

To the Bag

series also prevents direct-or-indirect-object ambiguity in *getting off* the vehicle.) But a moment later, that person is *off* the bus. Why shouldn't such a person have just as much claim to recover as he did an instant before? While it's true that the person is still *off* that same bus an hour or a day later, and in fact we are all perpetually *off* every vehicle we've ever previously been on, it's unlikely a court would apply such a hypertechnical definition. Accordingly, there's no reason to reject out of hand the possibility that the definition of "occupying" includes *off* on its own and not as part of the *getting* series.

There is yet another ambiguity which arises from treating *getting* as defining a series. As the alert reader has undoubtedly noticed, curly brackets have reappeared above to show that the word *of* was inserted in the penultimate item. We have to add *of* if we think *out* is part of the *getting* series because otherwise "occupying" means "getting out a vehicle."

Getting *out of* a vehicle is a familiar concept and makes sense as a definition of occupying because it mirrors *getting in*, which clearly is part of the definition. *Getting out* a vehicle is not a familiar concept. You could *be* out a vehicle if, for, instance, one of your fleet of delivery trucks is in the shop, or maybe one of your several vehicles was lost somehow, as in: My garage caught fire and now I'm *out* one car. But neither of those concepts works with *getting* and neither makes sense as a definition of "occupying."

Sincerely,
Jack Metzler
Washington, DC

HOWDY, COLUMBUS

To the *Bag*:

For the last seven years, the geographic center of the United States Supreme Court has bobbed upon the shimmering surface of Tappan Lake, Ohio. Measured by the average latitude and longitude of the places where the Justices worked at the time of their appointment to high federal office, a midpoint that pressed westward during most of American history had in recent decades reversed course toward the Northeast (following several nominations from the Acela corridor).¹

¹ See Benjamin C. Zuraw & Robert A. James, *The Supreme Court and the Westward Movement*,

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Ben Zuraw and I wish to record both the passing of Justice Antonin Scalia (birthplace Trenton, New Jersey, appointment location Chicago, Illinois) and the passing over of Judge Merrick Garland (birthplace Chicago, Illinois, nomination location Washington, D.C.). Justice Scalia's appointment location is not without dispute, as he practiced for many years in Washington, D.C., taught for several more in Charlottesville, Virginia, and sat on the District of Columbia Circuit bench for some time after his elevation from the University of Chicago Law School. We admittedly had selected Illinois in part to avoid an over-concentration of Washington data-points in our computations.

Newly confirmed Justice Neil Gorsuch creates an opportunity for judgment and controversy, in geography as well as in other fields. His birthplace of Denver, Colorado presents no difficulty. But he practiced in Washington for his entire career before being named to the appellate court of his origin, the Tenth Circuit. Three thousand chargeable hours in a year² certainly qualifies him as a D.C. litigator with oak-leaf clusters. We could with some justification count him as a Beltway denizen at the time he was tapped for the federal judiciary.

We prefer to take the view that the Coloradan left Denver without Colorado ever leaving him. Justice Gorsuch is a fourth-generation citizen of the Centennial State. "He lives on a small farm with two teenage daughters, two horses, two dogs and a barn cat."³ In the confirmation hearings,⁴ Senator Michael Bennet (D-Colorado) said "Judge Gorsuch exemplifies some of the finest qualities of Colorado," and if confirmed, "will be [the] first justice since Sandra Day O'Connor from the West," concurring in this one particular with Justice Scalia that "California does not count." Senator Cory Gardner (R-Colorado) declaimed that "Judge Gorsuch's nomination helps recognize that, indeed, there are highly qualified jurists west of the Mississippi River," and that the Tenth Circuit "represents 20 percent of our nation's landmass." (We salute a kindred spirit in whoever came up with that calculation.)

11 GREEN BAG 2D 341 (2008); *From Pulaskiville to Delaware*, 12 GREEN BAG 2D 376 (2009); *From Delaware to Tappan Lake*, 13 GREEN BAG 2D 377 (2010).

² See *Gorsuch Was Billing Juggernaut at DC Firm, Says Colleague*, Law360 (Mar. 13, 2017).

³ Ariane de Vogue, *Meet Neil Gorsuch: A fly-fishing Scalia fan*, CNN, cnn.com (Feb. 1, 2017).

⁴ Transcript from *Colorado Independent* (Mar. 20, 2017).

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The clinching argument is based on the widely circulated photograph of none other than Justice Scalia accompanying Judge Gorsuch on a fishing trip on the Colorado River.⁵ The Justice is transparently haunted by Western waters.⁶

For strict constructionists who wish to deem Justice Gorsuch a capital fellow, replacing Chicago with Washington, D.C. would fling the Court's geographic center back into the thirteen original colonies – to the hamlet of Fredericktown, Pennsylvania, south of Pittsburgh. We respectfully decline to do so, instead treating the newcomer as having been appointed from his homeland and his heartland. Substituting Denver for Chicago in the calculations results in the center's changing direction and once again *westerling* – to the outskirts of that collegiate metropolis, Columbus, Ohio (lat. 40° 7' N, long. 83° 6' W).

Let the fanfare be sounded by the horns of The Ohio State University Marching Band, conducted in the spirit of Ron Patimkin.⁷ We proclaim the entry of the Court into the Arch City, through the presence of this son of the Old West.

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⁵ See de Vogue, *Meet Neil Gorsuch*.

⁶ See NORMAN MACLEAN, *A RIVER RUNS THROUGH IT AND OTHER STORIES* (1976); cf. 40 C.F.R. Part 230 (“waters of the United States”).

⁷ PHILIP ROTH, *GOODBYE, COLUMBUS* (1959).