Most Influential Judges On Trump's Supreme Court Short List

By **Jacqueline Bell** | January 19, 2017, 10:04 PM EST

Seventh Circuit Judge Diane Sykes speaks during the Federalist Society's National Lawyers Convention in November. (AP)

President-elect Donald Trump's list of potential U.S. Supreme Court nominees is packed with judges with well-established conservative bona fides, but in the day-to-day work of writing opinions, which of them has actually made the biggest mark? A new look at their rulings, and how often those decisions have been cited by fellow judges, reveals a ranking of judicial influence with some surprises at the top — and at the bottom.
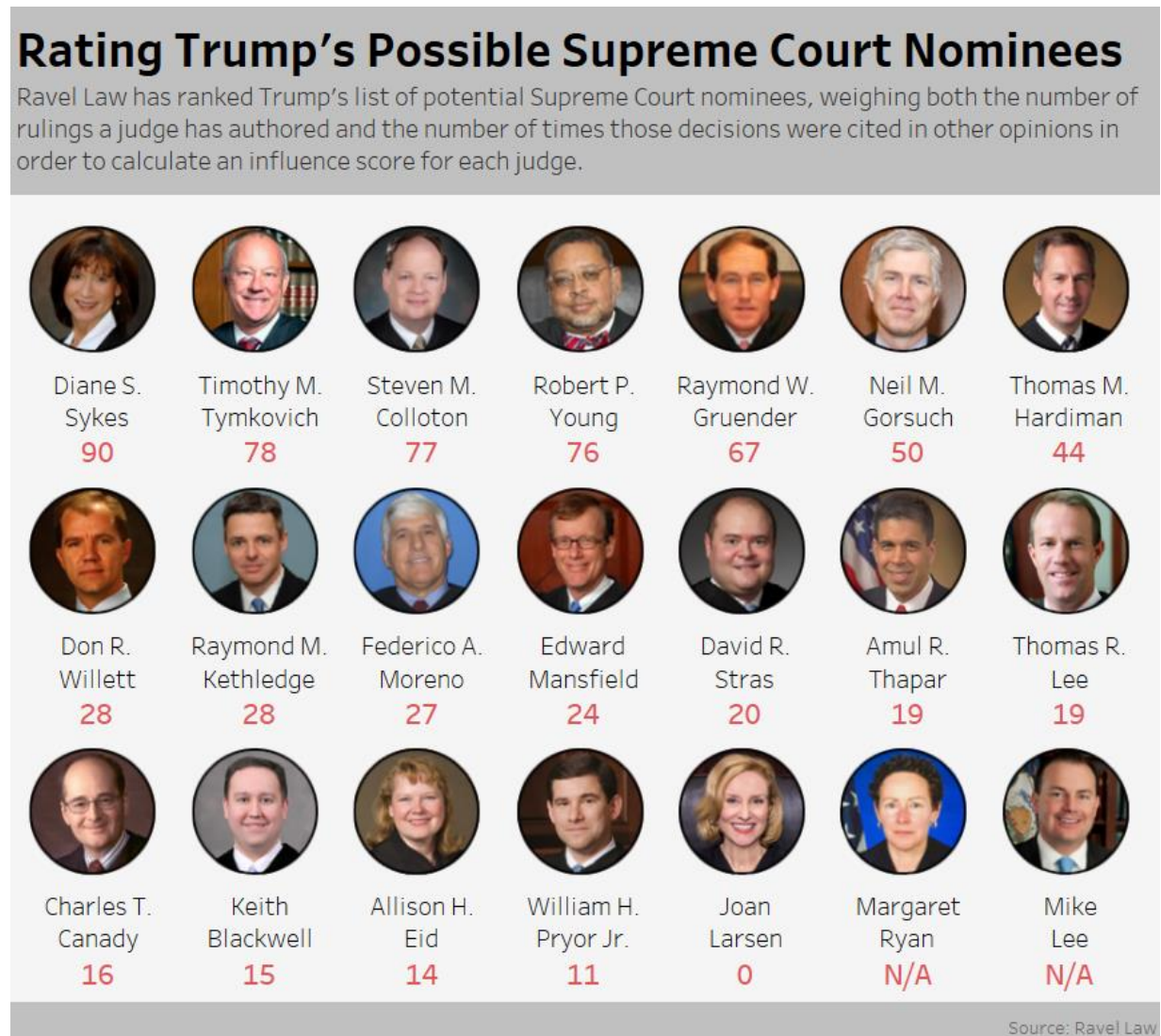
In an unusual move for a presidential candidate, Trump released a list of potential Supreme Court nominees during the campaign and vowed to select a nominee only from that list, in an apparent effort to quell concerns among the conservative rank and file over who he might choose to fill the late Justice Antonin Scalia's seat. At a press conference on Jan. 11, Trump said he was still working from that list, and had already "met with numerous candidates," promising to make a formal nomination within two weeks of his inauguration.

Most of the people on Trump's list — last updated in September — are judges who have large portfolios of opinions that can be mined for information about the ways they think, how they are perceived by their peers and the kind of Supreme Court justices they might be.

Using a formula that weighs both the productivity of the judge — how many opinions they've written — as well as the number of times those opinions have been cited in other rulings, legal analytics firm Ravel Law has created an influence score for each member of Trump's short list and ranked them by their relative reach and impact among their fellow judges.

"It's a very data-driven approach to uncover who's persuasive and who's influential within the judicial community," said Daniel Lewis, chief executive officer of Ravel Law.

Influence: Scored

Rating Trump's Possible Supreme Court Nominees

Ravel Law has ranked Trump's list of potential Supreme Court nominees, weighing both the number of rulings a judge has authored and the number of times those decisions were cited in other opinions in order to calculate an influence score for each judge.

Diane S. Sykes	Timothy M. Tymkovich	Steven M. Colloton	Robert P. Young	Raymond W. Gruender	Neil M. Gorsuch	Thomas M. Hardiman
90	78	77	76	67	50	44

Don R. Willett	Raymond M. Kethledge	Federico A. Moreno	Edward Mansfield	David R. Stras	Amul R. Thapar	Thomas R. Lee
28	28	27	24	20	19	19

Charles T. Canady	Keith Blackwell	Allison H. Eid	William H. Pryor Jr.	Joan Larsen	Margaret Ryan	Mike Lee
16	15	14	11	0	N/A	N/A

Source: Ravel Law

Topping Ravel's ranking are several judges who have been frequently mentioned as top contenders by the president-elect himself, or have been discussed as likely members of a narrowed short list being

carefully considered by the Trump team, particularly the Seventh Circuit judge at the top of the list, Judge Diane S. Sykes.

While presidents consider a wide range of factors when selecting a judge for a Supreme Court nominee, a high rate of citations is usually a sign that the judge is well-respected in at least some quarters of the judiciary.

"Judges who are well regarded by their colleagues and whose opinions are thought to be well reasoned are typically judges who are cited often," said Mark Kende, professor and director of the Constitutional Law Center at Drake University Law School. "And if you have a judiciary of many different kinds of people who nonetheless overall think this judge does a particularly good job, and cite them frequently, then I think that is a definite plus."

U.S. Circuit Judge Sykes, who scored top marks for influence in Ravel Law's analysis, is certainly something of a celebrity in conservative circles, favored by some Federalist Society attorneys, and considered to be a leading contender to be Trump's pick for the Supreme Court.

While on the Seventh Circuit, she has written 575 opinions since she was confirmed in 2004, fewer rulings than some of her fellow judges on Trump's short list. But several of her opinions have had a demonstrable and remarkable influence on her peers. Four of her opinions have been cited more than 700 times, and one — Pruitt v. Mote, a case examining the standard for considering an indigent plaintiff's request for court-appointed counsel — has been cited 1,350 times, according to Ravel Law's data.

While Judge Sykes has a significantly higher influence score than the other judges on Trump's short list, other judges often mentioned as likely nominees — including U.S. Circuit Judges Steven Colloton, Raymond Gruender and Neil Gorsuch — also have had a noteworthy reach and impact as demonstrated by their influence scores.

Texas Supreme Court Justice Don Willett also comes in higher in the ranking than some might expect. The work of a state supreme court justice differs significantly from that of a federal appeals court judge, so it can be difficult to compare the work of those jurists. Yet Justice Willett has scored a remarkable citation rate on his 58 authored opinions since he joined the Texas Supreme Court in 2005.

"Justice Willett has created a reputation for himself. He's written some long opinions that have heft that make him different than your typical state court judge," said Eric Segall, professor at Georgia State University College of Law.

Notching the lowest influence scores on the list are Michigan Supreme Court Justice Joan Larsen and Eleventh Circuit Judge William Pryor.

Justice Larsen has only been on the bench since October 2015, and has authored just 10 opinions, none of which have yet been cited, which explains her relatively low ranking.

Judge Pryor, on the other hand, is often mentioned in the same breath as Judge Sykes as a jurist highly likely to be tapped by Trump for the high court, yet he scores a relatively meager 11 on Ravel's influence score.

The reason? He has authored fewer opinions overall in his time as a federal appeals court judge than several of his peers and, taken as a whole, has not had as many opinions widely cited as other appeals court judges.
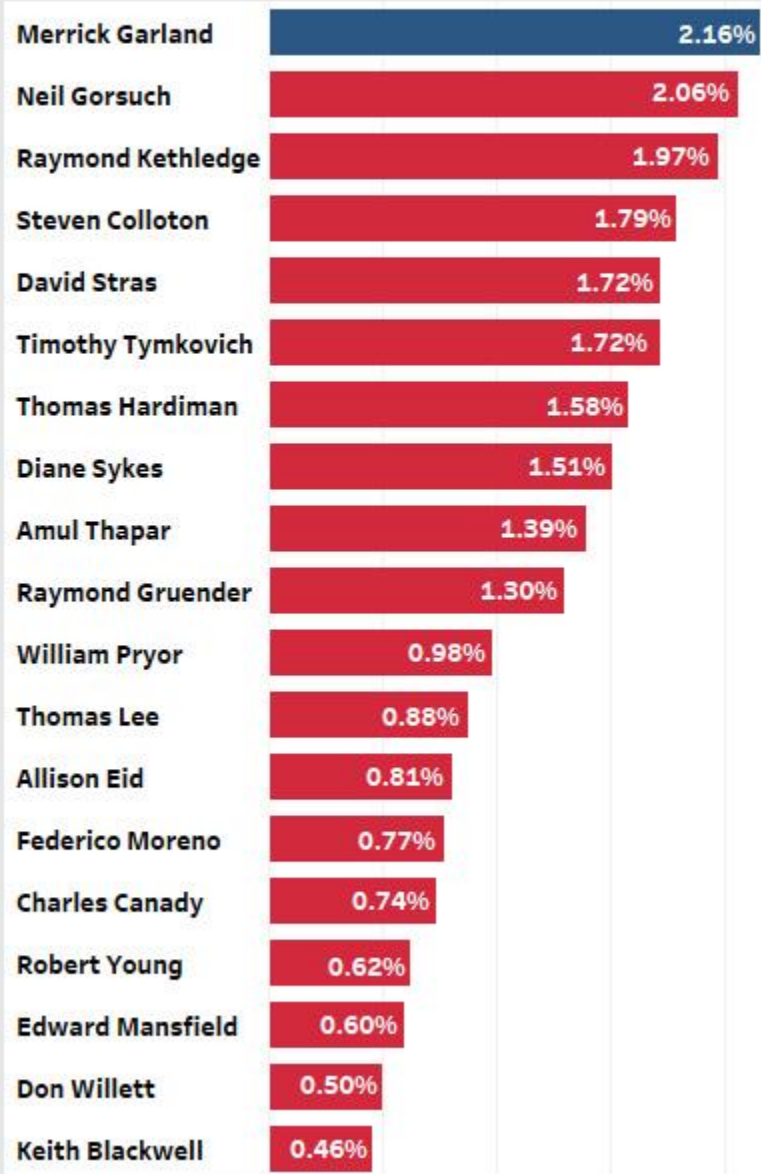
Advice and Consent

No matter who Trump taps for the Supreme Court, senators and their staff will be gathering a wealth of information in order to make a case for or against nominees at confirmation hearings, including anything they've written and what impact and influence those writings have had over the course of their careers.

The Scalia Score

The amount of times the possible Supreme Court nominees have cited opinions authored by the late Justice Antonin Scalia.

Judge	Score
Merrick Garland	2.16%
Neil Gorsuch	2.06%
Raymond Kethledge	1.97%
Steven Colloton	1.79%
David Stras	1.72%
Timothy Tymkovich	1.72%
Thomas Hardiman	1.58%
Diane Sykes	1.51%
Amul Thapar	1.39%
Raymond Gruender	1.30%
William Pryor	0.98%
Thomas Lee	0.88%
Allison Eid	0.81%
Federico Moreno	0.77%
Charles Canady	0.74%
Robert Young	0.62%
Edward Mansfield	0.60%
Don Willett	0.50%
Keith Blackwell	0.46%

Source: Ravel Law

Trump has long vowed to replace the late Justice Antonin Scalia with a jurist with similar leanings. Ravel Law examined which judges on Trump's short list might have had the most affinity for Justice Scalia and his writings by tallying the total number of citations in each judge's portfolio of decisions, then calculating how many times they cited to opinions authored by Justice Scalia.

Topping the list was U.S. Circuit Judge Neil Gorsuch, closely followed by U.S. Circuit Judges Raymond Kethledge and Steven Colloton, all reportedly top contenders for Justice Scalia's seat.

By way of comparison, President Barack Obama's pick for Justice Scalia's seat, D.C. Circuit Judge Merrick Garland, actually scored higher on this ranking than any of the judges on Trump's short list, with a "Scalia Score" of 2.16 percent.

There are other considerations at work, however, when it comes to who will be nominated. Trump may also have to consider the next Supreme Court justice's potential ability to not only be similar to Justice Scalia, but also have the ability to influence and even sway other justices.

Justice Scalia was not known to be a coalition builder, said Michael Gerhardt, a constitutional law professor at the University of North Carolina School of Law. He had a hard-nosed judicial style, was viewed as unwilling to compromise, and often wrote blistering criticisms of the majority opinions, using phrases like "argle-bargle" and "jiggery-pokery" to describe their conclusions.

His dissent in the same-sex marriage case Obergefell v. Hodges perhaps best captures his view of consensus building:

"If even as the price to be paid for a fifth vote, I ever joined an opinion for the court that began: 'The Constitution promises liberty to all within its reach, a liberty that includes certain specific rights that allow persons, within a lawful realm, to define and express their identity,' I would hide my head in a bag. The Supreme Court of the United States has descended from the disciplined legal reasoning of John Marshall and Joseph Story to the mystical aphorisms of the fortune cookie."

While Justice Scalia's way with words may have had a significant impact on the conservative legal community, his ability to move other justices to his side or to find common ground with the liberal wing of the court was more limited.

"He was a great wordsmith. He wrote incredibly well and he was very quotable. But in terms of actual influence, he may have had less impact than some other justices," Gerhardt said.

Methodology: For each judge, Ravel Law looked at the total number of citations and then calculated how many times the judge cited opinions authored by Justice Scalia, counting only the unique instance of from/to opinion pairings, regardless of how many times a ruling referenced the cited opinion.

That work is made much easier when the nominee is a judge.

"It's a very visible business. And consequently, I think the tendency is to pick a candidate where the nominator can get as much information about him or her as possible. And the best sort of person for that is a judge," said G. Edward White, professor at the University of Virginia School of Law and a former clerk to U.S. Chief Justice Earl Warren.

A judge with a high influence score will also certainly have a more significant body of work that senators, interest groups and the public will be able to dig into.

"They've issued a lot of decisions, and those decisions have had an impact. So, in terms of looking at a judge's track record and using it as a way to understand how they might rule in the future, it's a really powerful way to sift through this list," Lewis said.

Yet while many of the judges on Trump's short list have a wealth of highly cited cases, those opinions do not tend to revolve around particularly high-profile legal issues. While any nominee will certainly be questioned on contentious issues like abortion in a confirmation hearing, a judge's day-to-day influence in the judiciary tends to cover far less prominent legal questions.

Judge Sykes' top-cited cases, for example, involve not only questions of pro bono representation but also controversies over Social Security benefits, the Fair Credit Reporting Act and class action certification, disputes that would be familiar to any well-informed attorney but unlikely to make waves at a confirmation hearing.

Most of a confirmation hearing's focus is likely to be on the more controversial cases, which a typical appeals court judge handles only a handful of times. Judge Sykes, for example, is more likely to face questions about her 2013 ruling shielding for-profit companies from the Affordable Care Act's contraception mandate in Korte v. Sebelius, or a 2006 ruling in Christian Legal Society v. Walker that blocked a university from penalizing a Christian student group that had anti-gay policies, rather than pointed queries over her most-cited rulings.

"It may well be that these people have influence, but it may not be on the issues that are of concern to the president and to the Senate. The issues that are of concern to the president and the Senate are actually relatively few. Most circuit court judges end up looking at a fairly wide variety of cases, many of which never end up before the Supreme Court of the United States," said Michael Gerhardt, a constitutional law professor at the University of North Carolina School of Law who has been an adviser on several Supreme Court nomination hearings.

In another prominent example, Judge Pryor, who reportedly met with Trump on Saturday, is perhaps best known for his pointed criticism of Roe v. Wade, including calling it the "the worst abomination of constitutional law in our history," or the brief he authored as Alabama attorney general in support of the Texas anti-sodomy law that was ultimately overturned by the Supreme Court. A few of his opinions at the Eleventh Circuit have sparked controversy as well, including his decision in Common Cause/Georgia v. Billups upholding a Georgia voter identification law, as well as his consistent support for groups pursuing claims of religious liberty, including backing a county's practice of opening all its meetings with a prayer in Pelphrey v. Cobb County, Georgia.

But his most cited case — Ingram v. Commissioner of Social Security Administration, which has been cited more than a thousand times — covers the less high-profile question of the evidence a federal court must consider when reviewing the denial of an application for disability benefits.

Still, judges' citation rates and their reach and influence among their peers does send signals about their potential abilities as Supreme Court justices and their potential roles at the high court, arguments that could be used to bolster support for a particular nominee.

"I could see it being icing on the cake at a confirmation hearing," Segall said.

Results Not Guaranteed

Judges' records, reach and influence give nominating presidents and the senators that confirm them important clues about how they might perform on the Supreme Court, but it's ultimately impossible to predict where new justices will fit into the culture of the court and what kind of influence, if any, they may ultimately wield over their colleagues.

On the Roberts court, Chief Justice John Roberts and Justice Elena Kagan are largely viewed as consensus builders who are committed to the idea that, if possible, the court should work to find its way to a ruling that most of the justices can agree on, even if the ruling is an ultimately narrow one.

Justice Antonin Scalia, by contrast, was not known as a justice willing to compromise, but he wielded his legal intellect and sharp writing style in a long and somewhat successful campaign to advance constitutional originalism as an alternative to the so-called living Constitution doctrine.

On the other hand, some of the most controversial rulings the Supreme Court has issued in recent years have been authored by Justice Anthony Kennedy, in part because he is less ideologically driven and can be trusted to craft a ruling that cements what consensus there is and does not further split the court after the first draft, court watchers say.

"Influence as a practical matter has to be achieved in a different way on the Supreme Court. And sitting on the court itself, it also entails a different sort of job," Gerhardt said.

Supreme Court justices may also be on the bench for decades, and it's impossible to predict which cases and issues will come to the fore after a candidate has been nominated. All presidents are, in some sense, shooting in the dark.

"You nominate them on the basis of cases they've decided prior to the nomination, and you maybe take guesses about how they might respond to other cases, but sometimes you get cases that are just not anticipated and yet become important," White said. "To some extent, nominating presidents are powerless there."

The Trump transition team did not respond to a request for comment on the Ravel Law ranking.

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