

Trump Judicial Nominee Struggles to Answer Basic Legal Questions at Hearing

A Trump judicial nominee struggled to answer basic legal questions posed to him by a Republican senator, including his lack of experience on trial work, the amount of depositions he'd worked on and more, [reports CNN](#).

Matthew Spencer Petersen, who currently serves as a commissioner on the Federal Election Commission, was in the hot seat when GOP Sen. John Kennedy of Louisiana asked him a string of questions about his experience on trials. On the question of how many depositions Petersen had worked on, the nominee said the number was fewer than five. And in response to another question, he said he couldn't remember the last time he had read the Federal Rules of Civil Procedure.

The report by [Miranda Green](#) says that Petersen, who is up for a seat on the U.S. District Court for the District of Columbia, had to acquiesce on many occasions that his "background was not in litigation." despite the role he was up for.

[Read the CNN article.](#)

Inside Trump's Legal Team: Trying to Protect the President From Mueller's 'Killers'

As lawyers for the world's highest-profile client, John M. Dowd and Ty Cobb have come under scrutiny for their every move and utterance – and the criticism has been harsh, according to [a report](#) *The Washington Post* published on President Trump's legal team's representation in the Russia probe.

The report says that, when the president “frets that Mueller may be getting too close to him, they assure him he has done nothing wrong, urge him to resist attacking the special counsel and insist that the investigation is wrapping up – first, they said, by Thanksgiving, then by Christmas and now by early next year.”

The team is derided by some as being indiscreet, error-prone and outmatched, write [Philip Rucker](#), [Josh Dawsey](#) and [Rosalind S. Helderman](#).

They quote Alan Dershowitz, a criminal defense attorney and Harvard Law School professor: “These are not the kinds of things that one would expect from the most powerful man in America, who has a choice of anybody to be his defense counsel. Well – almost anybody.”

[Read the Post's article.](#)

Republicans Attack ABA Over 'Not Qualified' Judicial Nominee Ratings

Senate Republicans have declared war on the American Bar Association, according to a [report from Politico](#).

For decades, the ABA has assessed judicial nominees and their fitness to serve on the bench. But now, reporters [Seung Min Kim](#) and [John Bresnahan](#) write, as the ABA has emerged as a major stumbling block in President Donald Trump's effort to transform the courts, the GOP is accusing the nonpartisan group of holding a liberal slant and is seeking to sideline it.

"The ABA has deemed at least four of Trump's judicial nominees 'not qualified' – a high number, although other administrations had the ABA evaluate candidates privately before they were nominated," they write.

Republicans have responded by ratcheting up their attacks to try to discredit the century-old group.

[Read the Politico article.](#)

2017 Data Discovery: Celebrity Lessons on Litigation, Legal Ethics, and e-Discovery

Reed Smith LLP will present a [webinar](#) offering a look back on celebrity data discovery law in 2017 and how it affects you and your organization.

The one-hour complimentary event will be Thursday, Dec. 14, 2017, at 2 p.m. Eastern time.

Presenters will be U.S. Chief District Judge Joy Flowers Conti (W.D. Pa.), e-discovery authority and Reed Smith partner David Cohen, noted entertainment lawyer Michael Kump of Kinsella Weitzman Iser Kump & Aldisert, and join Relativity's David Horrigan.

Objectives are:

- What you should—and should not—do if you or your client suddenly become a news or social media celebrity
- Understanding your legal obligations to preserve evidence for litigation
- Knowing the potential pitfalls with data sources, including audio files and text messages
- Learning ways to protect and avoid waiving the attorney-client privilege

[Register for the webinar.](#)

How Forced Arbitration and Non-Disclosure Agreements Can Perpetuate Hostile Work Environments

Non-disclosure agreements are part of an arsenal of legal tools that employers have at their disposal to protect their reputation and their bottom line – but those tools often come at the expense of wronged employees, writes [Michelle Chen](#) in an article for [The Nation](#).

She also discusses the use of forced arbitration that requires employees to channel their workplace disputes through an extralegal negotiation process, rather than through the courts.

She adds:

According to the National Women's Law Center (NWLC), both forced arbitration and NDAs have in many workplaces become a standard tactic to preempt workers from taking legal action or disclosing sexual-harassment and -assault charges. These agreements force workers to sign away their rights in exchange for a job, by making them agree to settle future disputes outside the courts through an opaque negotiation process controlled by management and lawyers—effectively sentencing women to silence before they ever step into a courtroom.

[Read the article.](#)

Will Biglaw Firms Get Caught in the Weinstein RICO Lawsuit?

Reporting on the filing of a RICO suit against the “Weinstein Sexual Enterprise” has brought up names of some Biglaw firms, but they’re not named in the complaint.

The suit alleges that Harvey Weinstein, the Weinstein Co., the company’s board members, Miramax Film Corp., and others violated the Racketeer Influenced and Corrupt Organizations Act and helped “facilitate and conceal” a pattern of sexual assault and harassment.

“Boies Schiller & Flexner has already a lost client over the debacle, and they now appear to be implicated by this RICO lawsuit,” reports [Kathryn Rubino](#) for [Above the Law](#), adding that other firms mentioned in reports include K&L Gates, U.K.-based BCL Burton Copeland, and Israel-based Gross, Kleinhendler, Hodak, Halevy, Greenberg & Co.

K&L Gates denied the implications: “The claims relating to K&L Gates are false. K&L Gates has never represented Mr. Weinstein or any other person or entity concerning investigations or inquiries relating to Mr. Weinstein,” the firm said in a statement.

[Read the Above the Law article.](#)

Legal Symposium to Explore Groundbreaking Terror-Financing Case



Trial lawyer Mark Werbner of Dallas litigation firm [Sayles Werbner](#) will address Texas lawyers about his decade-long quest to hold the Arab Bank responsible for providing financial support to U.S.-designated terror organizations.

Werbner will discuss *Linde, et al. v. Arab Bank PLC* in a presentation titled, “Fighting Terror-Financing in the Courtroom,” during the State Bar of Texas Litigation Update Institute’s 34th annual course in January 2018.

In 2014, a jury in New York sided with Werbner, finding Jordan-based Arab Bank responsible for providing financial services to Hamas for 24 terror attacks during the “Second Intifada” in Israel and the Palestinian territories. The verdict was the culmination of a lawsuit filed in 2004 to obtain justice for nearly 300 American victims and their families. The case marked the first liability verdict against a foreign bank for violating the Anti-Terrorism Act.

Currently under review by the U.S. Supreme Court is *Jesner, et*

al., v. Arab Bank, a related case that would clarify if the Alien Tort Statute (ATS) applies to corporations under the 1789 U.S. law.

The *Linde* verdict earned Werbner the 2016 Trial Lawyer of the Year Award from Public Justice, which honors attorneys who made the greatest contribution to the public interest through their work in precedent-setting, socially significant cases. His work has also been consistently recognized in top legal publications, such as The Best Lawyers in America.

J&J, Bayer Ordered to Pay \$28 Million in First Xarelto Loss

Johnson & Johnson and Bayer AG are responsible for a woman's injuries tied to the blood-thinning drug Xarelto and must pay almost \$28 million in damages, jurors concluded in the companies' first loss at a trial over the medicine.

Bloomberg Technology [reports](#) that the plaintiff said she took Xarelto, sold by J&J's Janssen Pharmaceuticals unit, for more than a year before being hospitalized in 2014 with gastrointestinal bleeding she blamed on the drug.

The jury in Philadelphia on Tuesday ordered J&J and Bayer, which jointly developed the product, to pay \$1.8 million in actual damages and \$26 million in punitive damages.

"The companies still face more than 21,000 patent suits over Xarelto, which has been linked to at least 370 deaths,

according to U.S. Food and Drug Administration reports. Patients have said that Xarelto can cause uncontrollable bleeding and that Bayer and J&J failed to provide an antidote. Some also claim the companies failed to properly warn about the drug's risks," according to Bloomberg's [Jef Feeley](#) and [Margaret Cronin Fisk](#).

[Read the Bloomberg article.](#)

Judge Kicked Off Bench After Contacting Witnesses in Wife's Case

A juvenile and domestic relations judge in southwest Virginia was removed from the bench by the Virginia Supreme Court after he admitted contacting two key witnesses in a pending federal corruption case against his wife, according to [The Washington Post](#).

"Pomrenke also has been found guilty of contempt of court by a federal judge in Bristol in connection with his wife's case and on Thursday was sentenced to two months in prison and ordered to pay the maximum allowable fine of \$1,000," writes the *Post's* [Tom Jackman](#).

His wife, Stacey Pomrenke is serving a 34-month prison sentence on multiple charges of conspiracy, extortion and wire fraud from her time as chief financial officer of Bristol Virginia Utilities.

[Read the Post's article.](#)

Trump Lawyers Say Judge Lacks Jurisdiction for Defamation Lawsuit

U.S. President Donald Trump's lawyers told a New York state judge on Tuesday that under the U.S. Constitution she had no jurisdiction over the president and therefore urged her to dismiss a defamation lawsuit by a woman who has accused Trump of sexual harassment, [reports Reuters](#).

Summer Zervos, a former contestant on Trump's reality show "The Apprentice," contends that Trump's denials of her accusations amounted to false and defamatory statements, according to reporter [Jonathan Allen](#). She said she and her business have suffered harm because Trump branded her a liar.

Trump lawyer Marc Kasowitz told the judge that "a state court may not exercise jurisdiction over the president of the United States while he or she is in office."

But the lead lawyer for Zervos pointed out that there is no case holding that a federal official can't be held to account in state court.

[Read the Reuters article.](#)

Is It Time for People to Breach Their NDAs and Speak Truth to Power?

Elie Mystal, writing for [Above the Law](#), discusses some top factors to remember when dealing with a sexual predator who has signed you to a non-disclosure agreement.



Among those factors are: the need for the predator to show actual injury, the information disclosed has to be secret and confidential, courts will consider public policy, and courts will consider unequal bargaining power.

“If you’ve signed a non-disclosure agreement, it’s a risk to violate it. You might get sued, you might be forced to pay back some money,” she warns. “Or you might set liberating case law that allows more of these claims to come forward.”

[Read the article.](#)

Two Burns Charest Lawyers to Lead Hurricane Harvey Flooding Class-Action Claims

The U.S. Court of Federal Claims has appointed two attorneys from the firm of [Burns Charest LLP](#) to lead proposed class-action claims arising from flooding in Houston that resulted from Hurricane Harvey.

Trial lawyers Daniel Charest and Larry Vincent of Burns Charest were appointed co-lead counsel, along with Charles Irvine of Irvine & Conner PLLC, to manage discovery and dispositive motions. Vincent was also appointed co-lead counsel for jurisdictional discovery and motions to dismiss.

The plaintiffs in the case are Houston homeowners whose properties were ravaged by floodwater releases from the Addicks and Barker reservoirs, which were designed for flood control.

During the massive rains that resulted from Hurricane Harvey, the Army Corps of Engineers performed controlled releases of floodwater from the reservoirs out of concern the dams would break. But the retention of flood water and subsequent releases inundated many neighborhoods, leading to hundreds of millions of dollars in damage both upstream and downstream of the reservoirs. The homeowners claim that by intentionally flooding the area, the government took their land without providing compensation in violation of the Fifth Amendment to the U.S. Constitution.

“Our clients suffered enormous damages as a result of the government’s design of the reservoirs and actions during

Hurricane Harvey,” said Charest. “We are committed to helping the people of Houston receive just compensation.”

Burns Charest represents homeowners whose properties are in the flood zone upstream of the reservoirs. There are currently hundreds of upstream lawsuits pending before the U.S. Court of Federal Claims, but the attorneys estimate that number could eventually grow to more than 15,000. The court has laid out an aggressive schedule, with dispositive motions due by June 15, 2018.

“We are very pleased that the court recognizes the urgency in resolving these claims and the need to help residents who are desperate to move forward with plans to recover, rebuild or relocate,” said Charest.

Burns Charest has brought claims throughout the United States, and is currently leading the national class action litigation against EpiPen manufacturer Mylan, and against 3M Co., based on claims of defective dental crowns.

The Houston case is *In re Addicks and Barker (Texas) Flood-Control Reservoirs*, Master Docket No. 17-3000L, U.S. Court of Federal Claims.

Trump Adds Five Names to List

of Potential Supreme Court Justices



Judge Brett Kavanaugh

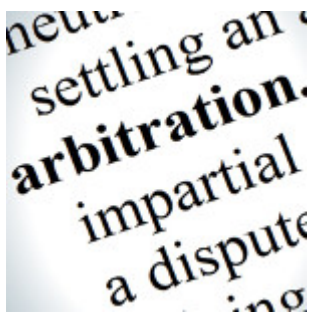
President Trump has added five names to his list of potential Supreme Court justices in a move that precedes the possible, but still unannounced, retirement of Associate Justice Anthony Kennedy, reports [USA Today](#).

Reporters [Richard Wolf](#) and [Gregory Korte](#) write that the biggest new name was that of Brett Kavanaugh, a judge on the powerful U.S. Court of Appeals for the District of Columbia Circuit.

“Like Justice Neil Gorsuch of Colorado, who was confirmed to the high court in April, Kavanaugh is a conservative who once clerked for the more moderate Kennedy,” they write. “When Trump selected Gorsuch for the late Justice Antonin Scalia’s empty seat, it was viewed as a move that might entice Kennedy, 81, to step down.”

[Read the USA Today article.](#)

Enforce Arbitration Agreement or Waive Right to Arbitrate Trade Secret Misappropriation Claims



A recent federal court denied an employer's motion to compel arbitration, finding that it waived its right to arbitration by engaging in litigation.

[George L. Kanabe](#), a partner in the San Francisco office of Orrick, Herrington & Sutcliffe LLP, [discusses](#) three key lessons the ruling provides for plaintiff-employers.

Kanabe reports that the ruling noted, "[t]here is no other reasonable interpretation of plaintiff's untimely demand for arbitration than as a deliberate tactic to test the judicial waters but then, when those waters did not flow the direction plaintiff intended, to change routes in hopes of finding a different current."

[Read the article.](#)

Prominent Trial Lawyer Dead After 'Battle With a Mental Health Issue'

Steve Mostyn, a top Democratic donor and prominent Houston trial lawyer who made his fortune suing insurance companies on behalf of homeowners after hurricanes, has died at 46.

Amber Mostyn, his wife, released a statement saying her husband died after "a sudden onset and battle with a mental health issue." She did not disclose the cause of death," reports [The Texas Tribune](#).

KTRK, the Houston ABC television affiliate, [reports](#) that Mostyn died at his home Wednesday night, and, according to authorities, he took his own life.

Tribune reporters [Morgan Smith](#) and [Jay Root](#) write that Mostyn and his wife, also an attorney, have long been considered the state's most powerful Democratic backers, spending millions on Democratic campaigns in Texas and beyond.

[Read the Texas Tribune article.](#)

Another Client Close to Firing Boies After Weinstein Revelations

Now even a pro bono client feels compelled to fire David Boies after revelations of the famed litigator's role in attempting to hide Harvey Weinstein's alleged history of sexual harassment and assault.

The *Tampa Bay Times* [reports](#) that the City of St. Petersburg, Florida, is heading toward ending its relationship with Boies.

[Charlie Frago](#) writes that Boies and his firm Boies Schiller Flexner had offered their services to the city in a challenge to *Citizens United v. Federal Elections Commission*, the 2010 U.S. Supreme Court ruling that removed restrictions on how much outside groups can spend on elections.

One city council member reacted to the revelations of Boies' actions: "I find this reprehensible and will absolutely NOT vote to accept Boies' offer to represent the city of St. Petersburg pro bono on the campaign finance issue."

[Read the Tampa Bay Times article.](#)

Ware, Jackson, Lee, O'Neill, Smith & Barrow on 2018 Best Law Firms List



Ware, Jackson, Lee, O'Neill, Smith & Barrow, LLP has been named in *U.S. News and World Report* and *Best Lawyers* list of "[Best Law Firms](#) for 2018."

According to *U.S. News and World Report*, "Firms included in the 2018 'Best Law Firms' list are recognized for professional excellence with persistently impressive ratings from clients and peers. Achieving a tiered ranking signals a unique combination of quality law practice and breadth of legal expertise."

The firm received recognition for a variety of litigation areas, including construction, mass torts, commercial, labor and employment, environmental, and trusts and estates.

[Read more about the recognition.](#)

Here's How Trump Is Rapidly

Reshaping the Judiciary

[The New York Times](#) lays out the plan the Trump team devised to fill the federal appeals courts with young and deeply conservative judges – a strategy that has started to show results.

Reporter [Charlie Savage](#) describes the plan: “Start by filling vacancies on appeals courts with multiple openings and where Democratic senators up for re-election next year in states won by Mr. Trump – like Indiana, Michigan and Pennsylvania – could be pressured not to block his nominees. And to speed them through confirmation, avoid clogging the Senate with too many nominees for the district courts, where legal philosophy is less crucial.”

He predicts that the consequence of the transformation of the judiciary will yield an appellate court system as ideologically split as Congress is today, after the Democrats regain power and use the same playbook.

[Read the NYT article.](#)

JPMorgan Judge Upends \$1.1

Million Verdict

Whistle-Blower

A U.S. district judge says she saw prejudice in a jury's verdict Tuesday that would have awarded \$1.13 million in damages to a former JPMorgan Chase & Co. employee over her dismissal, according to [Bloomberg](#).

The Manhattan jury deliberated for five hours to find the former wealth manager has been fired illegally. The jury awarded her \$563,000 in back pay and \$563,000 for emotional damage.

Reporter [Bob Van Voris](#) quoted Judge Denise Cote:

“The award of emotional damages says to me that the jury was prejudiced against the bank. That undermines the entire verdict.”

[Read the Bloomberg article.](#)

Jury Hits Hospital With \$26M Med-Mal Verdict in Tragic

Birth Case

Jurors took just eight hours to award a Brooklyn couple \$26 million – double what they had sought – after overwhelmed medical residents at Maimonides Medical Center allegedly botched the birth of their twins, leaving one dead and the other deaf and mute, reports the [New York Post](#).

Under a “high-low” agreement struck earlier by both sides, the plaintiffs agreed to receive a “high” of \$7.5 million if they won their suit and a “low” of \$1.5 million, even if they lost, according to reporter [Julia Marsh](#).

In 2010, the expectant mother went to the hospital twice with cramping and spotting but was sent home by doctors-in-training, according to the lawsuit. When her twins daughters were born later, they weighed about 1.5 pounds each. A month later, one died from an infection, and the other is deaf and suffers from kidney failure.

[Read the Post's article.](#)