

Senator Dick Durbin
Follow-up Questions for Jane Nitze
June 12, 2018

For questions with subparts, please answer each subpart separately.

1. In my previous question 1(a), I noted that in your questionnaire you said you have worked as an “independent contractor” for Justice Neil Gorsuch since October 2017. I asked you to describe with specificity what work you have performed in this capacity. You responded “I assist Justice Gorsuch on research and writing projects unrelated to his official duties.” This answer did not provide specificity on the work you have performed.

- a. **Did you work on researching and/or writing any speeches delivered by Justice Gorsuch? If so, please list the date and location of each speech.**

No.

- b. **Did you work on researching and/or writing any materials for possible publication by Justice Gorsuch? If so, please list all publications or future publications for which you have performed research or writing.**

Yes. I assist Justice Gorsuch with research and writing in connection with a forthcoming book on separation of powers, the judicial role, methods of interpretation, equal access to justice, and ethics.

- c. **Did you work on researching and/or writing any analysis of legal doctrine or caselaw for Justice Gorsuch? If so, please list all such matters.**

All the research and writing I have done for Justice Gorsuch is in connection with the book discussed in response 1(b). This forthcoming book will include discussion of legal doctrine and caselaw relevant to the topics listed in 1(b).

- d. **Did you work on researching and/or writing on any topics related to privacy or civil liberties for Justice Gorsuch? If so, please list all such topics.**

All the research and writing I have done for Justice Gorsuch is in connection with the book discussed in response 1(b). Certain topics discussed in the book, such as separation of powers and equal access to justice, relate generally to civil liberties and privacy.

- e. **Are there any other specific research projects you have assisted Justice Gorsuch on, and if so, has there been any overlap between the issue areas you have researched and matters that have come before the Supreme Court since October 2017?**

No.

- f. **Have you had any meetings or communications with Justice Gorsuch's law clerks from October 2017 to the present?**

Yes. I consider many of Justice Gorsuch's former and current law clerks to be my friends. I have seen and communicated with them on a number of occasions from October 2017 to the present, including at a recent reunion of law clerks.

- g. **Have you discussed your research or writings with Justice Gorsuch's law clerks between October 2017 and the present? If so, please list the matters discussed.**

Yes. As noted in response to questions 1(a)-(e), my work for Justice Gorsuch is confined to his forthcoming book. I consider many of Justice Gorsuch's former and current law clerks to be my friends, and I have discussed with several of them my work on that matter.

- h. **Have you discussed your research and writing projects for Justice Gorsuch with any members of the following organizations? If so, please list the matters discussed and the members involved.**

- a. **The National Security Institute at the Antonin Scalia School of Law at George Mason University;**
- b. **The Federalist Society;**
- c. **The Heritage Foundation; and**
- d. **The Judicial Crisis Network.**

Responses to (a)-(d). I have not discussed the work I perform for Justice Gorsuch with any individuals in their capacity as members of any of these organizations. I have discussed this work with friends and family. These friends include Justice Gorsuch's current and former law clerks, some of whom I believe are members of the Federalist Society. I am not aware that any are members of the Heritage Foundation or the Judicial Crisis Network. One of the former law clerks is the founder of the National Security Institute; I do not believe any others are members of the Institute.

2. In my previous question 2(i) I asked if you have a procedure in place to ensure that your work as a National Security Fellow does not create a conflict of interest with your work as an independent contractor for Justice Gorsuch. I asked you to provide this procedure with specificity. You responded "I ensure that nothing I do as a Fellow creates a conflict of interest with my work for Justice Gorsuch." This answer did not provide specificity on the procedure you use to ensure that conflicts of interest do not exist.

- a. **Does any person, other than you, review the work you do as an independent contractor and as a National Security Fellow to ensure that there are no conflicts of interest? If so, please name that person or persons.**

Not to date. As I stated previously, because of other work and personal commitments, I have not yet taken advantage of many of the opportunities that the Visiting Fellows Program offers. To date, I have reviewed the work of other Fellows and the materials, including papers, commentary, and media appearances, circulated by the NSI and its faculty and Fellows. I do not anticipate that any work I would do as a Fellow would conflict with the work I perform as an independent contractor for Justice Gorsuch, but I would discuss any potential conflicts with knowledgeable ethics officials as appropriate.

- b. **Is your independent contractor arrangement with Justice Gorsuch formalized in a written contract?**

No.

- c. **If the answer to question (b) is yes, does your contract describe a process for safeguarding against conflicts of interest?**

N/A.

- d. **When your independent contractor arrangement with Justice Gorsuch ends, will you provide written materials and other work product you performed as an independent contractor to the Supreme Court for recordkeeping and/or archiving? If not, what will happen to your written materials and other work product?**

The work I perform for Justice Gorsuch is not related to his official duties. As written materials and other work product I produce as an independent contractor belong to Justice Gorsuch, I will follow his directions as to whether I should provide them to the Supreme Court.

- e. **If the answer to question (b) is yes, will you provide the Committee with a copy of the terms of your contract (with appropriate redactions, if necessary)?**

N/A.

3. **Which officials at the Supreme Court or at the Administrative Office of the U.S. Courts approved your agreement to serve as an independent contractor for Justice Gorsuch? Please name the individual(s) who reviewed and approved this arrangement.**

Although I do not know the full extent of any discussions Justice Gorsuch may have had with officials at the Supreme Court or at the Administrative Office of the U.S. Courts, I understand that Legal Counsel for the Supreme Court approved my continued work for him while my nomination to be a member of the Privacy and Civil Liberties Oversight Board is pending. As previously indicated, I intend to cease such work if I am fortunate enough to be confirmed to the position for which I am being considered by the U.S. Senate.