

Chuck Cooper: The Principled Advocate

“Politics are impossible to isolate and extract from my law firm. Public policy, government and politics are to D.C. what money is to New York.”

BY BRUCE LOVE

On Jan. 15, 1985, a young Chuck Cooper made his first appearance as an advocate in the U.S. Supreme Court, defending the Reagan administration’s policies in one of the most divisive cases of the decade. It was an experience that set the tone for a brilliant legal career that has so far spanned five decades and thrust Cooper into the spotlight in some of the most historic moments of the country’s modern history.

Bowen v. American Hospital Association was the first of the so-called “Baby Doe” cases, which represented the U.S. government’s first attempts to directly intervene in treatment options for babies born with severe congenital defects. As a Justice Department lawyer, 33-year-old Cooper was tasked with defending federal government policies aimed at forcing life-prolonging medical treatment.

“The ‘treatment option’ at issue in my case was to simply let her slowly die from dehydration by denying her water or any other sort of nourishment,” said Cooper.

Picketers lined up outside the court that day, placards in hand, each side shouting that the other’s beliefs were un-American and just plain wrong. Undaunted, Cooper marched straight up the marble steps and through towering Corinthian columns with a certainty of conviction that has remained with him throughout his career.

Last month, almost 36 years to the day since his first appearance, Cooper walked those same steps for his ninth time at the podium, flanked once more by demonstrators. On Jan. 19, Cooper appeared in *Federal Election Commission v. Ted Cruz for Senate* on behalf of U.S. Sen. Ted Cruz, R-Texas.

In an interview with The National Law Journal, Cruz said it is a case that he and Cooper had talked about bringing “for a long time.”

“If you’re crafting a strategy for litigation to challenge a federal statute, or regulation that’s unconstitutional, to win in the trial court and then to win in the Supreme Court, there’s nobody better on planet Earth than Chuck,” Cruz told the NLJ.

Over the last three and a half decades, Cooper has become the doyen of the conservative bar and one of the

most well-regarded litigators in Washington, while his firm, Cooper & Kirk, has become an institution inside the Beltway and has fostered some of the best legal minds in the country, as well as some of the most storied.

Cruz himself, a lawyer before he was a politician, started out in D.C. as an associate at Cooper & Kirk. He first met Cooper in 1997 while clerking for Supreme Court Chief Justice William Rehnquist. Cooper, who had clerked for Rehnquist in the 1970s, had just formed his own firm, and recruited Cruz heavily.

“The firm was six lawyers and just nine months old,” Cruz said. “Chuck made the case to roll the dice and gamble with what they were creating. At the end of the day, it wasn’t much of a dice roll, because it was clear to me even then that he was a world-class litigator. And what I was looking for more than anything else, was to go work for lawyers from whom I wanted to learn how to practice law.”

Yet Cruz’s fellow SCOTUS clerks were less convinced. Several of his clerking colleagues — who were headed to Big Law after their clerkships — thought it a risky move. Besides, they said, if the next government was a Republican administration, Cooper was an obvious choice for Solicitor General. And if Cooper left, it would be devastating to the firm, they told Cruz.

“I remember laughing, saying, ‘Who would you want to work for? Someone who is obviously a superstar, or someone who would never be considered for the top post?’” Cruz told the NLJ. “It seemed like an easy decision ... as a 27-year-old baby lawyer. There were worse things in life than if your boss becomes the Solicitor General of the United States.”



Charles J. Cooper founding member and chairman of Cooper & Kirk.

Courtesy photo

Decades on, the senator trusts Cooper implicitly. If Cruz had been elected president in 2016, he says he would have nominated Cooper as attorney general.

Cooper was also an influential voice in a key moment in recent American legal history, when in 2016, President-elect Donald Trump all but offered former presidential candidate Sen. Ted Cruz a seat on the U.S. Supreme Court, according to Cruz and confirmed by Cooper.

In the interview with the NLJ, Cruz recounted a November 2016 meeting at Trump Tower with Trump.

“President Trump leaned in—significantly—pressing me to consider the Supreme Court, and possibly being nominated to replace Justice Scalia,” Cruz told the NLJ.

Justice Antonin Scalia had passed away in February that year, leaving vacant a critical seat on the Supreme Court. With the potential of giving Democrats a majority on the court, Scalia’s seat was hard-fought-over in Congress; President Barack Obama’s nominee Merrick Garland’s confirmation hearing was blocked by Sen. Mitch McConnell and the Republican majority. The seat was eventually filled the following term by Trump’s nominee, Neil Gorsuch, who at the time was a judge in the U.S. Court of Appeals for the Tenth Circuit.

Cruz was one of Trump’s main adversaries in the 2016 primaries. Whether or not Trump genuinely wanted Cruz on the Supreme Court, the result would have also taken his longtime adversary out of contention for any further political fights.

Cruz reiterated to the NLJ information he originally disclosed in his 2020 book, “One Vote Away: How a Single Supreme Court Seat Can Change History”: “I didn’t want to be a judge. But that’s a decision I wrestled with vitally.”

He said he “prayed about it,” and “talked with my family” and his pastor. Crucially, Cruz revealed to the NLJ, “I talked with Chuck at great length, because he understood firsthand what being a Supreme Court justice would entail.”

Cruz said Cooper also “understood the political battles I’m engaged in in the Senate.”

Cruz said he grappled with the decision for weeks before finally rejecting the idea.

Less than two months later, Trump nominated Gorsuch, Cruz issued the following statement: “Last year, after the unexpected passing of Supreme Court Justice Antonin Scalia, Senate Republicans drew a line in the sand on the behalf of the American people. Exercising our constitutional authority, we advised President Obama that we would not consent to a Supreme Court nominee until We the People, in the presidential election, were able to choose between an originalist and a progressive vision of the Constitution. ... Today, with the nomination of the Honorable Neil Gorsuch from the Tenth Circuit Court of Appeals, President Trump has fulfilled that promise, and the rule of law will be all the better for it.”

On the decision—which could have resulted in Supreme Court Justice Cruz instead of Justice Gorsuch—Cooper

told the NLJ, “All I am comfortable saying is that I advised against it.”

“He taught me how to be a lawyer—how to analyze a case, get inside what the judges are thinking, [and] how to craft a strategy to win impossible cases,” said Cruz. “In my subsequent legal career, that’s really

what I focused on; taking cases nobody else thought you could win, and winning them over and over and over again. And that’s what I learned from Chuck.”

As a political figure, Cruz has since been a client of the firm on several occasions. This time to challenge the constitutionality of the FEC’s \$250,000 limit on post-election contributions congressional candidates can use each cycle to pay off debt owed to candidates from their campaigns.

“It is challenging a provision of the federal campaign finance laws that I think is obviously unconstitutional, and that is designed to make it harder to challenge incumbent politicians,” Cruz said.

For Cooper, the FEC’s limits are a clear infringement on Cruz’s First Amendment right to free speech and yet another opportunity to curb government encroachment into the rights of citizens—an area of litigation firmly in his wheelhouse after over 40 years of championing conservative causes in the nation’s capital. Cooper is comfortably at home in the Halls of Power inside the Beltway, including in the highest court in the land.

At the podium on Jan. 19, Cooper faced not only challenges to the substance of his client’s case but also his right to standing — to bringing the case in the first place — because Cruz had admittedly acted deliberately in a way that would bring about a suit against the FEC. To those challenges, Cooper cited a case from America’s distance past — the landmark 1896 *Plessy v. Ferguson*:

“At least since Mr. Plessy sat down in the train car reserved for whites, this Court has repeatedly held that a plaintiff who deliberately subjects himself to the injury of unconstitutional government action for the admitted purpose of challenging it has created his standing, not defeated it.”

Commanding the Courtroom

Even back in 1985, during his first SCOTUS appearance in Bowen, he was already well familiar with the inner workings of the court. In the 1978-79 term, he clerked for Rehnquist—an experience that Cooper believes was a defining moment for his career.

“To this day, I remember the interview, and how easy-going and personable and friendly he was,” Cooper told the NLJ in an exclusive interview for this article. “It was



Noel Francisco, partner in charge at Jones Day, speaking at a panel discussion during “Law Symposium: Justice Thomas’s Thirty-Year Legacy on the Court” in Washington, D.C., on Thursday, October 21, 2021.

Photo: Diego M. Radzinski/ALM

not one of those difficult, substantive, argumentative grillings.”

Cooper remembers telling the justice that it would be a “real honor” to come and spend a year as his clerk.

“I told him that in my constitutional law class, I had regularly risen to my feet [all alone amid his liberal classmates]—arguing the Rehnquist position,” said Cooper. “When he hired me, it obviously changed everything.”

Since Bowen, guiding cases from the court of first instance all the way to the appellate courts has become a hallmark of the Cooper way of lawyering. Throughout his private practice—first at McGuireWoods, then Shaw Pittman (now Pillsbury Winthrop Shaw Pittman) and finally at his own firm, Cooper & Kirk—Cooper has made a name as a strong and versatile litigator who is comfortable in any venue, able to simultaneously concentrate on winning the trial at hand while also laying the groundwork for success in higher courts.

During oral arguments in Bowen, Cooper was sure-footed in his legal reasoning and confident in his delivery. On numerous occasions when Justice Sandra Day O’Connor fired off questions, interrupting his delivery, Cooper quickly answered her but kept on track. Toward the end of Cooper’s time at the podium, Justice Thurgood Marshall gave him a short lecture on federalism. And Cooper held his own:

Marshall: *Mr. Cooper, the truth is that the federal government is just taking over the state’s function.*

Cooper: *No, sir, Justice Marshall, with respect—*

Marshall: *Explain to me why I’m wrong.*

Cooper: *These regulations are carefully tailored to respect—to the maximum extent possible—the roles of the states.*

Looking back, the exchange amuses Cooper.

“I was the Federalism Czar in the Reagan administration,” said Cooper. “I’d developed a firm devotion to federalism and the sovereign powers of the states from Rehnquist—I believe in federalism.”

And believe in it he does. Separation of powers and the limits of the federal government have been the subject of many of Cooper’s cases, including when he returned to the Supreme Court in 1997 to represent Rudy Giuliani in *Clinton v. City of New York*—“back when Rudy was respected everywhere.”

That time at the podium, he tangled with Justices Antonin Scalia and Ruth Bader Ginsburg but received an assist from Justice John Paul Stevens.

The exchange showed another side to Cooper’s deep legal prowess, his affability and grace under fire.

Stevens: *Mr. Cooper, I don’t know why you didn’t accept the wager hypothetical. It seems to me a wager’s a lot like a lawsuit, that if you have a lawsuit, a wager pending which you may win or may lose and Congress passes a law and says you lose, it seems to me you’re hurt.*

Cooper: *Yes, Your Honor.*

Stevens: *So, I think a wager’s a very good example, is what I’m suggesting.*

[Laughter]

Cooper: *And I certainly accept your vast improvement over my answer.*

“During my time at Cooper and Kirk, I found Chuck to be an exceptionally talented lawyer, a perfect gentleman, and a genuinely decent human being,” said U.S. District Judge Howard Nielson of the District of Utah.

Nielson, who before entering the judiciary was a partner at Cooper & Kirk, said it is difficult to overstate how well-regarded Cooper is in the legal community, and how much of an impact he has had over the course of the last 25 years.

“But he’s more than just a talented lawyer. Not all exceptionally talented lawyers are also good, decent people. Chuck is more than a good and decent person, he is a perfect gentleman,” said Nielson.

Noel Francisco, one of Cooper’s early hires, who went on to become U.S. solicitor general, echoed Nielson’s view.

“There are some people who seem to be consistent in all the different aspects of their life. And to me, Chuck is one of those people. He is someone who is strongly principled, with very strong convictions,” Francisco said in an interview for this article. “He is a conservative, but more than that; he’s principled. His principles take him in a particular direction. You see him follow those principles, both professionally and personally.”

But it is in the courtroom where Cooper shines, Francisco said.

“What I admire most about his arguments is how authoritative he is. Because he is such a highly respected lawyer and person, judges, justices and opposing counsel listen to him. They actually want to hear what he has to say,” said Francisco.

One such judge, James Ho of the U.S. Court of Appeals for the Fifth Circuit, agrees.

“Most people know Chuck as one of the most respected constitutional litigators of our time, but I’m honored to know him as a devoted mentor and loyal friend as well,” said Ho, who is an alumnus of Cooper & Kirk. “On more occasions than I can remember, Chuck has always been there for me, and for countless others of my generation, always providing moral support as well as wise counsel, in both good times and bad.”

Conservative America’s Greatest Advocate

Even back in 1997, Cooper had become a fixture of the Washington, D.C., legal scene and one of the strongest legal voices for conservatives. He had served most of the



Photo: Diego M. Radzinski/ALM

Judge James Ho, of the U.S. Court of Appeals for the Fifth Circuit, speaking at a panel discussion during the “Law Symposium: Justice Thomas’s Thirty-Year Legacy on the Court,” Co-hosted by The C. Boyden Gray Center for the Study of the Administrative State and The Heritage Foundation, in Washington, D.C., on Thursday, October 21, 2021.

1980s in Reagan's Justice Department, making his way to assistant attorney general, and had already appeared in the Supreme Court three times for key conservative causes.

Following his first appearance in 1985, in November 1991, he argued *Lee v. Weisman*, a case involving prayer in schools. In 1994, his client was the National Rifle Association in *Federal Election Commission v. NRA Political Victory Fund*

Ted Olson, one of D.C.'s most high-profile litigators and a partner at Gibson, Dunn & Crutcher, has been on the other side of the table from Cooper more times than he can remember. The largest matter over which the two lawyers faced off was the fight in California over same-sex marriage that started in 2009 and ended up in the Supreme Court in 2012 as *Hollingsworth v. Perry*.

"He's a very, very good advocate. And he gets very much involved in the work that he's doing," said Olson. "Very diligent and passionate about the things that he cares about. He works hard, prepares meticulously and thoroughly, and knows what he's talking about."

Outside the courtroom, he counts as close friends Justices Samuel Alito and Clarence Thomas, and his one-time protégé and longtime client (and the first associate he hired for Cooper & Kirk), Cruz, whom he regards as like a son. His friendships have also extended to conservatives across the Atlantic, and he was close with the late Margaret Thatcher, the conservative Tory party leader and former British Prime Minister known as the Iron Lady.

As a fierce advocate of conservative values, his advocacy had often singled him out as a target for the left. During the prayer in schools case, the American Civil Liberties Union mounted a campaign to have him fired from the case as a racist, based not on any of his actions or beliefs, said Cooper in an interview, but purely because he had been "in the Department of Justice under the leadership of President Reagan, because of my apparently controversial racist activities in the department."

During the early years of the Reagan administration, Cooper had served closely in the DOJ with Brad Reynolds, widely known to be the architect of Reagan's civil rights policies on affirmative action, the implementation of school desegregation and voting rights measures such as questioning the constitutionality of using racial considerations to draw electoral boundaries. Those measures were seen by some as rolling back the social progress of the 1960s and 1970s.

If [the client] had actually fired me, that would have been deeply wounding for my career going forward," said Cooper. "And so, I fought it hard."

Friends from all sides of the political spectrum came to Cooper's defense, including former Condredge Holloway, a college football star quarterback at the University of Tennessee and one of the first African-American quarterbacks to gain exposure on a national stage. Holloway was a high school friend of Cooper and his roommate during

travels on all-star high school baseball teams. Cooper's college friend Cleo Thomas — who was the first Black Student Government Association president at the University of Alabama — also came to Cooper's defense. The ACLU's challenge failed for lack of evidence of its allegations.

Those who know him agree, being strong on his conservative principles and politics has never made Cooper partisan in his friendships. Many Democrats call Cooper a close friend, including U.S. Rep. Jamie Raskin, D-Maryland, a congressional progressive and one of the central figures in the push to impeach Trump after the Jan. 6 insurrection of Capitol Hill.

Yet in business, and in the law, Cooper is a deeply committed and formidable player of The Game in Washington. And there can be no doubt what side he is on.

"Politics are impossible to isolate and extract from my law firm. Public policy, government and politics are to D.C. what money is to New York," Cooper said. "They dominate everything in the Washington legal community. It's why I came back to D.C. after leaving for two years after my clerkship to be a commercial litigator in Atlanta—and hating it."

After clerking for Rehnquist, Cooper had taken a job as a commercial litigator in Atlanta.

"It was a good job at a good firm, and to begin with I didn't realize I had been infected by Beltway Fever," said Cooper, adding that when Reagan began mounting his campaign for presidency, he began thinking he had made a mistake leaving Washington. "I was a very solid Reagan Conservative in my beliefs and values, so when he won, I sent my resume in to the Department of Justice. But if Carter had won reelection, I would probably still be in Atlanta today."

For Cooper, however, being on the conservative side does not mean surrendering your principles if they clash with the Republican party line. After the insurrection of the Capitol Building by Trump loyalists on Jan. 6, 2021, Cooper penned an editorial for the Washington Post arguing the Constitution permitted the trial and conviction of former government officials—including presidents of the United States.

That February, he told the NLJ he had a question for Republican senators ahead of a vote to impeach: "Is this the same vote I would cast if everything President Trump did and said in the period from the election through Jan. 6 had been done and said by President Obama, and the Capitol had been violently seized by Antifa rioters?"



Chief Justice William H. Rehnquist (1972-). Chief Justice, Supreme Court of the United States..Credit: Dane Penland, Collection of the Supreme Court of the United States



Charles Cooper, 1997. Photo: Patricia Gilbert/ALM



Cooper speaks during a panel discussion entitled “What’s at Stake: Law & Justice Policy in the Next Administration,” at the American Constitution Society for Law & Policy’s 2008 National Convention, June 13, 2008. Photo: Diego M. Radzinski/ALM



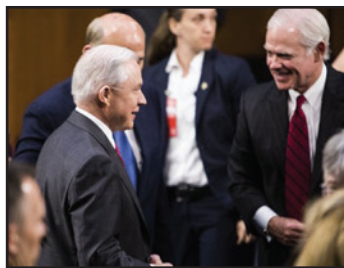
Cooper addresses the media after the U.S. Supreme Court heard arguments in a same-sex marriage case challenging California’s Prop 8. March 26, 2013. Photo: Diego M. Radzinski/ALM



Cooper speaks at a press conference in summer 2009 after Judge Vaughn Walker ruled to allow San Francisco to intervene in the Proposition 8 suit by David Boies and Ted Olson. Photo: Jason Doiy/ALM



Cooper leaves a court challenge to California’s voter-approved gay marriage ban in early 2010. Photo: Jason Doiy/ALM



Cooper, right, speaks with Attorney General Jeff Sessions, accompanied by Sessions’ attorney, after his testimony before the Senate Intelligence Committee on June 13, 2017. Photo: Diego M. Radzinski/ALM



Cooper departs after President Donald Trump announces the nomination of Judge Brett Kavanaugh to be associate justice on the U.S. Supreme Court, replacing Justice Anthony Kennedy, in the East Room of the White House, on July 9, 2018. Photo: Diego M. Radzinski/ALM



Cooper, who represents Sen. Ted Cruz, R-Texas, speaks to the media on Jan. 19, 2022, outside the Supreme Court in Washington, after the court heard arguments in the case Federal Election Commission v. Ted Cruz for Senate. Photo: Mariam Zuhair/AP

It was a poignant lesson in keeping to your values, from a deeply conservative lawyer that in 2017 Trump was considering as his solicitor general. The job eventually went to Cooper & Kirk alum Francisco.

“He is a conservative, but more than that, he’s principled,” Francisco said of Cooper. “His principles take him in a particular direction. You see him follow those principles, both professionally and personally.”

No Case Too Big

Despite Cooper’s strong conservative advocacy, it would be wrong to pigeonhole Cooper’s practice as solely focused on political issues, and there are few types of high-stakes civil litigation matters that he has not taken on over the years. Many Cooper & Kirk clients are Fortune 500 companies but he also represents individuals—especially if they are suing the government. Cooper has made a name for himself taking cases from the court of first instance all the way to the U.S. Supreme Court. His firm was launched on the back of his 1995 representation of a savings and loan company in a Supreme Court challenge to government action against financial services companies—*United States v. Winstar*.

The case came out of the savings and loan crisis of the 1980s. Federal regulators had allowed a certain

amount of regulatory leeway for financial institutions that took over failing S&Ls but Congress later changed these advantages. Winstar, a savings and loan company, hired Cooper to fight the government all the way to the Supreme Court.

The result was a windfall of new clients for litigators tasked with suing the federal government in myriad subsequent matters. Thanks to his Supreme Court win, at the head of the line was Cooper and his new firm.

“Without the revenue stream that Winstar created, the dream of starting our own litigation boutique would have been delayed and maybe even ended before it began,” Cooper admits.

The other original founding partner was Michael Carvin, who has been a partner at Jones Day since 2001 and spent six years at the Justice Department working alongside Cooper. Steven Rosenthal and four of his colleagues at Morrison & Forster joined Cooper & Kirk in 1998. Rosenthal left in 2001, and has for many years been a partner at Loeb & Loeb after a brief stint at Holland & Knight and time as the chair of the litigation department of Kaye Scholer.

The firm soon became Cooper & Kirk with the promotion of Michael Kirk to named partner.

“When we first started in fall of 1996, there were five of us,” said Kirk. “And we just kind of went from there.”

Yet it is a recent matter—far removed from the politics of Washington or the lucrative high stakes of corporate civil litigation—that Cooper sees as one of the highlights of his career.

For the past few years, Cooper has been representing iconic American author Harper Lee, and then her estate on her passing, in a closed arbitration involving Lee’s Pulitzer Prize-winning novel “To Kill a Mockingbird.”

Cooper represented Lee in a contract and copyright dispute with the heirs of Gregory Peck, the actor who played protagonist Atticus Finch in the 1962 film adaptation of Lee’s 1960 novel.

While the substance and nature of arbitrations are confidential—and Cooper would not disclose any details for this article—it is understood that at issue was the legal use of characters from Lee’s seminal work, as well as “Go Set a Watchman,” a novel she wrote before “Mockingbird” that was only published in 2015.

“Representing Harper Lee was truly one of the highlights of my career,” said Cooper. “I had the honor of meeting with Ms. Lee a couple of times before she passed, and she was charming, witty, and sharp as a tack.”

Small Firm, Big Impact

Since the early 2000s, the firm has stayed roughly the same size, with never more than around 20 lawyers. It is the boutique firm’s reputation as a stable of superb litigators that can win no matter the venue that has made it so attractive to young lawyers wanting to make a name for themselves.

And Cooper’s eye for legal talent seems unparalleled in Washington. His firm ranks among its alumni two sitting U.S. senators (Cruz and Tom Cotton), three current Federal Court judges (Nielson, Ho and Victor Wolski), former U.S. Solicitor General Noel Francisco, and a former U.S. associate attorney general (and current head of global corporate governance at Walmart), Rachel Brand. Francisco was the second associate Cooper & Kirk hired, and Brand was the sixth after being the firm’s first summer intern. Current partner Adam Laxalt is widely touted as the next Republican nominee for an upcoming U.S. Senate seat for Nevada.

Cooper & Kirk’s Michael Kirk jokes that if he was a young lawyer today, “I couldn’t get into this firm.” Yet the self-effacing Kirk seems to be selling himself short. With a thriving personal book of business that includes some of the biggest names in corporate America, Kirk is an expert in bringing lawsuits against the U.S. government.

To sustain the kind of practice—both in stature and legal expertise—that Cooper has, Francisco said it takes a “very special person.”

“You need to be able to engage major clients on major corporate matters that have nothing to do with Washington, as well as engage with the Washington players on their most significant matters,” Francisco said. “Among the boutiques, some firms can do one, and some firms can do the other. But few can do both.”

According to Olson, D.C. is better for Cooper and his boutique firm.

“It’s very important for Chuck Cooper and Cooper & Kirk to be a part of the bar,” said Olson. “They give people opportunities. They give people a choice.”

They also give clients some of the most committed lawyers in the business, Francisco opined, as well as some of the toughest and smartest.

Years ago, as an associate at the firm, Francisco went with his boss to Rockford, Illinois in the middle of winter.

“The first day of trial was in the middle of a blizzard. I show up wearing a great big, puffy parka, carrying a tower of file boxes,” said Francisco. “Up struts Chuck wearing nothing but his suit and a light overcoat, his hair perfectly quaffed and slicked back.”

“Chuck,” said Francisco, “you’re crazy. You’re going to freeze to death. Why are you going out like this?”

“Don’t worry, I know what I’m doing,” Cooper replied.

For the next two weeks, Cooper was on the local news every night, striding into the courthouse looking dressed to the nines with his perfect hair and his nice overcoat—the epitome of a confident lawyer on top of his game, with Francisco following along behind, wearing a parka and carrying a box.

“That’s where I learned from Chuck to think ahead,” said Francisco.

Last month, D.C. was not as cold as Rockford, Illinois. Yet the same Chuck Cooper was on display. Quietly confident and dressed to the nines, a convincing and well-reasoned argument in hand for his client. It was business as usual.

This article is an extended version of a feature that originally ran in the February 2022 print issue of the National Law Journal.



Former U.S. President Donald Trump. Credit: noamgalai/Shutterstock.com