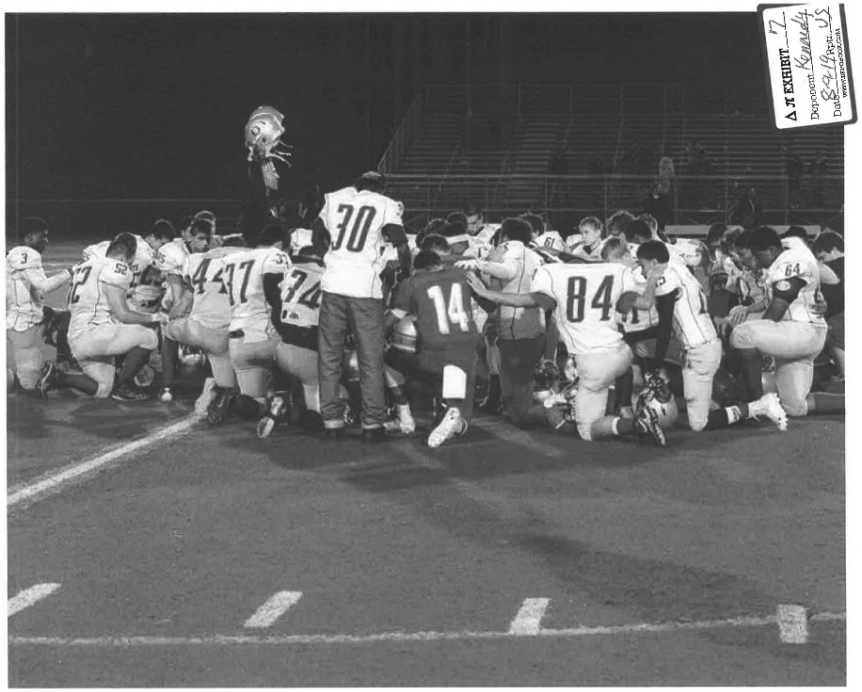
The state intervenors sought to prolong enforcement of policy, and LA District Court entered a nationwide injunction effectively requiring enforcement of Title 42 policy until notice-and-comment procedures were completed

Meanwhile, DC District Court entered an injunction purporting to wipe Title 42 policy off the books

In May 2023, US Supreme Court ordered remand of case and dismissal as moot, including because Congress passed and president signed a joint resolution declaring COVID-19 emergency over

Justice Sotomayor Dissent in *Kennedy v. Bremerton School District* (2022)

"To the degree the Court portrays petitioner Joseph Kennedy's prayers as private and quiet, it misconstrues the facts."



Photograph of J. Kennedy standing in group of kneeling players.

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Justice Gorsuch on COVID Restrictions *Arizona v. Mayorkas* (May 2023)

"Since March 2020, we may have experienced the ***greatest intrusions on civil liberties in the peacetime history of this country***. Executive officials across the country issued emergency decrees on a breathtaking scale. Governors and local leaders imposed lockdown orders forcing people to remain in their homes. They shuttered businesses and schools, public and private. They closed churches even as they al- lowed casinos and other favored businesses to carry on. They threatened violators not just with civil penalties but with criminal sanctions too. . . ."

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Justice Alito on Disqualification (WSJ)

ProPublica suggests that my failure to recuse in these cases created an appearance of impropriety, but that is incorrect. "There is an appearance of impropriety when an unbiased and reasonable person who is aware of all relevant facts would doubt that the Justice could fairly discharge his or her duties" (Statement on Ethics Principles and Practices appended to letter from the Chief Justice to Senator Durbin, April 25, 2023). ***No such person would think that my relationship with Mr. Singer meets that standard.*** My recollection is that I have spoken to Mr. Singer on no more than a handful of occasions, all of which (with the exception of small talk during a fishing trip 15 years ago) consisted of brief and casual comments at events attended by large groups. On no occasion have we discussed the activities of his businesses, and we have never talked about any case or issue before the Court. On two occasions, he introduced me before I gave a speech—as have dozens of other people. And as I will discuss, he allowed me to occupy what would have otherwise been an unoccupied seat on a private flight to Alaska. ***It was and is my judgment*** that these facts would not cause a reasonable and unbiased person to doubt my ability to decide the matters in question impartially."

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Justice Alito on Need for Disclosure

Second, when I reviewed the cases in question to determine whether I was required to recuse, I was not aware and had no good reason to be aware that Mr. Singer had an interest in any party. During my time on the Court, I have voted on approximately 100,000 certiorari petitions. The vast majority receive little personal attention from the justices because even a cursory examination reveals that they do not meet our requirements for review. See Sup. Ct. R. 10.

To ensure that I am not required to recuse, multiple members of my staff carefully check the names of the parties in each case and any other entities listed in the corporate disclosure statement required by our rules. See Supreme Court Rule 29.6. Mr. Singer was not listed as a party in any of the cases listed by ProPublica. Nor did his name appear in any of the corporate disclosure statements or the certiorari petitions or briefs in opposition to certiorari.

In the one case in which review was granted, *Republic of Argentina v. NML Capital, Ltd.,* No. 12-842, Mr. Singer's name did not appear in either the certiorari petition, the brief in opposition, or the merits briefs. *Because his name did not appear in these filings, I was unaware of his connection with any of the listed entities, and I had no good reason to be aware of that. The entities that ProPublica claims are connected to Mr. Singer all appear to be either limited liability corporations or limited liability partnerships. It would be utterly impossible for my staff or any other Supreme Court employees* to search filings with the SEC or other government bodies to find the names of all individuals with a financial interest in every such entity named as a party in the thousands of cases that are brought to us each year.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 25, 2023

Honorable Richard J. Durbin
Chair
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Thank you for your letter of April 20, 2023, inviting me to appear at a Senate Judiciary Committee hearing on May 2. I must respectfully decline your invitation.

Statement on Ethics Principles and Practices

The undersigned Justices today reaffirm and restate foundational ethics principles and practices to which they subscribe in carrying out their responsibilities as Members of the Supreme Court of the United States. This statement aims to provide new clarity to the bar and to the public on how the Justices address certain recurring issues, and also seeks to dispel some common misconceptions.

The Justices, like other federal judges, consult a wide variety of authorities to address specific ethical issues. They may turn to judicial opinions, treatises, scholarly articles, disciplinary decisions, and the historical practice of the Court and the federal judiciary. They may also seek advice from the Court's Legal Office and from their colleagues.

"Statement on Ethics Principles and Practices" – Financial Matters

In regard to the financial disclosure requirements relating to teaching and outside earned income, the Justices may not accept compensation for an appearance or a speech, but may be paid for "teaching a course of study at an accredited educational institution or participating in an educational program of any duration that is sponsored by such an institution and is part of its educational offering." Outside Earned Income Regs. § 1020.35(b). As the Commentary to Canon 4 of the lower court code observes, "As a judicial officer and a person specially learned in the law, a judge is in a unique position to contribute to the law, the legal system, and the administration of justice," including through teaching. Associate Justices must receive prior approval from the Chief Justice to receive compensation for teaching; the Chief Justice must receive prior approval from the Court. See Resolution ¶ 3 (Jan. 18, 1991). Justices may not have outside earned income— including income from teaching—in excess of an annual cap established by statute and regulation. ***In calendar year 2023, that cap works out to less than 12 percent of a Justice's pay. Compensation for writing a book is not subject to the cap.***

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A Federal Judge Asks: Does the Supreme Court Realize How Bad It Smells?
By Michael Ponsor (Senior Judge, D. Ma. 7-14-2023)

The fact is, when you become a judge, stuff happens. Many years ago, as a fairly new federal magistrate judge, I was chatting about our kids with a local attorney I knew only slightly. As our conversation unfolded, he mentioned that he'd been planning to take his 10-year-old to a Red Sox game that weekend but their plan had fallen through. Would I like to use his tickets?

I was tempted. The tickets were beyond my usual price range, and the game would be a fun outing with my 7-year-old. It didn't seem to me that the lawyer was trying to do anything improper. It seemed to be — and almost certainly was — just a spur-of-the-moment impulse arising out of a friendly conversation. Moreover, the seats at Fenway Park, like the much more expensive seat on the private jet used free by Justice Samuel Alito on his Alaska vacation, would probably go empty if I didn't take them. Who would be harmed?

To my chagrin, as I pondered the situation, I became aware of an aroma of something off. Not an actual smell, of course, but something like that — something like a whiff of milk on the verge of going sour or a pan left on the stove too long. It wasn't that the lawyer had evil intent; it was that I was approaching a boundary. Silently gnashing my teeth, I turned the tickets down.

A few years later, after I'd received my appointment as a life-tenured U.S. district judge, I issued a decision reversing the Social Security Administration's denial of disability benefits to an older plaintiff. I was in our clerk's office one day when the man and his wife approached me with a package. He had a woodworking hobby, and inside the package was an exquisitely crafted oak pencil case with bronze hinges. My ruling had made a big difference for them, and they wanted to extend this modest, personal gesture of gratitude. Again, they were obviously not being underhanded. Their lawsuit was over, and this was probably the last they would ever see of me. Nevertheless, as my police officer friends tell me, the road to perdition starts with a free cup of coffee. As politely as I could, I turned the pencil case down. It still pains me to remember their embarrassed, crestfallen faces.

Conclusory Matters

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