

FOIA Marker

This is not a textual record. This FOIA Marker indicates that material has been removed during FOIA processing by George W. Bush Presidential Library staff.

Counsel's Office, White House

Rao, Neomi

Stack:	Row:	Sect.:	Shelf:	Pos.:	FRC ID:	Location or Hollinger ID:	NARA Number:	OA Number:
W	20	24	3	3	10166	23029	6124	6323

Folder Title:

[Brett Kavanaugh]: DC Circuit Facts

Date Filed	Case Number	Case Name	Panel	Majority Author	Majority Party	Majority2	Majority2 Party	Concur	Concur Party	Dissent	Dissent Party	Dissent in Part	Dissent in Part Party	Concur in Part, Dissent in Part	Concur in Part, Dissent in Part Party	Tally
8/15/2003	02-7040	Akinseye v. District of Columbia	KLH, ARR, MBG	Henderson	R	Randolph	R			Garland	D					RR v. D
10/31/2003	02-7016	WMATA v. Georgetown University	HTE, ARR, MBG	Edwards	D	Garland	D			Randolph	R					DD v. R
3/5/2004	02-5266	United We Stand America, et al v. IRS	DBS, KLH, DST	Tatel	D	Sentelle	R			Henderson	R					DR v. R
5/7/2004	03-5093 & 03-5094	Judicial Watch, Inc. v. DOJ	KLH, ARR, JWR	Rogers	D	Henderson	R			Randolph	R					DR v. R
5/14/2004	03-5169	National Wrestling Coaches Ass'n v. Dept. of Ed.	HTE, KLH, SFW	Edwards	D	Henderson	R			Williams	R					DR v. R
5/14/2004	02-1358	Public Util. Comm'n of California v. FERC	DBS, ARR, JWR	Randolph	R	Sentelle	R							Rogers	D	RR v. D
7/9/2004	03-7044	Barbour v. WMATA	DBS, MBG, JGR	Garland	D	Roberts	R			Sentelle	R					DR v. R
7/23/2004	02-1294	Honeywell Int'l Inc. v. EPA	DBS, ARR, JWR	PC (Sentelle)	R			Randolph	R					Rogers	D	RR v. D
7/23/2004	03-3060, et al	United States v. Delgado-Garcia	DBS, ARR, JWR	Sentelle	R			Randolph	R					Rogers	D	RR v. D
7/23/2004	02-3110	United States v. Earle	DHG, KLH, SFW	Ginsburg	R	Williams	R			Henderson	R					RR v. R
7/27/2004	02-5342	McDonnell Douglas Corp. v. USAF	DHG, HTE, MBG	Ginsburg	R	Edwards	D							Garland	D	RD v. D
8/3/2004	03-3118	United States v. Riley	JWR, DST, MBG	Garland	D	Tatel	D							Rogers	D	DD v. D
8/27/2004	03-7128	United States ex. rel. Totten v. Bombardier Corp. et al.	JWR, MBG, JGR	Roberts	R	Rogers	D			Garland	D					RD v. D
10/8/2004	03-5169	National Wrestling Coaches Ass'n v. Dept. of Ed. (Pet. for rehearing en banc)	Full Court except DST	PC	PC	Edwards, Sentelle, Henderson, Randolph, Rogers, Tatel, Garland, Roberts	D, R, R, R, D, D, D, R			Williams, Ginsburg (did not write)	R, R					4 R, 4 D v. 2 R
12/21/2004	03-3100	United States v. Mellen	DHG, KLH, JGR	Roberts	R	Ginsburg	R					Henders on	R			RR v. R
1/7/2005	02-1294	Honeywell Int'l Inc. v. EPA (Pet. for panel rehearing)	DBS, ARR, JWR	PC (Sentelle)	R	Randolph	R							Rogers	D	RR v. D
1/21/2005	02-3010	United States v. Rashad	DHG, ARR, JWR	Ginsburg	R	Rogers	D			Randolph	R					RD v. R
1/28/2005	02-7106, et al	People for the Ethical Treatment of Animals v. Gittens	DHG, ARR, JWR	Randolph	R	Ginsburg	R							Rogers	D	RR v. D
1/28/2005	04-5026	Taucher v. CFTC	HTE, KLH, JGR	Roberts	R	Henderson	R			Edwards	D					RR v. D
2/4/2005	01-1072 & 04-1084	Rainbow/PUSH Coalition v. FCC	KLH, JWR, DST	Henderson	R	Tatel	D			Rogers	D					RD v. D
2/4/2005	04-5252	United States v. Philip Morris USA Inc.	DBS, DST, SFW	Sentelle	R			Williams	R	Tatel	D					RR v. D
2/8/2005	05-5016 & 05-5081	Seegars, et al. v. Ashcroft	DBS, DST, SFW	Williams	R	Tatel	D			Sentelle	R					RD v. R
2/25/2005	03-1323 & 03-1357	Federated Logistics and Opers. v. NLRB	DBS, KLH, DST	Sentelle	R	Tatel	D					Henders on	R			RD v. R

Date Filed	Case Number	Case Name	Panel	Majority Author	Majority Party	Majority2	Majority2 Party	Concur	Concur Party	Dissent	Dissent Party	Dissent in Part	Dissent in Part Party	Concur in-Part, Dissent in Part	Concur in Part, Dissent in Part Party	Tally
3/15/2005	04-1037	Amer. Lib. Ass'n v. FCC	HTE, DBS, JWR	Edwards	D	Rogers	D			Sentelle	R					DD v. R
3/18/2005	04-15145	Select Milk Producers, Inc. v. Veneman	HTE, KLH, ARR	Edwards	D	Randolph	R			Henderson	R					DR v. R
3/22/2005	03-7174	Salazar v. WMATA	DBS, DST, SFW	Tatel	D	Sentelle	R			Williams	R					DR v. R
5/31/2005	04-5057	AFL/CIO v. Chao	HTE, JWR, JGR	Rogers	D	Edwards	D							Roberts	R	DD v. R
6/28/2005	04-7034 & 04-7035	APCC Servs., Inc. v. Sprint Comms. Co.	DHG, DBS, ARR	PC (Randolph)	R					Ginsberg	R	Sentelle (concur in judgm't)	R			Rv. R
7/5/2005	04-7128, et al.	Brewers & Maltsters, Local No. 6 v. NLRB	DHG, DBS, JWR	Rogers	D	Ginsburg	R					Sentelle	R			DR v. R
7/5/2005	03-7143	Smith v. District of Columbia	DHG, HTE, DST	Tatel	D	Edwards	D			Ginsberg	R					DD v. R
7/15/2005	03-1361, et al.	Commonwealth of Massachusetts v. EPA	DBS, ARR, DST	Randolph	R					Tatel	D	Sentelle (concur in judgm't)	R			R v. R (dissent in part, concur in judgm't) v. D (dissent)
7/15/2005	04-5171 & 04-5172	Pigford v. Johanns	DBS, KLH, JWR	Henderson	R	Sentelle	R							Rogers	D	RR v. D
7/15/2005	04-5352	Shays v. FEC	HTE, KLH, DST	Tatel	D	Edwards	D			Henderson	R					DD v. R
7/22/2005	04-3021	United States v. Jackson	HTE, JWR, JGR	Rogers	D			Edwards	D	Roberts	R					DD v. R
7/22/2005	01-3103	United States v. Pollard	DBS, KLH, JWR	Sentelle	R	Henderson	R							Rogers	D	RR v. D
7/26/2005	04-7116	Goldring v. District of Columbia	DBS, KLH, JWR	Henderson	R	Sentelle	R			Rogers	D					RR v. D
11/2/2005	04-5301	Lee v. DOJ (Pet. for rehearing en banc)	Full Court except JRB and TBG	PC	PC	Ginsburg, Sentelle, Henderson, Randolph	R, R, R, R			Edwards (did not write), Rogers, Tatel, Garland	D (did not write), D, D, D					4 R v. 4 D
12/2/2005	03-1361, et al.	Commonwealth of Massachusetts v. EPA (Pet. for rehearing en banc)	Full Court except KLH and MBG	PC	PC	Ginsburg, Sentelle, Randolph, Brown	R, R, R, R			Rogers, Tatel, Griffith (did not write)	D, D, R (did not write)					4 R v. 2 D, 1 R
1/20/2006	04-1366 & 04-1403	Detroit Newspaper Agency v. NLRB	KLH, HTE, SFW	Edwards	D	Williams	R			Henderson	R					DR v. R
2/24/2006	03-3066	United States v. Valdes	KLH, HTE, SFW	Williams	R	Edwards	D			Henderson	R					RD v. R
2/28/2006	04-5418	NLRB v. Cooper Tire & Rubber Co.	KLH, JRB, TBG	Brown	R	Henderson	R			Griffith	R					RR v. R (dissent in part, concur in judgm't)
3/28/2006	04-7203	Boehner v. McDermott	DHG, DBS, ARR	Randolph	R	Ginsburg	R			Sentelle	R					RR v. R
5/2/2006	04-5350	Abigail Alliance for Better Access to Developmental Drugs v. Eschenbach	DHG, JWR, TBG	Rogers	D	Ginsburg	R			Griffith	R					DR v. R

D.C. CIRCUIT JUDGES WITH PRIOR EXECUTIVE/LEGISLATIVE POSITIONS

Name	Prior Executive/Legislative Position
Charles Duell	U.S. Commissioner of Patents
Louis E. McComas	U.S. Sen.*; U.S. Rep.
Charles Henry Robb	AAG*
Josiah A. Van Orsdel	AAG*
Constantine Joseph Smyth	Spec. Asst. to AG*
Duncan Lawrence Groner	USA
Harold Montelle Stephens	AAG*
Justin Miller	Spec. Asst. to AG
Henry White Edgerton	Spec. Asst. to AG
Frederick M. Vinson	U.S. Rep.*
Thurman Wesley Arnold	AAG*
Bennett C. Clark	U.S. Senator*
James McPherson Proctor	Spec. AAG
David L. Bazelon	AAG*
Charles Fahy	SG; Asst. SG
George Thomas Washington	Asst. SG*; Acting SG; Spec. Asst. to AG
John Anthony Danaher	Counsel, Republican Senatorial Cmte.*; U.S. Senator
Warren E. Burger	AAG*
J. Skelly Wright	USA
Edward A. Tamm	Deputy Dir., FBI
Spottswood W. Robinson III	U.S. Commission of Civil Rights
George E. MacKinnon	Spec. AAG; USA; U.S. Rep.
Malcolm R. Wilkey	AAG; USA
Patricia M. Wald	AAG*
Abner Mikva	U.S. Rep.*
Harry T. Edwards	Chair, National RR Passenger Corp.*
Robert H. Bork	Acting AG; SG
Antonin Scalia	AAG
Kenneth W. Starr	Counselor to the AG*
Lawrence H. Silberman	Ambassador; DAG; Undersec'y of Labor
James L. Buckley	Undersec'y for Security Assistance, State Dept.; U.S. Senator
Douglas H. Ginsburg	AAG*; DAAG
Clarence Thomas	Chair, EEOC*; Asst. Sec'y for Civil Rights, Dept. of Educ.; LA, Sen. John Danforth
A. Raymond Randolph	Deputy SG; Special Counsel, U.S. House Cmte. on Ethics/Cmte. on Standards of Official Conduct
David Tatel	Dir., Office of Civil Rights, U.S. Dept. of Health, Education, and Welfare

Merrick Garland	Principal Assoc. DAG*; DAAG
John G. Roberts	Principal Deputy SG; Counsel to the Pres.; Spec. Asst. to AG
Thomas B. Griffith	Legal counsel, U.S. Senate

* Indicates position when nominated to the D.C. Circuit

Abbreviations:

AAG Assistant Attorney General
AG Attorney General
DAAG Deputy Assistant Attorney General
DAG Deputy Attorney General
LA Legislative Assistant
SG Solicitor General
USA U.S. Attorney

SUPREME COURT JUSTICES WITH PRIOR EXECUTIVE/LEGISLATIVE POSITIONS

Name	Prior Executive/Legislative Position
John Jay	Sec'y of Foreign Affairs*
John Rutledge	Member, Continental Congress
James Wilson	Member, Continental Congress
William Paterson	U.S. Senator
Oliver Ellsworth	U.S. Senator*
John Marshall	Sec'y of State*; U.S. Rep.; U.S. Minister to France
Gabriel Duvall	U.S. Comptroller of the Treasury*; U.S. Rep.
Joseph Story	U.S. Rep.
Smith Thompson	Sec'y of the Navy*
John McLean	U.S. Postmaster Gen.*; U.S. Rep.
Henry Baldwin	U.S. Rep.
James Moore Wayne	U.S. Rep.*
Philip Barbour	Speaker of the House; U.S. Rep.
Roger Taney	Treasury Sec'y; AG; Acting Sec'y of War
John McKinley	U.S. Senator*; U.S. Rep.
Levi Woodbury	U.S. Senator*; Treasury Sec'y; Sec'y of Navy
Nathan Clifford	U.S. Minister to Mexico; AG; U.S. Rep.
Salmon P. Chase	Treasury Sec'y*; U.S. Sen.
William Strong	U.S. Rep.
Stanley Matthews	U.S. Senator*
Lucius Lamar	Sec'y of Interior*; U.S. Sen.; U.S. Rep.
Howell Jackson	U.S. Senator
Edward Douglass White	U.S. Senator*
Joseph McKenna	AG*; U.S. Rep.
William Rufus Day	Sec'y of State; Asst. Sec'y of State
William H. Moody	AG*; Sec'y of Navy; U.S. Rep.; USA
Charles Evan Hughes	Sec'y of State (prior to nom. as Chief Justice); Spec. Asst. to AG
Willis Van Devanter	AAG
Mahlon Pitney	U.S. Rep.
James C. McReynolds	AG*
William Howard Taft	President; Sec'y of War; SG
George Sutherland	U.S. Sen.; U.S. Rep.
Edward Terry Sanford	AAG; Spec. Asst. to AG
Harlan Stone	AG*
Owen Josephus Roberts	Spec. USA
Hugo Black	U.S. Senator*
Stanley F. Reed	SG*
William O. Douglas	Chair, SEC*
Frank Murphy	AG*
James F. Byrnes	U.S. Sen.*; U.S. Rep.
Robert H. Jackson	AG*; SG; AAG
Harold Hitz Burton	U.S. Senator*
Frederick M. Vinson	Treasury Sec'y*; U.S. Rep.
Tom C. Clark	AG*; AAG
Byron R. White	DAG*
Arthur J. Goldberg	Sec'y of Labor*
Abe Fortas	Undersec'y of the Interior
Thurgood Marshall	SG*

Warren E. Burger	AAG
William H. Rehnquist	AAG*
John Paul Stevens	Assoc. Counsel, U.S. House Subcmte. on the Study of Monopoly Power
Antonin Scalia	AAG
Clarence Thomas	Chair, EEOC; Asst. Sec'y for Civil Rights, Dept. of Educ.; LA, Sen. John Danforth
Stephen G. Breyer	USSC Commissioner; Chief Counsel, U.S. Senate Judiciary Cmte.; Special Asst. to AAG
John G. Roberts	Principal Deputy SG; Assoc. Counsel to the Pres.; Spec. Asst. to AG
Samuel Alito	USA; DAAG; Asst. to SG

* Indicates position when nominated to the U.S. Supreme Court

Abbreviations:

AAG	Assistant Attorney General
AG	Attorney General
DAAG	Deputy Assistant Attorney General
DAG	Deputy Attorney General
LA	Legislative Assistant
SG	Solicitor General
USA	U.S. Attorney

Rao, Neomi J.

From: Jamil.N.Jaffer@usdoj.gov
Sent: Friday, May 05, 2006 7:36 PM
To: Kavanaugh, Brett M.
Cc: Kristi.R.Macklin@usdoj.gov; Dixon, Grant; Rao, Neomi J.; Gerry, Brett C.
Subject: DC Circuit Analysis

Attachments: DC Circuit Dissents (07.25.03 - 05.05.06).xls



DC Circuit Dissents
(07.25.03 ...

All,

Below are the results of the D.C. Circuit analysis. The analysis looked at all opinions filed by the court between July 25, 2003 and May 5, 2006 (based on the D.C. Circuit's opinion release sheets available on the D.C. Circuit's website).

Of the 40 panel cases with dissents, 18 cases could be said to involve a party line split as to the outcome. Of the three en banc cases with dissents, only 1 involved a party line split.

As such, only 19 out of 657 cases - or less than three percent (2.89%) - could be said to be the subject of party line splits on the D.C. Circuit.

The underlying data is below and (in additional detail) in the attached Excel spreadsheet. Let me know if you have questions on this.

Total cases decided: 657

Dissents: 43 (6.54%)

Dissent Analysis:

43 cases with dissents (40 panel cases, 3 en banc cases)

Of the 40 panel cases:

Number of cases (of the 40 panel cases)	Type of Decision	Percentage
4 cases 10%	2 Reps v. 1 Rep	
1 case 2.5%	2 Reps v. 1 Rep (part. diss., conc. in judgment)	
1 case 2.5%	2 Dems v. 1 Dem	2.5%
1 case 2.5%	1 Rep. v. 1 Rep. (part. diss., conc. in judgment) v. 1 Dem (diss.)	
11 cases 27.5%	2 Reps v. 1 Dem	27.5%
6 cases 15%	2 Dems v. 1 Rep	15%
13 cases 32.5%	1 Rep, 1 Dem v. 1 Rep	
3 cases 7.5%	1 Rep, 1 Dem v. 1 Dem	

Of the 3 en banc cases:

Number of cases Type of Decision
(of the 3 en banc cases)

Percentage

1 case	4 Reps, 2 Dems v. 1 Rep	33%
1 case	4 Rep v. 4 Dems	33%
1 case	4 Reps, 4 Dems v. 2 Reprs.	
33%		

<<DC Circuit Dissents (07.25.03 - 05.05.06).xls>>

Best,

JJ
Jamil N. Jaffer
Counsel
United States Department of Justice - Office of Legal Policy
(202) 307-0120 (direct)
(202) 514-2424 (fax)
Jamil.N.Jaffer@usdoj.gov