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S. HRG. 109–397, Pt 6

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

SEPTEMBER 6, 12, 19, AND NOVEMBER 14, 2006

Serial No. J–109–4

PART 6

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NOMINATION OF KENT A. JORDAN, NOMINEE TO BE CIRCUIT JUDGE FOR THE THIRD CIRCUIT; MARCIA MORALES HOWARD, NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF FLORIDA; JOHN ALFRED JARVEY, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF IOWA; AND SARA ELIZABETH LIOI, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO

WEDNESDAY, SEPTEMBER 6, 2006

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC

The Committee met, pursuant to notice, at 2:12 p.m., in room 226, Dirksen Senate Office Building, Hon. Mike DeWine presiding.

Present: Senator Biden.

OPENING STATEMENT OF HON. MIKE DEWINE, A U.S. SENATOR FROM THE STATE OF OHIO

Senator DEWINE. The committee will come to order.

Today we will have a confirmation hearing for four of the President's judicial nominees, one nominee for the Court of Appeals and three District Court nominees.

We appreciate everyone's willingness to appear before the committee today. I am particularly glad to see Judge Lioi, a fellow Ohioan here with us today, and we welcome her.

I believe that today's hearing will show that all of our nominees are well qualified for their respective positions and that we will then be able to move all of the nominations quickly to the Judicial Committee for action.

At this point let me turn to Senator Biden for any comments that he would like to make.

[The prepared statement of Senator DeWine appears as a submission for the record.]

STATEMENT OF HON. JOSEPH R. BIDEN, JR., A U.S. SENATOR FROM THE STATE OF DELAWARE

Senator BIDEN. Mr. Chairman, thank you for convening this hearing and allowing me, first of all, to welcome all the nominees.

I think your assessment of their qualifications is correct, and I look forward to hearing the testimony.

But I would also like to welcome to the committee my two Delaware colleagues, Senator Carper and Congressman Castle, who is twice as powerful as us. He is the only Representative in the State, and so he represents all the State; Tom and I split it up.

[Laughter].

But I am glad my colleagues are here.

I am also pleased to play a dual role today of not only serving as the Ranking Member for this hearing—by the way, this is the closest I have gotten to the Chairman's seat in about 10 years, after sitting here 17 years. Thanks for letting me have this shot.

Senator DEWINE. It is nice to be in it, actually.

Senator BIDEN. That is right.

[Laughter].

But I have the honor of introducing a really fine Delawarean, Judge Kent Jordan, who has been nominated by the President to sit on the Third Circuit Court of Appeals.

But before I talk about the Judge, allow me to say a few words about the Judge whom Judge Jordan has been nominated to replace. This spring, Judge Jane Roth, our former colleague Bill Roth's wife, informed the President that she would be seeking senior status.

I would like to publicly acknowledge what a great judge Judge Roth has been, her service to this country, her dedication to the rule of law, and her stellar representation on the Third Circuit Court of Appeals.

I am sure every Senator believes their circuit is the most vaunted and honorable of them all, but we have a great, great history in the Third Circuit and some truly nationally renowned Judges, as other circuits do as well. Jane Roth fit the Delaware seat marvelously.

I have known Jane for many years, as both my colleagues have, and I look forward to her continuing her brilliant career as a senior Justice.

By being nominated to fill Judge Roth's seat, Kent Jordan has a very significant space to fill. I am confident, based on his conduct at the District Court level and all those in both political parties who have recommended him highly, that he will do exactly that.

It is almost exactly four years to the day that I introduced Kent Jordan to this committee to be District Court Judge, and he has performed by every measure with flying colors.

During his 22-year legal career, Judge Jordan has excelled at every step of the way. He started his legal career as a law clerk for one of the most respected Judges ever to serve on the Federal bench in our State, again known to both my colleagues, Judge James Latchum, who served on the very bench on which the Judge now serves.

Kent went on to serve as Assistant U.S. Attorney in Delaware for five years, and at the time he worked on some highly publicized cases, bringing some very bad people to justice, and also administering justice with an even hand.

He moved on to become a partner in one of Delaware's top law firms, Morris, James, Hitchens & Williams, working there for five

years. Then Kent became General Counsel to a 102-year-old corporation services company known as CSC, as it is known nationally as one of the leading incorporation service companies in the world.

For the past four years he has served with distinction on the District Court. As I said, he has drawn praise from his colleagues on the District Court, from the lawyers who have appeared before him, and from his soon-to-be colleagues on this Third Circuit Court of Appeals.

His colleagues describe him in many ways, but the adjectives that always come up are "bright", "hardworking", "deep sense of integrity", "intellectual honesty". I do not know what else you could ask for a Judge. I must tell you, I have become convinced he is open-minded, collegial, and most of all, fair.

He is accompanied today by his wife, Michelle. Michelle, I did not warn you of this, and I do not want to embarrass you. Would you please stand up and let folks see you here? This is all the more reason why we should confirm Kent Jordan.

Kent and Michelle have six children, and I will let him do the introductions of that, that range from ages 11 to 24. On my mother's side—I realize Kent is LDS and I am an Irish Catholic. But if my mother were here, Kent, she would say, "no purgatory for you. Straight to heaven."

[Laughter].

Six kids, 11 to 24. Their youngest are here. Three of the youngest are here today, and I will ask Kent, when it comes his time, to introduce them as well.

So, Mr. Chairman, I thank you again. I am anxious to hear from the witnesses. I know Senator Grassley has to leave very shortly, and I know Congressman Castle as well has to manage a bill in the House. But I want to welcome the Jordans, and I thank you for the time.

Senator DEWINE. Senator, thank you very much. I will have to tell my wife about that purgatory issue. With eight kids, I have to.

Senator BIDEN. She is in it right now and she does not know it.

[Laughter].

Senator DEWINE. I will have to think about that, Senator, a little bit. That is good.

Senator Grassley, we will start with you. I must say, Senator Grassley, before we let you start, I have to put a little plug in here for Ohio about Judge Jarvey.

Although he is nominated for a position from Iowa, I would be remiss in my obligation as Senator from Ohio to mention that the Honorable Judge received his B.S. degree from Akron in 1978. So, I will put that little plug in there.

Senator GRASSLEY. You do not get on the bench with a B.S., so remember his J.D. from Drake Law School.

Senator DEWINE. I understand that.

[Laughter].

I understand that. We have got a good start, though.

You are up, Senator.

PRESENTATION OF JOHN ALFRED JARVEY, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF IOWA, BY HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. You have made my speech. It is a pleasure today to introduce to the committee a distinguished Iowan who has been nominated to the Federal bench. Judge John Alfred Jarvey, from Cedar Rapids, Iowa, will serve as District Judge for the Southern District. He is an extremely qualified individual and I am proud to be here to support this nomination and introduce him to the committee.

Judge Jarvey was born in Minneapolis. He is married to Mary, who is an instructor of piano. Judge Jarvey graduated, as you said, from the University of Akron in 1978 with a degree in Accounting, and then received his J.D. degree from Drake University in 1981.

He clerked for two years for Judge Donald O'Brien of the Northern District of Iowa. In 1983, he joined the Justice's Criminal Division as a trial attorney, where he prosecuted drug, tax evasion, money laundering, and firearms, and he happened to specialize in prosecuting medical professionals involved in pharmaceutical drug diversion.

Since 1987, Judge Jarvey has been Chief Magistrate Judge for the Northern District of Iowa. In this position, Judge Jarvey has presided over a wide range of criminal and civil cases, such as cases involving personal injury, employment discrimination, and other employees' rights, as well as patents, copyrights, and commercial disputes that are complex.

In addition, since 1993, Judge Jarvey has been a trial advocacy instructor at the University of Iowa Law School. Judge Jarvey enjoys tremendous support from his peers. I received many letters praising Judge Jarvey's judicial temperament, courteousness to all litigants, respect for, and commitment to, our judicial system, and favorable comments about Judge Jarvey's ethics and abilities as an administrator, and complimentary statements about Judge Jarvey's intelligence, command of the law, and rules of evidence, fairness, and respectful judicial demeanor in court.

I just want to quote from a couple, but I have got a longer statement I am going to put in the record. From one attorney, "Judge Jarvey's decisions are thoughtful and well-reasoned. He clearly is guided by the rule of law and does not legislate from the bench."

Another one: "What is clear to me from my experience with Magistrate Jarvey is that he is, first and foremost, an exceptional legal mind. His ability to grasp complicated and dense fact patterns in a clear and concise manner is well known and respected in our district. He issues decisions which are well-reasoned and in harmony with the law of our jurisdiction." That is the end of that quote, but there are others that will be submitted.

Judge Jarvey has had a distinguished legal career and shown tremendous dedication to public service. He will be a tremendous asset to the District Court of the Southern District of my State.

As I noted, so many people agree that Judge Jarvey is a talented individual that deserves to be a Federal Judge and he brings with him the ABA unanimously giving him the rating of "Well Qualified".

I am confident that Judge Jarvey possess the skill, integrity, commitment, intellect, and temperament that we all look for in good Judges, so it is with great respect and admiration that I recommend this highly qualified individual to the Judiciary Committee for favorable consideration and hope we can get him approved before we adjourn.

Senator DEWINE. Senator Grassley, thank you very much.

Senator GRASSLEY. Thank you.

Senator DEWINE. Senator Harkin?

PRESENTATION OF JOHN ALFRED JARVEY, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF IOWA, BY HON. TOM HARKIN, A U.S. SENATOR FROM THE STATE OF IOWA

Senator HARKIN. Thank you very much, Mr. Chairman. I join with my colleague, Senator Grassley, to give my unqualified support to John Jarvey to be a Federal District Judge for the Southern District of Iowa.

As Senator Grassley said, John is currently a Magistrate Judge in the Northern District, a position he has had for 18 years.

I had a chance to meet with him, not for the first time, last month in Iowa when we were out for our August break. And Mr. Chairman and members of the committee, I can tell you that, after 18 years, I believe it is time for a promotion.

John Jarvey started his legal career as a clerk to Federal Judge Donald O'Brien, as Senator Grassley said, an excellent training ground for a future Federal Judge. In his years as a Magistrate, he has developed an excellent reputation as a fair-minded Judge with a devotion to the law and as a strong believer in judicial independence.

Based on the calls and letters received by my offices throughout Iowa, he has earned respect and admiration across the board. In fact, the Chief Judge of the Southern District, the Honorable Robert Pratt, and the Clerk of the Southern District, Marjorie Krahn, are with us today to demonstrate their support also.

In his years as a Magistrate, John Jarvey has devoted a tremendous amount of time and energy to successful mediations, including a very difficult tribal dispute in Iowa. He also regularly teaches the trial skills he developed as a Federal prosecutor to students at Drake University and the University of Iowa Law Schools.

As anyone who has spoken for more than a few minutes to John Jarvey knows, he is also a committed husband and father.

In selecting John Jarvey to be a Federal District Judge I believe the President has made a very good choice, and I look forward to his speedy confirmation.

Thank you very much, Mr. Chairman.

Senator DEWINE. Senator, thank you very much.

Representative Castle?

PRESENTATION OF KENT A. JORDAN, NOMINEE TO BE CIRCUIT JUDGE FOR THE THIRD CIRCUIT, BY HON. MICHAEL CASTLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF DELAWARE

Representative CASTLE. Thank you, Senator. I am also pleased to be here to support Kent Jordan. I guess it is a little bit unusual that you would have the entire delegation from one State supporting a person when there is three of us. It is easy when we all know the person and think so highly of him. It is even simpler, perhaps, than that.

Delaware, of course, is a small State, but for those who know anything about the law, it is a State which has a very highly-developed legal community and judicial community because of the incorporation statutes, and other reasons why Delaware is a central place for people to come.

As a matter of fact, the Chamber of Commerce ranked Delaware's Judges the highest in all five categories they looked at across the entire United States of America.

Kent Jordan came to the Delaware District Court and has just done a wonderful job there. I followed this carefully because I was involved in the initial selection process when he was nominated.

I can tell you, as one who practiced law in front of a lot of these Judges, very few do it as well as Kent has done it. He runs on time. He makes his decisions in a precise way. He has reduced the workload of that court for the other Judges. He has just done a great job—even a sensational job—on our District Court, so we are pleased that he has been nominated for the Third Circuit Court of Appeals.

He did receive the unanimous vote of the Senate when he went before you for the District Court, and we hope it can be the same, and obviously swiftly, if possible, for the Third Circuit Court of Appeals.

He, as Senator Biden has already indicated, was one of the top prosecutors and litigators in Delaware, and even has some corporation background, which is helpful as well. He is filling big shoes.

Again, typical of Delaware, I guess I have known Jane Roth all my life. I guess she sort of knew me before I could know her, because she was a friend of my older sister's, kind of thing.

She was a wonderful Judge, too, and we are sorry to see her move on to senior status, but we are delighted that we have somebody of Kent's ability to do this. All the things that one would look for in a Judge, patience, intelligence, experience, are there. The "Well Qualified" rating unanimously by the Bar Association, which we all look for is there.

In the case of Delaware, on the Third Circuit, we only have 2 of the 14 places and we have a wonderful Judge there, Judge Tom Ambrow, on that court now. But New Jersey, Pennsylvania, and the Virgin Islands—I have always wondered why the Virgin Islands was lumped with that, but it is probably a nice place to go on the circuit every now and then—serve that particular area, and we want the best Judges we can get from Delaware.

In my judgment, we have picked one of the best Judges you could find in the United States of America. So, we are looking forward to supporting Kent in every way we can.

He has a large family, most of which is here, his lovely wife and three of the kids, and many, many other supporters. When you are in a small State like ours, Senator, you hear a lot about people. You usually get to have a pretty good idea of who they are.

I have never heard a disparaging or discouraging word about Kent and the wonderful job he is doing in our District Court. So, I recommend him heartily to all of you here in the United States Senate.

If I may be excused at some point, I have got to manage a bill over on the floor of the House and I have to run.

Senator DEWINE. We understand.

Representative CASTLE. But I thank you so much for the opportunity of being able to speak on behalf of Kent. I appreciate it.

Senator DEWINE. Thank you, Congressman. Thank you very much.

Senator Carper?

PRESENTATION OF KENT A. JORDAN, NOMINEE TO BE CIRCUIT JUDGE FOR THE THIRD CIRCUIT, BY HON. THOMAS R. CARPER, A U.S. SENATOR FROM THE STATE OF DELAWARE

Senator CARPER. Thanks very much. I have a sense of déjà vu here. What was it, four years ago?

Senator DEWINE. Another Ohio State graduate here.

Senator CARPER. There we go. OH. OH. It was not that long ago, I think four years ago, that a number of us were here for a similar hearing when Judge Jordan was nominated to be a District Judge.

At the time I think the children were a little bit younger, and I know there are three of them here that look a little bit bigger. I told them they have done a good job in raising their dad, and they all agreed that he turned out pretty well.

As stated by my colleague Joe Biden and our colleague Mike Castle, Delaware is a little State and you know one another. If there are good things to say about a person, you hear those. If there are not such good things to say about someone, you hear those as well. In the time that I have known Kent Jordan, in the time that he has been in public life, we only hear good things about him.

When I appeared before this committee with our Senator and our Congressman four years ago, I indicated when I used to be a governor, like Governor Voinovich over here, I used to have the opportunity to nominate people to serve on the bench.

There was a litmus test of sorts that I used in nominating people. I always looked for people who were bright, I looked for people who knew the law. I looked for folks who had good judicial temperament, who treated people in the courtroom on either side with equal respect and made them feel welcome and listened to.

I looked for people who had good judgment, not only who had good judgment, but were also able to make a decision. You do not always find that in everybody who serves as a Judge.

I looked for folks who were hard workers. You never wanted to nominate anybody to the bench who was going to get on the bench and, frankly, not work very hard. Kent Jordan meets that litmus test to a "T".

I am proud that we were able to support his nomination four years ago. I think it speaks volumes that the entire delegation is here on his behalf, voicing our support of him and our approval.

I want to say to his children, half of whom are here, and to his wife Michelle, thank you very, very much for sharing with us a good father and a good husband to serve the people, not just in our State, but of our country.

As we think about the Third Circuit Court of Appeals, we lost some real good people from the Third Circuit. One has gone on to be a Cabinet Secretary, one has gone on to be a Supreme Court Justice, and one has just gone to the end of his life, Ed Becker, who is one of the finest people I have ever had the privilege of knowing and working with.

Now Judge Roth moves to senior status, and she will obviously be active and involved. Of all the people I have ever known on the bench, Federal or State, she was in many ways the epitome of what a Judge should be about.

She was all the things I just mentioned. In addition to that, she is someone who has a sparkling sense of humor and someone with whom it is just great to spend a little bit of time.

Speaking of her, my hope is that by the end of this year we will have the opportunity in our State, as Senator Biden and Congressman Castle know, of actually naming the most beautiful bridge in our State over the Chesapeake and Delaware Canal, a bridge built in large part because of the hard work of Bill Roth, after Judge Roth's husband, the late Senator Bill Roth.

I am pleased to be here to support Judge Jordan's nomination and elevation to the Third Circuit Court of Appeals, and my hope is that he will be confirmed. Thank you so much.

Senator DEWINE. Senator Voinovich?

PRESENTATION OF SARA ELIZABETH LIOI, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO, BY HON. GEORGE V. VOINOVICH, A U.S. SENATOR FROM THE STATE OF OHIO

Senator VOINOVICH. Thank you, Mr. Chairman. It is a pleasure for me to be here today and to speak on behalf of a very deserving person from the State of Ohio, and I am here to express my strong support for Judge Sara Lioi.

I feel kind of good about it, because I appointed Judge Lioi to the Court of Common Pleas back when I was governor of Ohio in 1997, and after that she was elected to retain her seat, then was elected to a six-year term. It is kind of satisfying to me today to know that the President has nominated her for a Federal Judgeship.

I welcome the committee's review of Judge Lioi. I believe that you will come to the same conclusion that I have, that she is well qualified to serve as a Federal District Court Judge, and should be confirmed by the Senate.

She has a distinguished and impressive record as an attorney in private practice, as a Ohio Court of Common Pleas Judge, as I mentioned, a community leader, and she has deep roots in Stark County, Ohio.

She is a native of that county and the youngest of seven children. Judge Lioi graduated from GlenOak High School and from Bowling

Green State University, where she graduated summa cum laude and earned the distinction of Phi Beta Kappa, she was an outstanding student.

She went on to attend my law school and alma mater, the Moritz College of Law at the Ohio State University, receiving her law degree in 1987. After graduating from law school, Judge Lioi joined the law firm of Day Kidder, the oldest law firm in Stark County, as an associate.

She was later recognized by her colleagues when they elected her to the firm's partnership in 1993. As an attorney, she represented individuals, schools, and other institutions of higher learning, cities, small business, and multinational corporations. While in private practice, she represented clients at both the trial and appellate levels.

Since ascending to the bench, Judge Lioi has disposed of over 9,500 cases and conducted over 350 trials, over 335 of which were jury trials. In sum, she has broad courtroom experience, both on and off the bench. This extensive experience will serve her well as a Federal trial court Judge.

She has also earned the respect of her colleagues and fellow attorneys. During her time as a practicing attorney she served on the Supreme Court of Ohio's Board of Commissioners on Grievances and Discipline, and for over 10 years she has served on the Supreme Court of Ohio's Board of Commissioners on Character and Fitness, including the last five years as chairman of that commission. I believe her service on these commissions evidences the high esteem and the high character in which members hold her in terms of her background.

Her legal credentials are not the only reasons I support her. Today, too many people do not take the time to become involved in their communities. However, the Judge Lioi participates actively in a number of civic organizations.

A graduate of Leadership Stark County, she has remained active with that program and serves on the boards of several nonprofit community agencies, including community services of Stark County, Stark County Humane Society, the Walsh University Advisory Board, and the Plain Local Schools Foundation.

I believe that one's involvement in a community is important. We need Federal judges not only that have exceptional legal skills, but also recognize how the law impacts individuals and communities. I believe she has this understanding because she works in a community every day.

As a result of her fine academic and professional achievements, I am not surprised that the American Bar Association found her unanimously "Well Qualified" to serve as a Federal District Court Judge.

In reviewing her academic and professional record, it is clear that she is well qualified to serve as a Judge on the U.S. District Court for the Northern District of Ohio, and there is nobody in this room that knows more about the fact that she is well qualified than the Chairman of this committee, Senator DeWine, who has spent a great deal of time with the Judge.

I am very happy to be here today to speak on her behalf and to second the good work that our Senator from Ohio has done in this case.

Senator DEWINE. Senator, thank you very much.

Senator Martinez?

PRESENTATION OF MARCIA MORALES HOWARD, NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF FLORIDA, BY HON. MEL MARTINEZ, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator MARTINEZ. Mr. Chairman, thank you very much, Senator Biden. I wanted to be here today to introduce to the committee a Floridian, a friend, Magistrate Judge Marcia Morales Howard.

Judge Howard appears before the committee today for a discussion of her nomination to serve on the Middle District of Florida, and I appreciate the opportunity to be here to speak on her behalf.

I am very proud of the fact that Judge Howard was recommended by the Florida Judicial Nominating Commission, which Senator Nelson and I have empaneled, which ensures that Florida has a nonpartisan judicial nominating process and allows us to move candidates forward in a timely manner with nominations for important Federal Judgeships, such as this one.

I particularly take seriously an appointment to this court. I practiced for many years before the Middle District of Florida and always held in high esteem the members of the bench before whom I practiced, all of whom I thought were excellent Judges with the right judicial temperament and wisdom, as well as integrity.

Judge Howard has a Bachelor of Science degree in Economics from Vanderbilt University, and she graduated with Honors from the University of Florida College of Law. She then went on to become an accomplished litigator for 13 years in Jacksonville, Florida, practicing insurance defense, labor, and employment law, and commercial personal injury litigation for two very fine law firms, Foley Lardner and McGuire Woods.

During her litigation career, Judge Howard also gave of her time to public service, being appointed by Governor Bush to serve on the Jacksonville Board of Transportation Authority from 1999 to 2003, and also being appointed by the mayor of Jacksonville to serve on Jacksonville's Human Rights Commission.

In 2003, she was appointed to serve as a Magistrate Judge for the Middle District of Florida. Judge Howard, therefore, knows the Judges and the operation of the Middle District. As a Magistrate Judge, she has been responsible for adjudicating criminal cases, Social Security appeals, and resolving non-dispositive matters in civil cases.

Judge Howard is an experienced Judge with a modest judicial philosophy who understands the supreme importance of judicial independence and the impartial role a Judge plays in our justice system.

I believe she will be an outstanding Judge for the Middle District of Florida, a person that I believe to be extremely well qualified, and I am delighted to have an opportunity to be here today and recommend her to the committee.

I know she will add very needed diversity to this Middle District of Florida. We have in Florida a very diverse State, and I think her appointment will only enhance the people's confidence in the judiciary and the process by which we select our Judges.

So, I thank you for allowing me an opportunity to present this very outstanding candidate.

PRESENTATION OF SARA ELIZABETH LIOI, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO, BY HON. MIKE DEWINE, A U.S. SENATOR FROM THE STATE OF OHIO

Senator DEWINE. Senator, thank you very much. We will thank our panel very much.

Before I bring up our nominees, I would like, as a Senator from Ohio, to say a few words about Judge Sara Lioi from Ohio.

I will not give my entire statement. Senator Voinovich has covered a great deal of Judge Lioi's background, and I would just like unanimous consent at this point to make my entire statement a part of the record, and it will be so made a part of the record.

Just adding a few comments, it should not surprise anyone that those who know Judge Lioi best regard her with tremendous respect and admiration. Senator Voinovich and I, when we were searching for an individual to take this position to make the recommendation to the President of the United States, spent considerable time talking to lawyers in the Northern District.

It came back unanimous, frankly, about her, her traits. She was described in glowing terms as bright, conscientious, fair, impartial, ethical. She is known as a Judge who treats everyone who appears before her courteously and with great respect. She has the sort of judicial temperament that we hope for and really expect from all our Judges.

Not surprisingly, the ABA has given her, as Senator Voinovich said, a unanimous rating of "Well Qualified", which of course is the highest rating that they can give.

For all these reasons, Judge Lioi is well suited to be a Federal Judge. She has the character, she has the intelligence you want to see in a Federal Judge.

The other attribute that anyone who knows her will attribute to her, is how hard-working she is. She gets in early, she stays very, very late, and she is extremely dedicated. She understands the role of a Judge in our system of government.

She is known by those who work with her as an excellent Judge. And just as important, she is the kind of person whom we can trust with the great responsibilities that come with being a Judge.

So Senator Voinovich and I are proud to recommend her nomination as the United States District Court Judge of the Northern District of Ohio the President, and I am gratified that President Bush has nominated her for that position. I believe that she will serve very ably as a Federal Judge for the people of the State of Ohio.

I would now ask that our nominees come forward to be sworn at this time. If all four nominees could come forward. Please remain standing. If you all would raise your right hand.

[Whereupon, the nominees were duly sworn.]

Senator DEWINE. Please take your seat.

We welcome all of you today. Each one of you will be able to make a statement if you wish. We would also ask you to introduce any members of your family or friends that you have with us.

We will start with you, Judge Jordan.

STATEMENT OF KENT A. JORDAN, NOMINEE TO BE CIRCUIT JUDGE FOR THE THIRD CIRCUIT

Judge JORDAN. Thank you very much, Senator DeWine. It is an honor and privilege to be here. I appreciate having this opportunity to speak to you. I want to thank you, Senator DeWine, for chairing this hearing.

I express my sincere gratitude to Senator Biden, to Senator Carper, and to Congressman Castle for taking time out of what I know are intensely busy schedules to be here and speak so kindly on my behalf.

I am grateful to have members of my family with me today, my wife Michelle, and three of my sons: Clinton, who is known by one and all as "Bubba," 16 years old; 14-year-old K.C.; and, as Jesse is quick to note, almost 12-year-old Jesse.

My three older children are out west at school or serving in the mission field. I miss Bethany and Nate, but I know they are pulling for me where they are, as is Bethany's husband, Thane, and my folks.

I am very fortunate to have good friends with me here as well: my secretary for many years, Cheryl Stein, and my co-clerk when I was clerking at the District Court, Kevin Brady, is here with me, as well as several of my current and former law clerks, if I could be permitted to just mention their names. Here today is Matt Person, Susan Coletti, Rob Weinschenk, Jason Nance, and Bart Kirstinbluth are all here to support me, and I appreciate that extended clerk family.

I would like to say a quick thank-you and note my appreciation as well for the mentoring I received over the years from Judge Roth, who people have spoken about here already today. She is a wonderful Judge, a great friend, and it is a real honor to be considered for the seat that she has filled with such great dignity and so very well these many years.

[The biographical information of Kent Jordan follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used.)**

Kent Amos Jordan

2. **Address: List current place of residence and office address(es).**

Residence: Hockessin, Delaware

Office: United States District Court
844 King Street - Lock Box 10
Wilmington,Delaware 19801

3. **Date and place of birth.**

October 24, 1957, West Point, New York

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

Married to Michelle Weaver Jordan, whose full-time occupation is homemaker. In 2006, Michelle worked part time as a teacher's aid for Red Clay Consolidated School District, 2916 Duncan Road, Wilmington, Delaware 19808.

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

Georgetown University Law Center; attended 9/81 to 5/84; J.D. awarded, *cum laude*, May 28, 1984.

Brigham Young University; attended 9/75 to 12/76 and 1/79 to 4/81; B.A. in Economics awarded, with High Honors, April 24, 1981.

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

Corporation Service Company; Vice President & General Counsel (1998 to 2002)(related operating entities included The Company Corporation, Corporate Domains, Inc., Corporate Agents, Inc., The Prentice-Hall Corporation System, Inc., The United States Corporation Company, and AccountStreet, Inc. The holding company of these entities

was WMB Holdings, Inc.).

Morris, James, Hitchens & Williams LLP; Partner (1994 to 1997), Associate (1992 to 1993).

Assistant United States Attorney for the District of Delaware (1987 to 1992).

Potter Anderson & Corroon; Associate (1985 to 1987).

U.S. District Court, Chambers of The Honorable James L. Latchum; Law Clerk (1984 to 1985).

University of Pennsylvania Law School; Adjunct Professor (2005 to present).

Vanderbilt University School of Law; Adjunct Professor (2003 to present).

Widener University School of Law; Adjunct Professor of Law (1995 to1996; 2006 to present).

VanCott Bagley Cornwall & McCarthy; Summer Law Clerk (Summer 1983).

Crystal Springs (Water Park); Laborer (Summer 1982).

Steve Zundel (Forestry Services); Laborer (Summer 1982).

Fraser Associates; Research Assistant (Summer 1981).

Richard S. Rodney American Inn of Court; President (2005 to present); Counselor (1996 to1999), Member of the Executive Committee (1994 to 1999; 2003 to present), Secretary-Treasurer (1994 to1996).

The Capital Trust Company of Delaware; Member of the Board of Directors (2000 to 2002).

Entity Services Group, LLC; Member of the Board of Directors (2000 to 2002).

Afilias Limited; Member of the Board of Directors of company and its predecessor in interest, Afilias LLC (2000 to 2002), Member of Executive Committee (2000 to 2001).

Board of Bar Examiners; Member of the Board (2001 to 2002), Secretary (1997), Assistant Secretary (1995 to 1996), Associate Member (1993 to 1994).

Delaware Valley Chapter of the American Corporate Counsel Association; Member of the Board of Directors (1999 to 2002), First Vice President (2002), Second Vice President (2001).

Greater Hockessin Area Development Association; Member of the Board of Directors (1991 to 2001), President (1992).

Village of Manley Civic Association; Member of the Board of Directors (1998 to 2001), President (2000 to 2001), Vice President (1998 to 1999).

Japan America Society of Delaware; Member of the Board of Trustees (1999-2000).

Delaware Chapter of the Federal Bar Association; Treasurer (1997).

Community Legal Aid Society, Inc.; Member of the Board of Directors (1994 to 1997).

Hickory Hill Civic Association; Member of the Board of Directors and President (late 80's, early 90's).

Delaware Society for the Prevention of Cruelty to Animals; Member of the Board of Directors (late 1980's to early 1990's).

Mental Health Association of Delaware; Member of the Board of Directors (mid 1980's).

Jorfam LLC, family LLC member (2004 to present)

7. **Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

I have never served in the military. (I was an ROTC cadet while a student at Brigham Young University from 1975 to 1976 and in 1979.)

8. **Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

Recipient, Caleb R. Layton III Service Award, presented periodically by the Judges of the United States District Court for the District of Delaware to an attorney who, "personifies the qualities of a federal practitioner: legal acumen, professional decorum, public service" (1998).

Recipient, New Lawyers Distinguished Service Award, presented annually by the Delaware State Bar Association to an attorney with less than ten years at the bar, "who by exemplary leadership and service dedicated to the cause of good citizenship in civic and humanitarian service ... has maintained the integrity and honored recognition of the legal profession in community affairs ..., thus reflecting high honor on both country and profession" (1992).

Juris Doctor degree awarded *cum laude* from Georgetown University Law Center (1984); Dean's list (1981-84); Selected to join the staff (1982-83) and the Editorial Board (Articles Editor; 1983-84) of the Georgetown Law Journal.

Bachelor of Arts in Economics awarded with High Honors from Brigham Young University (1981); Dean's list (1980); Earl Crockett Scholarship for Economics (1980); Army ROTC Scholarship (1976); Dean's Scholarship (1975).

9. **Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.**

Member of the Third Circuit Model Civil Jury Instruction Committee (by appointment of the Chief Judge of the United States Court of Appeals for the Third Circuit; 2004 to present).

Member of the Third Circuit Judicial Conference Committee on Magistrate Judges (by appointment of the Chief Judge of the United States Court of Appeals for the Third Circuit; 2005 to present).

"Bencher" of the Richard S. Rodney Chapter of the American Inns of Court (1996 to present); President (2005 to present); Counselor (1996 to 1999); Member of the Executive Committee (1994 to 1999; 2003 to present); Secretary-Treasurer (1994 to 1996); Barrister (1985 to 1988; 1994 to 1996).

American Judicature Society, Member of National Advisory Council (2006 to present);

Georgetown University Law Center, Member of Electronic Discovery Institute Advisory Board (2005 to present);

Federal Judges Association, Member (2003 to present).

Ombudsman for the United States District Court for the District of Delaware (by appointment of the District Court; 1995 to 2002).

Member of the Delaware State Bar Association (1984 to present); Member of the Executive Committee (July 2002); Member of the Standing Committee on the Provision of Legal Services to Low Income People (1998 to 2002); Member of the Intellectual Property Section (1996 to 2002); Council Member of the Intellectual Property Section (1996-1998); Member of the Ethics Committee (1991-1995); Chairman of the New Lawyers Committee (1989-1990).

District of Columbia Bar Association, Member (1996 to present).

Member of the Board of Bar Examiners of the Delaware Supreme Court (by appointment of the

Delaware Supreme Court; 2001 to 2002); Member of the Administrative Committee of the Board (2001 to 2002); Secretary of the Board (by appointment of the Delaware Supreme Court; 1997); Assistant Secretary of the Board (by appointment of the Delaware Supreme Court; 1995-96); Associate Member of the Board (by appointment of the Delaware Supreme Court 1993-94).

Member of the Board of Directors of the Delaware Valley Chapter of the American Corporate Counsel Association (1999 to 2002), First Vice President (2002), Second Vice President (2001).

Delaware Chapter of the Federal Bar Association (1996 to 2002), Steering Committee Member (1996 to 1997); Treasurer (1997).

Member of the Republican National Lawyers Association (2002)

Member of the American Intellectual Property Law Association (mid 90s to 2002).

Member of the Computer Law Association (mid 90s to 2002).

Member of the Advisory Committee for the United States District Court for the District of Delaware (by appointment of the District Court; 1995 to 1999).

Member of the Intellectual Property Advisory Committee of the United States District Court for the District of Delaware (by appointment of the District Court; 1997 to 1998).

Member of the Federalist Society (1995 to 1997).

Member of the Board of Directors of Community Legal Aid Society, Inc., 100 West 10th Street, Suite 801, Wilmington, DE 19801 (1994 to 1997).

Member of the District of Delaware Advisory Group under the Civil Justice Reform Act of 1990 (by appointment of the District Court; 1995); Alternate Member (1990 to 1994).

Member of the Criminal Justice Act Blue Ribbon Panel of the United States District Court for the District of Delaware (by appointment of the District Court; 1993 to 1998).

Member of the American Bar Association (1984 to early 90s).

Member, Judicial Conference of the United States Ad Hoc Committee on the American Inns of Court (by appointment of the Chief Justice of the United States; 1983 to1985).

Student Member of the Charles Fahy Chapter of the American Inns of Court (1983 to 1984)

10. **Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**

The Church of Jesus Christ of Latter-Day Saints, Member, have been a full-time missionary (Japan, 1977-78) and held various responsibilities in lay leadership.

Boy Scouts of America, Volunteer Merit Badge Counselor and Troop Committee Member (mid 1980's to present).

St. Thomas More Society, Member (late 1980's to present).

Lincoln Club of Delaware, Member (late 1980's to present).

Blood Bank of Delaware, Member (mid 1980's to present).

11. **Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.**

Delaware Supreme Court (1984 to present)
United States District Court for the District of Delaware (1985 to present)
United States Court of Appeals for the Third Circuit (1988 to present)
United States Supreme Court (1994 to present)
United States Court of Appeals for the Federal Circuit (1995 to present)
District of Columbia Court of Appeals (1996 to present)

12. **Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.**

Speech to Political Science Honor Society (March 26-30, 2003, Salt Lake City, UT), "Courage of Self-Restraint," *Meridian Magazine*

Speech to DuPont IP Seminar (Oct. 27, 2003, Wilmington, DE), on appellate deference to trial court patent claim construction;

Speech to Temple University Symposium (Feb. 24, 2005, Philadelphia, PA), "On Exclusive Rights";

Speech to Philadelphia Intellectual Property Law Assoc. (Oct. 20, 2005, Philadelphia, PA) (also basis of remarks at Thomas Jefferson Law School (Nov. 4, 2005) and ABA Intellectual Property Law Section Winter meeting (Jan. 5, 2006)), "It's the Same Thing";

Speech to Utah State Bar Assoc. Intellectual Property Section (March 24, 2006, Salt Lake City, UT) (also basis of remarks to Japan IP Judges Seminar (Apr. 21, 2006, and Waseda University Program on Claim Construction (Apr. 24, 2006)), "Anticipating Markman: Tips for Patent Prosecutors and Litigators";

Author, "Electronic Service of Process: Coming Soon to a Lawsuit Near You?" *Corporate Counsel* magazine, pg. A20 (October 1999)

Author, "The Online Copyright Infringement Liability Limitation Act: A New Tool to Preserve Copyright Protection in Cyberspace," *The Metropolitan Corporate Counsel* newspaper, pg. 18 (January 1999)

Author, "Motions Practice And Summary Disposition Of Appeal," Chapter 9, Vol. I, Federal Appellate Procedure, Third Circuit (Lawyers Cooperative Publishing 1996)

Co-Author, "Motions For Achieving Adjudication Without Trial," Chapter 16, Vol. III, Federal Civil Procedure Before Trial, Third Circuit (Lawyers Cooperative Publishing 1996)

Co-Author, "Legal Mentoring," Chapter 8, The Delaware Bar in the Twentieth Century (Delaware State Bar Association 1994)

Author of Note, "The Extent of Independent Presidential Authority to Conduct Foreign Intelligence Activities," 72 Geo.L.J. 1855 (1984)

I have been a speaker or panelist at professional conferences and classes (e.g., on intellectual property issues, civil procedure, advocacy, and professional responsibility) over the years, but I am not aware of any of the speeches or remarks having been reproduced in print or on videotape, except that I have been told my recent participation as a panelist at the May 18, 2006 judicial conference of the United States Court of Appeals for the Federal Circuit was recorded and broadcast on C-Span. I do not have a copy of that recording.

13. **Health: What is the present state of your health? List the date of your last physical examination.**

I am in excellent health. I underwent a physical examination on June 8, 2006.

14. **Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

United States District Judge for the District of Delaware, appointed Nov. 27, 2002. The District Court is a federal trial court of general jurisdiction.

15. **Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.**

a) citations for the ten (10) most significant opinions you have written;

1. *Abbott Labs. v. Teva Pharm. USA, Inc.*, No. Civ.A.02-1512, 2006 WL 1460077 (D. Del. May 26, 2006).

The main issue in this opinion is whether a pharmaceutical manufacturer can be subjected to antitrust scrutiny for changing a drug's formulation and thereby allegedly preventing generic substitution for the drug under the framework of the Hatch-Waxman Act. I held that it can, and denied the counterclaim-defendants' motion to dismiss.

2. *IT Litig. Trust v. D'Aniello (In re IT Group Inc.)*, No. Civ.A.04-1268, 2005 WL 3050611 (D. Del. Nov. 15, 2005).

The plaintiff in this case alleges breaches of fiduciary duties by corporate directors and officers. While I was required to follow Third Circuit precedent that such allegations made in federal court must only satisfy federal notice pleading standards, I noted my concern over the disparity I perceived developing between state and federal pleading standards and over a consequent weakening of the business judgment rule.

3. *VFB LLC v. Campbell Soup Co.*, No. Civ.A.02-137, 2005 WL 2234606 (D. Del. Sept. 13, 2005).

In these post-trial findings of fact and conclusions of law, I determined that the defendant was not liable for alleged fraudulent transfers or breaches of fiduciary duties. Among other things, I found that plaintiff's predecessor in interest received reasonably equivalent value for the transfers, and that the predecessor was not inadequately capitalized or insolvent at the time of the transfers.

4. *United States v. Leary*, 378 F. Supp. 2d 482 (D. Del. 2005).

In this arson case, I denied the defendants' post-conviction motions for a new trial. Newly discovered evidence that was relevant only to the extent that it might impeach one of the government's witnesses did not make it likely that a jury would have acquitted the defendants, nor did the government withhold exculpatory evidence. Finally, the government's refusal to grant immunity to a defense witness did not lead to distortions of the factual record requiring a new trial.

5. *Curay-Cramer v. Ursuline Acad. of Wilmington, Del., Inc.*, 344 F. Supp. 2d 923 (D. Del. 2004), *aff'd*, __ F.3d __, 04-4628 (3d Cir. June 7, 2006).

In this case, a former teacher brought employment discrimination claims against a Catholic school that fired her because of her public disagreement with the church's opposition to abortion. I dismissed her claims because I determined that the application of Title VII would raise substantial questions concerning the Free Exercise and Establishment Clauses of the First Amendment and that Congress did not intend for the statute to be so applied. The Third Circuit affirmed, in part on the basis I had relied upon and in part on other grounds.

6. *United States v. Gordon*, 334 F. Supp. 2d 581 (D. Del. 2004).

I denied a motion for admission pro hac vice in a public corruption prosecution, holding that the attorney who sought admission had a conflict of interest. Specifically, the attorney had represented New Castle County in connection with a grand jury investigation, before attempting to represent one of the defendants who was indicted in that investigation. The attorney argued that his representation of the County had been limited solely to document gathering, while the United States argued that the County may have been a victim of the crime and that the attorney's representation was not so limited. I found that the representation of the County and the proposed representation of the defendant were substantially related and that the interests of the County and the defendant were materially adverse.

7. *United States v. Freeman*, 325 F. Supp. 2d 463 (D. Del. 2004).

The defendant in this criminal case was detained by police under circumstances that rose to the level of police custody. While he was in custody, he was interrogated without receiving Miranda warnings, and his statements were therefore suppressed.

8. *United States v. Delaware*, No. Civ.A.01-020, 2004 WL 609331 (D. Del. Mar. 22, 2004).

The United States brought this employment discrimination action against the State of Delaware, challenging the test used to measure literacy in applicants for the job of Trooper with the Delaware State Police. While I found that literacy is an essential requirement of the job and is job-related for the position in question, I further found that the predictive power of

the test was weak. Furthermore, I found that the State set the score for a passing grade too high and failed to demonstrate that those who scored below the cutoff score would be unlikely to be able to do the job. Because I had held in a previous decision that the test had an adverse impact on African American applicants for the position of Delaware State Police Trooper (see case #10 below), I found that the State had failed to meet its burden of showing that the test met Title VII requirements.

9. *Rhodia Chimie v. PPG Indus., Inc.*, 303 F. Supp. 2d 502 (D. Del. 2004), *aff'd in part and rev'd in part*, 402 F.3d 1371 (Fed. Cir. 2005).

In this patent infringement action, I granted the defendant's motion for summary judgment of no literal patent infringement, and found that the plaintiff was estopped from asserting infringement under the doctrine of equivalents. The plaintiff in this case failed to timely submit any testing that showed that the defendant's product met the limitations of the patent claims as I had construed them. Additionally, I held that the plaintiff was estopped from asserting infringement under the doctrine of equivalents because of statements it made during the prosecution of the patent. The Federal Circuit affirmed my rulings, except for my grant of summary judgment of noninfringement as to one of the defendant's products, because the court held there was a genuine issue of material fact as to whether that product infringed the patent.

10. *United States v. Delaware*, No. Civ.A.01-020, 2003 WL 21183641 (D. Del. May 20, 2003).

This is the employment discrimination case noted above (supra, case #8), in which the United States sued the State of Delaware. I granted partial summary judgment to the United States, holding that it had demonstrated that, as compared to whites, African Americans were disproportionately screened out of the pool of applicants for the job of Trooper with the Delaware State Police.

b) Decisions reversed:

1. *Reyes v. Freebery*, No. Civ.A.02-1283, 2004 WL 1737683 (D. Del. July 30, 2004).

One of the individual defendants in this civil case was also a defendant in a criminal case. I stayed the proceedings in the civil case after finding that there was at least some overlap between the criminal and civil cases, and that a stay would help protect the defendant's Fifth Amendment right against self-incrimination, that the defendant was already under indictment, that the only prejudice to the plaintiffs was the delay in pursuing their suit, that the defendants had explicitly requested the stay, that the stay would promote judicial efficiency and the interests of justice, and that the stay was in the public interest. I had also previously entered an order regarding the parties' discussing the case with the media.

Reyes v. Freeberry, 141 Fed. Appx. 49 (3d Cir. 2005).

On appeal, the Third Circuit concluded that it lacked jurisdiction to review the stay on appeal. However, that Court also found that it needed clarification of the protective order to determine whether it had jurisdiction to review that order. The Court remanded the decision for clarification of the scope of the restrictions regarding the parties' contact with the media.

Reyes v. Freeberry, No. Civ.A.02-1283, 2005 WL 3560724 (D. Del. Dec. 29, 2005).

On remand, I outlined the documents and communications subject to the parties' stipulated protective order and the reasons for the restrictions on confidential information.

Reyes v. Freebery, No. 04-3400, ___ WL ___ (3d Cir., July 10, 2006).

On appeal, the Third Circuit dismissed the plaintiffs' appeal with respect both to my order denying their motion to void the protective order and to my order that they not discuss confidential information with the press. The Court remanded the case for me to consider whether my order denying unsealing of the summary judgment record should be reevaluated in light of the continuing stay of civil proceedings while criminal charges are pending against one of the defendants.

2. *NMSBPCSLDHB L. P. v. Integrated Telecom Express, Inc. (In re Integrated Telecom Express, Inc.)*, No. Civ.A.03-236, 2004 WL 1136547 (D. Del. May 19, 2004).

In this bankruptcy appeal, I affirmed the decision of the Bankruptcy Court that the debtor filed its bankruptcy petition in good faith. The Bankruptcy Court found as a matter of fact that the debtor, while not insolvent, was in financial distress, and ruled that the debtor's desire to cap its landlord's damage claim did not establish bad faith. I held that the Bankruptcy Court did not abuse its discretion in making those determinations.

NMSBPCSLDHB L. P. v. Integrated Telecom Express, Inc. (In re Integrated Telecom Express, Inc.), 384 F.3d 108 (3d Cir. 2004).

The Third Circuit held that the conclusion that the debtor was in financial distress was incorrect in the circumstances of this case. While the desire to cap the landlord's damages did not establish bad faith, the circumstances did not show good faith. Thus, the Third Circuit ruled that the debtor failed to carry its burden of showing good faith, and the holding to the contrary was reversed.

NMSBPCSLDHB L. P. v. Integrated Telecom Express, Inc. (In re Integrated Telecom Express, Inc.), 389 F.3d 423 (3d Cir. 2004).

The Third Circuit denied a petition for rehearing en banc. Two judges expressed concern that the discussion concerning good faith would be applied beyond the unusual facts of the case.

3. *Stanziale v. Nachtomi*, 330 B.R. 56 (D. Del. 2004).

I held that the complaint in a bankruptcy adversary proceeding failed to allege, with the particularity required by Delaware corporate law, breaches of fiduciary duty by corporate officers and directors. In Delaware, the business judgment rule requires that the plaintiff plead facts with particularity to show that the defendants' decisions were not a valid business judgment. I ruled that the plaintiff failed to meet that standard, and therefore I dismissed the claims.

Stanziale v. Nachtomi (In re Tower Air, Inc.), 416 F.3d 229 (3d Cir. 2005).

The Court of Appeals held that the heightened pleading requirement applied by the Delaware Court of Chancery does not apply in federal court. Since some of the plaintiff's claims met the more lenient notice pleading standards set forth in the Federal Rules of Civil Procedure, the dismissal was reversed as to those claims.

4. *Messina v. E.I. du Pont de Nemours & Co.*, 308 F. Supp. 2d 491 (D. Del. 2004).

This was a reverse race discrimination case, in which the plaintiff, who was Caucasian, alleged that his employer treated him differently than it treated similarly situated minority employees. To establish a prima facie case, the plaintiff was required to show that his employer treated him less favorably based on his race. I found that neither of the employees whom the plaintiff alleged were treated more favorably were similarly situated to him, and thus that he had failed to establish a prima facie case of discrimination. I therefore granted summary judgment to the defendant employer.

Messina v. E.I. du Pont de Nemours & Co., 141 Fed. Appx. 57 (3d Cir. 2005).

Although the Third Circuit affirmed my ruling, it did so on alternate grounds, finding that the plaintiff had established a prima facie case of discrimination because the burden at that stage of the analysis is relatively low, and the totality of the circumstances would allow a reasonable fact-finder to determine that the plaintiff was treated less favorably because of his race. However, the Court found that the plaintiff could not show that the employer's legitimate non-discriminatory reason for firing him was a pretext for discrimination, and thus that summary judgment was proper.

5. *Couden v. Duffey*, 305 F. Supp. 2d 379 (D. Del. 2004).

This is a civil rights case in which the plaintiffs, a mother and her children, alleged that federal and state police officers violated the Fourth Amendment protections against unlawful searches and seizures and against excessive force. I concluded that the officers' mistaken belief that the plaintiffs were involved in a burglary, and the subsequent use of force, were such that qualified immunity was appropriate. On the basis of that and related rulings, I granted summary judgment for the defendants.

Couden v. Duffy, 446 F.3d 483 (3d Cir. 2006).

The Third Circuit noted factual disputes that it concluded made summary judgment improper. The Court held, over a dissent, that the officers were not protected by qualified immunity for their actions after mistakenly believing that a crime was occurring.

6. *Lapinski v. Bd. of Educ. of the Brandywine Sch. Dist.*, No. Civ.A.00-173, 2004 WL 202900 (D. Del. Jan. 29, 2004).

In this employment discrimination action, I held that, because the plaintiff had voluntarily resigned, he could not prevail unless he could establish that he was constructively discharged. I granted the defendants' Motion for Judgment on the Pleadings because I held that, although the plaintiff's contract was not renewed, plaintiff could not establish a constructive discharge.

Lapinski v. Bd. of Educ. of the Brandywine Sch. Dist., 163 Fed. Appx. 157 (3d Cir. 2006).

The Third Circuit held that it was not necessary to establish that the plaintiff was constructively discharged, as the failure to renew his employment contract was actionable as an adverse employment action.

7. *Rhodia Chimie v. PPG Indus., Inc.*, 303 F. Supp. 2d 502 (D. Del. 2004).

In this patent infringement action, I granted the defendant's motion for summary judgment of no literal patent infringement, and found that the plaintiff was estopped from asserting infringement under the doctrine of equivalents. The plaintiff in this case failed to timely submit any testing that showed that the defendant's product met the limitations of the patent claims as I had construed them. Additionally, I held that the plaintiff was estopped from asserting infringement under the doctrine of equivalents because of statements it made during the prosecution of the patent.

Rhodia Chimie v. PPG Indus., Inc., 402 F.3d 1371 (Fed. Cir. 2005).

The Federal Circuit affirmed my rulings, except for my grant of summary judgment of noninfringement as to one of the defendant's products, because the court held there was a genuine issue of material fact as to whether that product infringed the patent.

8. *Harris-Thomas v. Christina Sch. Dist.*, No. Civ.A.02-253, 2003 WL 22999541 (D. Del. Dec. 18, 2003).

In this case, the plaintiff made civil rights claims on behalf of herself and her son, based on how the son was treated by the school district. I granted summary judgment for the school district, because the plaintiff failed to demonstrate racial discrimination, denial of procedural due process rights, or intentional infliction of emotional distress.

Harris-Thomas v. Christina Sch. Dist., 145 Fed. Appx. 714 (3d Cir. 2005).

The Third Circuit vacated the judgment as to the claims made on behalf of the son, because the mother was not entitled to represent her son's interests. The judgment was affirmed as to the mother's claims.

9. *Commissariat à l'Énergie Atomique v. Chi Mei Optoelecs. Corp.*, 293 F. Supp. 2d 423 (D. Del. 2003).

In this patent infringement case, I granted the defendant's motion to dismiss for lack of personal jurisdiction, and denied the plaintiff's request for jurisdictional discovery. I granted the motion because the plaintiff presented no evidence that the defendant made any pre-lawsuit sales in Delaware.

Commissariat à l'Énergie Atomique v. Chi Mei Optoelecs. Corp., 293 F. Supp. 2d 430 (D. Del. 2003).

On the plaintiff's motion for reconsideration, I found that jurisdictional discovery was not warranted, as the plaintiff had failed to preserve its position that jurisdictional discovery was necessary, prior to my decision on the motion to dismiss.

Commissariat à l'Énergie Atomique v. Chi Mei Optoelecs. Corp., 395 F.3d 1315 (Fed. Cir. 2005).

The Federal Circuit, on appeal, held that it was error to deny jurisdictional discovery. That Court held that the plaintiff had adequately preserved its position on jurisdictional discovery, because no formal discovery request is required to preserve such a position.

10. *Lui v. Comm'n on Adult Entm't Establishments of the State of Del.*, 213 F.R.D. 166 (D. Del. 2003).

In this case, the plaintiff asserted the unconstitutionality of a state law that formed the basis of an ongoing criminal prosecution against him. I held that the federal court should abstain pursuant to the *Younger* doctrine, because the criminal prosecution was pending in state court, important state interests were involved, and the plaintiff would be able to raise his constitutional concerns in the state proceeding.

Lui v. Comm'n on Adult Entm't Establishments of the State of Del., 369 F.3d 319 (3d Cir. 2004).

The Third Circuit affirmed my ruling as to *Younger* abstention, but held that my order was not correctly implemented, in that jurisdiction was improperly retained over one of the plaintiff's claims. The retention of jurisdiction was reversed, and the case was remanded with instructions to dismiss with prejudice.

11. *Cantor v. Perelman*, 235 F. Supp. 2d 377 (D. Del. 2002).

This opinion was written by Magistrate Judge Mary Pat Thynge, and I adopted Judge Thynge's recommendations in all respects and issued an order granting summary judgment in part for the defendants. Judge Thynge determined that Delaware law required the plaintiffs to demonstrate that they were harmed by the defendants' alleged breaches of fiduciary duty and that the plaintiffs had failed to make that showing.

Cantor v. Perelman, 414 F.3d 430 (3d Cir. 2005).

The Third Circuit reversed-in-part the grant of summary judgment. The Court held that it was not necessary for the plaintiffs to show that the defendants caused the corporate entity damage, and that, in any event, a genuine issue of fact remained as to whether such harm had occurred.

c) Citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

1. *Sokolove v. City of Rehoboth Beach*, No. Civ.A.05-514, 2005 WL 1800007 (D. Del. July 28, 2005).

The plaintiffs in this case challenged the constitutionality under the First Amendment of a city ordinance prohibiting the placement of signs on public property. In considering the plaintiffs' motion for a preliminary injunction, I concluded that, on the preliminary record, they had failed to show a likelihood of success as to the facial unconstitutionality of the ordinance and that, while they showed a likelihood of success in their claim that the ordinance was unconstitutionally applied, the specifically requested injunctive relief

was not an appropriate remedy. Therefore, I denied the motion for preliminary injunctive relief.

2. *Watkins v. New Castle County*, 374 F. Supp. 2d 379 (D. Del. 2005).

This civil rights case arose after a drug-intoxicated arrestee died following a struggle with police officers that occurred in the course of his arrest. Genuine issues of material fact remained as to whether the municipality had failed to train its officers about drug induced excited delirium and the use of prone restraint techniques, as to whether the officers used excessive force in violation of the Fourth Amendment, as to whether the officers failed to provide medical care in violation of the Fourteenth Amendment, and as to whether qualified immunity protected the officers from liability because they reasonably believed that their conduct was lawful. Thus, summary judgment was denied.

3. *Curay-Cramer v. Ursuline Acad. of Wilmington, Del., Inc.*, 344 F. Supp. 2d 923 (D. Del. 2004).

In this case, a former teacher brought employment discrimination claims against a Catholic school that fired her because of her public disagreement with the church's opposition to abortion. I dismissed her claims because I determined that the application of Title VII would raise substantial questions concerning the Free Exercise and Establishment Clauses of the First Amendment and that Congress did not intend for the statute to be so applied.

Curay-Cramer v. Ursuline Acad. of Wilmington, Del., Inc., __ F.3d __, 04-4628 (3d Cir. June 7, 2006).

The Third Circuit affirmed, in part on the basis I had relied upon and in part on other grounds.

4. *Maloney v. Gordon*, 328 F. Supp. 2d 508 (D. Del. 2004); *Reyes v. Freebery*, No. Civ.A.02-1283, 2004 WL 1737683 (D. Del. July 30, 2004).

In these employment discrimination actions, former County employees sued their former employer, New Castle County, as well as former County officials. Those former County officials had also been indicted in a criminal case involving similar issues. I stayed both cases pending the outcome of the criminal cases, at least in part to protect the Fifth Amendment rights of the defendants to be free from self-incrimination.

5. *Verizon Del., Inc. v. AT & T Communications of Del., LLC*, 326 F. Supp. 2d 574 (D. Del. 2004).

This case involved a challenge to the state public service commission's ruling on a telephone interconnection agreement. The commission asserted that it was immune

under the Eleventh Amendment from challenges brought in federal court. I concluded, based on Third Circuit precedent, that by participating in the federal regulatory scheme set forth in the Telecommunications Act of 1996, the state commission submitted itself to review in federal court. Considerations of federalism were insufficient in such a case to overcome the clear Congressional intent to provide a federal forum for challenges brought pursuant to the federal scheme. Thus, the federal lawsuit was allowed to proceed.

6. *Couden v. Duffey*, 305 F. Supp. 2d 379 (D. Del. 2004).

This is a civil rights case in which the plaintiffs, a mother and her children, alleged that federal and state police officers violated the Fourth Amendment protections against unlawful searches and seizures and against excessive force. I concluded that the officers' mistaken belief that the plaintiffs were involved in a burglary, and the subsequent use of force, were such that qualified immunity was appropriate. On the basis of that and related rulings, I granted summary judgment for the defendants.

Couden v. Duffy, 446 F.3d 483 (3d Cir. 2006).

The Third Circuit pointed to factual disputes that it concluded made summary judgment improper. The Court held, over a dissent, that the officers were not protected by qualified immunity for their actions after mistakenly believing that a crime was occurring.

7. *CSX Transp., Inc. v. Del. Dep't of Transp.*, No. Civ.A.03-756, 2003 WL 22953195 (D. Del. Dec. 12, 2003).

The plaintiff, a rail carrier, challenged the statutory authority of the Delaware Department of Transportation to cause the plaintiff to repair or replace certain railroad bridges. The plaintiff argued that, pursuant to the Supremacy Clause, the Department was preempted by federal law from enforcing the relevant state statute. I granted the Department's motion to dismiss, because state participation in the Federal-Aid Highway program is optional and, therefore, Congress did not intend to completely preempt state regulation in the circumstances of this case.

8. *Lui v. Comm'n on Adult Entm't Establishments of the State of Del.*, 213 F.R.D. 166 (D. Del. 2003).

In this case, the plaintiff asserted the unconstitutionality of a state law that formed the basis of an ongoing criminal prosecution against him. I held that the federal court should abstain pursuant to the *Younger* doctrine, because the criminal prosecution was pending in state court, important state interests were involved, and the plaintiff would be able to raise his constitutional concerns in the state proceeding.

Lui v. Comm'n on Adult Entm't Establishments of the State of Del., 369 F.3d 319 (3d Cir. 2004).

The Third Circuit affirmed my ruling as to *Younger* abstention, but held that my order was not correctly implemented, in that jurisdiction was improperly retained over one of the plaintiff's claims. The retention of jurisdiction was reversed, and the case was remanded with instructions to dismiss with prejudice.

In addition to the foregoing cases, I include one decision in a prisoner civil rights case and one on a petition for habeas corpus. Such cases are significant to the individuals involved and often deal with constitutional issues. However, they arise with such frequency that it is impractical to list them all, so one of each type is provided by way of example.

1. *Brown v. George*, No. Civ.A.02-1686, 2005 WL 2271922 (D. Del. Sept. 19, 2005)

In this Section 1983 case, the plaintiff, a former inmate in the Delaware correctional system, alleged that prison guards used excessive force in violation of the Eighth and Fourteenth Amendments. I granted summary judgment in part, based on the Eleventh Amendment immunity of the state, and denied it in part. The case settled following trial.

2. *Graham v. Brooks*, 342 F. Supp. 2d 256 (D. Del. 2004).

The petitioner in this habeas case contended, among other things, that his Eighth Amendment rights had been violated and that he was denied effective assistance of counsel. I determined that his petition had to be dismissed.

16. **Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.**

Assistant United States Attorney for the District of Delaware, appointed (1987 to 1992).

17. **Legal Career:**

a. **Describe chronologically your law practice and experience after graduation from law school including:**

1. **whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;**

Law Clerk to the Honorable James L. Latchum, United

States District Court for the District of Delaware, 1984-85.

2. **whether you practiced alone, and if so, the addresses and dates;**

I did not practice alone.

3. **the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;**

Associate (1985-87) with Potter Anderson & Corroon, 1313 North Market Street, Wilmington DE 19801

Assistant United States Attorney (1987-92), U.S. Attorney's Office for the District of Delaware, 1007 Orange Street, Suite 700, Wilmington, DE 19801

Associate (1992-93) and Partner (1994-97) with Morris James Hitchens & Williams, 222 Delaware Avenue, 10th Floor, Wilmington, DE 19801

Vice President & General Counsel (1998- 2002) with Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808

b. 1. **What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?**

From 1984 to 1985, I served as a law clerk to the Honorable James L. Latchum, a judge on the United States District Court for the District of Delaware. Following my clerkship with Judge Latchum, I worked for approximately two years (1985-87) with the law firm of Potter Anderson & Corroon, 1313 North Market Street, Wilmington, DE 19801, as an associate assigned mainly to corporate and commercial litigation matters. I was then offered the opportunity to serve as an Assistant United States Attorney for the District of Delaware (1987-92). The U.S. Attorney's Office is currently located at 1007 Orange Street, Suite 700, Wilmington, DE 19801. I became the lead attorney in the office on civil matters, as well as serving as lead counsel and co-counsel on a variety of criminal cases. Following my five years in the U.S. Attorney's Office, I became an associate (1992-93) and then a partner in the law firm of Morris James Hitchens & Williams (1994-97), 222 Delaware Avenue, 10th Floor,

Wilmington, DE 19801, handling mainly intellectual property, corporate, and commercial litigation. At the end of 1997, I accepted an offer to join the senior management team of Corporation Service Company ("CSC"), as a Vice President and the General Counsel, beginning in 1998. CSC, located at 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, is a national provider of registered agent, public records filing and retrieval, corporate and intellectual property information management, and litigation information management services. As General Counsel, I was responsible for all of the legal affairs of the company and for managing a legal department with eight attorneys, including me, and two paraprofessionals. I supervised dispute resolution, risk management, certain labor and employment issues, contract negotiation and review, intellectual property, and real estate matters, as well as participating in the planning and execution of business acquisitions and other strategic development in the company. In 2002, I was nominated, confirmed, and sworn in as a United States District Judge for the District of Delaware, in which position I handle a wide variety of civil and criminal cases.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

In private practice, my clients were typically business entities involved in patent and related disputes in the U.S. District Court for the District of Delaware. To a lesser degree, I handled corporate disputes in Delaware's Court of Chancery and commercial disputes in Delaware's Superior Court or in adversary proceedings related to bankruptcies pending in the Bankruptcy Court in Delaware. I also represented individual defendants, including directors and officers of corporations in civil cases and indigent individuals in federal criminal and post-conviction relief proceedings.

As an Assistant United States Attorney, my clients in civil cases included various agencies of the United States government involved in a broad array of legal disputes, from basic torts to complex federal regulatory and contractual problems. In criminal cases, I managed grand jury investigations and prosecuted cases involving matters as diverse as drug trafficking, environmental crime, extortion, bank robbery, firearms violations, tax violations, and complex fraud.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

As a law clerk (1984-85), I was in court daily. As a new associate (1985-

87), I appeared infrequently in court and then generally in a supporting role. During my five years as an Assistant United States Attorney (1987-92), I appeared in federal court nearly every day for some purpose: arguing motions, handling initial appearances or arraignments, presenting evidence to grand juries, representing the U.S. in various pretrial hearings, trying cases, or participating in case conferences related to civil or criminal matters. During the five and a half years I worked at Morris James Hitchens & Williams (1992-97), I regularly appeared in court for mediations, case conferences, arguments, *Markman* hearings, and, occasionally, trial. As General Counsel for CSC (1998-2002), I appeared in court sporadically in relation to disputes involving the company, and, on pro bono matters. I twice argued constitutional issues in a death penalty habeas matter before the United States Court of Appeals for the Third Circuit, and appeared in Delaware's Family Court as an attorney guardian ad litem for at-risk children.

2. **What percentage of these appearances was in:**
   - **(a) federal courts:** 95%
   - **(b) state courts of record:** 5%
   - **(c) other courts:**

3. **What percentage of your litigation was:**
   - **(a) civil:** 70%
   - **(b) criminal:** 30%

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

I estimate that I tried to conclusion 25 to 30 cases. To the best of my recollection, in all but two of those cases, I was either sole counsel (six or seven cases), sole lead counsel (another two or three cases), or (in all the rest) co-lead counsel, sharing equally with a partner or another Assistant United States Attorney in the responsibility to develop the case, prepare the witnesses, handle the examination and cross-examination, and present either the opening statement or the closing argument or both.

5. **What percentage of these trials was:**
   - **(a) jury:** 75%
   - **(b) non-jury:** 25%

18. **Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and**

date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

a. Hameen v. Delaware, 212 F.3d 226 (3d Cir. 2000), *cert. denied*, 532 U.S. 924 (2001)(opinion below at Ferguson, a/k/a Hameen v. Delaware, C.A. No. 96-306-LON, 1996 WL 1056727 (D.Del. Dec. 13, 1996)).

In the District Court, the case was before Judge Joseph J. Longobardi; in the Court of Appeals, it was first before Judges Mannsman, Greenberg, and McKee and subsequently before Judges Greenberg, McKee, and Rendell. My appointed co-counsel was John S. Malik, Esquire, 100 East 14th Street, Wilmington, DE 19801, Tel. 302-427-2247. Not court appointed but working closely with us on the case were former colleagues at Morris James who have since moved to other positions: The Honorable Joseph R. Slights, III, Superior Court of the State of Delaware, New Castle County Courthouse, 500 North King Street, Wilmington, DE 19801, Tel. 302-255-0656, and Ricardo Palacio, Esquire, Ashby & Geddes, 222 Delaware Avenue, 17th Floor, Wilmington, DE 19801, Tel. 302-654-1888. Opposing counsel was Loren C. Meyers, Chief of Appeals Division, Delaware Department of Justice, Carvel State Office Bldg, 820 N. French Street, Wilmington, DE 19801, Tel. 302-577-8500.

This is the death penalty habeas case to which I referred in answering question 17c., *supra*. When John Malik and I were appointed as co-counsel for Mr. Hameen, we reviewed the issues and agreed to divide them and focus our separate efforts on specific issues within the case. We agreed that I would be responsible for the lead constitutional argument in the case, which asserted that Delaware's retroactive application of its revised death penalty statute violated the *ex post facto* clause of the Constitution. While the overall effort put into the case was collaborative and included excellent work by Judge Slights and Rick Palacio, with occasional support by other colleagues at Morris James, I did have the opportunity to take the lead in briefing that issue and arguing it at the various levels at which we pursued relief. We were not successful in our efforts to obtain post-conviction relief, and Mr. Hameen was executed on May 25, 2001. The case was highly significant to me because it literally involved a question of life or death, it had at its heart a fundamental constitutional issue, and it involved the then-newly emerging standards for habeas corpus review under the Antiterrorism and Effective Death Penalty Act.

b. United States v. Morales, 861 F.2d 396 (3d Cir. 1988)

The case in the District Court was before Judge Murray M. Schartz. It was reviewed on appeal by Judges Hutchinson, Seitz, and Sloviter. I was the sole attorney for the United States on the case. (It should be noted, of course, that even in cases like this, where I was the only

Assistant United States Attorney assigned to the matter, the attorneys in the office regularly discussed our cases and shared counsel and lent other support as needed.) Opposing counsel was Joel DeFabio, then of Malman, DeFabio & Lapidus, 2121 Ponce de Leon Blvd., Coral Gables, FL 33134, Tel. Number unknown.

This was a drug trafficking case in which the District Court ruled the cocaine seized during a traffic stop on I-95 should be suppressed as evidence against one of the defendants because it was seized during a warrantless search as to which that defendant had not consented. I was responsible for the entire case, including the suppression hearing and briefing in the District Court and the briefing and argument of the matter on appeal. It was a significant case because it vindicated on appeal the propriety of the search and seizure and allowed us to move forward with a successful prosecution of both defendants.

c. **CFMT v. Steag Microtech, Inc.**, 965 F. Supp. 561 (D.Del. 1997).

The case in the District Court was before Judge Joseph J. Longobardi. It was decided in the first instance by Magistrate Judge Mary Pat Trostle (now Mary Pat Thynge), who issued a report and recommendation. I was the lead counsel for Steag Microtech GmbH Donaueschingen ("SMTD"), a German entity related to the lead defendant, and I coordinated my efforts with those of the attorneys for the lead defendant, Steag Microtech, Inc. ("SMTI"). The Attorneys for SMTI were Arthur G. Connolly, Jr., Esq., of Connolly Bove Lodge & Hutz, 1007 Orange Street, Wilmington, DE 19801, Tel. 302-888-6212; G. Thomas Delahunty, Esq., formerly of Brooks Haidt Haffner & Delahunty, last known address 32 Harvard Street, Garden City, NY 11530, Tel. unknown, and George F. Stradar, Jr., Esq., Northrop, Stradar & Glenn, P.C., One Corwin Court, P.O. Box 2395, Newburgh, NY 12550, Tel. 914-561-8000. Opposing counsel were Edward B. Maxwell, 2nd, Esq., and Josy W. Ingersoll of Young Conaway Stargatt & Taylor, The Brandywine Building, 17th Floor, 1000 West Street, Wilmington, DE 19801, Tel. 302-571-6600, and Thomas B. Kenworthy, Esq., Morgan Lewis & Bockius, 2000 One Logan Square, Philadelphia, PA 19103, Tel. 215-963-5000.

This was a patent case in which my client prevailed on a motion to dismiss for lack of personal jurisdiction and which involved the interpretation of a then-relatively new amendment to Fed.R.Civ.P. 4, pertaining to service of process and the exercise of personal jurisdiction. I dealt with SMTD personnel in Germany on the discovery conducted regarding SMTD's contacts with the United States. With the assistance of an associate, I researched the relevant law, filed and briefed the motion to dismiss, and made the case for dismissal both to the Magistrate Judge and to the District Judge who reviewed the case and rendered an opinion in our favor. This case was significant to me because it involved a rule which, though technical in nature, nevertheless bore on the fundamental constitutional question of when it is appropriate for a United States court to exercise jurisdiction over a foreign citizen, and it was a favorable result in a hard-fought case.

d. **United States v. Skerianz, et al.**, Criminal Action No. 89-15-LON.

The case in the District Court was before Judge Joseph J. Longobardi. On appeal, in which I was not substantially involved, it was before Judges Hutchinson, Nygaard, and Rosenn and is reported as United States v. Inigo, at 925 F.2d 641 (3d Cir. 1991). I was co-counsel with my U.S. Attorney's Office colleague Edmond ("Corky") Falgowski, 1007 Orange Street, Suite

700, Wilmington, DE 19801, Tel. 302-573-6277. Opposing counsel were, for defendant Bruno Skerianz, Richard A. Zappa, Esq., and Melanie K. Sharp, Esq. of Young Conaway Stargatt & Taylor, The Brandywine Building, 17th Floor, 1000 West Street, Wilmington, DE 19801, Tel. 302-571-6600; for defendant Raul Giordano, John S. Malik, Esq., 100 East 14th Street, Wilmington, DE 19801, Tel. 302-427-2247; for defendant Antonio Inigo, Raymond M. Radulski, Esq., 1225 N. King Street, Suite 301, Wilmington, DE 19801, Tel. 658-9388; and for material witness Maria deBianchini, Jerome M. Capone, 1823 West 16th Street, Wilmington, DE 19806, Tel. 654-3260.

This was a prosecution under the Hobbs Act against several defendants from Argentina who conspired and attempted to extort $10,000,000 from the DuPont Company. They had stolen DuPont's trade secrets associated with the production of its highly valuable Lycra spandex fiber. Corky Falgowski and I worked with the victim, the FBI, and law enforcement officers from Europe to develop the case, which, given the crimes and the international character of the defendants and venues involved, was complicated. After a trial that lasted ten days or two weeks, we succeeded in convicting all of the defendants. The convictions of three of the defendants were overturned on appeal because the Third Circuit held that the evidence was insufficient to sustain the convictions. That was, of course, not a result with which I agreed. The case was significant to me because it was fascinating and tragic in its human dimensions and very challenging in terms of logistics and evidence to bring to trial.

e. **United States v. One Million Three Hundred Twenty-Two Thousand Two Hundred Forty-Two Dollars and Fifty-Eight Cents ($1,322,242.58)**, 938 F.2d 433 (3d Cir. 1991) (In the District Court as Civil Action No. 88-654-CMW).

The case in the District Court was before Judge Caleb M. Wright. The opinion on appeal was written by then-Judge Samuel Alito. I was sole counsel for the U.S. in this matter. The opposing counsel was Bartholomew J. Dalton, Esq., 1106 West 10th Street, Wilmington, DE 19806 Tel. 302-652-2050, and Paul R. Regensdorf, formerly with Fleming, O'Bryan & Fleming, now with Stearns Weaver Miller, New River Center, 200 East Las Olas Boulevard, Suite 2100, Ft. Lauderdale, FL 33301, Tel. 954-462-9500.

This was a civil forfeiture action involving proceeds of illegal drug trafficking, deposited as gold bullion in a Wilmington, Delaware bank. I worked with the DEA agents responsible for the matter in Florida and Delaware and filed the action on behalf of the United States. Because of the claimant's recalcitrance in discovery, we were able to have the claim dismissed and the forfeiture was upheld. The case was significant because it involved what was then a relatively new tool in the war on drugs, because it highlighted the complexities inherent in using the tools of civil discovery in a case with criminal overtones, and because it emphasized the importance of judicial insistence on fair compliance with the rules of discovery. The case became important to me in an additional way. In private practice, I later represented a friend whose family home was at risk of forfeiture because a grown son had used drugs on the premises. I therefore saw the power in the forfeiture law from both the government's and the property-owner's perspectives.

f. **Discovision Associates v. Disc Mfg., Inc.**, Civil Action No. 95-21-SLR (opinions at 1997 WL 699275 (D.Del. Sept. 16, 1997); 42 U.S.P.Q. 1749 (D.Del. Apr. 3, 1997), and, after my involvement in the case, at 25 F.Supp.2d 301 (D.Del. 1998))

The case was before District Judge Sue L. Robinson. My co-counsel in the case included Thomas J. Nolan, Esq., now with Skadden, Arps, Slate, Meagher & Flom LLP, 300 S. Grand Avenue, Suite 3400, Los Angeles, CA 90071, Tel. 213-687-5000; Stephen L. Sulzer, Esq., and Frederick Frei, Esq., then with Steptoe & Johnson, now, respectively, with Connolly Bove Lodge Hutz LLP, 1990 M Street, NW, Suite 800, Washington, D.C. 20036, Tel. 202-331-7111, and Andrews Kurth LLP, 1350 I Street, NW, Suite 1100, Washington, D.C. 20005 Tel. (202) 662-2700; and Anthony C. Roth, Esq., of Morgan Lewis & Bockius, 1111 Pennsylvania Ave., NW, Washington, D.C. 20004, Tel. 202-739-3000 and D. Michael Underhill, Esq., then with Morgan Lewis, now with McDermott Will & Emery, 600 Thirteenth Street, NW, Washington, DC 20005, Tel 202-756-8000. Opposing counsel included Robert H. Richards, III, Esq., of Richards Layton & Finger, One Rodney Square, Wilmington, DE 19801, Tel. 302-651-7740; James B. Blanchard, Esq., of Brinks Hofer, Gilson & Lione, 455 N. Cityfront Plaza Drive, NBC Tower, Suite 3600, Chicago, IL 60611, Tel. 312-321-4200; and The Hon. Michael Chertoff, formerly of Latham & Watkins, now Secretary of Homeland Security, Washington, DC 20528, Tel. 202-282-8000.

This was a complex patent case dealing with the technology for compact discs and involving a very large number of attorneys. (I have not listed all of the participants from all of the firms.) I had the role of local counsel for the plaintiff. I was involved with the case from the beginning and watched the logistical issues mount for the court and the parties as the case moved through discovery, claim construction, and trial. I had some substantive involvement but was never lead counsel on any substantive issue. My primary responsibilities concerned procedural issues and assisting the various attorneys for the plaintiff to work within the local rules and customs of practice in the District Court in Delaware. The result of the litigation, when I left it, was a mixture of rulings, with each side able to claim some victory. The importance and value of the technology at issue and the sheer size of the workforce that each side deployed made this case significant. I felt that I made a positive contribution in a very complicated case and learned, from this and similar patent cases, the challenges that counsel and the court must address in resolving highly technical questions in high-stakes patent disputes.

g. **Ajinomoto Co., Inc. v. Archer-Daniels-Midland Co.**, Civil Action No. 95-218-SLR, 1996 WL 621830, and 621837 (D.Del. Oct. 21, 1996) and 1998 WL 151411 (D.Del. Mar. 31, 1998), *aff'd*, 228 F.3d 1338 (Fed. Cir. 2000), *cert. denied*, 532 U.S. 1019 (2001).

The case was before District Judge Sue L. Robinson. My co-counsel in the case included Arthur I. Neustadt, Esq., of Oblon Spivak McClelland Maier & Neustadt, 1755 Jefferson Davis Highway, Fourth Floor, Arlington, VA 22202, Tel. 703-413-3000; Marc R. Labgold, Esq., formerly of Oblon Spivak and now with Antara BioSciences Inc., 2257 Compass Point Lane, Reston, Virginia 20191, Tel. (703) 901-8860; Thomas Field, Esq., and Lawrence Rosenthal, Esq., of Strook & Stroock & Lavan, 180 Maiden Lane, New York, NY 10038, Tel. 212-806-5400. Opposing counsel included Jack B. Blumenfeld, Esq., of Morris Nichols Arsht & Tunnell, 1201 N. Market Street, Wilmington, DE 19801, Tel. 302-658-9200; Charles A. Laff, Esq., then of Laff Whitesel Conte & Stewart, now with Michael Best & Friedrich LLP, 180 N. Stetson Avenue, Suite 2000, Chicago, IL 60601, Tel. 312-222-0800; and J. Alan Galbraith, Esq., of Williams & Connolly, 725 Twelfth Street, NW, Washington, D.C. 20005, Tel. 202-434-5000.

This was another complex patent case, in this instance dealing with the bioengineering of

bacteria to produce amino acids for livestock feed. Again, the case involved a large number of attorneys (I have not listed all of them), and presented particularly technical scientific issues. What made the case significant for me was the international character of the dispute and the very human motivations that appeared to drive the actors. In addition, my co-counsel were adept at presenting evidence through the use of computer technology, and that was one of my first opportunities to see such technology applied to a significant degree in a courtroom setting. We were successful in enforcing our client's patent rights. My role as local counsel to plaintiff became increasingly substantive as the case progressed and I was closely involved in the development of the case for the plaintiff throughout discovery (which ranged over Europe, Japan, and the United States), claim construction, and trial.

h. **Buena Vista, Inc., et al. v. Wilmington Trust Company**, Civil Action No. 87C-12-043, 1994 WL 555373 (Del. Super. Aug. 31, 1994).

The judge who presided over this case was Superior Court Judge Fred S. Silverman. My co-counsel was my partner P. Clarkson Collins, Jr., Esq., Morris James Hitchens & Williams, 222 Delaware Avenue, 10th Floor, Wilmington, DE 19801, Tel. 302-888-6800, and we were assisted by associates and paralegals in the firm. Opposing counsel was Darryl K. Fountain, who is no longer in practice.

This case involved a commercial dispute between our client, the defendant bank, and a real estate developer and architect who claimed the bank's lending practices resulted in the failure of his real estate project. Mr. Collins and I developed the case together through discovery and shared the load equally at trial. Among other things, I handled the cross-examination of the plaintiffs' principal and made the closing argument. The case was significant because it was contentious litigation in which we obtained a favorable result at trial, with plaintiffs owing the bank hundreds of thousands of dollars rather than collecting the seven figure damages sum they had demanded.

i. **Diltz v. United States**, 771 F. Supp. 95 (D.Del. 1991).

District Judge Murray M. Schwartz presided over this case. My co-counsel was a colleague in the U.S. Attorney's Office, Patricia C. Hannigan, Esq., 1007 Orange Street, Suite 700, Wilmington, DE 19801, Tel. 302-573-6277. Opposing counsel was Bernard A. Van Ogtrop, Esq., then of Cooch & Taylor, now with Seitz Van Ogtrop & Green, 222 Delaware Avenue, Suite 1500, Wilmington, DE 19899, Tel. 302-888-7601; and Walter A. Oleniewski, Esq., then with Shulman Rogers Gandal Pordy & Ecker, now located at 2315 Twin Valley Lane, Silver Spring, MD 20906, Tel. Number unknown.

This was a medical malpractice action brought under the Federal Tort Claims Act and based upon allegations that mishandled surgeries by armed forces doctors on the plaintiff's eye had complicated a congenital condition. Ms. Hannigan and I developed the defense and shared responsibility in discovery. I took the lead in briefing our unsuccessful motion for summary judgment. Ms. Hannigan and I worked together to negotiate a settlement, which Ms. Hannigan succeeded in doing after I left the U.S. Attorney's Office for private practice. Because this case involved allegations of malpractice that stretched over a number of years and different surgeries, the case was significant in the challenge of marshalling evidence. It was also a particularly interesting case because of the medical science involved.

j. United States v. Ecke, Criminal Action No. 87-102-JRR.

The presiding judge was then District Judge Jane R. Roth. I was sole counsel in handling the case for the United States. Opposing counsel were, for defendant Wolfgang G. Ecke, Joseph A. Hurley, Esq., 1215 King Street, Wilmington, DE 19801, Tel. 302-658-8980; and, for defendant Johann W. Zalud, J. Calvin Williams, Jr., Esq., 7234 Lancaster Pike, Suite 300D, Hockessin, DE 19707, Tel. 302-234-8656.

This was a bank fraud case involving two German confidence men and a trail of evidence across Europe. The case was significant for me because it was one of the first criminal cases, if not the first, that I managed from beginning to end. I worked with the FBI and other government officials in securing evidence in the United States and abroad, and I handled all aspects of the trial, which concluded with convictions.

19. Legal Activities: **Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)**

Most recently, I have been a member of the committee charged by the Chief Judge of the Third Circuit to develop model civil jury instructions for the Circuit. With the help of two outstanding law professors who have served as reporters for the committee, we have largely completed the project but have on-going responsibilities for updating the instructions. I view my pro bono activities, which are described in detail in response to question number 1, section III, *infra*, as particularly significant and satisfying work. In addition, I have endeavored through teaching, speaking, and serving as a panelist at conferences to address issues of significance on various legal topics, particularly in the field of intellectual property rights.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

   None.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

   I do not anticipate any conflicts of interest to arise. My wife and I do not own securities, except for mutual funds held in 401(k) accounts. My wife has worked recently for the Red Clay Consolidated School District, and I have served in a variety of non-profit community organizations. I review weekly the new case filings, to ensure that I recuse myself when necessary. If the school district or one of those non-profit organizations were to become a party to litigation in the Court, I would have to determine on a case-by-case basis whether my or my wife's involvement with the organization had been recent enough to warrant recusal. I will continue to follow the guidelines of the Code of Conduct for United States Judges in resolving any conflicts that may arise.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

   As an Adjunct Professor, I have taught semester-long evening courses at the University of Pennsylvania Law School and the Widener University School of Law. I have likewise taught one-week, intensive seminars at the Vanderbilt University School of Law. I hope to have continued teaching opportunities.

4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

   See attached Financial Disclosure Report

5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**

   See attached Net Worth Statement

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

   In 1986, I managed the re-election campaign of a friend, Steve Taylor, for a seat in the Delaware House of Representatives. In 1996, I was the Delaware State Chair of the Richard G. Lugar for President campaign. In 1994 and 2000, I served as a volunteer on re-election campaigns for Senator William V. Roth, Jr. Also, in 2000, I was a volunteer with the George W. Bush for President campaign.

AO 10
Rev. 1/2006

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Jordan, Kent A	3d Circuit	07/03/2006
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
Circuit Judge-Nominee	☒ Nomination, Date 06/28/2006 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2005 to 07/03/2006
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
844 King Street Lock Box 10 Wilmington, DE 19801	Reviewing Officer_____ Date_____	

IMPORTANT NOTES: *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.*

I. POSITIONS. *(Reporting individual only; see pp. 9-13 of instructions.)*

☐ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. President	Richard S. Rodney Inn of Court
2. Advisory Board	Georgetown University E-Discovery Institute
3. Member of National Advisory Council	American Judicature Society
4.	
5.	

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of instructions.)*

☒ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting Jordan, Kent A	Date of Report 07/03/2006

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of instructions.)*

A. Filer's Non-Investment Income

☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 03/2005	Vanderbilt University - teaching	$ 6,000
2. 09/2005	University of Pennsylvania School of Law	$ 10,000
3. 01/2006	Widener University School of Law - teaching	$ 7,000
4. 02/2006	Vanderbilt University - teaching	$ 6,000
5.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*
(Dollar amount not required except for honoraria.)

☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE
1. 1/2006	Red Clay Consolidated School District - salary
2.	
3.	
4.	
5.	

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

☐ NONE *(No reportable reimbursements.)*

SOURCE	DESCRIPTION
1. EXEMPT	
2.	
3.	
4.	
5.	

FINANCIAL DISCLOSURE REPORT Page 3 of 7	Name of Person Reporting Jordan, Kent A	Date of Report 07/03/2006

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of instructions.)*

☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.	EXEMPT		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children. See pp. 32-34 of instructions.)*

☒ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 7

Name of Person Reporting	Date of Report
Jordan, Kent A	07/03/2006

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. Income during reporting period (2) Type (e.g. div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. Gross value at end of reporting period (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	D. Transactions during reporting period – If not exempt from disclosure (2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Brokerage Account #1									
2. Profunds Mid-Cap		None			Exempt				
3. Profunds Small-Cap Value		None							
4. Potomac Dynamic High Yield		None							
5. Rydex Nova Investors Trust		None							
6. Mutual Qualified Class A	B	Dividend							
7. Mutual Shares Class A	B	Dividend	K	T					
8. Janus Core Equity	A	Dividend							
9. Schwab Hedged Equity Fund	A	Dividend	K	T					
10. Rydex Series Trust OTC Fund		None							
11. Gateway Index Plus Fund	A	Dividend	J	T					
12. UMB Scout Worldwide		None							
13. Schwab Premier Equity Fund Select Shares	A	Dividend	J	T					
14. Schwab Premier Money Sweep Shares	B	Dividend	L	T					
15. Fidelity Investment - Delaware College Investment		None	J	T					
16. Brokerage Account #2									
17. Profunds Small-Cap Value		None							

1 Income Gain Codes (See Columns B1 and D4): A =$1,000 or less; B =$1,001 - $2,500; C =$2,501 - $5,000; D =$5,001 - $15,000; E =$15,001 - $50,000; F =$50,001 - $100,000; G =$100,001 - $1,000,000; H1 =$1,000,001 - $5,000,000; H2 =More than $5,000,000

2 Value Codes (See Columns C1 and D3): I =$15,000 or less; K =$15,001 - $50,000; L =$50,001 - $100,000; M =$100,001 - $250,000; N =$250,001 - $500,000; O =$500,001 - $1,000,000; P1 =$1,000,001 - $5,000,000; P2 =$5,000,001 - $25,000,000; P3 =$25,000,001 - $50,000,000; P4 =More than $50,000,000

3 Value Method Codes (See Column C2): Q =Appraisal; R =Cost (Real Estate Only); S =Assessment; T =Cash Market; U =Book Value; V =Other; W =Estimated

FINANCIAL DISCLOSURE REPORT
Page 5 of 7

Name of Person Reporting	Date of Report
Jordan, Kent A	07/03/2006

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. Income during reporting period (2) Type (e.g. div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. Gross value at end of reporting period (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	D. Transactions during reporting period — If not exempt from disclosure (2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. Profunds Mid-Cap		None							
19. Rydex Nova Investors Trust		None							
20. Mutual Discovery-Class A		None							
21. Victory Special Value A		None							
22. Schwab Premier Money Sweep Shares	A	Dividend							
23. Schwab Hedged Equity Fund		None							
24. Rydex Series Trust OTC Fund		None							
25. Fidelity Investment - Delaware College Investment		None	J	T					
26. Fidelity Investment - Delaware College Investment		None	J	T					
27. ING Direct (CD)	A	Interest	J	T					
28. ING Direct (Money Market Accts)	A	Interest	K	T					
29. Millbrook Capital Partners LLC	A	Int/Dist							
30. Texaco/Chevron Corp. Common Stock (X)		Dividend	J	T					
31. Texaco/Chevron Corp. Common Stock (X)		Dividend	J	T					
32. Texaco/Chevron Corp. Common Stock (X)		Dividend	J	T					

1 Income Gain Codes (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
2 Value Codes (See Columns C1 and D3)	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
3 Value Method Codes (See Column C2)	P3 =$25,000,001 - $50,000,000	R =Cost (Real Estate Only)	P4 =More than $50,000,000	T =Cash Market	
	Q =Appraisal	V =Other	S =Assessment		
	U =Book Value		W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 6 of 7	Name of Person Reporting Jordan, Kent A	Date of Report 07/03/2006

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

Filer's Non-Investment Income: Additional income received as compensation for duties as U.S. District Judge.

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Jordan, Kent A	Date of Report 07/03/2006

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature Kent A Jordan Date 7/3/06

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		32	686	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		148	331	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		2	000
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		38	844
Real estate owned-add schedule		450	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		51	035				
Cash value-life insurance							
Other assets itemize:							
Delaware College Investment Plan accounts		16	775				
Certificate of Deposit		5	000				
				Total liabilities		40	844
				Net Worth		662	983
Total Assets		703	827	Total liabilities and net worth		703	827
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Schwab Premier Money Sweep Shares	$ 73,313
Schwab Premier Equity Fund Select Shares	14,622
Mutual Shares Class A	22,989
Schwab Hedge Equity Fund	22,437
Gateway Index Plus Fund	14,970
Total Listed Securities	$ 148,331
Real Estate Owned	
Personal residence	$ 450,000
Real Estate Mortgages Payable	
Personal residence	$ 38,844

III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

I was court appointed to represent the petitioner in a death penalty habeas case. That appointment was made in 1996. With co-counsel, and in consultation with our client and his family, I worked on that case through briefing and argument in the District Court, through briefing and supplemental briefing, two rounds of argument, and a motion for reargument en banc in the Third Circuit, and a petition to the U.S. Supreme Court for a writ of certiorari. Following the denial of relief at each of those stages, my co-counsel and I worked with our client to secure a reduction in sentence from the Delaware authorities. Ultimately, we were unsuccessful and our client was executed in May of 2001. Over a period of five years, largely on an uncompensated basis, I probably devoted hundreds of hours to the representation of our client but do not have records to give a precise estimate.

At the end of 2001, I undertook on a pro bono basis the representation of two at-risk children as their attorney guardian ad-litem. I appeared in Delaware's Family Court approximately six times. Counting court appearances, interviews with parents, stepparents, extended family members, psychologists/counselors, and Division of Family Services personnel, discussions with opposing counsel and with the assigned Deputy Attorneys General for the state, correspondence to the court and to health care providers, and miscellaneous other matters, I estimate that I devoted approximately eighty hours to the representation.

In 1994, I represented, under a Criminal Justice Act court appointment and at a substantially reduced rate, an indigent defendant in a federal drug trafficking case. Along with co-counsel, I filed pre-trial motions, handled a suppression hearing, prepared witnesses and evidence, tried the case (a three or four day trial), appealed the conviction, and filed a petition for a writ of certiorari. Again, the time investment was very substantial, but it is long enough ago that I cannot recall now how much time was devoted to the matter.

Also in the mid 90's, I was appointed by the court on an emergency basis to represent an indigent material witness in a capital case in federal court. The matter required several interviews and the negotiation of immunity with the government. I do not recall receiving compensation for the representation, and, if there was any, it was at the substantially reduced Criminal Justice Act rate. I do not now recall how much time was devoted to the matter.

In the early 90's ('92 or '93), I represented on a pro bono appointment through Delaware Volunteer Legal Services an indigent woman in a landlord tenant dispute, which was resolved to

my client's satisfaction. Again, I cannot recall how much time was devoted to the matter.

In the mid 80's, I represented on a pro bono basis a young father and family friend in Family Court in relation to a custody dispute. I cannot recall how much time was devoted to the matter.

In addition to the foregoing pro bono efforts, I have spent many hours over the years on issues associated with the delivery of legal services to those who otherwise would be unable to afford representation. From 1994 to 1997, I served on the Board of Directors of the Community Legal Aid Society, Inc. ("CLASI"), a statewide non-profit agency responsible for providing legal services to low income people, and from 1998 to 2002, I served on the standing committee of the Delaware State Bar Association dedicated to the provision of legal services to people with low income. I also was a member of an informal committee convened by the District Court to explore ways to handle pro se prisoner litigation (Sec. 1983 claims) coming before the Court.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?**

   I have never belonged to any such organization

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

   I was invited to interview with attorneys from the office of White House Counsel regarding an opening on the United States Court of Appeals for the Federal Circuit, and I also expressed interest in the Third Circuit, since an opening on that court was said to be imminent. Once the opening on the Third Circuit occurred, I expressed my interest to Congressman Michael N. Castle.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

   No

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped-many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Judges do not make the rules; they apply them. While judges must be sensitive to how their resolution of specific disputes may affect other disputes, they should not view themselves as creating solutions for policy problems. That is the role of the elected representatives of the people.

In that same spirit, judges should adhere to the doctrines that have developed to foster judicial restraint and which reflect the wisdom of experience. Doctrines of ripeness and standing ought to be obeyed so that decisions on the merits of a question are only reached when a judge can act within the confines of a specific, well-defined case or controversy. Similarly, by following precedent and recognizing the binding character of higher court decisions, judges are steadily reminded of the boundaries within which the judiciary should operate.

Judges should recognize that, even when they have the power to right what they perceive to be wrong, not every wrong is theirs to right. A due respect for the other institutions of government, especially the co-equal branches of our government, is essential.

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE

AFFIDAVIT

I, Kent Amos Jordan, being duly sworn, hereby state that I have read and signed the foregoing Questionnaire for Nominees Before the Committee on the Judiciary and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Kent Amos Jordan

SUBSCRIBED AND SWORN TO before me this 3rd day of July, 2006.

Notary Public

CAREY M. SHEA
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires May 24, 2007

Senator DEWINE. Judge, thank you very much.

Judge Howard?

STATEMENT OF MARCIA MORALES HOWARD, NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF FLORIDA

Judge HOWARD. Thank you, Mr. Chairman. I want to thank all of the members of the committee for giving me the opportunity to appear before you here today.

I am very grateful to Senator Martinez for his time and for that most gracious introduction that he gave. I am also grateful for the support that both he and Senator Nelson have given me through this process.

I want to express my gratitude to the President for nominating me and giving me the opportunity to continue, or potentially to continue, in public service.

I do not have an opening statement, but I would be honored to introduce my family who are here with me today, and some friends.

My husband is here with me, Laurence Howard, and my two children, Amanda Howard, who is nine, and Webb Howard, who is six. I confess, when I looked back earlier, he was not awake.

[Laughter].

Senator DEWINE. I am sure that was not a commentary on Senator Biden or the Chairman.

[Laughter].

Judge HOWARD. I think it had to do with getting up too early to make the flight.

Senator DEWINE. I am sure.

Judge HOWARD. My parents, Marcia and Ricardo Morales are here. I will not share their ages. My sister, Rosa Maria Morales King and my sweet nephew Gray King are here. My brother, Ricardo Morales is here.

I am also very fortunate to have two dear friends with me, Jodi Wiles, who has worked with me both when I was in private practice and has served as my judicial assistant and courtroom deputy, and my dear friend Mary Summerville Welch. I am grateful to them for joining me, and I am privileged to answer any questions that you may have.

[The biographical information of Marcia Howard follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used).**

   Marcia Morales Howard

   (Ia Morales Howard, Marcia Maria Morales, Ia Morales)

2. **Address: List current place of residence and office address(es).**

   Residence: Jacksonville, Florida

   Office address: United States District Court
   300 N. Hogan Street, Suite 5-111
   Jacksonville, FL 32202-4249

3. **Date and place of birth.**

   07/16/65 - Jacksonville, Florida

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

   I am married to Laurence Webb Howard, III. Laurence is the Vice President and General Counsel of Interline Brands, Inc., 801 W. Bay Street, Jacksonville, FL 32204.

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

   University of Florida, College of Law; August 1987 – May 1990; Juris Doctor, with honors, May 1990.

   Vanderbilt University; 1983 to 1987; Bachelor of Science degree; May 1987.

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

   June 2, 2003 – Present; United States Magistrate Judge for the United States District Court for the Middle District of Florida

November 1994 - May 2003; McGuireWoods LLP (f/k/a McGuire, Woods, Battle & Boothe LLP) Partner, 1999-2003; Associate, 1994-1998

February 1991 - November 1994; Foley & Lardner, P.A.; Associate.
The law firms of Foley & Lardner, P.A. and Commander, Legler, Werber, Dawes, Sadler & Howell, P.A. merged effective 2/1/91.

September 1990 - February 1991; Commander, Legler, Werber, Dawes, Sadler & Howell, P.A.; Associate

August 1989 - May 1990; University of Florida College of Law; Teaching/Research Assistant

May 1989 - August 1989; Kirkpatrick & Lockhart; Summer Associate.

August 1988 - May 1989; University of Florida College of Law; Teaching/Research Assistant.

June 1988 - August 1988; Commander, Legler, Werber, Dawes, Sadler & Howell, P.A.; Summer Law Clerk.

January 1988 - May 1988; University of Florida College of Law; Research Assistant.

I currently serve as an uncompensated, non-employee, board member and/or director of the following family-owned entities: Morales Construction Company; Morales Investments of Jacksonville, Inc.; MIC Holdings, Inc.; and Morgar Realty, Inc.

Prior to becoming a magistrate judge, I was a partner with McGuireWoods LLP. Due to the firm's structure, I was required to form a corporation in the name of Marcia Morales Howard, P.A., which held my partnership interest. I permitted this professional association to remain an active corporation in 2004 in order to complete my 2003 income tax obligations. As certain of the firm's 2003 tax obligations had not yet been determined by the end of 2004, I permitted the corporation to remain active through the end of 2005. The corporation had no income in either 2004 or 2005 as it has had no employees, and I have not engaged in the practice of law. After closing the books and accounts, I requested that the Secretary of State for the State of Florida terminate the corporation's active status effective December 31, 2005.

I presently serve on the Board of Directors of the following:
American Cancer Society, Duval County Unit Board Member
Northeast Florida Council for Community and Justice, Board Member and Secretary

I previously served on the Board of Directors of the following entities:

Girl Scouts of Gateway Council, Board Member
Jacksonville Transportation Authority, Vice Chairperson (resigned upon becoming a magistrate judge)
Jacksonville Human Rights Commission, Board Member (membership prior to becoming a magistrate judge)
National Conference for Community and Justice, Board Member
Hispanic American Cultural Association, Board Member
TheatreWorks, Board Member
Bolles School Executive Alumni Council

7. Military Service: **Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

No.

8. Honors and Awards: **List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

Order of the Coif, University of Florida College of Law
Book Awards: Legal Drafting, Federal Income Taxation I
Symposium Editor, Florida Law Review
Chief Defense Counsel, University of Florida Student Honor Court

9. Bar Associations: **List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.**

Federal Bar Association
American Bar Association
The Florida Bar
Florida Bar EEO Committee (prior to judicial service)
Federal Magistrate Judges Association
Jacksonville Bar Association
Chester Bedell Inns of Court
Jacksonville Women Lawyer's Association
Hispanic Bar Association of Northeast Florida
Catholic Lawyer's Guild
National Association of Railroad Trial Counsel (prior to judicial service)
Defense Research Institute (prior to judicial service)

I have served actively on the following committees of the United States District Court, Middle District of Florida:

2003
Committee for Automation and Technology
Subcommittee on Case Management/Electronic Case Filing
Committee on Case Management and Judicial Relations
Committee on Judicial Resources and Personnel

2004
Automation and Technology Committee
Committee on Case Management/Electronic Case Filing
Case Management and Judicial Relations Committee
Judicial Education and Meetings Committee
Magistrate Judge Committee

2005
Automation and Technology Committee
Subcommittee on Case Management/Electronic Case Filing
Case Management and Judicial Relations Committee
Criminal Law, Probation Administration and Pretrial Services Committee
International Relations Committee
Rules of Practice, Procedure and Administration Committee

10. **Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**

To the best of my knowledge, the only organizations to which I currently belong that may be actively lobbying before public bodies would be the Girls Scouts of Gateway Council and the American Cancer Society. While I do not have specific knowledge of any current lobbying efforts, it is my general belief that these organizations are frequently involved in lobbying efforts.

I currently belong to the following organizations:

St. Matthews Catholic Church
Girl Scouts of Gateway Council
St. Vincent's Women's Council
Northeast Florida Council for Community and Justice
Leadership Jacksonville
Wolfson's Children's Hospital, Women's Board
American Cancer Society, Duval County Unit, Advisory Board Member

11. Court Admission: **List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.**

Florida Bar/Florida State Courts, 1990
United States District Court for the Middle District of Florida, 1990
Eleventh Circuit Court of Appeals, 1994
United States District Court for the Northern District of Florida, 1995
Supreme Court of the United States, 1998

12. Published Writings: **List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.**

Following is a list of my written publications:

Tenure Reform in Florida, National School Boards Association, Council of School Attorneys, 1996

Non-Compete Agreements, Florida Basic Labor and Employment Law Course, 1997 and 1999

Chapter Contributor, Employment Discrimination Law, 1998 Supplement

Chapter Chair, Employment Discrimination Law, 2000 Supplement

Chapter Chair, Employment Discrimination Law, 2002 Supplement

I have not given any speeches involving issues of constitutional law or legal policy.

Although I have given other presentations to civic clubs and some other groups, those have been limited to general presentations regarding the Middle District of Florida, our courthouse and the types of matters that come before this Court.

13. Health: **What is the present state of your health? List the date of your last physical examination.**

I am currently in excellent health. The date of my last physical examination is April 3, 2006.

14. Judicial Office: **State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

I am currently employed as a United States Magistrate Judge for the United States District Court, Middle District of Florida, Jacksonville Division. I was appointed to this position by the Court on June 2, 2003. My term expires on June 1, 2011.

15. Citations: **If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.**

(1) Significant opinions:

(a) Report and Recommendation dated November 13, 2003 in DirecTv v. Brown, et al., Case No. 3:03-cv-157-J-32MMH. On December 30, 2003, the district judge adopted the portion of the Report and Recommendation relating to Counts I and II of the complaint. However, he deferred ruling on my recommendation that Count III be dismissed because the criminal statute upon which Plaintiff relied did not provide for a private right of action until the Eleventh Circuit rendered a decision on that issue. On June 15, 2004, in a separate case, the Eleventh Circuit Court of Appeals ruled that the claim asserted by DirecTV in Count III of its complaint was properly dismissed because the statute on which it relied did not create a private right of action.

(b) Report and Recommendation dated May 21, 2004 in Clayman v. American Home Products, et al., Case No. 3:03-cv-1054-J-32MMH. This Report and Recommendation was adopted in full on July 14, 2004.

(c) Report and Recommendation dated May 31, 2005 in United States of America v. Griffis, et al., 3:04-cr-337-J-99MMH. This Report and Recommendation was adopted in full on July 6, 2005.

(d) Report and Recommendation dated July 26, 2005 in Snider v. Cingular Wireless Health and Welfare Benefit Plan for Non-Bargained Employees and Metropolitan Life Insurance Co., Case No. 3:04-cv-198-J-99MMH. This Report and Recommendation was adopted in full on September 27, 2005.

(e) Report and Recommendation dated August 6, 2004 in United States of America v. Mario Jerome Bentley, Case No. 3:04-cr-103-J-32MMH. This Report and Recommendation, which recommended denial of the defendant's motion to suppress, was adopted on September 16, 2004. The defendant later appealed his conviction based on the denial of the motion to suppress. The Eleventh Circuit Court of Appeals affirmed that denial as well as the conviction on September 23, 2005 in United States v. Bentley, Case No. 05-11459, 2005 WL 2334366.

(f) Report and Recommendation dated May 19, 2004 in United States of America v. Sandoval, et al., Case No. 3:04-cr-32-J-99MMH. This Report and Recommendation was adopted in full on June 15, 2004.

(g) Report and Recommendation dated February 24, 2005 in Mathews v. Crosby, 3:99-cv-1117-J-32MMH. This Report and Recommendation was adopted in full on March 15, 2005.

(h) Report and Recommendation dated March 19, 2004 in Gonzalez v. Carithers, et al., 3:04-cv-68-J-25MMH. This Report and Recommendation was adopted in full on April 5, 2004.

(i) Report and Recommendation dated October 15, 2003 in Dawson v. England, 3:02-cv-1037-J-21MMH. At the time this decision was entered, the Eleventh Circuit Court of Appeals had not yet determined whether Rule 4(m) of the Federal Rules of Civil Procedure permitted a district court to extend the time for service of process in the absence of a showing of good cause. This Report and Recommendation, which was adopted by the Court on November 4, 2003, recommended such a holding. On March 11, 2005, the Eleventh Circuit, after having permitted an immediate appeal in light of the substantial difference of opinion regarding the issue, determined that Rule 4(m) grants a district court the discretion to extend the time for service of process even in the absence of a showing of good cause.

(j) Order on Plaintiff's Motion for Leave to Amend Complaint to Join Additional Defendants dated November 17, 2005 in Beebe v. Eli Lilly and Company, et al., Case No. 3:05-cv-161-J-25MMH.

(2) To my knowledge, none of my decisions have been reversed nor have they been affirmed with criticism.

(3) I have not prepared any significant opinions on federal or state constitutional issues.

16. **Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.**

I served on the Board of the Jacksonville Transportation Authority from 1999 to 2003. I was appointed to this position by Governor Jeb Bush in August of 1999 and reappointed in June of 2002. I resigned upon accepting my appointment as a United States Magistrate Judge.

I also served on the Jacksonville Human Rights Commission. I was appointed to this Commission by Mayor John Delaney in 1996 and later reappointed for a subsequent term.

I have never run for elective public office.

17. **Legal Career:**

a. **Describe chronologically your law practice and experience after graduation from law school including:**

1. **whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;**

I did not serve as a law clerk.

2. **whether you practiced alone, and if so, the addresses and dates;**

I have never practiced alone.

3. **the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;**

June 2003 – Present; United States District Court for the Middle District of Florida, Jacksonville Division; 300 N. Hogan Street, Suite 5-111, Jacksonville, FL 32202; United States Magistrate Judge

1994 – 2003; McGuireWoods LLP (f/k/a McGuire, Woods, Battle & Boothe LLP); 50 N. Laura Street, Suite 3300, Jacksonville, FL 32202. I joined McGuireWoods in November of 1994 as an associate. I became a partner effective January 1, 1999, and withdrew from the firm in 2003 upon my appointment to the Middle District Court.

1990 – 1994; Foley & Lardner, P.A. and its predecessor, Commander, Legler, Werber, Dawes, Sadler & Howell, P.A., 200 North Laura Street, Jacksonville, FL 32202; associate attorney.

b. 1. **What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?**

From the time I graduated from law school until mid-1993, my practice was devoted to insurance defense litigation, medical malpractice litigation, and commercial litigation.

From mid-1993 until 1997, I shifted the focus of my practice from general litigation to labor and employment law. During this period, at least fifty percent of my time was spent representing management interests in labor and employment matters. The remaining fifty percent involved different types of commercial litigation and personal injury litigation (predominantly suits brought under the Federal Employers' Liability Act).

1997 - mid-2003 -- During this period, seventy-five to eighty-five percent of my practice was devoted to handling labor and employment matters, litigation resulting from non-competition agreements, and providing general advice to clients on labor and employment matters. The remaining time was spent on various types of commercial and personal injury litigation matters, as well as some minor criminal matters.

In June, 2003, I began my term as a United States Magistrate Judge. In this position, I am responsible for the pretrial management of all civil and criminal matters in my assigned cases. With regard to criminal matters, I preside over initial appearances and arraignments. I conduct detention hearings, and thus, determine whether to release a defendant on bond or detain that defendant pending resolution of the charges. I also preside over any bond revocation proceedings. I resolve non-dispositive

motions and preside over any hearings necessary to resolve those motions. I have conducted numerous evidentiary hearings on motions to suppress evidence and accepted countless felony guilty pleas. I have also adjudicated guilt and sentenced a number of defendants charged with misdemeanor offenses. In addition to these regular responsibilities, when acting as the duty judge, I review and issue search warrants, arrest warrants and seizure warrants.

I also carry responsibilities relating to the civil case load. These duties include resolving non-dispositive matters, conducting evidentiary hearings and preparing reports and recommendations regarding dispositive matters referred to me by the assigned district judge. I also conduct status conferences and settlement conferences. With the consent of the parties, I have exercised full jurisdiction over federal civil cases.

Magistrate judges in the Jacksonville division of the Middle District of Florida generally handle social security appeals on a consent basis. This means that I am responsible for the final dispositive judgment in these cases and have made such determinations on forty occasions to date. I have also gained experience in handling admiralty matters.

2. **Describe your typical former clients, and mention the areas, if any, in which you have specialized.**

During the first few years of my practice, my typical clients were physicians, hospitals, their insurers and various commercial entities. As I transitioned to a labor and employment practice, my clients were corporations or smaller companies, although I also represented individuals in non-competition litigation. During the last six years of my practice, most of my work was for large national or multinational corporations. However, I continued to represent local companies and individuals in appropriate cases.

c. 1. **Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.**

The frequency of my court appearances changed significantly over time. During the first several years of my practice, when I was handling general litigation matters, I appeared in court for hearings frequently. From 1993 to 1997, as my practice shifted more to

labor and employment, the frequency of my court appearances began to wane. Most labor and employment matters at that time were litigated in federal court rather than state court. It was my experience that the federal courts required, and indeed allowed, fewer oral arguments. However, during that same time frame, because I continued to handle other types of litigation, I continued to appear in state court on a regular basis. From 1997 to 2003, because my practice focused more heavily on labor and employment law in federal court, my court appearances were limited to pretrial conferences, trials, and motion hearings.

2. **What percentage of these appearances was in:**
   - **(a) federal courts:** 70%
   - **(b) state courts of record:** 30%
   - **(c) other courts.**

3. **What percentage of your litigation was:**
   - **(a) civil:** 95%
   - **(b) criminal:** 5%

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

I tried four cases to verdict or judgment. I was lead counsel in one of the trials and associate counsel in the other matters. I was also lead counsel in numerous cases which resulted in the entry of summary final judgment in favor of my client. Accordingly, they did not reach trial. In addition, I have handled two commercial bid protests under the Florida Administrative Code, one of which culminated in a hearing and an order requiring the contract to be re-bid. My client responsibilities have also given me the opportunity to handle arbitrations to final judgment.

5. **What percentage of these trials was:**
   - **(a) jury;** 75%
   - **(b) non-jury.** 25%

18. **Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:**

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Held v. CSX Intermodal, Inc., Case No. 3:97-cv-279-RWN. I represented CSX Intermodal in a lawsuit alleging violations of the Americans with Disabilities Act. I handled all aspects of this matter until experts were deposed. At that time, I enlisted the assistance of another attorney in my office for the purposes of these depositions as a trial in federal court would have prevented me from completing them on a timely basis. I also prepared the legal argument of the summary judgment brief. This case involved complicated issues relating to whether and when the duty to accommodate an individual arises under a given set of circumstances. It also involved complex questions regarding whether the plaintiff was covered by the Americans with Disabilities Act. Final summary judgment was entered in favor of CSX Intermodal, Inc.
   (a) Mid-1997 through April 1998.
   (b) United States District Court for the Middle District of Florida, Jacksonville Division, The Honorable Ralph W. Nimmons.
   (c) C. Warren Anderson, Esq.
   Anderson & Howell
   2029 North Third Street
   Jacksonville Beach, Florida 32250
   Telephone: (904) 247-1972

   Cindy L. Anderson, Esq.
   Eraclides, Johns, Hall, Gelman, Eikner & Hohannessen, LLP
   4811 Atlantic Boulevard
   Jacksonville, Florida 32207
   Telephone: (904) 306-9955

2. EEOC v. SeaWorld of Florida, Inc., Case No. 6:99-cv-710-ACC. In 1999 and 2000, Eva Tashjian-Brown and I defended SeaWorld of Florida, Inc. against a class action brought by the EEOC alleging sexual harassment. The matter was of particular significance to the client in light of the adverse publicity attendant to such claims. Ms. Tashjian-Brown and I were able to resolve the matter with the

EEOC without substantial press coverage, without the necessity of far ranging class notification and without the imposition of a consent decree.

(a) Mid-1999 through mid-2000.

(b) United States District Court for the Middle District of Florida, Orlando Division, The Honorable Anne C. Conway.

(c) Eve Lowe, Esq.
Lauren Greenbaum, Esq.
Equal Employment Opportunity Commission
Miami District Office
One Biscayne Tower, Suite 2700
Two South Biscayne Boulevard
Miami, Florida 33131
Telephone: (305) 530-6005

3. Huff v. CSX Transportation, Inc., Case No. 5:98-cv-142-WTH. I represented CSX Transportation, Inc. in defending a lawsuit alleging violations of the Americans with Disabilities Act. The plaintiff in this case had previously sued CSX Transportation successfully on two separate occasions (under the Federal Employers' Liability Act), and had received over half a million dollars in compensation. Despite this, he sued CSX Transportation a third time, alleging that the company had failed to accommodate him. On this occasion, my firm was retained to represent CSX Transportation. I handled all aspects of this matter through summary judgment. It was significant because the plaintiff's claims required analysis of almost every issue under the Americans with Disabilities Act, including unresolved issues such as the extent of an employer's duty to promote or transfer a disabled individual, and the application of the continuing violation doctrine to Americans with Disabilities Act cases. We ultimately obtained a full summary judgment on behalf of CSX Transportation. Plaintiff appealed the matter to the Eleventh Circuit Court of Appeals. I prepared the brief on behalf of CSX Transportation and the Eleventh Circuit affirmed the summary judgment. See Huff v. CSX Transportation, Inc., Case No. 00-10194.

(a) Early 1998 through October 2000.

(b) United States District Court for the Middle District of Florida, Ocala Division, The Honorable William Terrell Hodges.

(c) Robyn Bufford, Esq.
Jeffrey W. Bennitt, Esq.
Bennitt & Bufford, L.L.C.
One Perimeter Park South, Suite 325
Birmingham, Alabama 35243
Telephone: (205) 970-0813

Mr. Huff subsequently filed yet another charge of discrimination alleging that CSX Transportation would not permit him to return to work in violation of the Americans with Disabilities Act. Upon completion of the administrative

proceedings, he again filed suit against CSX Transportation. After receiving the complaint, I contacted Mr. Huff's lawyer and provided him with a copy of the district court's decision, the Eleventh Circuit Court of Appeals decision, and the relevant history regarding the plaintiff's claims. After consultation with his attorney, Mr. Huff voluntarily dismissed his case with prejudice.

(a) February 2002 - July 23, 2002.
(b) Duval County Circuit Court, Case No. 02-01448-CA-CVB.
(c) Donald E. Pinaud, Jr., Esq.
Law Offices of Kattman & Pinaud, P.A.
4069 Atlantic Boulevard
Jacksonville, Florida 32207
Telephone: (904) 398-1229

4. McAnany v. MediaOne, et al., 3:01-cv-1321-JHM and Smith v. MediaOne, et al., 3:02-cv-370-JHM. In 2001 and continuing to early 2003, I was lead counsel representing AT&T Broadband (and its successor Comcast) in connection with two lawsuits alleging violations of the Fair Labor Standards Act and Florida's Whistleblower Protection Statute (Fla. Stat. § 448.102). These cases should have been fairly routine. However, upon filing the lawsuit, one of the plaintiffs sought and received significant media attention. She also corresponded with city officials which resulted in the City Council requesting that the Attorney General investigate our client, as well as the filing of a class action on behalf of the area's cable customers. One of the two plaintiffs ultimately agreed to dismiss his claims with prejudice in exchange for an agreement that my client relieve him from the obligation of satisfying a sanction award imposed by the Court, while the other dismissed her claims with prejudice in exchange for a payment of attorney's fees and costs to her counsel.

(a) November 2001 - December 2002.
(b) United States District Court for the Middle District of Florida, Jacksonville Division, The Honorable John H. Moore, II.
(c) Eric S. Block, Esq.
6817 Southpoint Parkway, Suite 2502
Jacksonville, Florida 32216
Telephone: (904) 475-9400

5. Globe Data Systems, Inc. v. Griebel and Monarch Art Plastics, LLC, Case No. 3:01-cv-557-RWN. I was lead counsel representing Globe Data Systems in this action seeking injunctive relief and damages against an individual defendant for violation of a non-competition agreement and against both the individual and her employer for misappropriation of trade secrets and tortious interference with advantageous business relationships. With arduous investigation prior to filing the action, we were able to obtain a broad preliminary injunction providing significant protection for the client's business interests. With that injunction

substantially limiting the defendants' business activities, we were able to negotiate a resolution of the matter satisfactory to the client.

(a) May 2001 - July 2001.

(b) United States District Court for the Middle District of Florida, Jacksonville Division, The Honorable Ralph W. Nimmons.

(c) Frederick Dyer Page, Esq.
Holland & Knight LLP
50 N. Laura Street, Suite 3900
Jacksonville, Florida 32202
Telephone: (904) 353-2000

6. Hamerter v. Busch Entertainment Corporation, Case No. 8:00-cv-824-JSM. I represented Busch Entertainment Corporation in this action alleging employment discrimination and violations of the Fair Labor Standards Act. The matter was significant to Busch Entertainment because the plaintiff, a current employee, challenged an established seniority system. In addition, plaintiff challenged Busch Entertainment Corporation's ability to enforce a newly instituted mandatory alternate dispute resolution program which required employees to arbitrate their claims. On behalf of Busch Entertainment, I filed a motion for summary judgment as well as a motion to compel arbitration. The Court ultimately granted summary judgment in favor of Busch Entertainment Corporation.

(a) April 2000 - October 2001.

(b) United States District Court for the Middle District of Florida, Tampa Division, The Honorable James S. Moody.

(c) Yveline Paul, Esq.
Paul & Assoc., Law Firm
620 East Twiggs Street, Suite 102
Tampa, Florida 33602-3938
Telephone: (813) 226-3997

7. Hammick v. Metal Container Corporation, Case No. 3:01-cv-65-HLA, Gilham v. Metal Container Corporation, Case No. 3:01-cv-66-HLA, and Bradley v. Metal Container Corporation, Case No. 3:01-cv-67-HES. Rodney A. Satterwhite of the firm's Richmond office and I represented Metal Container Corporation in defending three companion cases brought by employees of Metal Container alleging gender discrimination and harassment. The cases raised a broad range of issues from the enforceability of settlement agreements entered into by the employees, to the scope of claims that could be brought, the status of the harasser, and the availability of punitive damages. Plaintiffs' counsel propounded voluminous discovery requests and deposed some thirty witnesses (current and former management and non-management employees of Metal Container Corporation). The matter was further complicated by the fact that the claims spanned over a decade, and the fact that the three plaintiffs remained employed by

Metal Container throughout the litigation. A summary judgment motion was filed on behalf of Metal Container in the Bradley action. All three of the matters were satisfactorily resolved prior to the filing of summary judgment motions in the two remaining cases.

(a) January 2001 - January 2002.

(b) United States District Court for the Middle District of Florida, Jacksonville Division, The Honorable Henry L. Adams and The Honorable Harvey E. Schlesinger.

(c) Patricia Dodson, Esq.
Terrell, Hogan
233 E. Bay Street, Suite 800
Jacksonville, Florida 32202
Telephone: (904) 632-2424

Jennifer Kolinski Millis, Esq.
Law Office of W.C. Gentry
One Independent Drive, Suite 1701
Jacksonville, Florida 32202
Telephone: (904) 356-4100

8. Codrington v. Anheuser-Busch, Inc., Case No. 8:98-cv-2417-RAL. I, with the assistance of Rodney A. Satterwhite of the firm's Richmond, Virginia office, represented Anheuser-Busch, Inc. in a ten-plaintiff retaliation claim filed by former employees who failed to obtain continuing employment with Anheuser-Busch, Inc. after the company's Tampa brewery closed in 1995. This case was substantial, both because of the precedent it set for future Anheuser-Busch brewery closings and because of the potential financial risk. Summary judgment briefs were filed on behalf of Anheuser-Busch on January 31, 2000. The matter was resolved shortly thereafter.

(a) October 1998 - April 2000.

(b) United States District Court for the Middle District of Florida, Tampa Division, The Honorable Richard A. Lazarra.

(c) Thomas W. Dickson, Esq.
Fechter & Dickson, P.A.
1201 Swann Avenue
Tampa, Florida 33606
Telephone: (813) 254-2404

9. Hollenbeck v. General Motors. I participated with Susan Maisa in the defense of General Motors in an Americans with Disabilities Act action brought by Steven Hollenbeck. At the time this matter was litigated, the Americans with Disabilities Act was quite new. Issues relating to the preparation of jury instructions, preparation of the trial brief and the motion for judgment as a matter of law required significant analysis, given the fact that there had been so few ADA

decisions at that time. In addition to being responsible for half of the witnesses, I was responsible for drafting the jury instructions and dispositive trial motions, as well as handling the legal arguments and charge conference. The jury ultimately returned a verdict in favor of General Motors.

(a) May 1994

(b) United States District Court for the Western District of Wisconsin, Judge Shabaz.

(c) Willie J. Nunnery, Esq.
802 West Broadway, Suite 211
Madison, Wisconsin 53713

10. Nackley v. HealthCare, U.S.A., Case No. 3:95-cv-551-HES. Scott Cairns and I represented HealthCare, U.S.A. in an action brought by a former employee alleging gender discrimination and intentional infliction of emotional distress. The plaintiff had been terminated after being accused of sexual harassment. I assisted in the discovery on this case and prepared the summary judgment motion as well as the appellate brief. Mr. Nackley's claims were significant because of the risk employers frequently run when they terminate employees who are accused of harassment. We ultimately obtained a summary judgment on behalf of HealthCare U.S.A. That summary judgment was upheld by the Eleventh Circuit Court of Appeals. 107 F.3d 26 (11th Cir. 1997).

(a) 1995 - January 1997.

(b) United States District Court for the Middle District of Florida, The Honorable Harvey E. Schlesinger. Eleventh Circuit Court of Appeals, Judges Birch, Carnes and Fay.

(c) Linda Ingham, Esquire
Marks, Gray, Conroy & Gibbs, P.A.
1200 Riverplace Boulevard, Suite 800
Jacksonville, Florida 32207
Telephone: (904) 398-0900

19. **Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)**

(1) In 1997, I assisted a client in the analysis and handling of a potential WARN Act liability in excess of $1,000,000.00 resulting from the sale of certain operations. This entailed a review of the transaction documentation, analysis of the potential WARN Act exposure, identification of options to reduce the potential WARN Act liability, and ultimate coordination and handling of the plan of action.

(2) In 1996, Timothy J. Corrigan (now United States District Judge Corrigan) and I were asked to serve as inventory attorneys, on a pro bono basis, for the practice of Jeffrey Mulrain. Mr. Mulrain, a sole practitioner with a substantial practice, went into a coma suddenly and died three weeks later. Initially, Judge Corrigan and I faced this challenge with the optimistic goal of keeping Mr. Mulrain's practice going until he could return to work. However, it quickly became apparent that Mr. Mulrain would not be returning. At that time, it became necessary to find new representation for all of his clients, particularly those who faced statute of limitations issues, criminal hearing/trial deadlines and immigration deadlines. A major factor complicating our mission was the fact that many of Mr. Mulrain's clients had paid him in advance to complete their legal work and were unable to pay fees a second time. Nonetheless, they were in a position of needing prompt representation lest they be deported or incarcerated. For the benefit of Mr. Mulrain's wife and young children, we also wanted to avoid any future claims against the estate. Judge Corrigan and I were successful in finding pro bono representation for a significant number of Mr. Mulrain's clients and were also able to secure representation for all of the remaining clients who were left in Mr. Mulrain's practice at the time we were appointed as inventory attorneys. My duties in this regard extended through the next four years as I continued to assist clients who called seeking information and documents.

(3) In 2002 and 2003, I advised a major financial institution with regard to compliance with its Fair Labor Standards Act obligations. In doing so, I assisted them in identifying errors in the manner their systems were calculating an employee's regular rate of pay so that the matter could be resolved to avoid future litigation. I also advised them on the implementation of a program to correct the previous underpayments to employees.

(4) Previously, from 1998 - 2000, I assisted attorneys in the firm's Charlotte, North Carolina office with the defense of five Fair Labor Standards Act actions filed in the Southern District of Florida against another financial institution. These actions challenged either the classification of certain bank employees or the alleged failure to pay overtime compensation on a class wide basis. The number of plaintiffs involved in these cases ranged from 5 to approximately 1500. The matters were extremely significant in terms of the damages sought as well as their potential impact on the bank's operations and its classification of current and future employees.

(5) From 1998 - 2001, I, along with one of my partners, represented a national securities brokerage in an employment discrimination matter. Over the plaintiff's objection, we successfully moved to compel arbitration of the plaintiff's claims pursuant to NASD regulations. In addition to the normal factual issues present in any age and sex discrimination claim, this case raised several critical legal issues regarding the arbitrability of a number of plaintiff's claims as well as the

recoverable damages. Surprisingly, given the fact that the matter was being arbitrated, there were also a number of contested discovery issues. It was ultimately resolved shortly before the NASD arbitration, but not before the arbitration panel was called upon to resolve a number of disputed issues.

(6) In both 1994 and 1995, I was called upon by separate clients to provide legal advice with respect to labor and employment laws affecting companies doing business in the Commonwealth of Puerto Rico. As part of my analysis, I obtained and translated relevant Puerto Rican labor and employment laws and prepared a detailed summary of those laws as well as all other federal employment laws which would impact entities doing business in the Commonwealth of Puerto Rico.

(7) As a magistrate judge, I have participated in a number of continuing legal education programs regarding issues including Fair Labor Standards Act claims, professional responsibility, courtroom decorum, trial preparation and electronic case filing. In 2005, I was asked to be the keynote speaker at the annual meeting of the Social Security Administrative Law Judges.

(8) At the request of the various district judges, I have conducted numerous settlement conferences with success in all but one occasion. As a result of this experience, as well as my attendance at the Federal Judicial Center's Mediation Skills Workshop, I have been active in advocating the creation of a formal mediation program in the Middle District of Florida to help address our heavy civil case load.

(9) As a member of the Court's Subcommittee on Case Management/Electronic Case Filing, I participated in the preparation of the administrative procedures utilized for the implementation and administration of the Case Management and Electronic Case Filing system which went into effect in July of 2004. Similarly, as a member of the Committee on Rules of Practice, Procedure and Administration, I recently participated actively in revising the Local Rules for the United States District Court, Middle District of Florida.

(10) In appropriate circumstances, I have invited troubled youth and students interested in the criminal justice system or the legal profession to spend a day in chambers observing various court proceedings and chambers activities. Additionally, at the request of various community leaders, I have also spoken at career days for some of the community's inner city schools which have focused on inspiring young students to stay in school and to set for themselves the goal of not only graduating but proceeding with further education.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

   Other than dividends I expect to earn on publicly traded investments and return on my personal investments in the family owned companies previously identified, the only such arrangement of which I am aware is my continued participation in the McGuireWoods 401k plan which is administered by T. Rowe Price.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

   Federal judicial officers are required to comply with the Code of Conduct for United States Judges as well as the mandates of the Ethics Reform Act of 1989, 28 U.S.C. § 455. As I have in the past, I will continue to refer to the statutory authority, case law interpreting that authority, and the Guides to Codes of Conduct for guidance when faced with any issue of concern.

   It is my practice to recuse myself in any cases involving Wachovia Corporation and Compass Bancshares as a result of stock ownership in these entities. It is also my practice to recuse myself in any matters relating to the Jacksonville Transportation Authority that involve the time frame in which I served on the Authority or any matters related to decisions that came before us during my tenure. I also recuse myself from cases involving my husband's employer. As my sister-in-law (the wife of my husband's brother) is employed by the Office of the General Counsel for the City of Jacksonville, I regularly disclose her position to litigants. However, as she is not involved in litigation matters, and has had no involvement in any City of Jacksonville matter that has come before me, I have not found her position to cause frequent recusal.

   For the past three years, it has been my practice to recuse myself from matters involving my previous law firm due to my relationship with many of the partners as well as my continuing business arrangement with the firm regarding my retirement plan. I will continue to do so. It has also been my practice to recuse myself from all matters relating to my previous clients. Given the length of time that has now elapsed since my representation of those clients, it is my intention, as of June 2, 2006, to determine whether recusal is required with regard to a particular client on a case by case basis rather

than automatically recusing myself from all matters involving any of my former clients regardless of how insignificant my former representation may have been.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

   No.

4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

   A copy of the Financial Disclosure Report is attached.

5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**

   A financial net worth statement as of June 12, 2006 is attached.

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

   I served on the finance committee for mayoral candidate John Peyton for a brief period in early 2003. However, as I was selected as a magistrate judge soon thereafter, I performed no significant work on this campaign and resigned shortly after being asked to serve on the committee.

AO-10
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (Last name, First name, Middle initial)	2. Court or Organization	3. Date of Report
Howard, Marcia M	USDC-Middle District of FL	6/12/2006
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time)	5. ReportType (check appropriate type)	6. Reporting Period
District Judge - Nominee	(•) Nomination. Date 6/6/2006 ( ) Initial ( ) Annual ( ) Final	1/1/2005 to 6/12/2006
7. Chambers or Office Address U.S. Courthouse 300 N. Hogan Street, #5-111 Jacksonville, FL 32202-4249	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer_____ Date_____	

IMPORTANT NOTES The instructions accompanying this form must be followed Complete all parts, checking the NONE box for each part where you have no reportable information Sign on last page

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions)

☐ NONE - (No reportable positions.)

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Registered Agent/Officer/Director	Marcia Morales Howard, P.A. (sole proprietorship)
2.	Officer/Director	Morales Construction Co., Inc.
3.	Officer/Director	Morgar Realty, Inc.
4.	Director	Morales Investments of Jacksonville, Inc.
5.	Director	MIC Holdings Inc.
6.	Board Member	Girl Scouts of Gateway Council (non-profit)
7.	Board Member	Theatreworks (non-profit)
8.	Board Member	American Cancer Society - Duval County Unit (non-profit)
9.	Board Member	Wolfson Children's Hospital Women's Board (non-profit)
10.	Member	St. Vincent's Hospital Women's Council (non-profit)
11.	Board Member	National Conference for Community & Justice (non-profit)
12.	Board Member / Secretary	Northeast Florida Center for Community & Justice (non-profit)
13.	Trustee	Irrevocable Insurance Trust #1

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions)

☐ NONE - (No reportable agreements.)

	DATE	PARTIES AND TERMS
1.	2003	McGuireWoods LLP 401(k) (administered by T. Rowe Price)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Howard, Marcia M	6/12/2006

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions)

☐ NONE - (No reportable agreements.)

	DATE	PARTIES AND TERMS
2.	2003	Marcia Morales Howard, P.A.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Howard, Marcia M	6/12/2006

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions)

A. Filer's Non-Investment Income

☑ NONE - (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1.			

B. Spouse's Non-Investment Income - (If you were married during any portion of the reporting year, please complete this section. Dollar amount not required except for honoraria.)

☐ NONE - (No reportable non-investment income.)

	DATE	SOURCE AND TYPE
1.	2005	Interline Brands, Inc., salary
2.	2006	Interline Brands, Inc., salary
3.		

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

~~(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)~~

☐ NONE - (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1.	Exempt	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Howard, Marcia M	6/12/2006

V. GIFTS. (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

☐ NONE - (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1.	Exempt		

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

☑ NONE - (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
1.			

FINANCIAL DISCLOSURE REPORT
Page 1 of 2

Name of Person Reporting	Date of Report
Howard, Marcia M	6/12/2006

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A -H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
1. Wachovia (bank acct)	D	Interest	N	T	Exempt				
2. Wachovia Stock	D	Dividend	N	T					
3. Compass Bank Stock	C	Dividend	M	T					
4. Southside Warehouse, Inc. Stock	C	Ptn. Inc.	K	U					
5. Paragon Life Variable Life Policy	A	Interest	J	T					
6. Morales Investments of Jax, Inc.	G	Ptn. Inc.	J	U					
7. MIC Holding	D	Ptn. Inc.	J	U					
8. T. Rowe Price 401(k)	D	Int./Div.	M	T					
9. NCNB Real Estate Fund									
10. TRP RST Balanced									
11. TRP Stable Value Fund									
12. Bombardier 401(k)	E	Int./Div.	L	T					
13. Franklin Real Estate Securities Fund/A									
14. Investment Co. of America Fund/A									
15. Washington Mutual Investors Fund/A									
16. Growth Fund of America/A									
17. Franklin Balance Sheet Investment/Inv. A.									
18. Franklin Small Mid Cap Growth Fund/A									

1. Income/Gain Codes: A = $1,000 or less; B = $1,001-$2,500; C = $2,501-$5,000; D = $5,001-$15,000; E = $15,001-$50,000
(See Columns B1 and D4) F = $50,001-$100,000; G = $100,001-$1,000,000; H1 = $1,000,001-$5,000,000; H2 = More than $5,000,000
2. Value Codes: J = $15,000 or less; K = $15,001-$50,000; L = $50,001-$100,000; M = $100,001-$250,000
(See Columns C1 and D3) N = $250,000-$500,000; O = $500,001-$1,000,000; P1 = $1,000,001-$5,000,000; P2 = $5,000,001-$25,000,000
P3 = $25,000,001-$50,000,000; P4 = $More than $50,000,000
3. Value Method Codes: Q = Appraisal; R = Cost (Real Estate Only); S = Assessment; T = Cash/Market
(See Column C2) U = Book Value; V = Other; W = Estimated

FINANCIAL DISCLOSURE REPORT
Page 2 of 2

Name of Person Reporting	Date of Report
Howard, Marcia M	6/12/2006

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A -H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
19. Euro Pacific Growth Fund/A									
20. Templeton Developing Markets Trust/A									
21. State Street EAFE International Index F									
22. State Street S&P 500 Index									
23. Wachovia 401(k)	D	Int./Div.	M	T					
24. Stable Fund									
25. Southland Life Insurance Policy	A	Interest	J	T					
26. Bank of America C.D.	D	Interest	M	T					

1. Income/Gain Codes:	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000
(See Columns B1 and D4)	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000	
2. Value Codes:	J = $15,000 or less	K = $15,001-$50,000	L = $50,001-$100,000	M = $100,001-$250,000	
(See Columns C1 and D3)	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000	
	P3 = $25,000,001-$50,000,000		P4 = $More than $50,000,000		
3. Value Method Codes	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market	
(See Column C2)	U = Book Value	V = Other	W = Estimated		

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Howard, Marcia M	6/12/2006

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

Part I - The Irrevocable Trust disclosed on Line 12 is an unfunded trust.

Part III - My non-investment income since January 1, 2004 has been limited to my U.S. government salary.

Part VII, Co. B(2) - Ptn. Inc. = Partnership Income.

Part VII, Co. B(1) and C(1) = Income and values for the 401k accounts are based upon the most recent statement received which reflect income and value as of March 31, 2006.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Howard, Marcia M	6/12/2006

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature Marcia Morales Howard Date June 12, 2006

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		510	866	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		379	716	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		10	000
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		171	908
Real estate owned-add schedule		280	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		178	000				
Cash value-life insurance		5	888				
Other assets itemize:							
401(k) accounts and Thrift Savings Plan		387	373				
Business investments		34	915				
				Total liabilities		181	908
				Net Worth	1	594	850
Total Assets	1	776	758	Total liabilities and net worth	1	776	758
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Wachovia Corp.	$ 264,972
Compass Bancshares, Inc.	114,744
Total Listed Securities	$ 379,716
Real Estate Owned	
Personal residence	$ 280,000
Real Estate Mortgages Payable	
Personal residence	$ 171,908
Other Assets	
Accounts:	
Wachovia 401(k)	$ 124,692
T. Rowe Price 401(k)	119,743
Bombardier 401(k)	88,378
Thrift Savings Plan	54,560
Sub-Total	$ 387,373
Business Investments:	
Southside Warehouse, Inc.	$ 19,496
MIC Holdigns, Inc.	2,715
Morales Investments of Jax	12,704
Sub-Total	$ 34,915

III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

While in private practice, I provided pro bono legal services through Jacksonville Area Legal Aid. On various occasions I volunteered to conduct screening interviews and to assist social security claimants by representing them through the administrative hearing process. I also volunteered to provide pro bono seminars to disabled individuals through the Jacksonville Center for Independent Living. These seminars focused on informing the clients of the Center for Independent Living about their rights under the Americans with Disabilities Act and helping them enter the workforce. I also provided volunteer services through the Webb Center for Independent Living for Disabled Children.

As noted in paragraph 19(2) above, in 1996, Timothy J. Corrigan (now United States District Judge Corrigan) and I were asked to serve as inventory attorneys, on a pro bono basis, for the practice of Jeffrey Mulrain. Mr. Mulrain, a sole practitioner with a substantial practice, went into a coma suddenly and died three weeks later. Initially, Judge Corrigan and I faced this challenge with the optimistic goal of keeping Mr. Mulrain's practice going until he could return to work. However, it quickly became apparent that Mr. Mulrain would not be returning. At that time, it became necessary to find new representation for all of his clients, particularly those who faced statute of limitations issues, criminal hearing/trial deadlines and immigration deadlines. A major factor complicating our mission was the fact that many of Mr. Mulrain's clients had paid him in advance to complete their legal work and were unable to pay fees a second time. Nonetheless, they were in a position of needing prompt representation lest they be deported or incarcerated. For the benefit of Mr. Mulrain's wife and young children, we also wanted to avoid any future claims against the estate. Judge Corrigan and I were successful in finding pro bono representation for a significant number of Mr. Mulrain's clients and were also able to secure representation for all of the remaining clients who were left in Mr. Mulrain's practice at the time we were appointed as inventory attorneys. My duties in this regard extended through the next four years as I continued to assist Mr. Mulrain's former clients who called seeking information and documents.

Through my service on the Jacksonville Human Rights Commission, I volunteered to act as a mediator for fair housing disputes which were handled by the Commission. I also provided educational presentations to the members of the Commission itself regarding the obligations of employers under the various federal fair employment laws.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that**

invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

With the exception of my college sorority (Alpha Omicron Pi; 1984-1987), which limited its membership to female students, I have not.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

The state of Florida utilizes a Federal Judicial Nominating Commission to recommend candidates for nomination to the United States District Court. On December 15, 2005, I submitted an application to the Judicial Nominating Commission indicating my interest in the position of the United States District Judge, Middle District of Florida. In January of 2006, I was notified that I had been selected for an interview by the Commission. I, along with approximately ten other applicants, appeared for an interview before the full Middle District of Florida Commission on January 25, 2006. Shortly thereafter, I was notified that I, along with three other candidates, had been selected by the Commission to be recommended for further consideration. Following that recommendation, I was invited to interview with the Deputy White House Counsel, an Associate White House Counsel and a representative of the Justice Department. Approximately two weeks later, I had the privilege of interviewing with the Senators from the state of Florida, Senator Martinez and Senator Nelson, as well as representatives from their offices. After completing all nomination paperwork and undergoing a background investigation, I was informed by the White House that my nomination would be forwarded to the Senate. I was nominated on June 6, 2006.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue,or question? If so, please explain fully.**

No.

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the

judicial branch has usurped-many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The United States Constitution establishes three separate and distinct branches of government each with its own roles and responsibilities. The role of the judiciary is limited in that it is charged with the obligation of resolving cases and controversies that are properly before the court given its limited jurisdiction. Accordingly, a judge must exercise restraint and always be cautious to limit any decision to those issues actually raised by the pleadings and only those issues properly before the court. In resolving those matters, the role of the judge is to interpret and apply the law. The basis for such decisions must be found in the legislative enactments of state and federal governing bodies and prior legal decisions. Adherence to the rule of law and precedent promotes the stability of our system of justice and assures against even the inadvertent imposition of the personal beliefs of a particular judge. Indeed, the phrase "judicial activism" is often used to describe the failure of a jurist to recognize precedent and the role of stare decisis. In rendering decisions, a judge is neither permitted nor expected to formulate policy or provide redress for perceived wrongs not otherwise recognized by law. Those responsibilities lie with the duly elected members of the representative branches of our democratic government.

AFFIDAVIT

I, Marcia Morales Howard, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

June 20, 2006
(DATE)

Marcia Morales Howard
(NAME)

(NOTARY)

SHANNON M. SHOULDERS
MY COMMISSION # DD 510128
EXPIRES: February 12, 2010
Bonded Thru Notary Public Underwriters

Senator DEWINE. Judge, thank you very much.
Judge Jarvey?

STATEMENT OF JOHN ALFRED JARVEY, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF IOWA

Judge JARVEY. I would also like to thank the President of the United States for the nomination and for the trust that he has shown in my abilities.

I would like to thank Senators Grassley and Harkin for their support and for their kind, kind comments here today.

I would like to also thank you, Mr. Chairman, for chairing this hearing, and to Senator Biden for also presiding at the hearing.

I would like to thank the members of the Administrative Office of the Courts for their longtime support of Magistrate Judges and Judges of the United States, and for their presence here today.

I would be pleased to introduce members of my family who are with me today. They include my sister, Carol Hawkins, my nephew, Edmund Hawkins, my brother, William Jarvey, Jr. I am particularly honored that my father could attend the hearing today.

While the President and the Senate are most immediately responsible for my opportunity to sit in this chair, it is my mother and my father that paved the long road, so I am very pleased and honored that my dad could be here today. My mother is suffering from a brief, but temporary, illness and could not make it.

My wife and children could not make it today. My kids all just started college and high school and were just unable to be here on short notice.

I would like to also thank the Honorable Robert Pratt, Chief Judge of the Southern District of Iowa, and Southern District of Iowa Clerk of Court Marjorie Krahn for their attendance. If confirmed, I will be honored to serve with them in the Southern District of Iowa.

With that, I have no further comments. Thank you.

[The biographical information of John Jarvey follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used.)**

   John Alfred Jarvey

2. **Address: List current place of residence and office address(es).**

   Residence: Cedar Rapids, Iowa

   Office: 101-1st Street SE, Suite 211 Federal Building, Cedar Rapids, IA 52401

3. **Date and place of birth.** September 14, 1956; Minneapolis, MN

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(east).**

   I am married to Mary George Jarvey. Her maiden name was Mary Ann George. She teaches piano lessons at the Cedar Valley Montessori School, 145 Transit Way, S.E., Cedar Rapids, IA 52401

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

   Drake University School of Law 1978-1981; Doctor of Jurisprudence May 16, 1981
   University of Akron 1976-1998; Bachelor of Science in Accounting June 11, 1978
   Concordia College, Moorhead, MN; 1974-1976, No degree awarded

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

   October 1987-present: Chief United States Magistrate Judge, United States District Court, Northern District of Iowa

   1993-Present: University of Iowa Law School Trial Advocacy instructor

   September 1983-October 1987: United States Department of Justice, Criminal Division Narcotic and Dangerous Drug Section, Trial Attorney, Washington, D.C.

   July 1981-July 1983: Law clerk to the Honorable Donald E. O'Brien, United States District Court, Northern District of Iowa

7. **Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

   I have never served in our military.

8. **Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

I am a member of Beta Gamma Sigma, National Business Honor Society and Beta Alpha Psi, National Accounting Honor Society

9. **Bar Association: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.**

I was a member of the Iowa State Bar Association from 1981 until 2003. I have never served as an officer in that organization.

I have been a member of the Linn County Bar Association from 1987 to the present. I have never held office in the Linn County Bar Association.

In 1989 I was a charter member of the Dean Mason Ladd American Inn of Court and served as President during the 2000-2001 term.

10. **Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**

I am a member of the Federal Magistrate Judges Association, a voluntary organization of magistrate judges oriented toward improvement of the judicial system.

I am a member of First Lutheran Church in Cedar Rapids and have been since 1987.

11. **Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.**

Supreme Court of Iowa, June 26, 1981
United States District Court for the Southern District of Iowa, July 27, 1981
Eighth Circuit Court of Appeals, May 28, 1986
Seventh Circuit Court of Appeals, September 12, 1986
Second Circuit Court of Appeals, March 21, 1986
Eleventh Circuit Court of Appeals, December 2, 1985

I was admitted to these courts for the sole purpose of handling particular litigation. I assume that all memberships in these courts have lapsed with the exception of the Supreme Court of Iowa, and the Southern District of Iowa.

12. **Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.**

I co-authored a section of an internal Department of Justice monograph relating to the forfeiture of assets associated with money laundering. It is entitled "Investigation and Prosecution of Illegal Money Laundering; Narcotic and Dangerous Drug Section Monograph, *A Guide to the Bank Secrecy Act*." It was published internally at the Department of Justice in October 1983.

13. **Health: What is the present state of your health? List the date of your last physical examination.**

I am in excellent health. The date of my last physical examination was May 31, 2006.

14. **Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

Since October 1987 I have served as Chief United States Magistrate Judge for the Northern District of Iowa. A magistrate judge is appointed by judges of the district court after the recommendation of a local committee consisting of five lawyers and two lay people. The jurisdiction of United States Magistrate Judges extends to all duties, including trial and judgment, in a civil case when all parties to that case consent to exercise of jurisdiction by a magistrate judge. In all other cases, the magistrate judge's duties pertain to case management, alternative dispute resolution, and discovery matters. In criminal cases, magistrate judges rule on requests for search warrants and arrest warrants. Upon arrest of a defendant, magistrate judges hold initial appearance, arraignments, and all necessary bond and detention proceedings. Magistrate judges preside over suppression hearings and felony guilty plea proceedings by issuing a report and recommended decision. Magistrate judges in the Northern District of Iowa also preside over felony jury selection with the consent of the parties. Finally, magistrate judges routinely exercise jurisdiction by consent over serious misdemeanors and have plenary power to resolve minor federal criminal offenses such as infractions and non-serious misdemeanors.

15. **Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.**

(1) **Citations for Most Significant Opinions Written (in chronological order)**

Arthur Killinger v. State of Iowa, C96-2042 (N.D. Iowa, March 1999). In this Report and Recommendation, the court analyzes the concept of procedural default and whether the state court properly instructed the jury in a murder case on the issue of felony murder. The case was affirmed on appeal at Killinger v. Iowa, 2 Fed. Appx. 698 (8th Cir. 2001).

United States v. Gerald W. Oliver, CR99-0010 (N.D. Iowa, March 2000). In this case, a Native American moved to dismiss the indictment against him in which it is alleged he illegally possessed bald eagles. The defendant contended that the statute prohibiting this possession violated

his rights under the Religious Freedom Restoration Act. The case was affirmed on appeal at United States v. Gerald Oliver, 255 F.3d 588 (8th Cir. 2001).

General Casualty Ins. Co. v. Exterior Sheet Metal, Inc., C01-2085 (N.D. Iowa, Dec. 2002).
In this case, the court found that there could be insurance coverage for the negligent installation of the roof at a college sporting facility. This was a particularly complex insurance dispute. Following the denial of the motion for summary judgment, the case was tried and the court found that there was partial insurance coverage for some of the damage caused by a negligently-constructed roof. The case was not appealed.

John Q. Hammons Hotels, Inc. v. Acorn Window Systems, Inc., C01-0151 (N.D. Iowa, Oct. 15, 2003).
This was a complex case alleging the installation of defective window systems at a large hotel. Motion for summary judgment was granted for the defendant on statute of limitations grounds, rejecting plaintiff's assertion of the discovery rule. The case was affirmed. John Q. Hammons Hotels v. Acorn Window Systems, Inc., 394 F.3d 607 (8th Cir. 2005).

Kratzer v. Rockwell Collins et al., C02-0110 (N.D. Iowa, Dec. 2003).
Summary judgment granted to employer in Americans With Disabilities Act case. Case discusses plaintiff's burden to request reasonable accommodation and the interactive process that must ensue between the employer and employee. Case affirmed on appeal. Kratzer v. Rockwell Collins, 398 F.3d 1040 (8th Cir. 2005).

Andrews et al v. City of West Branch, C03-0009 (N.D. Iowa, Dec. 7, 2004).
In this case, the court granted summary judgment on qualified immunity grounds to a City whose police officer negligently shot a dog. This case is currently on appeal to the Eighth Circuit Court of Appeals.

United States v. Floyd Neal, CR97-2012 (N.D. Iowa, Jan. 24 2005).
Motion to modify guideline sentence pursuant to U.S.S.G. § 1B1.10 for guideline ranges lowered as a result of an amendment to the Guideline Manual. Motion to modify sentence denied. Report and Recommendation adopted by the District Court June 1, 2005. No appeal was taken.

United States v. Johnny Ray McAtee, CR05-2005 (N.D. Iowa, June 2, 2005).
In this Report and Recommendation, the court analyzes probable cause for a search warrant, issues regarding execution of the warrant, and the defendant's motion for severance. It is typical of the quality of my work. The Report and Recommendation was adopted by the District Court. The case is currently on appeal to the Eighth Circuit Court of Appeals.

Highway Equipment Company, Inc. v. FECO Ltd., C03-0076 (N.D. Iowa, July 27, 2005).
This order denies the defendant's motions for attorney fees after prevailing in this patent infringement case. The court found that the case

did not present the exceptional circumstances necessary for an award of attorney fees. This case is currently on appeal to the Federal Circuit.

Northeast Iowa Ethanol LLC v. Jerry Drizin, C03-2021 (N.D. Iowa, Feb. 7, 2006).
Following a trial on the merits, the court awarded $3.8 million in compensatory damages and $7.6 million in punitive damages to an investment adviser who misappropriated $3.8 million in security for a loan for the creation of a northeast Iowa Ethanol plant. The case is currently on appeal to the Eighth Circuit Court of Appeals.

(2) Citations for Appellate Opinions Reversed

Moorman v. Thalacker, 83 F.3d 970 (8th Cir. 1996).
In this case, a prisoner was significantly punished for violating prisoner rules forbidding conduct that constituted a felony under state or federal law. The rules also prohibited any attempt or complicity in felony behavior. The inmate was overheard by a prison guard indicating his intent to obtain a gun upon release from prison. I found that a simple statement of intent to acquire a gun was not an "attempt" to commit a felony, especially in light of the fact that the prisoner was in custody at the time. The Court of Appeals held that the law of "attempt" is complex and fraught with intricacies and doctrinal divergences. The defendants were entitled to qualified immunity.

Lundell Mfg Co., Inc. v. American Broadcasting Companies, Inc., 98 F.3d 351 (8th Cir. 1996).
This is a libel case brought against ABC News for airing a story about a garbage recycling machine manufactured by the plaintiff and used in Georgia. When the news report indicated that the machine "did not work," the plaintiff sued for libel. This court found the statement either to be true or to be an expression of opinion, both of which were protected under the First Amendment in matters relating to public concern (The garbage recycling machine was used by a county and the news story was part of a series concerning wasteful governmental expenditures.). The Court of Appeals found that the statement that the machine "did not work" was capable of different meanings and it was up to the jury to determine the meaning conveyed by the story. I set aside an approximately $1 million award to the plaintiff and it was reinstated upon appeal.

Rail Intermodal Specialists v. General Electric Capital Corp, 103 F.3d 627 (8th Cir. 1996).
In this case, a venture capitalist was found responsible to a transportation company that brokered the placement of trucks on flatbed railroad cars. The jury found that GE Capital had interfered with Rail Intermodal's contract with the Chicago Central and Pacific Railroad. The Court of Appeals did not believe that the defendant's conduct satisfied the stringent requirements for Iowa's tort of intentional interference of contractual relations. The Court of Appeals' decision was later withdrawn and the parties settled the case.

Vandelune v. 4B Elevator Components Unlimited, 148 F.3d 943 (8th Cir. 1998).
In this products liability case, I was affirmed in granting summary judgment for one manufacturer in a grain elevator explosion case. I was

reversed for denying a motion to dismiss for lack of personal jurisdiction. The personal jurisdiction issue related to the showing that a plaintiff must make to secure personal jurisdiction over a defendant who places products in the "stream of commerce" and arrives in the forum state on an attenuated, random or fortuitous basis.

Holly Cox v. Dubuque Bank & Trust, 163 F.3d 492 (8th Cir. 1998).
In this age discrimination case, the jury found in favor of the plaintiff and against the defendant bank. Part of the plaintiff's evidence was a repeated and unnecessary series of questions as to when the plaintiff intended to retire. The defendant proposed a jury instruction indicating that inquiries from an employer to an employee concerning the employee's intention to retire could not be evidence of age discrimination. I refused to give that instruction. The case was reversed for that reason and remanded for a new trial. The parties settled the case prior to retrial.

Trobaugh v. Hall, 176 F.3d 1087 (8th Cir. 1999).
An inmate at the Linn County Jail was placed in administrative segregation for filing excess grievances. The defendants immediately admitted liability. The plaintiff had wrongfully suffered three days of administrative segregation but had no physical injuries. I awarded $1 in nominal damages. The Eighth Circuit Court of Appeals reversed suggesting that the appropriate range of damages was in the vicinity of $100 per day for each of the three days. This court was further requested to consider awarding punitive damages against defendant Hall. Upon remand, I awarded $300 in damages but denied the request for punitive damages.

United States v. Michael James Knight, 306 F.3d 534 (8th Cir. 2002).
This case arose out of a traffic stop of a trucker on Interstate Highway 80 in Iowa. As a part of an administrative trucking inspection, a police officer found a gun in the defendant's briefcase. I found that it was a proper administrative search pursuant to New York v. Burger, 482 U.S. 691 (1987). On July 30, 2001, the Honorable Michael J. Melloy adopted my Report and Recommendation. The case was reversed on appeal.

Andreas v. Volkswagen of America, Inc., 336 F.3d 789 (8th Cir. 2003).
This is a copyright infringement case in which Audi's advertising agency misappropriated a sentence from a work created by the plaintiff and used it as a part of a commercial to launch a campaign to sell Audi's TT vehicle. Following a jury trial, I set aside the jury's $570,000 award of Audi profits based on caselaw indicating that the manufacturer's revenue in an "indirect profit" case could not be established by speculative evidence. The Court of Appeals held that the jury had a non-speculative basis for concluding that the copyrighted words contributed to the sale of automobiles. The award of Audi profits was reinstated on appeal.

United States v. Craig Sanders, 424 F.3d 768 (8th Cir. 2005).
This case arose out of the warrantless search of the defendant's person and hotel room at which the police found controlled substances, money, and drug paraphernalia. This court concluded that the defendant expressed his consent to the search. On appeal, the Eighth Circuit Court of Appeals found that the defendant withdrew his consent.

I have some recollection that another report and recommendation from our Western Division was adopted by the District Court but reversed on appeal. I have been unable to remember or to locate a copy of that decision.

(3) Citations for Significant Opinions on Federal or State Constitutional Issues

CIVIL CASES

Steven Radloff v. City of Oelwein, et al, C02-2029 (N.D. Iowa, May 19, 2003).
This is an excessive force case where police made a warrantless entry into a residence to arrest individuals they observed to be committing misdemeanors (underage drinking). The issues concerning the right of the police to enter a home under these circumstances and their entitlement to qualified immunity are discussed at length in this opinion.

Michael Cook v. City of Elkader, et al, C03-1029 (N.D. Iowa, Jan. 21, 2005).
This is an employment discrimination case brought against a municipality. The plaintiff contends that the termination of his employment violated his right to substantive due process. He further claimed that he was retaliated against for exercising First Amendment rights.

Jack Oswald v. Waterloo Board of Education, C02-2050 (N.D. Iowa, Sept. 22, 2003).
At issue in this case is the due process rights of a teacher who was given a two-day suspension without pay. The other issue is whether a teacher has the right to confront and cross-examine all persons who have provided information used to support the discipline. I found that there was no right to due process in the context of very minor discipline such as this.

CRIMINAL CASES

United States v. Michael Thomas Gatena and Carla Grace Engler, CR05-1021 (Report & Recommendation) (N.D. Iowa, Sept. 22, 2005).
This Report and Recommendation has a lengthy discussion of the plain view exception to the search warrant requirement, the showing necessary to support probable cause for a warrant and inventory searches.

United States v. Anthony Tyrone Thomas, CR05-0016 (Report and Recommendation) (N.D. Iowa, June 9, 2005).
This case addresses the validity of a warrantless search of a probationer's residence and the issue of abandonment under the Fourth Amendment to the United States Constitution.

United States v. Michael J. Vandenberg, CR05-1015 (Report and Recommendation) (N.D. Iowa, June 6, 2005).
This Report and Recommendation discusses the issue of whether the defendant was "in custody" for purposes of getting Miranda warnings. It further discusses the voluntariness of the defendant's confession.

United States v. Thomas Alfred Brydon, CR04-0103 (Report and Recommendation) (N.D. Iowa, May 20, 2005).

This Report and Recommendation discusses the voluntariness of consent, the plain view exception to the warrant requirement, and the legitimacy of a protective sweep search.

United States v. Denise Gail Kimball, CR03-1025 (Report and Recommendation) (N.D. Iowa, Mar. 23, 2004).
Competence to stand trial and forced administration of psychotropic medication.

United States v. Lonnie Maurice Hill, CR03-0081 (Report and Recommendation) (N.D. Iowa, Oct. 17, 2003).
This case discusses whether the defendant had a reasonable expectation of privacy in a public bathroom and whether the act of inserting the key into a lock constitutes a "search" within the meaning of the Fourth Amendment to the United States Constitution.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of serve and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

I have held no other public office other than Magistrate Judge for the Northern District of Iowa. As noted above, I served in the United States Department of Justice as a trial attorney and I was a law clerk for a United States District Court Judge.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

Law clerk to the Honorable Donald E. O'Brien, United States District Court, Northern District of Iowa; July 1981-July 1983.

2. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

October 1987-present: Chief United States Magistrate Judge, United States District Court, Northern District of Iowa

United States Department of Justice, Washington, D.C., Criminal Division Narcotics and Dangerous Drug Section, trial attorney; September 1983-September 1987. At the Department of Justice, I was a trial attorney. I tried federal controlled substances, tax evasion, money laundering, firearms, and other cases relating to the trafficking in controlled substances.

b. 1. **What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?**

As a law clerk, I researched matters pending before the court and provided draft opinions for Judge O'Brien. At the United States Department of Justice, I prosecuted traffickers of controlled substances and money launderers. As a United States Magistrate Judge, I have presided over a wide range of civil and criminal cases. I have tried cases involving personal injury, employment discrimination and other employee rights, patents, copyrights, and other complex commercial disputes.

2. **Describe your typical former clients, and mention the areas, if any, in which you have specialized.**

At the Department of Justice, I developed a specialty involving the prosecution of doctors and pharmacists engaged in pharmaceutical drug diversion. I also developed considerable expertise in the area of wire tapping. Finally, I tried many trials and developed a general expertise in litigation.

c. 1. **Did you appear in court frequently, occasionally or not at all? If the frequency of your appearances in court varied, describe each such variance, giving the dates.**

As an attorney, I appeared in federal courts very frequently. While serving in the District of Columbia, I appeared nearly every day in court. In other busy courts such as the Southern District of Miami, I appeared every week in court. When I had a complex investigation such as one case I had in the Southern District of Iowa, I may have spent as much as five months preparing for trial and approximately one month trying the case.

2. **What percentage of these appearances was in:**

(a) **federal courts:** 100%
(b) **state courts of record;**
(c) **other courts.**

3. **What percentage of your litigation was:**

(a) **civil;**

(b) **criminal.**
Nearly 100% of my litigation was criminal. I gave some assistance to the Drug Enforcement Administration by representing it in the civil appeal of a doctor whose registration to dispense controlled substances was suspended by the DEA.

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

As a Special Assistant United States Attorney in the District of Columbia in 1984, I tried over ten jury trials and numerous non-jury trials in that capacity. I tried many cases in the United States District Court for the Southern District of Florida. I tried two cases in the United States District Court for the Southern District of Indiana. I tried one very lengthy trial in the Southern District of Iowa. I tried one case in the District of Arizona. I indicted a number of cases in the Eastern District of Pennsylvania. Several of these cases went to trial but none of them went to verdict as the defendants decided to plead guilty before the trial was completed.

5. **What percentage of these trials was:**

(a)	**jury:**	90%
(b)	**non-jury.**	10%

18. **Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case**

(a) the date of representation;

(b) the name of the court and the name of the judge or judges before whom the case was litigated; and

(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. United States v. Norma J. Crabtree, et al., (S.D. Ind.). United States v. Billy Roach, et al., CR84-0016 (S.D. Ind.).
These are two complex cases arising out of numerous wiretaps conducted at a pharmacy in Indianapolis. I began working on this case in June of 1984, shortly after the wiretaps had been completed and the pharmacist, Sterling Litiskas, had agreed to cooperate and plead guilty. I worked this case with Assistant United States Attorney Kennard Foster (currently a United States Magistrate Judge) and obtained convictions on all of the street-level dealers. As a part of this prosecution, I tried the case of United States v. Jerry Whaley in Case No. CR84-0017. The first trial resulted in a hung jury. The defendant was then arraigned on a superseding indictment with additional information that we learned in the first trial and convicted of all crimes charged. This particularly violent defendant was sentenced to a 15-year term of imprisonment by the Honorable William E. Steckler. I also successfully argued the appeal, United States v. Whaley, 830 F.2d 1469 (7th Cir. 1987) (Note: My name was incorrectly spelled in that opinion.). Defendant Whaley was represented by Allan Yacky of Indianapolis on Appeal.

2. William H. Carranza, M.D. v. Drug Enforcement Administration, 86-4015 (2d Cir. 1986).
This case challenged the ability of the Drug Enforcement Administration to deny a registration to dispense controlled substances to a physician with a long-standing drug problem. I successfully argued the appeal and defended the Drug

Enforcement Administration's position. The decision was an unpublished memorandum decision. Carranza v. DEA, 792 F.2d 136 (2d Cir. 1986). The appellant was represented by Louis M. Freeman, 233 Broadway, Suite 3201 NY, NY 10279.

3. United States v. Bunsong, 85-395-CR-JCP (S.D. Fla. 1985).
I prosecuted this case in the Southern District of Florida in late 1985. The defendant and his co-conspirator brought four pounds of pure heroin from Thailand to the United States. They stopped briefly in Miami before going to the Bahamas to cut the heroin. They were caught in the Bahamas but the heroin was stolen from a Bahamian police evidence locker shortly after it was tested by a Bahamian chemist. I convicted both defendants despite this significant obstacle. They were sentenced and ultimately cooperated in an even larger heroin importation investigation. The case was tried in federal court in West Palm Beach before the Honorable James C. Paine. I did not argue the appeal. Affirmed. United States v. Bunsong, 795 F.2d 87 (11th Cir. 1986) (Table). The defendants were represented by David Shenkman and Paul Korchin of Miami.

4. United States v. Amel Lueth et al, Criminal No. 85-8, (S.D. Iowa). Affirmed. United States v. Lueth, 807 F.2d 719 (8th Cir. 1986).
In this case, I indicted 16 drug traffickers in the Southern District of Iowa for drug and income tax violations. The case resulted in the first Continuing Criminal Enterprise (21 U.S.C. § 848) conviction in the State of Iowa. The case was also made complex by the joint trial of 14 defendants. I tried the case together with an Assistant United States Attorney from the Southern District of Iowa, Ronald Kayser (currently an Administrative Law Judge for Social Security). The case was indicted in January 1985 and tried during the month of June 1985. The trial was before the Honorable Harold D. Vietor in the Southern District of Iowa. I was given a Justice Department award for my handling of this case. I argued the appeal.

The following attorneys represented defendants in the trial before Judge Vietor: Mark Pennington 515-288-3339; Paul Rosenberg 515-245-3828; Lawrence Scalise 515-244-3500; J.C. Salvo 712-755-3141; James Murphy-telephone number unknown; William Gallup 402-341-0700; Greg Schatz 402-330-1221; Don Nickerson 515-286-3391; David Shinkle 515-244-6821; Donald Kleine 402-444-7040; John Reefe 402-346-0666; William White, Austin, Tx-telephone number unknown; Paul Zoss 712-233-3921.

5. United States v. Andrew David Griffith, John Dover, and William Dillow, No. 86CR8015 (S.D. Fla.).
This case was prosecuted in the Southern District of Florida during the summer and fall of 1986. This difficult case involved the prosecution of a commercial airline pilot, other pilots, a mechanic, and the owner of a large range in the Southern District of Florida. This group was responsible for the importation of many loads of cocaine and marijuana from South America. The group would fly King Air and Queen Air aircraft between South Florida and Colombia. It was a particularly difficult case because the events had transpired several years before our investigation commenced. I worked on this difficult case with Assistant United States Attorney Karen Atkinson. All defendants were convicted pursuant to their plea agreements. The Judge was the Honorable Norman Roettger. Griffin was represented by Bryce Lyons of Ft. Lauderdale. Dover was represented by Joel Hirschhorn of Miami. Dillow was represented by Ross Zimmerman of Ft. Lauderdale.

6. United States v. Dante Bevilacqua, 87-CR-321 (E.D. Pa.).
In 1987 I prosecuted Dr. Dante Bevilacqua. Dr. Bevilacqua had a sophisticated scheme to sell potent pharmaceutical amphetamines to street dealers using the "front" of a weight loss clinic. In that case, we calculated that Dr. Bevilacqua was illegally dispensing 3% of the nation's supply of Preludin. This was a very early case that used computers for the sorting and analysis of an extremely high volume of data derived from Dr. Bevilacqua's prescriptions. Ultimately, he agreed to plead guilty and received a ten-year sentence for illegal drug distribution.

7. United States v. John Drummond, et al, CR85-169 (D. Ariz.).
This case was prosecuted in the District of Arizona. Co-counsel was AUSA Stan Patchell. It involved an extremely large conspiracy that imported five tons of cocaine into the United States. The last shipment of approximately one ton of cocaine was seized by law enforcement officials. John Drummond had contact with Mexican (Miguel Felix-Angel) and Honduran (Juan Ramon Mata-Ballesteros) Cartel affiliates. The American conspirators were immediately caught. Eventually all of them pleaded guilty with the exception of George Krasovich. I tried the Krasovich case before the Honorable William Browning. Mr. Krasovich was convicted. His conviction was reversed on appeal by the Ninth Circuit Court of Appeals. The defendant was represented by Assistant Public Defender Pamela Franks (currently an Arizona State District Court Judge). This is the only defendant I prosecuted whose conviction was reversed on appeal. United States v. Krasovich, 819 F.2d 253 (9th Cir. 1987).

8. United States v. Willie James Roberts, CR187-19 (S.D. Ga., 1987).
Wiretapping conducted before I entered the case revealed a large crack cocaine distribution network in Augusta, Georgia, and North Augusta, South Carolina. I was brought into this case by Assistant United States Attorney Leon Barfield (now United States Magistrate Judge) to defend the wiretaps at the suppression hearing and to present the wiretap evidence at trial. I successfully defended the wiretap at a suppression hearing conducted by United States Magistrate John Dunsmore. I became a United States Magistrate Judge shortly before this matter went to trial.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

In 1986, I was selected to go to Lima, Peru, and give a seminar for members of the Peru Supreme Court, Executive and Legislative Branch, on American drug prosecutions. At this time, the United States was attempting to get other nations to extradite their own nationals (i.e., to get Peru to be willing to extradite Peruvian citizens to the United States). Peruvian officials were very concerned about the kinds of crimes for which Peruvians would be extradited. Another attorney and I spoke for 2-1/2 days on the protections afforded by the judicial system, drug prosecutions, conspiracy law, Racketeer Influenced Corrupt Organization (RICO) prosecutions, and other topics.

I have always been active in teaching the law to others. While I was with the Justice Department, I served as an instructor at the Department of Justice's Advocacy Institute and FBI Academy at Quantico, Virginia. I have since been a guest judge at the Department of Justice's National Advocacy Center at the University of South Carolina. I

have taught Trial Advocacy at the University of Iowa since 1993 (one class each year). I have coached the Washington High School mock trial team in Cedar Rapids for the past five years. Before that, I served as coach of the McKinley Middle School mock trial team in Cedar Rapids.

I have devoted tremendous effort as a judge to the area of alternative dispute resolution. I have conducted over 400 mediations and I resolve approximately 80% of the cases that come before me for mediation. I am considered one of Iowa's most successful mediators. I believe in the importance of offering alternative dispute resolution and the satisfaction that litigants receive by resolving their own problems.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

   I will not derive anything from any of the types of arrangements identified in this question.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

   I post the identity of my investments on our court website. We direct litigants to file statements identifying corporations and other entities related to the named parties in their case. Our Clerk of Court screens cases assigned to the judge for potential conflicts of interest and the parties have this information available for their own use. I believe the Southern District of Iowa has the same system. It works very well. I follow, and will continue to follow, the Code of Conduct for United States Judges and all applicable statutes, policies and procedures.

   More importantly, I conduct my affairs to avoid potential conflicts of interest. Rather than purchasing individual shares of stock, I purchase mutual funds that do not present conflicts of interest. For the past several years, I have purchased mutual funds administered by only one company to further reduce the number of potential conflicts of interest. As a result, I believe that there are no categories of litigation or any financial arrangements that are likely to present potential conflicts of interest during my tenure as a judge.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

   Yes. I intend to continue to teach classes at the University of Iowa School of Law and give seminars at the Drake University School of Law. The compensation for these activities is modest (I am paid $3000 to teach a class at the University of Iowa and $900 to give an annual lecture at Drake University).

4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

   See attached Financial Disclosure Report.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See attached Net Worth Statement

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No.

AO 10
Rev. 1/2006

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Jarvey, John A	ND IA	07/24/2006
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
District Judge Nominee	☒ Nomination, Date 06/28/2006 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2005 to 06/30/2006
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
101-1st Street SE 211 Federal Building Cedar Rapids, Iowa 52401	Reviewing Officer_____ Date_____	

IMPORTANT NOTES: *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.*

I. POSITIONS. *(Reporting individual only; see pp. 9-13 of instructions.)*

☒ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.		
2.		
3.		
4.		
5.		

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of instructions.)*

☒ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting Jarvey, John A	Date of Report 07/24/2006

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of instructions.)*

A. Filer's Non-Investment Income

☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. Sept 05	University of Iowa -- College of Law	$ 3,000
2. Dec 05	Drake University School of Law	$ 900
3. May 2006	University of Iowa -- College of Law	$ 3,000
4.		
5.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*
(Dollar amount not required except for honoraria.)

☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE
1. 2005-2006	Self-Employment Piano Teacher
2.	
3.	
4.	
5.	

IV. REIMBURSEMENTS – *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

☐ NONE *(No reportable reimbursements.)*

SOURCE	DESCRIPTION
1. Exempt	
2.	
3.	
4.	
5.	

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting Jarvey, John A	Date of Report 07/24/2006

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of instructions.)*

☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.	Exempt		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children. See pp. 32-34 of instructions.)*

☒ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 4 of 6	Name of Person Reporting Jarvey, John A	Date of Report 07/24/2006

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Legg Mason Part Fundamental Value Fund Class A-See Part VIII	B	Dividend	K	T	Exempt				
2. Family Trust-See Part VIII	A	Appreciation	K	R					
3. Legg Mason Partners Cap. Growth Fund Class B-See Part VIII	B	Dividend	K	T					
4. Legg Mason Part Large Cap. Growth Fund Class A-See Part VIII	A	Dividend	J	T					
5. Legg Mason Partn Social Awareness Fund Class A-See Part VIII	A	Dividend	K	T					
6. Legg Mason Partn Social Awareness Fund Class B-See Part VIII	A	Dividend	J	T					
7. Legg Mason Part Fundamental Value Fund Class A-See Part VIII	A	Dividend	J	T					
8. Legg Mason Part Large Cap. Growth Fund Class B-See Part VIII	A	Dividend	J	T					
9. Legg Mason Partn Social Awareness Fund Class A-See Part VIII	A	Dividend	J	T					
10. Firstar Bank-Self & Spouse Checking Account	A	Interest	J	T					
11. Firstar Bank-Self & Spouse Savings Account	A	Interest	M	T					
12.									
13.									
14.									
15.									
16.									
17.									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	P3 =$25,000,001 - $50,000,000	R =Cost (Real Estate Only)	P4 =More than $50,000,000	T =Cash Market	
	Q =Appraisal	V =Other	S =Assessment		
	U =Book Value		W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting Jarvey, John A	Date of Report 07/24/2006

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

Part III.A. - Additional non-investment income was received by filer as United States Government salary for services as a United States Magistrate Judge.

All From Part VII:
1. John IRA-Mutual Funds
2. The only asset in this trust is a residence located in Maple Grove, MN. The asset was gifted to the trust on July 9, 2003 by my parents but the trust pays a mortgage on the residence and I fund 1/5 of the mortgage payments. The purchase price of the residence was $320,000. The mortgage is for $120,000. Therefore, my interest in the Family Trust is ($320,000 minus $120,000) divided by 5 or $40,000. I am not aware of any appreciation in its value.
3. John IRA-Mutual Funds
4. John IRA-Mutual Funds
5. John IRA-Mutual Funds
6. John IRA-Mutual Funds
7. Spouse IRA-Mutual Funds
8. Spouse IRA-Mutual Funds
9. Spouse IRA-Mutual Funds

Part VII - The Mutual funds listed in this section all changed names in 2006. The name changed from "Smith Barney [Mutual Fund]" to "Legg Mason Partners [Mutual Fund]."

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Jarvey, John A	Date of Report 07/24/2006

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature John C. Jarvey **Date** July 24, 2006

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		12	000	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		151	000
Real estate owned-add schedule		400	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		58	000				
Cash value-life insurance							
Other assets itemize:							
IRA		70	000				
IRA		8	000				
TSP		52	000	Total liabilities		151	000
Family Trust		40	000	Net Worth		489	000
Total Assets		640	000	Total liabilities and net worth		640	000
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Real Estate Owned	
Personal residence	$ 400,000
Real Estate Mortgages Payable	
Personal residence	$ 151,000

III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

   As a federal magistrate judge, I am prohibited from representing anyone or taking on work outside my judicial responsibilities other than teaching and public speaking. My government employment for the past 25 years has prohibited me from engaging in pro bono legal work.

   I do, however, serve the disadvantaged. Over the past five years I have been part of a team at my church assisting the poor by serving a free meal on Saturday evenings in our church basement. I have also devoted a tremendous amount of time over the past 18 years to assisting in our schools. Children from disadvantaged circumstances make up a significant percentage of the student body in schools that my children attend. I have devoted substantial time to reading and other programs that are designed to give those children additional assistance. I was named "Volunteer of the Year" in 2005 at McKinley Middle School in Cedar Rapids.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?**

   I have never belonged to any organization that discriminates on the basis of race, sex, or religion. I have never belonged to a country club or other social club.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

   There is a selection committee in Iowa that assists the White House in nominating qualified individuals for positions in federal courts. While the process of deliberating on candidates is not made public, I believe that the selection commission recommended my nomination.

   My experience with the judicial selection process demonstrated to me that the committee was looking to recommend the best candidate possible. I have been unsuccessful on other occasions but I have nothing but respect for this committee. All of their questions focus on the candidates' background, proposed solutions to existing court problems, and other appropriate topics.

   Candidates were publicly solicited through a press release from Senator Grassley. As I understand it, all applicants were interviewed by the selection committee. Some were

interviewed by telephone to accommodate serious logistical problems. Most were interviewed personally. Within approximately two weeks, Senator Grassley publicly identified three candidates whose names would be forwarded to the White House for its consideration. One week after my name was submitted to the White House, I was interviewed by representatives of the White House and the Department of Justice. Again, appropriate questions concerning fitness for office, qualifications, and plans were asked.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

No one asked any question that could reasonably be interpreted as asking how I would rule on any case, issue or question.

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch and usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- **a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;**
- **b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**
- **c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**
- **d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and**
- **e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.**

I believe that I have always respected the separation of powers identified in our United States Constitution which has served this country so well. I fully appreciate the function of the Legislature to represent the will of the nation when laws are enacted. I further appreciate the function of the Executive Branch to determine the most appropriate way to enforce those laws. Finally, I recognize the judiciary as the co-equal branch charged with the ultimate responsibility for interpreting the laws and Constitution of the United States.

Where laws created by the Legislature are clear and unambiguous on their face, the role of the judiciary is simply to apply them. Where those laws are ambiguous, the courts have tools that can reasonably resolve those ambiguities. Legislative history is often a fertile place in which to find the Legislature's intent. As a trial judge I am bound to follow precedent from my Circuit Court of Appeals in the United States Supreme Court.

AFFIDAVIT

I, John A. Jarvey, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

July 26, 2006
DATE

JOHN A. JARVEY

(NOTARY)
Karolyn K. Stigler, Deputy Clerk of Court
United States District Court
Northern District of Iowa

Senator DEWINE. Judge, thank you very much.
Judge Lioi?

STATEMENT OF SARA ELIZABETH LIOI, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO

Judge LIOI. Thank you, Mr. Chairman. I have no opening statement. However, I would like to thank the Chair for conducting this hearing today. I would like to thank Senator Biden for his presence.

I would also like to thank the President for nominating me, and you, Senator DeWine and Senator Voinovich, for your very kind and gracious words and your support of me throughout this process.

I do have some family members and friends here today and I would like to introduce them at this time. My mother, Rosaria, is here with us today. I consider that a blessing. She spent quite a few months in the hospital earlier this year and I feel very blessed that she was able to make the trip.

Also, two of my sisters, Carmela Lioi and Germann are with us today, and my cousin, Helen Garofalo. I also have some very dear friends of mine, Diana Pittman, Judge Michael Howard, and Tim and Debby Bentivegna. I thank them for their attendance here today as well.

[The biographical information of Sara Lioi follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used).**

   Sara Elizabeth Lioi

2. **Address: List current place of residence and office address(es).**

   Residence: Canton, OH

   Office address: Stark County Courthouse, 115 Central Plaza, North, Canton, OH 44702

3. **Date and place of birth.**

   December 17, 1960 – Canton, OH

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

   Single

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

   The Ohio State University College of Law
   Attended: 8/84 – 5/87; Degree received: Juris Doctor – 5/87

   The University of Oxford, Oxford, England and the Department of External Studies, The Ohio State University, Summer Pre-Law Program in Oxford (1984)
   Attended: 7/84 – 8/84; No degree received

   The University of Akron
   Department of External Studies – Computer class
   Attended: 1/84 – 3/84; No degree received

   The University of Virginia
   Attended: 8/83 – 11/83; No degree received

   Bowling Green State University
   Attended: 9/79 – 5/83; Degree received: Bachelor of Arts, *summa cum laude* – 5/83

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

Stark County Common Pleas Court – General Division

Day, Ketterer, Raley, Wright & Rybolt, Ltd.
I was hired by the firm as an associate in the fall of 1987, and was elected a principal of the firm in December 1993.

The Ohio State University College of Law (employment during law school)

Law Library Worker
Legal Writing and Research Advisor
Research Assistant

Manchester, Bennett, Powers and Ullman (Law Firm)
Summer Intern – Summer of 1986

Appalachian Exploration, Inc. (1983)
Assisted contract manager and aided in special projects

[Note: I served on the boards of the organizations listed in below, but I was not an employee of these organizations, nor did I receive any remuneration for my service on these boards, the vast majority of which were not-for-profit.]

Plain Local Schools Foundation (director, currently serve on board)

Plain Local Schools Alumni Association (director, currently serve on board)

Stark County Humane Society (director, currently serve on board)

Walsh University Advisory Board (member, currently serve on board)

Community Services of Stark County, Inc. (past president, past first vice president and director, 2001 – 2006)

Stark County Citizen's Council for Non-Violence (Justice Committee and Executive Committee member, 1999-2004)

St. Michael the Archangel Roman Catholic Church Parish Council (member and past council president, 1998 – 2003)

Family Services, Inc. (director, 2001-2002)

J.R. Coleman Outreach Services, Inc. (director, 1997-2000)

Boy Scouts of America (2000)

Next Step, Inc. (director, 1994-2001)

Nova Behavioral Health, Inc. (director, 1999-2000)

Pyramid Career Services, Inc. (director and past board president) (1994-2000)

YWCA (director, 1998-2001)

Atlantic Blvd. Ltd. Partnership (real estate partnership -- share sold in 2001)

Custom Design Technologies, Inc. (former director and secretary) (resigned Nov. 30, 1997, when I began my judicial service)

7. Military Service: **Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

None

8. Honors and Awards: **List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

American Jurisprudence Award -- Legal Writing and Research
Phi Alpha Delta
Phi Beta Kappa
Phi Kappa Phi
Phi Beta Delta (Honor Society for International Studies)
Omicron Delta Kappa (Leadership Honor Society)
Phi Alpha Theta (Honor Society in History)
Phi Sigma Alpha (Honor Society in Political Science)
Phi Eta Sigma and Alpha Lambda Delta (Freshman Honoraries)
Distinguished Undergraduate Political Science Major
Nordmann Award (College of Arts & Sciences)
President's Achievement Scholarship
University Achievement Scholarship
Book Scholarship (3 years)

9. **Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.**

American Bar Association
Ohio State Bar Association
Stark County Bar Association

Ohio Common Pleas Judges Association (elected trustee for 3-year term beginning 2004)

The Supreme Court of Ohio Board of Commissioners on Character and Fitness (1 of 12 attorneys or judges appointed to the board by the Supreme Court of Ohio) Appointed as Chairperson of the Board by the Supreme Court for a one-year term for the years 2002, 2003, 2004, 2005 and 2006 (1996 – present)

The Supreme Court of Ohio Task Force on Rules of Professional Conduct (appointed by Chief Justice Thomas J. Moyer) (2003 – 2006)

The Supreme Court of Ohio Board of Commissioners on Grievances and Discipline (1 of 28 individuals appointed to the board by the Supreme Court of Ohio) (1997)

Judicial Corrections Board (December 1997 – present) (Chairperson 2000 and 2001)

The Supreme Court of Ohio, Interpreter Services Subcommittee

Stark County Bar Association, Naturalization Committee (1998 – present)

Stark County Bar Association, Executive Committee (elected by members of the Stark County Bar Association) (1995-1998)

Stark County Bar Association, Disputed Fee Committee (1995 – 1997)

10. **Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**

I believe the American Bar Association and the Ohio Common Pleas Court Judges Association may employ lobbyists who appear before public bodies.

Other organizations to which I belong:
Member, St. Michael the Archangel Roman Catholic Church
Member, Brookside Country Club
Member, Order of Sons of Italy – Ben V. Marconi Lodge
Member, Ladies Auxiliary VFW
Member, Stark County Humane Society

11. **Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.**

The State of Ohio – November 16, 1987 – Good standing

The United States District Court for the Northern District of Ohio – December 30, 1987 – Good standing

The United States Court of Appeals for the Sixth Circuit – December 16, 1988 – Good standing

12. **Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.**

Recapturing Professionalism, STARK COUNTY BAR JOURNAL, Oct. 1998, at 4.

I have given speeches or presentations to various civic organizations and other groups regarding the courts. I have discussed a variety of topics, including jury service, court programs, court caseloads, the types of cases that come before a state trial court, an overview of the state court system, judicial ethics, and the role of a judge in our system of government. The format and topic of my speeches vary from audience to audience.

13. **Health: What is the present state of your health? List the date of your last physical examination.**

I am in good health. My last physical was on June 7, 2006.

14. **Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

Stark County Common Pleas Court, General Division (Jurisdiction over civil and criminal cases); Appointed in November, 1997, by (then) Governor George V. Voinovich and took office on December 1, 1997; Elected for an unexpired 4-year term in November 1998; Re-elected for a full 6-year term in November 2002

15. **Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written.**

State of Ohio vs. Ronald J. Grezmak, Stark Cty. C.P. Case No. 2003CR0643 (Aug. 27, 2003), *aff'd*, Fifth Dist. Ct. Appls., Stark Cty. App. No. 2003CA00344 (July 12, 2004).

City of Canton, et al. vs. Jack Koury, et al,. Stark Cty. C.P. Case No. 2003CV00485 (Jan. 14, 2004), *aff'd*, Fifth Dist. Ct. Appls., Stark Cty. App. No. 2004CA0043 (June 20, 2005), *jurisdiction declined*, Ohio Supreme Court (Case No. 05-1344).

State of Ohio vs. Paul D. Lowe, Stark County C.P. Case No. 2004CR0547 (June 30, 2004), *aff'd*, Fifth Dist. Ct. Appls., Stark Cty. App. No. 2004CA00292 (Aug. 15, 2005), *jurisdiction accepted and appeal pending*, Ohio Supreme Court (Case No. 2005-1843).

State of Ohio vs. Lamarr Parr, Stark Cty. C.P. Case No. 2000CR1124 (Dec. 1, 2000).

State of Ohio vs. Craig Allen Limbach, Stark Cty. C.P. Case No. 2001CR0610 (Oct. 1, 2001), *aff'd*, Fifth Dist. Ct. Appls., Stark Cty. App. No. 2001CA00396 (July 29, 2002).

*M. Conley Company vs. Arthur M. Anderson, et al.,*Stark Cty. C.P. Case No. 2002CV04093 (Oct. 14, 2003), *aff'd*, Fifth Dist. Ct. Appls., Stark Cty. App. No. 2003CA00386 (Aug. 9, 2004), *aff'd*, 108 Ohio St.3d 252, 2006-Ohio-792 (2006).

William Haren vs. Superior Dairy, Inc., Stark Cty. C.P. Case No. 2002CV01038 (Sept. 11, 2003), *aff'd*, Fifth Dist. Ct. Appls., Stark Cty. App. No. 2003CA00331 (Aug. 17, 2004), *jurisdiction declined,* Ohio Supreme Court (Case No. 04-1643).

Infinity Outdoor Advertising Inc. d.b.a Outdoor Systems Advertising vs. Jackson Twp. Board of Zoning Appeals, Stark Cty. C.P. Case No. 2001CV00210 (Oct. 11, 2001).

Canton Police Patrolmen's Ass'n Inc. vs. City of Canton, Stark Cty. C.P. Case No. 2001CV01725 (Nov. 2, 2001), *aff'd*, Fifth Dist. Ct. Appls., Stark Cty. App. No. 2001CA00364 (May 13, 2002).

Timothy A. Swanson vs. Fraternal Order of Police, Ohio Labor Council, Stark Cty. C.P. Case No. 2003CV01338 (Oct. 29, 2003).

(2) **a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;**

Since taking the bench, I have disposed of over 9,500 cases and conducted over 350 trials (over 335 of which were jury trials). The following is a list of cases where my decisions were reversed.

State of Ohio v. David Daniels, Stark Cty. C.P. Case No. 1998-CR-0133, Fifth Dist. Ct. Appls. Case No. 1998CA00273 (Sept. 20, 1999).

The defendant was convicted by a jury on one count of rape. On appeal, the defendant asserted that I erred in prohibiting evidence of the victim's crack cocaine use earlier on the day of the incident. I excluded such testimony on the basis that it was not relevant to the defense that the sexual encounter had been consensual. In a 2-1 decision, the court of appeals reversed, finding that the exclusion of such evidence deprived the defendant of the right to present a complete defense and that same would have been relevant to the victim's credibility.

State of Ohio v. Chad A. Thomas, Stark Cty. C.P. Case No. 1998CR0141, Fifth Dist. Ct. Appls. Case No. 1998CA00143 (Dec. 7, 1998).

The defendant was indicted on one count of possession of cocaine. The defendant filed a motion to suppress the cocaine that was found in his pants pocket by a police officer through a *Terry* pat-down search that was conducted during the execution of a search warrant at the bar where the defendant worked. I denied the motion to suppress.

The court of appeals reversed, finding that, while the officer had reasonable suspicion to conduct a *Terry* pat-down search, such search exceeded the scope of a *Terry* pat-down because the officer admitted that the pat-down was conducted not only for weapons, but because contraband might be present as well.

State of Ohio v. Lewis Thompson, Stark Cty. C.P. Case No. 2000CR0651 (July 30, 2000), Fifth Dist. Ct. Appls. Case No. 2000CA00283 (Oct. 29, 2001).

The defendant was indicted on one count of robbery and was initially represented by appointed counsel. The defendant wished to represent himself and, after confirming this decision on the record, the defendant signed a written waiver of counsel, which was also discussed on the record. The defendant represented himself at trial and was convicted.

The defendant, through assigned counsel, appealed his conviction and argued that he did not knowingly, intelligently, and voluntary waive counsel. The appellate court agreed, finding that, even though I engaged in an inquiry as to the voluntariness of the defendant's waiver of counsel, I also needed to inform the defendant of other matters, such as the nature of the offense charged, the statutory offenses included within it, the range of allowable punishments, and possible defenses to the charge.

Brotherhood Mut. Ins. Co. v. George & Elizabeth Michailides, Stark Cty. C.P. Case No. 1998CV01271 (Mar. 3, 1999), Fifth Dist. Ct. Appls. Stark Cty. Case No. 1999CA00089 (Dec. 28, 1999).

As was the practice in their church, and with their minister's permission, the defendants

supplied candles and decorations that were placed in the church's candelabra during their wedding ceremony. The candles were not extinguished following the ceremony and the church was damaged by smoke from a resulting fire. The church's insurance company filed a subrogation action against the defendants. The defendants filed a motion for summary judgment, which I granted on the basis that the defendants did not owe a duty to extinguish the candles. In this respect, the minister testified that he instructed the best man to light the candles, but, contrary to his normal practice at a wedding, he did not instruct the best man to extinguish the candles following the ceremony.

The appellate court reversed finding that, although there is no general duty to extinguish the candles, the defendants owed a duty of reasonable care when they added decorations to the candelabra. The appellate court further found that there were questions of fact as to whether such duty was breached. The matter was reversed and remanded. A jury found in favor of the defendants.

Patrick J. Calloway v. Cynthia Calloway, Stark Cty. C.P. Case No. 2001CV00539 (Aug. 9, 2001), Fifth Dist. Ct. Appls., Stark Cty. Case No. 2001CA00274 (Feb. 25, 2002).

The defendant filed a complaint for divorce, which the plaintiff did not contest. The defendant obtained one-half of the marital portion of the plaintiff's 401(K) plan. The plaintiff brought suit against the defendant for breach of contract and fraud for failing to disclose the prenuptial agreement in which the defendant disclaimed her right to the retirement benefits. The defendant filed a motion to dismiss for failure to state a claim pursuant to Civ.R. 12(B). The motion was granted on the basis that *res judicata* barred the claims.

The appellate court revered and remanded finding that *res judicata* is not a basis upon which a complaint may be dismissed pursuant to Civ.R. 12(B). Upon remand, the motion was re-filed as a summary judgment motion and judgment was again entered in favor of the defendant on the basis of *res judicata*.

Kester E. Cantwell, et al., v. Joseph E. Frantz, Stark Cty. C.P. Case No. 2000CV01042, Fifth Dist. Ct. Appls., Stark Cty. Case No. 2000CA00331 (Aug. 8, 2001).

This was a motor vehicle accident case in which the defendant filed a motion for summary judgment on the basis that the complaint had been filed beyond the applicable statute of limitations period. Even after taking into consideration time that the defendant had been out of the state after the accident (which time would toll the statute of limitations), the complaint was found to have been filed untimely and the defendant's motion was granted.

The appellate court reversed, finding that it was error not to consider "fractional days" that the plaintiffs were out of the state, and count them as a full day. In computing the days in this fashion, the appellate court determined that the plaintiffs had timely commenced the action.

the instruction to be confusing and that it probably mislead the jurors. The matter was reversed and remanded.

Robert D. Roberts v. Republic Storage Systems, Co, et al., Stark Cty. C.P. Case No. 2003CV03167, Fifth Dist. Ct. Appls. Stark Cty. Case No. 2004CA00230 (April 25, 2005).

This was a workers' compensation appeal wherein the plaintiff was seeking a determination that his shoulder condition was compensable as a work related injury. The defendant filed a motion for summary judgment arguing that the plaintiff filed his claim outside the applicable statute of limitations for an occupational injury and summary judgment was granted on this basis. The appellate court reversed with instructions to analyze the claim pursuant to the statute of limitations for an occupational disease, rather than occupational injury.

Victoria Shumaker v. John L. Holstein, Stark Cty. C.P. Case No. 1999CV00020, Fifth Dist. Ct. Appls., Stark Cty. Case No. 1999CA0031 (Oct. 30, 2000).

This case involved an automobile accident wherein, in addition to compensatory damages, the plaintiff was seeking punitive damages based upon the defendant's alleged intoxication at the time of the accident. In the absence of expert testimony as to intoxication, I granted the defendant's motion in limine preventing any lay opinion that the defendant was intoxicated. The appellate court reversed, finding that the lay evidence proffered as to the defendant's alleged intoxication was sufficient to send the issue of punitive damages to a jury.

Catrina Taylor v. Michael Covey, et al., Stark Cty. C.P. Case No. 2000CV01825 (June 6, 2002), Fifth Dist. Ct. Appls., Stark Cty. Case No. 2002CA00201 (Dec. 23, 2002).

I granted a motion for judgment on the pleadings filed by an insurance company whose insured was liable for $800,000.00, where the insurance company denied the claim and refused to defend under a reservation of rights. The plaintiff filed a motion for summary judgment as to the binding effect of the judgment on the insurance company, which had not been made a party to the underlying case. The motion was denied. Upon appeal, the appellate court reversed and entered final judgment against the insurance company.

The following cases involved cases decided under *Scott-Pontzer v. Liberty Mutual Fire Ins. Co.* (1999), 85 Ohio St.3d 660, 1999-Ohio-292, wherein the Supreme Court of Ohio held that, with respect to certain insurance policy provisions, a person who was injured in an automobile accident could qualify for uninsured/underinsured motorist coverage under a policy of insurance issued to that person's employer, even though the person was not in the course and scope of his/her employment at the time of the accident. As the case law in *Scott-Pontzer*-type cases evolved, cases were reversed and/or remanded for judgment consistent therewith. Four years later, in *Westfield Ins. Co. v. Galatis* (2003), 100 Ohio St.3d 216, 2003-Ohio-5849, recognizing that its holding in *Scott-Pontzer* "def[ied] practical workability," the Supreme Court significantly limited its holding in *Scott-Pontzer* to only those accidents which occur during the scope and course of employment.

Robert Bernabei, et al., v. The Cincinnati Ins. Co., Stark Cty. C.P. Case No. 2000CV02399, Fifth Dist. Ct. Appls., Stark Cty. Case No. 2002CA00073 (Sept. 20, 2004).

Tamara Bernabei, et al. v. Cincinnati Ins. Co., Stark Cty. C.P. Case No. 2000CV02399, Fifth Dist. Ct. Appls., Stark Cty. Case No. 2003CA00103 (Dec. 22, 2004).

Tamara Bernabei, et al., v. St. Paul Fire & Marine Ins. Co., et al., Stark Cty. C.P. Case No. 2000CV02399, Fifth Dist. Ct. Appls., Stark Cty. Case No. 2003CA00346 (Sept. 13, 2004).

Russell J. Fisher v. West American Ins. Co., et al., Stark Cty. C.P. Case No. 2002CV01850, Fifth Dist. Ct. Appls., Stark Cty. Case No. 2003CA00385 (Sept. 7, 2004).

Shirley K. Ickes, et al., v. CAN Insurance, etc., et al., Stark Cty. C.P. Case No. 2001MI00023, Fifth Dist. Ct. Appls., Stark Cty. Case No. 2001CA00241 (May 6, 2002).

Darene Jordan, et al., v. Travelers Property Casualty Ins. Co., Stark Cty. C.P. Case No. 2001CV01062, Fifth Dist. Ct. Appls., Stark Cty. Case No. 2002CA00248 (Mar. 17, 2003).

Susan S. Rosenberry, et al., v. John N. Morris, et al., Stark Cty. C.P. Case No. 2000CV02838, Fifth Dist. Ct. Appls., Stark Cty. Case No. 2002CA00399 (May 27, 2003).

Jeannette Rufo v. Nationwide Agribusiness Ins. Co., Stark Cty. C.P. Case No. 2002CV00017, Fifth Dist. Ct. Appls., Stark Cty. Case No. 2003CA00291 (July 20, 2004).

George Wertz v. Grange Mut. Ins. Co., Stark Cty. C.P. Case No. 2002CV01883, Fifth Dist. Ct. Appls., Stark Cty. Case No. 2003CA00186 (Jan. 12, 2004).

(3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

State of Ohio vs. Ronald J. Grezmak, Stark Cty. C.P. Case No. 2003CR0643 (Aug. 27, 2003), *aff'd*, Fifth Dist. Ct. Appls., Stark Cty. App. No. 2003CA00344 (July 12, 2004).

City of Canton, Ohio, et al. vs. Jack Koury, et al., Stark Cty. C.P. Case No. 2003CV00485 (Jan. 14, 2004), a*ff'd*, Fifth Dist. Ct. of Appls, Stark Cty. App. No. 2004CA0043, *jurisdiction declined*, Ohio Supreme Court (Case No. 05-1344).

State of Ohio vs. Paul D. Lowe, Stark Cty. C.P. Case No. 2004CR0547 (June 30, 2004), *aff'd*, Fifth Dist. Ct. Appls., Stark Cty. App. No. 2004CA00292 (Aug. 15, 2005), *jurisdiction accepted and appeal pending*, Ohio Supreme Court (Case No. 2005-1843).

State of Ohio vs. Lamarr Parr, Stark Cty. C.P. Case No. 2000CR1124 (Dec. 1, 2000).

State of Ohio vs. Lamarr Parr, Stark Cty. C.P. Case No. 2000CR1124 (Dec. 5, 2000).

State of Ohio vs. Craig Allen Limbach, Stark Cty. C.P. Case No. 2001CR0610 (Oct. 1, 2001), aff'd, Fifth Dist. Ct. Appls., Stark Cty. App. No. 2001CA00396 (July 29, 2002).

State of Ohio vs. Ernest Robert Swogger, Stark Cty. C.P. Case No. 2002CR1558 (Feb. 27, 2003), *aff'd*, Fifth Dist. Ct. Appls., Stark Cty. App. No. 2003CA00144 (Feb. 27, 2003).

State of Ohio vs. Mark Swint, Stark Cty. C.P. Case No. 2002CR0945 (Feb. 28, 2003), *aff'd*, Fifth Dist. Ct. Appls., Stark Cty. App. No. 2003CA00165 (Feb. 9, 2004).

State of Ohio vs. Stephen David Shoenfelt, Stark Cty. C.P. Case No. 2000CR0232 (June 29, 2000), *appeal dismissed*, Fifth Dist. Ct. Appls., Stark Cty. Case No. 2000CA00262 (Jan. 10, 2001).

State of Ohio vs. Jeffrey Leon Gooden, et al., Stark Cty. C.P. Case Nos. 2004CR2123(A), (B), and (C)(Apr. 25, 2005); No appeal filed.

State of Ohio vs. Sero D. Askew, Stark Cty. C.P. Case No. 2004CR0449 (June 28, 2004), *aff'd*, Fifth Dist. Ct. Appls., Stark Cty. App. No. 2004CA00275, *jurisdiction declined,* Ohio Supreme Court (Case No. 05-1436).

Steven Shankel, et al., vs. City of Canton, et al., Stark Cty. C.P. Case No. 2005CV00498 (Dec. 9, 2005), *appeal pending*, Fifth Dist. Ct. Appls., Stark Cty. App. No. 2006CA00004.

16. Public Office: **State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.**

None

17. Legal Career:

a. **Describe chronologically your law practice and experience after graduation from law school including:**

1. **whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;**

I have not served as a clerk to a judge.

2. **whether you practiced alone, and if so, the addresses and dates;**

I have not practiced alone.

3. **the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;**

1997 – Present, Judge in the Stark County Court of Common Pleas, General Division

Stark County Court of Common Pleas
Stark County Courthouse
115 Central Plaza, North
Canton, OH 44702

1987-1997
Day, Ketterer, Raley, Wright & Rybolt, Ltd. (Law firm)
200 Market Avenue, North
Canton, Ohio 44702

I was hired by the firm as an associate in the fall of 1987, and was elected a principal of the firm in December 1993. Upon being appointed by Governor George Voinovich to fill a vacancy on the Stark County Common Pleas Court, I resigned my membership in the law firm effective December 1, 1997.

b. 1. **What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?**

As a judge of the Stark County Court of Common Pleas, General Division, I preside over both civil and criminal cases.

While an attorney at Day, Ketterer, Raley, Wright & Rybolt, Ltd., my principal practice areas included appellate advocacy and civil

litigation. I also was appointed by the Ohio Attorney General to serve as Special Counsel to a local college.

2. **Describe your typical former clients, and mention the areas, if any, in which you have specialized.**

The clients to whom I rendered legal services were diverse, and included individuals, schools and institutions of higher learning, municipalities, small businesses, and large multi-national corporations.

c. 1. **Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.**

Throughout my tenure in private practice, at the trial court level I appeared in court occasionally, and at the appellate court level I appeared in court frequently.

2. **What percentage of these appearances was in:**
   - **(a) federal courts;** 5%
   - **(b) state courts of record;** 95%
   - **(c) other courts.**

3. **What percentage of your litigation was:**
   - **(a) civil;** 100%
   - **(b) criminal.**

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

When I was in private practice, I worked on many cases at the trial court level. I no longer have access to the case files, as they are retained by my former law firm. The number of cases that I can recall that I personally tried either before a judge, jury, arbitrator or referee to verdict was seven. I was sole counsel at the trial or hearing in six of the cases. Since I have been a judge, I have presided to verdict over hundreds of trials.

5. **What percentage of these trials was:**
   - (a) jury; - 33%
   - (b) non-jury.- 67%

18. **Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:**

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

a. *Edward Niesz, et al. vs. Northern Life Insurance Company*, Stark County C.P. Case No. 87-1119, Judge Harry Klide, Fifth Dist. Ct. Appls., Stark Cty. App. No. CA-8818 (March 30, 1993)(Panel: Judges Irene Smart, Norman Putman & William Hoffman), *jurisdiction declined*, Ohio Supreme Court, *Niesz v. Northern Life Ins. Co.*, 76 Ohio St.3d 1438 (1993).

Party Represented: Intervening Plaintiff, Lawrence Northcutt, Individually and as Executor of the Estate of Carolyn Northcutt, Deceased

Date of representation:	Est. 10/87 – 08/93
Co-counsel:	Louis A. Boettler, Retired Day Ketterer Ltd. Home: 5143 East Blvd., NW Canton, OH 44718 (330) 494-9350
	Alicia M. Wyler John A. Murphy, Jr. Day Ketterer Ltd. 300 Millennium Centre P.O. Box 24213 Canton, OH 44701-4213 (330) 455-0173
Lead opposing counsel: (Northern Life Ins. Co.)	William D. Dowling 195 S. Main St. Suite 300 Akron, OH (330) 762-7377

This lengthy, complex, and novel case (which was believed to be a case of first impression in

Ohio) involved numerous claims surrounding the negligent issuance of a life insurance policy which resulted in the wrongful death of the insured. Co-counsel and I represented the son of the insured, who was appointed executor of his mother's estate.

The decedent, who lived alone, died under suspicious circumstances after returning home from having drinks at a local restaurant with her insurance agent, Edward Niesz. He was the last known person to be with her. Initially, the coroner ruled that her death was accidental, due to her falling down stairs in her home onto a pair of scissors that pierced her heart. After a review of the autopsy and other evidence, an independent pathologist, retained on behalf of the estate, determined that the decedent had been beaten and stabbed, and that her death was not accidental.

The action was originally brought by Niesz, the insurance agent, to recover the proceeds of a life insurance policy issued by Northern Life Insurance Company. He was listed on the policy as the beneficiary and his relationship was described as "executor." Our client, who was the son of the decedent and the duly appointed executor of her estate, intervened as a plaintiff against Northern Life asserting, among other things, claims for reformation of the insurance policy to list himself as the executor of his mother's estate and beneficiary of the policy, breach of contract, bad faith, wrongful death and survivorship, fraud, and punitive damages. The estate also cross-claimed against Niesz and asserted that he was not entitled to the proceeds because he caused the death of the decedent in order to collect the insurance proceeds.

The jury found that Northern Life was negligent in issuing the policy and awarded $800,000 in damages to our client on the survivorship claim. The trial court set off $150,000 from the verdict as a result of prior settlement for wrongful death that our client had entered into with another life insurance company for similar, yet separate claims.

Northern Life Insurance Company appealed and we cross-appealed on behalf our client. The court of appeals overruled all of Northern Life's assignments of error and sustained a number of our assignments of error. In doing so, the court reinstated the full jury award, in the amount of $800,000. Additionally, the court found merit to our assignment of error that the trial court should have reformed the insurance contract and, as a result, entered judgment in favor of our client for the face amount of the insurance policy ($311,300), making the total judgment against Northern Life $1,111,300.

I was responsible for researching potential causes of action, drafting the complaint and discovery requests, locating and interviewing lay and expert witnesses, and all legal research relative to the case. I was also involved extensively in the critical legal analysis of the case and in all important strategy and tactical decisions. Additionally, I researched and wrote all briefs and memoranda at the trial court level, and all briefs at the appellate court levels.

b. *Gregory Greene, et al. v. United Foundries, Inc.*, Fifth Dist. Ct. Appls., Stark Cty. App. No. 94CA0106 (Mar. 21, 1995)(Panel: Judges Sheila G. Farmer, William B. Hoffman and W. Don Reader).

Party represented:	United Foundries, Inc.
Date of representation:	Est. 11/91 – 3/95
Co-counsel: (United Foundries)	William S. Cline Day Ketterer Ltd. 300 Millennium Centre P.O. Box 24213 Canton, OH 44701-4213 (330) 455-0173
Lead opposing counsel:	Jerry P. Hontas, Retired 140 SE 5th Avenue Unit 549 Boca Raton, FL 33432 (561) 417-4539

This case involved three separate intentional tort cases that arose from the same incident. The cases were consolidated for purposes of discovery and trial.

The plaintiffs were employees of United Foundries, Inc. and were all seriously injured as a result of an accident involving a vertical centrifugal casting machine. At the time of the accident, the employees were assisting in the production of a casting to be produced on the casting machine. This production method required that a mold be attached to a plate on the casting machine which would rotate when driven by an electric motor. The casting machine was located in a pit which had been specifically constructed for the installation of the casting machine.

During the production process, a mechanical failure occurred. The lid of the mold broke free allowing molten metal and hot expanding gases to escape from the mold. This explosive eruption, in turn, caused the hot gas and molten metal to be spewed from underneath the protective plates on top of the mold causing burn injuries to the plaintiffs.

The plaintiffs alleged that United Foundries had knowledge that the process being used was dangerous as a result of being notified of an incident at another company's facility involving the same type of machine. They also pointed to concerns that United Foundries had about vibrations in the machine the employees were using.

After a four day trial, the jury unanimously found in favor of United Foundries. At the trial, evidence was introduced that United Foundries had performed substantial work on the vertical centrifugal casting machine to improve upon the machine and try and make it safe, and that after modifications were made, there were no complaints about the safety of the

machine.

The plaintiffs appealed, asserting error on the part of the trial judge in instructing the jury relative to the elements of an intentional tort. The court of appeals affirmed the verdict in the trial court.

I was responsible for handling the appeal. I reviewed the transcript of proceedings, researched the law, and prepared the brief, which included a cross-appeal. I also argued the case before the court of appeals.

c. *Peter Briney, et al. v. The Timken Company, et al.*, Fifth Dist. Ct. Appls., Stark Cty. App. No. CA-8043 (Aug. 27, 1990)(Panel: Judges Norman Putman, John Milligan, William Hoffman), *jurisdiction declined*, Ohio Supreme Court (Case No. 90-2062) (Jan. 16, 1991).

Party represented:	The Timken Company
Date of representation:	Est. 9/86 – 1/91
Co-counsel:	William S. Cline Day Ketterer Ltd. 300 Millennium Centre Canton, OH 44701-4213 (330) 455-0173
Lead opposing counsel:	Thomas Mester 1370 Ontario Street, First Floor Cleveland, OH 44113 (216) 621-2300

The plaintiffs, Peter and Carolyn Briney, filed a complaint against numerous defendants seeking damages as a result of injuries sustained by Peter Briney at his place of employment. At the time of the accident, Briney was assisting a co-worker in the installation of a pump that had previously been removed from service for repairs. Due to the fact that the pump was being reinstalled, there was no guard or cover over the exposed coupling between the pump and the motor. During the reinstallation, in order to better position himself to assist his co-worker, Briney placed his foot on the platform on which the motor assembly was located. He then leaned forward to shine a flashlight to read an optical pyrometer, at which time his pant leg was caught by an exposed grease fitting on a rotating coupling. His leg was injured when it was pulled against the spinning coupling.

As to our client, the employer, the plaintiffs asserted an intentional tort claim. (As to the co-defendants, the plaintiffs asserted a products liability claim.)

Co-counsel and I filed a motion for summary judgment on behalf of the employer, and the trial court granted the motion. The decision was affirmed on appeal.

I was responsible for reviewing the evidence, researching and preparing the motion for summary judgment and reply brief at the trial court level, and all briefs at the appellate court levels.

d. *Joshua Driggs, A Minor, et al. v. National Electric Coil, et al.*, Summit Cty. C.P. Case No. CV 90 01 0186 (Judge Glen B. Morgan), Ninth Dist. Ct. Appls., Summit Cty. App. No. 14896 (Mar. 27, 1991)(Panel: Judges Daniel B. Quillin, William R. Baird, John W. Reece).

Party represented:	National Electric Coil
Date of representation:	Est. 1/90 – 3/91
Co-counsel:	James R. Blake Day Ketterer Ltd. 300 Millennium Centre P.O. Box 24213 Canton, OH 44701-4213 (330) 455-0173
Lead counsel for co-defendant: (Ohio Edison Company)	Deborah Cook (Currently a Judge on the U.S. Sixth Circuit)
Co-counsel for co-defendant:	Robert Linton 1500 Cascade Plaza Akron, OH 44308 (330) 434-3000
Lead opposing counsel:	William F. Mikesell 159 S. Main Street Suite 400 Akron, OH 44308 (216) 434-1211

This was a premises liability case involving a 10½ year old minor who had climbed into an electrical substation on industrial property and sustained serious injuries. The defendants filed separate motions for summary judgment, which were granted by the trial court. The trial court's decision was later affirmed by the court of appeals.

I attended client meetings, site tours, depositions, and assisted with discovery. Additionally, I was responsible for reviewing the evidence, researching and preparing the motion for summary judgment and reply brief at the trial court level, and all briefs at the appellate court levels.

e. *John Leach v. Leiner Health Products, Inc.*, Summit Cty. C.P. Case No. 95 10 3676 (Judge Patricia Cosgrove).

Party represented:	Leiner Health Products, Inc.
Date of representation:	Est. 11/95 – 4/97
Co-counsel:	Alicia M. Wyler Louis A. Boettler, Retired Day Ketterer Ltd. 300 Millennium Centre P.O. Box 24213 Canton, OH 44701-4213 (330) 455-0173
Lead opposing counsel:	Patrick A. Malone 100 Connecticut Avenue, NW Suite 1100 Washington, DC 20036 (202) 6610918

This was a complex case involving a wrongful death claim as a result of the decedent's use of acetaminophen in combination with her regular consumption of alcohol. The plaintiff's claim against the defendant was based upon a number of theories, including products liability (failure to warn and failure to conform to representations), label misbranding within the meaning of 21 U.S.C. § 352 (Federal Food, Drug and Cosmetic Act) and Title 13 of the Ohio Revised Code, misrepresentation, breach of warranties under the Uniform Commercial Code, common law tort claims (including breach of express and implied warranties and negligence), and breach of the Ohio Consumers Sales Practices Act. The plaintiff also requested punitive damages.

There were numerous motions filed on behalf of the defendant prior to trial, including a motion for summary judgment and a *Daubert* motion regarding the plaintiff's experts. The case proceeded to trial before a jury. During deliberations, the case was settled.

I was responsible for locating and interviewing expert witnesses, and all legal research relative to the case. I was also involved extensively in the critical legal analysis of the case and in all important strategy and tactical decisions. Additionally, I researched and prepared all briefs and memoranda at the trial court level, and argued motions before the trial court prior to trial.

f. *Lavista Brown-Austin v. Judith A. Johanning, et al.*, Stark Cty. C.P. Case No. 88-970 (Judge James R. Ungar).

Parties represented:	Judith A. Johanning and Visiting Nurse Society of Central Stark County

Date of representation: Est. 7/88 – 9/90

Co-counsel: John A. Murphy
(Lead trial counsel) Day Ketterer Ltd.
300 Millennium Centre
P.O. Box 24213
Canton, OH 44701-4213
(330) 455-0173

Lead opposing counsel: William J. Sexton
800 Standard Building
Cleveland, OH 44113
(216) 621-0500

This was a wrongful death case involving the death of a young man in a car-motorcycle accident. Co-counsel and I represented the defendants, a visiting nurse who was working in the course and scope of her employment at the time of the accident, and her employer. The jury returned a verdict in favor of our clients.

I was primary counsel responsible for handling the case. I conducted discovery, investigated issues related to the case, located and interviewed lay and expert witnesses (including an accident reconstructionist), and performed all legal research relative to the case. I was also involved extensively in the critical legal analysis of the case and in all important strategy and tactical decisions. I researched and prepared all briefs and memoranda at the trial court level, and actively participated as trial counsel.

g. *Victoria Kilgore, et al. v. David Shrock, et al.*, Stark Cty. C.P. Case No. 1994CV01404 (Judge Harry Klide), Fifth Dist. Ct. Appls., Stark Cty. App. No. 1995CA00299 (June 24, 1996)(Panel: Judges John Wise, William Hoffman, Scott Gwin).

Party represented: Richard T. Kiko Agency, Inc. (Third-Party Defendant)
Date of representation: Est. 11/94 – 6/96

Co-counsel: John R. Werren
Day Ketterer Ltd.
300 Millennium Centre
Canton, OH 44701-4213
(330) 455-0173

Defendant/Third-Party
Plaintiff counsel: James D. Snively
11 Lincoln Way East
Massillon, OH 44646
(330) 837-4251

Lead opposing counsel: Richard L. Henning
Henning & Yost Co., L.P.A.
5022 Yukon NW, Suite D
Canton. OH 44708
(330) 479-9825

This case involved a dispute as to who was entitled to free gas following an auction of an eighty-acre farm that was divided into three parcels. Prior to the auction, it was announced that there was an oil and gas lease on the property and a well. In addition to paying royalties for oil and gas produced from the well, the lease provided that free gas would be provided to one dwelling on the eighty acre tract. It was predetermined that the right to the free gas would go to the purchasers of parcel two (which was the parcel that the separator for the well was located). Even though the plaintiffs purchased parcel three, they believed they were entitled to the rights to the free gas because the well head for the oil and gas well was located on parcel three.

The trial court granted the summary judgment in favor of the auctioneer and the court of appeals affirmed.

I was primary counsel responsible for handling the case. I conducted discovery, investigated issues related to the case, located and interviewed lay witnesses, and performed all legal research relative to the case. I was also involved extensively in the critical legal analysis of the case and in all important strategy and tactical decisions. I researched and prepared all briefs and memoranda at the trial court level, and also argued the case before the court of appeals.

h. *Siebert, et al. vs. Chessler, et al*, Stark Cty. C.P. Case No. 1993CV01317 (Judge Harry Klide)(Arbitrator: Judge James R. Ungar, Retired).

Parties represented: Donald E. Siebert and Constance J. Siebert

Date of representation: Est. 08/93 – 11/94

Lead opposing counsel: Stephen P. Griffin
Buckingham, Doolittle & Burroughs, Ltd.
4518 Fulton Dr., NW
Canton, OH
(330) 491-5262

This is was an action for civil fraud in which my clients, the buyers of a home, alleged that the sellers of the home failed to disclose material information concerning the swimming pool, specifically, that a corner of the pool was sinking. The case was arbitrated before a retired judge, who found in favor of my clients. The defendants filed a notice of appeal from the arbitrators' decision, after which the case was settled.

I was responsible for all aspects of the case, including discovery, preparing a response to the defendants' motion for summary judgment, and preparation and presentation of the case at arbitration.

i. *Ohio Power Company vs. GKL Construction Co.*, Canton Muni. Ct. Case No. 1992-CVF-1519 (Judge Mary Falvey).

Party represented:	Ohio Power Company
Date of representation:	Est. 7/92 – 12/92
Co-counsel:	James R. Blake Day Ketterer Ltd. 300 Millennium Centre P.O. Box 24213 Canton, OH 44701-4213 (330) 455-0173
Lead opposing counsel:	Stephen P. Griffin Buckingham, Doolittle & Burroughs, Ltd. 4518 Fulton Dr., NW Canton, OH (330) 491-5262

This case involved a claim for negligence by Ohio Power Company against GKL Construction Co. Ohio Power Company alleged that GKL was damaging its poles while doing excavation work in connection with a road relocation project. The case was tried to a jury who returned a verdict in favor of Ohio Power Company. The defendant did not appeal.

I was primary counsel responsible for handling the case. I conducted discovery, investigated issues related to the case, located and interviewed lay witnesses, and performed all legal research relative to the case. I also was sole counsel at trial for Ohio Power Company.

j. *John J. Oser v. First National Bank of Ohio, et al.*, Summit Cty. C.P. Case No. 93 08 2702 (Judge Patricia Cosgrove).

Party represented:	First National Bank of Ohio
Date of representation:	Est. 11/94
Co-counsel:	Alicia M. Wyler Day Ketterer Ltd. 300 Millennium Centre Canton, OH 44701-4213 (330) 455-0173

John Solomon
Vorys, Sater, Seymour and Pease, LLP
106 South Main Street, Suite 801
Akron, OH 44308
(330) 208-1013

Lead opposing counsel: A. Edward Bonetti, Jr.
441 Wolf Ledges, # 302
Akron, OH 44311
(216) 376-9691

This was a lender liability case involving the plaintiff's procurement of a $200,000 loan from the defendant bank. The loan officer agreed that the plaintiff would receive the loan if he paid the loan officer a $12,000 kickback. The plaintiff obtained the loan and reported the kickback scheme to bank officials who alerted the FBI. The FBI arranged a "sting" operation whereby the plaintiff wore a wire and offered the loan officer the money. The loan officer accepted the money and was prosecuted for his participation in the scheme.

As to the bank, the plaintiff asserted claims for fraud, deceit and misrepresentation, intentional infliction of emotional distress, negligent hiring, interference with business relations, engaging in a pattern of corrupt activity, and punitive damages. A motion for summary judgment was filed on behalf of the bank as to all of the plaintiff's claims. The trial court granted the motion.

I was responsible for reviewing the evidence, researching and preparing a motion for summary judgment and reply brief at the trial court level, and all briefs at the appellate court levels.

k. *Lois A. Rigsby, Executrix. v. Ohio Power Company*, Ninth Dist. Ct. Appls., Wayne Cty. App. No. 2423 (Aug. 2, 1989)(Panel: Judges John W. Reece, Edward J. Mahoney, William R. Baird).

Party represented: Ohio Power Company
Date of representation: Est. 5/88 – 8/89

Co-counsel: James R. Blake
Day Ketterer Ltd.
300 Millennium Centre
P.O. Box 24213
Canton, OH 44701-4213
(330) 455-0173

Albert M. Orgain IV
801 E. Main Street
Suite 1800
Richmond, VA 23219-2906
(804) 783-7243

Lead opposing counsel: Charles A. Kennedy
558 North Market Street
Wooster, OH 44691
(216) 262-7555

This case involved claims of negligence and nuisance against Ohio Power Company relative to the location of a wooden utility pole. A commercial pilot was operating a twin-engine turbo-prop passenger airplane which was bound for Wayne County, Ohio airport. The plane carried one passenger, the plaintiff's decedent. On the final approach to the runway, the airplane struck a wooden utility pole which carried transmission lines owned and maintained by Ohio Power Company. The aircraft tumbled into a cornfield short of the runway, and both the pilot and his passenger died as a result of the accident.

After a seven-day jury trial, the jury rendered a verdict in favor of Ohio Power Company. The plaintiff appealed asserting a number of assignments of error. The Ninth District Court of Appeals overruled all assignments of error and affirmed the jury verdict.

I was responsible for reviewing the record, and assisting in the research and preparation of the brief at the appellate court level.

19. Legal Activities: **Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)**

I feel strongly that lawyers and judges should be involved in activities that serve to promote confidence in and improve our legal system. Additionally, I believe it is important to maintain high standards of professionalism and conduct in the profession in order to protect the public and inspire respect for our legal system. To this end, I have volunteered my time in service on boards, committees, and other organizations on local, state, and national levels, many of which in some manner are involved with the regulation of the profession.

While I was in the private practice, I was elected by the members of the Stark County Bar Association to serve on the executive committee of the bar association. I also assisted or served on the boards of a number of non-profit agencies and organizations and, prior to becoming a judge, provided pro bono legal services to some of these agencies and organizations.

Prior to becoming a judge, I served on the Supreme Court of Ohio Board of Commissioners on Grievances and Discipline. This Board is a twenty-eight member commission appointed by the Supreme Court of Ohio, and is responsible for issuing final recommendations to the Supreme Court on formal disciplinary charges against Ohio's

lawyers and judges, monitoring and assisting the certified grievance committees in the regulation of the legal profession, and issuing advisory ethics opinions.

For over the past ten years, I have served on the Supreme Court of Ohio Board of Commissioners on Character and Fitness, and for the last five years, I have been appointed by the Supreme Court of Ohio to serve as chair of the Board. The Board is a twelve-member commission appointed by the Supreme Court of Ohio to review cases involving applicants who are seeking to become licensed to practice law in the State of Ohio and approve applicants to sit for the bar examination in Ohio. The Board serves as a gatekeeper, from the perspective of character and fitness matters, as to all individuals who seek to become licensed to practice law in Ohio. In addition to chairing the Board and serving on hearing panels in cases involving applicants who have been disapproved, approved with qualifications, or who are being reviewed at the request of the Board, I also serve on a number of active subcommittees of the Board, including the rules and forms subcommittee and a review subcommittee (which is responsible for reviewing all candidate applications submitted to determine if a character and fitness hearing is necessary). I have also served on the Character and Fitness Committee of the National Conference of Bar Examiners.

Additionally, in March, 2003, I was appointed by the Chief Justice of the Ohio Supreme Court to serve on the Supreme Court of Ohio Task Force on Rules of Professional Conduct. The Task Force devoted more than three years to a comprehensive review of Ohio's current legal ethics rules and standards, the Model Rules of Professional Conduct promulgated by the American Bar Association, and the legal ethics rules promulgated by other states. The Task Force recently completed its work on the rules and submitted a proposal to the Supreme Court of Ohio, which adopted new rules on July 18, 2006, based upon the recommendations of Task Force.

Finally, I devote a significant amount of time presenting at seminars in the areas of professionalism, legal ethics, and character and fitness standards. I have spoken on these topics to judges, lawyers, and law students. I have presented programs for a number of different sponsors, including the Ohio Judicial College, the Ohio Judicial Conference, the Ohio State Bar Association, the National Conference of Bar Examiners, and the Stark County Bar Association. Currently I serve as a trustee for the Ohio Common Pleas Judges Association. The association sponsors seminars for common pleas court judges in Ohio, and I have presented seminars on judicial ethics to this association as well.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

I have participated in the Public Employee Retirement System for the State of Ohio and I anticipate I will be paid retirement income based upon my length of service.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

It is my practice to provide my administrative assistant with information regarding any potential conflicts of interests, particularly as it pertains to my retirement investment accounts, so that my assistant can help bring potential conflicts of interests to my attention. Additionally, I am very sensitive to potential conflicts of interests, and it is my practice to disclose any potential conflict of interest to counsel for the parties and voluntarily recuse myself when appropriate. I will continue to follow these practices if appointed to the United States District Court, and also abide by the Code of Conduct for United States judges and all applicable statutes, policies, and procedures.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

I have no plans to pursue outside employment if I am confirmed to serve as a United States District Judge for the Northern District of Ohio.

4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

See attached Financial Disclosure Report.

5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**

   See attached net worth statement.

6. **Have you ever held a position or played a role in a political campaign?** Yes. **If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

   I served as chair of the committee to elect John F. Boggins to the Stark County Common Pleas Court (1994).

   I served as chair of the committee to elect Barbara Frustaci Stark County Commissioner (1994).

AO-10
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (Last name, First name, Middle initial)	2. Court or Organization	3. Date of Report
Lioi, Sara E	U.S. District Court, Ohio	7/18/2006
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge - Nominee	5. ReportType (check appropriate type) (•) Nomination, Date 7/13/2006 ( ) Initial ( ) Annual ( ) Final	6. Reporting Period 1/1/2005 to 6/30/2006
7. Chambers or Office Address Stark County Courthouse 115 Central Plaza, North Canton, Ohio 44702	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer_____ Date_____	

IMPORTANT NOTES: The instructions accompanying this form must be followed Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions)

☐ NONE - (No reportable positions.)

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Judge	Stark County Common Pleas Court
2.	Director (President of Board from 4/04-4/05)	Community Services of Stark County, Inc.
3.	Director	Plain Local School Foundation
4.	Director	Plain Local Alumni Association
5.	Director	Stark County Humane Society
6.	Member	Walsh University Advisory Board

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions)

☑ NONE - (No reportable agreements.)

	DATE	PARTIES AND TERMS
1.		

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Lioi, Sara E	7/18/2006

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions)

A. Filer's Non-Investment Income

☐ **NONE** - (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1.	2004	State of Ohio/Judiciary - Salary	87,955.70
2.	2004	County of Stark (State of Ohio) - Salary	13,980.01
3.	2005	State of Ohio/Judiciary - Salary	90,419.08
4.	2005	County of Stark (State of Ohio) - Salary	13,999.96
5.	2006	State of Ohio/Judiciary - Salary	51,097.68
6.	2006	County of Stark (State of Ohio) - Salary	6,999.98

B. Spouse's Non-Investment Income (If you were married during any portion of the reporting year, please complete this section. Dollar amount not required except for honoraria.)

☑ **NONE** - (No reportable non-investment income.)

	DATE	SOURCE AND TYPE
1.		

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

☐ **NONE** - (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1.		EXEMPT

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Lioi, Sara E	7/18/2006

V. GIFTS. (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

☐ **NONE** - (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1.		EXEMPT	

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

☐ **NONE** - (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
1.	Bank of America	Credit Card	J

FINANCIAL DISCLOSURE REPORT
Page 1 of 1

Name of Person Reporting: Lioi, Sara E

Date of Report: 7/18/2006

VII. INVESTMENTS and TRUSTS – income, value, transcations (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A -H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	D. If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ **NONE** (No reportable income, assets, or transactions)									
1. KeyBank Account	A	Interest	J	T	Exempt				
2. Public Employee Retirement System		None	M	T					
3. IRA	D	Dividend	M	T					
4. -JP Morgan Liquid Assets Moneymarket									
5. -Columbia Large CAP Value Class C									
6. -Columbia Mid CAP Value Class C									
7. -Exxon Mobile Corp Common Stock									
8. -Federated High Income Bond Class C									
9. -Fifth Third Bancorp Common Stock									
10. -JP Morgan Intermed Bond Class C									
11. -MFS Mass Investor Growth Stock C									
12. -Medco Health Solutions Inc. Common Stock									
13. -Merck & Co. Inc. Common Stock									
14. -Oppenheimer Int'l Growth Class C									
15. -Oracle Corporation Common Stock									
16. -Progressive Energy Inc. Contigent Value Oblig.									

1. Income/Gain Codes: (See Columns B1 and D4) A = $1,000 or less; B = $1,001-$2,500; C = $2,501-$5,000; D = $5,001-$15,000; E = $15,001-$50,000; F = $50,001-$100,000; G = $100,001-$1,000,000; H1 = $1,000,001-$5,000,000; H2 = More than $5,000,000
2. Value Codes: (See Columns C1 and D3) J = $15,000 or less; K = $15,001-$50,000; L = $50,001-$100,000; M = $100,001-$250,000; N = $250,000-$500,000; O = $500,001-$1,000,000; P1 = $1,000,001-$5,000,000; P2 = $5,000,001-$25,000,000; P3 = $25,000,001-$50,000,000; P4 = $More than $50,000,000
3. Value Method Codes (See Column C2) Q = Appraisal; R = Cost (Real Estate Only); S = Assessment; T = Cash/Market; U = Book Value; V = Other; W = Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Lioi, Sara E	7/18/2006

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Lioi, Sara E	7/18/2006

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature Sara E. Lioi Date 7/18/06

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		8	803	Notes payable to banks-secured		18	353
U.S. Government securities-add schedule				Notes payable to banks-unsecured		6	500
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned-add schedule				Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		33	450				
Cash value-life insurance							
Other assets itemize:							
IRA		175	630				
Public Employees Retirement System		111	422				
				Total liabilities		24	853
				Net Worth		304	452
Total Assets		329	305	Total liabilities and net worth		329	305
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

I have served on the board of directors for numerous community not-for-profit organizations. When I was in private practice, as a part of my service to some of these organizations, I provided pro bono legal services. The Code of Judicial Conduct prohibits me from rendering any such service presently.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?**

I belong to no such organizations.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

I met with a selection committee on December 20, 2005. It is my understanding that the selection committee made recommendations to the two United States Senators from Ohio. I interviewed with one of the Senators. My name was recommended to the President in April. On April 10, 2005, I interviewed with staff from the White House Counsel's Office and from the Department of Justice. After completing nomination paperwork and undergoing a thorough background investigation, I was notified that my name would be forwarded to the Senate. The President sent my nomination to the Senate on July 13, 2006.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped-many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The Constitution of the United States sets forth the authority, duties, and responsibilities of the three branches of government. The role of the judiciary is set forth in Article III, which empowers judges to decide specific types of cases and controversies. Article I and Article II of the Constitution set forth the role of the legislative and executive branches of government. Among other things, these two branches are responsible, respectively, for enacting and enforcing laws. It is also the prerogative of these two branches to make policy decisions within the confines of the parameters of their duties as set forth in the Constitution.

All three branches of government have distinct and vital roles within our constitutional framework, and each should respect the roles of the others. I believe the term "judicial activism" is employed when there is a belief that the judiciary has improperly exceeded its authority and intruded into an area reserved for the legislative or executive branch.

The role of the judiciary is, of course, crucial, and judges ought to be able to fulfill their proper role without interference from the other branches of government; however, judges must be mindful that their role is limited. Judges

must be committed to performing their duties within the proper confines of Article III authority. These duties include deciding the cases and controversies that are properly before them and interpreting the law; these duties do not include making law or policy decisions. To this end, judges must be respectful of and show proper deference to the other two branches of government, both of whom also have constitutional authority vested in them. To the extent that a judge improperly intrudes beyond the constitutional authority of the judiciary and into an area within the authority of either of the other branches, then criticism is warranted.

AFFIDAVIT

I, Sara E. Lioi, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

7/18/06
(DATE)

(NAME)

(NOTARY)

NOTARIAL SEAL STATE OF OHIO

JANE THOMAS
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES NOV. 28, 2006

Senator DEWINE. Good. Well, we welcome everyone. We are glad everyone is here. Thank you very much.

Judge Jordan, you have written "it takes restraint to recognize that even when you have the tools to right wrongs, not everything that you perceive as wrong is yours to right."

Would you say that this is an accurate expression of your judicial philosophy, and how do you think this philosophy will manifest itself if, in fact, you are confirmed as the appellate judge?

Judge JORDAN. That is a quick summary of an attribute I very much admire in judges that I have known. I know it is an attribute that I want, and I think I have, exhibited in my time on the bench.

I feel a great responsibility whenever I walk into the courtroom to see to it that the elected offices in our government are given the deference and respect that they ought to have.

I want to echo what the other judges have said here about gratitude to the President for the nomination. This is the second opportunity I have had to be nominated by President Bush, and my gratitude knows no bounds.

I just feel it is really important that when we are wearing the robe and presiding, that we keep firmly in mind that we are to apply the law, we are not there to make public policy.

Senator DEWINE. Judge, how do you feel your background as a trial judge will help you in your new position?

Judge JORDAN. Well, I certainly will have a real appreciation for what it takes to create a trial record and to be conscious of the work and the many opportunities that come up for a district judge to make a close call on a point of evidence or on a motion that is before them.

I would be very tuned in to the rules of deference that are in place for appellate review because they make our system function in a sensible way.

Senator DEWINE. You have a great deal of background in intellectual property, certainly a specialized area of practice. How has that helped you in the district court, and what impact will that have, do you think, in your appellate work?

Judge JORDAN. Well, the District of Delaware has a very full docket of patent cases. Those cases will, on appellate review, end up before the Federal Circuit. But the kinds of issues that frequently accompany them, antitrust issues, for example, and the kinds of procedural issues that come up in the patent cases, complicated cases as they are, will, of course, come to the Third Circuit. The trademark cases and copyright cases I have handled will also end up in the Third Circuit.

I believe, having handled those at the district court level, I will again have an appreciation for the challenge it is when you have multiple parties and a lot of money on the table, as you do in these intellectual property cases regularly, what it has taken to get the case to appellate review, and hopefully that will stand me in good stead as I am considering the complicated issues that will arise on appeal.

Senator DEWINE. Senator Biden?

Senator BIDEN. Judge, tell me your view of stare decisis. I did, with the help of some constitutional scholars, a study about three years ago. Since the Supreme Court is not taking that many cases

on cert these days, not hearing as many cases as they used to by a long shot, you guys are the last stop on the train for a significant number of constitutional issues, more than any time that I can think of in the last 75 years.

Tell me how you, as a circuit court judge, would have a view different, if it is different, from your view of stare decisis as a district court judge.

Judge JORDAN. Well, Senator, it would not be different in any material respect. As an appellate court judge, I know I would be working within the framework of decisions that the Third Circuit had already rendered, and those are typically only changed by an en banc ruling of the court, and certainly would be bound by the decisions of the Supreme Court.

So as I have tried to do as a district court judge, I would be paying very close attention to the precedents set that would regulate and bind decision making that I would be called upon to make as a circuit court judge.

Senator BIDEN. Would you look to the Third Circuit itself and be inclined to give it deference on matters that came before you as opposed to assuming that the question in question had not been litigated before the Supreme Court?

Judge JORDAN. If it had been a matter decided by the Third Circuit—and I confess, I have not taken a look at the internal operating procedures of the court in some time—I believe that there are procedures that the court has so that panels will be following the precedent that is established within the circuit, unless there has been some wider review by the court sitting en banc.

Senator BIDEN. One of the things I have learned as a Senator, I have been here a while, is that everything I have ever written has been read much after the fact. No one read it when I wrote it when I was in law school, but they sure read it now. You wrote an article, I believe at Georgetown, dealing with foreign intelligence gathering.

You wrote that "although the intelligence function is subject to the shared powers of Congress and the President, it is a function which constitutional theory and practice is entrusted primarily to the President, and over which he has significant independent power."

You went on to claim that "because access to information is the very heart of the President's ability to wield these powers, no amount of congressional action should be able to prevent him from gathering the intelligence he deems necessary in the exercise of these powers."

You may very well be in the Third Circuit, and it is a very hot topic now, as you know. The Foreign Intelligence Surveillance Act, so called FISA, which I co-sponsored and wrote.

Does that automatically mean that the congressional definition of what the last stop on the train is is one that automatically would be dismissed, that there is no ability of Congress to in any way affect the President's gathering of information as long as it is not inconsistent with the Fourth Amendment?

Judge JORDAN. No, sir. I really wish that I had written on the Uniform Commercial Code when I was a law student.

[Laughter].

Senator BIDEN. I do not know anything about the Uniformed Commercial Code.

Judge JORDAN. But who knew, right, 22 years ago?

Senator BIDEN. You tend to ask only those questions you know something about.

Judge JORDAN. Yes. Yes. Senator, when I was writing that article lo those many years ago, I was endeavoring, for myself, to understand the framework that Justice Jackson had laid out in the steel seizure case, and get my arms around, as best I could, issues that were then very topical. As you have noted, they are topical again today.

Senator BIDEN. You wrote that case about the time I was writing the law. That is worrisome to me that I am that old.

[Laughter].

Judge JORDAN. As I tried to put into context, this is an area where politics and law intersect in a dramatic way, and that these are not easy cases. I mentioned FISA specifically and tried to address it in that article as well. If the matters were to come before me today, I can assure you that I would be giving it the most careful attention. And not to denigrate my work before because, frankly, I do not know how it stacks up now. I have not really given it as critical a read as perhaps I should.

But hopefully with a mature viewpoint on the law and with the recent decisions that have come out, including some very recent pronouncements from the Supreme Court, I would be in a position to do justice to a structural constitutional issue like that.

Senator BIDEN. Thank you.

I say to the district court nominees, I do not have any questions for you. I have read your backgrounds and I am prepared to support you. But I am reminded of something that a man for whom I served under in this court, James O. Eastland from Mississippi, an old fellow who ran this committee for a long, long time, and I sat at the very end, the most junior member of the committee.

One day, Mr. Chairman, he asked me whether I would come down to Mississippi and campaign for him. The reason was, they were running the campaign about, he was getting too old.

At that time, I was 32 years old. My job was to go down and point out, which was accurate, that even though he was 84, he was more than twice my age, I had trouble keeping up with him, like your nominee does keeping up with her mother. I had trouble doing that.

I went down and there was a big event he had for all the Judges that he had been involved in appointing in Mississippi. The room was as full as this room. It was at a dinner. All of them got up and said what you said, I want to thank the President for nominating me.

Then they got all finished, and they turned to the Chairman of the Judiciary Committee, the most powerful man in the country at the time, and he stood up and he looked out at all the Judges and he said, "You all just got finished telling us how you got appointed by Eisenhower and Kennedy and Carter." Carter had been President. He said, "You all know why you are Federal judges, don't you?" Everybody just looked. He said, "Because Jim Eastland said so."

[Laughter].

You are district court judges because of the Senators who nominated you and the President agreed. That has been the custom here. So, the President did have to be convinced, and he clearly was, that you are fully, fully worthy of the job.

Circuit court judges are different. Circuit court judges are the place where Presidents have reserved the right, under the traditions of the Senate, because there are multiple jurisdictions, to pick whom he or she wishes to be on the court and not feel obliged to go through any senatorial picking process.

But I was just reminded of old Jim Eastland when you said that. I think that Senator DeWine, as they say in the southern part of my State, "done good" in picking you, Judge.

I wanted to say for the record that I have received telephone calls and notes from folks I know in Iowa who are in the opposite party, strongly, strongly supporting Judge Jarvey.

I think, Ms. Howard, you did not need any notes. You are obviously qualified. So I want to thank you all for being here. Thank you for being willing to serve, and thank your families for being here.

As I indicated to the Chairman, I am not able to stay. I have an appointment, that I am now a few minutes late for, at 3:00. But I wish you well, Judge Jordan. I think you will make a fine Judge.

Mr. Chairman, thank you for convening the hearing. Thank you all.

Judge JORDAN. Thank you, Senator.

Senator DEWINE. Senator Biden, thank you very much.

I do have a few questions, though. Let me turn to our district court nominees. I am going to ask all of you some general questions. And we will start with you, Judge Howard, then we will go right down the line.

Let us start with your views on settlement procedures and what the proper role of a judge is in settlement procedures. Judge?

Judge HOWARD. Thank you for allowing me to comment on that, Senator. The Middle District of Florida, as I am sure you know, is one of the busiest districts in the Nation.

We have the seventh highest weighted caseload, so we rely a great deal on settlement conferences. Most of our Judges, our district judges, refer parties to the Magistrate Judges to conduct settlement conferences. I find them to be a very valuable tool.

It is the opportunity for the parties to once again take control of the process. Frequently it allows them to get an outcome that would not be possible simply through litigation.

The parties tend to be very satisfied with that. So I think it is a very useful tool, both for allowing people their respect for the judicial system, and also for reducing our caseload.

Senator DEWINE. Judge Jarvey?

Judge JARVEY. Thank you, Senator. Before I respond to the question directly, I neglected to mention that I am also joined here today by a longtime friend, Matthew Novak, and I am honored by his presence as well.

I am a strong proponent of court-sponsored alternative dispute resolution. As a Magistrate Judge, I have conducted over 500 mediations, summary jury trials, and other settlement techniques.

My anecdotal experience is that 90 percent or more of our civil litigants do not want a full-blown trial. For those folks, I believe that is important to offer another effective way to resolve their disputes. So I fully support court-annexed alternative dispute resolution.

Senator DEWINE. Judge Lioi?

Judge LIOI. Yes. Thank you for the opportunity to respond, Senator. I, as a State court trial judge, oftentimes will defer cases to settlement negotiations. We have a wonderful mediation program in Stark County.

If I am fortunate enough to be confirmed to the district court level, it is my understanding that the U.S. district court for the Northern District has a very comprehensive alternative dispute resolution program where they offer the parties a variety of different dispute resolution mechanisms, from arbitration, to mediation, to early neutral evaluation of a case, to summary jury trials.

I would make use of all of the tools to assist parties in resolving their disputes efficiently and effectively. It has been my experience that attorneys and parties embrace alternative dispute programs.

Senator DEWINE. Judge Howard, let me turn to another issue that I experienced when I was a county prosecutor many, many years ago, and I think most attorneys who practice much in court experience, and that is the balance between a judge who needs to control the courtroom and a judge who sometimes goes too far, at least from the attorney's point of view, and does not let you try your case. How do you deal with that? I want to try my case if I am a lawyer, but obviously you have to control what is going on in your courtroom. How do you do that?

Judge HOWARD. Well, Senator, I think that being a trial judge requires a very careful balance, because you absolutely have to control the courtroom. It is necessary for the respect for the process. It is necessary to assure that lawyers treat the litigants with dignity and respect at all times.

Certainly an advocate needs to be permitted to try his case, as you say. But there are permissible bounds of advocacy and it is the role of the judge to impose those.

Senator DEWINE. Judge Jarvey?

Judge JARVEY. Thank you, Senator. I see no inconsistency between keeping control of a courtroom and allowing lawyers to try their case. There are two different issues. I have steadfastly stayed out of the advocacy business as a judge. I believe that it is the prerogative of the lawyer to be in control of their case.

For that reason, I do not ask questions of witnesses during jury trials for fear of the appearance in front of the jury that I am too far into the litigation. I have had no difficulty controlling my courtroom and I have never raised my court in order to do it.

Senator DEWINE. Judge Lioi?

Judge LIOI. Yes. I concur with the comments of my fellow nominees, that the role of a judge is to ensure due process. There is a careful balance that must take place, but the goal of the proceedings must be the orderly administration of the law.

It is very important that while you permit attorneys to try their cases, that you also make sure that the trying of a case is done

within the proper parameters of the code of responsibility, and also that everyone in the proceedings gets due process.

Senator DEWINE. Let me ask, starting with you, Judge Lioi, why you want to be a Federal judge.

Judge LIOI. Thank you for the opportunity to answer that question, Senator. I have had the privilege and honor of serving the public as a State court judge for nearly nine years now and I take my duties and responsibilities very seriously to administer cases and controversies which come before me impartially, fairly, and I consider it a very high honor to be considered to serve on the Federal court bench.

I cannot imagine a higher honor for a sitting judge in a State court to be considered for a Federal position. I would welcome the opportunity to administer cases on the Federal bench.

While I would still have the opportunity to apply case law in diversity cases, I would also have the opportunity to decide cases and controversies involving Federal law. And again, if I am fortunate enough to be confirmed, I would welcome and embrace that opportunity.

Senator DEWINE. Judge Jarvey?

Judge JARVEY. Thank you, Senator. I have devoted my entire career to public service in Federal Court. Over the last, almost 19 years now of being a U.S. Magistrate Judge, I have had the privilege to preside over cases and controversies involving some of the most complex disputes in Iowa.

After this amount of time, I believe that I am well qualified for the position. And, frankly, I am just looking for more challenges. I look forward to the opportunity to take on more responsibility and a steady stream of bigger challenges. Thank you.

Senator DEWINE. Judge Howard?

Judge HOWARD. Thank you, Senator. I am honored to serve as a Magistrate Judge in the Middle District of Florida right now. It is an amazing opportunity, and at the same time a very humbling experience, and one which I love.

I recognize that the decisions that I would face, if I were fortunate enough to be confirmed as a district judge, would be more challenging decisions. They are more challenging intellectually, they are more challenging just sort of on a gut level, and I embrace that.

I was raised by parents who immigrated to this country with nothing, basically, but their education. They never let my brother, my sister or I forget how fortunate we were to be here and to have the opportunities we have. They were great role models in teaching us that we owed something back.

For me, the opportunity to serve as a district judge is the opportunity to continue to do what I love and to serve my country, so it makes it a very easy decision. I simply offer myself in that service.

Senator DEWINE. Judge Lioi, you chaired the Supreme Court of Ohio Board of Commissioners on Character and Fitness. How has this experience helped shape your views of the legal profession? What impact, if any, might that have on your work as a Federal Judge?

Judge LIOI. Thank you for the question, Senator. It has been an honor for me to serve on the Board of Commissioners on Character and Fitness for the Supreme Court. I believe that all lawyers and Judges should engage in activities which promote competence in the legal system and improve the legal system.

This is one small way that I have been fortunate enough to contribute to the profession in ensuring that the individuals who are licensed to practice law in Ohio have the requisite character and fitness qualifications to enjoy the privilege of being licensed.

Service on this board has just underscored for me the qualities and characteristics that are necessary in a candidate for admission to the practice of law, the honesty, integrity, trustworthiness that are required of these individuals who will in turn serve their clients and the public.

So, it has just been a great honor to serve on this board, to serve the bench, the bar, and the public. It has just, as I said, underscored the need for professionalism in the profession.

Senator DEWINE. Judge Jarvey, tell us a little bit about your experience at the Justice Department and how that may impact on your work on the bench.

Judge JARVEY. My experience at the Department of Justice was just a phenomenal beginning to my trial career. I tried cases in Federal courts all across the country, appeared before well over 50 Federal district court judges, and argued many appeals.

The experience of practicing in front of so many different Judges gave me an opportunity to see so many things that I appreciated and respected, and a number of things that, frankly, I did not.

If confirmed as a district court judge, I would employ those practices that I have been employing that I learned from judges across the country during my experience at the Department of Justice.

Senator DEWINE. All right.

Judge Howard, in your experience as a magistrate judge, how has that prepared you to serve on the district court?

Judge HOWARD. Well, Senator, as a magistrate judge, I perform a subset of the responsibilities of an Article 3 Judge. I am very fortunate, as I mentioned earlier. Because the Middle District is as busy as it is, the Middle District fully utilizes its magistrate judges.

We enjoy the full authority that is permissible under the statute. So over the past three years, I have faced many of the very same decisions and the types of issues that I would face if confirmed as a district judge.

In civil cases, on consent, I, in fact, sit as a district judge, and also on referral from the district judges handle many dispositive motions. So, I think it has given me a very unique opportunity to work with our district judges, to learn from them, and to do some of the same things that I would do if I am confirmed.

Senator DEWINE. I have one final question for each one of you. Supreme Court precedents are, of course, binding on Federal circuit court judges, and both Supreme Court and Federal circuit court precedents are binding on district courts.

Are you committed and willing to follow the precedents of the higher courts faithfully and give them full force and effect, even if you might personally disagree with those precedents? Judge Jor-

dan, your question, of course, would be in regard to the Supreme Court.

Judge JORDAN. The answer to that is, absolutely, Senator.

Senator DEWINE. Judge Howard? Judge Howard. And I answer it in the same way, absolutely.

Senator DEWINE. Judge Jarvey?

Judge JARVEY. Absolutely. Yes.

Senator DEWINE. Judge Lioi?

Judge LIOI. Absolutely.

Senator DEWINE. The record will remain open. You may get additional questions from members of the committee. If you do, we would suggest that you respond to them as quickly as possible.

For the record, I have a statement for the record from Senator Nelson, I have a statement from Senator Leahy, and Senator Grassley's full statement for the record as well.

[Whereupon, at 3:15 p.m. the hearing was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

CHAMBERS OF
KENT A. JORDAN
DISTRICT JUDGE

LOCKBOX 10
844 KING STREET
U.S. COURTHOUSE
WILMINGTON, DELAWARE 19801
(302) 573-6001

September 13, 2006

The Honorable Arlen Specter
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Attached are my responses to written questions from Senator Leahy.

Very Truly Yours,

Kent A. Jordan

KAJ:cas
Attachment
cc: The Honorable Patrick J. Leahy
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Responses of Kent A. Jordan
Nominee to the U.S. Court of Appeals for the Third Circuit
to the Written Questions of Senator Patrick J. Leahy

1. In 2003, you addressed a conference of Pi Sigma Alpha chapters from colleges in Utah on the importance of judicial self restraint, saying "[i]t takes courage to exercise self-restraint: to deny a sympathetic criminal defendant's motion, to refuse relief to a sympathetic civil plaintiff suing a powerful and perhaps unappealing corporate defendant, to decline the demand that a law be struck down, even though the politics behind it are distressing." However, often judges need to have the courage to step in and protect rights. One of the central questions I have for any judicial nominee is whether he or she understanding the role of the courts and their responsibility to protect the constitutional rights of individuals, especially the less powerful and especially where the political system has not.

A. Can you discuss your view of the court's responsibility to intervene to ensure that the rights of all citizens are protected and the consequences that would result if it failed to do so?

Response: It is the obligation of the federal courts to ensure that the rights of all citizens are protected. In the speech referred to above, I endeavored to explain that "a judge must have respect both for the rights of the majority, i.e., for democratic processes of our Republic, and for the rights of individuals." I went on to cite the courage of Judge James E. Horton, Jr. in the Scottsboro case as a dramatic example of the importance of judges standing up for individual rights even in the face of overwhelming prejudice and pressure. It was immediately after citing that example that I turned to the language quoted in the question above, as a way of making the point that, just as individual rights must be respected regardless of the popularity of legal positions in a particular case, so too majority rights must be respected regardless of the policy preferences of an individual judge. A failure of the courts to fulfill their fundamental function to administer the laws without fear or favor would leave us without the benefit of the protections provided for all in the Constitution.

B. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?

Response: I can give my complete assurance that that will be the case, and I believe my record supports that assurance. I have based my decisions as a district court judge on the merits of litigants' legal positions, not on their socioeconomic status or any other non-legal basis.

2. Earlier this month, Judge J. Harvie Wilkinson of the U.S. Court of Appeals for the Fourth Circuit published an op-ed in the Washington Post opposing the use of constitutional amendments to ban same-sex marriage. (*See* J. Harvie Wilkinson III,

"Hands Off Constitutions; This Isn't the Way to Ban Same-Sex Marriage," The Washington Post, September 5, 2006). Judge Wilkinson argued against the passage of constitutional amendments banning gay marriage and wrote that if the six such amendments on state ballots this fall pass, "the first principles of American law will be further endangered."

A. Judge Wilkinson wrote in his op-ed that the amendments are not needed for "protection" against gay marriage because states already have this protection through the Defense of Marriage Act and public policy defenses allowed under the full faith and credit clause. Do you agree with Judge Wilkinson's analysis? Does it imperil the public's confidence that a judge will have an open mind if that judge has already weighed in publicly on the legal issues involved in a case?

Response: As a federal district court judge, it would not be appropriate for me to comment on the statements of another judge. It is my practice to refrain from commenting publicly on the merits of legal arguments relating to matters that may come before me. It would not be appropriate for me to comment on the proposed Federal Marriage Amendment, as that amendment, if ratified, could come before the federal courts.

B. Judge Wilkinson criticized the Massachusetts Supreme Court for beginning "the rush to constitutionalize" describing the holding by that court that the constitution protects the right to marry, as "concocted" and denigrating it as "constitutional excess." Do you believe it is proper for a sitting judge to use a public forum to criticize the decisions of other courts?

Response: Please see response to Question 2.A., above.

C. Judge Wilkinson wrote that, "The Framers meant our Constitution to establish a structure of government and to provide individuals certain inalienable rights against the state. They certainly did not envision our Constitution as a place to restrict rights or enact public policies, as the Federal Marriage Amendment does." Do you agree with Judge Wilkinson's analysis of the Federal Marriage Amendment that it would restrict rights? Do you agree with Judge Wilkinson that the Framers did not envision our Constitution as a place to restrict rights?

Response: Please see response to Question 2.A., above.

3. Generally, federal judges have great discretion when possible conflicts of interest are raised to make their own decisions whether or not to sit on a case, so it's important

that judicial nominees have a well-thought out view of when recusal is appropriate. Former Chief Justice Rehnquist made clear on many occasions that he understood that the standard for recusal was not subjective, but rather objective. It was whether there might be any appearance of impropriety. How do you interpret the recusal standard for federal judges, and in what types of cases have you recused yourself and do you plan to recuse yourself? I'm interested in specific examples, not just a statement that you'll follow applicable law.

Response: To my recollection, I have not had to recuse myself for any financial conflict, but I have had to recuse myself in a case in which I concluded that, under 28 U.S.C. ç 455(a) my impartiality might reasonably have been questioned. The case is a political corruption prosecution in which one of the defendants asserted the intention to call as a witness at trial one of my colleagues on the bench. That defendant filed a recusal motion, and I ruled that,

> [s]ince a defense effort to subpoena ... [the judge] cannot be rejected without consideration, the inquiry necessarily turns to whether reasonable people could question my role as the one doing the considering. I think they could. Indeed, I would be surprised if they did not. This is a relatively small court, with four active trial judges, including me. Without presuming to speak for anyone but myself on how an objective observer would see this court, I am persuaded that one could reasonably believe that we four judges see each other regularly, that we have developed professional respect, appreciation, and friendship for one another, and that a natural empathy may be unavoidable in seeing a colleague's reputation and privacy threatened by embroilment in a criminal prosecution. Real or not, partiality under these circumstances could fairly be perceived to be an issue. Since the judicial role must be filled by one whose partiality cannot be reasonably questioned, I cannot continue in this case.

United States v. Gordon, 354 F.Supp.2d 524, 528 (D. Del. 2005). In another case, one involving a dispute over insurance coverage, I recused myself because it came to light that a business entity whose actions allegedly caused the losses for which insurance proceeds were sought was a company in which a friend of mine was a senior officer. Again, I determined that an objective view of whether my impartiality might reasonably questioned required recusal.

4. **While in law school, you authored a note entitled "The Extent of Independent Presidential Authority to Conduct Foreign Intelligence Activities," 72 Geo. L. J. 1855 (1984). You argued that "although the intelligence function is subject to the shared powers of Congress and the President, it is a function which constitutional theory and practice entrust primarily to the President and over which he has significant independent power." Further, you wrote, "[b]ecause access to information is at the very heart of the President's ability to wield these powers, no amount of congressional action should be able to prevent him from gathering the intelligence he deems necessary for the exercise of these powers."**

A. You wrote this in 1984, six years after passage of the Foreign Intelligence Surveillance Act (FISA), including a provision that it is the exclusive means for wiretapping individuals in the United States for foreign intelligence purposes. Do you still agree with the conclusions you reached in your note? Why or why not?

Response: In writing that law student note twenty-two years ago, I was seeking to understand and explain the application of Justice Jackson's analysis in the Steel Seizure Case to the question of the scope of Presidential authority to conduct foreign intelligence activities. At that time, I observed that "the intelligence function is subject to the shared powers of Congress and the President," but that the President had some independent foundations in the Constitution for undertaking intelligence activities. (*See* text following note 7.) Of course, my choice of topics has turned out to be very topical today, so much so that I believe it would be problematic for me to comment on how I would determine the issues raised and discussed in that student note. There is recent litigation in the district courts challenging intelligence gathering actions of the executive branch, and the issues addressed in the note are ones that I ought not address in the abstract, as I had the liberty of doing as a law student, since they, or ones closely akin to them, may come before me either in my current position or in the position to which I will move if I am confirmed by the Senate. I can assure you, however, that in the event these issues were raised before me in a case, I would address them not in the abstract but in light of the then existing case and controversy and in light of the legal developments that have occurred, and may yet occur, since I wrote that student note, including more recent Supreme Court authority.

B. Last December, it was revealed that for four years President Bush has authorized the NSA to conduct warrantless wiretapping of American citizens, with no review by any court, including the FISA court specifically established by law to review such requests. To justify this practice, the President and his defenders have invoked a theory of extraordinarily broad and largely unchecked presidential power. Do you agree with the President's defenders that there is a Commander in Chief override giving a wartime President the authority to bypass the FISA Court and authorize warrantless spying on U.S. citizens or to authorize or excuse the use of torture in interrogations of enemy prisoners, despite domestic and international laws prohibiting the practice?

Response: As noted in response to question 4.A., these are matters that have already been and are likely in the future to be the subject of challenges in court, and I do not believe that it would be appropriate for me to state a view on an issue that may come before me.

5. Four years ago (August 2002), the Office of Legal Counsel at the Justice Department issued a secret legal opinion concluding that the President of the United

States had the power to override domestic and international laws outlawing torture. The memo sought to redefine torture and asserted that the President enjoys "complete authority over the conduct of war" and asserted that application of the criminal law passed by Congress prohibiting torture "in a manner that interferes with the president's direction of such core war matters as the detention and interrogation of enemy combatants would be unconstitutional." It seemed to assert that the President could immunize people from prosecution for violations of United States criminal laws that prohibit torture.

This Justice Department memo was withdrawn only after it became public because it could not withstand public scrutiny. The Attorney General said in connection with his confirmation hearing that this extreme legal opinion no longer represents the Bush Administration's policy and with its having been officially withdrawn you will not likely be confronted with a case that turns on this memorandum.

What is your view of the legal contention in that memo that the President can override the laws and immunize illegal conduct?

Response: I have not read the referenced memo. Article II, section 3, of the Constitution requires the President to "take Care that the Laws be faithfully executed ... ." To the extent that the memo, which has been withdrawn, is in conflict with the Constitution, I would not agree with it.

6. Over the past decade and a half, the Supreme Court has struck down an unprecedented number of federal statutes, most notably several designed to protect the civil rights of Americans, as beyond Congress's power under Section 5 of the Fourteenth Amendment, for example, *Flores v. City of Boerne*, 117 S. Ct. 2157 (1997), *Kimel v Florida Board of Regents*, 120 S. Ct. 631 (2000), and *Board of Trustees v. Garrett*, 19 S. Ct. 2240 (1999). The Supreme Court has also recently struck down statutes as being outside the authority granted to Congress by the Commerce Clause, such as in the case of *U.S. v. Lopez*, 115 S. Ct. 1624 (1995) or *U.S. v. Morrison*, 120 S. Ct. 1740 (2000).

I am hopeful that the Court's decision last year in *Gonzales v. Raich*, 125 S. Ct. 2195 (2005) signals a turn away from the diminishing of the authority of Congress to legislate to protect the American people. What is your understanding of the scope of congressional power under Article I of the Constitution, in particular, the Commerce Clause, and under Section 5 of the Fourteenth Amendment?

Response: Supreme Court authority holds that the Commerce Clause provides broad regulatory power to Congress. The court has "reiterated that when a general regulatory statute bears a substantial relation to commerce, the *de minimis* character of individual instances arising under that statute is of no consequence." *Gonzales v. Raich*, 125 S.Ct. 2195, 2206 (2005) (internal quotation marks omitted). Similarly, as to Section 5 of the Fourteenth Amendment to the Constitution the Court has recently emphasized the breadth of

Congressional power, saying, "[w]hile the Members of this Court have disagreed regarding the scope of Congress's 'prophylactic' enforcement powers under § 5 of the Fourteenth Amendment, no one doubts that § 5 grants Congress the power to 'enforce ... the provisions' of the Amendment by creating private remedies against the States for *actual* violations of those provisions. ... This enforcement power includes the power to abrogate state sovereign immunity by authorizing private suits for damages against the States." *United States v. Georgia*, 126 S.Ct. 877, 881-82 (2006) (internal citations omitted; italics in original). As a lower court judge, I am bound to apply the precedents of the Supreme Court in this area.

UNITED STATES SENATOR • OHIO

Mike DeWine



FOR IMMEDIATE RELEASE
SEPTEMBER 6, 2006

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DEWINE STATEMENT [AS PREPARED]: NOMINATION HEARING FOR JUDGE SARA LIOI

Introductory Remarks From Judiciary Committee Hearing

It is my great honor to introduce fellow Ohioan Judge Sara Lioi to the Members of the Judiciary Committee today. Judge Lioi currently serves in the General Division of the Stark County Common Pleas Court, and President Bush has nominated her to serve as a Federal Judge in the Northern District of Ohio.

At this point, I'd like to extend our welcome to Judge Lioi's family and friends who are with her today. There are a number of you here, so let me start with Judge Lioi's mother Rosaria; her sister Mel Lioi, who I should note is the Assistant Superintendent of the Stark County Educational Service Center, and her sister Mary Germann, plus her cousin Helen Garafalo. She also has brought several friends, including Diana Pittman; Judge Mike Howard, from the Stark County Family Court, and Tim and Debby Bentivegna. Thank you all for joining us. I know you must be very proud of Judge Lioi's accomplishments, and of her nomination to the Federal bench.

Judge Lioi has had a distinguished legal career, a career with a breadth of experience and accomplishment that has clearly prepared her to be a successful Federal judge. To begin, she graduated summa cum laude from Bowling Green University in 1983, and she then attended the Ohio State University College of Law and graduated with her J.D. in 1987. Judge Lioi started her legal career as an associate at the law firm of Day, Ketterer, Raley, Wright & Rybolt Ltd. in Canton, OH. She distinguished herself in her principal areas of practice - appellate advocacy and general litigation - and became a partner in 1993. Judge Lioi's colleagues outside the firm also thought very highly of her, and she was elected to serve on the executive committee of the Stark County Bar Association during this time.

Her service in the Bar Association was an early indication of her long-term commitment to legal ethics and professionalism, a commitment that has been one of the defining aspects of her legal career. Even before becoming a judge, she served on the Supreme Court of Ohio Board of Commissioners on Grievances and Discipline, which is responsible for issuing final recommendations to the Supreme Court on formal disciplinary charges against Ohio's lawyers and judges. It is also responsible for monitoring and assisting the certified grievance committees in the regulation of the legal profession, and for issuing advisory ethics opinions.

-more-

Her continuing work in this regard has broadened and enriched her understanding of the legal profession and the responsibilities of the lawyers and judges who make up the bar.

Judge Lioi continued as a partner in private practice with Day, Ketterer until 1997, when she was appointed by then-Governor George Voinovich to the General Division of the Stark County Common Pleas Court, which has jurisdiction over civil and criminal cases. Judge Lioi swiftly distinguished herself on the bench, and she was elected to the court in 1998 and then re-elected for a subsequent six year term in 2002.

As a sitting member of the bench, Judge Lioi is known for her extraordinary work ethic and her willingness to put in long hours. Since taking the bench in 1997, she has disposed of over 9,500 cases and has conducted over 350 trials, more than 335 of which were jury trials. As any practicing lawyer knows, and anyone with a legal problem knows, a judge who can efficiently move her docket and conduct trials on a rapid schedule is a tremendous benefit to all of those within the justice system; justice delayed is often justice denied, but Judge Lioi helps avoid that problem by making sure that people have their day in court, and have it in a timely way. Judge Lioi, however, is just as productive outside the courtroom as in it, and has continued to be involved in issues of legal ethics and professionalism.

She became a member of the Supreme Court of Ohio Board of Commissioners on Character and Fitness in 1996, and was appointed as Chair of the Board in 2002 - a position she still holds today.

This is an extraordinarily important position, because the Board is responsible for reviewing the cases of applicants who are seeking to become licensed to practice law in Ohio and for approving applicants to sit for the bar examination.

From 2003-2006, she also served as a member of the Supreme Court of Ohio Task Force on Rules of Professional Conduct. This important Task Force was dedicated to conducting a comprehensive review of Ohio's current legal ethics rules and standards, the American Bar Association's Model Rules of Professional Conduct, and the legal ethics rules promulgated by other states. The Task Force recently completed its work on the rules and submitted a proposal to the Supreme Court of Ohio, which adopted the new rules on July 18, 2006, based upon the Task Force's recommendations.

Clearly, Judge Lioi believes strongly in the importance of maintaining high standards of professionalism, civility, and ethics, and she has worked towards achieving those important goals. In addition to her numerous activities, she has delivered speeches and presentations to various civic organizations and other groups on matters such as the state court system, judicial ethics, and the role of the judge in our system of government. Judges, lawyers, and law students have heard her speak on topics such as professionalism, legal ethics, and character and fitness standards. Her dedication to these issues is something we unfortunately don't see enough of nowadays.

Judge Lioi has also demonstrated a strong commitment to her community. She has served as President, First Vice President, and Director for Community Services of Stark County - a non-profit organization involved in a broad range of community activities. She has also served on the boards of more non-profit organizations than I can name here. For some of these organizations and agencies, she provided pro bono legal services during the time that she was in private practice.

Not surprisingly, those who know Judge Lioi regard her with respect and admiration. Attorneys who have worked in her courtroom - both Democrats and Republicans - speak of her glowingly, describing her as "bright," "conscientious," "fair," "impartial," and "ethical." She is known as a judge who treats everyone who appears before her courteously and with respect. That is the sort of judicial temperament that we hope for and expect from our judges. And, not surprisingly, the ABA has given her a unanimous rating of "well-qualified," which is the highest rating they give.

For all of these reasons, Sara Lioi is well-suited to be a Federal judge. She has the character and intelligence that we want to see in a Federal judge. She is hard-working, dedicated, and understands the role of a judge in our system of government. She is an excellent judge, and, just as important, is the kind of person whom we can trust with the great responsibilities that come with being a judge. I was proud to recommend her nomination for the United State District Court in the Northern District of Ohio, and I am gratified that President Bush has nominated her for that position. I believe that she will serve admirably as a Federal judge for the people of Ohio.

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Introductory Statement of Senator Charles Grassley for Judge John Jarvey, Senate Judiciary Committee Judicial Nominations Hearing, September 6, 2006

It's my pleasure today to introduce to the Committee a distinguished Iowan who has been nominated to the federal bench. Judge John Alfred Jarvey, hails from Cedar Rapids, Iowa, and has been nominated to serve as a United States District Judge for the Southern District of Iowa. He is an extremely qualified individual, and I'm proud to be here to support this nomination.

Judge Jarvey was born in Minneapolis, Minnesota, and is married to Mary George Jarvey, who is a piano teacher in Cedar Rapids. By way of background, Judge Jarvey graduated from the University of Akron in 1978 with a Bachelor's Degree in Accounting, and received his JD from Drake University School of Law in 1981.

Following law school, Judge Jarvey clerked for two years for Judge Donald O'Brien of the United States District Court for the Northern District of Iowa. In 1983, Judge Jarvey joined the United States Department of Justice's Criminal Division as a trial attorney, where he prosecuted drug, tax evasion, money laundering, and firearms cases. While at the Justice Department, Judge Jarvey specialized in prosecuting medical professionals involved in pharmaceutical drug diversion.

Since 1987, Judge Jarvey has been the Chief United States Magistrate Judge for the United States District Court, Northern District of Iowa. In this position, Judge Jarvey has presided over a wide range of criminal and civil cases, such as cases involving personal injury, employment discrimination and other employee rights, patents, copyrights, and other complex commercial disputes. In addition, since 1993, Judge Jarvey has been a Trial Advocacy instructor at the University of Iowa Law School.

Judge Jarvey enjoys tremendous support from his peers. I received many letters from the Iowa legal community praising Judge Jarvey's judicial temperament, courteousness to all litigants, and respect for and commitment to our judicial system. Many contained favorable comments about Judge Jarvey's judicial ethics and abilities as an administrator. Numerous other letters contained complementary statements about Judge Jarvey's intelligence, command of the law and rules of evidence, fairness, and respectful judicial demeanor in court.

For example, one attorney wrote, "Judge Jarvey's decisions are thoughtful and well reasoned. He clearly is guided by the rule of law and does not legislate from the bench." Another wrote, "What is clear to me from my experience with Magistrate Jarvey is that he is, first and foremost, an exceptional legal mind. His ability to grasp complicated and dense fact patterns, coupled with his ability to analyze these

fact patterns in a clear and concise manner, is well known and respected in our district. He issues decisions which are well-reasoned and in harmony with the law of our jurisdiction. And above all, he is fair."

Another attorney commented, "Judge Jarvey is unfailingly courteous to litigants, their lawyers and to jurors. His demeanor on the bench helps to build confidence in the judicial system. His rulings are fair, carefully considered and respectful. He maintains control of his courtroom in a quiet and reassuring manner. Judge Jarvey clearly has the support of the practicing bar. In an astounding number of cases, parties have specifically chosen Judge Jarvey to handle their civil lawsuits through a consent procedure that requires both sides to agree." Finally, another attorney wrote "John Jarvey possesses the fierce, incorruptible independence and integrity that is indispensable in the best of public servants . . . . you will never find a more straight arrow than John Jarvey.

This is a man who has his priorities right – God, family, work – in that order."

Today, Judge Jarvey comes before the Senate Judiciary Committee accompanied by his family, friends and colleagues. I understand that his father, William Jarvey Sr., and his brother, sister and nephew are here today. I believe that Chief Judge PRATT is here, as well Iowa friends and colleagues Marjorie Krahn and Matthew Novak. I'm sure that they're all very proud to lend their support.

Judge Jarvey has had a distinguished legal career and shown tremendous dedication to public service. He'll be a great asset to the United States District Court of the Southern District of Iowa. As I've already noted, so many people who know and work with this man agree that Judge Jarvey is a talented individual that deserves to be a federal judge – in fact, the ABA unanimously gave Judge Jarvey the rating of "well qualified." I'm confident that Judge Jarvey possesses

the skill, integrity, commitment, intellect, and temperament that we expect of all good judges.

So, it is with great respect and admiration that I recommend this highly qualified individual to the Judiciary Committee for favorable consideration.

Statement of Senator Tom Harkin
On the Nomination of John Jarvey to be
United States District Judge for the Southern District of Iowa
September 6, 2006

Good afternoon, Mr. Chairman and members of the committee:

I am pleased to give my support to John Jarvey to be a Federal District Judge for the Southern District of Iowa. John is currently a Magistrate Judge in the Northern District of Iowa, a position he has held for the past 18 years. I had a chance to meet with him last month in Iowa -- and Mr. Chairman and members of the Committee – I can tell you that after 18 years – I believe it is time for a promotion! John Jarvey started his legal career as a clerk to Judge Donald O'Brien, a excellent training ground for a federal judge. In his years as a Magistrate, he has developed an excellent reputation as a fair minded judge with a devotion to the law, and as a strong believer in judicial independence.

Based on the calls and letters received by my offices throughout Iowa, he has earned respect and admiration across the board. In fact, the Chief Judge of the Southern District, Robert Pratt and by the Clerk of the Southern District Marjorie Krahn [Craw-N] are with us today to demonstrate their support.

In his years as a Magistrate, John Jarvey has devoted a tremendous amount of time and energy to successful mediations, including a difficult tribal dispute in Iowa. He also regularly teaches the trial skills he developed as a federal prosecutor to students at the Drake University and the University of Iowa law schools. And as anyone who has spoken for more than a few minutes to John Jarvey knows he is also a committed husband and father.

In selecting John Jarvey to be a Federal District Judge, I believe the President has made a very good choice and I look forward to his speedy confirmation. Thank you Mr. Chairman.

Statement of Senator Patrick Leahy
Ranking Member, Senate Judiciary Committee
Hearing on Judicial Nominations
September 6, 2006

Today, with less than four weeks left in this legislative session, the Committee will hear from four candidates for lifetime appointments to the Nation's federal courts. They are: Kent A. Jordan, nominated for a vacancy on the U.S. Court of Appeals for the Third Circuit; and three district court nominee, Sara Elizabeth Lioi for the Northern District of Ohio; Marcia Morales Howard for the Middle District of Florida; and John A. Jarvey for the Southern District of Iowa.

I am concerned that these nominations, like so much of the Nation's pressing business over the last two years, could be derailed by the misguided priorities of the Bush-Cheney Administration and the Republican leadership. With so little time remaining in this Congress, I would have hoped that the Administration and the Republican leadership would be anxious to make up for lost time by trying, at last, to address the many urgent and unresolved needs of Americans. I hoped that we could joint together to change the course of failed policies from the Persian Gulf to the Gulf Coast that have left America less secure and set us back as a Nation. Regrettably, rather than learn lessons from these failures, it appears that they are intent on staying the course in all things. The President and his political advisors have stayed the disastrous course on judicial nominations by choosing to renominate five extremely controversial choices for lifetime positions on the Nation's highest courts. This Administration seems intent on heeding the siren call from the narrow, special interest groups on the right and picking fights. I urge the Senate Republican leadership not to take the bait and, instead, join with us in the waning days of this Congress to do the work of the American people.

Re-Nominations of Controversial Nominees

The five nominations the President has sent back to the Senate represent a troubling group. The President re-nominated Judge Terrence Boyle to the Fourth Circuit despite the fact that as a sitting United States District Judge and while a Circuit Court nominee, Judge Boyle ruled on multiple cases involving corporations in which he held investments. The President should have heeded the call of North Carolina Police Benevolent Association, the North Carolina Troopers' Association, the Police Benevolent Associations from South Carolina and Virginia, the National Association of Police Organizations, the Professional Fire Fighters and Paramedics of North Carolina, as well as the advice of our former colleague, Senator John Edwards, to withdraw this ill-advised nomination and not renominated him. Law enforcement officers from North Carolina and across the country oppose the nomination. Civil rights groups oppose the nomination. Those knowledgeable and respectful of judicial ethics oppose this nomination. This nomination had been pending on the floor calendar in the Republican-controlled Senate since June of last year when it was forced out of the Committee on a party-line vote. The Senate did the President a favor by returning this nomination to the

White House before the summer recess. The President should not have re-nominated Judge Boyle.

The President also re-nominated William Gerry Myers III to the Ninth Circuit. This is another Administration insider and lobbyist whose record has raised serious questions about his ability to be a fair and impartial judge. I opposed this nomination when it was considered by the Judiciary Committee in March 2005. This was a nomination that the so-called "Gang of 14" expressly listed as someone for whom they made no commitment to vote for cloture, and with good reason.
Mr. Myers' anti-environmental record is reason enough to oppose his confirmation. His lack of independence is another. If anyone sought to proceed to this nomination, there would be a need to explore any connections to the lobbying scandals associated with the Interior Department and Republican lobbyist Jack Abramoff.

It is particular troubling to see Mr. Myers re-nominated because the President missed an opportunity to be a uniter. I had suggested that he re-nominate Norman Randy Smith for the vacancy created by the retirement of Judge Thomas G. Nelson from Idaho. Instead, the President has again nominated Judge Smith to a California seat on the Ninth Circuit, effectively stealing California's seat. That is wrong. I support Senators Feinstein and Boxer in their opposition to this tactic. I again urge President Bush to resolve this impasse and turn Idaho's vacancy into a judge by withdrawing the controversial Myers nomination and nominating Judge Smith for the Idaho vacancy to which he could be easily confirmed.

It is distressing that the President chose to re-nominate William James Haynes II to the Fourth Circuit despite bipartisan concern about this nomination. As General Counsel at the Defense Department, Mr. Haynes has been deeply involved in seeking to excuse this Administration's now discredited policies on the treatment of enemy combatants, the interrogation and torture of detainees, and the creation of military commissions. In two hearings, Mr. Haynes has refused to answer questions from Senators about these policies, despite disturbing developments that have come to light that relate to those policies, including the Abu Ghraib scandal and scores of other incidents of detainee abuse in Afghanistan, Iraq, and Guantanamo Bay. In addition, new press reports, declassified memoranda and letters from former high-ranking military officials have detailed Mr. Haynes's disregard for legal concerns raised by senior military and civilian lawyers within the Armed Services about these policies and his efforts to subvert their advice. It seems that Mr. Haynes ignored the policy concerns raised by military officers about the effect of his policies on the safety of American troops and American credibility around the world.

I have found inconsistencies between Mr. Haynes' testimony and that of the uniformed JAGs relating to their involvement in the development of detainee interrogation policies to be particularly troubling. Although Mr. Haynes sought at his hearing in July to allay some of these concerns regarding his disregard of the advice of uniformed JAGs, his statements were contradicted by several JAGs who testified before the Senate Armed Services Committee. Subsequently,

Mr. Haynes sought to reconcile his testimony with that of the JAGs in a letter to the Committee. Unfortunately, even this letter turned out to be inaccurate, as set forth in a subsequent letter from Daniel Dell'Orto, Mr. Haynes' deputy at the Defense Department. The President had an opportunity to move beyond this controversy by sending the Senate a more qualified, consensus nominee. Unfortunately, he squandered that opportunity with this re-nomination.

Finally, the President has re-nominated Michael Wallace to a vacancy on the Fifth Circuit even though he received the first ABA rating of unanimously "not qualified" that I have seen for a circuit court nominee in 25 years. The hearing on his nomination scheduled for July 19 was cancelled, though not before the Committee received written testimony from the ABA regarding his rating. This testimony, which was confidential until leaked to a conservative website, details the significant concerns raised by numerous jurists around the country regarding Mr. Wallace's judicial temperament, lack of commitment to equal justice for the poor and minorities, lack of tolerance, and open-mindedness. It details concerns from judges and lawyers that Mr. Wallace "may not follow the law" and is driven by his "personal agenda." Of course, the troubling issues raised in the ABA's testimony echo significant concerns about Mr. Wallace's record on civil rights, his opposition to the Voting Rights Act, his support for tax exemptions for Bob Jones University, his opposition to prison safety regulations, and his attempt as President Reagan's director of the board of the Legal Services Corporation to undermine efforts to provide legal services to low-income clients.

Continuation of Misguided Priorities

I wish that this were the first time this Administration and this Republican-led Congress had diverted resources and attention from America's needs. Unfortunately, President Bush's re-nomination of these controversial nominees is a continuation of a pattern of misguided priorities that has plagued the Administration and the Senate's Republican leadership since the beginning of this Congress. Instead of urging his party to take early and decisive action to pass comprehensive immigration reform, as he signaled he would in February 2001, the President began his second term campaigning to undercut the protections of our Social Security system. As a result, at the start of this Congress in 2005, the Administration's top priority was not increasing national security or the economic security of working Americans who are sharing in a smaller piece of the country's wealth than they have in decades. Had the Administration been successful at privatizing Social Security, it would have gutted the program that ensures for all Americans that growing old does not mean growing poor. Thankfully, Americans rejected this effort.

Like the Administration, the Senate's Republican leadership turned away last spring and summer from addressing the priorities of most Americans. They focused instead on the fierce legal battle over the medical treatment of Terri Schiavo, who was in a persistent vegetative state for more than a decade. Politicians engaged in extraordinary measures to override what state courts determined to be her personal wishes. The power of the Federal Government was wielded by some to determine deeply personal choices. The

Republican leader even made a medical diagnosis on the floor of the Senate, and the President cut short one of his vacations to back to Washington to sign legislation to override the precise wishes of this one patient. The American people recoiled from this misuse of the Government's time and authority.

The President's re-nomination of divisive nominees is a repeat of last Congress and last year, when the Administration and the rubberstamp Republican Senate created a massive confrontation over controversial nominees. The Senate narrowly averted the so-called "nuclear option," a bid to achieve one-party rule by thwarting the Senate rules. They were willing to destroy a fundamental check and balance in order to be a more efficient rubberstamp for this President. Thankfully, this attempt failed, but not before the Senate expended much energy and lost precious time.

This summer the Republican leadership determined, despite the many pressing issues facing the country and affecting Americans, to turn away from the legislative agenda to focus on two constitutional amendments that would result in restricting the rights of the American people. Although not among our Nation's most pressing priorities, the constitutional amendments were considered and rejected. The marriage amendment and the flag amendment would have artificially created division among the American people.

With more Americans in poverty and extreme poverty and more children without health care, we must do better. With rising interest rates, rising mortgage rates, rising health care costs, rising insurance costs, we must do better for America's working families. While corporate profits are taking a greater and greater share of our GNP, wages are stagnant and those in charge refuse to allow a long overdue raise to the minimum wage. We have just come through a summer of record high gas prices, and for many families, the threat of record high home heating prices this winter looms around the corner.

The full agenda before us as we enter the final weeks of this legislative session reflects how little the Republican leadership has accomplished, even with control of the White House and both Houses of Congress. A steady course of misguided priorities have cost Americans progress on real issues that matter most. And these failures to focus on our real priorities have left America less secure.

The Republican-controlled Congress has yet to enact a federal budget. We are in violation of the statutory deadline of April 15. We have passed but one appropriations bill, and we are required by law to pass 13. We have yet to reconcile and enact lobbying reform and ethics legislation. We have yet to deal with the skyrocketing cost of gasoline and health care. We have yet to reconcile and enact a bipartisan and comprehensive immigration reform bill. And for the second year in a row the Republican-led Senate will not even take up the annual intelligence authorization bill.

As we commemorated the one-year anniversary of Hurricane Katrina last week, we were reminded that the situation in the Gulf Coast remains a tragedy with serious human consequences. We need to commit ourselves and our resources to helping our fellow citizens who are still in need after the appalling lack of responsiveness by this

Administration. We need to provide the assistance to that region of our country where rubble remains a fixture of the landscape one year later. Many residents still do not have homes to return to or jobs waiting for them when they get there.

Americans would be better served if we used our remaining time in this Congress to address these vital issues than to focus on political fights over a handful of divisive and failed nominations.

I look forward to hearing from the four nominees before the Committee today and I hope that I will be convinced that they are the kind of nominees who understand that the role of the judge is to act as a check and balance to protect the rights and liberties of all Americans. I welcome the nominees and their friends and families to the Committee today.

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STATEMENT OF OHIO SENATOR GEORGE VOINOVICH TO THE COMMITTEE ON THE JUDICIARY ON THE NOMINATION OF SARA ELIZABETH LIOI TO SERVE AS A JUDGE OF THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO

SEPTEMBER 6, 2006

Mr. Chairman and Members of this Committee, thank you for allowing me to speak on behalf of a very deserving attorney from the state of Ohio. I am here to express my strong support for Judge Sara Lioi, whom the President has nominated to serve on the U.S. District Court for the Northern District of Ohio.

I welcome this Committee's review of Judge Lioi, and I believe that you will come to the same conclusion that I have; Sara Lioi is well-qualified to serve as a federal district court judge and should be confirmed by the Senate.

Judge Lioi has a distinguished and impressive record as an attorney in private practice, an Ohio Court of Common Pleas Judge, and a community leader. Moreover, she has deep roots in Stark County, Ohio.

A native of Stark County, and the youngest of seven children, Judge Lioi graduated from GlenOak High School and from Bowling Green State University, where she graduated *summa cum laude* and earned the distinction of Phi Beta Kappa.

Judge Lioi went on to attend my law school alma mater, The Moritz College of Law at The Ohio State University, receiving her law degree in 1987. After graduating from law school, Judge Lioi joined the law firm of Day, Ketterer, the oldest law firm in Stark County, Ohio, as an associate. Judge Lioi was later recognized by her colleagues when they elected her to the firm's partnership in 1993.

As an attorney, she represented individuals, schools, and other institutions of higher learning, cities, small businesses, and multinational corporations. While in private practice, she represented clients at both the trial and appellate levels.

In November 1997, I appointed Judge Lioi to fill a vacancy on the Stark County Common Pleas Court. Later, she was elected to the unexpired term for which I nominated her. In 2002, the voters of Stark County re-elected her to a full six-year term.

Since ascending to the bench, Judge Lioi has disposed of over 9,500 cases and conducted over 350 trials, over 335 of which were jury trials. In sum, she has broad courtroom experience, both on and off the bench. This extensive experience will serve her well as a federal trial court judge.

Judge Lioi has also earned the respect of her colleagues and fellow attorneys. During her time as a practicing attorney, she served on the Supreme Court of Ohio Board of Commissioners on Grievances and Discipline, and for over ten years, Judge Lioi has served on the Supreme Court of Ohio Board of Commissioners on Character and Fitness, including the last five as the Chair of this Commission.

I believe her service on these important commissions evidences the high esteem in which members of the Ohio bar hold her, and is testimony of her excellent character.

Judge Lioi's legal credentials are not the only reasons I support her nomination. Today, too many people do not take the time to become involved in their communities; however, Judge Lioi participates actively in a number of civic organizations. A graduate of Leadership Stark County, she has remained active with that program and serves on the boards of several not-for-profit community agencies, including Community Services of Stark County, Stark County Humane Society, Walsh University Advisory Board, and the Plain Local Schools Foundation.

I believe involvement in one's community is important. We need judges who not only have exceptional legal skills, but who also recognize how the law impacts individuals and communities. I believe she has this understanding because she works in her community every day.

As a result of Judge Lioi's fine academic and professional achievements, I am not surprised that the American Bar Association found her unanimously well-qualified to serve as a federal district court judge.

In reviewing Judge Lioi's academic and professional record it is clear that she is well-qualified to serve as a judge on the U.S. District Court for the Northern District of Ohio, and I look forward to this Committee's swift review of her nomination.

Thank you.

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NOMINATIONS OF NORA BARRY FISCHER, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF PENNSYLVANIA; GREGORY FRIZZELL, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OKLAHOMA; LAWRENCE JOSEPH O'NEILL, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF CALIFORNIA; AND LISA WOOD, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF GEORGIA

TUESDAY, SEPTEMBER 12, 2006

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC

The Committee met, pursuant to notice, at 2:08 p.m., in room 226, Dirksen Senate Office Building, Hon. Tom Coburn presiding.

Also present: Senators Specter and Feinstein.

OPENING STATEMENT OF HON. TOM COBURN, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator COBURN. The Judiciary Committee will come to order.

Today we have a confirmation hearing for four of the President's judicial nominees. On behalf of the committee, I would like to welcome all four of you. Some of you have traveled considerable distances, and I appreciate your willingness to appear before us today.

I am particularly glad to see Judge Frizzell here, a fellow Oklahoman. It is our hope that we can move all of your nominations through the Committee quickly and get them voted on the floor before Congress goes out of session at the end of this month.

I know Judge Frizzell will be particularly glad to hear that, because his term on the State court expires in January. We are going to do our best to make sure you have a job this winter, Judge.

I would now like to turn to our full Committee Chairman, Arlen Specter, for any comments that he might have.

PRESENTATION OF NORA BARRY FISCHER, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF PENNSYLVANIA, BY HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Chairman SPECTER. Well, thank you very much, Mr. Chairman, for chairing this hearing. You have accurately stated the intention of the Committee is to move these nominations through as promptly as possible, and I think it is realistic, unless something unforeseen occurs, to complete them before we adjourn at the end of this month.

I also want to take a moment or two to join my distinguished colleague, Senator Santorum, in the introduction of Nora Barry Fischer to be U.S. District Judge for the Western District of Pennsylvania.

Ms. Fischer comes to this nomination with an outstanding record, academically and professionally. She graduated from St. Mary's College Magna Cum Laude in 1973, and has a law degree from Notre Dame. She was editor at Callaghan and Company Legal Publications in 1976 and 1977.

She was an associate at Meyer Darragh for 15 years, and then became an equity partner in the Pietragallo law firm, and she currently is the Defense Litigation Practicing Group co-chair.

Included in her work has been administrative partner in charge of recruitment and training. She has represented General Electric in both toxic tort and product liability cases. She has had significant mediation practice, having served as an adjunct settlement judge and as an arbitrator for the Western District of Pennsylvania, which gives her some judicial experience before approaching the bench.

I would ask unanimous consent to put my full statement in the record and a full resume before yielding, if I may, Mr. Chairman, to Senator Santorum.

Senator COBURN. Without objection. It is my understanding, because of the time pressure on Senator Inhofe of a Committee hearing, that he would be recognized first, if the Chairman has no objection to that.

Chairman SPECTER. Fine.

Senator COBURN. I want to welcome our fellow Senators here and look forward to your statements.

Senator Inhofe, you are recognized.

PRESENTATION OF GREGORY FRIZZELL, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF OKLAHOMA, BY HON. JAMES M. INHOFE, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator INHOFE. Thank you, Mr. Chairman. I am hoping also that he will be allowed to introduce some of his family. Now, if he had all of his family here there would not be time to do that. But I am here today to support Judge Greg Frizzell, nominee for the U.S. district court for the Northern District of Oklahoma.

His family is no stranger to the legal field. I can remember his daddy, who is here in the audience today—I saw him when he came in—Kent Frizzell. He served as Attorney General for the

State of Kansas. That is when I first got to know his family. Later on when they moved to Oklahoma, we became very close friends.

He has had all kinds of experience in the past in serving the Under Secretary of Interior, and he has taught at the University of Tulsa Law School for, I do not know, over 18 or 20 years.

So given his father's distinguished work, it is no surprise that Judge Frizzell felt compelled to pursue a career in public service, and his friends and colleagues have praised his professional qualifications and personal integrity, and all have emphasized his ability to rule fairly from the bench.

Someone who has been around as long as this young judge has been around, you would think you would hear negative things. I have never heard anything negative about him. Robert Sartin, member of the Board of Governors of the Oklahoma Bar Association said, "Judge Frizzell is a man of extremely good character and high integrity, with a deep sense of personal responsibility toward his fellow man."

Judge Claire Eagan, who was before this Committee not too long ago, praised him and talked about the urgency, the fact that that court right now has three judges doing the work of six.

One of the prominent and well-respected attorneys in Oklahoma, Joe Wohlgemuth of Norman, Wohlgemuth, Chandler & Dowdell in Tulsa, called Judge Frizzell "a man of integrity and a straight arrow".

Before serving in the current position of district Judge of the 14th Judicial District of Oklahoma, Greg Frizzell had a long and distinguished legal career and ample Federal experience.

After graduating with a law degree from the University of Michigan, he clerked for Judge Tom Brett. Tom Brett is now in retirement and there is no one who has a better reputation than he, and he has praised and praised Greg Frizzell.

Also, Ralph Thompson, who is getting very close to retirement, he is in senior status right now on the Federal bench in Oklahoma, has praised him.

So, I just cannot think of anyone who has had a greater background and experience for this. He has held positions other than judicial positions. He was the General Counsel to the Oklahoma Tax Commission for a period of time. He has not only proven to be an effective and legal professional, but he is a devoted husband and loving father of six children.

Getting back again to Mr. Wohlgemuth, he recalls an incident where Judge Frizzell, Mr. Chairman, had to stay late one night at work and he brought all six kids so he could spend time with them into the late hours. Anyone who can handle six kids while doing his judicial work, I think can handle this job.

So, Judge Frizzell is a man of great moral integrity who has proven his character in both his private and public life. I cannot say enough about him and his qualifications to be the next U.S. district court judge for the Northern District of Oklahoma.

Thank you very much.

Senator COBURN. Thank you, Senator Inhofe.

Senator Santorum?

PRESENTATION OF NORA BARRY FISCHER, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF PENNSYLVANIA, BY HON. RICK SANTORUM, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SANTORUM. Thank you, Mr. Chairman. My colleague, Senator Specter, I think adequately reviewed Nora Barry Fischer's resume.

Just let me comment on a couple of things. First, in general, Senator Specter and I have developed a system in Pennsylvania where we have always tried to make sure that we have a balance on the court, whether it is a Republican or Democratic administration.

During a Democratic administration we have worked out agreements to have Republicans every fourth nominee. One in every four would have to be Republican. We do the same when there is a Republican President. We make sure that there is a Democrat in there. Every four district court nominees, there is a Democrat in the mix, and we do that by district.

In the Western District, we have been very fortunate to put some really outstanding jurists on the court. The court has a very, very strong reputation. Hopefully soon-to-be Judge Fischer would be an excellent addition, but she is a Democrat. She is someone who, when we put her forward in this political season, I have to tell you, I was not sure what the reaction would be.

Let me assure you, the reaction has been unanimous from both Republicans, Democrats, folks in the plaintiff's bar, the defense bar, you name it. We have not received a single negative word about Nora Barry Fischer.

Given, again, the intensity of the political scene in Pennsylvania, I think it just speaks volumes for the kind of qualities that this woman brings to her practice of law, to the professional associations that she is involved with in the law, and as a past president of the Allegheny County Trial Lawyers Association, which is not necessarily an organization that is particularly complimentary to me on occasion, but she was an outstanding leader there and someone who has tremendous respect in our community.

So when Senator Specter and I went through the names and we identified her name on the list, the feedback, again, we have gotten was extraordinary before we nominated her, and I will tell you, has been unanimously extraordinary since.

My understanding from the Committee is that she was rated unanimously "Well Qualified" by the ABA. I am not surprised about that. She is someone who has been a trailblazer, as a woman in Pittsburgh in the legal profession, and has, as I said before, the utmost respect.

I just mentioned lawyers. I should also say judges who have contacted us, including some of her future colleagues, I hope, on the court, who are ecstatic that her name has been placed in nomination.

So, it is truly an honor for me to be here this morning to forward her nomination and encourage this Committee and the full U.S. Senate to act promptly on this nomination. Again, we have one vacancy and hope to have another one soon, so this is a court that definitely needs to have this vacancy filled.

Thank you, Mr. Chairman.

Senator COBURN. Thank you, Senator Santorum.
Senator Chambliss?

PRESENTATION OF LISA WOOD, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF GEORGIA, BY HON. SAXBY CHAMBLISS, A U.S. SENATOR FROM THE STATE OF GEORGIA

Senator CHAMBLISS. Thank you, Mr. Chairman. I very much appreciate the opportunity to appear this afternoon before the committee, and to be back before the committee. As a former member, I am particularly pleased to be back here.

Senator COBURN. As a matter of fact, I have my seat because you are not here.

Senator CHAMBLISS. I think you have my seat, Mr. Chairman. I will always hold that against you, even though you are my dear friend.

[Laughter.]

But I am here both to introduce and heartily endorse President Bush's nomination of Lisa Godbey Wood to be U.S. district Judge for the Southern District of Georgia. In nominating Lisa Wood, the President has demonstrated his commitment to ensuring both the integrity and the quality of the Federal judiciary.

Lisa Wood is an extraordinarily qualified individual who comes before this body at a time of urgency for the Southern District of Georgia. Currently, this distinguished Federal bench has but a single active Federal judge with the recent election by two judges to take senior status.

This, in addition to recent health developments affecting one such judge, highlights the need for swift action by the Senate to ensure that the administration of justice continues in this important Federal District.

I, and the people of Georgia, appreciate you, Chairman Coburn, along with Chairman Specter and Senator Leahy, for agreeing to schedule this hearing today. I urge prompt action in reporting favorably her nomination, and prompt confirmation by the Senate.

Lisa has served with distinction as U.S. Attorney for the Southern District of Georgia since 2004. She was unanimously confirmed by the Senate in November of that year, and since that time she has effectively managed this important prosecution office, while overseeing significant Federal criminal prosecutions, including successful high-profile corruption cases and racketeering prosecutions involving the fraudulent diversion of black market pharmaceuticals.

Lisa is a Summa Cum Laude graduate of the University of Georgia, where she was Phi Beta Kappa, and the University of Georgia Law School, where she was selected as a member of the Order of the Coif and served as managing editor of The Law Review, and Chief Justice of the Honor Court, among many other accomplishments and honors.

Following graduation from law school, Lisa served as a law clerk to Hon. Anthony A. Alaimo of the Southern District of Georgia before joining the Brunswick law firm of Gilbert, Harrell, Summerford & Martin, where she actively litigated cases involving product liability, employment law, medical malpractice, white col-

lar crime, and death penalty issues. She was elevated to litigating partner after just three and a half years, which is very significant.

Ms. Wood served as president of the Brunswick Glynn County Bar Association in 1995 after many years of service in other leadership positions with the Bar Association.

She served as a Magistrate Judge of the Glynn County Magistrate Court from 1998 to 2000, and is highly respected by members of the bench before whom she has appeared and by members of the bar who appeared before her and who served with her, including opposing counsel.

Lisa has been active in community and civic associations, including the YWCA. She is active in her church. Moreover, Lisa Wood has contributed immeasurably to her profession, community, church, and country, while being a devoted wife to her husband Richard, and mother to two 4-year-old twins, Lachlan and Katherine, all of whom are with her today.

I look back over here, Mr. Chairman, and I do not know what you did, but you put one of them to sleep over here.

[Laughter.]

These two children are obviously beautiful little 4-year-old twins.

Her husband, Richard, has been a dear friend of mine for many years. He is not nearly as good-looking as the twins are. But this is a beautiful family, and I look forward to Lisa having the opportunity to introduce them to you.

Mr. Chairman, I urge the committee's swift and enthusiastic action to advance her nomination, and I look forward to the prompt confirmation of Lisa Wood to the Southern District of Georgia, and I thank you.

Senator COBURN. Thank you, Senator Chambliss.

Senator Isakson?

PRESENTATION OF LISA WOOD, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF GEORGIA, BY HON. JOHNNY ISAKSON, A U.S. SENATOR FROM THE STATE OF GEORGIA

Senator ISAKSON. Thank you, Mr. Chairman. I, at the outset, want to express my appreciation to Gregg Nunziata for his help in facilitating this hearing today, and I appreciate very much your chairing it.

It is really an honor to introduce Lisa Godbey Wood to the committee, along with her husband Richard, her two children, and her mom and dad, who sit there proudly.

I must mention, as part of the extended family, Hon. Judge Tony Alaimo from the Southern District of Georgia who is behind me and here today. He is a great servant of the United States of America, a great Georgian, and his service on the court for years is greatly appreciated.

Mr. Chairman, in November of 2004, the U.S. Senate confirmed the appointment of Lisa Godbey Wood as U.S. Attorney in the Southern District of Georgia. In her term since that time she has served honorably and well the people of the United States.

Senator Chambliss and I are in united support of her nomination to the U.S. district court in Georgia, and urge the Senate to facilitate its approval at a rapid rate.

As Saxby as said, at the University of Georgia she was an Honor graduate. In fact, she earned the Meinhart Award for the highest grade point average all 3 years. She was the first Honor graduate at the University of Georgia.

When she left the University of Georgia she went to clerk under this distinguished judge, Tony Alaimo, in the Southern District itself. She went into the private practice of law in 1991, became a partner in 1995, and as I have said, because U.S. District Attorney in 1996.

Her record of prosecution and indictments in the Southern District has been well-noted by Senator Chambliss. She is probably the most universally popular nominee I have ever seen appointed to the court since I have served in the Congress of the United States and the U.S. Senate.

For me on a personal note, it is also very easy to make this introduction. I have known Lisa and Richard since 1996. They are two of our State's most outstanding students. She will be a great Judge on the court, and it is an honor for me today, as a U.S. Senator, to give her my highest commendation to this Committee and to the Senate.

I thank you, Mr. Chairman.

Senator COBURN. Thank you, Senator Isakson. I know that Senator Feinstein wanted to be here and is detained, so I might take the liberty right now of reading the resume on Lawrence Joseph O'Neill, the U.S. district Judge for the Eastern District of California nominee.

Magistrate Judge Lawrence O'Neill was nominated to be a U.S. district court judge on August 2, 2006. He received his B.A. from the University of California at Berkeley in 1973, his M.P.A. from Golden Gate University in 1976, and his J.D. from the University of California, Hastings College of Law in 1979.

During law school, Judge O'Neill served as a legal clerk to Hon. Roberts F. Cain of the First Appellate District of the California Court of Appeals. Following law school, Judge O'Neill joined the law firm of McCormick, Barstow, Sheppard, Wayte and Carruth as an associate. He became a partner with that firm in 1984.

His practice focused almost exclusively on civil tort litigation. While working for that law firm, he also taught classes for 6 years as an Adjunct Professor at San Joaquin College of Law. He was honored by that college for his teaching skills and was presented with the "Professor of the Year" award.

In 1990, Judge O'Neill was appointed to the Fresno County Superior Court. He served on that court until 1999, when he was appointed as U.S. Magistrate Judge in the U.S. district court for the Eastern District of California.

Judge O'Neill has received numerous awards for his community service, including the annual Judicial Award presented by the Rape Counseling Service of Fresno County, and the "20 Years of Service" award presented by the Fresno County Mock Trial competition program.

While serving as a presiding judge of the Juvenile Courts of Fresno County, Judge O'Neill was recognized for his outstanding efforts to prevent child abuse with the Judy Andreen-Nilson

Award. The Fresno County Juvenile Justice Commission also presented him with the "Award for Achievement in Juvenile Justice."

Let me ask, if I might, first, unanimous consent to enter into the record Ranking Member Senator Leahy's statement, and that will be done by unanimous consent, as well as the further statement of my own.

Senator COBURN. I would ask our nominees to come forward. I would also note that Senator Feinstein is on her way, and we will give her the opportunity from the dais to present her recommendations for her nominee.

If you all would come forward, please.

If you would each raise your right hand.

[Whereupon, the nominees were duly sworn.]

Senator COBURN. By tradition, we will ask each of you to make an opening statement, and then we will have some questions for you. Hopefully this will be as painless as possible. We will interrupt your statement, as one of you finishes, when Senator Feinstein arrives.

Ms. Fischer, please start.

STATEMENT OF NORA BARRY FISCHER, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Ms. FISCHER. Thank you, Mr. Chairman. I have no prepared statement here today, but what I would like to do is, first, thank you, Mr. Chairman. I would certainly like to thank the Senators of my home State, Pennsylvania, Senators Santorum and Specter, for their kind words.

In addition, I thank President Bush for considering me, and also nominating me to the potential judgeship on the Western District of Pennsylvania.

Not having a statement, with your permission I would like to introduce my husband of 30-plus years.

Senator COBURN. Absolutely.

Ms. FISCHER. Dr. Donald Fischer, who is with me here today. Unfortunately, our three children, Erin, Lauren and Adam, could not join us.

I would also like to tip my hat to my parents, Michael and Olga Barry, who, because of health reasons, could not join us here today.

I would also like to acknowledge my partners and friends at Pietragallo, Bosick & Gordon. My managing partner, Bill Pietragallo, has been particularly helpful in this quest.

I would also like to thank all of the associates who are back on the ranch doing the work that needs to be done today, and my legal assistants and secretaries who worked hard on the applications.

I would also like to say a word in thanks to my six sisters, who I will not all name, and my brother, who have supported me along the way and e-mailed and cheered me on today. A special salute to my godchild and niece, U.S. Army Captain Meghan Cumpston, who is serving in Afghanistan.

[The biographical information of Nora Barry Fischer follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full Name (include any former names used.)**

Nora Barry Fischer
Nora Mary Barry

2. **Address: List current place of residence and office address(es).**

Residence: Pittsburgh, Pennsylvania

Office: Pietragallo, Bosick & Gordon
3800 One Oxford Centre
Pittsburgh, PA 15219

3. **Date and Place of Birth.**

June 13, 1951
Homestead, Pennsylvania

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

Married to Donald R. Fischer, M.D., Physician Executive/Chief Medical Officer
Highmark
Fifth Avenue Place
Pittsburgh, PA 15222

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received and dates degrees were granted.**

St. Mary's College, Notre Dame, Indiana 46556 (1969-1973)
History/Humanistics Studies/BA, *Magna Cum Laude* (May, 1973)

L'Université Catholique de L'Ouest Angers, France (1970-1971)
Certificate of French Studies

Notre Dame Law School (1973-1/76)
JD (January 15, 1976)

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

Pietragallo, Bosick & Gordon (2/1/92 – Present)
Equity Partner
Administrative Partner (1997 – 2000)
Practice Group Co-Chair – Defense Litigation Group (2003 to present)

Meyer, Darragh, Buckler, Bebenek & Eck (8/1/77 – 2/1/92)
Associate (1977 – 1980)
Jr. Partner (1980 – 1982)
Sr. Partner (1982 – 1992)
Member of Firm Executive Committee and Compensation Committee
Case Manager and Practice Development Chair towards the end of my career at Meyer Darragh.

Callaghan and Company, Legal Publishers – Editor (Spring 1976- Spring 1977)

Academy Trial Lawyers of Allegheny County
Member of Board of Directors and Officer (1997-2005)
Currently Past President, *Ex Officio* Board Member (2005-2006)

American Inns of Court, Pittsburgh Chapter
Officer and *Ex Officio* (2000-2005)

St. Mary's College, Notre Dame, IN
Member of Alumnae Board (9/2006-2009)

7. **Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

I have never served in the military.

8. **Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

St. Mary's College, Notre Dame, IN – Scholarship and Work Study
Allegheny County Bar Association Special Service Award (1993)
Allegheny County Bar Foundation Charter Fellow (1997)
Pittsburgh Athena Award Nominee (September 1999)
PBA Anne X. Alpern Award (May 2001)

PBA Award for Service as Tri-Chair of the Pennsylvania Bar Association Health Care Task Force (May 2004).
Martindale Hubbell "AV" Rating
Fellow in the American College of Trial Lawyers
Named Pennsylvania Super Lawyer and Top 50 Women Super Lawyers in Pennsylvania (2004 and 2005)
Named Pennsylvania Super Lawyer (2006)
Recognition as one of Pennsylvania's Top 50 Women in Business (February 2001).

9. **Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.**

Illinois Bar Association (1976 to Present)

Allegheny County Bar Association (1977 to Present)
- St. Thomas More Society Board Member (1978-1980's)
- Medical Legal Committee Member, Vice Chair and Chair (1980's)
- Civil Litigation Section Member (1977 to Present) and Member of Executive Council (1980's)
- Women in Law Committee (1980's to 1990's)
  - Education Co-Chair
- Board of Governors, three (3) year term (1990's)

Allegheny County Bar Association Foundation Trustee (1997 to 2000)
- Fellows Committee (1998 to Present)

Pennsylvania Bar Association
- Civil Litigation Section Member and Executive Council
- Commission on Women in the Profession
  - Program Chair; Co-Chair for two (2) terms (1997-1999)
  - Co-Chair of Subcommittee on Promotion of Women (2000-2002)
- Delegate to PBA House of Delegates (two (2) terms) (1990's)
- Cochair, Task Force on Health Care (2004 to present)

Inns of Court – Pittsburgh Chapter
- Master
- Program Chair; Vice President; President (1999-2001)
- *Ex Officio* Board Member (2002-Present)

American Bar Association
- Section of Civil Litigation
  - Past Chair Professional Liability Subcommittee, Insurance Committee, Civil Litigation Section (1999-2001)
- Women Advocate Group – State Coordinator (2002-2003)

West Virginia Bar Association Member (1990 to present)
Member of West Virginia Bar Association Mediation Panel

Academy of Trial Lawyers (1992 to present)
Board of Directors (1992-1994) and (1996-1998)
Service on various committees, including Essay Contest; Long Range Planning; and Membership
Assistant Treasurer; Treasurer; Secretary; Vice-President; President Elect; President; *Ex Officio*, Past President (1999 to present)

American College of Trial Lawyers
Fellow (2003)
State Committee Member (2003-present)

Defense Research Institute
Member, Insurance Coverage Committee (2004-present)

10. **Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**

Organizations to which I belong and in which I am active in lobbying before public bodies are:

Pennsylvania Bar Association

West Virginia Bar Association

Defense Research Institute

To my knowledge, all of these organizations have PACs.

Other organizations to which I belong, not previously listed are:

Insurance Women of Pittsburgh – now known as Insurance Professionals of Pittsburgh

Executive Women's Council of Pittsburgh, PA

The Rivers Club, Pittsburgh, Pennsylvania

The Pittsburgh Golf Club, Pittsburgh, Pennsylvania

St. Mary's Club of Pittsburgh

Notre Dame Club of Pittsburgh

Sacred Heart Parish, Pittsburgh, Pennsylvania

The DePaul Institute Development Committee (2003 to present)

11. **Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission of practice.**

Illinois (1976)
Pennsylvania (1977)
West Virginia (1990)
United States District Court for the Northern District of Illinois (1977)
United States District Court for the Western District of Pennsylvania (1977)
United States District Court for the Southern District of West Virginia (1990)
United States Court of Appeals for the Third Circuit (1981)
Supreme Court of the United States(1982)

United States District Court for the Middle District of Pennsylvania – *Pro Hac Vice*, only (Late 1990's)
United States District Court for the Northern District of West Virginia – *Pro Hac Vice* and by admission (2002)

12. **Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.**

McQuillen's on Municipal Corporations, Callaghan and Company (1976 – 1977); provided updates to text.

I have not made any speech on issues involving constitutional law or legal policy.

13. **Health: What is the present state of your health? List the date of your last physical examination.**

I am in very good health. The date of my last physical examination was May 23, 2006.

14. **Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

None.

15. **Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of an citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.**

I have never been a judge

16. **Public Office: State (chronologically) any public office you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.**

None.

17. **Legal Career:**

a. **Describe chronologically your law practice and experience after graduation from law school including:**

1. **whether you served as a clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;**

I did not serve as a clerk to a judge.

2. **whether you practiced alone, and if so, the addresses and dates;**

I have never practiced alone.

3. **the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;**

Callaghan and Company, Legal Publishers, formerly located at 6141 North Cicero, Chicago, IL 60646 – Legal Editor (Spring 1976 to Spring 1977)

Note: Callaghan and Company was subsequently merged into Thompson and ultimately into West Legal Publishers.

Meyer, Darragh, Buckler, Bebenek & Eck
U.S. Steel Tower, Suite 4850
600 Grant Street
Pittsburgh, PA 15219
Associate: 1977-1980
Jr. Partner: 1980-1982
Sr. Partner: 1982-1992

Pietragallo, Bosick & Gordon
One Oxford Centre, 38th Floor
301 Grant Street
Pittsburgh, PA 15219
Equity Partner: February 1992 to Present

b. 1. **What has been the general character of your law practice, dividing it into periods with date if its character has changed over the years?**

At Callaghan and Company, I was charged with updating and editing McQuillen's on Municipal Corporations. I also worked on Fletcher's Corporation treatise and a number of practice and procedure texts directed at Illinois practitioners.

Joining Meyer, Darragh, Buckler, Bebenek & Eck as an associate, I was engaged in insurance defense practice including automobile liability; municipal liability; and civil rights cases in both state and federal court. I handled arbitration cases; non-jury trials and my initial civil jury trials in both state and federal court. I started our firm's law clerk program and served on the Library Committee. I also served as a Master for the Allegheny County Court of Common Pleas in the *pro bono* divorce program.

In this time period, I had a number of cases involving alleged Section 1983 civil rights violations against various municipalities and municipal officials. Many of these cases were brought by prisoners or other *pro se* litigants. My practice also included malpractice and insurance coverage trials and appeals.

Between 1980 and 1992, as a partner at Meyer Darragh, I continued my work in the insurance defense arena. For approximately ten (10) years, my practice was 50% medical malpractice defense and 50% toxic tort. I practiced throughout western Pennsylvania and West Virginia. As a medical malpractice defense attorney, I represented both hospitals and

physicians. On occasion, I also handled employment and insurance coverage disputes.

At the same time, I became more active in the administration of Meyer Darragh, moving on to the firm Executive Committee and ultimately to its Compensation Committee. In my last years at Meyer Darragh, in addition to those duties, I also served as Case Manager and Practice Development Chair.

Moving to Pietragallo, Bosick & Gordon in February 1992 as an equity partner, I concentrated on insurance coverage disputes, product liability and toxic tort claims and began to develop a mediation practice. For a particular major manufacturer and supplier, I have handled a variety of toxic tort claims including claims emanating from asbestos, mercury, lead, and breast implant exposures.

At Pietragallo, Bosick & Gordon, I have served as Administrative Partner handling recruitment, associate and staff training and related matters. At the present time, I serve as Co-Chair of the Defense Litigation Practice Group, our largest practice group.

b. 2. **Describe your typical former clients, and mention the areas, if any, in which you have specialized.**

Clients whom I have represented have included a number of major manufacturers, suppliers and distributors in the product liability and toxic tort fields; numerous insurance companies in coverage litigation; various municipalities including Allegheny County, the Borough of Homestead, among others, in 1983 civil rights litigation and employment litigation; various individuals whom I represented through insurance companies in negligence cases; physicians and hospitals in medical liability cases and on occasion, Plaintiffs in personal injury litigation, as well as policy holder entities in coverage disputes.

c. 1. **Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.**

Frequently.

2. **What percentage of these appearances was in:**

(a)	**federal courts:**	20%
(b)	**state courts of record:**	75%
(c)	**other courts.**	5%

3. **What percentage of your litigation was:**

   (a) Civil: 100%
   (b) criminal.

4. **State the number of case in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

   Approximately 35 as sole counsel; approximately 20 as associate counsel or second chair.

5. **What percentage of these trials was:**

   a. Jury: 80%
   b. Non-Jury: 20%

18. Litigation: **Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:**

   (a) the date of representation;
   (b) the name of the court and the name of the judge or judges before whom the case was litigation; and
   (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Mason v. Western Pennsylvania Hospital, 286 Pa. Super. 354, 428 A.2d 1366; 499 Pa. 484, 453 A.2d 974 (1982)

   As an associate at Meyer Darragh, I was assigned Preliminary Objections in regard to the above-captioned case. We challenged the nature and scope of damages in this alleged wrongful life but healthy child case. Those Preliminary Objections took me to the Superior Court twice, once before a panel and once *en banc* and then to the Pennsylvania Supreme Court. Thereafter, the case was tried in the Court of Common Pleas of Allegheny County before Judge Silvestri Silvestri. I acted as trial counsel for the Hospital. The trial resulted in a defense verdict for both the Doctor and Hospital. An appeal was taken. Consequently, Judge Silvestri Silvestri wrote an opinion concerning the standard for expert testimony under Pennsylvania law which was published in the *Pittsburgh Legal Journal*. The case went back on appeal with Dr. Blockstein, only, the Hospital having been dismissed.

Counsel for the Masons were Byrd Brown, now deceased, the Honorable Doris Smith Ribner, now of the Pennsylvania Commonwealth Court (215-560-3699) and the Honorable Gary Lancaster now of the District Court for the Western District of Pennsylvania (412-208-7400). Although my former partner, Don Bebenek, began the case with me, I proceeded to handle all of the appellate briefs and arguments as well as to try the case. Richard Dorfzaun of Dickie, McCamey & Chilcote, Two PPG Place, Suite 400, Pittsburgh, Pennsylvania 15222 (telephone number 412-392-5201) acted as counsel to co-Defendant, Dr. Blockstein throughout the litigation.

2. Michael Derzack and Karen Derzack v. County of Allegheny, et al., Civil Action No. 94-0943 in the United States District Court for the Western District of Pennsylvania, 173 FRD 400, *aff'd*, 118 F3d. 1575 (1997). Karen and Michael Derzack sued Allegheny County and numerous related Defendants charging civil rights violations in the handling of the placement of Baby Byron. Our firm represented the County of Allegheny and the Commissioners in their official capacity.

Working with my then associates, Mark Haak and Jeanette Ho, as well as one of our Summer Law Clerks who happened to be a CPA, during the course of the investigation and discovery of this case, we determined that the Derzacks' tax and wage documents were dishonest. Based on that information, and the fact that the Plaintiffs had submitted a written demand per Court Order to the Magistrate Judge, Robert Mitchell, I determined that we should defend the case as a fraud on the Court. Hence, we put on testimony and related evidence, then moved for judgment which was upheld by Magistrate Judge Mitchell and then by the Honorable Donald Lee, in a lengthy opinion which was affirmed on appeal.

Counsel for the Plaintiffs were Art Bloom now of Arthur Bloom & Associates, Law & Finance Building, 429 Fourth Avenue, Pittsburgh, Pennsylvania 15219 (412-281-1899) and Alexander H. Lindsay, Jr. of the then law firm Lindsay, Jackson & Martin, 128 S. Main Street, Butler, Pennsylvania 16001 (724-282-6600). Co-Defendants were represented by David James Singley formerly of Israel & Wood and now of Thorp Reed & Armstrong, 14th Floor, 301 Grant Street, Pittsburgh, Pennsylvania 15219 (412-394-7711); Timothy W. Pawol, Ira Weiss and John A. Mulroy then of the Allegheny County Law Department, 711 Bingham Street, Pittsburgh, Pennsylvania 15203 (412-350-1120); (Mr. Weiss is now practicing as the principal in the Law Offices of Ira Weiss, Ft. Pitt Commons Building, 445 Fort Pitt Boulevard, Suite 503, Pittsburgh, Pennsylvania 15219 (412-391-9890). Mr. Mulroy can be reached at 412-606-1002)). Peter J. Taylor and Arthur J. Murphy, Jr. of Arthur J. Murphy & Associates, Suite 100, 326 3rd Avenue, Pittsburgh, Pennsylvania 15222 (412-255-0200); Elizabeth A. Malloy and Joseph F. Quinn of Klett Rooney, 40th Floor, One Oxford Centre, Pittsburgh, Pennsylvania 15219 (412-392-2000).

3. Mabel L. Ford, Administratrix of the Estate of Shawn T.L. Ford, Deceased v. Althea Denise Johnson, et al. Civil Action number 94-2201 in the United States District Court for the Western District of Pennsylvania, 899 F. Supp. 227, *; 1995 U.S. Dist. LEXIS 19268. This case arose out of a custody dispute. Sadly, the father beat the child to death in a motel room. The mother filed an action against the county officials and police officers. She raised "special relationship" and "state created" danger theories of liability against the county officials. She also alleged a violation of the child's Eighth and Fourteenth Amendment rights. On a Motion to Dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(6), the trial court judge dismissed the "special relationship" theory of liability. We represented the Allegheny County Commissioners who were in office at the time. The dismissal stood on appeal for the Third Circuit. The matter was heard by The Honorable Donetta Ambrose, currently Chief Judge of the Federal Court, Western Pennsylvania District.

   Mabel Ford was represented by Alan Cantor and Max A. Levine whose office is located at Levine & Spatz, 900 Allegheny Building, 429 Forbes Avenue, Pittsburgh, Pennsylvania 15219 (412-232-0315). Co-defense counsel were numerous including Eric N. Anderson of Meyer, Darragh, Buckler, Bebenek & Eck, U.S. Steel Tower, 600 Grant Street, Suite 4850, Pittsburgh, Pennsylvania 15219, 412-261-6600; Howard J. Schulberg, presently of Goehring Rutter & Boehm, Frick Building, 437 Grant Street, Suite 1424, Pittsburgh, Pennsylvania 15219, 412-281-0587, Scott T. Redman, Redman & Pongrace, Two Chatham Center, 112 Washington Place, Suite 610, Pittsburgh, PA 15219, 412-263-3360 and John C. Conti of Dickie McCamey & Chilcote P.C., Two PPG Place, Suite 400, Pittsburgh Pennsylvania 15222-5402, 412-392-5425.

4. Liebert, et al. v. Chatwins Group, Inc., v. W. I. Clarke Company, GD92-20602 in The Court of Common Pleas of Allegheny County. The Lieberts brought suit against Chatwins Group and a number of other entities in regard to a severe head injury sustained by Mr. Liebert at the former Jones & Laughlin Steel facility located in Hazlewood. Represented by Phil Ignelzi of Ogg, Jones, Cordes & Ignelzi, 245 Fort Pitt Boulevard, Pittsburgh, Pennsylvania 15222 (412-471-8500), the Lieberts charged the Defendants with negligence and maintained that their individual products were defective under Pennsylvania product liability law. I represented Dixon Valve, a supplier of valves and related equipment used in hoses. After extensive discovery, and upwards of thirty depositions, as a component part manufacturer, we moved for summary judgment. Summary judgment was granted by Judge Wettick. Co-Defendants challenged same. On re-hearing, it was granted again. On appeal, the Superior Court affirmed. I made all of the arguments.

   The case proceeded to jury selection and arguments on Motions in Limine. At the commencement of the trial, the case was settled for a significant seven figure sum.

Chatwins Group was represented by Herbert Bennett Conner, now of Buchanan Ingersoll, 20th Floor, One Oxford Centre, Pittsburgh, Pennsylvania 15219 (412-562-8800). Combustion Engineering was represented by Ben McAuley, formerly of the Wayman Irvin & McAuley firm and now retired. Terry Bashline, formerly of Bagainski and Bashline and now Bashline & Hutton, Suite 1650, One PPG Place, Pittsburgh, Pennsylvania 15222 (412-434-0201), David Abrams of Abrams & Mazer, Alstan Mall, 2526 Monroeville Boulevard, Suite 207, Monroeville, Pennsylvania 15146 (412-829-7733), Sean Patrick Hannon of Gorr Moser Dell & Loughney, Frick Building, 437 Grant Street, Suite 1300, Pittsburgh, Pennsylvania 15219 (412-471-1180) and Barron P. McCune, formerly of Suite 100, 90 W. Chestnut Street, Washington, Pennsylvania 15301 (724-225-2400) represented the remaining co-Defendants. Throughout the pre-trial stage of the case, the Honorable Stanton Wettick presided.

5. Lewis, et al. v. Wendy's of Greater Pittsburgh, et al., GD 96-001371; Pritts, et al. v. Wendy's of Greater Pittsburgh, et al., GD 97-003173 in the Court of Common Pleas of Allegheny County. These were the first two (2) significant E.coli cases brought in Allegheny County. In each of these cases, small children claimed devastating injury due to their ingestion of food products allegedly contaminated by E-coli. Representing the franchise operator and by way of indemnification, Wendy's as the national organization, I was required to carefully investigate the potential mode of transmission; the practices, policies and procedures of the franchise versus the national; and to consider and evaluate the medical evidence in the cases. In the course of the handling of these cases, a significant dispute arose concerning discovery and contact of individuals employed by various of the restaurants. This discovery dispute resulted in an Opinion by the Honorable Stanton Wettick concerning the discoverability of non-management employees at an entity such as a fast food restaurant.

   Neil R. Rosen of Rosen Louik & Perry, Suite 200, 437 Grant Street, Pittsburgh, Pennsylvania 15219 (412-281-4200) represented Mr. & Mrs. Lewis and John Gismondi of Gismondi & Associates, Grant Building, 310 Grant Street, Suite 700, Pittsburgh, PA 15219 (412-281-2200) represented Mr. & Mrs. Pritts.

6. Nicklow, et ux. v. Western Pennsylvania Hospital, et al., GD 98-014512 in The Court of Common Pleas of Allegheny County. This case was a medical malpractice claim brought against West Penn Hospital and three (3) adult cardiologists. The case tried for two and one-half (2½) weeks before the Honorable Paul F. Lutty in May 2000. The case resulted in a $1,000,000.00 verdict against West Penn Hospital and one of the Defendant physicians. My client, an individual physician, was exonerated. The case made local and national news and was reported in various radiology and cardiology journals given the circumstances of the claim. It was settled by West Penn Hospital and the liable Defendant Doctor on appeal. No payment was made by my client and/or his insurer.

Plaintiffs' counsel was Alan Perer of Swensen & Perer, Two PNC Plaza, Suite 2710, Pittsburgh, PA 15222 (412-281-1970). Co-defense counsel included Lynn E. Bell of Davies McFarland & Carroll, One Gateway Center, 420 Ft. Duquesne Boulevard, 10th Floor, Pittsburgh, Pennsylvania 15222 (412-281-0737) for two (2) of the physicians and David Johnson of Thomson Rhodes & Cowie, Two Chatham Center, 112 Washington Place, 10th Floor, Pittsburgh, Pennsylvania 15219 (412-316-8662) for West Penn Hospital.

7. Bashir Yousufzai, M.D. v. Darryl R. Slimak, McQuaide, Blasko Schwartz Flemming & Faulkner, Inc., Meyer Derragh Buckler Bebenek & Eck, and PMSLIC Civil Docket #04-CV-882 – U.S. District Court of Western District of PA (2005). This case entailed the defense of a $9 million bad faith lawsuit brought in federal district court against a professional liability carrier which involved allegations of claim mishandling by the insurance adjuster and alleged legal malpractice by assigned defense counsel. The insured also asserted that defense counsel's success in securing dismissal of all claims against the insured physician except a single, non-covered assault and battery charge constituted legal malpractice by defense counsel and bad faith on the part of the insurer. Novel argumentation and effective brief writing in a Motion to Dismiss filed early in the case resulted in a settlement extremely favorable to the insurance carrier. The presiding judge was The Honorable David Cercone sitting in the Western District of Pennsylvania.

   Plaintiff's counsel was Robert Woomer, WOOMER & FRIDAY, LLP, 3220 West Liberty Avenue, Suite 200, Pittsburgh, Pennsylvania 15216-2320 (412-563-7980). Co-defense counsel was Dennis Watson formerly of Grogan Graffam Grogan Graffam, P.C., Four Gateway Center, 12th Floor, 444 Liberty Avenue, Pittsburgh, Pennsylvania 15222 and now of Marshall, Dennehey, Warner, Coleman & Goggin, Pittsburgh, Pennsylvania, 15219 (412-803-1181) and James Schadel of Weinheimer Schadel & Haber, Law & Finance Building, Suite 602, 429 4th Avenue, Pittsburgh, Pennsylvania 15219 (412-765-3399).

   We represented the interests of Pennsylvania Medical Society Liability Insurance Company and its adjusters.

8. Rolls Technology, Inc. v. The Hartford Steam Boiler Inspection and Insurance Company and Factory Mutual Insurance Company, in the District Court for the Western District of Pennsylvania, Civil Docket No.: 01-0904. I represented a policy holder manufacturer which had sustained significant damage to its facility due to an onsite explosion. Following the filing of a declaratory judgment action in state court, the matter was removed to federal district court, the Honorable William Standish presiding. The matter was referred for mediation resulting in a very favorable settlement in favor of our client.

   Counsel for Hartford was William James Rogers of Thomson Rhodes & Cowie, P.C., 1010 Two Chatham Centre, Pittsburgh, Pennsylvania 15219 (412-232-3400) and counsel for Factory Mutual was Donald L. Best of DiBella & Geer, P.C., 322

Boulevard of the Allies, 3rd Floor, Pittsburgh, Pennsylvania 15222 (412-261-3208).

9. Grace Goodnite, as the Personal Representative of the Estate of Donald Goodnite, Deceased v. 20th Century Glove, et al. Civil Action Number 03-C-9600 in the Circuit Court of Kanawha County, West Virginia, decided on summary judgment in favor of the Defendant manufacturer which we represented (May, 2005). The Decision is noteworthy in that it upheld a release entered in a lesser disease injury claim, thereby dismissing the more significant asbestos related cancer claim. The presiding judge was The Honorable Ronald Wilson, appointed to the Mass Tort Panel by the West Virginia Supreme Court of Appeals. Plaintiff's counsel was Geraldine Guerin of the James Humphreys & Associates firm located at United Center, Suite 800, 500 Virginia Street, East, Charleston, West Virginia 25301 (304-347-5050)

10. West Virginia Mass Trial, In the Circuit Court of Kanawha County, West Virginia. This was the third statewide consolidation of asbestos-related claims in Charleston, West Virginia and involved over 8,000 Plaintiffs and in excess of 200 Defendants. Appointed by the West Virginia Supreme Court of Appeals Judges Arthur Recht and Booker T. Stephens presided over this massive trial which consolidated strict liability, negligence and premises claims against numerous defendants including some of the biggest manufacturers in the United States. Representative plaintiffs were chosen based on disease type to stand for the plaintiff group. Discovery of work sites and plaintiffs themselves was exhaustive. Periodically, the Court hosted motions practice leading up to the trial date. Given the magnitude of the case, the potential for the application of offensive collateral estoppel on product defect issues and the costs of going to trial in such a forum, my client chose to settle. As local counsel of a large manufacturing defendant working with national counsel we negotiated settlement of pending and future cases. (September, 2002).

Plaintiffs' counsel included Ted Goldberg, Dave Chervenick and Bruce Mattock of Goldberg, Persky & White, P.C., 1030 Fifth Avenue, Pittsburgh, Pennsylvania 15219 (412-471-3980); Jackie Rion formerly of Ness Motley and now affiliated with Richardson Patrick Westbrook& Brickman, LLC, P.O. Box 879, Charleston, South Carolina 29402 (1-888-293-6883) and Ron Motley and Anne Kearse of Motley Rice, 28 Bridgeside Boulevard, P.O. Box 1792, Mt. Pleasant, South Carolina 29465 (843-216-9140). Co-counsel for General Electric Company was Maja Eaton of Sidley, Austin, Brown & Wood, One S. Dearborn Street, Chicago, IL 60603 (312-853-7123). More than 100 defense counsel throughout Western Pennsylvania and West Virginia and beyond were involved. They included Eric Falk of Davies McFarland and Carroll, 10th Floor, One Gateway Center, Pittsburgh, Pennsylvania 15222 (412-281-0737) and Connie Silvaggio, Willman & Arnold, 705 McKnight Park Drive, Pittsburgh, Pennsylvania 15237-6356 (412-366-3333); Michael Victorson, Jackson & Kelly P.O. Box 553, Charleston, WV 25322-0553 (304-340-1079); Leo Daly, Grogan Graffam, P.C., Four Gateway Center, 12th Floor, Pittsburgh, Pennsylvania 15222 (412-553-6300); Joni

Mangino and Alex Bickett of Zimmer Kunz, PLLC, Suite 3300 U.S. Steel Tower, Pittsburgh, PA 15219, (412-281-8000), Beth Rauer, formerly of Spillman Thomas now of Robinson & McElwee, PLLC, P.O. Box 1791, Charleston, WV 25326 (304-347-8320); Corey Zurbuch, Spilman Thomas & Battle, 300 Kanawha Boulevard East, Charleston, West Virginia 25301 (304-340-3800); among others.

19. Legal Activities: **Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)**

In addition to building a practice and handling literally hundreds of cases over the past 30 years, I would state that the most significant legal activities which I have pursued have included my activity as an expert witness and consultant as well as my work as a mediator and arbitrator. As an expert witness and consultant, I have provided opinion evidence in a reinsurance matter emanating out of an insurance dispute centered on coverage for asbestos related claims. More recently, I acted as a consultant and expert in regard to the duties between a primary carrier and its excess carrier, including the duty to provide proper defense representation to the insured. In this instance, I was retained following trial of an underlying personal injury case which resulted in a significant millions of dollar verdict. I was required to review and analyze not only the insurance coverage, but the claims handling activity as well as the legal files of underlying defense and appeal counsel. The matter resolved following submission of expert reports prior to trial in May 2005.

Following training by United States Arbitration and Mediation, I was fortunate to be selected to act as a Dalkon Shield referee through the Duke University Private Adjudication Center. As such, I heard cases in both Pittsburgh and in Harrisburg, taking testimony and ultimately handing down decisions in approximately 12-15 cases. Further, I have acted as a mediator and arbitrator, either privately, by court appointment, or through referral by the West Virginia Bar Association. I have tried jury and non jury trials as a Special Master in the Court of Common Pleas of Allegheny County. I have handled cases on a *pro bono* basis as well as a paid basis. These cases have centered on personal injury, insurance coverage, employment, and business claims as well as a heated property dispute which took two days of mediation in Marshall County, West Virginia. I have obtained great satisfaction in bringing matters to a close through arbitration, mediation and my negotiation skills.

In addition, over the years, I have worked with both the University of Pittsburgh School of Law School and Duquesne University in their NITA trial programs. I have volunteered to act as a judge in the Honorable Amy Reynolds Hay Trial Moot Court Class at the University of Pittsburgh. More recently, I worked with my partner William Pietragallo as well others in putting together a course outline and materials for one of the courses taught as part of the John Gismondi Trial Advocacy Institute at the University of Pittsburgh School of Law.

In the local Bar I had the privilege to chair an effort to recognize the first 100 women who practiced law here in Pittsburgh. Not only did we write their history, but we celebrated them at the largest dinner every hosted by the Bar Association. For this activity, I received special recognition by the local Bar and was an invited speaker at the ABA national meeting the following year on a program directed at increasing female participation in the ABA.

I would also say it's been my pleasure over the past thirty (30) years to work with law students and younger attorneys first, at Meyer Darragh through its law clerk program which I established, and later at Pietragallo, Bosick & Gordon and through the Bar Association. I have had the opportunity to mentor, both men and women in the practice of law and in the development of their legal careers. I am proud to say that a number of these individuals have gone on to a variety of careers in the law and in business. One of my early mentees now sits as a Superior Court Judge in the Commonwealth of Pennsylvania. Several act as in house counsel. Many have gone on to partnerships in my former firm, my current firm and in the firms across the City. Furthermore, as one of the first women to make partner in a major Pittsburgh law firm, I had the opportunity to help shape policies at my then and current firm on maternity leave and part time work, both of which help to encourage and maintain women in the profession.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensation in the future for any financial or business interest.**

Upon retirement from Pietragallo, Bosick & Gordon, I would be entitled to reimbursement of my capital contribution. If I should be selected to become a Federal District Court Judge, then and in that event, said monies would be paid to me. At that point, I would have no financial interest in Pietragallo, Bosick & Gordon. I have no deferred income arrangements, stock, options, uncompleted contracts and/or any other future benefits.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

If I should be confirmed, I would carefully follow the Code of Conduct for United States Judges and all applicable statutes, policies and procedures. I would follow established procedures to review the parties in each case as well as counsel to determine the potential for any conflict. Potential conflicts would include cases wherein members of my current firm are counsel of record; cases involving current clients of mine; and cases involving entities with which my spouse or family members are affiliated or represent.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

No.

4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prepare to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

See attached. Financial Disclosure Report

5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**

See attached Net Worth Statement

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

Over time, I have acted in a fundraising role for various judicial candidates, including my current partner, Gayle Godfrey, the Honorable Kate Ford Elliott, President Judge of the Superior Court, and Roger Wise, a recent candidate for the Court of Common Pleas of Allegheny County. In each instance, I have solicited donations, particularly from lawyers, family and friends. My role has been limited to fundraising in large measure. In addition, I have made political contributions to various candidates for public office. Recently, I was asked to serve on a host committee for a fundraiser involving Senator Santorum by one of my former law clerks, now an attorney at Eckert Seamans. My husband and I contributed to that event and I sought out additional contributions from colleagues, business contacts and friends. I was out of the Country at the time of the fundraiser and did not attend. Nor did my husband attend.

AO-10
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U S C. app. §§ 101-111)

1 Person Reporting (Last name, First name, Middle initial)	2 Court or Organization	3. Date of Report
Fischer, Nora B	District Court, Western PA	7/26/2006
4 Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) Federal District Court Judge Nominee	5 ReportType (check appropriate type) (•) Nomination Date 7/13/06 ( ) Initial ( ) Annual ( ) Final	6 Reporting Period 1/1/2005 to 6/30/2006
7 Chambers or Office Address 3800 One Oxford Centre Pittsburgh, PA 15219	8 On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion in compliance with applicable laws and regulations Reviewing Officer_____ Date_____	

IMPORTANT NOTES: The instructions accompanying this form must be followed Complete all parts, checking the NONE box for each part where you have no reportable information Sign on last page

I. POSITIONS. (Reporting individual only: see pp 9-13 of filing instructions)

☐ NONE - (No reportable positions)

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Equity Partner	Pietragallo Bosick, and Gordon
2	Immediate Past President	Academy of Trial Lawyers of Allegheny County

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions)

☐ NONE - (No reportable agreements.)

	DATE	PARTIES AND TERMS
1.	1992	Partnership agreement; Pietragallo, Bosick and Gordon (PB&G)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Fischer, Nora B	7/26/2006

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp 17-24 of filing instructions)

A. Filer's Non-Investment Income

☐ NONE - (No reportable non-investment income)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1	2004	Pietragallo, Bosick and Gordon	521,740
2	2005	Pietragallo, Bosick and Gordon	686,158
3	2006	Pietragallo, Bosick and Gordon	116,700

B. Spouse's Non-Investment Income - (If you were married during any portion of the reporting year, please complete this section Dollar amount not required except for honoraria)

☐ NONE - (No reportable non-investment income)

	DATE	SOURCE AND TYPE
1	2004	Highmark Blue Cross Blue Shield, salary
2	2005	Highmark Blue Cross Blue Shield, salary
3	2006	Highmark Blue Cross Blue Shield, salary
4	2004	University of Pittsburgh Physicians, part time salary
5	2005	University of Pittsburgh Physicians, part time salary
6	2006	University of Pittsburgh Physicians, part time salary

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment

(Includes those to spouse and dependent children See pp 25-27 of instructions)

☐ NONE - (No such reportable reimbursements)

	SOURCE	DESCRIPTION
1		EXEMPT

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Fischer, Nora B	7/26/2006

V. GIFTS. (Includes those to spouse and dependent children See pp 28-31 of instructions)

☐ NONE - (No such reportable gifts)

	SOURCE	DESCRIPTION	VALUE
1		EXEMPT	

VI. LIABILITIES. (Includes those of spouse and dependent children See pp 32-34 of instructions)

☑ NONE - (No reportable liabilities)

	CREDITOR	DESCRIPTION	VALUE CODE
1			

FINANCIAL DISCLOSURE REPORT
Page 1 of 1

Name of Person Reporting	Date of Report
Fischer, Nora B	7/26/2006

VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets). Place (X) after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div., rent or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
1 Mellon Bank savings and checking accounts	A	Interest	K	T	exempt				
2 PNC Bank checking account	A	Interest	J	T					
3 American Funds qualified investment plan (PB&G)	E	Dividend	P1	T					
4 Mellon Bank IRA	A	Interest	J	T					
5 Pietragallo, Bosick and Gordon capital investment		None	L	T					
6 TIAA-CREF qualified investment account (spouse)	E	Dividend	O	T					
7 NHS IRA (spouse)	E	Dividend	N	T					
8 UPMC Health System retirement plan (spouse)	A	Dividend	J	T					
9 Highmark qualified investment plan (spouse)	D	Dividend	M	T					
10 Highmark deferred compensation plan (spouse)	C	Dividend	L	T					
11 NFS Joint Investment Account	E	Dividend	N	T					
12 Mass Mutual Life Insurance Policy cash value (NBF)	A	Interest	K	T					
13 Mass Mutual Life Insurance Policy cash value (spouse)	A	Interest	J	T					

1 Income/Gain Codes: (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000		
	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000			
2 Value Codes: (See Columns C1 and D3)	J = $15,000 or less	K = $15,001-$50,000	L = $50,001-$100,000	M = $100,001-$250,000			
	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000			
	P3 = $25,000,001-$50,000,000		P4 = $More than $50,000,000				
3 Value Method Codes (See Column C2)	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market			
	U = Book Value	V = Other	W = Estimated				

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Fischer, Nora B	7/26/2006

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Fischer, Nora B	7/26/2006

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature N. Barry Fischer Date August 9, 2006

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT
NET WORTH SCHEDULES

Securities			
I. Pietragallo, Bosick and Gordon qualified accounts			
American Funds Growth Fund		$408,183.15	
American Funds Washington Mutual		$441,931.95	
Amer Funds Smallcap World Fund		$242,442.81	
Amer Funds Fundamental Investors		$104,130.96	
American Balanced Fund		$ 32,274.85	
PB&G funds total			$1,228,963.72
II. IRA's			
Mellon Bank CD		$ 5,016.00	
NBF Mellon CD		$ 4,182.00	
NBF Allegheny Investments			
American AMCAP Fund (AMPFX)	$ 7,355		
American Europacific Growth (AEGFX)	$15,004		
Dodge & Cox Stock (DODGX)	$ 8,956		
Federated Kaufman Small Cap Fund CL A	$14,621		
Eaton Vance Adviser's Senior (EAFRX)	$10,974		
FPA New Income (FPNIX)	$ 1,043		
T Rowe Price International Bond (RPIBX)	$ 2,023		
Prime Fund Cap Reserves (FPRXX)	$933		
TOTAL Allegheny NFS IRA:		$60,909.16	
TOTAL NBF IRAs			$ 70,107.16
III. PB&G partnership interest			$ 60,000
IV. (DRF) Securities			
A. University of Pittsburgh qualified accounts			
TIAA B188005-9	$260,401		
CREF Q188005-6; cref stock	$487,479		
CREF Q188005-6; global	$2,093		
SRA TIAA K215836-4	$14,474		
SRA CREF stock J215836-6	$31,139		
SRA CREF global J215836-6	$1,479		
TIAA 2860970-9	$16,041		
CREF 1860970-1; cref stock	$31,130		
CREF 1860970-1; global	$19,574		
TIAA 2865312-9	$10,697		
CREF 1865312-9; cref stock	$20,757		
CREF 1865312-9;global	$13,051		
CREF 4114099-7;global	$1,090		
CREF 4159335-1;	$ 254		
TIAA-CREF total:			$909,656.91

B. NHS LLC IRA		
Federated US Govt Sec (FIGTX)	$24,258	
PIMCO Low Duration (PTLAX)	$25,361	
Federated FD US Govt Sec (FUSGX)	$12,395	
PIMCO total Return (PTTAX)	$13,144	
PIMCO Foreign Bond (PFOAX)	$ 5,634	
Capital World Bond (WBFFX)	$ 6,860	
Davis New York Venture (NYVTX)	$37,627	
Enterprise Growth (ENGRX)	$34,942	
Artisan Internat'l (ARTIX)	$40,882	
SIT Small Cap Growth (SSMGX)	$27,199	
Templeton Foreign (TEMFX)	$39,239	
MFS International New Disc CL A	$39,324	
First Eagle Sogen Global (SGENX)	$41,998	
Royce Microcap Investment Class	$47,539	
Davis Real Estate (RPFRX)	$17,954	
Wells Family Real Estate (WSPAX)	$16,367	
Prime Fund (FPRXX)	$1,117	
NHS total:		$431,839.23
C. UPMCHS retirement program		
Savings Plan (Artisan Mid Cap)	$5,839	
Cash Balance Plan	$4,629	
UPMCHS total:		$10,468.03
D. Highmark Investment Plan		
AET Small Cap Equity Index	$27,058	
Large Cap Equity Fund (Y)	$31,056	
UBS Intl Equity Fund	$33,479	
PIMCO Total Return Fund (Admin)	$24,184	
Highmark Inv Plan		$115,776.81
E. Highmark Deferred Comp Plan		
Federated Quality Bond II	$12,476.45	
Oppenheimer Global Securities	$13,002.46	
GVIT Mid Cap Index	$17,147.90	
Salomon High Yield	$8,511.48	
T Rowe Price Equity Income II	$21,444.13	
Templeton VIPT Foreign Securities	$13,280.33	
Highmark Def Comp		$85,862.75

V. NBF and DRF Jointly Held Securities

NHS funds

Federated Kaufmann (KAUFX)	$23,345
Harbor Capital Appreciation (HACAX)	$21,464
Royce Pennsyl Mutual Invst (PENNX)	$22,862

T Rowe Price Intl Disc (PRIDX)	$16,039	
T Rowe Price Real Est Fund (TRREX)	$13,950	
Thornburg Inv Income Builder (TIBAX)	$33,729	
Thornburg Inter Muni Class A (THIMX)	$14,898	
Thornburg Ltd Term US Govt (LTUSX)	$14,624	
Thornburg Value Class A (TVAFX)	$24,201	
Tweedy Browne Global Value (TBGVX)	$15,628	
William Blair Int'l Growth Class (WBIGX)	$15,637	
Dodge & Cox Income (DODIX)	$4,180	
PIMCO Foreign Inst SHS (PFORX)	$8,172	
Thornburg Ltd Term Income (THIFX)	$10,944	
Prime Fund Capital Reserves (FPRXX)	$20,312	
Dodge & Cox Intl Stock Fund (DODFX)	$16,426	
total NFS accounts:		$ 276,411.96

Total Securities (qualified and unqualified) $3,189,086.56

Real Estate Owned		
Personal residence	est. market value	$950,000.00
Vacation home	est. market value	$150,000.00
Timeshare	purchase price	$ 15,700.00
Total Real Estate		$ 1,115,700.00

Real Estate Mortgages	
Personal residence	$286,000.00
Home equity loan	$135,300.00
Vacation home	$ 25,100.00
Total Mortgage liability	$ 446,400.00

Assets pledged (current balance owed over multiple year campaigns)

St. Mary's College development campaign	$15,000.00
Sacred Heart Parish	$ 1,000.00
American Bar Assn Foundation	$ 3,500.00
DePaul School for Hearing and Speech	$ 2,500.00
Total Assets pledged	$ 22,000.00

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in the serving of the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

As an associate at Meyer, Darragh, Buckler, Bebenek & Eck, I served on the then Indigent Divorce Panel. As such, I reviewed cases and then heard testimony, making recommendations concerning the granting of divorces. In most instances, abandonment had occurred. Over a three-year period, I estimate I served as a Master in at least two-dozen of these cases. Later in my legal career at Meyer Darragh and in my career at Pietragallo Bosick & Gordon, I have routinely accepted *pro bono* assignments to mediate, arbitrate and/or establish a settlement value for cases pending in both the District Court for the Western District of Pennsylvania situated in Pittsburgh, Pennsylvania and through the West Virginia Bar Association. On average, I have accepted 2-3 such assignments per year. Depending upon the nature and extent of the case, mediation could run from a couple of hours to as many as two days, as occurred in a property dispute I mediated in Marshall County, West Virginia.

Concurrently, as a partner at Pietragallo, Bosick & Gordon, under the leadership of Christine Miller and then Lenora Randall, I served as a telephone contact person for the Legal Resources for Women, based at the YWCA. As such, I volunteered as much as once per week, over the lunch hour or late in the day to answer inquiries, primarily concerning family law issues. If the issue presented was beyond my limited experience in family law, I then made referrals to appropriate family lawyers. In addition, on occasion, I made referrals to plaintiff personal injury lawyers and/or employment counsel, as the case may be.

Most recently, I continue to accept *pro bono* mediation and arbitration as well as adjunct settlement evaluation appointments. Further, over the past several years, I have been active with the Allegheny County Bar Foundation, first as a member of the Board of Governors and then as a Fellow and member of the Fellows Committee. The Foundation exists in large measure to provide legal services to the underserved. Grants are made to various organizations that provide such services and/or counseling. Presently, I am working on the Fellows Campaign to attract more Fellows to help underwrite these expenses. Over the past several years, I would estimate that I have personally recruited more than two dozen Fellows to this program.

In addition to the above, I have handled on a *pro bono* basis legal issues of various of our employees. For example, in 2005, I worked with one of our employees to right a number of problems she encountered in the building of a brand new home. Most recently, I have counseled an employee concerning the formation of a small business. I have also reviewed insurance matters for a number of employees.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct state that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates – through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?**

I do not and never have held membership in any such organization.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

Yes. Twice, I have appeared before the local Selection Commission. The first occasion of my appearance was approximately three years ago. At that time, I was rated relatively highly as I was invited to the White House to interview for a then current vacancy within the Federal District Court, sitting in Johnstown, Pennsylvania. More recently, I returned to be interviewed and provided an update concerning my application. Again, I was recommended by the local Commission and then appeared at the White House for a follow up interview. After interviews with staff from the White House Counsel and Justice Department, completing nomination paperwork, and undergoing a background investigation, I was notified I would be nominated by the President. My nomination was submitted to the Senate on July 13, 2006.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

No

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped-many of the prerogatives of other branches and levels of government.

Some of the characteristics of this Ajudicial activism have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to brad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

My orientation to the law begins with a review of the facts and existing law. A judge is supposed to apply law to the facts at hand. On occasion, a judge may have to go beyond existing law to reach an opinion. If that should be the case, then and in that event, the judge is required to look at the legislative history of the statute or regulation at issue. If a judge is required to go beyond the existing case law, the judge must review that existing case law and if there is not precedent for the issue at hand, then look to parallel state or federal precedent. It is not the role of the judiciary to legislate. It is the judiciary's role to provide a fair and impartial tribunal, to apply the law equally and to reach just results, in an expeditious manner.

AFFIDAVIT

I, Nora Barry Fischer, do swear that the information provided I this statement is, to the best of my knowledge, true and accurate.

July 24, 2006
(DATE)

Nora Barry Fischer
Nora Barry Fischer

Billie Jo Belkin
(NOTARY)

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Billie Jo Belkin, Notary Public
City Of Pittsburgh, Allegheny County
My Commission Expires Apr. 23, 2010
Member, Pennsylvania Association of Notaries

Thank you.

Senator COBURN. Thank you.

Judge Frizzell?

STATEMENT OF GREGORY FRIZZELL, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OKLAHOMA

Judge FRIZZELL. Thank you, Mr. Chairman.

Like Ms. Fischer, I have no prepared statement, but would first like to thank the President for the honor of his nomination. I would also thank you for your kind words, and thank Senator Inhofe for his kind words.

I want to thank the Committee for having scheduled this hearing today, and if I might, introduce my family who is here today.

Senator COBURN. Absolutely. Please do.

Judge FRIZZELL. First of all my wife of 15-plus years, Kelly Nash Frizzell, my mother, Shirley Frizzell, my father, Kent Frizzell, and my sister, Angela Frizzell.

Senator COBURN. Great. And where are the six kids?

Judge FRIZZELL. With notice on Friday afternoon, we could not load them all up on the bus and get them here in time.

Senator COBURN. Right.

Any other comments?

Judge FRIZZELL. No, sir. Thank you.

[The biographical information of Gregory Frizzell follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used).**

Gregory Kent Frizzell

2. **Address: List current place of residence and office address(es).**

Residence: Tulsa, Oklahoma

Office Address:

Tulsa County Courthouse
500 S. Denver Avenue, Room 706
Tulsa, Oklahoma 74103-3832

3. **Date and place of birth.**

December 13, 1956; Wichita, Kansas

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

Kelly Susan (Nash) Frizzell. Works in the home as wife and mother of our six children.

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

The University of Michigan Law School, August 1981 to May, 1984; Juris Doctor, May 11, 1984

The University of Tulsa, August 1977 to May 1981; Bachelor of Arts, May 10, 1981

The University of Virginia, August 1974 to May 1975, no degree

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations,**

nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

The State of Oklahoma/District Courts, District Judge, 1997-Present

Oklahoma Tax Commission, General Counsel, 1995-1997

Gregory K. Frizzell, Attorney at Law, 1994-1995

Jones, Givens, Gotcher & Bogan, P.C., 1986-1994

U.S. District Court for the Northern District of Oklahoma, Judicial Clerk, 1984-1986

Andrews Kurth LLP, Summer Associate, 1983

Holland & Hart LLP, Summer Associate, 1983

Hall, Estill, Hardwick, Gable, Collingsworth & Nelson, Summer Associate, 1982

Cam-Coors, Truck Loader, Summer 1981

Rotary Club of Tulsa, Director-at-Large, 2006-2007

Tulsa Speech & Hearing Association, President, 1994-95, Board of Directors, 1986-1995

7. **Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

No

8. **Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

Robert D. Simms Award for Judicial Leadership, awarded by Hudson-Hall-Wheaton Chapter of American Inns of Court, 2002

AmJur Award in Legal Research and Writing

Phi Alpha Theta History Honor Society

Omicron Delta Kappa Honor Society

Oklahoma Rhodes Scholar Finalist, 1980

Eagle Scout, 1973

9. **Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.**

Oklahoma Assembly of Presiding Judges

Oklahoma Judicial Conference

Oklahoma Bar Association
- Vice Chairman, Professionalism Committee, 2006
- House of Delegates, 2001-2002
- State Law Day Committee
- Client Security Fund Committee

Tulsa County Bar Association
- Board of Directors, 2006
- Chairman, Law School/Mentoring Committee, 2001-2002
- Court Operations Committee
- Law Day Committee

Trustee, Tulsa County Law Library, 1999-2006

American Inns of Court, Hudson-Hall-Wheaton Chapter
- President, 2000-2001
- Master of the Bench, 1997-2002

Oklahoma Task Force on Judicial Selection, 1999-2000

10. **Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**

I belong to no organizations active in lobbying before public bodies.

Organizations to which I belong, not previously listed in this questionnaire include the following:

The Rotary Club of Tulsa
Federalist Society
Grace Church, Advisory Board Member, 2005-2006
Meadowbrook Country Club

11. **Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.**

Oklahoma Supreme Court, May 3, 1985

Supreme Court of the United States, April 2, 1990

Tenth Circuit Court of Appeals, August 7, 1985

U.S. District Court for the N.D. of Okla., May 3, 1985

U.S. District Court for the E.D. of Okla., January 28, 1988

U.S. District Court for the W.D. of Okla., October 6, 1993

U.S. Tax Court, July 24, 1995

12. **Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.**

Discovery—A View from the State Bench, Oklahoma Bar Assn. CLE presentation, 1999

Professionalism, Civility, Discovery Disputes & Motion Practice, Oklahoma Bar Assn. CLE presentation, April 14, 2000, and presented to Tulsa Title & Probate Lawyers Association, March 6, 2003

Justice on the Frontier: The Historic Trial of George "Machine Gun" Kelly and Other Famous Oklahoma Cases, CLE presentation to Inns of Court group, Spring, 2003

Deposition Ethics--the Judicial Perspective, Oklahoma Bar Assn. CLE presentation, September 8, 2000

The Trial of Christ, a speech made to a men's group at my church, and a Lutheran men's group

Tips to Aide Yourself by Aiding the Court, CLE presentation to local Inns of Court group, March 21, 2001

A Former General Counsel Reflects on the Effective Preparation and Presentation of a Case to ALJs, a talk to the Oklahoma Tax Commission Audit Conference, 2001

Reflections on the Judiciary: Judicial Independence vs. Judicial Accountability, a speech to Phi Alpha Theta History Honor Society at the University of Tulsa, Spring, 2001

Jurors and Their Antics, a speech to the Will Rogers Rotary Club, 2002

The Good, the Bad & the Ugly in Trial Practice: Motion Practice and the Ethics of Motion Practice, Oklahoma Bar Association Young Lawyers Division CLE, April 4, 2003

The 2004 Oklahoma Civil Liability (Tort Reform) Provisions, a synopsis of statutory changes made by the Oklahoma legislature that session, Rotary Club of Tulsa, October, 2004

Motions in Motion: A Practical Guide to Getting What You Want, Tulsa County Bar Association Lunchtime CLE, May 12, 2004

Recent Issues and Developments at the Tulsa County Courthouse, a talk given to the Tulsa County Criminal Defense Lawyers Association, January, 2006.

13. Health: What is the present state of your health? List the date of your last physical examination.

I am in excellent health. My last physical examination was January 3, 2006

14. **Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

District Judge, appointed in 1997 and elected without opposition in 1998 and 2002. Term expires January 8, 2007. This is a court of general jurisdiction.

15. **Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.**

(1) Ten Significant Opinions

Major vs. Microsoft, 2002 WL 1585649, 2002-1 Trade Cases ¶ 73,701, also found at 60 P.3d 511 (Exhibit "A" thereto) and 2003-1 Trade Cases ¶ 73,933 (Exhibit "A" thereto), wherein the Oklahoma Civil Court of Appeals adopted the opinion.

Stanley Glanz, Sheriff of Tulsa County vs. Board of County Commissioners of Tulsa County, CJ-1997-6125 in the District Court of Tulsa County, Oklahoma, July 17, 1998, affirmed March 3, 2000, 995 P.2d 1124, 2000 OK 2.

Bank One, N.A. v. Billy R. Sanders, Case No. CJ-2001-220 in the District Court of Tulsa County, Oklahoma, December 18, 2002.

Peoples State Bank v. Droms, Case No. CJ-2003-1861 in the District Court of Tulsa County, Oklahoma, August 14, 2003.

Pezold, Richey, Caruso and Barker v. Cherokee Nation Industries, Inc., Case No. CJ-1999-427 in the District Court of Tulsa County, Oklahoma, August 11, 1999, affirmed at 46 P.3d 161.

Denver Corporation vs. City of Tulsa, CJ-1999-3864 in the District Court of Tulsa County, Oklahoma, affirmed October 15, 2002.

Westby vs. Burger, CJ-2000-794 in the District Court for Tulsa County, Oklahoma, January 18, 2002.

Nelson vs. Sanguine, Ltd., CJ-1996-1851, CJ-97-2220, and CJ-98-1923 in the District Court for Tulsa County, Oklahoma, April 25, 2001.

Bayway Refining Company vs. Helm Inspection Service, Inc. and Shelter Mutual Insurance Company, Case No. CJ-2003-279 in the District Court for Tulsa County, Oklahoma, June 24, 2004.

Thompson vs. Krantz, CJ-2002-2381 in the District Court for Tulsa County, Oklahoma, August 25, 2004, affirmed May 6, 2006.

(2) Reversals over nine years on the bench

Connie Covert dba The Glitz v. Southroads Associates, not officially reported, CJ-1995-2493, July 8, 1998, Okla. Civ. App. Issues of fact regarding commercial lease agreement precludes summary adjudication.

Columbus Lee Jones vs. Roger E. Janitz, not officially reported, affirmed in part, reversed in part, CJ-1995-1771, February 9, 1999, Okla. Civ. App. Deposition costs awarded in favor of prevailing party could not include those incurred in identical action between same parties dismissed without prejudice by plaintiff, even if depositions taken in prior action were used in subsequent action.

Sturgeon v. Retherford Publications, 987 P.2d 1218 (Okla. Civ. App. 1999), reversed with respect to claims of defamation, intentional infliction of emotional distress and gross negligence; affirmed with respect to claims of false light invasion of privacy, false or fraudulent misrepresentation, and negligent hiring and retention.

Sproles v. Gulfcor, Inc., 987 P.2d 454 (Okla. Civ. App. 1999). Trial court erred in denying plaintiff's motion to execute judgment against shareholders of defendant corporation on the ground that the shareholders' liability must be pursued in a separate suit.

Pezold, Richey, Caruso & Barker v. Cherokee Nation Industries, Inc., 18 P.3d 364 (Okla. Civ. App. 2001), sanctions order reversed.

Baytide Petroleum v. Whitmar Exploration, 18 P.3d 378 (Okla. Civ. App. 2000). Findings made as to claims in equity could not be used as basis for subsequent summary judgment on legal claims.

Crosby v. Tulsa Airports Improvement Trust and Tulsa Airport Authority, unreported, Okla. Civ. App., May 8, 2001. Summary judgment in favor of airport authority affirmed; issue of fact precludes summary judgment in favor of airports improvement trust.

Nelson vs. Nelson, affirmed in part and modified in part, Okla. Civ. App., October 14, 2003, Judgment reduced by a portion of verdict determined to be double recovery.

Horvat v. State of Oklahoma, 95 P.3d 190 (Okla. Civ. App. 2004), "Mailbox rule" applied to administrative appeals.

Bump v. Desiree Construction, affirmed in part and reversed in part, unreported, (Okla. Civ. App. 2004), damages reduced in part.

Pembrooke Park vs. Barnes, unreported (Okla. Civ. App. 2004), restrictive covenant construed to permit parking of motor home on residential lot.

Henry v. Sims, unreported (Okla. Civ. App. 2004), limitations period tolled until mandate issued in prior action.

Martin v. Chubb, affirmed in part and reversed in part, unreported (Okla. Civ. App. 2004), factual issue as to what "certificate of mailing" means in insurance policy.

Bourke v. Western Business Products, affirmed in part and reversed in part, unreported (Okla. Civ. App. 2005), inference of misrepresentation insufficient to support portion of jury verdict for fraud.

Meier v. Lefler, affirmed in part and reversed in part, unreported (Okla. Civ. App. 2005), portions of verdict and attorney fee award on claims for breach of fiduciary duty and tortuous interference overturned.

University of Tulsa v. Employment Security Comm'n, unreported (Okla. Civ. App. 2005), agency could have properly given disciplinary letters little weight in finding no misconduct.

(3) Significant Opinions on Constitutional Issues

International Ass'n of Firefighters vs. Town of Skiatook, affirmed in unreported opinion (Okla. Civ. App. 2005); Art. 10, § 26 of Okla. Constitution, which forces municipalities to operate on a cash basis, precludes a municipality from conducting an election pursuant to 11 O.S. § 51-108 (B) in the budget year subsequent to the year of the collective bargaining agreement.

Sunoco vs. Messer, unreported (Okla. Civ. App. 2002); injunction preventing defendant from interfering with plaintiff's business not an unconstitutional deprivation of property nor infringement of right of free speech.

16. **Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.**

General Counsel, Oklahoma Tax Commission, April 17, 1995 to May 8, 1997. Appointed by Governor Frank Keating and Tax Commissioners Don Kilpatrick, Robert Anderson and Robert Cullison.

17. **Legal Career:**

a. **Describe chronologically your law practice and experience after graduation from law school including:**

1. **whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;**

I served as a clerk to the Honorable Thomas R. Brett, U.S. District Court for the Northern District of Oklahoma, September 1984 to September 1986.

2. **whether you practiced alone, and if so, the addresses and dates;**

616 S. Main Street, Suite 302, Tulsa, Oklahoma, 74119; January, 1994 to April, 1995

3. **the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;**

1997-Present; State of Oklahoma/District Courts; 500 S. Denver Avenue; Tulsa, Oklahoma 74103; District Judge.

April, 1995 to May, 1997, Oklahoma Tax Commission Legal Division, 2501 N. Lincoln Blvd., Oklahoma City, Oklahoma 73194; General Counsel.

September, 1986 to January, 1994; Jones, Givens, Gotcher, Bogan and Hilborne, Suite 3800, 15 East 5th Street, Tulsa, Oklahoma, 74103, Associate Attorney.

b. 1. **What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?**

General Civil Litigation. I began in 1984 as a federal law clerk, which provided experience and exposure to civil trial work as well as criminal trials. When I began with a firm in 1986, the initial focus was almost exclusively on commercial litigation. In about 1989, I began to do increasingly more work as outside counsel to a large (20,000+) local community college. In about 1990, I began doing more defense work for corporate and individual insureds. In solo practice beginning in 1994, I tended to represent both individuals and smaller

business entities in civil controversies, but I also handled some criminal defense and the defense of an institution of higher education. Beginning in April, 1995, I focused on tax law issues in administrative proceedings and in state and federal courts. In May, 1997, I was assigned a civil docket, so I have necessarily focused on civil trial work. I have, however, handled a handful of criminal jury trials.

2. **Describe your typical former clients, and mention the areas, if any, in which you have specialized.**

Small, medium to large business entities (general civil litigation); individual insured motor vehicle owners insured doctors of osteopathy, and companies (insurance defense litigation); a large metropolitan community college (higher education law); individual plaintiffs (FELA/personal injury litigation); small business creditors (debtor/creditor law); and a state tax agency (tax litigation).

c. 1. **Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.**

I appeared in court occasionally at the beginning (1986 to 1990). In 1991, I began to appear in court with increasing frequency. That steadily increased until 1997 and from that point I am in court every day.

2. **What percentage of these appearances was in:**
   (a) federal courts: 40%
   (b) state courts of record: 60%
   (c) other courts.

3. **What percentage of your litigation was:**
   (a) civil: 97%
   (b) criminal: 3%

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

Twenty-five. Six as sole counsel, ten as chief counsel, nine as associate counsel

5. **What percentage of these trials was:**
(a) jury; 24%
(b) non-jury. 76%

18. **Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:**

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Tulsa County Public Facilities Authority v. Oklahoma Tax Commission, 955 P.2d 741 (Okla. Civ. App. 1997). *Held*: public facilities authority owed tax and penalty for unpaid tax on receipts from pari-mutuel wagers. I represented the tax agency in the dispute as General Counsel in 1996 and early 1997. In this dispute, I personally appeared in a parallel action brought by appellants in probate court in Tulsa County, oversaw and counseled the audit division on the assessment, directed the administrative proceeding, and counseled the briefing on appeal. Assistant General Counsel John A. Grissom, Jr., Suite 108, 2219 S.W. 74th St., Oklahoma City, OK 73159 (405) 680-9593 and Assistant General Counsel Sean R. McFarland, 2501 N. Lincoln Blvd., Okla. City, OK (405) 521-3141. Opposing counsel - Graydon D. Luthey, Jr., Hall, Estill Law Firm, 320 S. Boston Ave., Tulsa, OK 74103 (918) 594-0400.

2. O'Carroll v. Oklahoma Tax Commission, 952 P.2d 45 (Okla. 1998). *Held*: Oklahoma statutory law imposes a duty upon taxpayers to notify the Tax Commission, by amended tax return or by letter, of any adjustment or correction in federal income within one year of the federal adjustment or correction. I participated as supervising counsel in the case, and was personally involved in the legal positions taken. The matter was briefed to the Oklahoma Supreme Court in October, 1996. Deputy General Counsel was Robert B. Struble, 3829 Northridge Road, Norman, OK 73072 (405) 623-2107. Opposing counsel was Scott W. Bradshaw, 1717 E. 15th St., Tulsa, OK (918) 749-3338.

3. Daimler-Benz Aktiengesellschaft v. U.S. District Court for the Western District of Oklahoma, 805 F.2d 340 (10th Circuit, 1986); writ of mandamus issued to stay order compelling Daimler-Benz to produce discovery until the U.S. Supreme Court issued its decision in case dealing with same issue. The firm represented Daimler-Benz and I handled writ proceedings in October and November, 1986. The case was before Judge David L. Russell in the Western District of Oklahoma. Although the result was "significant" for me as a young lawyer, the success was short-lived, as the U.S. Supreme Court decided that the Hague Convention did not apply to foreign parties subject to the jurisdiction of a federal court. Lead counsel for Daimler-Benz was Alfred Kent Morlan, Suite 403, 406 S. Boulder, Tulsa, OK 74103 (918) 582-5544.

4. Crawford Enterprises Manufacturing, Inc. v. Ryder/P-I-E Nationwide, Inc. and Granite State Insurance Company (Garnishee), Case No. 84-C-395-B in the U.S. District Court for the Northern District of Oklahoma. Issues of alleged reliance by plaintiff on certificate of insurance issued by Granite State. Successfully represented Garnishee Granite State Insurance Company before Judge Thomas R. Brett in the Northern District of Oklahoma in late 1991 and through 1992. Affirmed on appeal to 10th Circuit Court of Appeals, # 92-5217. Opposing counsel: Robert B. Sartin, Barrow & Grimm, Suite 300, 610 S. Main St., Tulsa, OK 74119 (918) 584-1600.

5. In the Case of Linda K. Self for Reconsideration of Denial of Disability and Disability Insurance Benefits,

Hearing held February 5, 1995 before U.S. Administrative Law Judge Dana E. McDonald of the Social Security Administration Office of Hearings and Appeals. *Held*: Ms. Self met disability insured status due to severe impairment following the surgical removal of the frontal parietal area of her brain and removal of part of a brain tumor. The result for the client was very rewarding. Representation began 12/93 and ended 03/95.

6. Redbird v. Oklahoma Tax Commission, 947 P.2d 525 (Okla. 1997). *Held*: Oklahoma statute of limitations applicable to claims for refund of income taxes applies even where exemption from taxation is federally granted. I participated as supervising counsel in the case, and was personally involved in the legal position taken in the action. Deputy General Counsel (now Asst. Atty General) Kathryn Bass, Suite 260, 4545 N. Lincoln Blvd., Oklahoma City, OK 73105-3498 (405) 521-4274. Counsel for taxpayers - G. William Rice, 1601 Gordon Cooper Drive, Shawnee, OK 74801 (405) 878-4844.

7. Dobson Cellular Systems, Inc. v. State Board of Equalization, 957 P.2d 569 (Okla. Civ. App. 1998). *Held*: Court of Tax Review lacked jurisdiction to determine whether taxpayer was a public service corporation for purposes of ad valorem taxation. Case remanded to district court to make determination. Substantive issue addressed in Dobson v. State Board of Equalization, 27 P.3d 1029 (Okla. Civ. App. 2001). Held: company laying fiber optic cables under public highways was "public service corporation" subject to Board's ad valorem assessment. I was personally involved in the legal positions taken in the action. Assistant General Counsel (now Asst. Atty Gen.) David L. Kinney, Suite 260, 4545 N. Lincoln Blvd., Oklahoma City, OK 73105-3498 (405) 521-4274. Counsel for Dobson - Collier H. Pate, Suite 418, 211 N. Robinson Ave., Okla. City, OK 73101 (405) 235-4211.

8. El Paso Natural Gas Company v. Oklahoma Tax Commission, 929 P.2d 1002 (Okla. Civ. App. 1996). *Held*: Court of Appeals affirmed the Tax Commission's denial of El Paso's protest of assessment of gross production and petroleum excise taxes on $12 million paid in settlement of "take-or-pay" provisions of gas purchase contracts. As General Counsel I was personally involved on the take-or-pay taxation issues before the Commission at the time. Deputy General Counsel (now

Asst. Atty General) Kathryn Bass, Suite 260, 4545 N. Lincoln Blvd., Oklahoma City, OK 73105-3498 (405) 521-4274. Counsel for El Paso - Richard B. Kells, Suite 1600, 201 Robert S. Kerr Ave., Oklahoma City, OK 73102 (405) 235-7000.

9. Noram Energy Corp. v. Oklahoma Tax Commission, 935 P.2d 389 (Okla. Civ. App. 1995). Court of Appeals affirmed denial of taxpayer's protest of an assessment of $536,291.62 on a "take-or-pay" settlement payment to gas producer Ricks Exploration. Deputy General Counsel (now Asst. Atty General) Kathryn Bass, Suite 260, 4545 N. Lincoln Blvd., Oklahoma City, OK 73105-3498 (405) 521-4274. Counsel for Noram - Kenneth L. Hunt, Suite 400, 320 S. Boston Ave., Tulsa, OK 74103 (918) 594-0400.

10. U.S. v. Augustin Jaramillo, Case No. 4:94-cr-00027 in the United States District Court for the Northern District of Oklahoma, entry of appearance 03/25/94, closed 10/20/94. Represented defendant Jaramillo, an undocumented alien, against whom the government dismissed federal counts of possession with intent to distribute Cocaine and Marihuana on October 20, 1994, at which time state prosecutors filed a state claim of possession. Defendant pled nolo and state court sentenced client to 2 years with credit for time served and balance of time suspended. Federal Prosecutor David E. O'Meilia (now U.S. Attorney), 110 W. 7th Street, Suite 300, Tulsa, OK 74119-1013 (918) 382-2700. Counsel for co-defendant Paul D. Brunton, Suite 1225, One W. 3rd St., Tulsa, OK 74103-3532 (918) 581-7656.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

In private practice around 1990, I represented relators in a potentially significant Qui Tam case. The relators had information that certain oil and gas companies were not making the proper royalty payments to the United States government for oil and gas production on federal lands. Upon submission of the proposed claim to the Minerals

Management Service, the government declined to take on the action. My clients decided they did not have the financial resources to prosecute the action on their own.

I worked on behalf of a medium-sized national broadcasting network to enforce "must-carry" rules as against Tulsa Cable Television. My work as a young lawyer at the time was as an associate for the partner responsible for the client and was in the nature of researching, preparing documents, and meeting with the client with the partner. The firm was ultimately successful on behalf of the network.

As General Counsel to the Oklahoma Tax Commission, I provided counsel to the Commissioners on matters that arose at bi-weekly meetings over the two-year course of my tenure. This included issues related to motor fuel taxation following the U.S. Supreme Court's 1995 decision in Oklahoma Tax Commission v. Chickasaw Nation, wherein the Court held that Oklahoma could not apply its motor fuels tax to fuels sold by tribe in Indian country. As a result, the state moved the legal incidence of the tax upstream from the retailer to the rack.

In another interesting matter, I appeared on behalf of the Oklahoma Tax Commission before a retired Oklahoma Supreme Court Judge supervising the Oklahoma Multi-County Grand Jury. The issue presented involved a subpoena issued by the grand jury for confidential tax records held by the Commission. As another example, I was very involved in an administrative case involving an Oklahoma lawyer who earned a thirty million dollar contingency fee in a jury case tried in West Texas. The lawyer filed an amended return wherein he took the position that he had been a resident of Texas (which does not impose a state income tax) during the time he worked on the Texas action.

For nine years I participated and served in a local chapter of the American Inns of Court. The purpose of Inns of Court is to improve the skills, professionalism and ethics of the bench and bar through mentoring, discussion, and monthly programs. I served in various roles, including Master of a "pupillage group" for several years and as President of the Inns. Each pupillage group consists of law students and lawyers of various experience levels. The interaction in a pupilage group allows less experienced lawyers to learn side-by-side with the most experienced judges and attorneys in the community.

In bar-related activities, I currently serve on the Tulsa County Bar Association's Board of Directors and as Vice Chairman of the Oklahoma Bar Association's Professionalism Committee. It was particularly rewarding to serve as chairman of the Law School/Mentoring Committee in 2001-2002 in our continuing effort to provide law students with "real-world" experience in the practice of law.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

   None.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

   I will strictly comply with the Code of Conduct for United States Judges, applicable statutes, rules and procedures regarding any potential conflict of interest. I will ensure financial holdings are listed on a conflicts list and plan to designate a staff member to check each and every filing for any companies on the list to ensure no actual or potential conflict arises.

   In light of the fact that it has been nine (9) years since I represented the state tax commission and eleven (11) years since I represented any private client, I do not anticipate a conflict in that regard.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

   No.

4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and**

other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached Financial Disclosure Report

5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**

See attached Financial Net Worth Statement

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

Yes.
Citizens for Judge Frizzell, 2002, candidate.
Citizens for Judge Frizzell, 1998, candidate.
Frank Keating for Governor, 1994, volunteer
Paula Unruh for Congress, Special Election, 1994, Counsel
Bob Dole for President, 1992, Tulsa County Chairman
Burns Hargis for Governor, 1990, volunteer
Don Nichols for U.S. Senate, 1990, volunteer
Dewey Bartlett for Tulsa City Council, 1990, volunteer
John Bryant for State Rep., 1986 and 1988, volunteer
Kent Frizzell for Governor of Kansas, 1970, volunteer
Kent Frizzell for Attorney General, 1968, volunteer
Kent Frizzell for State Senate, 1964, volunteer

AO-10
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (Last name, First name, Middle initial)	2. Court or Organization	3. Date of Report
Frizzell, Gregory K	Northern District of Oklahoma	6/15/2006
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge Nominee	**5. Report Type** (check appropriate type) (●) Nomination, Date 6/7/2006 ( ) Initial ( ) Annual ( ) Final	**6. Reporting Period** 1/1/2005 to 5/31/2006
7. Chambers or Office Address Room 706 500 South Denver Avenue Tulsa, Oklahoma 74103	**8.** On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer_____ Date_____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions)

[ ] NONE - (No reportable positions.)

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	District Judge	State of Oklahoma

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions)

☑ NONE - (No reportable agreements.)

	DATE	PARTIES AND TERMS
1.		

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Frizzell, Gregory K	6/15/2006

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions)

A. Filer's Non-Investment Income

[ ] NONE - (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1.	2004	State of Oklahoma	88,355.00
2.	2005	State of Oklahoma	89,885.70
3.	2006	State of Oklahoma	38,723.30

B. Spouse's Non-Investment Income - (If you were married during any portion of the reporting year, please complete this section. Dollar amount not required except for honoraria.)

[X] NONE - (No reportable non-investment income.)

	DATE	SOURCE AND TYPE
1.		

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

[ ] NONE - (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1.		EXEMPT

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
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V. GIFTS. (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

[ ] NONE - (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1.		EXEMPT	

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

[X] NONE - (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
1.			

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Name of Person Reporting	Date of Report
Prizzell, Gregory K	6/15/2006

VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-37 of filing instructions.)

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	D. If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
1. JP Morgan Chase Bank Accounts	A	Interest	K	T	EXEMPT				
2. Covenant Federal Credit Union	A	Interest	J	T					
3. Custodial S&P Index Unit Trust for Benjamin Prizzell (SPY)	A	Dividend	J	T					
4. Custodial S&P Index Unit Trust for Hannah Prizzell (SPY)	A	Dividend	J	T					
5. Custodial S&P Index Unit Trust for Robert Prizzell (SPY)	A	Dividend	J	T					
6. Custodial S&P Index Unit Trust for David Prizzell (SPY)	A	Dividend	J	T					
7. Custodial S&P Index Unit Trust for Elizabeth Prizzell (SPY)	A	Dividend	J	T					
8. Custodial S&P Index Unit Trust for Jubilee Prizzell (SPY)	A	Dividend	J	T					
9. UBS Brokerage Account (Kelly Prizzell)									
10. -Occidental Petroleum Common Stock	A	Dividend	J	T					
11. -Verizon Common Stock	A	Dividend	J	T					
12. -UBS Bank USA Deposit Account	A	Interest	J	T					
13. Smith Barney Brokerage Account (Kelly Prizzell)									
14. -AMGN Common Stock	A	Dividend	J	T					
15. -BNI Common Stock	A	Dividend	J	T					
16. -CSCO Common Stock	A	Dividend	J	T					
17. -INTC Common Stock	A	Dividend	J	T					
18. -SGU Common Stock	A	Dividend	J	T					

1. Income/Gain Codes: (See Columns B1 and D4) A – $1,000 or less; B – $1,001-$2,500; C – $2,501-$5,000; D – $5,001-$15,000; E – $15,001-$50,000; F – $50,001-$100,000; G – $100,001-$1,000,000; H1 – $1,000,001-$5,000,000; H2 – More than $5,000,000
2. Value Codes: (See Columns C1 and D3) J – $15,000 or less; K – $15,001-$50,000; L – $50,001-$100,000; M – $100,001-$250,000; N – $250,000-$500,000; O – $500,001-$1,000,000; P1 – $1,000,001-$5,000,000; P2 – $5,000,001-$25,000,000; P3 – $25,000,001-$50,000,000; P4 – $More than $50,000,000
3. Value Method Codes (See Column C2): Q – Appraisal; R – Cost (Real Estate Only); S – Assessment; T – Cash/Market; U – Book Value; V – Other; W – Estimated

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
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VII. INVESTMENTS and TRUSTS – Income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div, rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	D. If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
19. -WGI. Common Stock	A	Dividend	J	T					
20. -QQQQ Closed end fund (index unit trust)	A	Dividend	J	T					
21. -SPY Closed end fund (index unit trust)	A	Dividend	J	T					
22. Merrill Lynch SIP Account									
23. -US Treasury Strips	A	Interest	J	T					
24. -C Common Stock	A	Dividend	J	T					
25. -DCIL Common Stock	A	Dividend	J	T					
26. -INTC Common Stock	A	Dividend	J	T					
27. -PFE Common Stock	A	Dividend	J	T					
28. -PPH Common Stock	A	Dividend	J	T					
29. -STA Common Stock	A	Dividend	J	T					
30. -APGCX Mutual Fund	A	Dividend	J	T					
31. -MTWAX Mutual Fund	A	Dividend	J	T					
32. -ML Bank USA Money Account	A	Interest	K	T					
33. -ML Retirement Reserves Account	A	Interest	J	T					
34. SpectrSave Retirement Savings Account									
35. -ARPGX Mutual Fund	A	Dividend	J	T					
36. -ACRNX Mutual Fund	A	Dividend	J	T					

1. Income/Gain Codes (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000
	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J = $15,000 or less	K = $15,001-$50,000	L = $50,001-$100,000	M = $100,001-$250,000	
	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000	
	P3 = $25,000,001-$50,000,000		P4 = $More than $50,000,000		
3. Value Method Codes (See Column C2)	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market	
	U = Book Value	V = Other	W = Estimated		

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Name of Person Reporting	Date of Report
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VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust asset(s) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A -H)	B. (2) Type (e.g. div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
37. -JSCVX Mutual Fund	A	Dividend	J	T					
38. -TWVAX Mutual Fund	A	Dividend	J	T					
39. -DNLDX Mutual Fund	A	Dividend	J	T					
40. -BGRX Mutual Fund	A	Dividend	J	T					
41. -WFSPX Mutual Fund	A	Dividend	J	T					
42. -TRBCX Mutual Fund	A	Dividend	J	T					
43. -RPBAX Mutual Fund	A	Dividend	J	T					
44. -RPSIX Mutual Fund	A	Dividend	J	T					

1. Income/Gain Codes:	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000	
(See Columns B1 and D4)	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000		
2. Value Codes:	J = $15,000 or less	K = $15,001-$50,000	L = $50,001-$100,000	M = $100,001-$250,000		
(See Columns C1 and D3)	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000		
	P3 = $25,000,001-$50,000,000		P4 = $More than $50,000,000			
3. Value Method Codes	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market		
(See Column C2)	U = Book Value	V = Other	W = Estimated			

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
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VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
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IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature Gregory K. Frizzell Date 6/15/2006

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		33	466	Notes payable to banks-secured			
U.S. Government securities-add schedule		4	367	Notes payable to banks-unsecured			
Listed securities-add schedule		183	222	Notes payable to relatives			
Unlisted securities--add schedule		44	901	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned-add schedule		275	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		15	000				
Cash value-life insurance		16	536				
Other assets itemize:							
				Total liabilities			0
				Net Worth		572	492
Total Assets		572	492	Total liabilities and net worth		572	492
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT - NET WORTH SCHEDULES

US Government Securities	
ZC LGC	$ 4,367
Listed Securities	
OXY	13,129
VZ	17,222
AEPGX	1,304
ACRNX	996
JSCVX	1,495
TWVAX	288
DNLDX	1,464
BIGRX	2,197
WFSPX	578
TRBCX	2,059
RPBAX	566
RPSIX	364
AMGN	6,759
BNI	11,612
CSCO	3,936
INTC	10,832
SGU	660
WGL	2,592
QQQQ	7,764
SPY	67,837
C	16,989
DCEL	193
PFE	165
PPH	6,984
STA	833
APGCX	3,143
MTWAX	1,261
Total Listed Securities	183,222
Unlisted Securities	
UBS Bank USA Dep. Acct.	17,987
ML Bank USA RASP	19,363
ML Retirement Reserves	7,136
WTS Imperial CR Inds. Inc.	415
Total Unlisted Securities	$ 44,901
Real Estate Owned	
Personal residence	$ 275,000

III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

From 1986 to 1995, I volunteered with the Tulsa Speech & Hearing Association. I negotiated and resolved a funding dispute over competing claims to United Way funds by two agencies providing services to the deaf and hearing impaired. I drafted corporate documents creating a subsidiary non-profit with a separate board of directors. After the dispute settled, I continued to provide ongoing legal advice to the parent board. I estimate the time devoted to the effort averaged 5 hours per month. When I became President of the board in 1994, I averaged approximately 15 hours per month.

From about 1988 to 1990, I drafted wills on a pro bono basis for poor elderly Tulsans. I estimate I spent approximately 3 hours per month when a referral was made.

Since 1997, I have been a member of the downtown Rotary Club and have participated on the Immunization Committee, which organizes, sponsors and subsidizes immunization clinics in order to raise the level of immunizations among poor children in Northeastern Oklahoma. I am currently an at-large member of the board, which oversees club functions, including numerous committees serving the disadvantaged.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?**

No. During college, from 1974-75 and 1977-81, I was a member of a fraternity (Kappa Sigma) which did not admit women.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

No. It is my understanding that the two U.S. Senators each chose a group of three individuals to vet the potential candidates. The Senators subsequently conducted personal interviews in May 2005. In November 2005, I interviewed with two representatives from the Office of White House Counsel and one representative from the Department of Justice. I was later interviewed by an agent of the Federal Bureau of Investigation. After my background investigation was completed and reviewed, my nomination was forwarded to the United States Senate on June 7, 2006.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue,or question? If so, please explain fully.**

No.

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The Constitution of the United States established three branches of government with separate and distinct powers. The Federal judiciary is vested by the Constitution with "the judicial Power of the United States." Such power extends only to that limited jurisdiction specifically set forth in Article III, Section 2.

A judge's role is to address cases-in-controversy and not to impose policy preferences and personal values, or attempt to solve broad social problems. By adhering to requirements of standing and ripeness, judges can ensure their decisions are grounded in real, fact-intensive cases and help them steer clear of policymaking.

Federal judges must guard against "judicial activism" in the sense of imposing their own policy preferences and personal values through their decisions. The Federal judiciary can properly limit itself by showing restraint, yielding to the informed judgment of legislatures, and adhering to the doctrine of *stare decisis*.

AFFIDAVIT

I, Gregory Kent Frizzell, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

June 16, 2006
(DATE)

Gregory Kent Frizzell
(NAME)

(NOTARY)

2/6/07

03000425

Senator COBURN. Thank you.
Judge O'Neill?

STATEMENT OF LAWRENCE J. O'NEILL, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF CALIFORNIA

Judge O'NEILL. Good afternoon. I would first like to thank, also, the President for the nomination. I would like to thank you for your words and for convening this Committee meeting so that we could move forward. I would like to—and I will hold off just a second if you would like.

[The biographical information of Lawrence J. O'Neill follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used.)**

Lawrence Joseph O'Neill

2. **Address: List current place of residence and office address(es).**

Residence: Fresno, California

Office: (chambers): 2500 Tulare Street
Fresno, CA 93721

3. **Date and place of birth.**

September 05, 1952

Oakland, California

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

Married.
Kathleen Matzen O'Neill
Retired Dental Hygienist

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

University of California, Hastings College of Law
Attended: August 1976-May 1979
Degree: J.D. May 1979

Golden Gate University, San Francisco
Attended: September 1974 to June 1976
Degree: Masters, Public Administration in June 1976

University of California, Berkeley
Attended: September 1970 to June 1973
Degree: Bachelor of Arts in Criminology in June 1973

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

January 1999 to the present
U.S. District Court, Eastern District of California; United States Magistrate Judge

February 1990 to January 1999
Fresno County Superior Court; California Superior Court Judge

December 1986 to June 1992
San Joaquin College of Law; Adjunct Professor

September 1979 to February 1990
McCormick, Barstow, Sheppard, Wayte and Carruth Law Firm; Associate, 1979-83; Partner, 1984-90

January 1979 to May 1979
First District Court of Appeal; Research Attorney for Appellate Justice Robert F. Kane

June 1977 to December 1978
Alameda County District Attorney's Office; Law Clerk

September 1973 to December 1978
City of San Leandro, California; Police Officer

June 1973 to September 1973
Alameda County District Attorney's Office; Aid in Inspector's Division

7. **Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

I have had no military service.

8. **Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

Recipient of the "20 Years of Service" award for service to the Fresno County Mock Trial competition program.

Recipient of the first annual "Youth Character Award" presented by the Clovis Unified School District for teaching legal issues in the areas of character and the law.

Recipient of the annual Judicial Award presented by the Rape Counseling Service of Fresno County.

Recipient of the Judy Andreen-Nilson Award for outstanding work in the area of child abuse prevention, while serving as the Presiding Judge of the Juvenile Courts of Fresno County.

Award for Achievement in the area of Juvenile Justice presented by the Fresno County Juvenile Justice Commission

Professor of the Year award, San Joaquin College of the Law, while a professor in Civil Trial Advocacy.

Annual Mentor's Award presented by the County Bar Association's Young Lawyers.

9. **Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.**

Federal Bar Association, Judicial Member, Executive Board, 1999-present

Federal Magistrate Judges Association member, 1999-present

Fresno County Bar Association
Attorney member: 1979 to 1990
Judicial member: 1990 to present

Ninth Circuit Magistrate Judge Executive Committee, Board Member 2003-2006

Association of Business Trial Lawyers, Board Member 1996-2006.

10. **Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**

None

11. **Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.**

California State Bar Member
Attorney Member, 1979-1990
Inactive Judicial Member 1990- present

United States District Court for the Eastern District of California
Attorney member: 1979-1990

12. **Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.**

"Alcohol and Sand Don't Mix." Presented to the Clovis Unified School District for publication in their District newspaper;

"Counsel and the Courthouse: A Judicial Chat" published in the California Trial Lawyers FORUM magazine

"Civil Jury Trials: A Judge's Cookbook." written for and donated to the California Judicial Education and Research Institute to help newly appointed Superior Court Judges who had little or no experience trying civil cases

Speech delivered in May 2002 on the occasion of the annual Peace Officers Memorial.

Other speeches delivered have been in the form of educational presentations about the structure and workings of the court system. They have been delivered from brief notes (no speech written). There has been nothing controversial or sociological about them, nor have they involved judicial philosophy type comments.

13. **Health: What is the present state of your health? List the date of your last physical examination.**

I am in excellent health. My last physical examination was June 5, 2006.

14. **Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

Since January 1999 I have served as a United States Magistrate Judge in the United States District Court for the Eastern District of California.

From February 1990 to January 1999 I served as a Fresno County Superior Court Judge. I was appointed by then Governor George Deukmejian. It is a court of general jurisdiction, handling all civil matters over $25,000, all felonies, all family law, all probate matters, and all juvenile court matters.

15. Citations: **If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.**

(1) Significant Opinions:

Calaway v Interstate Bakeries CV-F-01-6533 LJO
This case involved allegations of racial discrimination in the workplace. The opinion of the Court dealt with matters under Rule 56 of the Federal Rules of Civil Procedure (Summary Adjudication)

Morales-Opett v County of Fresno CV-F-02-6626/7 LJO
This claim dealt with allegations of civil rights violations under 42 USC 1983. The underlying case involved the execution of a search warrant by the District Attorney's office of the County, as well as undue force during the alleged illegal execution. The opinion of the Court centered on summary adjudication issues pursuant to FRCP 56.

Cerda v United Brotherhood of Carpenters CV-05-00616 LJO
The underlying action centered on a personal injury that resulted from union picketing. Subissues included agency matters. The legal matter before the court was one of the propriety of the removal of the case from state court. (28 USCA 1446)

Abdulla v Sally Beauty Company CV-F-98-6552 LJO
This was an employment dispute matter, centering around age discrimination, breach of a labor contract, and Intentional Infliction of Emotional Distress matters. The issue before the Court was summary adjudication under FRCP 56.

Flying J, Inc. V Central California Kenworth CV-F-95-5030 LJO
This case involved allegations of copyright infringement dealing with architectural plans of nationwide truck stops. The motion before the Court was for summary adjudication of issues pursuant to FRCP Rule 56.

Tokyu Trading Corp v USA AGRO, Inc. CV-F-00-5557 LJO
This was a diversity case involving a breach of contract claim. The issue before the Court was a choice-of-law provision in the contract.

Condit v National Enquirer, Inc. CV-F-02-5198 OWW/LJO
This case was one for libel and slander arising from the Congressman Gary Condit matters surrounding the death of an Extern in Washington, D.C. The case was brought by the Congressman's wife. The specific issue involved was the Journalist Privilege under Branzburg v Hayes.

Arkin v Spencer Batcheler CV-F-03-5903 LJO

This was a 1st Amendment case brought against a County Counsel surrounding a dependency juvenile case under Welfare and Institutions Code, section 300 et.seq, and specifically pursuant to 42 USC 1983 (civil rights violations). The matter before the Court was a summary adjudication one (FRCP Rule 56)

Nationwide Mutual v Liberatore CV-F-02-5741 LJO

This was an insurance coverage matter involving legal issues in the areas of employment and personal injury. It involved the issue of whether a member of the United States Navy was in the course and scope of employment at the time of an accident. The Court's involvement dealt with a motion to dismiss (Rule 12b, FRCP) and summary adjudication (Rule 56, FRCP).

Adams v Speers CV-F-02-5741 LJO

This was a wrongful death matter involving the California Highway Patrol, with civil rights allegation brought under 42 USC 1983. The motion for the court was for summary adjudication under Rule 56, FRCP.

(2) Reversals:

Cunningham v Bloxom, 9th Circuit #01-16610, decided 11-04-03

Pro Se inmate brought a civil rights claim against a prison employee to trial. The Circuit Court upheld the Trial Court on the issue of refusal to provide counsel in a civil case. The Circuit Court reversed the Trial Court on its failure to tell the Jury, during Voir Dire, which side had prepared the "Neutral Statement of the Case."

Elliott v Wackenhut Corrections Corporation

9th Circuit, #02-15049, decided 02-20-2003

The plaintiff filed suit against his employer, claiming that he was terminated for writing letters to government officials complaining about mismanagement at the Corrections facility. The Trial Court granted summary judgment, and was reversed, holding that the letters sent by the plaintiff included matters NOT included in the statute permitting him to file suit, but also included information that a jury "could conclude" were included in the statute.

Carlton v Hernandez, 9th Circuit. (Two cases decided)

#04-16057, decided April 4, 2005 affirming Trial

#02-15056, decided November 27, 2002, affirming in part, and reversing in part.

This case involved the plaintiff's being taken into custody by an airport police officer, and thereafter claiming civil rights violations under 42 USC 1983. The District Court affirmed the dismissals of the City of Fresno and the police officer on the basis of failing to exhaust all administrative remedies, but reversed on the ruling of dismissal against the officer in his individual capacity.

Blind Doan v Sanders, 9th Circuit. #00-17194, decided May 28, 2002
The case involved the alleged sexual assault of an inmate by a correctional officer. After a jury trial, the District Court reversed the jury's defense verdict, finding that a clear record was not made to support the exclusion of a witness involving an alleged non-sexual attack on a different inmate. (Circuit Court decision included a DISSENT)

Garcia v Barnhart, 9th Circuit, #04-15812, decided April 20, 2006
The case involved a social security disabled benefits case. The Commissioner of Social Security denied the benefits, and the Trial Court upheld the decision. On reversal, the Circuit Court remanded, instructing the Trial Court to remand to the Social Security Administration. The issue was the rejection by SSA of certain designated physicians.

(3) None

16. **Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.**

None

17. **Legal Career:**

a. **Describe chronologically your law practice and experience after graduation from law school including:**

1. **whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;**

I did not serve as a clerk after graduation from law school.

2. **whether you practiced alone, and if so, the addresses and dates;**

I have not practiced alone.

3. **the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;**

January 1999 to the present
United States District Court for the Eastern District of California
2500 Tulare Street, Fresno, CA 93721
United States Magistrate Judge

February 1990 to January 1999
Fresno County Superior Court
1100 Van Ness Avenue, Fresno, CA 93724
California Superior Court Judge

August 1979 to February 1990
McCormick, Barstow, Sheppard, Wayte and Carruth.
5 River Park Drive East, Fresno, CA 93729
Associate (1979-83), Partner (1984-90)

b. 1. **What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?**

Civil litigation (torts) for the entire ten years of practice.

2. **Describe your typical former clients, and mention the areas, if any, in which you have specialized.**

I specialized in tort defense work representing insurance companies and public entities (Counties, Cities, School Districts).

c. 1. **Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.**

I appeared in court frequently.

2. **What percentage of these appearances was in:**

(a)	**federal courts:**	5%
(b)	**state courts of record:**	95%
(c)	**other courts:**	0%

3. **What percentage of your litigation was:**

(a) civil: 99%
(b) criminal: 1%

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

I was in my 50th trial when I received the call appointing me to the Superior Court. In all but one, I was the sole counsel.

5. **What percentage of these trials was:**
(a) jury: 90%
(b) non-jury: 10%

18. **Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:**

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

(1) Ligon v Continetal Gin Company, Fresno Superior Court #301999-0
In this products liability case resulting in the traumatic removal of the hand of a young cotton gin worker I represented one of three target defendants. The result was a defense verdict for my client and an award of $600,000 against a co-defendant.
Jury trial. (Filed Oct 11, 1983)
Judge: James Ardaiz, The current Presiding Justice of the Fifth District Court of Appeal, Fresno. 2525 Capitol Street, Fresno, California 83721 Telephone: 559-445-5491
Attorneys: Richard C. Watters 2844 Fresno Street, Fresno, California 93721; telephone 559-486-5200 (counsel for Plaintiff)
Michael Marderosian 1260 Fulton Mall, Fresno, California 93721; telephone 559-441-7991 (counsel for second defendant)
Peggy Liggett (deceased)(counsel for third defendant)

(2) Stubblefield v Palmer, Fresno Superior Court 3301887-6
Hunting Accident resulting in partial blindness of a teenager. Tort case. I represented the parent of the injured teen, on a cross action for indemnity. Defense verdict: jury trial. (Filed October 7, 1983)
Judge: Dennis Caeton (retired)
Attorneys: Paul Auchard 2377 W. Shaw Avenue, Suite 106, Fresno, Calif. 93711; telephone 559-432-0991 (represented the target defendant/X-complainant).

L. Clarke Rountree 2505 B West Shaw, Suite 190Fresno, Calif 93711 represented the Plaintiff; telephone 559-650-6555.

(3) Romero v Leach Fresno Superior Court #304589-5

The case involved the death of a pedestrian resulting in the wrongful death accusations against my client. After several days of jury trial, and at the conclusion of the plaintiff's case, a motion for nonsuit was granted. (Filed December 13, 1983)

Judge: Leonard I. Meyers (decease)

Opposing Counsel: Fernando Chavez 1530 The Alameda, San Jose, California 95126 408-241-3903

(4) Grundy v Fresno Unified School District Fresno Sup. Ct. #307929-0

The case involved an allegation of negligence against my clients, who were two teachers and the school district. While on a field trip, a student severed tendons and nerves in the bottom of the foot resulting in permanent neurological deficits. A defense verdict was rendered by the jury in favor of my clients.
(Filed: February 17, 1984)
Judge: James Quaschnick
Opposing Attorney: Robert Gilmore 1111 E. Herndon #204, Fresno, California 93720 telephone: 559-436-1100

(5) Watts v McConnell, Fresno Superior Court #336938-6

The case involved a hit and run accident which caused a rollover type incident. Three unbelted passengers died resulting in death claims. The jury returned a verdict in favor of my defendant clients. (Filed October 8, 1985)
Judge: Robert Z. Markidian (deceased)
Opposing Attorney: A now-sitting Superior Court Judge, Donald R. Franson 1100 Van Ness Avenue Fresno, Calif 93724; telephone:559-488-1825

(6) Ryan v Fresno Unified School District, Fresno Superior Court #343584-9

The case involved a motorcycle/pedestrian accident on a school ground which led to a serious, crippling let injury to the pedestrian. The issue against my client, the school district, was one of dangerous condition to public property. The jury returned a defense verdict in favor of my client. (Filed February 25, 1986)
Judge: Now-sitting, Court of Appeal Justice Gene Gomes
2525 Capitol Street, Fresno California 93721
559-445-5491
Opposing Counsel: Michael Seng P.O. Box 14180, Fresno, CA 93650;
telephone 559-436-6111 represented the Plaintiff.

(7) Flagg v Raymond/County of Tuolumne, United States District Court, Eastern District of California #CV-F-86-102 REC; Monterey Superior Court CR 11915.

This case involved allegations of civil rights against my client, a County of Tuolumne sheriff's deputy. The plaintiff's decedent died while in custody. My client was charged both criminally and civilly. My participation in the murder trial was limited to medical aspects of

the defense, which led to the acquittal of the client, and a reopening of the FBI's civil rights file against the responsible police officer. (Filed 1986; dismissed December 12, 1990)
Federal Trial Judge: Robet E Coyle, 2500 Tulare Street, Fresno, CA 93721 559-499-5641.
State Trial Judge: Robert O'Farrell (retired)

(8) Bass v California State Automobile Association, Madera Sup Ct 36428
This case was an alleged insurance bad faith suit against the CSAA. The underlying set of facts involved the death of the insured. The issue was a medical one: causation. Verdict in favor of my client. (Filed May 1, 1987)
Judge: Paul Martin (retired)
Opposing Counsel: John Dawson (retired; no longer listed as a member of the California Bar)

(9) Reynolds v County of Fresno, Sheriff McKinney, Fresno Sup Ct #347875-1
The case was an alle3ged wrongful shooting/civil rights violation case against my client wherein a wanted felon was shot during the arrest. After a two week jury trial, my client was found not liable. (Filed May 16, 1986)
Judge: Stephen R. Henry (retired)
Opposing Counsel: James Elia 2300 Tulare, Suite 140, Fresno, CA 93721; 559-498-3600

(10) Fresno Unified School District v Ebersole, Fresno Superior Court #3375396-9
This case finally settled. It involved forty different plaintiffs and sixteen consolidated cases, The underlying allegations were that a school principal improperly videotaped school children in sexually explicit circumstances. I represented the school district on a negligence theory. (Fresno County Superior Court Clerk's office unable to locate file in the archives. Date of filing, unknown. Estimate: 1987)
Judge for extensive motions: James Thaxter (retired)
Opposing Counsel: A.D. Canelo 548 W. 21st Merced, California 95344 209-383-0720

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

While there have been hundreds of important and significant client contacts and interesting factual and legal issues dealt with over the years, there is one that stands out as being more worthwhile in result.

I was retained by the California Automobile Association to defend the parents of a University of California student wherein the son was killed in an automobile owned by them. At first blush, it seemed as though it was a nothing-unusual insurance defense case. It turned out to be one of the most challenging legal and humanistic cases in which I was involved during my years of practice. It involved a case where the friend of my

clients' son sued for personal injury, claiming he was a passenger in the car being driven by the deceased son. Through expert engineering work, it became obvious that the plaintiff had been the driver, and he had NOT been the passenger. Instead, the now-deceased son of my clients was the passenger. The legal work was interesting and important, but the most important aspect of the case turned out to be the more than 50 hours of uncompensated time spent with the parents working out their emotional and moral dilemma issues, including the devastating betrayal by their son's best friend. For me, it was a timely reminder of the importance of practicing law. The case did not go to trial, but rather was dismissed. The parents eventually moved on with their lives, and almost ten years later, wrote a letter of touching gratitude reminding me what the attorney client relationship truly should be. I haven't forgotten the lesson.

More recently, for more than a decade, I have dedicated three full days per year teaching 9 classes at the Intermediate School level. The topic is The United States Constitution, and it is taught on the first day of that new subject matter. It is an interactive attempt to illustrate the importance of the Rule of Law and its source. The students are certain that the class is going to be a huge bore. Three minutes into the class, they realize that their expectations were incorrect. Sixty minutes later, there is NO student who can contain himself or herself with the excitement they feel for the law and how it affects them. To see the transition is tantamount to seeing an evolution of the concept of no future, to hope for that same future.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

Because I served as a Superior Court Judge for nine years, I am vested in the California Judges Retirement Plan. Commencing at age 62, I will be paid the equivalent of 25% of what a sitting Superior Court judge is paid. That payment will last for life.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

In the 16 plus years of being a Judge, I have had only one situation where I had a conflict of interest that required my recusal. I know of no financial arrangements that create potential conflicts. Nonetheless, I personally review each case assigned to me as soon as the assignment is made to prevent the problem, and will continue to do so, if I am confirmed as a United States District Judge. I presently abide by and will continue to follow the Code of Conduct for United States Judges, along with all applicable statutes, procedures and policies.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

I have no such plans, commitments or agreements.

4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

See attached Financial Disclosure Report.

5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**

   See attached financial net worth statement.

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

   No

AO 10
Rev. 1/2006

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
O'Neill, Lawrence J	Eastern District of California	08/02/2006
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
District Judge Nominee	☒ Nomination, Date 08/02/2006 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2005 to 07/31/06
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
United States Courthouse 2500 tulare Street, Dept 8 Fresno, California 93721	Reviewing Officer_____ Date_____	

IMPORTANT NOTES: *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.*

I. POSITIONS. *(Reporting individual only; see pp. 9-13 of instructions.)*

☐ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. Member, Board of Directors	Association of Business Trial Lawyers
2. Board of Director	Federal Bar Association
3. Member	9th Circuit Magistrate Jduges Executive Board
4. Trustee	Trust #1
5.	

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of instructions.)*

☐ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1. 1999	State of California Judges Retirement Plan (pension commences at age 62)
2.	
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting O'Neill, Lawrence J	Date of Report 08/02/2006

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of instructions.)*

A. Filer's Non-Investment Income

[X] NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.			
2.			
3.			
4.			
5.			

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section. (Dollar amount not required except for honoraria.)*

[X] NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE
1.		
2.		
3.		
4.		
5.		

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.*

(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

[ ] NONE *(No reportable reimbursements.)*

	SOURCE	DESCRIPTION
1.	exempt	
2.		
3.		
4.		
5.		

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting O'Neill, Lawrence J	Date of Report 08/02/2006

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of instructions.)*

☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.	Exempt		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children. See pp. 32-34 of instructions.)*

☒ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
O'Neill, Lawrence J	08/02/2006

VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

	A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A -H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	D. If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE	(No reportable income, assets, or transactions)									
1.	Wells Fargo Bank (Trust #1)	A	Interest	J	T	Exempt				
2.	Vanguard Money Mkt Acct	B	Interest	L	T					
3.	Clovis Community Bank (Trust #1)	A	Interest	J	T					
4.	Argonaut Corp Livermore, Calif. 1985, $84,200 (Trust #1)	D	Distribution	M	R					
5.	Columbia Housing IX Ltd prtnr 1988 $25,767 (Trust #1)	B	Distribution	K	R					
6.	American Funds: New Economy Fund (Trust #1)	D	Interest	K	T					
7.	American Funds: New Perspective (Trust #1)	C	Dividend	K	T					
8.	American Funds: Europacific (Trust#1)	C	Dividend	K	T					
9.	American Funds: Fundamental Investors (Trust #1)	C	Dividend	J	T					
10.	American Funds: Bond Fund (Trust #1)	B	Dividend	J	T					
11.	American Funds: Small Cap ((Trust#1)	B	Dividend	J	T					
12.	American Funds: High Income (Trust #1)	A	Dividend	J	T					
13.	First Trust Corp (IRA) (Trust#1)		None	L	T					
14.	Vanguard Intermediate Acct (Trust #1)		None	K	T					
15.	SFG Inc Fund of Renton, Wa. (Trust #1)	D	Interest	M	T					
16.	Datalynx (IRA) (Trust #1)		None	M	T					
17.	Wells Fargo Bank acct #2	A	Interest	J	T					
18.	Calif EDL FACS Authority muni bond	A	Dividend	J	T					

1. Income/Gain Codes: A = $1,000 or less; B = $1,001-$2,500; C = $2,501-$5,000; D = $5,001-$15,000; E = $15,001-$50,000
(See Columns B1 and D4) F = $50,001-$100,000; G = $100,001-$1,000,000; H1 = $1,000,001-$5,000,000; H2 = More than $5,000,000
2. Value Codes: I = $15,000 or less; K = $15,001-$50,000; L = $50,001-$100,000; M = $100,001-$250,000
(See Columns C1 and D3) N = $250,000-$500,000; O = $500,001-$1,000,000; P1 = $1,000,001-$5,000,000; P2 = $5,000,001-$25,000,000
P3 = $25,000,001-$50,000,000; P4 = $More than $50,000,000
3. Value Method Codes: Q = Appraisal; R = Cost (Real Estate Only); S = Assessment; T = Cash/Market
(See Column C2) U = Book Value; V = Other; W = Estimated

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Name of Person Reporting	Date of Report
O'Neill, Lawrence J	08/02/2006

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-37 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
19. Desert Funding, Inc. Mortgage Note (Trust #1)	D	Interest	M	T					
20. Macwest Riverside Housing Inv, LLC		None	M	U					
21. American Funds: Capital Income Builders (Trust #1)	A	Interest	J	T					
22. California State Univ revenue muni bond	A	Interest	K	T					
23. Dallas/Ft. Worth Tex Intl muni bond	B	Interest	K	T					
24. Oregon Go Elderly/Disabled muni bond	A	Interest	J	T					
25. Oregon HSG and Community SVCS REV muni bond	B	Interest	K	T					
26. Oregon State muni bond	A	Interest	J	T					
27. Port of Portland Oregon Airport muni bond	A	Interest	J	T					
28. Puerto Rico Electric Power muni bond	A	Interest	K	T					
29. San Francisco Int. Airport muni bond	A	Interest	J	T					
30. St. Louis MO Airport muni bond	A	Interest	J	T					
31. Bank of America interno corporate bonds	B	Interest	K	T					
32. Bank of America Sub Not corporate bonds	B	Interest	K	T					
33. Bank of New York corenot corporate bonds	B	Interest	K	T					
34. Bear Stearns COS Inc corporate bonds	B	Interest	K	T					
35. Caterpillar Finl SVCS Pwer corp bonds	B	Interest	K	T					
36. Citigroup Global Med Term note	B	Interest	K	T					

1. Income/Gain Codes: (See Columns B1 and D4) A = $1,000 or less; B = $1,001-$2,500; C = $2,501-$5,000; D = $5,001-$15,000; E = $15,001-$50,000; F = $50,001-$100,000; G = $100,001-$1,000,000; H1 = $1,000,001-$5,000,000; H2 = More than $5,000,000
2. Value Codes: (See Columns C1 and D3) J = $15,000 or less; K = $15,001-$50,000; L = $50,001-$100,000; M = $100,001-$250,000; N = $250,000-$500,000; O = $500,001-$1,000,000; P1 = $1,000,001-$5,000,000; P2 = $5,000,001-$25,000,000; P3 = $25,000,001-$50,000,000; P4 = More than $50,000,000
3. Value Method Codes: (See Column C2) Q = Appraisal; R = Cost (Real Estate Only); S = Assessment; T = Cash Market; U = Book Value; V = Other; W = Estimated

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
O'Neill, Lawrence J	08/02/2006

VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A -H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
37. Delta Natural Gas inc debenture	A	Interest	J	T					
38. General Electric Cap Corparation bond	A	Interest	J	T					
39. GTE North Inc	A	Interest	J	T					
40. Household Fin Corp bond	B	Interest	K	T					
41. J.P. Morgan Chase & Co corp bond	B	Interest	K	T					
42. Key Bank corporate bond	B	Interest	K	T					
43. Laclede Gas Co 1st mortgage	B	Interest	J	T					
44. Lasalle Fundings LLC note	B	Interest	K	T					
45. Marshall and Ilsley Corp corporate bond	B	Interest	K	T					
46. Pacific Bell corp bond	B	Interest	K	T					
47. Providence Gas Co. bond	A	Interest	J	T					
48. Prudential Finl Inc corp bond	B	Interest	K	T					
49. Southwestern Bell Tel Co corporate bond	B	Interest	K	T					
50. Verizon MD, Inc corporate bond	B	Interest	K	T					
51. Bank of America stock	A	Dividend	J	U					
52. Healthcare Realty Inc. stock	A	Dividend	J	U					
53. New York Community Bancorp Inc stock	B	Dividend	J	U					
54. Capital World Growth and Income mutual fund	A	Interest	J	T					

1. Income/Gain Codes (See Columns B1 and D4): A = $1,000 or less; B = $1,001-$2,500; C = $2,501-$5,000; D = $5,001-$15,000; E = $15,001-$50,000; F = $50,001-$100,000; G = $100,001-$1,000,000; H1 = $1,000,001-$5,000,000; H2 = More than $5,000,000.
2. Value Codes (See Columns C1 and D3): J = $15,000 or less; K = $15,001-$50,000; L = $50,001-$100,000; M = $100,001-$250,000; N = $250,000-$500,000; O = $500,001-$1,000,000; P1 = $1,000,001-$5,000,000; P2 = $5,000,001-$25,000,000; P3 = $25,000,001-$50,000,000; P4 = More than $50,000,000.
3. Value Method Codes (See Column C2): Q = Appraisal; R = Cost (Real Estate Only); S = Assessment; T = Cash Market; U = Book Value; V = Other; W = Estimated.

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Name of Person Reporting	Date of Report
O'Neill, Lawrence J	08/02/2006

VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A -H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	D. If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
55. Investment Company of American mutual fund	A	Interest	J	T					

1.. Income/Gain Codes: A = $1,000 or less; B = $1,001-$2,500; C = $2,501-$5,000; D = $5,001-$15,000; E = $15,001-$50,000
(See Columns B1 and D4) F = $50,001-$100,000; G = $100,001-$1,000,000; H1 = $1,000,001-$5,000,000; H2 = More than $5,000,000
2. Value Codes: J = $15,000 or less; K = $15,001-$50,000; L = $50,001-$100,000; M = $100,001-$250,000;
(See Columns C1 and D3) N = $250,000-$500,000; O = $500,001-$1,000,000; P1 = $1,000,001-$5,000,000; P2 = $5,000,001-$25,000,000
P3 = $25,000,001-$50,000,000 P4 = $More than $50,000,000
3. Value Method Codes Q = Appraisal; R = Cost (Real Estate Only); S = Assessment; T = Cash Market
(See Column C2) U = Book Value; V = Other; W = Estimated

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting O'Neill, Lawrence J	Date of Report 08/02/2006

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

Part III.A. --- Non-investment income received during the reporting period as salary for United States Magistrate Judge

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting O'Neill, Lawrence J	Date of Report 08/02/2006

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature Lawrence J O'Neill **Date** August 2, 2006

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		196	765	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		766	851	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned-add schedule	1	350	767	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		60	000				
Cash value-life insurance		57	904				
Other assets itemize:							
Individual Retirement Account		275	627				
Education Funds		279	230				
				Total liabilities			0
				Net Worth	2	987	144
Total Assets	2	987	144	Total liabilities and net worth	2	987	144
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Edward Jones Account	
(See attached Financial Disclosure Report)	
Total Listed Securities	$ 766,851
Real Estate Owned	
Personal residence	$ 1,100,000
Limited partnership #1	100,000
Limited partnership #2	125,000
Limited partnership #3	25,767
Total Real Estate Owned	$ 1,350,767

III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

While a practicing lawyer, on a consistent basis, I donated at least one hundred hours per year either to teaching/coaching in the High School Mock Moot Court competition or donating legal services to The Marjorie Mason Center (a shelter for abused woman). As a judge, I continue to donate time to teaching activities: junior high school (U.S. Constitution), High School (Government class), Law School (moot court competitions), and the high school mock moot court competition.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?**

I do not belong to at present, nor have I ever belonged to any such organization.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

Yes. It is a bipartisan committee of 3 Republicans and 3 Democrats. I was ranked number one out of that committee on a unanimous vote.

I filled out the extensive application for the judgeship. The bipartisan committee then reviewed all applications submitted, and ultimately interviewed six. Of the six, two moved onto the next interview process with Mr. Gerald Parsky of Los Angeles. Mr. Parsky, after interviewing both, forwarded both names to the White House. After interviews with the White House Counsel's Office and a thorough background investigation, I was informed that my name would be submitted to the Senate. I was formally nominated on August 2, 2006.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

No

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped-many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Judges take an oath. It is not a symbol of something. It is a promise to be diligent in learning the law and applying the law. It is also a promise not to write the law. When we ignore the promises, we insult the oath, the Constitution and the co-equal branches of government. We ignore the structure of the government. Judges must respect the Rule of Law and follow it every day. If a judge ignores the law, that action can affect the trust our Nation needs to have in the judicial branch.

The doctrine of Separation of Powers and the issue of limited jurisdiction of the court (defined in laws addressing standing, jurisdiction, and case and controversy) are not casual

AFFIDAVIT

I, Lawrence Joseph O'Neill, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

August 2, 2006
(DATE)

Lawrence Joseph O'Neill
(NAME)

CLAIRE S. CARROLL
Commission # 1432910
Notary Public - California
Fresno County
My Comm. Expires Aug 27, 2007

Claire S. Carroll
(NOTARY)

JURAT

State of California
County of Fresno } ss.

Subscribed and sworn to (or affirmed) before me this 2nd (Date) day of August (Month), 2006 (Year), by
(1) Lawrence J. O'Neill (Name of Signer(s))
(2) _____ (Name of Signer(s))

CLAIRE S. CARROLL
Commission # 1432910
Notary Public - California
Fresno County
My Comm. Expires Aug 27, 2007

Claire S. Carroll
Signature of Notary Public

OPTIONAL

Though the information in this section is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Senate Questionnaire

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

RIGHT THUMBPRINT OF SIGNER #1 Top of thumb here	RIGHT THUMBPRINT OF SIGNER #2 Top of thumb here

Senator COBURN. Senator Feinstein?

Senator FEINSTEIN. Can I get settled?

Senator COBURN. You bet. You bet. We will wait and allow you to settle.

PRESENTATION OF LAWRENCE O'NEILL, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF CALIFORNIA, BY HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. Thank you very much, Mr. Chairman. I apologize. We were in our caucus and I was the last one up to talk about FISA. So, I appreciate this opportunity.

I would like to, first of all, thank Chairman Specter for the accommodation of my request for expedited consideration of Judge Lawrence O'Neill's nomination to the Eastern District of California, and it is my great pleasure to introduce him here today.

His appointment is really critical because there is a major judicial emergency in the Eastern District of California. The Fresno Division to which Judge O'Neill is nominated is suffering from a particularly acute overload of cases.

Judge Oliver Wanger and Senior Judge Anthony Ischi are currently the only judges in this division. They share a caseload of 2,928 active cases. Now, this is an average caseload of 1,464 active cases per judge. It is the highest caseload by far in the Nation. By contrast, the average weighted caseload nationally for a Federal district court judge is 524 cases, so this is three times that.

The people of Fresno and the Eastern District truly need the help that Judge O'Neill can provide. Fortunately, he is uniquely qualified to step in and offer some immediate relief because he has been a Magistrate Judge in the District since 1999, or for 7 years.

In addition, for the last 17 years he has been a judge in California, spending 10 years as a Superior Court Judge in Fresno before becoming a Magistrate. He is a home-grown Californian. He was born in Oakland.

He attended school in our State. He received a Bachelor's Degree in Criminology from the University of California at Berkeley, a Master's degree in Public Education from Golden Gate University, and a law degree from Hastings College of Law, which is where my daughter, now a judge, received her law degree as well.

So before attending law school, he was a police officer for the City of San Leandro, and I think that additional perspective is actually an asset on the bench because I assume he then has street smarts as well as academic smarts. The ABA has unanimously declared him to be "Well Qualified", their highest rating.

Now, as you know, in California we have a bipartisan process. Anyone that would like to be considered to be a judge can apply. They are screened, they are interviewed, and this commission, chaired by Mr. Parsky, contains three Democrats, three Republicans, and Judge O'Neill's nomination was the product of this commission.

He was one of five nominees submitted to the President for his consideration. Although Senator Boxer could not be here today, she asked me to relay her support for his nomination. She will be entering a separate statement into the record.

So, Judge O'Neill, I congratulate you on this nomination. Mr. Chairman, I thank you, and hope we can move this through speedily so that this emergency can be alleviated.

Thank you.

Senator COBURN. Thank you, Senator Feinstein. And Judge O'Neill, I do not know if you introduced family or not, but you are more than welcome to do so.

Judge O'NEILL. Not yet. Senator Feinstein's entrance was very timely because I was about ready to thank her as well.

I do thank you, Senator, for your words, and also the help that your office and Senator Boxer's office has been to move us forward so that we can take care of the emergency that you have amply discussed.

I would like to introduce my family, if I could. My wife, Kathleen, and my son, William. William flew all night to be here. He is in his last year of Hastings Law School as well. My daughter Erin sends her best, as she is starting her last year at Northwestern University in Evanston, Illinois. After hearing for 10 minutes why it was just impossible to be here, I understood. I accepted it.

Lastly, my mother sends her best. She is also a lawyer. She started University of California, Bolt Hall, back in 1940. She is 87, and her health does not permit her to be here, but she is certainly here in spirit.

Senator COBURN. I understand. Well, you certainly have the background and academics to handle 1,500 active cases a year.

Judge Wood?

STATEMENT OF LISA WOOD, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF GEORGIA

Judge WOOD. Thank you. I want to first begin by thanking the Committee for giving us the opportunity to have this hearing, and to thank my home State Senators, Senator Chambliss and Senator Isakson, for supporting me, and the President as well for nominating me.

I would also like to introduce my friends and family who have made the journey from Georgia. I have with me my husband, Richard Wood. The first of our twins, Katherine Wood, and my son, Lachlan Wood, fell asleep earlier. But he is in my mother's arms. That is my mother, Sue Godbey, my father, Dr. Edsel Godbey.

Also here with me is Judge Anthony Alaimo, who, as an 86-year-old, got up at 4:00 this morning to fly to be here with us today. I was privileged to clerk with him and he is my mentor, and I am honored by his presence.

Also with him is his courtroom deputy, Loyal Buford Rowe. My two best friends have come to be with us as well, Rita Spalding and Ginger Adams.

Finally, I would like to thank the staff of the U.S. Attorney's Office for making me look good. Thank you.

[The biographical information of Lisa Wood follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used.)**

Lisa Godbey Wood is my full name.

Lisa Sue Godbey is my maiden name.

2. **Address: List current place of residence and office address(es).**

Residence: St. Simons Island, Georgia

Office addresses: U.S. Attorney's Office
100 Bull Street
Savannah, Georgia 31401

U.S. Attorney's Office
1 Tenth Street, Suite 530
Augusta, Georgia 30901

3. **Date and place of birth.**

My birthdate is January 28, 1963. My birthplace is Lexington, Kentucky.

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

I am married to Richard V. Wood, who is retired from the Federal Bureau of Investigation. He works part-time at the Federal Law Enforcement Training Center in Glynco, Georgia.

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

The University of Georgia School of Law, Fall 1987 – May 1990; Juris Doctor Degree, *summa cum laude*, May 1990.

The University of Georgia, Fall 1981 – June 1985; Bachelor of Arts, *summa cum laude* June 1985

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations,**

nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

2004-Present		Employee of Department of Justice, United States Attorney's Office, Southern District of Georgia (United States Attorney).
1995-2004	-	Employee of Gilbert, Harrell, Sumerford & Martin, P.C. (partner).
1991-1994		Employee of Gilbert, Harrell, Sumerford & Martin, P.C. (associate).
1998-2000	-	Employee of Glynn County, Georgia (part-time Magistrate Judge).
1990-1991		Employee of United States District Court Judge Anthony A. Alaimo (Judicial Law Clerk).
1989	-	Employee of University of Georgia Business School (teaching assistant).
	-	Employee of King and Spalding Law Firm (summer law clerk).
	-	Employee of Gilbert, Harrell Law Firm (summer law clerk).
1988	-	Employee of Varner, Stephens Law Firm (summer law clerk).
1987	-	Employee of Educational Improvement Project (consultant).
	-	Employee of Central Intelligence Agency (career trainee).
1986	-	Employee of U.S. Representative Pat Swindall (R. GA) (campaign worker).
	-	Employee of Educational Improvement Project (consultant).
1985	-	Employee of U.S. Representative Pat Swindall (R. GA) (press secretary).

7. Military Service: **Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

I have never served in the military.

8. Honors and Awards: **List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

Law School Honors and Awards:

Isaac Meinhard Award for maintaining highest academic average throughout all three years of law school;
Order of the Coif;

Georgia Law Review:	Managing Editor (1989-90)
	Editorial Board (1988-89);
Honor Court:	Elected Chief Justice (1989-90)
	Elected Justice (1987-88 and 1988-89);

Judge Newell Edenfield School of Law Scholarship Recipient;
Donald P. Gilmore, Jr. Labor Law Award;
Multiple American Jurisprudence Prizes;
Teaching Assistant for School of Management, U.G.A. School of Business Administration – 1990 Excellence in Teaching Award. (Part-time job while in law school.)

Undergraduate Honors and Awards:

1985 First Honor Graduate (4.0 gpa);
Jasper Dorsey Outstanding Senior Female of the Year;
Jasper Dorsey Outstanding Sophomore Female of the Year;
Phi Beta Kappa;
Omicron Delta Kappa;
Mortar Board;
Blue Key;
Blue Key/Tucker Dorsey Memorial Scholarship;
Young Alumni Council President's Award;
Alpha Chi Omega Sorority – President 1985.

9. **<u>Bar Associations</u>: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.**

Attorney General's Advisory Subcommittee on White Collar Crime (2005-2006), Subcommittee on Cybercrime (2006);

United States District Court Advisory Committee, Southern District of Georgia (1999-2004) (2004-Present, attend as U.S. Attorney);

United States District Court, Southern District of Georgia, Federal Courthouse Security Committee (2004-Present);

Georgia Bar Association (1990-Present):
Judicial Evaluation Committee (2003-2004)
Disciplinary Review Panel (2001-2004)
Vice-Chairman (2003-2004);

Brunswick/Glynn County Bar Association (1990-2004):
1995 — President
1994 — Vice President
1993 — Treasurer
1992 — Secretary;

American Bar Association – Litigation Section:
1990-Present.

10. **Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**

Frederica Presbyterian Church;
Georgia Bar Association;
American Bar Association;
University of Georgia Alumni Society;
Sea Island Club (social club, does not discriminate);
Judicial Invitational (social golf club, does not discriminate);
Butler Plantation Home Owners' Association (does not discriminate).

11. **Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.**

United States Eleventh Circuit Court of Appeals (August 4, 1993-Present);

United States District Court for the Southern District of Georgia (June 5, 1991-Present);

Georgia Supreme Court (May 11, 1992-Present);

Georgia Court of Appeals (January 15, 1992-Present);

Georgia State Bar (June 4, 1991 – Present).

There have been no lapses in my memberships.

12. **Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.**

I have spoken at numerous continuing legal education seminars and many civic organizations in my community. None of those speeches has been published that I know of. I have authored one guest editorial on the Patriot Act that appeared in the local newspaper, *Savannah Morning News:* "The Patriot Act's Actual Benefits Outweigh any Hypothetical Harms", July 19, 2005. It also appeared in *The Augusta Chronicle* on July 20, 2005: "Benefits Outweigh Supposed Harms".

13. **Health: What is the present state of your health? List the date of your last physical examination.**

I am in excellent health. My last physical examination was on May 11, 2006.

14. **Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

I served as part-time Magistrate Judge of Glynn County Magistrate Court from June 1998 to February 2000. I was appointed to that position. In that capacity, I reviewed weekend arrest and search warrant requests, conducted preliminary probable cause hearings and presided over bond revocation hearings. I also heard civil disputes which fell within the monetary jurisdictional limit of the Magistrate Court. I believe at that time the County Magistrates were limited to considering civil cases with no more than $15,000 in dispute.

15. **Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.**

As a Glynn County Magistrate, none of my decisions was reported, nor, to my knowledge, were any reversed.

16. **Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.**

I served on the Georgia Board of Public Safety. I was sworn in to office in November of 2003. I was appointed to that position by the Governor of Georgia. I resigned in order to serve as United States Attorney. I currently serve as United States Attorney for the Southern District of Georgia. I was sworn in to office in July of 2004. I was appointed to that position by the President. I have never run for public office.

17. **Legal Career:**

a. **Describe chronologically your law practice and experience after graduation from law school including:**

1. **whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;**

Yes. I served as a law clerk to Judge Anthony A. Alaimo, United States District Court, Southern District of Georgia, from August 1990 through August 1991.

2. **whether you practiced alone, and if so, the addresses and dates;**

I did not practice alone.

3. **the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;**

Department of Justice
United States Attorney's Office
Southern District of Georgia
100 Bull Street
Savannah, Georgia 31401
United States Attorney – July 2004 – Present.

Gilbert, Harrell, Sumerford & Martin, P.C.
777 Gloucester Street, Suite 200
Brunswick, Georgia 31520
Partner, 1995 – July 2004.
Associate, August 1991 – December 1994;

Glynn County, Georgia
Glynn County Magistrate Court
Brunswick Judicial Circuit
Glynn County Courthouse
701 H Street
Brunswick, Georgia 31520
Part-time Magistrate Judge, 1998-2000.

b. 1. **What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?**

My private law practice consisted of a general trial practice. I

enjoyed litigating a wide variety of cases including criminal and civil matters, primarily in federal court. The nature of my role in cases has changed since becoming United States Attorney. Whereas in private practice I would be the one carrying out various tasks—taking depositions, selecting juries, cross-examining witnesses, and drafting briefs—as United States Attorney, I have been privileged to occupy a decisional role for each case and the policy-making role for the office in general. I make the final determination in every case as to which defendants are included in each indictment presented to the Grand Jury and which are not. Similarly, I make the final determination as to which charges should be presented to the Grand Jury. I review and, when appropriate, revise every appellate brief which leaves the office. Additionally, I collaborate with the Assistant U.S. Attorneys on case strategy and briefs in non-routine cases. However, as United States Attorney, I no longer participate in the trial and jury selection phases of the cases.

2. **Describe your typical former clients, and mention the areas, if any, in which you have specialized.**

My typical private practice clients were commercial enterprises in the Southern District of Georgia. As a lawyer in a relatively small town, I did not develop an overly specialized practice. My trial experiences included products liability, employment law, medical malpractice, white collar crime and death penalty cases.

As United States Attorney, I have only one client, the United States of America. We represent the United States in civil disputes throughout the Southern District. Our primary role is to prosecute federal crimes. Priority issues include anti-terrorism and prosecution of gun crimes, drug violations, healthcare fraud and white collar crime.

c. 1. **Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.**

I have appeared in Court frequently, and this has not varied.

2. **What percentage of these appearances was in:**

   (a) federal courts: 75%.

   (b) state courts of record: 25%

   (c) other courts.

   I appeared in Magistrate Court weekly when I served as a part-time Magistrate Judge from 1998-2000.

3. **What percentage of your litigation was:**

   (a) civil: 75%.
   (b) criminal: 25%.

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

   Seventeen cases tried to verdict: Three cases, sole; five cases, chief; nine cases, co-counsel.

5. **What percentage of these trials was:**

   (a) jury; 95%.
   (b) non-jury: 5%.

18. **Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:**

   (a) the date of representation;
   (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
   (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

(1) Chicago Tribune v. Bridgestone/Firestone, Inc. and Van Etten v. Bridgestone/ Firestone, Inc. The Van Etten case began as a wrongful death action filed by the parents of a University of West Virginia football player who was killed when his Ford Explorer rolled over on the highway. The parents alleged that the Firestone

tires on the vehicle were defective. I represented Firestone. I was an active participant in all phases of the litigation including Court hearings and discovery. The case eventually settled just prior to trial.

After the case settled, news agencies filed pleadings seeking to intervene in order to unseal certain discovery documents held under seal pursuant to a Court-issued protective order. I presented oral argument on Firestone's behalf arguing that the seal should stay in place. The District Court ordered that the records be unsealed. I was able to obtain a stay preserving the status quo pending an expedited appeal to the Eleventh Circuit Court of Appeals.

Following oral argument, the Eleventh Circuit Court of Appeals reversed and remanded the case to the District Court. Following the remand, the media dismissed their requests, and the records were never unsealed. The case led to two reported decisions: Chicago Tribune Co. v. Bridgestone/Firestone, Inc., 263 F.3d 1304 (11th Cir. 2001) and Van Etten v. Bridgestone/Firestone, Inc., 117 F. Supp. 2d 1375 (S.D. Ga. 2000).

(a) Date of representation was from mid-1998 to mid-2002.

(b) The case was filed in the United States District Court for the Southern District of Georgia. Judge Anthony A. Alaimo was the presiding Judge, and Magistrate Judge James E. Graham addressed discovery matters.

(c) My co-counsel was:

Alfred B. Adams, III
Holland & Knight
One Atlantic Center, Suite 2000
1201 West Peachtree Street, Northeast
Atlanta, Georgia 30309-3400,
(404) 898-8117

The Plaintiffs were represented by:

Daniel B. Snipes
James B. Franklin
Franklin, Taulbee, Rushing, Snipes & Marsh,
12 Siebald Street (30458)
Post Office Box 327
Statesboro, Georgia 30459
(912) 764-9055

Rowe Brogdon
203 Donehoo Street (30458)
Post Office Box 189
Statesboro, Georgia 30459
(912) 764-6668

Mark J. Smith
Littky, Smith
Citizens Building, Suite 800
105 South Narcissus Avenue
West Palm Beach, Florida 33401
(800) 519-1965

Ford Motor Company was a co-defendant and was represented by:

Charles K. Reed
McKenna, Long & Aldridge
Suite 5300, 303 Peachtree Street, Northeast
Atlanta, Georgia 30308
404-527-4000

Once the appeal was lodged, my co-counsel was:

Dorothy Kirkley
Kirkley & Hawker, LLC
999 Peachtree Street, Suite 1640
Atlanta, Georgia 30309
(404) 892-8781

Attorneys representing other parties include:

Lee A. Mickus, Esq.
Wheeler, Trigg & Kennedy, P.C.
1801 California Street, Suite 3600
Denver, Colorado 80202
(303) 224-1800

Arnold C. Young, Esq.
Hunter, Maclean
200 East Saint Julian Street
Savannah, Georgia 31401
(912) 236-0261

D. Alan Thomas, Esq.
Huie, Fernambucq & Stewart, LLP
Three Protective Center
2801 Highway 280 South, Suite 200
Birmingham, Alabama 35223
(205) 251-1193

Robert L. Rothman, Esq.
Roger A. Chalmers, Esq.
Arnall Golden Gregory LLP
171 17th Street, Northwest, Suite 2100
Atlanta, Georgia 30363-1031
(404) 873-8500

Jerome L. Kaplan, Esq.
Walter H. Bush, Esq.*
Stone & Baxter, LLP
Suite 800, Fickling & Co. Building
577 Mulberry Street
Macon, Georgia 31201
(478) 750-9898

*Both Mr. Kaplan and Mr. Bush were located at 201 Second Street in Macon at that time. Their phone number was (912) 745-3344. Mr. Kaplan is now a partner of Stone & Baxter. I am not sure where Mr. Bush is currently located.

J. Thomas Whelchel, Esq.
Whelchel, Brown, Readdick & Bumgartner
(nka Brown, Readdick, Bumgartner, Carter, Strickland & Watkins)
5 Glynn Avenue
Brunswick, Georgia 31520
(912) 264-8544

Mary-Rose Papandrea, Esq.
Kevin T. Baine, Esq.
Williams & Connolly, LLP
725 Twelfth Street, Northwest
Washington, D.C. 20005-5901
(202) 434-5000

Lisa M. Raleigh, Esq.
Keith P. Vanden Dooren, Esq.
Office of the Attorney General

The Department of Legal Affairs
The Capitol, PL-01
Tallahassee, Florida 32399-1050
(850) 414-3600

Earl W. Gunn, Esq.
Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC
950 East Paces Ferry Road, Suite 3000
Atlanta, Georgia 30326
404-876-2700

(2) Gibbons v. Glynn-Brunswick Memorial Hospital Authority, et al. and Mulligan v. Glynn-Brunswick Memorial Hospital Authority, et al. These were two separate actions filed in two separate years that revolve around the same core facts. I, along with my partner, Wallace E. Harrell, defended our local hospital in these actions. The suits challenged an agreement the hospital entered into with a local anesthesia group. The Plaintiffs alleged anti-competitive practices, tortious interference with business relations and other restraint of trade claims. I actively participated in every phase of the litigation of each case, including writing a motion and brief for summary judgment in each case. The summary judgments were affirmed on appeal. Each resulted in a reported decision: Mulligan v. Glynn-Brunswick Memorial Hospital Authority, 264 Ga. App. 39, 589 S.E.2d 851 (2003) and Glynn-Brunswick Memorial Hospital Authority v. Gibbons 243 Ga. App. 341, 530 S.E.2d 736 (2000). The co-defendant anesthesia group was not able to secure summary judgment in either case. Dr. Gibbons received a million-dollar jury verdict against the anesthesia group, and Dr. Mulligan's case will proceed to trial against the anesthesia group at some point in the near future.

(a) Date of representation in the Gibbons matter was from late 1996 to early 2000; date of representation in the Mulligan matter was from late 1999 to mid-2003.

(b) The cases were pending in Glynn County Superior Court. Judge E. M. Wilkes, III, presided over the Mulligan action, and Judge Amanda F. Williams presided over the Gibbons action.

(c) My co-counsel was my partner, Wallace E. Harrell.

Plaintiff Gibbons was represented by:
Anthony L. Cochran
Chilivis, Cochran, Larkins & Bever, LLP
3127 Maple Drive, Northeast
Atlanta, Georgia 30305-2503
(404) 233-4171

John J. Ossick, Jr.
Post Office Box 1087
Kingsland, Georgia 31548
(912) 729-5864

Plaintiff Mulligan is represented by:

Kevin Gough, Esq.
904 "G" Street
Post Office Box 898
Brunswick, Georgia 31521-0898
(912) 262-0565

John C. Butters
7616 Richard Moss Lane
Suches, Georgia 30572
(404) 872-5693

Alta Anesthesia was represented in the Gibbons action by:

Roy E. Paul
Bouhan, Williams & Levy
447 Bull Street
Savannah, Georgia 31401
(912) 236-2491

Alta Anesthesia is represented in the Mulligan action by:

John E. Bumgartner
Bradley J. Watkins
Brown, Readdick, Bumgartner, Carter, Strickland & Watkins
5 Glynn Avenue
Brunswick, Georgia 31520
(912) 264-8544

(3) Pamela L. Lewis v. Dale Sapp and City of Baxley. This was a sexual harassment suit in which I was sole counsel for Defendant Dale Sapp. Ms. Lewis accused my client of multiple, egregious acts of physical and verbal sexual harassment. The jury rendered a defense verdict.

(a) Date of representation was early 1996.

(b) The case was filed in the United States District Court for the Southern District of Georgia. Judge Anthony A. Alaimo was the presiding Judge.

(c) The Plaintiff was represented by:

Martha F. Dekle
Post Office Box 1644
Brunswick, Georgia 31520
(912) 261-8980

The City of Baxley was represented by:
Terry L. Readdick
G. Todd Carter
Brown, Readdick, Bumgartner, Carter, Strickland & Watkins
5 Glynn Avenue
Brunswick, Georgia 31520

(4) Mosher v. State. This was a death penalty case in which the accused was charged with murdering a fellow traveler. I represented the Defendant. Our main defense focused on Mr. Mosher's diminished mental capacity at the time of the death. I was responsible for presenting the mental capacity defense. The jury convicted Mr. Mosher but declined to impose the death penalty. The case is reported as Mosher v. State, 268 Ga. 555, 491 S.E.2d 348 (1997).

(a) Date of representation was late-1995 until early-1997.

(b) The case was tried in Glynn County Superior Court before Judge Amanda F. Williams.

(c) My co-counsel was:
Randall M. Clark
1708 Ellis Street
Brunswick, Georgia 31520
(912) 264-6662

The State was represented by:

Keith Higgins, Assistant D.A.
Glynn County District Attorney's Office
Glynn County Courthouse
701 H Street, 3rd Floor
Brunswick, Georgia 31520
(912) 554-7200

(5) William James Morgan, et al. v. Hercules Incorporated, Civil Action No. CV293-149. This was an environmental contamination dispute brought by a group of homeowners who live near a landfill where toxaphene by-products were buried. It is

a significant case in my community which is home to multiple paper mills, chemical companies and other manufacturing entities. It is one of the few environmental contamination cases in the Brunswick area which has progressed to the jury verdict stage. I represented the Defendant, Hercules Incorporated. I actively participated in the pretrial and trial proceedings including cross-examining some of the Plaintiffs. Plaintiffs were seeking millions of dollars in actual damages in addition to punitive damages. The jury returned a verdict in the $250,000 range.

(a) Date of representation was 1993-95.

(b) The case was filed in the United States District Court for the Southern District of Georgia. Judge Dudley Bowen presided over the case.

(c) Lead Counsel for the defense was:

J. Kevin Buster
King & Spalding
1180 Peachtree Street
Atlanta, Georgia 30309-3521
(404) 572-4600

Co-counsel included my partner, Wallace E. Harrell.

Plaintiffs were represented by:

John C. Bell, Jr., Esq.
Bell & James
945 Broad Street, 3rd Floor
Augusta, Georgia 30901
(706) 722-2014

Eugene Highsmith
1321 Egmont Street
Brunswick, Georgia 31520
(912) 265-6000

Robert P. Killian
Killian & Boyd, P.C.,
506 Monk Street
Brunswick, Georgia 31520
(912) 265-5063

(6) Gregory Britton v. Southeast Georgia Regional Medical Center. This was a discrimination suit in which the Plaintiff alleged that he was fired because of his race

and gender. I was lead counsel for the Defendant. The jury returned a defense verdict. The case was appealed to the Eleventh Circuit. The defense verdict was affirmed in an unpublished decision, Civil Action No. CV299-324, 11th Circuit Docket No. 00-16142D.

(a) Date of representation was late 1999 to mid-2001.

(b) The case was filed in United States District Court for the Southern District of Georgia and was presided over by Judge Anthony A. Alaimo.

(c) My co-counsel was my partner, Wallace E. Harrell.

The Plaintiff was represented by:

James A. Yancey, Jr.
704 G Street
Brunswick, Georgia 31520-6749
(912) 265-8562

Linell A. Bailey
formerly of 1617 Union Street
Brunswick, Georgia 31520

To my knowledge, Mr. Bailey no longer practices law. I believe he may be deceased. The last known address and telephone number listed in the Brunswick City Directory is:

132 Timber Ridge Drive
Brunswick, Georgia 31525
(912) 261-0261

(7) John C. Richards v. Moore-Sapp Investors and City of Brunswick, Georgia. This was a personal injury action. I was lead counsel for the City of Brunswick. Although the underlying facts of the case are not unusual, the case stands out as significant in my practice from a procedural standpoint. At the time I was contacted to represent the City, the City had already been in default for quite some time. After multiple motions, briefings and hearings, the Judge allowed the City of Brunswick to Answer but denied its Motion for Summary Judgment. We obtained a Certificate of Immediate Review and were permitted to appeal the denial of summary judgment. The Court of Appeals reversed the denial of summary judgment. The case is reported as Moore-Sapp Investors v. Richards, 240 Ga. App. 798, 522 S.E.2d 739 (1999).

(a) Date of representation was mid-1997 to late-1999.

(b) The action was pending in Glynn County Superior Court before Judge James R. Tuten, Jr.

(c) The Plaintiff was represented by:

James A. Yancey, Jr.
704 G Street
Brunswick, Georgia 31520-6749
(912) 265-8562.

The Defendant Moore-Sapp was represented by:

John E. Bumgartner
Brown, Readdick, Bumgartner, Carter, Strickland & Watkins
5 Glynn Avenue
Brunswick, Georgia 31520
(912) 264-8544

(8) Dewberry v. Atlanta Gas Light Company. In this case, I was co-counsel for Atlanta Gas Light Company. The Plaintiff, Mr. Dewberry, alleged age and disability discrimination in his termination. Mr. Dewberry had filed for bankruptcy during the same timeframe he filed his EEOC charge. We obtained his bankruptcy petition and learned that he had not listed his discrimination claim as a possible asset. Mr. Dewberry sought to reopen his bankruptcy case to list the asset. Following oral argument and two court rulings, the action was eventually dismissed by the District Court. The Bankruptcy Court's ruling is reported as In re Dewberry, 266 B.R. 916 (S.D. Ga. 2001).

(a) Date of representation was early 2001 to late 2001.

(b) This case originated in the United States District Court, Southern District of Georgia, before Judge Anthony A. Alaimo. The United States Bankruptcy Judge involved was Judge Lamar Davis.

(c) My co-counsel were:

Weyman Johnson
Rebecca Farber
Paul Hastings, LLP
600 Peachtree Street, Northeast, Suite 2400,
Atlanta Georgia 30308-2222
(404) 815-2209

The Plaintiff was represented by:

Stephen A. Land, Esq.
Land & Keon, LLP
115 Perimeter Center Place
Suite 1080 – The South Terraces
Atlanta, Georgia 30346
(770) 350-8581

James B. Durham, Esq.
Durham, McHugh & Duncan, P.C.
777 Gloucester Street, Suite 300
Brunswick, Georgia 31520
(912) 264-1800

Bankruptcy attorneys involved were:

William Orange, III, Esq.
1429 Newcastle Street
Brunswick, Georgia 31520
(912) 267-9272

R. Michael Souther
1520 ½ Newcastle Street
Brunswick, Georgia 31520
(912) 265-5544

(9) John Tuten v. St. Mark's Episcopal Church and City of Brunswick. This was an action to enjoin a property exchange agreed to by the church and the city. I represented the church and served as lead counsel, arguing the case in the Georgia Supreme Court. The city agreed to give the church a tract of land situated behind the church in exchange for a nearby parcel of church property. Mr. Tuten sought to enjoin the exchange as a violation of a state statute governing municipal land exchanges and as inconsistent with historic preservation goals, for the land in question was listed as a city park on General Oglethorpe's original plan for the City of Brunswick. The Judge granted summary judgment to the church and the city. That decision was reversed on appeal. Not long after the Georgia Supreme Court issued its decision, the relevant statute was amended. Following the amendment, the church and the city were able to move forward with the property exchange. The case is reported at Tuten v. City of Brunswick, 262 Ga. 399, 418 S.E.2d 367 (1992).

(a) Date of representation was 1992 to 1996.

(b) The case was pending before Judge Amanda F. Williams in Glynn County Superior Court.

(c) The Plaintiffs were represented by:

George M. Rountree
708 G Street
Brunswick, Georgia 31520
(912) 264-6606

The City of Brunswick was represented by:
Eugene Highsmith
1321 Egmont Street
Brunswick, Georgia 31520
(912) 265-6000

(10) Newcastle Construction, Inc. v. Bayou Fleet, Inc., et al., Civil Action No. CV203-034.

I was lead counsel for the Plaintiff in this construction dispute involving the renovation of an historic building in the City of Brunswick. I represented the contractor who had substantially completed the project yet had not been paid for much of the work. We tried the case in Federal Court in 2004. The jury awarded our client the money he was due plus attorneys' fees.

(a) Date of representation was early 2003 to March 2004.

(b) The case was filed in United States District Court for the Southern District of Georgia and was presided over by Judge Anthony A. Alaimo.

(c) My co-counsel was my Associate, James L. Roberts, IV.

The Defendants were represented by:

Roy E. Paul
Walter C. Hartridge
Bouhan, Williams & Levy
447 Bull Street
Savannah, Georgia 31401
(912) 236-2491

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that

did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

In Private Practice: As a lawyer who primarily represented corporate defendants, I consider many of my most significant victories to be instances where I have been able to guide my clients through challenging events and yet avoid litigation. An important part of my practice consisted of clients and others seeking legal advice in strategic, employment and commercial decisions. I am honored to have developed, at a relatively early stage in my career, the trust and confidence of a number of people in my community who sought my advice on critical business matters and when their own family members needed legal guidance. I have more than twenty reported decisions to my name and carried one of the largest case loads in my firm.

In addition to my work with clients, I have devoted significant time to State Bar Activities, culminating with my work on the Disciplinary Review Board. I also served on the State Bar Statewide Judicial Evaluation Committee.

Furthermore, I participated in community outreach programs involving the legal professional. I have taught paralegal courses at our Community College and served on our Hospital's Ethics Board and my church's Permanent Judicial Commission.

As United States Attorney: The most fulfilling work I have ever done is my service as United States Attorney. I have never worked as hard or brought as much focus to a job as I have since becoming United States Attorney, more so than in law school, more so than as a law clerk, more so than in private practice. Of course, our office works as a team. While I may be the captain, my most valuable contributions are in instituting strategic planning and motivating employees. The advancements I deem significant that our team has accomplished include the following:

This past year (2005), we initiated the highest number of cases in the recent history of the office. Not only was the raw number of cases high, but also the complexity of those cases reflects positive changes as evidenced by the nature of the charges, the number of the counts and the magnitude of the conduct alleged. We successfully concluded cases which have had a statewide impact.

In a year of national budget reductions and cutbacks, we were permitted to hire an additional prosecutor. Attorneys and staff show increased pride, involvement and motivation in their role in the office. In both 2004 and 2005 the Southern District of Georgia was the only United States Attorney's Office in the state to have an employee receive a Director's Award for outstanding performance from EOUSA. We have made a commitment of time and resources to all parts of the District, expanding federal prosecutorial presence in some of the smaller areas of the District.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

I have a retirement account with Thrift Savings Plan. I receive a salary as United States Attorney, which will cease when I leave the Department of Justice.

I have ownership interests in two entities: Vandelay, LLC and 777 Gloucester, LLC. Those entities have not been income-producing. If either shows a profit, I would receive my pro rata share. Vandelay, LLC, owns a percentage of an undeveloped tract of land near Interstate 95 in Glynn County, Georgia. 777 Gloucester, LLC, owns an office building in Brunswick, Georgia.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

Upon becoming a District Court Judge, I will run an immediate conflict check to determine whether any active matters will present a conflict or the appearance of a conflict of interest. In the event of a potential conflict of interest, I will consult with the appropriate ethics officials.

The only areas of which I am aware that are likely to present conflicts are any matters that are currently being handled by the United States Attorney's Office.

In the event of any conflict or appearance of a conflict of interest, I would remove myself from consideration or handling of the matter and follow all appropriate guidelines, including the Code of Conduct for United States Judges.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

No.

4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

   See attached financial disclosure report.

5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**

   See attached net worth statement and schedules.

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

   I was on the Bush 2000 Glynn County Steering Committee. I served in that capacity in 2000 and in 2004. I have been active in some state and local campaigns including Johnny Isakson's campaign for Senate, Mack Mattingly's 2000 Senate campaign, Sonny Perdue's 2002 Gubernatorial campaign and Jerry Keen's campaign for State Representative. I was a paid campaign worker for U.S. Representative Pat Swindall in 1986.

AO-10
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (Last name, First name, Middle initial)	2. Court or Organization	3. Date of Report
Wood, Lisa G	U.S. District Court, GA-S	6/16/2006
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5. ReportType** (check appropriate type)	**6. Reporting Period**
District Court Judge - Nominee	(•) Nomination, Date 6/12/2006 ( ) Initial ( ) Annual ( ) Final	1/1/2005 to 5/31/2006
7. Chambers or Office Address	**8.** On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.	
U.S.Attorney's Office, SDGA 100 Bull Street Savannah, Georgia 31401	Reviewing Officer_____ Date_____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions)

☐ NONE - (No reportable positions.)

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	United States Attorney	U.S. Department of Justice United States Attorney's Office, Southern District of Georgia
2.	Trustee	Trust #1
3.	Partner	Gilbert, Harrell, Sumerford & Martin, P.C.
4.	Board Member	Georgia Board of Public Safety
5.	Council Member	University of Georgia Law School Alumni Council

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions)

☐ NONE - (No reportable agreements.)

	DATE	PARTIES AND TERMS
1.	2004	Gilbert, Harrell, Sumerford & Martin, P.C. - Agreement for receipt of accounts receivable received during 2004 for legal services performed prior to Aug. 2004.
2.		Agreement expired December 2004.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Wood, Lisa G	6/16/2006

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions)

A. Filer's Non-Investment Income

☐ NONE - (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1.	2004	Gilbert, Harrell, Sumerford & Martin, P.C. - law firm compensation for services performed from January through July 2004.	$136,795.07
2.		(Additional Non-Investment Income was received as United States Government salary for services as United States Attorney.)	

B. Spouse's Non-Investment Income - (If you were married during any portion of the reporting year, please complete this section. Dollar amount not required except for honoraria.)

☑ NONE - (No reportable non-investment income.)

	DATE	SOURCE AND TYPE
1.		

IV. REIMBURSEMENTS – transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

☐ NONE - (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1.	Exempt	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Wood, Lisa G	6/16/2006

V. GIFTS. (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

☐ NONE - (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1.	Exempt		

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

☐ NONE - (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
1.	SunTrust Bank, Brunswick, GA	1 of 10 Guarantors on loan for 777 Gloucester, LLC, an office building in Brunswick, GA	P1

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Wood, Lisa G	6/16/2006

VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A -H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	D. If not exempt from disclosure (2) Date: Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
1. SunTrust Money Market Account, Brunswick, GA	A	Interest	L	T	(EXEMPT)				*EXEMPT*
2. Oglethorpe Bank Money Market Account, Brunswick, GA	A	Interest	L	T					
3. Sea Island Credit Union Savings Account, Sea Island, GA	A	Interest	L	T					
4. Bank of America Investment Services Account: G.E. Stock	A	Dividend	J	T					
5. (Cont'd) Home Depot Stock	A	Dividend	J	T					
6. (Cont'd) Johnson & Johnson Stock	A	Dividend	J	T					
7. Georgia Lawyers Insurance-Stock (Liability ins.) Fayettevil	A	Dividend	J	T					
8. Oglethorpe Bank Stock (Bank), Brunswick, GA	A	Dividend	J	T					
9. Bank of Amer. Investment Svcs: Gainesville & Hall Co. Bond	D	Interest	M	T					
10. Bank of America IRA (Cash) Brunswick, GA	A	Interest	J	T					
11. Bank of America Checking Accounts, Brunswick, GA	A	Interest	J	T					
12. Associated Credit Union Savings Account, Atlanta, GA	A	Interest	J	T					
13. Utah Edu. Sav. Plan: Vanguard Inst. Index Fund (S&P 500)	A	Interest	J	T					
14. 13.64% Vandelay, LLC - undeveloped land in Glynn Co.	A	Interest	K	T					
15. 1 of 10 owners of 777 Gloucester, LLC, an office bldg.	A	Interest	N	T					
16. TRUST #1 (see breakout below):									
17. (Con'td) ADP Stock	A	Dividend	J	T					
18. (Cont'd) Bank of America Stock	A	Dividend	J	T					

1. Income/Gain Codes (See Columns B1 and D4): A = $1,000 or less; B = $1,001-$2,500; C = $2,501-$5,000; D = $5,001-$15,000; E = $15,001-$50,000; F = $50,001-$100,000; G = $100,001-$1,000,000; H1 = $1,000,001-$5,000,000; H2 = More than $5,000,000
2. Value Codes (See Columns C1 and D3): J = $15,000 or less; K = $15,001-$50,000; L = $50,001-$100,000; M = $100,001-$250,000; N = $250,000-$500,000; O = $500,001-$1,000,000; P1 = $1,000,001-$5,000,000; P2 = $5,000,001-$25,000,000; P3 = $25,000,001-$50,000,000; P4 = More than $50,000,000
3. Value Method Codes (See Column C2): Q = Appraisal; R = Cost (Real Estate Only); S = Assessment; T = Cash Market; U = Book Value; V = Other; W = Estimated

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Name of Person Reporting	Date of Report
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VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure		B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div. rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
19.	(Cont'd) Bristol-Myers Stock	A	Dividend	J	T					
20.	(Cont'd) Cinergy Corp. Stock	A	Dividend	J	T					
21.	(Cont'd) General Electric Stock	A	Dividend	J	T					
22.	(Cont'd) Citigroup Stock	A	Dividend	J	T					
23.	(Cont'd) Chevron Texaco Stock	A	Dividend	J	T					
24.	(Cont'd) Conoco-Phillips Stock	A	Dividend	J	T					
25.	(Cont'd) Cisco Systems Stock	A	Dividend	J	T					
26.	(Cont'd) Conagra Foods Stock	A	Dividend	J	T					
27.	(Cont'd) Dell Stock	A	Dividend	J	T					
28.	(Cont'd) Dupont Stock	A	Dividend	J	T					
29.	(Cont'd) Exxon Mobile Stock	A	Dividend	J	T					
30.	(Cont'd) Fannie Mae Stock	A	Dividend	J	T					
31.	(Cont'd) Genuine Parts Stock	A	Dividend	J	T					
32.	(Cont'd) Home Depot Stock	A	Dividend	J	T					
33.	(Cont'd) Intel Stock	A	Dividend	J	T					
34.	(Cont'd) Johnson & Johnson Stock	A	Dividend	J	T					
35.	(Cont'd) Kellogg Stock	A	Dividend	J	T					
36.	(Cont'd) Kimco Realty Corp. Stock	A	Dividend	K	T					

1. Income/Gain Codes: A = $1,000 or less; B = $1,001-$2,500; C = $2,501-$5,000; D = $5,001-$15,000; E = $15,001-$50,000
(See Columns B1 and D4) F = $50,001-$100,000; G = $100,001-$1,000,000; H1 = $1,000,001-$5,000,000; H2 = More than $5,000,000
2. Value Codes: J = $15,000 or less; K = $15,001-$50,000; L = $50,001-$100,000; M = $100,001-$250,000
(See Columns C1 and D3) N = $250,000-$500,000; O = $500,001-$1,000,000; P1 = $1,000,001-$5,000,000; P2 = $5,000,001-$25,000,000
P3 = $25,000,001-$50,000,000; P4 = $More than $50,000,000
3. Value Method Codes: Q = Appraisal; R = Cost (Real Estate Only); S = Assessment; T = Cash Market
(See Column C2) U = Book Value; V = Other; W = Estimated

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Name of Person Reporting	Date of Report
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A -H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
37. (Cont'd) Oracle Stock	A	Dividend	J	T					
38. (Cont'd) Pfizer Stock	A	Dividend	J	T					
39. (Cont'd) Sara Lee Stock	A	Dividend	J	T					
40. (Cont'd) Southern Company Stock	A	Dividend	J	T					
41. (Cont'd) Teco Energy Stock	A	Dividend	J	T					
42. (Cont'd) Travelers Stock (TAPA) PPTY CAS CRP	A	Dividend	J	T					
43. (Cont'd) United Technology Corp. Stock (UTX)	A	Dividend	J	T					
44. (Cont'd) Verizon Communication Stock	A	Dividend	J	T					
45. (Cont'd) Wal-Mart Stock	A	Dividend	J	T					
46. (Cont'd) Weingarten Realty Stock	B	Dividend	K	T					
47. (Cont'd) General Motors Bonds	C	Interest	L	T					
48. (Cont'd) Bank of America Bonds	B	Interest	K	T					
49. (Cont'd) Merrill Lynch Money Market Account	A	Interest	J	T					
50. (Cont'd) Oglethorpe Bank Stock (Bank)	A	Dividend	J	T					
51. (Cont'd) Atlantic Bank Checking Account	A	Interest	J	T					

1. Income/Gain Codes: (See Columns B1 and D4) A = $1,000 or less; B = $1,001-$2,500; C = $2,501-$5,000; D = $5,001-$15,000; E = $15,001-$50,000; F = $50,001-$100,000; G = $100,001-$1,000,000; H1 = $1,000,001-$5,000,000; H2 = More than $5,000,000
2. Value Codes: (See Columns C1 and D3) I = $15,000 or less; K = $15,001-$50,000; L = $50,001-$100,000; M = $100,001-$250,000; N = $250,001-$500,000; O = $500,001-$1,000,000; P1 = $1,000,001-$5,000,000; P2 = $5,000,001-$25,000,000; P3 = $25,000,001-$50,000,000; P4 = $More than $50,000,000
3. Value Method Codes (See Column C2): Q = Appraisal; R = Cost (Real Estate Only); S = Assessment; T = Cash Market; U = Book Value; V = Other; W = Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
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VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
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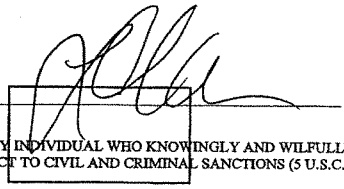
IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature  Date 6/16/06

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		54	000	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		128	532	Notes payable to relatives			
Unlisted securities--add schedule		11	700	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		2	400
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		171	000
Real estate owned-add schedule	2	203	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		200	000				
Cash value-life insurance							
Other assets itemize:							
Bank of America IRA		2	900				
Thrift Savings Plan		148	000				
Vandelay, LLC		18	500	Total liabilities		173	400
777 Gloucester, LLC		1	000	Net Worth	2	594	232
Total Assets	2	767	632	Total liabilities and net worth	2	767	632
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor	YES	See attached		Are any assets pledged? (Add schedule)	YES		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
GE	$ 3,478
Home Depot	4,230
Johnson & Johnson	5,922
Gainsville and Hall County, GA Municipal Bond	26,209
Columbia Cash Reserves	88,693
Total Listed Securities	128,532
Unlisted Securities	
Oglethorpe Bank Stock	$ 11,700
Real Estate Owned	
Personal residence 1	$ 1,978,000
Personal residence 2	225,000
Total Real Estate Owned	2,203,000
Real Estate Mortgages Payable	
Personal residence	$ 171,000

Contingent Liabilities: I am one of 10 guarantors on a $3,200,000 loan from SunTrust Bank to 777 Gloucester, LLC.

Assets Pleged: My personal residence is security for my mortgage.

III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

Throughout the duration of my private practice, I spent approximately one-half day a week performing pro bono work. While in private practice, I spent significant time performing free legal services for the YWCA. Much of this work was centered around the after school and day care programs which serve many disadvantaged children in our community. For two years, I co-chaired the Tribute to Women Leaders YWCA fundraising event which secures funds to run the after school program. In addition to these activities, I have worked in conjunction with our local school system as a mentor in the middle school shadowing program, an interviewer in the middle school career day exercises, and a Judge in the high school mock trial competition. Additionally, when in private practice, I was appointed by the District Court to represent indigent defendants on multiple occasions. Furthermore, when in private practice, I gave advice to numerous low income individuals regarding civil matters and have not taken a fee. I served on the State Bar of Georgia Disciplinary Review Panel and the State Bar of Georgia Judicial Evaluation Committee. As United States Attorney, I speak to student groups and civic organizations on a regular basis. I also enjoy serving as a judge in student mock trial competitions. I take activities such as those listed above seriously, and they have been a constant, significant part of my legal career.

In addition to my pro bono legal work, I am an Ordained Elder of the Frederica Presbyterian Church. In that capacity, I have supported many community organizations that help the disadvantaged. Prior to becoming the U.S. Attorney, I served on the Permanent Judicial Commission of the Savannah Presbytery. Additionally, I served on my community hospital's Medical Ethics Board and was active in other community organizations such as Safe Harbor Children's Shelter and the Brunswick Port Society.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?**

I do not belong and have not belonged to any such organizations.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

Yes, there is a selection commission in Georgia.

Yes, I was recommended for nomination by the selection commission. The process consisted of the following steps: I submitted an application to the selection commission in Georgia. The selection commission interviewed me. I received a call from the White House Counsel's office informing me that I was one of three people who had been recommended for nomination by the selection commission and the Georgia Senators. I was interviewed by two members of the White House Counsel's office and one person from the Department of Justice. I received a telephone call from the White House Counsel's office informing me that the White House had decided to move forward with my background investigation. Following my background investigation, I was notified that I would be nominated. My nomination was submitted to the Senate on June 12, 2006.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

No.

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped-many of the prerogatives of other branches and levels of government.

Some of the characteristics of this Ajudicial activism@ have been said to include:

a. **A tendency by the judiciary toward problem-solution rather than grievance-resolution;**

b. **A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

District Court Judges should not engage in policy making. The Constitution carefully balances the powers among the three branches of government. Respect and humility in recognizing the Constitutional separation of powers is important. The judiciary is not vested with the power to make law, nor is it the judiciary's role to execute the law.

District Court Judges must recognize the importance of precedent. It is their duty to find and apply precedent, not look for ways to make it. *Stare decisis* is a fundamental doctrine in American law. It provides the stability and continuity that is a crucial feature of our system of justice.

Furthermore, District Court Judges must heed the jurisdictional limits imposed by Article III, including the duty to hear only actual cases and controversies. District Court Judges should ensure that the matters before them satisfy the appropriate standing, ripeness and mootness requirements instead of attempting to issue orders on abstract issues or hypothetical facts. Specifically, District Court Judges should decide the cases properly before them according to the rule of law.

AFFIDAVIT

I, Lisa Godbey Wood, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

6/16/06
(DATE)

(NAME)

Maurene S. Tapley
(NOTARY)

MAURENE S. TAPLEY
Notary Public, Chatham County, GA
My Commission Expires February 1, 2009

Senator COBURN. Thank you.

Well, we will proceed with some questions now. I have a limited number of questions for each of you. There will be no time contingency in terms of how you answer them. They are fairly general questions, but it will give me a feel and an opportunity to get to know you a little bit better.

I am going to begin with Ms. Fischer, if I might. Your legal career has really encompassed a broad mix of civil and legal work, particularly focusing on trial work.

Would you share with us how your experiences have prepared you to serve as a U.S. judge?

Ms. FISCHER. Thank you, Mr. Chairman, for that question. As you know from your review of my resume, I have been practicing law in Western Pennsylvania, and also in West Virginia, I might add, the last 30 years. I have covered a broad range of cases in both State and Federal work. Early on I handled a number of civil rights and employment cases, for example, in the Federal district court.

I think that the mix of skills that I have learned, the ability to look at cases, analyze the facts and then apply the law, I think I can carry that into the judiciary, if I should be so fortunate. Further, as it has been indicated, I have some training in mediation, arbitration, and alternate dispute resolution. It would be my hope to bring those skills to the table as well.

Senator COBURN. You just answered my next question. I actually consider that to be a tremendous asset, because what that means, as you recognize in mediation and alternate dispute resolution, is you are a trusted advocate for fairness. I think that is a tremendous compliment to you.

When we see 1,500 cases per judge, if they go to trial, that is an impossibility in our judicial system today. So mediation, and actually the concept of reconciliation, reconciling two people apart or two parties to a common denominator, is a key factor.

In your mind, of all the judges you have been in front of, what are the qualities that you are most impressed with that makes a good judge?

Ms. FISCHER. First, Mr. Chairman, I would say that the judges who I admire are fair-minded and open, listening to both sides of the case, sometimes more than two sides of the case. Certainly hardworking, people who spend the time, the energy to learn the facts of the case and the parties to do justice.

In addition to that, I think that the people that I most admire are those who welcome the citizens into their courtroom and provide an atmosphere, a fairness, even- handedness, and integrity as they address cases.

Senator COBURN. Thank you.

I am going to ask each of you this question. You do not have the advantage of having it heard it prior to coming up. I am not a lawyer. I am a physician/businessman. As all of you know, judges have become a political issue, which I think is much to the detriment of our country.

There is a difference between political ideology and judicial philosophy. I do not think anybody ought to have to explain their po-

litical ideology, but would you care to explain what you see as a proper judicial philosophy?

Ms. FISCHER. Thank you, Mr. Chairman, for that question. I know that it is an important question. As a Federal district court judge, if I should be so fortunate to become one, I would have to address the facts of the case and apply the law.

As any sitting judge in the Western District, or in any other district court, I would first have to look to precedent. In that vein, I would look to the Third Circuit, and certainly to the Supreme Court, as precedent. From that, then I would proceed to make the rulings that would be required in a case on a case-by-case basis.

Senator COBURN. All right. And you recognize, your authority comes from the Constitution, the statutes, and the treaties of this country, as well as stare decis?

Ms. FISCHER. Certainly.

Senator COBURN. And nothing else.

Ms. FISCHER. That is the basis.

Senator COBURN. As far as the authority for the basis of your opinions.

Ms. FISCHER. That would be correct.

Senator COBURN. All right. Thank you.

Judge Frizzell, you have served in the State of Oklahoma as a judge for 9 years. First of all, let me thank you for doing that. Given your service on the bench, you have some insight about the roles that judges play. Can you kind of share with us your thoughts on the role of the judiciary in our tri-part government?

Judge FRIZZELL. Yes, sir. Having tried some 185 or so cases, I have found that the judiciary, the judge, playing a central role in the trial of cases, first of all, has to be extremely courteous. The judge sets the tone in the courtroom. So, courtesy, humility, and I think restraint, first and foremost.

Obviously, restraint in following stare decis, restraint in recognizing that addressing a case in controversy, one must limit one's self to the case before the judge and utilize those tools that are applicable and can resolve the case and not going beyond.

Senator COBURN. How do we promote more cases into reconciliation rather than trial?

Judge FRIZZELL. Clearly, alternative dispute resolution—fortunately, in Tulsa, as you know, Mr. Chairman, we have on the State level an actively-used municipal early settlement procedure that we use quite a bit. I personally referred a lot of cases there a lot of times, because parties simply want to be heard.

They want to make their case, and many times by presenting their case to a mediator they have that catharsis and are able to get an impartial evaluation regarding the strength of their case. So, mediation is absolutely essential, as you have previously mentioned.

In addition, the Northern District of Oklahoma has an active process. The Magistrate Judge who is in charge of that was my co-clerk for Judge Brett, Magistrate Judge Paul Cleary, and he is doing an excellent job.

Senator COBURN. All right. Thank you.

Judge Frizzell, for 9 years you have been involved with the local chapter of the American Ends of Court, which, as you know, is an

organization dedicated to improving the skills, professionalism, and ethics of the bench and bar.

Can you tell me how your experience has shaped your skills as a judge and how you will apply those skills during your service, should you so be confirmed to the district court?

Judge FRIZZELL. I think in three ways, Mr. Chairman. First of all, as you know, the American Ends of Court is designed to promote civility amongst the bench and amongst the bar. They do so by dining together, breaking bread together once a month, which fosters relationships.

Second, through education. Each month we have a presentation made by one of the people groups, and one that always, if you keep your ears open, you can pick up tips on how to address a lawsuit and how the administration of justice ought to be performed.

I think, third, I have dived head-first into the idea of mentoring. I think we have lost in the American legal system because recently you see many people from law school going into solo practice and not going into law firms.

It is essential that they have mentors. Just last week I started up with a new mentee, who is a private practitioner who has just a few years of experience and is a solo practitioner in the criminal area.

Senator COBURN. You have done a lot of pro bono work for both the Tulsa Speech and Hearing Association, as well as for indigent Tulsans through the Rotary Club. If it is appropriate, or would it be appropriate for you, and if so, how would you use your experience in pro bono work to increase the amount of pro bono work that is done by the bar that sits before you?

Judge FRIZZELL. I know that on the State bench we have attempted to increase the amount of pro bono work done for individuals participating or who otherwise would be pro se before the courts.

I, frankly, do not know whether the Northern District of Oklahoma promotes—excuse me. I do. But in the area of criminal practice, because I was a member of the board at one point in private practice, we had an adjunct board where we represented criminal defendants. So, we do promote that in the Northern District of Oklahoma.

Senator COBURN. Thank you.

Then to my final question: judicial philosophy.

Judge FRIZZELL. Yes, sir. I think, first of all, the linchpin is that of judicial restraint, as I previously alluded. One must not use the totality of powers that a judge is given. It is much like being a parent; you do not want to go beyond that which is necessary to resolve a particular case. I think, obviously, firm adherence to the doctrine of stare decis and unfailing courtesy.

Senator COBURN. All right. Thank you.

Judge O'NEILL. A really interesting career. You should be proud. You have had a varied career. You worked as an advocate, then on the State bench, and now recently as a Federal magistrate judge for the same court. Probably a lot of this work has been falling on you anyway, I would imagine. How about all of those experiences, and how does that fit with making you a great Federal judge?

Judge O'NEILL. I think starting out as an advocate, that being a lawyer, makes you understand that there are judges you like to come before and judges you would prefer never to be before again. I think that it is important for a judge to remember those experiences so you are the type of judge that people want to appear before again and again.

With regard to the State court, I handled more than 2,000 criminal cases. You mentioned earlier the part about mediation. That is a good part of what occurs every day in the criminal field, as well as the civil field. I ran that calendar for several years at the end of my State years on the Superior Court.

Moving then into the Federal court, I handled, and have continued to handle, settlement conferences on a weekly basis. Sometimes it is the traditional settlement conference, sometimes it is mediation, sometimes it is a hybrid. But all of those things, coupled with more than 500 trials that I have handled, I believe, make me ready for this position.

Finally, when you mention that perhaps I am handling some of the cases now that I will be handling, that is a true statement. As you know, in the Federal court a magistrate judge can handle a case sitting as a district court judge with the consent of all parties. The consent rate for me is in excess of 90 percent. So for the past, almost 8 years, on the civil side of it, I have been acting as a district court judge.

Senator COBURN. That is great.

You have been recognized also as well for your pro bono and community service activities, including your service for the Fresno County Mock Trial competition, and other teaching activities.

Can you describe these activities for the committee, what you have done?

Judge O'NEILL. Yes. Generally it is junior high school and high school, and it is almost not ever grammar school level. I am invited back to the junior high school level to teach six to eight classes per year, either on the first day that they are going to be handling the Constitution, or the last day that they are handling the Constitution.

As far as the high school level is concerned, I teach the Advanced Placement review course for the Government class, specifically the courts and the Constitution arena, and in between all of that, a lot of speeches.

I think that judges, from time to time, as best we can, need to get out of our chambers and out of our courtrooms and into the public to explain what we do, because so many people do not know.

Senator COBURN. Right. Right.

Do you plan on continuing that work, should you be confirmed?

Judge O'NEILL. I absolutely do.

Senator COBURN. Yes. The key to that is making sure the public has confidence in our judiciary, and I think you are right on.

Judge O'NEILL. And if they do not know what we do, there is no way they can have that confidence.

Senator COBURN. Right.

And how about the answer to my question on judicial philosophy?

Judge O'NEILL. There are several things that I think a judge must do. First, is to be prepared, to have read not just the briefs,

but the law, to be ready to proceed with that case before you come out on the bench.

Second, to be efficient with your time. If you waste time or have people waste time in your courtroom, you do not have time to give the people at the end of the calendar the same type of listening that you need to do in every case.

Civility is absolute. It is an absolute requirement for a judge. I think that ultimately people need to come into your courtroom knowing that you are going to apply the law as it is. Not how you might think it should be, not just on the things that you agree with, but apply the law as it is.

The only way you are ever going to do that as a judge is to recognize that there are three branches of government, and that means something. That is not just a convenience, it is the law itself.

Senator COBURN. Thank you.

Ms. Wood, a similar question. You have had broad experience, both in terms of civil and criminal work, and prosecutorial work. How has that prepared you to be a Federal judge?

Judge WOOD. Well, Senator, I think it puts me in a unique position of having been able to see the Federal district court from just about every angle possible, beginning with behind the scenes as a law clerk, and to see the decisional process and how that goes on, then next as a private practitioner representing civil plaintiffs and defendants, and also defending accused people who have been brought to the court, then as a county magistrate court, to pass on issues regarding search and seizure and arrest warrants, and so forth, then, finally, as the U.S. Attorney, to represent the United States in civil and criminal matters.

So, I get to see from all those vantage points how crucial it is for the members of the Federal judiciary to be honest, fair, hardworking, patient, and humble.

Senator COBURN. Thank you.

Speaking of your role as a U.S. Attorney in the Southern District of Georgia, what would you outline or lay out for us that are your major accomplishments as a U.S. Attorney there?

Judge WOOD. Senator, I have been U.S. Attorney for approximately 2 years. I was confirmed in 2004. During that time our office has increased its productivity, and last year we had the most productive year that we have ever had in terms of pursuing criminal defendants resulting in convictions, and complex cases that we have been able to pursue. This year, as well, we are track to best that. I also think that the morale in our office is good, and that affects everyone's work ethic.

I guess, lastly, I would say, touching on something that Judge O'Neill mentioned, and that is the public face of the office. I agree with him that, as public servants, we need to let the public know what we are doing. Our buildings of justice stand only so much as we have public confidence and that they trust us.

So I spend a lot of time going to schools, elementary schools up to colleges and law schools, going to civic clubs and groups, and telling them about what the Federal law enforcement initiatives are and what we are doing in our part of the world to accomplish those.

Senator COBURN. Great.

Then to my last question about judicial philosophy? Judge Wood. My judicial philosophy is fairly simple. I think it is important to understand the role that a Federal district Judge plays within the larger system within the three branches of government and within the appellate system itself.

As a district court judge, I am bound to apply the precedent of the 11th Circuit Court of Appeals in my State, and the U.S. Supreme Court. My task will be to discern the facts as fairly as I can and to research and discover the law as diligently as I can. If I were to be fortunate enough to be confirmed, that is what I would do every day of my career.

Senator COBURN. All right. Thank you.

I have just one final question for each of you. It is something that you see reflected here in the U.S. Congress. The difference is, we are not appointed for life, although we might act like it.

[Laughter.]

What will each of you do in your personal life to have a check or balance so that the position of a lifetime appointment and the power that comes with that will be moderated, influenced, or a Governor put on so that our normal human nature of being approached to ourselves of significance, will never get in the way of your decisions as a U.S. district court judge.

Ms. Fischer?

Ms. FISCHER. Thank you.

Senator COBURN. And by the way, I will give you an out. My balance is my wife. She cuts me down all the time and puts me right back where I belong.

Ms. FISCHER. Thank you, Mr. Chairman, for that question. I could echo the same. I would say that my husband Don certainly adds balance to my life, as do my children. In fact, my husband, who happens to be a physician, such as the Chairman, makes sure that I get exercise. I was 25 years old when he started to teach me how to swim, and I am still learning. I am getting there.

But in addition to that, I think in approaching my every day, I would expect to approach the matters at hand, if you will, with the same kind of evenness, if you will, that I currently have in my law firm practice where I work with a team of younger associates and partners, paralegals and staff.

We know when to crack a joke. We know when to celebrate somebody's success. We support each other. I think I would take those same kinds of attributes, if you will, to the bench if I would be so fortunate to be appointed and committed to the bench.

Senator COBURN. Judge Frizzell?

Judge FRIZZELL. Thank you, Mr. Chairman. Obviously that is a critical question with this particular job. I would echo Ms. Fischer's statement, substituting my wife for her husband, and the children. Obviously that keeps one humble.

In addition, I have tried to operate on the "bathroom mirror" philosophy. I want to be able to look myself in the mirror the next day without any second thoughts. That has kind of helped me through nearly 10 years of service on the State bench. I think, as Ms. Fischer says, you have got to keep active, you have got to keep exercising. With the YMCA right across the street, I use that often.

Senator COBURN. Judge O'Neill?

Judge O'NEILL. One of the finest judges I have met, who is now deceased, his name was Hollis G. Best, and he was the presiding Justice of the Fifth district court of Appeals in California.

When I first got appointed by the Governor of the State of California to the Superior Court, before I was sworn in he took me to lunch and he said, "The best judges focus in on responsibility and not on power." That is a philosophy that I have followed since the first day some 17 years ago.

Second, I, too, have a spouse who, in one word, can put me back where I need to be from time to time. That one word is: overruled.

[Laughter.]

Senator COBURN. Great answer.

Ms. Wood?

Judge WOOD. Thank you, Senator. I, too, have a spouse that keeps me in check. We serve that role for each other. My parents taught me that you shine brightest when you are polishing others, and I would take Judge Alaimo's cue and speak softly and listen hard.

Senator COBURN. Well, thank you each very much. The Chairman will make a determination of when you will come on the business calendar. I appreciate you responding on short notice to this hearing. We are trying to accomplish your nominations through.

I must say, each of you are impressive in your own right. It is a reflection on the legal profession in this country, as well as our system of government, that we see such quality individuals before us.

The record will remain open for one week should you want to amend or add anything to what you might have said.

With that, the hearing is adjourned.

[Whereupon, at 3:00 p.m. the hearing was adjourned.]

[Submissions for the record follow.]

SUBMISSIONS FOR THE RECORD

Statement of Sen. Barbara Boxer
on Nominee for the
Eastern District of California:
Judge Lawrence O'Neill
September 12, 2006

Mr. Chairman and members of the Senate Committee on the Judiciary, I am pleased to offer my support for Judge Lawrence O'Neill, nominee for the Eastern District Court of California. Judge O'Neill has an excellent reputation in the California legal community, and I am confident that, should he be confirmed, he will discharge his judicial responsibilities with dignity and integrity.

I met Judge O'Neill in 1994, while he was the Presiding Judge over the Juvenile Courts for Fresno County. Judge O'Neill and I served as panelists in a roundtable discussion about youth violence that I organized in the Fresno area. Judge O'Neill and I agreed on some issues, and disagreed on others. But in the end, Judge O'Neill earned my respect for providing thoughtful insights on the issues and debating them in a civil manner.

Judge O'Neill is another example of the bipartisan selection process created by Senator Feinstein and I, along with the White House Counsel's office. Together, we created four judicial advisory committees for the State of California, with one in each federal judicial district.

This selection process was put to the test in the case of Judge O'Neill. The Eastern District, Fresno Division – where Judge O'Neill will sit if confirmed – is in a state of judicial emergency right now, due to an excessive case load. There are two judges currently sitting in the Fresno Division, and each is carrying over 1,400 cases – almost three times the national average for a District Court judge.

The bipartisan selection process once again came through, producing yet another outstanding judicial nominee in a timely manner to address the Fresno Division judicial emergency. Now it is time for the Senate to do its part and bring Judge O'Neill's nomination to the floor for quick confirmation.

Judge O'Neill is a native Californian, born in Oakland in 1952. He attended the University of California-Berkeley, where he majored in criminology. He then obtained a Master's in Public Administration at Golden Gate University in San Francisco. Judge O'Neill completed his Bay Area education tour by attending Hastings College of Law, also in San Francisco.

Following law school, Judge O'Neill began his legal career in private practice before being named to the California Superior Court in 1990. From 1990-99, Judge O'Neill served on the Superior Court in Fresno County with distinction, including two years as Presiding Judge over the Juvenile Court.

Since 1999, Judge O'Neill has served as a federal Magistrate Judge for the Eastern District, where he has earned the respect and admiration of other judges on the court as well as attorneys who have practiced before him. He will be a welcome addition to the bench should he be confirmed.

In closing, I offer my full support for Judge O'Neill's nomination to the District Court for the Eastern District of California. The Eastern District will benefit greatly from the exemplary service of Judge O'Neill, and I urge my Senate colleagues to confirm his nomination quickly.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA
United States Courthouse
Claire V. Eagan
Chief Judge
333 West Fourth Street, Room 411
Tulsa, Oklahoma 74103-3819
(918) 699-4795
Fax: (918) 699-4787

September 12, 2006

Honorable Senator James Inhofe
453 Russell Senate Office Building
Washington, DC 20510-3603

Dear Senator Inhofe:

On behalf of the Northern District of Oklahoma, I respectfully request assistance in filling the judicial vacancy left open by Judge Holmes' resignation in March 2005.

Cases left by Judge Holmes were substantial in number (about 250) and complexity. In a small court, such as ours, with three and one-half authorized judgeships, existing cases cannot be widely allocated. In this instance, Judge Kern and I received the primary burden while the roving judge from the Eastern District received less. In addition to taking on existing cases from Judge Holmes, we have drawn new cases over the past year and a half at a higher percentage because we are missing an authorized judgeship.

Often, senior judges can shoulder much of the burden when districts go through transitions. Unfortunately, circumstances have been such that our senior judges have been unable to assist. In March 2005, we had two senior judges one of whom has since taken inactive status (no staff, no cases) and the other has reduced his caseload to criminal cases only.

Under these circumstances, we hope that the Senate Judiciary Committee will look favorably upon our need. As always, I thank you for your assistance in judiciary matters during your busy schedule.

Very truly yours,

Claire V. Eagan

Claire V. Eagan

Statement for Hearing on Judge Gregory Frizzell
by Senator James Inhofe
September 12, 2006

- Mr. Chairman, today I am here in support of **Judge Gregory Frizzell**, nominee for the **United States District Court for the Northern District of Oklahoma**.
- His family is no stranger to the legal field or to public service, as his father, **Kent Frizzell**, served as the **Kansas Attorney General from 1969-1971**.
- His father then went on to become **Undersecretary of the Interior**, and taught at **the University Of Tulsa School Of Law** for 18 years.
- Given his father's distinguished work, it is no surprise that **Judge Frizzell** felt compelled to pursue a career in public service.
- His friends and colleagues have praised his professional qualifications and personal integrity who all emphasize his ability to rule fairly from the bench.
- **Robert Sartin**, **Member of the Board of Governors of the Oklahoma Bar Association**, said **Judge Frizzell** is **"...a man of extremely good character and high integrity, with a deep sense of personal responsibility toward his fellow man."**
- **Judge Claire Eagan**, of the **Northern District**, said that since **March 2005** there have been **no new judges confirmed** to her district and they are in desperate need of new judges as there are currently **three judges doing the work of six**—this just reiterates the importance of quickly confirming **Judge Frizzell**.
- **Joel Wohlgemuth** (Vol-guh-Myooth), a partner at **Norman, Wohlgemuth, Chandler & Dowdell** in Tulsa, called **Judge Frizzell** a "**man of integrity**" and a **"straight arrow."**
- Before serving in his current position as **District Judge of the 14th Judicial District of Oklahoma**, **Greg Frizzell** had a

long and distinguished legal career with ample federal experience.

- After graduating with a law degree from the University of Michigan, he clerked for **Judge Thomas Brett**, who served on the **U.S. District Court for the Northern District of Oklahoma**.
- He then became an associate for the **Oklahoma** law firm **Jones, Givens, Gotcher & Bogan** from 1986-1994 and ran his own private practice from 1994-1995.
- In 1995, he was selected by **Governor Frank Keating** as **General Counsel to the Oklahoma Tax Commission**, where he served until he was appointed to his current position as **District Judge**.
- He has also shown a commitment to keeping abreast of current legal practice by conducting **Continuing Legal Education** presentations on behalf of the **Oklahoma Bar Association** related to trial practice and procedure.
- Not only has **Judge Frizzell** proven an effective and fair legal professional, he is a devoted husband, loving father of six children, and is active in his community and church.
- **Mr. Wohlgemuth** (Vol-guh-Myooth) recalls an instance where **Judge Frizzell** was at the courthouse late one night doing work, but brought his children along so that he could spend time with them.
- **Judge Frizzell** is a man of great moral integrity who has proven his character in both his private and public life.
- I cannot say enough good things about his overwhelming qualifications to serve as **District Judge** and I urge my colleagues to quickly approve his nomination.

Statement of Senator Patrick Leahy
Ranking Member, Senate Judiciary Committee
Hearing on Judicial Nominations
September 12, 2006

Today, with less than three weeks left in this legislative session, the Committee will hear from four more candidates for lifetime appointments to the Nation's federal courts. I am concerned that these nominations, like so much of the Nation's pressing business over the last two years, could be derailed by the misguided priorities of the Bush-Cheney Administration and the Republican leadership. With so little time remaining in this Congress, I would have hoped that the Administration and the Republican leadership would be anxious to make up for lost time by trying, at last, to address the many urgent and unresolved needs of Americans. I had hoped that we could join together to change course from the failed policies that have stretched from the Persian Gulf to the Gulf Coast and left America less secure and set us back as a Nation. Regrettably, rather than learn lessons from these failures, it appears that they are intent on staying the course. The President and his political advisors have stayed the disastrous course on judicial nominations by choosing to renominate five extremely controversial choices for lifetime positions on the Nation's highest courts. This Administration seems intent on heeding the marching orders of the narrow, special interest groups on the right and picking fights. I urge the Senate Republican leadership not to take the bait and, instead, join with us in the waning days of this Congress to do the work of the American people.

Re-Nominations of Controversial Nominees

The five nominations the President has sent back to the Senate this month represent a troubling group. The President re-nominated Judge Terrence Boyle to the Fourth Circuit despite the fact that as a sitting United States District Judge and while a Circuit Court nominee, Judge Boyle ruled on multiple cases involving corporations in which he held investments. The President should have heeded the call of North Carolina Police Benevolent Association, the North Carolina Troopers' Association, the Police Benevolent Associations from South Carolina and Virginia, the National Association of Police Organizations, the Professional Fire Fighters and Paramedics of North Carolina, as well as the advice of our former colleague, Senator John Edwards, to withdraw this ill-advised nomination and not re-nominated him. Law enforcement officers from North Carolina and across the country oppose the nomination. Civil rights groups oppose the nomination. Those knowledgeable and respectful of judicial ethics oppose this nomination. This nomination had been pending on the floor calendar in the Republican-controlled Senate since June of last year when it was forced out of the Committee on a party-line vote. The Senate did the President a favor by returning this nomination to the White House before the summer recess. The President should not have re-nominated Judge Boyle.

The President also re-nominated William Gerry Myers III to the Ninth Circuit. This is another Administration insider and lobbyist whose record has raised serious questions about his ability to be a fair and impartial judge. I opposed this nomination when it was considered by the Judiciary Committee in March 2005. This was a nomination that the

so-called "Gang of 14" expressly listed as someone for whom they made no commitment to vote for cloture, and with good reason.

Mr. Myers' anti-environmental record is reason enough to oppose his confirmation. His lack of independence is another. If anyone sought to proceed to this nomination, there would be a need to explore any connections to the lobbying scandals associated with the Interior Department and Republican lobbyist Jack Abramoff.

It is particularly troubling to see Mr. Myers re-nominated because the President ignored another opportunity to be a uniter. I had suggested that he re-nominate Norman Randy Smith for the vacancy created by the retirement of Judge Thomas G. Nelson from Idaho. Instead, the President has again nominated Judge Smith to a California seat on the Ninth Circuit, effectively stealing California's seat. That is wrong. I support Senators Feinstein and Boxer in their opposition to this tactic. I again urge President Bush to resolve this impasse and turn Idaho's vacancy into a judge by withdrawing the controversial Myers nomination and nominating Judge Smith for the Idaho vacancy to which he could be easily confirmed.

It is distressing that the President chose to re-nominate William James Haynes II to the Fourth Circuit despite bipartisan concern about this nomination. As General Counsel at the Defense Department, Mr. Haynes has been deeply involved in seeking to excuse this Administration's now discredited policies on the treatment of enemy combatants, the interrogation and torture of detainees, and the creation of military commissions. In two hearings, Mr. Haynes has refused to answer questions from Senators about these policies, despite disturbing developments that have come to light that relate to those policies, including the Abu Ghraib scandal and scores of other incidents of detainee abuse in Afghanistan, Iraq, and Guantanamo Bay. In addition, new press reports, declassified memoranda and letters from former high-ranking military officials have detailed Mr. Haynes' disregard for legal concerns raised by senior military and civilian lawyers within the Armed Services about these policies and his efforts to subvert their advice. It seems that Mr. Haynes ignored the policy concerns raised by military officers about the effect of his policies on the safety of American troops and American credibility around the world.

I have found inconsistencies between Mr. Haynes' testimony and that of the uniformed JAGs relating to their involvement in the development of detainee interrogation policies to be particularly troubling. Although Mr. Haynes sought at his hearing in July to allay some of these concerns regarding his disregard of the advice of uniformed JAGs, his statements were contradicted by several JAGs who testified before the Senate Armed Services Committee. Subsequently, Mr. Haynes sought to reconcile his testimony with that of the JAGs in a letter to the Committee. Unfortunately, even this letter turned out to be inaccurate, as set forth in a subsequent letter from Daniel Dell'Orto, Mr. Haynes' deputy at the Defense Department. The President had an opportunity to move beyond this controversy by sending the Senate a more qualified, consensus nominee. Unfortunately, he squandered that opportunity with this re-nomination.

Finally, the President has re-nominated Michael Wallace to a vacancy on the Fifth Circuit

even though he received the first ABA rating of unanimously "not qualified" that I have seen for a circuit court nominee in 25 years. The hearing on his nomination scheduled for July 19 was cancelled, though not before the Committee received written testimony from the ABA regarding his rating. This testimony, which was confidential until leaked to a conservative website, details the significant concerns raised by numerous jurists around the country regarding Mr. Wallace's judicial temperament, lack of commitment to equal justice for the poor and minorities, lack of tolerance, and open-mindedness. It details concerns from judges and lawyers that Mr. Wallace "may not follow the law" and is driven by his "personal agenda." Of course, the troubling issues raised in the ABA's testimony echo significant concerns about Mr. Wallace's record on civil rights, his opposition to the Voting Rights Act, his support for tax exemptions for Bob Jones University, his opposition to prison safety regulations, and his attempt as President Reagan's director of the board of the Legal Services Corporation to undermine efforts to provide legal services to low-income clients.

Continuation of Misguided Priorities

This is not the first time this Administration and this Republican-led Congress has diverted resources and attention from America's needs. Unfortunately, President Bush's re-nomination of these controversial nominees is a continuation of a pattern of misguided priorities that has plagued the Administration and the Senate's Republican leadership since the beginning of this Congress. Instead of urging his party to take early and decisive action to pass comprehensive immigration reform, as he signaled he would in February 2001, the President began his second term campaigning to undercut the protections of our Social Security system. As a result, at the start of this Congress in 2005, the Administration's top priority was not increasing national security or the economic security of working Americans who are sharing in a smaller piece of the country's wealth than they have in decades. Had the Administration been successful at privatizing Social Security, it would have gutted the program that ensures for all Americans that growing old does not mean growing poor. Thankfully, Americans rejected this effort. Unfortunately, the President continues to voice his support for his rejected approach and refuses to concede his error.

Like the Administration, the Senate's Republican leadership turned away last spring and summer from addressing the priorities of most Americans. They focused instead on the fierce legal battle over the medical treatment of Terri Schiavo, who was in a persistent vegetative state for more than a decade. Politicians engaged in extraordinary measures to override what state courts determined to be her personal wishes. The power of the Federal Government was wielded by some to determine deeply personal choices. The Republican leader even made a medical diagnosis on the floor of the Senate, and the President cut short one of his vacations to come back to Washington to sign legislation to override the precise wishes of this one patient. The American people recoiled from this misuse of the Government's time and authority.

The President's re-nomination of divisive nominees is a repeat of last Congress and last year, when the Administration and the rubberstamp Republican Senate created a massive

confrontation over controversial nominees. The Senate narrowly averted the so-called "nuclear option," a bid to achieve one-party rule by thwarting the Senate rules. They were willing to destroy a fundamental check and balance in order to be a more efficient rubberstamp for this President. Thankfully, this attempt also failed, but not before the Senate expended much energy and lost precious time.

This summer the Republican leadership determined, despite the many pressing issues facing the country and affecting Americans, to turn away from the legislative agenda to focus on two constitutional amendments that would result in restricting the rights of the American people. Although not among our Nation's most pressing priorities, the constitutional amendments were considered and rejected. The marriage amendment and the flag amendment would have artificially created division among the American people.

With more Americans in poverty and extreme poverty and more children without health care, we must do better. With rising interest rates, rising mortgage rates, rising health care costs, rising insurance costs, we must do better for America's working families. While corporate profits are taking a greater and greater share of our GNP, wages are stagnant and those in charge refuse to allow a long overdue raise to the minimum wage. We have just come through a summer of record high gas prices, and for many families, the threat of record high home heating prices this winter looms around the corner.

The full agenda before us as we enter the final days of this legislative session reflects how little the Republican leadership has accomplished, even with control of the White House and both Houses of Congress. A steady course of misguided priorities has cost Americans progress on real issues that matter most. And these failures to focus on our real priorities have left America less secure. Just last week, the Senate Democratic leadership reached out again to refocus our efforts against the terrorists. We introduced the REAL Security Act in the hope that Senate Republicans would finally turn to that issue.

The Republican-controlled Congress has yet to enact a federal budget. We are in violation of the statutory deadline of April 15. We have passed but two appropriations bills, and we are required by law to pass a dozen. We have yet to reconcile and enact lobbying reform and ethics legislation. We have yet to deal with the skyrocketing cost of gasoline and health care. We have yet to reconcile and enact a bipartisan and comprehensive immigration reform bill. And for the second year in a row the Republican-led Senate will not even take up the annual intelligence authorization bill.

As we commemorated the first anniversary of Hurricane Katrina two weeks ago, we were reminded that the situation in the Gulf Coast remains a tragedy with serious human consequences. We need to commit ourselves and our resources to helping our fellow citizens who are still in need after the appalling lack of responsiveness by this Administration. We need to provide the assistance to that region of our country where rubble remains a fixture of the landscape one year later. Many residents still do not have homes to return to or jobs waiting for them when they get there.

As we commemorate the fifth anniversary of the deadliest foreign terrorist attack on American soil this week, we should refocus our efforts and our resources where they belong: on the real terrorists and providing real security. More than five years after 9/11, Osama bin Laden remains at large, taunting us and threatening us-- this despite the bipartisan efforts by the Senate to authorize the President to use the most powerful military force in the world to bring him to justice. Had the President not diverted our forces from Afghanistan to Iraq, we would be much more successful in the war on terrorism.

Americans would be better served if we used our remaining time in this Congress to address these vital issues than to focus on political fights over a handful of divisive and failed nominations.

I look forward to hearing from the four nominees before the Committee today, and I hope that I will be convinced that they are the kind of nominees who understand that the role of the judge is to act as a check and balance to protect the rights and liberties of all Americans. I welcome the nominees and their friends and families to the Committee today.

#####

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January 31, 2005

Senator James M. Inhofe
Washington, DC 20510-3603

VIA FAX 202-228-0380

Re: Judge Gregory K. Frizzell:
Letter of Recommendation;
Our File No. 3851.000

Dear Senator Inhofe:

It is my pleasure to submit this letter of recommendation for Greg Frizzell for the recently created opening at the United States District Court for the Northern District of Oklahoma.

In the years I have known Greg, I have found him to be a man of extremely good character and high integrity, with a deep sense of personal responsibility toward his fellow man. Greg is held in high regard by those who know him, and I can think of no one more qualified for the office of United States District Judge.

I have been very active in both local and state bar associations, and as a result, have come into contact with a large number of bar leaders. I currently serve on the Board of Governors of the Oklahoma Bar Association, and formerly have served as President of both the Tulsa County Bar Association and the Tulsa County Bar Foundation. My involvement in the local and state bar associations makes me uniquely qualified to recommend Greg for this position.

I am sure you have been provided with a list of Greg's qualifications, so it is unnecessary for me to include them here. However, I will point out that Greg has been a highly respected and competent Tulsa County District Judge for a number of years. Moreover, with his background in tax law as the former general counsel to the Oklahoma Tax Commission, Greg is the only candidate for this position with such a diverse background. Greg is clearly the most qualified person, and I urge you to appoint him.

I appreciate your consideration. If I may be of assistance, please do not hesitate to call.

Very truly yours,

Robert B. Sartin

RBS/csd

S:\WPDOC\3851\000\Lt.Inhofe, James.rbs.wpd
csd1/31/05

Senator Specter Statement
Nora Barry Fischer
United States District Judge for the Western District of Pennsylvania

I am pleased to introduce to the Committee an eminently qualified and well-regarded fellow Pennsylvanian, Nora Barry Fischer, who was nominated to be a U.S. District Judge for the Western District of Pennsylvania on July 13, 2006. Mrs. Fischer is a native of Pennsylvania. She was born near Pittsburgh, in Homestead, Pennsylvania.

Mrs. Fischer has a distinguished academic record. She graduated *magna cum laude* from St. Mary's College, earning her B.A. in 1973. She received her J.D. from Notre Dame Law School in 1976. In 1977, Mrs. Fischer joined the well-regarded Pittsburgh firm of Meyer, Darragh, Buckler, Bebnek & Eck as an associate. Meyer, Darragh made her a junior partner in 1980 and a senior partner in 1982.

In 1992, Mrs. Fischer became an equity partner at another Pittsburgh firm, Pietragallo, Bosick & Gordon. Mrs. Fischer served as administrative partner in charge of recruitment and training and served as the co-chair of the Defense Litigation Practice, which is Pietragallo, Bosick's largest practice group. At Pietragallo, Bosick, Mrs. Fischer represented General Electric in both toxic tort and product liability cases for more than 18 years. Mrs. Fischer has also developed a significant mediation practice. She is a former *Dalkon Shield* Referee, and she has served as an Adjunct Settlement Judge, an Arbitrator for the District Court for the Western District of Pennsylvania, and as a mediator by private appointment and through the West Virginia State Bar Association. As Special Master for the Court of Common Pleas, Allegheny County, she handled conciliations, non-jury and jury trials by consent of the parties.

Mrs. Fischer's many accomplishments have won her a number of awards. In 2001, the Pennsylvania Bar Association's Commission on Women in the Profession awarded Mrs. Fischer the Anne X. Alpern Award for her efforts to promote women in the law. In 2004, the Pennsylvania Bar Association again recognized Mrs. Fischer, this time for her work as co-chair of the Task Force on Health Care Delivery in Pennsylvania. Mrs. Fischer has also been recognized as a Pennsylvania Super Lawyer and as one of the Top 50 Women Super Lawyers in Pennsylvania.

The American Bar Association has unanimously rated Mrs. Fischer "Well Qualified" to serve as a federal district court judge. I am sure that Mrs. Fischer will acquit herself well before the Committee today, and I look forward to supporting her on the floor later this month.

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E-MAIL: jlw@nwcdlaw.com

September 13, 2006

Honorable James M. Inhofe
United States Senator
453 Russell Senate Office Building
Washington, DC 20510-3603

Re: **Honorable Gregory K. Frizzell**

Dear Senator Inhofe:

It is my understanding that the Honorable Gregory K. Frizzell's nomination as a federal district judge is currently pending before the Judiciary Committee of the United States Senate. I am hopeful that I can contribute some additional information regarding Judge Frizzell which will be of assistance to the members of the Senate.

I know that you have previously received and reviewed extensive information reflecting Judge Frizzell's exceptional credentials, so I shall not belabor these background issues. I have been acquainted with Judge Frizzell on both a personal and professional level for over twenty years. I have litigated both jury and non-jury cases before Judge Frizzell, and I have had the opportunity to observe his performance as a trial judge since his appointment in 1997. His civil docket has ranged from complex commercial litigation to medical malpractice cases to cases involving the protection of basic human and constitutional rights. I am confident that the lawyers that have appeared before Judge Frizzell will state, without hesitation, that the Judge is thoroughly prepared, demonstrates a clear understanding of the issues, and has an instinctive sense for the fair, proper and just disposition of his cases.

In addition, the Judge has served with distinction as Presiding Judge of Tulsa County. He was endorsed by all other district judges for this position, and predictably has been a strong leader willing to tackle controversial issues. Judge Frizzell has justifiably received a "well qualified" rating by the American Bar Association, and he has the respect and support of lawyers from across Oklahoma.

Judge Frizzell is being considered for the position in the Northern District of Oklahoma that became vacant by virtue of Judge Sven Holmes' departure in March of 2005. Prior to that time, the Northern District had 3½ active district judges and 3 senior judges. At the present time we have 2½

active district judges and one senior judge (who takes only criminal cases). Accordingly, there is truly an urgent need to fill this vacancy as soon as practicable.

Judge Frizzell possesses the experience, judgment and values which we need in the federal judicial system. On a personal level, the Judge has a great family, tremendous friends and supporters, and is eagerly awaiting the opportunity to assist the judges of the Northern District. Incidentally, and as I am sure you know, one of Judge Frizzell's early and most enthusiastic supporters has been Henry Zarrow. That fact, by itself, should give you and the United States Senate the utmost confidence in the President's nomination of Judge Frizzell for the Northern District of Oklahoma.

Please let me know if there is any further information I can provide.

Respectfully,

Joel L. Wohlgemuth

JLW/psg

NOMINATIONS OF ROBERT JAMES JONKER, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MICHIGAN; PAUL LEWIS MALONEY, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MICHIGAN; JANET T. NEFF, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MICHIGAN; AND LESLIE SOUTHWICK, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

TUESDAY, SEPTEMBER 19, 2006

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC

The Committee met, Pursuant to notice, at 3:07 p.m., in room 226, Dirksen Senate Office Building, Hon. Sam Brownback, presiding.

OPENING STATEMENT HON. SAM BROWNBACK, A U.S. SENATOR FROM THE STATE OF KANSAS

Senator BROWNBACK. The hearing will come to order.

Thank you all for joining us today. We have a confirmation hearing for several highly qualified individuals nominated by President Bush to serve on district courts in Michigan and Mississippi.

The nominees include the following four individuals: Robert James Jonker, who has been nominated to be U.S. district Judge for the Western District of Michigan; Judge Paul Lewis Maloney, who has also been nominated to be U.S. district Judge for the Western District of Michigan; Judge Janet Neff, similarly nominated to be U.S. district Judge for the Western District of Michigan; and, finally, Judge Leslie Southwick, nominated to be U.S. district Judge for the Southern District of Mississippi.

On behalf of the Committee I want to welcome all of the nominees, you and your families. You have traveled a great distance to be here today. I appreciate your willingness to appear before us. It is quite a day. This is as big deal, as they would put it, to go through a nomination hearing, and hopefully a confirmation process, to be confirmed to be a Federal judge.

We have in attendance today several Senators from the home States of these fine attorneys. I will leave it to my colleagues to discuss their superb qualifications and to vouch for their fitness to serve on the bench. I am delighted that you are here.

Since my Ranking Member is not present, I will go to the individual Senators to speak for their nominees.

We have in panel one Hon. Thad Cochran, my Chairman on the Appropriations Committee who I have been delighted to serve with; from Mississippi, Hon. Trent Lott, a dear friend, the Senator from Mississippi. I understand that Senator Levin may be coming later, but is not here yet; and Hon. Debbie Stabenow, a U.S. Senator from Michigan.

We will go in the order of seniority, as that is the way this place operates. So, Senator Cochran, I will go with you first. I am delighted that you are here to discuss your nominee.

PRESENTATION OF LESLIE H. SOUTHWICK, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, BY HON. THAD COCHRAN, A U.S. SENATOR FROM THE STATE OF MISSISSIPPI

Senator COCHRAN. Mr. Chairman, thank you very much.

I am pleased to introduce to you and the Committee Leslie H. Southwick, and to recommend to the Committee his confirmation as a U.S. district court judge for the Southern District of Mississippi.

I have known Leslie for about 30 years. He is well qualified by his temperament, his intelligence, his education, and experience to serve as a U.S. district court judge.

During his distinguished career he has demonstrated a keen knowledge of the law as a lawyer and a judge. He will reflect credit, in my opinion, on the Federal judiciary. I am glad to notice that his daughter Cathy is representing his family and is here today to be with him on this special occasion.

Leslie was born and educated in Texas, but he has deep roots in Mississippi. He came to the State in 1976 to serve as a law clerk to U.S. Court of Appeals Judge Charles Clark, who served at that time on the Fifth Circuit Court of Appeals.

Leslie had graduated Cum Laude from Rice University in 1972. He then entered the University of Texas School of Law, graduating in 1975. Following law school graduation, he clerked for Chief Judge John Runyan, Jr. on the Texas Court of Criminal Appeals in Austin, and then he came to practice law in Jackson, Mississippi with the firm of Bernini, Grantham, Grauer & Hughes.

I was practicing law in Jackson at the time and I came to know him very soon as a keen intellectual, thoughtful, personable member of our Bar. He became a respected member of the Bar on a wide range of legal issues.

He served as Deputy Assistant Attorney General in the Civil Division of the U.S. Department of Justice. He supervised there 125 lawyers of the Federal Programs Branch. He also supervised the Office of Consumer Litigation, a 25-lawyer division charged with civil and criminal enforcement of Federal consumer laws.

In November 1994, Leslie was elected to serve on the Mississippi Court of Appeals. He served there with distinction. I read some of

his opinions and followed his career there on the appellate bench. He has been one of the most respected judges in that court.

Then he was called to serve as a Staff Judge Advocate for the 155th Armored Combat Brigade of the Mississippi National Guard. He was deployed to Iraq. He served there with distinction. He has become the citizen soldier, and he has distinguished himself by answering the call to duty and for this mobilization in support of Operation Iraqi Freedom.

He has been an Adjunct Professor at the Mississippi College School of Law, where he taught courses in administrative law, consumer law, evidence, statutory interpretation, and judicial history. He has also served as an instructor at the U.S. Military Academy at West Point.

He has written several legal and historical articles, been published in the Mississippi Law Journal, the Mississippi College of Law Review, the Wall Street Journal, and other journals and magazines.

He is the author of Presidential Also-Rans and Running Mates, a historical discussion of the American candidates for presidents and vice presidents. It won the American Library Association's Best Reference Book of the Year Award in 1985.

He has enjoyed politics. He has been active in the political life of our State and we are very proud of him. Few decisions made by a U.S. Senator have a farther-reaching effect than the recommendation to a president of an individual to serve on the Federal bench.

I am confident that Senator Lott and I have made a good decision in recommending Leslie Southwick to President George W. Bush to serve on the Federal bench. I am pleased the President submitted his name to the Senate for consideration, and he deserves to be confirmed by the Senate.

Senator BROWNBACK. Thank you very much, Senator Cochran.

Senator Lott, welcome.

PRESENTATION OF LESLIE H. SOUTHWICK, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, BY HON. TRENT LOTT, A U.S. SENATOR FROM THE STATE OF MISSISSIPPI

Senator LOTT. Thank you, Senator Brownback, for having this timely hearing. I would like to ask that my statement be submitted for the record in its entirety.

Senator BROWNBACK. Without objection.

[The prepared statement of Senator Lott appears as a submission for the record.]

Senator LOTT. A lot of it is discussion about the resume and the history of this very fine nominee. I am quite pleased to be here and to recommend his nomination to the President. I just wanted to come and vouch for the character of the man. I think that is important, too.

While his resume is obviously extremely impressive, his reputation goes way beyond his legal qualifications, his educational background, his involvement in public service, his writing ability, his military career. He has an outstanding record, but he also has a reputation of just being a fine man of very good temperament.

I believe that people, the Senate, looks for that in a nominee. I doubt that we have had many nominees for the Southern District of Mississippi, or anywhere in Mississippi for that matter, that exceeded the qualifications of this nominee.

I focused on two things in particular, his experience there on the Mississippi Court of Appeals where he served as a presiding judge for several years, 1999 to 2004, and he amassed a very outstanding record in that position.

Also, the fact that he chose, at a particular point in his life, to go into the U.S. Reserves and then transfer to the Mississippi National Guard and serve as lieutenant colonel and Staff Judge Advocate of the 155th Brigade. He served in Iraq, where, when I asked him, "How did it go?" he said, "Well, it was character building." I suspect that was the most diplomatic way he could describe his experience there.

So this really is a unique nominee. He has shown great wisdom, Mr. Chairman, beyond that, having been born in Texas. He graduated Cum Laude from Rice University and attended the University of Texas School of Law, and clerked there for the Texas Court of Criminal Appeals.

He had the wisdom for to then become a law clerk for one of the finest judges I have ever known in my life, Fifth Circuit Court of Appeals Chief Judge Charles Clark, in Jackson.

After that experience, having lived in Jackson, Mississippi, he then went to one of the finest law firms in the State and has chosen to live in Mississippi from that day till this, showing the great wisdom of this nominee in choosing the place where he lives, Mississippi. We are proud of him. We believe he will make an excellent Federal judge. I am delighted to be here and vouch for his candidacy for this position.

Senator BROWNBACK. Thank you very much. I thank my colleagues for their statements in support of the nominee from Mississippi, an outstanding nominee and fantastic statements in support.

If my colleagues need to excuse themselves, that is certainly understandable. If you would like to stay, we would love to have your presence. But we will proceed now to Senator Stabenow and the discussion of the Michigan nominees that we have on the panel.

PRESENTATION OF PAUL MALONEY, JANET NEFF, AND ROBERT JONKER, NOMINEES TO BE DISTRICT JUDGES FOR THE WESTERN DISTRICT OF MICHIGAN, BY HON. DEBBIE STABENOW, A U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator STABENOW. Well, thank you, Senator Brownback. It is my great pleasure today to be here. I thank you for holding this hearing on the nominations of Judge Paul Maloney, Judge Janet Neff, and Robert Jonker to the U.S. district court for the Western District of Michigan.

Let me start by indicating that Senator Levin had fully intended to be here. He is speaking on the floor at this moment and asked me to submit his written testimony for the record. He is in full support of all three nominees. If it is possible, he will be here. If not, certainly it is not because of lack of support for the nominees. So, I would submit that.

Senator BROWNBACK. His full statement will be submitted to the record.

Senator STABENOW. Thank you.

[The prepared statement of Senator Levin appears as a submission for the record.]

Senator STABENOW. And in addition to introducing them, I want to indicate that all three of them bring distinguished legal careers to the Federal bench, and their resumes are impressive.

In the interest of time, because I want you to have an opportunity to hear from them directly, I will not go into extensive discussion of each of their resumes, except to say that we are very proud of them in Michigan.

Judge Paul Maloney has served as a Circuit judge on the Berrien County Trial Court for almost 10 years. Judge Maloney also brings a wealth of public service experience to the bench, including working as a Berrien County prosecutor, a Deputy Assistant Attorney General in the Department of Justice, and as Chairman of the Michigan Sentencing Commission. I want, personally, to welcome Judge Paul Maloney to the Senate hearing today.

Judge Janet Neff has served as a judge on the Court of Appeals for the Third District of Michigan for almost 17 years. In addition to her very distinguished career on the bench, Judge Neff has been an active leader in Grand Rapids, including serving as the first woman president of the Grand Rapids Bar Association. I would like, also, to welcome her, along with her husband Dave and daughter Meredith, and congratulate her on her nomination as well.

Robert Jonker has been a partner at Warner, Norcross & Judd in Grand Rapids for almost 12 years. A lifelong Michiganian, Robert Jonker is a graduate of Calvin College and the University of Michigan Law School, and has served as a law clerk for U.S. district court judge John Feikens in the Eastern District. I would welcome Robert Jonker to the Senate today.

Again, Mr. Chairman, these are brief overviews of what are three distinguished careers. We are very proud to come together and have worked with the White House on these nominations.

Senator Levin and I are bringing our full support, enthusiastic support, for the nominees. I would also indicate that it would be my hope that we would move expeditiously on the floor on these nominations. Thank you, Mr. Chairman.

Senator BROWNBACK. Thank you very much, Senator Stabenow. I appreciate your thoughts, comments, and recommendations of these highly qualified nominees. I appreciate your attendance here today.

Senator STABENOW. Thank you.

Senator BROWNBACK. We will call the second panel, the nominees, forward, if you would join us up front. I do have an oath that I would like for you to take.

Calling forward Robert James Jonker, to be U.S. district Judge for the Western District of Michigan; Judge Paul Lewis Maloney, to be U.S. district Judge for the Western District of Michigan; Judge Janet T. Neff, to be U.S. district Judge for the Western District of Michigan; and Judge Leslie Southwick, to be U.S. district Judge for the Southern District of Mississippi.

I would ask, if you would, to repeat after me. Hold your right hand up, please.

[Whereupon, the nominees were duly sworn.]

Senator BROWNBACK. Thank you all. Please take your seats.

Again, as I said at the outset, I thank you all for attending and being here today. This is one of the key jobs of the Senate, is putting people on the Federal bench. It is a lifetime appointment and it is an important appointment to be put in such a position of authority and trust.

What I would like for each of you to do, is to give me a brief opening statement if you have one prepared. As you do that, because I recognize that families are involved in this as well, I would like for you to introduce your family to me and to the Committee as well so we can meet them and thank them because, while it is a lifetime commitment of you, it is also a lifetime commitment of theirs.

We do not come into this world by ourselves and we do not stay here by ourselves, either. There are a lot of people that are around us that are very key and important.

So, Mr. Jonker, I would like for you to start off. If you would present your testimony, but please start by introducing any family members you have here present with you today.

STATEMENT OF ROBERT JAMES JONKER, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MICHIGAN

Mr. JONKER. Well, thank you, Mr. Chairman. I appreciate that. I do have a great cloud of witnesses and supporters back in Michigan cheering me on today that were not able to be with me other than in spirit, and they are here that way today.

I want to thank you, Mr. Chairman, and the entire Committee for convening this hearing and giving me an opportunity to appear before you and respond to your questions.

I certainly want to thank, in particular, Senator Stabenow for personally coming today to deliver that introduction. Thanks to both Senator Stabenow and Senator Levin for their courtesies and support throughout this process.

Of course, I do need to thank President Bush for honoring me in the first place with this nomination. I aim to do credit to that nomination, and also to the Senate's confirmation, if I am fortunate enough to receive that.

[The biographical information of Robert Jonker follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. Name: **Full name (include any former names used).**

   Robert James Jonker

2. Position: **State the position for which you have been nominated.**

   United States District Judge for the Western District of Michigan

3. Address: **List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.**

   Office: Warner Norcross & Judd LLP
   900 Fifth Third Center
   111 Lyon NW
   Grand Rapids, MI 49503

4. Birthplace: **State date and place of birth.**

   1960; Holland, Michigan

5. Marital Status: **(include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.**

   Married to Nancy Grevengoed. Nancy is self-employed as a clinical psychologist and currently works out of our home. We have two dependent children.

6. Education: **List in reverse chronological order, listing most recent first, each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.**

   Calvin College, 1978-1982; BA, with Honors, in Political Science (Economics Cognate); May 1982

   University of Michigan Law School, 1982-1985; JD, Summa Cum Laude; May 1985

7. Employment Record: **List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms,**

or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

Warner Norcross & Judd LLP
900 Fifth Third Center
111 Lyon NW
Grand Rapids, MI 49503
Partner, 1994-Present; Associate, 1987-1993

The Honorable John F. Feikens
United States District Judge for the Eastern District of Michigan
Judicial Law Clerk, 1985-1987

U of M Law School / Professor James White
Research Assistant, 1984-1985

Miller Johnson Snell & Cummiskey
Summer Clerk, 1984

Ryan McQuillan VanderPloeg & Fette
Law Clerk, 1983

8. <u>Military Service and Draft Status</u>: **Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.**

No military service

9. <u>Honors and Awards</u>: **List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.**

Order of the Coif

Law School Book Awards (or certificates of Merit) in eight law school classes

Listed in Best Lawyers in America (Business Litigation)

Michigan State Bar Foundation Fellow

Student Body President, Calvin College

Robert S. Feldman Labor Law Award

10. **Bar Associations: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.**

Federal Bar Association

Western District Chapter of the Federal Bar Association
Executive Board Member (Past approximately 8 years)
Treasurer (Served 2 terms of one year each)
Vice President Operations (Served 2 one year terms)
President-Elect (2006)

Grand Rapids Bar Association

Michigan Bar Association

American Bar Association

11. **Bar and Court Admission:**

a. **List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.**

State of Michigan, 1985. No lapses.

b. **List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.**

State of Michigan (all courts of record), 1985
United States District Court for the Western District of Michigan, 1987
United States District Court Eastern District of Michigan, 1985
United States Court of Appeals for the Sixth Circuit, 1990
United States Court of Appeals for the District of Columbia Circuit, 2005
Supreme Court of the United States, 1996

There have been no lapses in any of the listed admissions.
I have also been admitted on a pro hac basis to many state and federal courts throughout the country, including United States District Courts in Illinois, Ohio, North Carolina, New Jersey, Pennsylvania, Minnesota, Florida, California and New York. I do not have specific dates for these pro hac admissions.

12. **Memberships:**

a. **List all professional, business, fraternal, scholarly, civic, charitable, or other**

organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

I have been a member of the University Club of Grand Rapids (a social and athletic club) since 1987.

I have served on the Board of Worldwide Christian Schools from approximately 2002-2005.

I have served as a member of the Judicial Code Committee of the Christian Reformed Church in North America, and am currently serving as Chairperson of the Committee.

I have been a member of 23 is Enough, a Michigan political action committee dedicated to stopping the proliferation of casino gambling venues in Michigan since approximately 2003.

I have been a member of the Committee to Elect Christian Meyer for State Representative from 2005-2006.

I have been a member and officer of the Council of Church of the Servant Christian Reformed Church from approximately 2000-2003.

b. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Please indicate whether any of these organizations listed in response to 12a above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.**

No discrimination.

13. **Published Writings and Public Statements:**

a. **List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Please supply four (4) copies of all published material to the Committee.**

None.

b. Please supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, please give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None.

c. Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None, other than testifying before the Senate Judiciary Committee in the 109th Congress on my nomination for this position.

d. Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

None.

e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have periodically responded to press questions about my pending cases, but I have no record of particular interviews.

14. <u>Judicial Office</u>: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None.

15. Citations: **If you are or have been a judge, please provide:**

    a. **citations for all opinions you have written (including concurrences and dissents);**

    b. **a list of cases in which certiorari has been requested or granted;**

    c. **a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;**

    d. **a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;**

    e. **a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored; and**

    f. **citations to all cases in which you were a panel member in which you did not issue an opinion.**

    I have not served as a judge.

16. Recusal: **If you are or have been a judge, please provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest, or for any other apparent reason, or in which you recused yourself sua sponte. (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Please identify each such case, and for each provide the following information:**

    a. **whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;**

    b. **a brief description of the asserted conflict of interest or other ground for recusal;**

    c. **the procedure you followed in determining whether or not to recuse yourself;**

    d. **your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.**

    I have not served as a judge.

17. **Public Office, Political Activities and Affiliations:**

a. **List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.**

None, except my prior nomination to be United States District Judge for the Western District of Michigan was returned to the President at the close of the 109th Congress.

b. **List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

I have been a member of the Committee to Elect Christian Meyer for State Representative.

I have been a member of 23 is Enough, a Michigan Political Action Committee.

I have assisted in fundraising of Michigan judicial campaigns, but I have not had a formal role in the campaigns.

I was a Regional Coordinator of the Lawyers for Bush organization.

18. **Legal Career: Please answer each part separately.**

a. **Describe chronologically your law practice and legal experience after graduation from law school including:**

i. **whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;**

I was a law clerk from 1985-1987 for United States District Judge John F. Feikens in the Eastern District of Michigan. He was Chief Judge during the first year of my clerkship, and took senior status during my second year. He is still a sitting senior judge.

ii. **whether you practiced alone, and if so, the addresses and dates;**

I did not practice alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

Warner Norcross & Judd LLP
900 Fifth Third Center
111 Lyon NW
Grand Rapids, MI 49503

My entire private practice career has been with Warner Norcross & Judd, as an associate since 1987, and as a partner since 1994.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

The general character of my practice has involved complex business litigation, including environmental litigation. I have been recognized for this work as an attorney listed in Best Lawyers in America for business litigation.

ii. your typical clients and the areas, if any, in which you have specialized.

Clients (former and current) include large public and private companies, such as Alticor (and affiliates); GenCorp; The Dow Chemical Company; Aerojet-General Corporation; Mettler-Toledo; GlaxoSmithKline; Borg-Warner Automotive; Nestle; and Wolverine World Wide.

I have also represented, and continue to represent a variety of other significant businesses that are not named among the nation's largest or most significant (but are nonetheless significant to me), including Hastings Manufacturing Company; AIS Construction Equipment; Manatron; Webb Chemical; National Nail; and Spartan Motors.

I have also represented, and continue to represent a number of individuals in business disputes (most often shareholder litigation).

Finally, I have represented a variety of trade groups and citizen groups, including Isle Royale Boaters Association; Taxpayers of Michigan Against Casinos; and Citizens Exposing Truth about Casinos.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the

frequency of your appearances in court varied, describe such variance, providing dates.

One hundred percent of my practice has been in litigation. I have frequently appeared in court. This includes not only personal appearances to handle motion arguments, trials and other proceedings, but also filing of pleadings and briefs bearing my name that lead to disposition without oral argument.

i. **Indicate the percentage of your practice in:**
   1. **federal courts;** 75%
   2. **state courts of record;** 15%
   3. **other courts.** 10%

ii. **Indicate the percentage of your practice in:**
   1. **civil proceedings;** 100%
   2. **criminal proceedings.**

d. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

I have conducted approximately 15-20 formal jury, bench or arbitration trials. I was lead (or only) counsel on my side of the case in all but one of them. I was associate counsel on one case.

i. **What percentage of these trials were:**
   1. **jury;** 35%
   2. **non-jury.** 65%

e. **Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.**

I have never presented oral argument before the Supreme Court.

I have prepared only one set of briefs on the merits in the Supreme Court. I have also filed, or participated in filing, multiple petitions for certiorari (or oppositions to petitions), but I have no readily accessible record of all such filings.

19. **<u>Litigation</u>: Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the**

nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

(1) The Cordova Environmental Cost Recovery Litigation: These cases included two consolidated CERCLA cost recovery actions in the Western District of Michigan before the Honorable Douglas Hillman, the United States Court of Appeals for the Sixth Circuit and the United States Supreme Court. The principal litigation began in approximately 1989 and ended in approximately 2001 (though some aspects of the case continued to percolate thereafter). The litigation resulted in several published opinions, the most important of which are: *CPC International, Inc. v. Aerojet-General Corp.*, 777 F. Supp 549 (W.D. Mich. 1991), *aff'd in part and rev'd in part sub. nom. United States v. Cordova Chemical Co.*, 59 F.3d 584 (6th Cir. 1995), *vacated pending reh'g en banc*, 67 F.3d 586 (1995), *aff'd in part and rev'd in part*, 113 F.3d 527 (6th Cir. 1997) (*en banc*), *vacated and remanded sub. nom. United States v. Bestfoods*, 524 U.S. 51 (1998), *decision on remand, Bestfoods v. Aerojet-General Corp.*, 173 F. Supp. 2d 729, 757 (W.D. Mich. 2001). I organized the trial, managed Sixth Circuit appeal and United States Supreme Court review, handled all briefing, and shared responsibility for witness examination and oral argument in these cases involving over 2,500 trial exhibits, 90 depositions, on-line access to data base from courtroom, and estimated remediation costs of over $100 million. Primary opposing counsel for the United States was Michael McNulty of the United States Department of Justice in Washington, D.C. Primary opposing counsel for opposing party Bestfoods (and its predecessors) was Gordon J. Quist (now United States District Judge for the Western District of Michigan) and J. Michael Smith (616-831-1754), both of whom were partners with Miller, Johnson, Snell & Cummiskey in Grand Rapids, Michigan.

(2) The Cordova State Litigation: As part of the overall Cordova litigation, our client asserted claims against the State of Michigan for reimbursement under a 1977 Consent Order. The case began in approximately 1989 as part of the federal cost recovery litigation, but ultimately proceeded to the Michigan Court of Claims (Judge Collette), and the Michigan Court of Appeals. The Michigan Supreme Court denied the State's application for leave to appeal. The case ended in the mid-1990s. Both the trial court and the Court of Appeals agreed with our claim that the State of Michigan was liable to reimburse our client for any damages imposed on it under CERCLA. My role involved handling the briefing in both the trial court and the Court of Appeals. The case resulted in one published opinion. *See Cordova Chemical Company v. Dept. of Natural Resources*, 212 Mich. App. 144 (1995). Opposing counsel for the State included Kathy Cavanaugh (current practice setting unknown) and Eric Eggan of the State Attorney

General's office. Eric is now with Honigman Miller Schwartz and Cohn in Lansing, Michigan (517-377-0726).

(3) The TOMAC Gaming Compact Litigation: We represented Taxpayers of Michigan Against Casinos ("TOMAC") in state court litigation challenging the validity of four gambling compacts between the State of Michigan and various Indian tribes. The case began in 2000 in the Ingham County Circuit Court before Judge Houk, and proceeded to the Michigan Court of Appeals and the Michigan Supreme Court. The case defines the role of the Legislature and the Governor in handling gambling compacts and has resulted in several published cases. *See TOMAC v. State*, 254 Mich. App. 23 (2002), *aff'd in part, rev'd in part and remanded*, 471 Mich. 306 (2004), *cert. denied,* 543 U.S. 1146 (2005). One portion of the case continues on remand. *See TOMAC v. State,* 268 Mich. App. 226 (2005), *lv granted* 474 Mich. 1097 (2006). My role was lead litigation counsel throughout the case. Principal opposing counsel for the State of Michigan was Eugene Driker of Barris, Sott, Denn & Driker, Detroit, Michigan (313-596-9303). Principal opposing counsel for intervening parties was Richard McLellan of Dykema Gossett in Lasing, Michigan (517-374-9111).

(4) The Federal Gaming Litigation: We represented the citizen group, TOMAC, in a challenge to proposed land-to-trust gambling acquisitions for a proposed casino site in Michigan. The case presented legal issues under the National Environmental Policy Act, and the Indian Gaming Regulatory Act. We filed the case in the United States District Court for the District of Columbia. It resulted in published decisions. *See TOMAC v. Norton*, 240 F. Supp. 2d 45 (D.D.C. 2003), *aff'd* 433 F.3d 852 (D.C. Cir. 2006). I served as principal litigation counsel in the case. Principal opposing counsel for the government was Lisa Jones Fossee of the United States Department of Justice in Washington, D.C. (202-514-2748).

(5) The Dow Chemical Company NPDES Permit Litigation: This litigation involved two parallel cases in state and federal court regarding alleged NPDES permit violations by our client Dow. The State of Michigan sued Dow in Ingham County Circuit Court, Case No. 95-CV-81142-CE (Judge Harrison). PIRGIM sued Dow in federal court for the same alleged violations, Case No. 95-CV-73286 (E.D. Mich.) (Judge Zatkoff). The case went to trial in Ingham County, and resulted after trial in a bench decision rejecting the State's claims for equitable relief and imposing a civil penalty on Dow of $100,000, in contrast to the State's request for more than $8 million. The federal case then settled before trial. I was lead litigation counsel for Dow. Principal opposing counsel for the State were Stu Freeman (now deceased) and Craig Atchison of the State Attorney General's office. Mr. Atchison is no longer with the Attorney General's office. The Michigan Bar Journal lists his phone number as 616-405-4840. Principal opposing counsel for PIRGIM was Andy Buchsbaum (currently available at 734-769-3351).

(6) The GenCorp CERCLA Appeal: GenCorp retained our services to handle the appeal of a judgment entered against the Company in the United States District Court for the Northern District of Ohio in the amount of approximately $30 million. (The case involved some issues parallel to those raised in the Cordova cost recovery litigation.)

The United States Court of Appeals issued a decision (for publication) rejecting our principal appeal arguments, but remanding one portion of the case for further proceedings. *See GenCorp v. Olin,* 390 F.3d 433 (6th Cir. 2004), *cert. denied*, 126 S. Ct. 420 (2005). GenCorp moved for rehearing, and while that motion was pending, the United States Supreme Court issued a new decision changing one key aspect of CERCLA law in a way that GenCorp believes provides another basis for vacating the judgment entered against it. The United States Supreme Court denied certiorari, and the matter is now back in the District Court on remand. I was lead counsel on appeal. Principal co-counsel with us on the case (and who handled the trial) is Mike Hardy of Thompson Hine's Cleveland office (216-566-5500). Principal opposing counsel is Ralph Albright of Morgan Lewis & Bockius' Washington office (202-739-5185). I am not actively involved in the remand proceedings.

(7) The Hicks Minority Shareholder Litigation: This case involved our client, David Hicks, a minority shareholder in a Kalamzoo based radio station company, Crystal Radio. The case began before Judge Foley in the Kalamazoo County Circuit Court (Case No. B-94-3603) in 1994. After several years of litigation, our client won summary disposition on his minority shareholder oppression theory, and this ruling precipitated a settlement favorable to our client. Principal opposing counsel was Craig Lubben of the Kalamazoo office of Miller Johnson Snell & Cummiskey (269-226-2958). Also involved as a third-party observer (and counsel to an important witness in the case, attorney Ric Brown) was attorney Charles Ritter of Miller Canfield's Kalamazoo office (269-383-5845). I was principal litigation counsel for Mr. Hicks.

(8) The Nippecraft Litigation: This matter involved a series of related state court, federal court and American Arbitration Association proceedings over a contractual relationship between our client, Nippecraft, a company based in Singapore, a local affiliate of Nippecraft, and a corporate sales representative based in Florida. The litigation began in the mid-1990s, and continued for several years before it was finally resolved through trial in arbitration. The arbitrator was attorney Robert Eleveld (616-336-6600). The state court litigation was in Kent County Circuit Court before Judge Sullivan, Case No. 96-6969. The federal court litigation was in the Western District of Michigan before Judge Hillman, Case No. 96-CV-565, and the United States Court of Appeals for the Sixth Circuit. The case involved a series of procedural, jurisdictional and corporate law issues. I was lead litigation counsel for our side. Principal opposing counsel was attorney Norm ("Skip") Pylman of Gruel Mills Nims & Pylman in Grand Rapids (616-235-5500).

(9) The National Nail Raiding Litigation: This matter involved a fast-track preliminary injunction proceeding in United States District Court for the District of New Jersey (Newark). The case opened and closed in the Spring of the year 2000. Primesource is a fierce business competitor of National Nail in the packaged nail market, and part of a multi-billion dollar Japanese conglomerate. Primesource sued National Nail on a variety of employee raiding, breach of fiduciary duty and other related theories and sought a preliminary injunction that would have blocked National Nail's ability to open markets in New Jersey and in Atlanta. (It also sought a multi-million dollar damage award.)

Judge Lifland handled the case (Case No. 00-1617), including a preliminary injunction evidentiary hearing. At the end of the hearing, the Judge denied injunctive relief, and made preliminary fact-findings so that all parties could understand how he viewed the case and what would be necessary, in his preliminary view at the time, for Primesource to secure some eventual relief against National Nail. These preliminary findings allowed the parties to assess their position just a few weeks into the case, and reach a settlement that saved everyone an enormous amount of time and money, and that allowed National Nail to open its new markets. The case did not result in a published opinion. I was principal litigation counsel for National Nail, along with local counsel (Bill Reilly of McCarter English) based in New Jersey. Principal opposing counsel was Steve Marshall of RubinBaum's New York City office (212-698-7700).

(10) The Webb Chemical Insurance Coverage Litigation: This was a state court case on behalf of our client against The Hartford for insurance coverage related to clean up costs of some environmental contamination. Webb was seeking recovery of several hundred thousand dollars already spent, and declaratory relief to cover future expenses, for a total package of relief in excess of $1 million. The case involved extensive factual discovery, many legal briefs, significant expert analysis and ultimately a jury trial in Muskegon County Circuit Court before Judge Daniels (Case No. 93-30014-CK). The jury returned a verdict in favor of Webb. After extensive post-verdict proceedings (including motion practice over then novel issues regarding mediation sanctions and interest rates on judgments), the insurance company appealed. The case ultimately settled on appeal. I was principal trial counsel for Webb. Principal opposing counsel was Joel Huyser of Rhodes McKee in Grand Rapids. Greg Timmer, also of Rhodes McKee, handled post-verdict proceedings and the appeal (616-233-5132).

20. <u>Legal Activities</u>: **Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)**

One of the most significant non-litigation aspects of my legal practice has involved working for Alticor on the careful internal process it has developed to manage and resolve disputes among its Independent Business Owners ("IBOs") without resort to traditional litigation. This has become a greater focus of my practice in recent years, and it fascinates me on a numbers of levels, though it is difficult to provide concrete examples because of confidentiality concerns. Perhaps the most important thing that has struck me is how well it works! Disputes that could drag on in a public forum at great expense, time, inconvenience and publicity generally wind up, instead, moving through the Company's internal processes and lead to a resolution that the parties are all willing to accept (if not embrace) as a way of moving on with the business. The process ensures that people are genuinely heard—a key part of any successful ADR process in my view. But it also ensures that the ebbs and flows of emotions that so often accompany the

processing of disputes do not have a chance to fester in the same way they can under a traditional litigation model. Of course, the Alticor process retains a failsafe feature that ultimately allows disputing parties to resort to more traditional legal channels if the need arises. But the amazing thing is that it so rarely happens.

Over the years of practice, I have seen other businesses attempt to incorporate some of the same elements that Alticor has successfully done with its IBOs. What has made this interesting to me is the realization that parties to any contract that involves the probability of a long-term relationship can benefit from carefully structuring their ADR process on the front end of a project. I have worked over the last several years with a public company (Manatron) that develops software for governmental entities. The interesting thing about the early form of contracts in the software industry is that they almost uniformly involved model contracts drawn from traditional UCC Article 2 sales contracts—the sort of contracts people use to buy and sell commodity products. Over time, I have seen (and hopefully contributed) to development of an entirely different model for a software development contract—a model built on the construction project experience. Building a software product tends to involve the same dynamics and potential for disputes that often drive construction disputes. Using this model has allowed me to assist in developing multi-step dispute resolution procedures that keep the parties talking and working toward solution, rather than running to the courthouse. And, as in the Alticor experience, it usually works.

The other thing I have learned as a result of these first two non-litigation practice aspects is that even a bad contract can serve as the foundation for a meaningful ADR process if the parties are willing to work together with able counsel toward a business solution. In several of the early Manatron situations, and in several other software development disputes (including a significant one involving Covansys and our client, Mettler-Toledo), an old contract premised on the sales model was able to serve as the basis for a settlement negotiated over several days with a skilled facilitator. This process, unlike the traditional litigation process, allowed the business players to meet and talk about real business problems, and allowed the lawyers to craft a solution that at least somehow honored the original business expectations of the parties as expressed in the original contract. In effect, the process allowed the parties to have a structured opportunity to re-negotiate the contract terms to reflect the reality they were experiencing rather than the fiction they originally conceived.

Another significant experience for me outside the traditional litigation realm has been service to the Christian Reformed Church in North American as a member (originally) and now Chair of the Judicial Code Committee. This Committee functions as a special advisory committee to the national assembly of the denomination on disputes between members, or between a member and the church that have not been resolved in other regional or local assemblies. The Committee does have a quasi-judicial role in that it ultimately does conduct evidentiary hearings that resemble formal trials; does make proposed findings of fact; and does recommend ultimate disposition. (Since the national assembly itself cannot perform these functions, as a practical matter, the Committee process and recommendation carry significant weight.) But the process also includes

sufficient flexibility to permit—especially in the church setting—a pastoral discussion with the parties who are in conflict—a discussion that in a surprising number of cases leads to resolution short of final decision by the national assembly. I have often said that service on this Committee is the best experience I have ever had (or am likely to have) on a church committee.

Finally, for about six years, I served as the Chair of the Professional Staff Committee of our firm. The Committee is responsible for recruiting, development, retention and review of associate attorneys. The role allowed me to have a significant hand in firm management, which provided a wonderful education in the business of private legal practice. But even more importantly in my mind, the role helped me develop empathy for people in difficult situations, and a deeper understanding of the way human beings relate to each other, at least in a work setting. I learned over time that, at least in our firm (but I suspect most others, too), people rarely fail because they lack the raw intelligence to succeed. Rather, they have for a variety of reasons failed to connect with the core mission and animating spirit of the organization. This realization ultimately made my job of "moving associates on" from time to time much easier. I stopped thinking of this part of the job as "firing" someone, and began to think of it as giving the person an opportunity to find a setting that would allow the person's very considerable skills to flourish and thrive. That sounds hopelessly pollyanish, I know, and I do not discount the real pain that people experience in a job transition. But I do believe, as I reflect on the people who I helped through this process, that in almost every case, they have gone on to a successful -- sometimes even stellar--career in other settings.

21. **Teaching: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.**

    None.

22. **Deferred Income/ Future Benefits: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

    None, other than normal winding up of my law partnership interest in Warner Norcross & Judd LLP, under existing articles and by-law arrangements that include no provision for receipt of deferred income in my case.

23. **Outside Commitments During Court Service: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

I have no such plans, commitments or agreements, but I do have an interest in working at some point in the future as part-time, adjunct law school faculty.

24. Sources of Income: **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

Please see copy of attached Financial Disclosure Report.

25. Statement of Net Worth: **Please complete the attached financial net worth statement in detail (add schedules as called for).**

Please see attached Net Worth Statement.

26. Potential Conflicts of Interest:

a. **Identify the parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.**

If I am confirmed, the parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during my initial service in the position to which I have been nominated would include the following: any case in which my current firm is appearing as counsel, or in which a current client is a party and any matter on which I substantively worked. These would be relatively easy conflicts to track and handle using the general screening procedure noted below. I will follow the Code of Conduct for United States Judges and all applicable statutes, policies and procedures.

b. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.**

The general screening procedure I would plan to follow would be one we used in Judge Feikens' chambers while I was a law clerk. Law clerks would provide a daily summary (a brief summary) of the new filings assigned to the Judge each day. The summary would include enough information to track the potential conflicts noted. Any conflict presented by appearance of my firm as counsel for a defendant would be picked up at the time of the initial case status report, if not before. I will follow the Code of Conduct for United States Judges and all applicable statutes, policies and procedures.

27. **<u>Pro Bono Work</u>: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

I have been active in bar related activities since beginning my practice. My most recent service has focused on the Western District Chapter of the Federal Bar Association. I have been a member almost since starting practice here, and I have been on the Executive Committee board for about 7 years, and an officer for at least 3 of those years. I am currently the Vice-President of Operations, and am on the ballot for the President-Elect slot this October. The work of this association includes, among many other things, direct efforts to assist poor and under-represented persons. It also works more generally to secure the solid administration of justice in the Western District.

My own personal pro bono cases have included representation of two prisoners in Section 1983 actions. Both cases involved claims of mistreatment during incarceration. I tried both cases to jury verdict (and lost each time). I am also part of a law firm that supports pro bono efforts both with significant financial contributions each year.

The bulk of my personal pro bono work at this time is focused on activities on various church related activities and charitable boards that need free legal expertise. Most recently, this has involved service on the board of Worldwide Christian Schools (three years of service ending earlier this year); and service as Chair of the Christian Reformed Church in North America's Judicial Code Committee.

This latter role involves significant time commitments when it meets—usually several days of hearing and preparation, and some additional time for a report to the Church's national assembly (called Synod). During non-meeting periods, there is relatively little work for the Committee. The Committee serves fundamentally as an internal church tribunal that attempts to resolve disputes between church members, and more often, between clergy and churches, outside the civil courts. The process follows a civil court model in many respects, but is more informal than a traditional court. Still, we conduct trial proceedings with verbatim transcripts, with cross examination of witnesses and with legal counsel available to any side who wishes to employ it. Cases over which I have presided or served on a panel of clergy and lay members include 1) a sexual abuse charge against an elder of a congregation in Canada; 2) review of decisions stripping clergy credentials; 3) reviewing decision of the church governing board on terminating the appointment of various persons in the mission field before the scheduled expiration of the term. I have thoroughly enjoyed this work. It is one of the things that has sparked my interest in the judiciary.

Finally, as a member and President (not currently) of my local congregation's counsel, I have naturally provided legal advice on a wide variety of legal matters.

28. Selection Process:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Please do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

I know of no formally established commission in my jurisdiction that regularly reviews or makes recommendations on candidates for nomination to the federal courts. In this case, I did participate in an interview. There were several local practitioners and judges, and my belief is that the group recommended me as one of several possible candidates for appointment. I found out about the local process after contacting the office of my local congressman, Vern Ehlers, to indicate that I had an interest in applying for judicial vacancies in my home district. I also participated in brief interviews with representatives of the White House Counsel's Office and the Department of Justice. Sometime later, I also appeared before and responded to questions posed by a panel selected, as I understood it, by Michigan Senators Levin and Stabenow. After completing all the nomination paperwork and undergoing a thorough background investigation, I was informed that I would be nominated for the position. My nomination was submitted to the Senate on June 28, 2006. A hearing on my nomination was held on September 19, 2006. My nomination was returned to the President on December 19, 2006, when the 109th Congress adjourned. I was renominated on March 19, 2007.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

No.

AO-10
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (Last name, First name, Middle initial)	2. Court or Organization	3. Date of Report
Jonker, Robert J	U.S. Dist. Western Dist of MI	3/22/2007
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5. ReportType** (check appropriate type)	**6. Reporting Period**
US District Judge Nominee	(•) Nomination, Date 3/19/2007 ( ) Initial ( ) Annual ( ) Final	1/1/2006 to 2/28/2007
7. Chambers or Office Address	**8.** On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.	
900 Fifth Third Center 111 Lyon Street N.W. Grand Rapids, MI 49503-2487	Reviewing Officer_____ Date_____	

IMPORTANT NOTES. The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions)

☐ NONE - (No reportable positions.)

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Partner	Warner Norcross & Judd LLP
2.	Vice President/Operations	Western District of Michigan Chapter of the Federal Bar Association
3.	General Counsel	Christian Meyer for State Representative

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions)

☐ NONE - (No reportable agreements.)

	DATE	PARTIES AND TERMS
1.	2007	Warner Norcross & Judd LLP Partnership Agreement - No deferred income

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Jonker, Robert J	3/22/2007

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions)

A. Filer's Non-Investment Income

NONE - (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1.	2005	Warner Norcross & Judd LLP	$463,666
2.	2006	Warner Norcross & Judd LLP	$330,107
3.	2007	Warner Norcross & Judd LLP	$79,827.80

B. Spouse's Non-Investment Income (If you were married during any portion of the reporting year, please complete this section. Dollar amount not required except for honoraria.)

NONE - (No reportable non-investment income.)

	DATE	SOURCE AND TYPE
1.	2005	Self-employed psychology practice
2.	2006	Self-employed psychology practice

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

NONE - (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1.	Exempt	

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V. GIFTS. (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

☐ NONE - (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1.	Exempt		

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

☑ NONE - (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
1.			

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Name of Person Reporting	Date of Report
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
1. Deposit Accounts at Fifth Third Bank	[redacted]	[redacted]	[redacted]	[redacted]	Exempt		[redacted]	[redacted]	
2. Fifth Third Bank - Stock	[redacted]	[redacted]	[redacted]	[redacted]			[redacted]	[redacted]	
3. Fifth Third Institutional Money Market Fund (N)	[redacted]	[redacted]	[redacted]	[redacted]			[redacted]	[redacted]	
4. Freddie Mac Agency Bond CUSIP 3128X2EY7	[redacted]	[redacted]	[redacted]	[redacted]			[redacted]	[redacted]	
5. Freddie Mac Agency Bond CUSIP 3133F1RQ2	[redacted]	[redacted]	[redacted]	[redacted]			[redacted]	[redacted]	
6. Fannie Mae Agency Bond CUSIP 3136F52G5	[redacted]	[redacted]	[redacted]	[redacted]			[redacted]	[redacted]	
7. Fannie Mae Agency Bond CUSIP 3136F53G4	[redacted]	[redacted]	[redacted]	[redacted]			[redacted]	[redacted]	
8. Lehman Bros Hlds Inc Lehman Corp Bond CUSIP52519FAD3	[redacted]	[redacted]	[redacted]	[redacted]			[redacted]	[redacted]	
9. Dreyfus Prem High Incm-B Mut Bnd Fnds CUSIP 26202J208	[redacted]	[redacted]	[redacted]	[redacted]			[redacted]	[redacted]	
10. Alliance Bernstein Growth & Inc Fund CL B CUSIP 018597203	[redacted]	[redacted]	[redacted]	[redacted]			[redacted]	[redacted]	
11. Alliance Bernstein Growth & Inc Fund CL B 018597203	[redacted]	[redacted]	[redacted]	[redacted]			[redacted]	[redacted]	
12. American Amcap FD CL A CUSIP 023375108	[redacted]	[redacted]	[redacted]	[redacted]			[redacted]	[redacted]	
13. Calamos Invt Tr New Strategic Income FD CL C CUSIP 128119849	[redacted]	[redacted]	[redacted]	[redacted]			[redacted]	[redacted]	
14. American Cap Incm Builder-C CUSIP 140193301	[redacted]	[redacted]	[redacted]	[redacted]			[redacted]	[redacted]	
15. Columbia Fds Ser TR Marsico Growth FD CL C CUSIP 19765H198	[redacted]	[redacted]	[redacted]	[redacted]			[redacted]	[redacted]	
16. American Funds Europacific Growth Fund CUSIP 298706102	[redacted]	[redacted]	[redacted]	[redacted]			[redacted]	[redacted]	
17. American Fundamental Investors-A CUSIP 360802102	[redacted]	[redacted]	[redacted]	[redacted]			[redacted]	[redacted]	
18. Goldman Sachs TR Mid Cap Value FD CL B CUSIP 38142V712	[redacted]	[redacted]	[redacted]	[redacted]			[redacted]	[redacted]	

1. Income/Gain Codes: (See Columns B1 and D4) A = $1,000 or less; B = $1,001-$2,500; C = $2,501-$5,000; D = $5,001-$15,000; E = $15,001-$50,000; F = $50,001-$100,000; G = $100,001-$1,000,000; H1 = $1,000,001-$5,000,000; H2 = More than $5,000,000
2. Value Codes (See Columns C1 and D3) J = $15,000 or less; K = $15,001-$50,000; L = $50,001-$100,000; M = $100,001-$250,000; N = $250,000-$500,000; O = $500,001-$1,000,000; P1 = $1,000,001-$5,000,000; P2 = $5,000,001-$25,000,000; P3 = $25,000,001-$50,000,000; P4 = $More than $50,000,000
3. Value Method Codes (See Column C2) Q = Appraisal; R = Cost (Real Estate Only); S = Assessment; T = Cash/Market; U = Book Value; V = Other; W = Estimated

FINANCIAL DISCLOSURE REPORT
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VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
19. American Growth FD of America-A CUSIP 399874106	[redacted]								
20. Jennison Natural Resources FD-C CUSIP 476293303	[redacted]								
21. Lord Abbett Mid-Cap Value FD-B CUSIP 543919203	[redacted]								
22. MFS Mid Cap Growth FD-B CUSIP 552987802	[redacted]								
23. MFS Capital Opportunities CUSIP 552988404	[redacted]								
24. American Funds Group New Perspective Fund #07 CUSIP648018109	[redacted]								
25. ING Global Real Estate FD-C CUSIP 44980R292	[redacted]								
26. Van Kampen Aggr Growth Fund CL B cusip 92113A835	[redacted]								
27. Jennison Health Sciences C	[redacted]								
28. Lord Abbett Small Cap Blend C	[redacted]								
29. Unit Van Kampen EAFE Select 20 Portfolio 2006-1	[redacted]								
30. Unit Van Kampen EAFE Select 20 Portfolio 2006-3	[redacted]								
31. BDP Morgan Stanley Bank	[redacted]								
32. Van Kampen Comstock C	[redacted]								
33. Jennison Natl Resources C	[redacted]								
34. Goldman Sachs Mid Cap Val C	[redacted]								
35. Columbia Marsico Growth C	[redacted]								
36. Unit Van Kampen Brick Opportunity Portfolio 2007-1	[redacted]								

1. Income/Gain Codes: (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000			
	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000				
2. Value Codes: (See Columns C1 and D3)	J = $15,000 or less	K = $15,001-$50,000	L = $50,001-$100,000	M = $100,001-$250,000				
	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000				
	P3 = $25,000,001-$50,000,000		P4 = $More than $50,000,000					
3. Value Method Codes (See Column C2)	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market				
	U = Book Value	V = Other	W = Estimated					

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
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VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Jonker, Robert J	3/22/2007

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature Robert J. Jonker Date March 22, 2007

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		150	000	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		6	000	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		100	000
Real estate owned-add schedule		560	000	Chattel mortgages and other liens payable		15	000
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		50	000	Personal Line of Credit		20	000
Cash value-life insurance				Balance of pledge to church building fund		6	000
Other assets itemize:							
401(k)		650	000				
				Total liabilities		141	000
				Net Worth	1	275	000
Total Assets	1	416	000	Total liabilities and net worth			
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Fifth Third Bancorp	$ 6,000
Real Estate Owned	
Personal residence	$ 560,000
Real Estate Mortgages Payable	
Personal residence	$ 100,000

Senator BROWNBACK. Thank you very much.
Judge Maloney?

STATEMENT OF PAUL LEWIS MALONEY, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MICHIGAN

Judge MALONEY. Thank you, Mr. Chairman. Thank you for conducting this hearing today on our nominations to be District judges for the Western District of Michigan. I am honored by the President's nomination to be a Federal judge, and look forward to answering your questions during the course of this hearing.

I want to personally thank Senator Stabenow for her appearance this afternoon in support of our nominations. I look forward to your questions. Unfortunately, my family was not able to make it today. They are with me in spirit back in Michigan and assorted other places across the country, Texas and Pennsylvania, to be more specific.

Thank you, Senator.

[The biographical information of Paul Maloney follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name: Full name (include any former names used).**

   Paul Lewis Maloney

2. **Position: State the position for which you have been nominated.**

   United States District Judge for the Western District of Michigan

3. **Address: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.**

   Office: Berrien County Courthouse
   811 Port St.
   St Joseph, MI 49085

4. **Birthplace: State date and place of birth.**

   1949, Cleveland, Ohio

5. **Marital Status: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.**

   Married to Marie Maloney (nee Birrer), School Teacher, River Valley Schools, Three Oaks, Michigan

6. **Education: List in reverse chronological order, listing most recent first, each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.**

   University of Detroit School of Law; 1972 – 1975, Juris Doctorate Degree, May 1975

   Lehigh University, 1968 – 1972, BA Degree conferred, June 1972

7. **Employment Record: List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner,**

proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

1996-Present, Circuit Judge, Berrien County Courthouse, 811 Port St., St. Joseph, Michigan, 49085

1995-1996, District Judge, Berrien County Courthouse, 811 Port St., St. Joseph, Michigan, 49085

1993-1995, State of Michigan, Department of Corrections, Special Assistant to the Director, Grandview Plaza Building, Lansing, MI 48933

1989-1993, Deputy Assistant Attorney General, Criminal Division, United States Department of Justice, Washington, DC 20530

1975-1989, Berrien County Prosecutor's Office, (Asst. Prosecutor and Prosecuting Attorney), 811 Port Street, St. Joseph, MI 49085

1974-1975, City of Detroit Department of Transportation, Legal Division (Law Clerk)

Summer Work During Law School – Great Lakes Pipe Co, West Seneca, NY

8. **Military Service and Draft Status: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.**

   None

9. **Honors and Awards: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.**

   None

10. **Bar Associations: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.**

    State Bar of Michigan
    Berrien County, Michigan Bar Association
    American Bar Association
    Michigan Prosecuting Attorneys Association (Highest Office held – President-elect)
    Michigan District Judges Association
    Michigan Judges Association (Board of Directors Member for one year)

11. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

State Bar of Michigan continuously since October, 1975

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

State Courts of Michigan continuously since October, 1975
Supreme Court of the United States since 1987
Sixth Circuit Court of Appeals since approximately the late 1970s
United States District Court, Western District of Michigan since approx. 1976

12. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Knights of Columbus, 2005-Present
Catholic Community Education Commission, 1999-Present, Current President

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Please indicate whether any of these organizations listed in response to 12a above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Being Catholic is required for membership in the Knights of Columbus, Council 1120, sponsored by my Catholic Parish.

13. **Published Writings and Public Statements**:

a. **List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or**

edited, including material published only on the Internet. Please supply four (4) copies of all published material to the Committee.

Cooley Law Review, Symposium on Michigan Sentencing Guidelines.
Vol 16, Issue 1, 1999

b. **Please supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, please give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.**

None

c. **Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.**

Between 1989-1992, I recall testifying as a representative of the Department of Justice before Congressional Committees and Sub-Committees. I estimate appearing on approximately six to ten occasions. I do not have copies of my prepared remarks.

As Chair of the Michigan Sentencing Guideline Commission, I recall testifying before Senate and/or House Committees on sentencing issues. Again, I do not have copies of any prepared statement if one was created.

d. **Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.**

Since becoming a Judge, I have had very limited occasion for public speaking. During my Court of Appeals Campaign, I gave short remarks at political events in support of my candidacy, but I did not retain copies of notes.

I gave a speech a "Respect the Law" Ceremony on May 4, 2000.

e. **Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.**

I have given interviews to media sources during my tenure as Prosecuting Attorney. Generally, these interviews concerned criminal justice matters in my County, including announcements of initiation of charges against individuals and administrative matters. As Chief Judge, I grant interviews concerning Court administrative matters, including budget, caseload issues. I do not have a clip or transcript of any of these interviews.

14. **Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

Berrien County, Michigan Circuit Judge, Appointed 1996, elected and re-elected 1998 and 2002

Berrien County, Michigan District Judge, Appointed 1995, elected 1996

The Circuit Court is the court of general jurisdiction in Michigan. Jurisdiction includes trial of all felony crimes, civil lawsuits over $25,000 with accompanying equity jurisdiction.

The District Court is a statutory court of limited jurisdiction. Jurisdiction includes trial of misdemeanor matters and civil lawsuits in which the prayer for relief is less than $25,000.

15. **Citations: If you are or have been a judge, please provide:**

a. **citations for all opinions you have written (including concurrences and dissents);**

As a trial Judge in Michigan, my written opinions do not have citations.

b. **a list of cases in which certiorari has been requested or granted;**

None

c. **a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;**

In People v. Ervin, Court of Appeals #249826, decided 9/14/04, the Court reversed, finding that a lesser-included instruction should have been given in this homicide case.

In Old Kent Bank v. Kal Kustom, Court of Appeals #231915, the Court reversed, finding my interpretation of a UCC provision to be erroneous.

South Cove v. Dunescape @ New Buffalo II, Ltd., Court of Appeals #270571, decided 10/31/06, the Court found inaccurate my interpretation of language in an easement agreement.

Pheasant Ridge Development Co., Inc. v. Nottawa Township, Court of Appeals #269453, decided 12/28/06, reversed in part, affirmed in part. This case dealt with the applicability of a Township's "anti-funneling" ordinance to a riparian lot in a subdivision.

d. a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

Opinions were orally issued. See Item c. immediately above.

e. a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored; and

Less than 5% of all decisions are reduced to writing. Those opinions are stored in the individual Court files.

f. citations to all cases in which you were a panel member in which you did not issue an opinion.

None

16. Recusal: **If you are or have been a judge, please provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest, or for any other apparent reason, or in which you recused yourself sua sponte. (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Please identify each such case, and for each provide the following information:**

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. **your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.**

Recusal in Michigan Courts is governed by MCR 2.003 and case law issued by the Appellate Courts. I am always mindful of the actuality and potential for conflict of interest.

My Court does not track or keep records of recusals entered *sua sponte* by a Judge or otherwise, except in individual Court files.

I do not recall any cases in which a party filed a motion seeking my recusal in litigation assigned to me. There may be instances where a litigant has sought the recusal of all Judges of my Court for asserted conflicts.

17. **Public Office, Political Activities and Affiliations**:

a. **List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.**

Deputy Assistant Attorney General, United States Department of Justice, Criminal Division, 1989-1992 (Appointed)

Berrien County Prosecuting Attorney, 1981-1989, appointed 1981, elected 1982, 1984, 1988

Unsuccessful candidate for Michigan Court of Appeals in 1994 and 2000 and for Circuit Judge of Berrien County in 1986

b. **List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

Berrien County, Michigan Republican Party Executive Committee
Vice-Chairman, Berrien County Republican Party During 1980s
Member, Republican State Committee, mid-1980s

I had an active role in my county and state for the election of then Vice-President George H.W. Bush in 1988. I was co-chair of the Congressional District

committee for the Vice-President and held other positions in sub-groups such as Michigan Law Enforcement for Bush.

18. Legal Career: **Please answer each part separately.**

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I did not serve as a Clerk to a Judge.

ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1996-Present, Circuit Judge, Berrien County Courthouse, 811 Port St, St Joseph, Michigan, 49085

1995-1996, District Judge, Berrien County Courthouse, 811 Port St., St. Joseph, Michigan 49085

1993-1995, State of Michigan, Department of Corrections, Special Assistant to the Director, Grandview Plaza Building, Lansing, MI 48933

1989-1993, Deputy Assistant Attorney General, Criminal Division, United States Department of Justice, Washington, DC 20530

1975-1989, Berrien County Prosecutor's Office, (Asst. Prosecutor and Prosecuting Attorney), 811 Port Street, St. Joseph, MI 49085

b. describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

My entire career as an attorney has been in public service. As a practicing attorney, I have served in positions representing the State and Federal government in criminal matters.

ii. your typical clients and the areas, if any, in which you have specialized.

I represented the State and Federal government in my public positions almost exclusively in the area of criminal law.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

As an Assistant Prosecutor, my practice was 100% litigation, appearing in court daily.

As the elected Prosecutor, I appeared in court intermittently. I would estimate litigation constituted 15% of my responsibilities.

My work at the Justice Department did not include court appearances.

i. Indicate the percentage of your practice in:

1. federal courts 5%
2. state courts of record 95%
3. other courts.

ii. Indicate the percentage of your practice in:

1. civil proceedings 2%
2. criminal proceedings 98%

d. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I would estimate that across the scope of my prosecutorial responsibilities I tried approximately 200 cases to verdict. All of these cases would have been "first chair" trials.

i. **What percentage of these trials were:**

1. jury 60%
2. non-jury 40%

e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

None

19. **Litigation: Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:**

    a. **the date of representation;**

    b. **the name of the court and the name of the judge or judges before whom the case was litigated; and**

    c. **the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.**

    The cases delineated below were all litigated as first chair in the Berrien County Court system during my career as an Assistant Prosecuting Attorney or Prosecuting Attorney. For your information, Judges Byrns, White and Hughes are deceased. Judge Burkholz retired in 1995.

1. People v. Gerald Gene Barker, #82-617, opposing Counsel, Mr. James Straub, POB 318, St. Joseph, MI 49085, 269-982-1600. Judge William S. White Presiding.

    This First Degree Murder case was tried in July, 1982. Mr. Barker and two others committed a rape/murder of a housewife. After sexually assaulting the victim, she was shot to death at point blank range with a shotgun. Mr. Barker was convicted of First Degree Murder.

2. People v. Fred Burrell, #84-2717, opposing Counsel, Joseph Spiezer, Address and Phone Number Unknown. Judge Ronald J. Taylor Presiding

    This First Degree Murder case was tried in July, 1985. Mr. Burrell shot and killed Michigan State Police Trooper Robert Mihalik during the officer's attempts to arrest him for a theft of gasoline from a local station. Mr. Burrell was convicted of First Degree Murder.

3. People v. Thelma Zoschke, #77-3423, opposing Counsel, Gary Hosbein, 320 Main Street, St. Joseph, MI 49085, 269-983-0656. Judge Julian Hughes Presiding.

    Ms. Zoschke was convicted of Embezzlement by Agent over $100, 10-year felony offense. She was a clerk for a local unit of government and embezzled funds from the water department.

4. People v. Richard Clarey Jr., #84-1897, opposing Counsel, Randy Hyrns, 610 Ship St., St. Joseph, MI 49085, 269-983-0551. Judge William White Presiding.

   This First Degree Murder case involved the shooting of two victims at an I-94 rest area. Mr. Clarey was fleeing crimes committed in a neighboring county, lost control of his vehicle, disabling it. He sought substitute transportation by shooting and killing two citizens in the rest area. Mr. Clarey was convicted of First Degree Murder. A 7-8 day trial was held December 10-20, 1984.

5 People v. Dr. J. Russell Ham-Ying, #81-537, Delivery of Controlled Substances, opposing Counsel, Mr. Robert McDowell, 815 Main St., St. Joseph, MI 49085, 269-983-7321. Judge Zoe Burkholz presiding.

   Dr. Ham-Ying was a D.O. practicing in Berrien County. The Doctor was convicted of dispensing controlled substances for no valid medical reason. This case was one of the first of its kind in Michigan under the Michigan Controlled Substances Act. Case was tried over five days to verdict.

6. People v. George Smith, #82-3354, opposing Counsel, Andrew Burch, 1211 E. Napier Ave., Benton Harbor, MI 49022, 269-926-6135. Judge Zoe Burkholz presiding.

   Triple-Victim, Drug-Related Homicide Case. Mr. Smith was acquitted of First Degree Murder charges. Trial occurred in November, 1982.

7. People v. Linda Calahan, #80-1833, opposing Counsel, Quentin Fulcher (Deceased). Judge Chester Byrns presiding

   Murder case. Defendant was convicted of Second-Degree Murder in the shotgun slaying of her live-in boyfriend after a six-day jury trial in October, 1980.

8. People v. Andre Craig, #78-2247, opposing Counsel, Donald Bleich, 816 Ship St., St. Joseph, MI 49085, 269-983-0151.

   Armed Robbery case. Defendant found guilty as charged after a two-day jury trial.

9. People v. Ernest Michael Jackson, #82-5110, opposing Counsel, Ernie White, 606 Main St., St. Joseph, MI 49085, 269-0210.

   Defendant was convicted of criminal sexual conduct and felony assault arising from a vicious attack outside a bar. This two-day jury trial was held in January, 1983.

10. People v. Edwin Lee Fetke, #83-2726, opposing Counsel, Peter Johnson, 800 Port St., St. Joseph, MI 49085, 269-982-1100.

Defendant was acquitted of Arson charges arising from a fire at a local paper manufacturing plant. Defendant was a security guard at the plant. Circumstantial evidence case was insufficient to convince the jury. Case was tried over three days in May, 1984.

20. Legal Activities: **Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)**

As Chairman of the Michigan Sentencing Commission, I led the effort to establish sentencing guidelines for all felony crimes in the State of Michigan. The Commission's recommendations were largely enacted into law by the Michigan Legislature and now form the basis for sentencing of felons in Michigan.

As a member of the Committee on Rules of Criminal Procedure, I participated in a total review of the criminal rules of procedure for Michigan Courts. Recently, the Supreme Court adopted a vast majority of the Committee's recommendations

I have not performed lobbying activities.

21. Teaching: **What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.**

None

22. Deferred Income/ Future Benefits: **List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

Michigan Judges State Pension, defined benefit calculated based on years of service in Judiciary. Estimated $3200/mo if I separate from State Judicial Service in 2007.

Berrien County Pension, defined benefit calculated based upon years of service with county and average of highest five years of county salary. Estimated $1500/mo at age 60 if I separate from County service in 2007.

23. **Outside Commitments During Court Service: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

No

24. **Sources of Income: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

See attached Financial Disclosure Report

25. **Statement of Net Worth: Please complete the attached financial net worth statement in detail (add schedules as called for).**

See attached Net Worth Statement

26. **Potential Conflicts of Interest**:

a. **Identify the parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.**

Since I have been in the judiciary for ten years, I expect the potentiality for conflicts to be minimal. My financial holdings are modest, and have to date posed no difficulty. However, I am always mindful of the actuality and potential for conflict of interest.

b. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.**

I would resolve any conflict of interest by applying the dictates of the Code of Conduct for United States Judges and other applicable sources of law or policy which may pertain.

27. **Pro Bono Work: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

The nature of my prior employment has made pro bono service as an attorney to individual clients not practicable. However, I have engaged in efforts to foster respect for law through Bar activities such as Law Day programs, speaking when requested before Service Clubs, High School government or law classes, and occasionally in middle schools and elementary class rooms.

28. Selection Process:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Please do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

After expressing interest in being considered by the President for nomination, I was interviewed by Congressman Upton's screening committee in late August 2005. I was recommended by that committee for further consideration by the Congressman.

In late September, I met with several Republican members of the Michigan Congressional delegation.

On October 18, 2005, I was interviewed by representatives of the White House Counsel's office and Department of Justice. My nomination was forwarded to the Senate on June 28, 2006.

After my nomination, Senators Levin and Stabenow convened a screening committee of attorneys with whom I met on July 21, 2006.

The Senate Judiciary Committee held a hearing on my nomination on September 19, 2006. My Nomination was reported out of committee the following week. The nomination was returned to the President, on December 19, 2006, when the 109th Congress adjourned. I was renominated on March 19, 2007.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

No

AO 10
Rev. 1/2006

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Maloney, Paul L	District Court, WD MI	03/22/2007
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
District Judge Nominee	☒ Nomination, Date 03/19/2007 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2006 to 02/28/2007
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
811 Port Street St Joseph MI 49085	Reviewing Officer_____ Date_____	

***IMPORTANT NOTES:** The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.*

I. POSITIONS. *(Reporting individual only; see pp. 9-13 of instructions.)*

☐ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. President, Catholic Community Education Commission	Lake Michigan Catholic Schools, St. Joseph, Michigan
2.	
3.	
4.	
5.	

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of instructions.)*

☐ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1. 1995-2007	State Judicial Pension calculated based on years of service
2. 1995-2007	Berrien County Pension calculated based upon years of service
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 8	Name of Person Reporting	Date of Report
	Maloney, Paul L	03/21/2007

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of instructions.)*

A. Filer's Non-Investment Income

☐ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2005	Judicial Salary, State of Michigan and County of Berrien	$ 139,500
2.	2006	Judicial Salary, State of Michigan and County of Berrien	$ 139,500
3.	2007	Judicial Salary, State of Michigan and County of Berrien	$ 26,850
4.			
5.			

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*
(Dollar amount not required except for honoraria.)

☐ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE
1.	2006	Teacher, River Valley School District
2.	2007	Teacher, River Valley School District
3.		
4.		
5.		

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

☐ NONE *(No reportable reimbursements.)*

	SOURCE	DESCRIPTION
1.	Exempt	
2.		
3.		
4.		
5.		

FINANCIAL DISCLOSURE REPORT Page 3 of 8	Name of Person Reporting Maloney, Paul L	Date of Report 03/21/2007

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of instructions.)*

☐ NONE *(No reportable gifts.)*

SOURCE	DESCRIPTION	VALUE
1. Exempt		
2.		
3.		
4.		
5.		

VI. LIABILITIES. *(Includes those of spouse and dependent children. See pp. 32-34 of instructions.)*

☒ NONE *(No reportable liabilities.)*

CREDITOR	DESCRIPTION	VALUE CODE
1.		
2.		
3.		
4.		
5.		

FINANCIAL DISCLOSURE REPORT Page 4 of 8	Name of Person Reporting Maloney, Paul L	Date of Report 03/21/2007

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure: (2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1 BROKERAGE ACCOUNT #1					Exempt				
2. --Agere Common Stock	A	Dividend	J	T					
3. --Avaya Common Stock	A	Dividend	J	T					
4. --CMS Energy Common Stock	A	Dividend	J	T					
5. --Freescale Semiconductor Common Stock	A	Dividend	J	T					
6. --GE Common Stock	A	Dividend	K	T					
7. Harley Davidson Common Stock	A	Dividend	K	T					
8. --Alcatel-Lucent Common Stock	A	Dividend	J	T					
9. --Disney Common Stock	A	Dividend	J	T					
10. --Health Services Trust B	B	Dividend	J	T					
11. --Tech Fund B (fka Info Fund B)	A	Dividend	J	T					
12. --Financial Services Trust B	A	Dividend	J	T					
13. --Focus Growth Fund A (fka Amer. Opp. Fund A)	A	Dividend	J	T					
14. --Dividend Growth Securities A	A	Dividend	J	T					
15. --Tech Fund A (fka Info Fund A)	A	Dividend	J	T					
16. --Liquid Asset Fund	A	Dividend	J	T					
17. BROKERAGE ACCOUNT #2									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	P3 =$25,000,001 - $50,000,000 Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	P4 =More than $50,000,000 S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT
Page 5 of 8

Name of Person Reporting	Date of Report
Maloney, Paul L	03/21/2007

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	D. If not exempt from disclosure (2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. --Apple Computer Common Stock	A	Dividend	J	T					
19. --EBay Common Stock	A	Dividend	J	T					
20. --US Government Money Trust	A	Dividend	J	T					
21. BROKERAGE ACCOUNT #3									
22. --Liquid Asset Fund	A	Dividend	J	T					
23. --Microsoft Common Stock	A	Dividend	J	T					
24. --Dividend Growth Securities A	A	Dividend	J	T					
25. --S&P 500 Index Fund B	A	Dividend	J	T					
26. --Divdend Growth Securities B	A	Dividend	J	T					
27. STATE OF MICHIGAN 401(k)									
28. --SSgA Bond Market Index	A	Dividend	J	T					
29. --Western Asset Core Bond	A	Dividend	J	T					
30. --MFS Total Return A	A	Dividend	K	T					
31. --Dodge and Cox Stock Fund	B	Dividend	L	T					
32. --Legg Mason Lg. Cap Growth Y	A	Dividend	K	T					
33. --Columbia Acorn Z	A	Dividend	J	T					
34. --American Funds Euro Pacific	A	Dividend	K	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	P3 =$25,000,001 - $50,000,000	R =Cost (Real Estate Only)	P4 =More than $50,000,000	T =Cash Market	
	Q =Appraisal	V =Other	S =Assessment		
	U =Book Value		W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 6 of 8	Name of Person Reporting Maloney, Paul L	Date of Report 03/21/2007

VII. INVESTMENTS and TRUSTS — *income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
35. --Templeton Foreign A	A	Dividend	J	T					
36. 457 RETIREMENT ACCOUNT									
37. --Nationwide Fixed Account	B	Interest	K	T					
38. --Neuberger Genesis Fund TC	A	Dividend	J	T					
39. 403 b ACCOUNT									
40. --New Perspective Fund A	A	Dividend	J	T					
41. --Capital World Growth A	A	Dividend	J	T					
42. --US Govt Securities A	A	Dividend	J	T					
43. FIFTH THIRD BANK	A	Interest	J	T					
44. DOJ FEDERAL CREDIT UNION	A	Interest	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	P3 =$25,000,001 - $50,000,000 Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	P4 =More than $50,000,000 S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 7 of 8	Name of Person Reporting Maloney, Paul L	Date of Report 03/21/2007

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting Maloney, Paul L	Date of Report 03/22/2007

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature Paul L Maloney **Date** 3/22/07

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		5	000	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		360	634	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		3	000
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		135	000
Real estate owned-add schedule		350	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		150	000				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		138	000
				Net Worth		727	634
Total Assets		865	634	Total liabilities and net worth		865	634
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Securities/Mutual Funds	
State of Michigan 401(k)	$ 161,801
SsgA Bond Market Fund	
Western Asset Core Bond Fund	
MFS Total Return A	
Dodge & Cox Stock	
Smith Barney Lg Cap Grwth; Y	
Columbia Acorn;Z	
American Funds EuroPacific Growth	
Templeton Foreign A Fund	
Nationwide Retirement Solutions 457 (b)	$ 43,593
Nationwide Fixed Account	
Neuberger Ber Genesis Fund	
Morgan Stanley Account	$ 12,726
Apple Computer	
Morgan Stanley Roth IRA	$ 17,272
Microsoft	
Dividend Growth Securities A	
Liquid Asset Fund	
S & P 500 Index Fund B	
Dividend Growth Securities B	
Morgan Stanley IRA Standard	$ 111,160
gere Systems	
Avaya Inc	
CMS Energy	
General Electric	
Harley Davidson	
Lucent Technologies	
Walt Disney	
Spouse's 403 (b)	$ 14,082
American Mutual Funds	
Total	$ 360,634

Real Estate owned:	
Personal Residence	$ 350,000
Real Estate Mortgages Payable:	
Personal residence (First Mortgage)	$ 113,000
Home Equity Loan	$ 22,000
Total Real Estate Mortgages Payable:	$ 135,000

AFFIDAVIT

I, PAUL L. MALONEY, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

4/3/07
(DATE)

PAUL L. MALONEY

Alice E. Baker, Notary Public
Berrien County, Michigan
My Commission Expires: 6/24/07

Senator BROWNBACK. Thank you. It is a delight to have you here. Judge Neff?

STATEMENT OF JANET T. NEFF, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MICHIGAN

Jude NEFF. Thank you, Senator. Thank you particularly for your comments with regard to the support of family, which is very important, as you know as someone in public life.

I would like to introduce to you my husband of almost 35 years, David Neff, and the younger of my two daughters, Meredith Neff, who is with us here from Wisconsin, where she lives and works. My older daughter, Genevieve, unfortunately could not be here. She is in law school in New York City.

Senator BROWNBACK. Welcome. Delighted to have you all here.

Jude NEFF. I also am appreciative of the opportunity to have this hearing. I am extremely grateful to Senators Levin and Stabenow for forwarding my name to President Bush for consideration and for his nomination.

I also think it appropriate to thank the staff at the Department of Justice, particularly David Best and the people who have worked with him who have helped us so very much through this process, which can be a little daunting at times, as well as the staff of Harriet Meyers in the White House.

They were extremely helpful to me and I am very, very grateful for all of the courtesies and assistance that have been shown me. So I am more than pleased to be here and more than honored to be nominated to this position. Thank you.

[The biographical information of Janet Neff follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used.)**

Janet Theresa Neff

Former Names: Janet Theresa Hunt, Janet Theresa Nebiolo

2. **Address: List current place of residence and office address(es).**

Home: E. Grand Rapids, MI

Office: 5 Lyon N.W., Suite 624
Grand Rapids, MI 49503

3. **Date and place of birth.**

4/8/45, Wilkinsburg, PA

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer=s name and business address(es).**

Married to David Askins Neff, Attorney, Retired

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

University of Pittsburgh 1963-67, B.A., cum laude 1967

University of Pittsburgh School of Law 1967-68, left to transfer to Wayne State University Law School

Wayne State University Law School 1968-70, J.D. 1970

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

1970	Internal Revenue Service Tax examiner
1970-71	Michigan Court of Appeals Research Attorney
1971-73	City of Grand Rapids Assistant City Attorney
1973-78	VanderVeen, Freihofer & Cook Associate, Partner
1978-80	Michigan Supreme Court Commissioner
1980	Office of the U.S. Attorney Department of Justice Assistant United States Attorney
1980-88	William G. Reamon, P.C. Associate
1989-present	Michigan Court of Appeals Judge

7. **Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

No.

8. **Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

I graduated cum laude from the University of Pittsburgh where I was elected to Omicron Delta Epsilon, an Economics Honorary Society.

Recipient of the "Law Enforcement" award for 1998 by the Order Sons of Italy in American Grand Lodge of Michigan

Recipient, Outstanding Member 2006, Women Lawyers Association of Michigan, Western Michigan

9. **Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.**

State Bar of Michigan
Commissioner 1980-1984

Grand Rapids Bar Association

Treasurer	1985-87
Vice-President	1987-88
President-Elect	1988-1989
President	1989-90

Michigan Trial Lawyers Association

Women Lawyers Association of Michigan

Women Lawyers Association of Michigan, Western Region

Association of Trial Lawyers of America

American Bar Association

Member and Chair, State Bar of Michigan Character and Fitness Subcommittee

Member, U.S. District Court Professional Review Committee

Trustee, Kent Medical Society

Trustee, Grand Rapids Bar Association Professional Relations Committee

Member, State Bar of Michigan Task Force on Racial, Ethnic and Gender Issues in the Courts and Legal Profession

Member, State Bar of Michigan Open Justice Committee

Member, Grand Rapids Area Legislative Business Forum

Member, Grand Rapids Bar Association Access to Justice Center Committee

Member, Grand Rapids Bar Association Diversity Committee

10. **Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**

Order, Sons of Italy in America
Progressive Women's Alliance of Grand Rapids

11. **Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.**

Michigan Supreme Court, 1971:
- Michigan Supreme Court
- Michigan Court of Appeals
- 1st through 57th Circuit Courts
- Recorder's Court, Detroit
- Court of Claims
- 1st through 98th District Courts
- Michigan Probate Courts
- Michigan Municipal Courts
- Michigan Administrative Agencies

U.S. District Court for the Eastern District of MI, 1971
U.S. District Court for the Western District of MI, 1973
U.S. Court of Appeals for the Sixth Circuit, 1986

12. **Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.**

None

13. **Health: What is the present state of your health? List the date of your last physical examination.**

I am in excellent health. My last physical examination was on 3/29/06.

14. **Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

1/1/89 - Present - Judge, Michigan Court of Appeals, Elected

The Michigan Court of Appeals has statewide general civil and criminal jurisdiction over appeals from all state trial courts and state administrative agencies. The Court's jurisdiction is primarily non-discretionary. Under the 1963 Michigan Constitution, which created the Court of Appeals, litigants have a right of appeal to the Court of Appeals, whereas Michigan Supreme Court's jurisdiction is primarily discretionary. In the vast majority of litigated and appealed cases, the Court of Appeals is the court of last resort in Michigan. The per judge case load and disposition rate both rank consistently among the highest of U.S. state intermediate appellate courts.

Twenty-eight elected judges currently serve on the Court of Appeals and hear cases in three-judge panels. Our dockets are approximately evenly divided between criminal and civil appeals. A decision of any panel of the Court is controlling throughout the state and is reviewable by the Michigan Supreme Court on leave granted.

15. **Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written;**

Morris v Governor, 214 Mich App 604; 543 NW2d 363 (1995), lv den 453 Mich 962; 557 NW2d 311 (1996)

Martinez v Ford Motor Co, 224 Mich App 247; 568 NW2d 396 (1997).

Cherry Growers v Michigan Processing Apple Growers, Inc, 240 Mich App 153; 610 NW2d 613 (2000)

People v Rodriguez, 251 Mich App 10; 650 NW2d 96 (2002), lv den *People v Porter*, 467 Mich 932; 655 NW2d 566 (2002) and *People v Rodriguez*, 468 Mich 880; 659 NW2d 241 (2003)

City of Lansing v Schlegel, 257 Mich App 627; 669 NW2d 315 (2003)

People v Jones, 260 Mich App 424; 678 NW2d 627 (2004)

People v Moorer, 262 Mich App 64; 683 NW2d 736 (2004)

Grand Trunk Western Railroad, Inc v Auto Warehousing Co, 262 Mich App 345; 686 NW2d 756 (2004)

In re McEvoy, 267 Mich App 55; 704 NW2d 78 (2005), lv den 474 Mich 1068; 711 NW2d 306 (2006)

Mason v Simmons, 267 Mich App 188; 704 NW2d 104 (2005)

(2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

People v Westman, 262 Mich App 184; 685 NW2d 423 (2004), overruled by *People v Monaco*, 474 Mich 48, 710 NW2d 46 (2006).

SUMMARY: Offense to which defendant pleaded guilty, felony failure to pay child support, was a continuing offense that straddled old and new versions of law that criminalized failure to pay. Statute's application did not violate Ex Post Facto Clauses.

Langrill v Stingers Lounge, 261 Mich App 698; 683 NW2d 225 (2004), vacated and remanded 471 Mich 926, 689 NW2d 228 (2004).

SUMMARY: A grant of summary disposition in favor of the lounge was improper where the individual's action was not time barred because she originally retained her attorney for the purpose of an auto negligence claim, not a dramshop action.

Elezovic v Ford Motor Co, 259 Mich App 187; 673 NW2d 776 (2003), affirmed in part, reversed in part and remanded 472 Mich 408; 697 NW2d 851 (2005).

SUMMARY: In a hostile work environment claim, notice to employer was insufficient where worker reported incident but asked for confidentiality. Court disagreed with, but followed, caselaw disallowing claim against supervisor who created hostile environment.

Thomason v Contour Fabricators, Inc, 255 Mich App 121; 662 NW2d 51 (2003), modified in part and remanded 469 Mich 960, 671 NW2d 41 (2003).

SUMMARY: Where employee was injured while having blood drawn at her place of employment for employment provided insurance, employee's injury arose in the course of employment and employee was entitled to workers' compensation benefits.

Sekulov v City of Warren, 251 Mich App 333; 650 NW2d 397 (2002), vacated and remanded 468 Mich 863, 659 NW2d 229 (2003).

SUMMARY: Summary judgment was reversed when county had jurisdiction over location of automobile accident. New case law would have only prospective application, and full retroactive effect was unjust and unwarranted.

Sweatt v Dep't of Corrections, 247 Mich App 555; 637 NW2d 811 (2001), reversed and remanded 468 Mich 172; 661 NW2d 201 (2003).

SUMMARY: Where a corrections officer suffered a work-related injury and was then incarcerated, he was entitled to reinstatement of disability payments upon his release even though his employer, the DOC, was prohibited by statute from hiring him back.

Corley v Detroit Bd of Education, 246 Mich App 15; 632 NW2d 147 (2000), reversed 470 Mich 274; 681 NW2d 342 (2004).

SUMMARY: Plaintiff established a genuine issue concerning whether the alleged adverse actions were factors in decisions affecting her employment; thus, granting summary disposition to defendants was improper.

People v Ross, 242 Mich App 241; 618 NW2d 774 (2000), vacated and affirmed on alternative grounds 465 Mich 909; 638 NW2d 746 (2001).

SUMMARY: Assault with intent to rob while unarmed constituted predicate felony, as essentially attempted robbery, for purposes of felony murder statute, so trial court's reduction of conviction to second-degree murder was reversed.

Bingham Twp v RLTD Railroad Corp, 237 Mich App 538; 603 NW2d 795 (1999), reversed 463 Mich 634; 624 NW2d 725 (2001).

SUMMARY: Reference in the Michigan Trailways Act to local ordinances did not mean that plaintiff's local zoning ordinances should control the development of defendants' bike-and-commuter trailway over the statute.

Crego v Coleman, 232 Mich App 284; 591 NW2d 277 (1998), reversed 463 Mich 248, 615 NW2d 218 (2000).

SUMMARY: A state statute's denial of right to modify child support for illegitimate child, but that did not deny such right to legitimate children, was unconstitutional because such statute violated equal protection right of child born outside marriage.

In re Forfeiture of $275, 227 Mich App 462; 576 NW2d 431 (1998), reversed 457 Mich 864; 581 NW2d 732 (1998).

SUMMARY: A trial court erred in ordering the forfeiture of currency where there was insufficient evidence under Michigan law to connect the claimant's possession of the currency with another individual's possession of large amounts of cocaine.

People v Brownridge, 225 Mich Ap. 291; 570 NW2d 672 (1997), affirmed in part and reversed in part 459 Mich 456, 591 NW2d 26 (1999), amended 459 Mich 1276, 595 NW2d 856 (1999).

SUMMARY: Defendant should have been allowed to admit testimony of an officer related to investigating officer's credibility and truthfulness where it had significant probative value and omission may have affected outcome of trial.

Haberl v Rose, 225 Mich App 254; 570 NW2d 664 (1997), abrobated by *Alex v Wildfong*, 460 Mich 10; 594 NW2d 469 (1999).

SUMMARY: Governmental employee, who was acting in scope of her employment and driving her own car when the accident occurred, was liable under the civil liability statute as an owner even though she was immune from common law negligence as driver.

Bieszck v Avis Rent-A-Car System, Inc, 224 Mich App 295; 568 NW2d 401 (1997), reversed 459 Mich 9, 583 NW2d 691 (1998).

SUMMARY: In personal injury action, husband and wife were entitled to new trial where trial court erroneously submitted issue of rental company's consent to underage driver to jury. Car lease provision was insufficient to overcome presumption of consent.

People v Harris, 219 Mich App 184; 555 NW2d 891 (1996), vacated and remanded for reconsideration in light of *People v Mitchell*, 454 Mich 145; 560 NW2d 600 (1997), 455 Mich 864, 567 NW2d 251 (1997).

SUMMARY: Defendant's adjudications for sexual conduct and felonious assault improperly were scored under the Michigan Sentencing Guidelines as prior convictions; they were supplemental dispositions that Michigan Court Rules treated as probation violations.

People v Mack, 218 Mich App 359; 554 NW2d 324 (1996), appeal denied; ordered not precedential 455 Mich 865, 567 NW2d 251 (1997).

SUMMARY: A trial court erred in failing to provide a defendant with various discovery material requested by him, but the errors were harmless when overwhelming evidence existed to convict the defendant, including his own admission.

Shurlow v Bonthuis, 218 Mich App 142; 553 NW2d 366 (1996), affirmed in part and reversed in part 456 Mich 730; 576 NW2d 159 (1998).

SUMMARY: After obtaining judgment of possession and money judgment, landlords brought action against tenant and guarantor of commercial lease contracts for additional damages. Although action was stayed when tenant and guarantor filed bankruptcy petitions, stay was lifted after guarantor withdrew bankruptcy petition following rejection of landlords' claim in bankruptcy court. The trial court granted motion for summary disposition by guarantor.

Berrien Co Probate Judges v Michigan AFSCME Council 25, AFL-CIO, 217 Mich App 205; 550 NW2d 859 (1996), appeal denied; ordered not precedential, 454 Mich 908; 564 NW2d 46 (1997).

SUMMARY: The probate court and the county were not joint employers and could not implicitly agree to act as joint employers by sharing services and waive the legal rights of employees because this would violate the separation of powers doctrine.

People v Baker, 216 Mich App. 687; 551 NW2d 195 (1996), reversed by *People v Goecke*, 457 Mich 442, 579 NW2d 868 (1998).

SUMMARY: A finding that defendant was driving drunk, without more, was insufficient to warrant an inference of malice to support a conviction for first degree murder.

Volkema v Dep't of Natural Resources, 214 Mich App 66; 542 NW2d 282 (1995), affirmed in part and disapproved in part 457 Mich 886; 586 NW2d 231 (1998).

SUMMARY: Denial of property owner's inverse condemnation claim was proper because the mere diminution on the value of the property was not compensable and because the trial court considered how the land-use regulation affected the property as a whole.

Nelson v American Sterilizer Co, 212 Mich App 589; 538 NW2d 80 (1995), vacated in part and remanded 453 Mich 946; 554 NW2d 898 (1996).

SUMMARY: Injured person was entitled to present her expert's testimony for the jury's consideration in her case for damages incurred as a result of exposure to ethylene oxide because that method was the appropriate way to challenge the expert's opinions.

Feaster v Portage Pub Schools, 210 Mich App 643; 534 NW2d 242 (1995), reversed 451 Mich 351; 547 NW2d 328 (1996).

SUMMARY: The school district's policy of requiring proof of residency to enroll children in the public schools was rationally related to their policy of collecting tuition from out of state students.

Nalepa v Plymouth-Canton Community School Dist, 207 Mich App 580; 525 NW2d 897 (1994), affirmed on other grounds 450 Mich 934; 548 NW2d 625 (1995).

SUMMARY: School district, board of education, and school superintendent had absolute governmental immunity from liability for wrongful death of second grader who hung himself after his school showed a video in which a boy attempted suicide by hanging.

Local 1064, RWDSU, AFL-CIO v Ernst & Young, 204 Mich App 445; 516 NW2d 492 (1994), affirmed in part and reversed in part 449 Mich 322; 535 NW2d 187 (1995).

SUMMARY: A client's breach of contract claim against an accounting firm was not governed by the two-year statute of limitations for malpractice suits, but rather by one of several other sections that ranged from three to six years and did not bar the suit.

People v Paul, 203 Mich App 55; 512 NW2d 20 (1993), reversed 444 Mich 949, 511 NW2d 434 (1994).

SUMMARY: A trial court properly suppressed evidence that was seized pursuant to a search warrant that was improperly issued by a district court magistrate because no specific authorization was obtained from a district court judge to issue the warrant.

People v Lemcool, 200 Mich App 77; 504 NW2d 7 (1993), reversed 445 Mich 491; 518 NW2d 437 (1994).

SUMMARY: It was error for the trial court to grant reciprocal discovery to prosecution. The trial court was required to exercise judicial restraint and refuse to permit prosecutorial discovery in the absence of statute or court rule.

Schippers v SPX Corp, 194 Mich App 52; 486 NW2d 89 (1992), reversed 444 Mich 107; 507 NW2d 591 (1993).

SUMMARY: Because a question of fact existed concerning whether an employee had a reasonable belief that he could be fired only for cause, it was for the jury to determine the facts and circumstances that actually occurred.

People v Cobbs, 188 Mich App 324; 469 NW2d 47 (1991), reversed 443 Mich 276; 505 NW2d 208 (Mich. Aug 17, 1993).

SUMMARY: Defendant was improperly sentenced following guilty plea for kidnapping and felonious assault where the trial judge improperly negotiated a sentence agreement with defendant, over the prosecutor's objections; thus, the sentences imposed were invalid.

Schippers v SPX Corp, 186 Mich App 595; 465 NW2d 34 (1990), vacated and remanded 439 Mich 895; 478 NW2d 439 (1991).

SUMMARY: An employer's handbook, stating that disciplinary action including discharge might result from the violation of certain rules, raised a genuine issue of fact as to whether a contract of employment providing termination only for just cause existed.

Rouch v Enquirer & News of Battle Creek, 184 Mich App 19; 457 NW2d 74 (1990), vacated and remanded 440 Mich 238; 487 NW2d 205 (1992).

SUMMARY: An individual was entitled to damages in its libel action where he met his burden of proving that a newspaper incorrectly reported that he was charged with sexual assault and that the identification was by his own children.

People v Williams, 179 Mich App 15; 445 NW2d 170 (1989) reversed 434 Mich 894; 453 NW2d 675 (1990).

SUMMARY: Because it urged jurors to do their civic duty by supporting the police, the prosecutor's argument was highly prejudicial. It had the effect of improperly converting the presumption of innocence into one of guilt and constituted reversible error.

Krisfalusi v Krisfalusi, 178 Mich App 458; 444 NW2d 196 (1989), reversed 434 Mich 916; 456 NW2d 236 (1990).

SUMMARY: Michigan's usury statute did not apply to property divisions in a divorce. Thus, in an ex-wife's petition to enforce a divorce judgment the circuit court properly ordered the ex-husband to pay the nine percent interest specified in the settlement.

and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

People v Jones, 270 Mich App 208; 714 NW2d 362, (2006)

Mason v Simmons, 267 Mich App 188; 704 NW2d 104 (2005)

In re McEvoy, 267 Mich App 55; 704 NW2d 78 (2005), lv den 474 Mich 1068; 711 NW2d 306 (2006)

People v Walker, 265 Mich App 530; 697 NW2d 159 (2005), held in abeyance 705 NW2d 687 (2005)

People v Moorer, 262 Mich App 64; 683 NW2d 736 (2004), lv den 472 Mich 901; 698 NW2d 153 (2005), cert den *Moorer v Michigan*, 126 S Ct 234, 163 L Ed 2d 218 (2005)

People v Jones, 260 Mich App 424; 678 NW2d 627 (2004)

People v Galloway, 259 Mich App 634; 675 NW2d 883 (2003), lv den 470 Mich 890; 684 NW2d 266 (2004)

People v Rodriguez, 251 Mich App 10; 650 NW2d 96 (2002), lv den *People v Porter*, 467 Mich 932; 655 NW2d 566 (2002) and *People v Rodriguez*, 468 Mich 880; 659 NW2d 241 (2003)

Crego v Coleman, 232 Mich App 284; 591 NW2d 277 (1998), rev'd 463 Mich 248; 615 NW2d 218 (2000), cert den *Crego v Coleman*, 531 US 1074, 121 S Ct 767, 148 L Ed 2d 667 (2001)

People v Morey, 230 Mich App 152; 583 NW2d 907 (1998), aff'd 461 Mich 325; 603 NW2d 250 (1999)

Martinez v Ford Motor Co, 224 Mich App 247; 568 NW2d 396 (1997)

Hawkins v Dep't of Corrections, 219 Mich App 523; 557 NW2d 138 (1996)

People v Mack, 218 Mich App 359; 554 NW2d 324 (1996), lv den, ordered not precedential 455 Mich 865; 567 NW2d 251 (1997)

Morris v Governor, 214 Mich App 604; 543 NW2d 363 (1995), lv den 453 Mich 962; 557 NW2d 311 (1996)

Volkema v Dep't of Natural Resources, 214 Mich App 66; 542 NW2d 282 (1995), aff'd in part & disapproved in part 457 Mich 886; 586 NW2d 231 (1998), cert den *Volkema v Michigan*, 525 US 1040, 119 SCt 590, 142 LEd2d 533 (1998)

Feaster v Portage Pub Schools, 210 Mich App 643; 534 NW2d 242 (1995), rev'd 451 Mich 351; 547 NW2d 328 (1996)

16. Public Office: **State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.**

I was an unsuccessful candidate for the Michigan Court of Appeals in 1986.

17. Legal Career:

a. **Describe chronologically your law practice and experience after graduation from law school including:**

1. **whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;**

I did not serve as a clerk.

2. **whether you practiced alone, and if so, the addresses and dates;**

I have not practiced alone.

3. **the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;**

1970 Internal Revenue Service
Cadillac Square Building
Detroit, MI 48226
Position: Estate and Gift Tax Examiner

1970-71 Michigan Court of Appeals
Washington Square Building
109 West Michigan Ave.
Lansing, MI 48909-7522
Position: Prehearing Research Attorney

1971-73 City of Grand Rapids
300 Monroe N.W.
Grand Rapids, MI 49503
Position: Assistant City Attorney

1973-78 VanderVeen, Freihofer & Cook
950 Union Bank Building
Grand Rapids, MI 49503
Position: Associate and Partner

1978-80 Michigan Supreme Court
525 W. Ottawa
G. Mennen Williams Building
Lansing, MI 48933
Position: Commissioner

1980 Office of the U.S. Attorney
Department of Justice
P.O. Box 208
Grand Rapids, MI 49501-0208
Position: Assistant U.S. Attorney.

1980-88 William G. Reamon, P.C.
161 Ottawa, N.W., Suite 200-C
Grand Rapids, MI 49503
Position: Associate

1989-Present Michigan Court of Appeals
5 Lyon, N.W., Suite 624
Grand Rapids, MI 49503
Position: Judge

b. 1. **What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?**

After graduation from law school in 1970, I was briefly an Estate and Gift Tax Examiner for the IRS. This position involved review and audit of federal estate and gift tax returns.

1970 - 1971 - I was a Prehearing Research Attorney for the Michigan Court of Appeals. This was a central legal staff position in which I reviewed briefs and lower court records and conducted independent research of cases on appeal, drafting reports for the Court's judges and, often, proposed per curiam opinions.

1971 - 1973 - I was an Assistant City Attorney for the City of Grand Rapids assigned to the Ordinance Enforcement Division. I prosecuted all manner of ordinance violations, including drunk driving, misdemeanor assaults, housing and zoning violations and the like. I was in the courtroom daily and tried scores of jury and non-jury cases.

1973 - 1978 - I was an associate and then a partner at Vander Veen, Freihofer and Cook, then one of the largest firms in west Michigan. I was in the litigation group of the firm and our trial practice was a general one. My practice included insurance defense, criminal defense, domestic relations, commercial litigation (primarily construction bond defense), products liability defense, bankruptcy and the representation of numerous municipal governments, including Kent County as well as city and township governments throughout west Michigan. While at the firm, I was appointed a Special Assistant Attorney and defended two state worker's compensation funds, the Second Injury Fund and the Silicosis & Dust Disease Fund.

1978 - 1980 - I was a Commissioner of the Michigan Supreme Court. As a staff attorney to the Court, I conducted independent research and review of applications for leave to appeal, motions and administrative matters, writing reports for the Justices and, on request, drafting proposed per curiam opinions. I also was one of two staff attorneys who drafted the comprehensive staff report to the Court which resulted in the publication and adoption of the total revision of the Michigan Court Rules,

effective 3/1/85.

1980 - I joined the U.S. Attorney's Office in the Western District of Michigan where I represented the federal government in both criminal and civil cases, working closely with various investigative agencies such as the FBI, the DEA and the Postal Service. I left to take an opportunity in private practice.

Late 1980 - 1988 - I was with a small personal injury law firm, William G. Reamon. P.C. Our practice was exclusively in the plaintiff's personal injury area. My primary areas of practice were medical malpractice and automobile negligence and no-fault, although I also did some product liability work and some worker's compensation.

2. **Describe your typical former clients, and mention the areas, if any, in which you have specialized.**

1973-78 - My typical clients during this period included in-surance companies, municipal governments, criminal defendants, creditors, debtors, business owners, and individuals.

1980-88 - My typical clients during this period included injured individuals who were mostly working people. This was exclusively a plaintiff's personal injury practice and I concentrated my work in medical malpractice, automobile negligence and no-fault, although I also handled other types of liability cases.

c. 1. **Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.**

I appeared in court regularly during most of my practice before joining the bench in 1988.

2. **What percentage of these appearances was in:**
   (a) federal courts; 20%
   (b) state courts of record; 80%
   (c) other courts.

3. **What percentage of your litigation was:**
   (a) civil; 80%
   (b) criminal. 20%

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

   I estimate that I tried nearly 300 cases to verdict. In most, I was sole counsel. In a few, I was chief counsel or associate counsel.

5. **What percentage of these trials was:**
   (a) jury; 70%
   (b) non-jury. 30%

18. **Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:**

   (a) the date of representation;
   (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
   (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

My litigation practice ended in 1988 when I was elected to the Michigan Court of Appeals; however, following are five significant matters I personally handled during my practice.

1. *Anderson v Volkswagen of America,* unpublished opinion per curiam of the Court of Appeals, issued 10/19/78 (Docket No. 31240).

The plaintiffs were driving a Volkswagen bus when it was struck, head-on by an oncoming car. The driver was killed and the passenger seriously injured. The driver and passenger were an elderly couple.

Plaintiffs sued the van manufacturer, Volkswagen of America, on a theory of crash worthiness because the blunt, front end of the van had no built-in protection for occupants in a head-on collision. The van front collapsed on the occupants from the force of the collision, causing their injuries.

This was, to the best of my knowledge, the first case in Michigan tried on a theory of crash worthiness and the first to go to appellate decision.

I was co-counsel for defendant, the manufacturer, Volkswagen of America.

My responsibilities included drafting all pleadings, briefs, and jury instructions at trial and on appeal. I also handled motion arguments and some trial testimony.

Jury verdict for plaintiffs: $150,000. Affirmed on appeal.

a) Dates of trial: 11/19/76
b) Name of the court and judge: Muskegon Circuit Court, Honorable John H. Piercey
c) Name, address, telephone numbers of counsel and co-counsel:

Co-counsel:
Peter R. Tolley
1700 E. Beltline Ave., N.E., Suite 200
Grand Rapids, MI 49525
(616) 447-1800

Plaintiffs' counsel:
Robert J. Van Leuven
410 Ruddiman Dr.
N. Muskegon, MI 49445
(800) 255-5066

2. *Rush v County of Ionia*, not reported, Ionia Circuit Court, Docket #84-B-9075-NZ.

Plaintiffs purchased property in rural Ionia County. The property provided them with a bluff overlooking a trout stream

where they built their home. After completion of the house, the stream below the house became a swamp when a downstream owner built a dam to generate electricity pursuant to a reservation of flowage rights. The abstract of title obtained by the plaintiffs before they purchased the property did not disclose the reservation of flowage rights, which permitted construction of the dam.

The cause of action was for negligent preparation of the abstract of title, a novel legal theory in Michigan law.

I represented the plaintiffs landowners.

I tried the case to jury verdict. Co-counsel drafted pleadings, briefs and instructions.

Jury verdict for plaintiffs in the amount of $75,000 which was the exact amount I requested during final argument.

a) Dates of trial: November 1988
b) Name of the court and judge: Ionia Circuit Court, Visiting Judge Paul O'Connell
c) Name, address, telephone numbers of counsel and co-counsel:

Co-counsel:
Sharon M. Hanlon
Zelman & Hanlon
5633 Naples Blvd.
Naples, FL 34109
(239) 598-3222 (W) (239) 592-6353 (H)

Counsel for Defendants:
William A. Brengle
1700 E. Beltline Ave., N.E., Suite 200
Grand Rapids, MI 49525
(616) 447-1800, ext 467

Robert E. Attmore
13404 Lime Lake Dr.
Sparta, MI 49345
(616) 696-6096

3. *Atlanta Int'l Ins. Co. v Faulkner*, 821 F2d 649 (CA6, 1987) (unpublished decision).

This was a declaratory judgment action by the insurance company on an insurance policy issued to Faulkner, an

independent trucker who negligently backed an unlit tractor trailer across a dark rural road. Maria and Gary Schaeffer drove into the unlit trailer positioned across the dark road and were killed instantly. They were survived by three young children.

In addition to issues of coverage under the insurance policy, plaintiff claimed that the ICC rules and regulations did not apply, an argument which was rejected by the trial and appellate courts.

I represented the personal representative of the decedents' estates.

I argued the motion for summary judgment and the appeal in the U.S. Court of Appeals for the Sixth Circuit. I was the primary author of the pleadings and briefs.

The U.S. District Court for the Western District of Michigan denied plaintiff's request for declaratory judgment.

The U.S. Court of Appeals for the Sixth Circuit affirmed the District Court.

a) Dates of trial: 1985
b) Name of the court and judge: U.S. District Court for the Western District of Michigan, The Honorable Benjamin Gibson, U.S. Court of Appeals for the Sixth Circuit, before Merritt and Martin, Circuit Judges, and Brown, Senior Circuit Judge

c) Name, address, telephone numbers of counsel and co-counsel:

Co-counsel:
Sharon M. Hanlon
Zelman & Hanlon
5633 Naples Blvd.
Naples, FL 34109
(239) 598-3222 (W) (239) 592-6353 (H)

Plaintiff's Counsel:
Arthur W. Brill
151 S. Rose St., Suite 850
Kalamazoo, MI 49007
(269) 343-1338

4. *Beaton & Jackman v Mecosta County General Hosp*, not reported, Mecosta Circuit Court, Docket #85-5817-NM.

Malpractice and assault and battery arising out of actions by registered nurse anesthetist during surgery. Plaintiffs alleged that the individual defendant sexually assaulted them.

The facts supporting the theories of recovery were unusual and proofs were difficult because defendant's actions occurred as plaintiffs were being anesthetized.

I represented the plaintiffs.

I handled all document drafting and court appearances.

a) Dates of trial: The case settled before trial.
b) Name of the court and judge: Mecosta Circuit Court, The Honorable Lawrence Root
c) Name, address, telephone numbers of counsel and co-counsel:

Defense Counsel:
Richard B. Gustafson
28 Mallard Cove Ct.
Saginaw, MI 48603
Telephone Unlisted

5. *Saldibar v Community Med Clinic, PC*, not reported, Allegan Circuit Court, Docket #86-8753-NM.

This was a medical malpractice case in which the decedent's cancer went undetected in spite of numerous abnormal PAP smear reports and the presence of cervical polyps. Mrs. Saldibar was survived by her husband and eight children.

This was one of a number of obstetrical/gynecological medical malpractice cases I handled. In the 1980's, cases based on medical malpractice in general, and ob/gyn claims in particular, were not commonplace. Experts who were willing to testify for plaintiffs were not readily available. Because of the number of health care providers involved, the delay in detecting the abnormal pap smears and diagnosing the cancer, and the lack of adequate record keeping, it was very difficult to trace responsibility for the medical negligence. The defendants included physicians, a pathology lab, and a non-profit gynecological health care agency, which provided services for low-income women.

I represented the plaintiff.

Until my election in 1988, I was primary counsel for the

plaintiff, drafting pleadings/briefs, conducting discovery and appearing in court for motion hearings and conferences.

a) Dates of trial: Settled by co-counsel after I joined the bench.
b) Name of the court and judge: Allegan Circuit Court, The Honorable George Corsiglia
c) Name, address, telephone numbers of counsel and co-counsel

Co-counsel:
William G. Reamon, Sr. (Deceased)
Sharon M. Hanlon
Zelman & Hanlon
5633 Naples Blvd.
Naples, FL 34109
(239) 598-3222 (W) (239) 592-6353 (H)

Defense counsel:
Thomas R. Fette
720 State St.
St. Joseph, MI 49085
(269) 983-0755

Lester J. Tooman
314 Trowbridge St.
Allegan, MI 49010-0239
(269) 673-2136

Donald Souter
2637 Littlefield Dr., N.E.
Grand Rapids, MI 49506
(616) 949-9373

Peter R. Tolley
1700 E. Beltline N.E., Suite 200
Grand Rapids, MI 49525
(616) 447-1800

William F. Mills
50 Monroe N.W., Suite 700w
Grand Rapids, MI 49503
(616) 235-5500

Richard G. Leonard
161 Ottawa N.W., Suite 600
Grand Rapids, MI 49503
(616) 235-3500

Paul M. Oleniczak
250 Monroe N.W., Suite 200
Grand Rapids, MI 49503
(616) 458-5461

19. **Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)**

While an associate at VanderVeen, Freihofer & Cook, I drafted the first affirmative action policy for Kent County.

Because my legal practice before I was elected to the Michigan Court of Appeals was almost exclusively trial/litigation oriented, I cannot point to other significant matters that did not involve litigation. Since my election in 1988, all of my work has involved review of litigated matters.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

None.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

In resolving any conflicts of interest, I will comply with the Ethics Reform Act of 1989, 28 USC 455, and 28 USC 144, addressing the disqualification of judges, the Code of Conduct for United States Judges, and all other applicable requirements.

In my service on the Michigan Court of Appeals since 1989, I have recused myself from cases less than a dozen times. On those occasions when I have done so, it was because of personal relationships with a party and/or attorney. I don't believe that I have recused myself because of a perceived conflict arising out of the nature of the litigation or because of financial arrangements, and no motion has ever been filed seeking my recusal. I expect that, if confirmed, I will continue to review each situation on a case-by-case basis with the ultimate goal of ensuring that there is no reason to believe I could not consider a matter with complete impartiality.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

No.

4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

See attached Financial Disclosure Report

5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**

See attached.

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

I have never had any formal role in a political campaign. I have occasionally supported judicial candidates in nonpartisan campaigns.

AO-10
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (Last name, First name, Middle initial)	2. Court or Organization	3. Date of Report
Neff, Janet T	US Dist Ct Western Dist of MI	7/24/2006
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time)	5. ReportType (check appropriate type)	6. Reporting Period
District Judge Nominee	(•) Nomination, Date 6/28/2006 ( ) Initial ( ) Annual ( ) Final	1/1/2005 to 6/30/2006
7. Chambers or Office Address	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.	
5 Lyon St., N.W., Suite 624 Grand Rapids MI 49503	Reviewing Officer_____ Date_____	

IMPORTANT NOTES The instructions accompanying this form must be followed Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions)

☐ NONE - (No reportable positions.)

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Successor Trustee	Olga C. Nebiolo Revocable Living Trust

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions)

☐ NONE - (No reportable agreements.)

	DATE	PARTIES AND TERMS
1.	1989	Michigan Judges Retirement System - Pension upon Retirement from Michigan Court of Appeals

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Neff, Janet T	7/24/2006

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions)

A. Filer's Non-Investment Income

☐ NONE - (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1.	2004	State of Michigan	$151,822
2.	2005	State of Michigan	$153,211
3.	2006	State of Michigan (to 6/30/06)	$81,545
4.	2005	Olga C. Nebiolo Revocable Living Trust	$30,000
5.	2006	Olga C Nebiolo Revocable Living Trust	$48,000
6.	2005	American Investors Life (Annuity 378305)	$4,934
7.	2005	American Investors Life (Annuity 378160)	$8,036
8.	2005	American Investors Life (Annuity 378305 & 378160)	$1,149
9.	2005	Transamerica (Annuity 26233273)	$13,470
10.	2005	Hartford Life Insurance (Policy GL 0674862)	$3,800

B. Spouse's Non-Investment Income - (If you were married during any portion of the reporting year, please complete this section. Dollar amount not required except for honoraria.)

☐ NONE - (No reportable non-investment income.)

	DATE	SOURCE AND TYPE
1.	2005	State of Michigan Pension
2.	2006	State of Michigan Pension

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Neff, Janet T	7/24/2006

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Include those to spouse and dependent children. See pp. 25-27 of instructions.)

☐ NONE - (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1.	Exempt	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Neff, Janet T	7/24/2006

V. GIFTS. (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

☐ NONE - (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1.	Exempt		

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

☑ NONE - (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
1.			

FINANCIAL DISCLOSURE REPORT
Page 1 of 1

Name of Person Reporting	Date of Report
Neff, Janet T	7/24/2006

VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
1. U.S. Treasury Bonds	A	Interest	L	T	Exempt				
2. IRA #1Prudential Money Market and Apple CommonStock	A	Dividend	K	T	Exempt				
3. IRA #2 Prudential Money Market	A	Interest	J	T	Exempt				
4. 401K - Dodge & Cox, Columbia Acorn, Europacific Growth	A	Dividend	O	T	Exempt				
5. 401K (continued) - STI Small Cap Value Fund					Exempt				
6. 457	A	Dividend	L	T					

1 Income/Gain Codes (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000				
	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000					
2 Value Codes (See Columns C1 and D3)	I = $15,000 or less	K = $15,001-$50,000	L = $50,001-$100,000	M = $100,001-$250,000					
	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000					
	P3 = $25,000,001-$50,000,000		P4 = $More than $50,000,000						
3 Value Method Codes (See Column C2)	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market					
	U = Book Value	V = Other	W = Estimated						

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Neff, Janet T	7/24/2006

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Neff, Janet T	7/24/2006

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature Janet T Neff Date 7/24/06

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household

ASSETS				LIABILITIES			
Cash on hand and in banks		13	727	Notes payable to banks-secured			
U.S. Government securities-add schedule		70	000	Notes payable to banks-unsecured			
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		8	210
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		254	460
Real estate owned-add schedule		450	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		100	000				
Cash value-life insurance							
Other assets itemize:							
401K		500	000				
457 Account		58	000				
Individual Retirment Account		32	000	Total liabilities		262	670
				Net Worth		961	057
Total Assets	1	223	727	Total liabilities and net worth	1	223	727
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

U.S. Government Securities	
Series EE Bonds	$ 70,000
Real Estate Owned	
Personal residence	$ 450,000
Real Estate Mortgages Payable	
Personal residence	$ 254,460

III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

For a number of years, when my children were in elementary and middle school, my primary volunteer work involved their school and sports activities. I continued these activities after they entered high school, but was also able to resume other pro bono and community volunteer activities.

I have participated several times as a panelist on "Ask the Lawyers" a public interest TV program sponsored by the Grand Rapids Bar Association and was an organizer and participant in a program called "The Peoples' Law School", also sponsored by the Grand Rapids Bar Association.

I have served on numerous bar association committees, task forces, and groups, both formal and informal. For instance, in 1988 I was very active in the activities of the Grand Rapids Bar Association to support a ballot proposal to build a new Kent County jail. I am an annual contributor to the Grand Rapids Bar Association Pro Bono program, which supports the provision of free legal services throughout Kent County.

I have served on the Boards of Directors of the Easter Seal Society, the Women's Resource Center, Junior Achievement and the United Way of Kent County as well as on the Board of Trustees of the Winchester Scholarship Fund. I have been a member of the YWCA Nominating Committee and the Committee of Visitors of the Wayne State University Law School.

From 1988-91, I was a faculty member of the Federal Trial Skills Work Shop, Federal Bar Association, Western District of Michigan.

In 1995, I co-chaired Women Building the Dream, a committee of Habitat for Humanity of Kent County, which constructed

Michigan's first house built entirely by women. I worked on the construction of the house and several others. In 1996, we constructed a second house built entirely by women, and in 2000, participated in the Kent County "First Lady's Build", a project of Habitat for Humanity which resulted in construction of a house in each of the 50 states under the sponsorship of women governors and first ladies.

I was a member of the Board of Governors of the Grand Rapids Masonic Children's Learning Center, which provides one-on-one tutoring for dyslexic children at no cost to them or their parents/guardians. This is a national program in which the Masonic order has opened centers around the country to address dyslexia, a serious learning disability. I am not a mason or member of a related order.

I am currently a member of the Grand Rapids Bar Association's Diversity Committee which seeks to attract and maintain a diverse legal community of attorneys, paralegals, legal secretaries, and support staff in the Greater Grand Rapids area.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?**

No.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

There is no selection commission that I am aware of and none which recommended me for this nomination. When I learned of a potential compromise between the current administration and Michigan's two senators to make progress in filling

current vacancies on the district court, I contacted Senator Levin and Senator Stabenow to express my interest in the nomination. They decided to submit my name to the White House Counsel's office for consideration, and on 4/27/06, I sat for an interview with members of the White House Counsel's office and the Department of Justice. Since then I have had numerous contacts with members of the Department of Justice's Office, and with members of the White House Counsel's Office. I have also spoken briefly with Senator Levin.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue,or question? If so, please explain fully.**

No.

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped-many of the prerogatives of other branches and levels of government.

Some of the characteristics of this Ajudicial activism@ have been said to include:

a. **A tendency by the judiciary toward problem-solution rather than grievance-resolution;**

b. **A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**

c. **A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

My experience as an appellate judge since 1989 has reinforced my long-held view that a judge's role is to enforce the rules, not to make them. The function of a judge is to focus narrowly on the dispute at issue in each case, learning its unique facts, reviewing the issues properly raised by the parties, and carefully applying the law solely to the facts and issues raised.

It is important to determine whether issues are properly raised and preserved and to establish that the dispute in every case is within the court's jurisdiction and is brought by parties who have proper standing. Judges are not policy makers and must operate within the constraints established by statute and precedent.

AFFIDAVIT

I, Janet T. Neff, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

August 9, 2006

Janet T. Neff

(NOTARY)

Joyce L. Conaster, Notary Public
State of Michigan, County of Ottawa
My Commission Expires 5/28/2011
Acting in the County of Kent

Senator BROWNBACK. Thank you. Welcome here.

Judge Southwick?

STATEMENT OF LESLIE SOUTHWICK, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

Judge SOUTHWICK. Senator, I appreciate your chairing this hearing today. I think you opened with the phrase, and if you do not mind my borrowing it, that this is a very big deal today to have this hearing and to have the opportunity to discuss whatever comes to the committee's and your mind regarding our background.

I am honored beyond, I think, her understanding, that my daughter Cathy has joined us today. She flew up from Houston early this morning. It required her getting up at 3:30 in the morning to catch a 5:30 flight, and that is doing it for the team. Thank you, Cathy.

Senator BROWNBACK. Cathy, thank you. And we have extra coffee if you need it.

[Laughter.]

Welcome. Delighted you are here.

Judge SOUTHWICK. Her mother is back in our hometown, Jackson. My wife's mother has been ill and she is helping out with her. We have one more child, Philip, who is an architect in Austin who is doing his client's business today. I respect all of their decisions, and I am glad Cathy is here.

Also with me today, coincidentally—he told me he flew up just for the occasion and I will accept that—is Andy Taggert, who is out in the audience. He is a supervisor from a county just north of Jackson and is one of the outstanding leaders in Mississippi political life today, and an outstanding lawyer as well.

I want to thank the committee, but I want to thank two Senators in particular who have addressed you already, Senators Cochran and Lott. They have been stalwarts in my support through this process and I am extraordinarily pleased to have their support. President Bush's nomination of me is an honor that almost goes beyond description. So with my personal comments, I am ready for whatever questions you might have.

[The biographical information of Leslie Southwick follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: Full name (include any former names used).

   Leslie Harburd Southwick

2. **Position**: State the position for which you have been nominated.

   United States Court of Appeals for the Fifth Circuit

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Mississippi College School of Law
   151 East Griffith Street
   Jackson, MS 39201

4. **Birthplace**: State date and place of birth.

   1950, Edinburg, Texas

5. **Marital Status**: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

   Wife: Sharon Elaine Polasek Southwick
   Marketing Assistant
   W.S.Quinn CLU
   405 Briarwood Drive, Suite 104B
   Jackson, Mississippi 39206

   Two children (No longer dependent children)

6. **Education**: List in reverse chronological order, listing most recent first, each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   University of Texas School of Law, 1972-75; J.D. May 1975
   Rice University, 1968-72; B.A. May 1972

7. **Employment Record**: List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

   2007-present; Mississippi College School of Law; visiting professor

   1995 – 2006; Mississippi Court of Appeals; Judge

   1998 – 2006, 1985 – 1989; Mississippi College School of Law; Adjunct Professor

   2004-2006; United States Army; Deputy Staff Judge Advocate, Staff Judge Advocate

   1989 – 1993; United States Department of Justice, Civil Division; Deputy Assistant Attorney General

   1977 – 1989; Brunini, Grantham, Grower & Hewes, PLLC; Associate (1977-1983) Partner (1983-1989)

   1976 – 1977; United States Court of Appeals for the Fifth Circuit; Law Clerk to the Honorable Charles Clark

   1975 – 1976; Texas Court of Criminal Appeals; Law Clerk to the Honorable John F. Onion, Jr.

   1974 – 1975; University of Texas School of Law, Teaching Quizmaster (instructor of legal research and writing for one section of first-year law students).

   1974; United States Attorney's Office, Eastern District of Texas; summer law clerk

   1973; International Paper Company; box assembler, summer

   1972; Polasek Air Conditioning; central heat and air installer, summer

   Charles Clark American Inns of Court, president, 2006

   Jackson Servant Leadership Corps: President 2001-2003, Member 1998-2003.

   Hinds County Mental Health Association: President 1981-82.

8. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.

Judge Advocate General's Corps, U.S. Army Reserves (1992-1997), Mississippi National Guard (1997-present). Lieutenant Colonel, Deputy Staff Judge Advocate (August 2004-July 2005), then Staff Judge Advocate (July-Dec. 2005), 155th Brigade Combat Team, mobilized in support of Operation Iraqi Freedom, August 2004; served in Iraq, January-December 2005; released from active duty January 2006. Currently assigned to Joint Forces Headquarters, Jackson.

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Judicial Excellence Award, Mississippi State Bar, 2004.
American Library Association "Best Reference Work of the Year" award in 1985, for PRESIDENTIAL ALSO-RANS & RUNNING MATES, 1788-1980 (first edition 1984, revised 1998)
Volunteer of Year, Jackson Mental Association, 1981 & 1985.
Usual military awards, including Meritorious Service Medal in 2005.

10. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Texas State Bar, 1975-1980
Mississippi State Bar 1977-present
Charles Clark American Inns of Court: President, 2006-; Program chairman, 2003-2004; Bencher, 1995-.
Criminal Code Revision Group, Miss. Judicial Advisory Study Committee, 1996-present; Citizens Task Force for Correctional Reform (faith-based prison initiative), 1998-2000; Curriculum Committee, American Bar Association's Section on Legal Education, 1998-2002.
American Law Institute, 2001- .
Federalist Society, 1990-approx.1998.

11. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Texas State Bar, 1975-1980, dropped membership because was remaining in Mississippi.

Mississippi State Bar, 1977-present

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse

in membership. Give the same information for administrative bodies that require special admission to practice.

Texas Supreme Court, 1975. After dropped membership in Texas Bar, my admission to practice before the Texas Supreme Court may have lapsed.

Mississippi Supreme Court, 1977-present.

Mississippi circuit and chancery courts, 1977-present.

U.S. Court of Appeals, Fifth Circuit 1977-2003, lapsed because had not updated my address and clerk's office could not locate me when periodic renewal notice was sent.

U.S. District Court, Southern District of Mississippi 1978-1992, lapsed when re-registration occurred in May 1992 and the mailing was sent to my former law firm; I was in Washington, D.C. at DOJ in 1992.

U.S. Army Court of Military Review (now Army Court of Criminal Appeals) June 1994 - present.

U.S. District Court, D.C. Practiced there from 1989-93 while at DOJ. The court's records list me as a government attorney authorized to appear but not formally admitted.

12. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Jackson Roman Catholic Diocese Fitness Review Committee, and Fitness Review Administrator, 2001-2004.
Jackson Servant Leadership Corps: President 2001-2003, Member 1998-2003.
Hinds County Mental Health Association: President 1981-82, Member 1978-84.

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Please indicate whether any of these organizations listed in response to 12a above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical

implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

I have not belonged to any organization that discriminates in these ways.

13. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Please supply four (4) copies of all published material to the Committee.

Legal Writings

1. *Separation of Powers at the State Level, Part II: Service in Civilian Public Office and in the National Guard,* 74 MISS. L. J. 47 (2004).

2. *Recent Trends in Mississippi Judicial Rule Making: Court Power, Recusals, and Expert Testimony,* 23 MISS. C.L.REV. 1 (2003).

3. *Separation of Powers at the State Level [Part I]: Interpretations and Challenges in Mississippi*, 72 MISS. L.J. 927 (2003).

4. *Military Justice for Terrorists and the National Guard: Comparisons and a Mississippi Case Study*, 72 MISS. L.J. 781 (2002).

5. *The Least of Evils for Judicial Selection*, 21 MISS. C.L.REV. 209 (2002).

6. *A Modest Proposal For Clarity in Compensation Law*, 14 MISS. C. WORKERS' COMPENSATION SEMINAR (2002).

7-9. Three chapters for the ENCYCLOPEDIA OF MISSISSIPPI LAW: *Administrative Law, Statutory Interpretation*, and *Unemployment Compensation* (West Pub. 2001-2002).

10. *The Big Case on Appeal*, XLV MISS. LAWYER 24 (1999).

11. *Mississippi Supreme Court Elections: A Historical Perspective 1916-1996*, 18 MISS. C. L. REV. 115 (1998).

12. *The Mississippi Court of Appeals: History, Procedures, & First Year's Jurisprudence*, 65 MISS. L.J. 593 (1996).

13. *A Tribute to Chief Judge Charles Clark,* 12 MISS. C.L.REV. 355 (1992).

14. *Methods of Constitutional Revision: Which Way Mississippi?*,56 MISS. L.J. 17 (1986).

15. *State Constitution Revision: Mississippi & the South,* XXXII MISS. LAWYER 21 (1985).

Historical Writings

1. *Presidential Also-Rans and Running Mates, 1788-1996* (McFarland & Co.: Jefferson, N.C. 1998, first edition 1984; supplement for 2000 election published in 2004 by GREEN BAG JOURNAL OF LAW).

2. *The Colonel, the Judge, & the Bartender: The Presidential Election of 1904*, XXVI (no. 2) THEODORE ROOSEVELT ASSN JOURNAL 3 (2004).

3. *A Judge Runs for President: Alton Parker's Road to Oblivion*, 5 GREEN BAG JOURNAL OF LAW 2D 37 (2001).

4-6. Articles on Kenneth Anderson, Peter Grayson, and Robert Wilson published in THE NEW HANDBOOK OF TEXAS (1996).

7-9. "Robert Wilson & the Texas Election of 1838," "James Collinsworth," and "Peter W. Grayson," all published in the HOUSTON REVIEW (1991-1992).

10. "Kenneth L. Anderson: Last Vice President, Almost First Governor of Texas," published in the EAST TEXAS HISTORICAL JOURNAL (1989).

Newspaper and newsletter articles and columns

1. "Speak No Evil, Spend no Fortune, and Win: First Amendment Issues in Judicial Elections," PROFESSIONAL RESPONSIBILITY NEWS (Federalist Society) (Fall 2000).

2. "Separation of Powers: Three Recent Challenges in Mississippi," HINDS COUNTY BAR ASS'N (newsletter) (Aug. 2000).

3. "In Case Some Forgot, George Bush Did a 'Superb' Job in Many Ways," (Jackson, Miss.) CLARION-LEDGER (Oct. 18, 1993), at 7A.

4. "'Spare Tires' of the Past Got Kicked as Much as Quayle," WALL STREET JOURNAL (Nov. 1, 1988), at A30.

5. "The 1988 Republican National Convention," HINDS COUNTY BAR ASS'N NEWS Oct. 1988.

6. *"A New Constitution?"* JACKSON YOUNG LAWYERS ASS'N NEWSLETTER Jan. 1987.

7. "Don't Fight Constitution's Rising Tide," (Jackson, Miss.) CLARION-LEDGER (Jan. 25, 1987), at 1-H.

8. "Reforming Constitution Path to Righting Power Imbalance," (Jackson, Miss.) CLARION-LEDGER (Sept. 2, 1986), at 7A.

b. Please supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, please give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I have not made any such reports or other statements.

c. Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

While at the Department of Justice in 1989-93, I testified at least four times before congressional committees. I do not have copies of any prepared statements that were submitted with the one exception noted below.

1) *House Committee on the Judiciary, Subcommittee on Crime*, on May 17, 1990, I was scheduled as a witness about the Anabolic Steroids Control Act of 1990, H.R. 4658. As I recall, my prepared statement was delivered late to the subcommittee and I was not allowed to testify.

2) *House Committee on the Judiciary, Subcommittee on Criminal Justice*, on July 11, 1990, on a panel with James G. Richmond, Special Counsel for Financial Institutions, U.S. Department of Justice; and Paul L. Maloney, Deputy Assistant Attorney General, Criminal Division. We discussed DOJ's efforts to combat financial institution fraud.

3) *Senate Committee on Appropriations, Subcommittee on Treasury, Postal Service, and General Government*, on February 19, 1991, testified on the implementation of the Federal Employee Drug Testing program, along with several other witnesses from the Administration. I do not recall the specific issues addressed at the hearing.

4) *Senate Judiciary Committee, Subcommittee on the Constitution*, on July 30, 1991, testified at a hearing that examined First Amendment implications of the Supreme Court's then-recent decision in *Rust v. Sullivan*, 500 U.S. 173 (1991), which upheld regulations forbidding recipients of Federal funding for family planning services from encouraging or promoting abortion. A primary area of interest for the subcommittee was whether *Rust* was precedent for Congress's imposing other limits on the speech that it funded, such as of libraries and art. I stated the Administration's initial position that *Rust* was support for such limits. I have a copy of my prepared statement.

d. Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and

readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

1980-89. I would participate as a presenter at occasional seminars on oil and gas law and on other subjects, but I have no record of any of those presentations. My specific recollection is solely of a seminar at which four members of my firm made presentations. We were presented a plaque, which allowed me to obtain this information from the lawyer who retained it: Mississippi Oil and Gas Law: What The Landman Needs To Know, March 2, 1989, sponsored by Baton Rouge Association of Petroleum Landmen. Any materials from the session are lost.

Different dates. I have occasionally been called upon to give a talk on my book, *Presidential Also-Rans & Running Mates, 1788-1996*. I have spoken to church groups, civic clubs, and others. I have included a copy of typed remarks from one occasion, and a print-out of power-point slides that I used in 2002.

April 18, 1982, St. Luke's Methodist Church, church fellowship hall, Jackson. I moderated a panel discussion on abortion, between a physician and a chaplain. I do not now have and probably did not present prepared remarks.

1982, Mississippi State Bar Annual Convention, Broadwater Beach Hotel, Biloxi. I spoke on Oil, Gas, and Coal Leasing on Sixteenth Section [school] Lands." I do not have a copy of my remarks.

1988 George Bush campaign. I gave a few campaign addresses in support of Bush, but I do not have any record of my remarks nor do I remember many details, other than one address was on the back of a trailer at the campus of Mississippi College in Clinton.

November 11, 1988, Mississippi Youth Legislature banquest speaker, Holiday Inn, Jackson. I spoke on the two-party system in Mississippi, with the chairman or director of the state Democratic Party having equal time. I do not have any record of my remarks.

November 13, 1989, U.S. Attorneys conference, Northern District of Mississippi, in Oxford, University Student Union. I spoke on U.S. attorneys offices from the perspective of "Main Justice" and specifically the Civil Division. I do not have a copy of my remarks.

August 19, 1990, Southaven, Miss. Police Station dedication. I was the principal speaker at the dedication, and spoke about the importance of law enforcement. My outline is attached.

September 5, 1990, Partners Against Drug Abuse, National Seminar and Exhibition, Arlington, Va. I was on a four-person panel that discussed drug testing of employees. I do not have a copy of my remarks.

September 10, 1990, Executive Office, U.S. Attorneys, Financial Litigation Conference, San Francisco. I gave an overview of DOJ's tools and efforts. I do not have a copy of my remarks.

February 27, 1991, Interagency (OTS, RTC, FDIC) Bank Fraud Conference, Atlanta, Georgia. I believe I spoke as a substitute for the Assistant Attorney General on the issue of Civil Money Penalty Actions. I do not have a copy of my remarks.

May 22, 1991, U.S. Attorneys' Offices, Iowa, Clients' Conference, Des Moines. I spoke on resolving conflicts among agencies affected by litigation. I do not have my outline.

August 30, 1991, Executive Office of U.S. Attorneys Financial Institution Fraud Training Seminar, Boston. I spoke on civil penalties. A copy of my outline is attached.

September 12, 1991, Federal Attorneys Conference, KeeslerAir Force Base, Biloxi, Miss. I spoke on ethics in federal litigation. I have attached a copy of my hand-written remarks..

October 15, 1991, Practicing Law Institute Civil and Criminal Liability of Officers, Directors, and Professionals., Mayflower Hotel, Washington. I have attached a copy of my outline.

November 1991, U.S. Attorneys Conference, perhaps conducted by the Executive Office of U.S. Attorneys, held in Savannah, Georgia. I spoke on then-recent amendments to the Rules of Civil Procedure. I do not have a copy of my remarks.

June 5, 1992, Mississippi Association of Legal Assistants, spring seminar, Ramada Renaissance, Jackson. I spoke on the activities of the U.S. Department of Justice. A copy of my notes is attached.

1994. I have a copy of only one address from my first election to the Court of Appeals. It was given in Natchez on an unknown date, discussing the campaign and the needs of the court system. Copy of my remarks attached. I have included press stories of other campaign events. On most occasions I spoke without notes and have no record of my remarks.

January 20, 1995, Jackson Young Lawyers' (JYL) monthly luncheon. I talked about the previous year's judicial campaign. Copy of outline attached.

January 26, 1995, Mississippi Association of Legal Assistants monthly meeting, Capital City Petroleum Club. The same remarks as for the JYL luncheon on Jan. 20 were used.

March 10, 1995, Mississippi Trial Lawyers' Association. I was on a panel with other Court of Appeals judges to discuss our court. A handwritten outline is enclosed.

April 10, 1995, Jones County bar luncheon. I spoke about the Court. A copy of my hand-written outline is attached.

August 3, 1995, Tylertown Rotary luncheon. I spoke about the Court. A copy of my outline is attached.

October 10, 1995, Jackson Legal Secretaries Association Court Observance Day, Primos Northgate Restaurant, Jackson. I spoke about the Court. A copy of my outline is attached.

December 1995. Sponsored by the Krieble Institute, I went to St. Petersburg, Volgograd, and Maloyaroslavets (south of Moscow) to give talks about democracy to candidates and citizens a few weeks before the1996 Duma elections. I cannot find copies of my remarks. I spoke through a translator at each location.

January 18, 1996, Mississippi Oil and Gas Lawyers' Association monthly dinner, Capital Club, Jackson. I spoke on the operation of the Court of Appeals. A copy of my outline is attached.

January 22, 1996, Charles Clark Chapter, American Inns of Court, bimonthly program. I discussed the different options for structuring an intermediate appeals court, the option the Miss. legislature selected, and some pros and cons of the choices. Copy of my notes attached.

1996-present. As a member of the JAG Corps, I have frequently given briefings to soldiers on military law, including a set of briefings required annually on military discipline, ethics, and employment rights of Reservists and National Guardsmen. The briefings were largely based on powerpoint slides and other materials provided by others. I have not attached any remarks since the materials are not really of my creation.

March 20, 1996, Lee County Bar luncheon, Morrison's Cafeteria meeting room, Tupelo. I discussed my experiences in Russia. A copy of my remarks is attached.

March 29, 1996, Rankin County Rotary luncheon, Brandon restaurant. I spoke on my experiences visiting Russia in late 1995. A copy of an outline of my remarks is attached.

August 2, 1996, Jones County Bar/Legal Secretaries Asscociation conference. My topic was "Statutes and Rules Relating to the Court of Appeals." A copy of my hand-out is attached.

February 11, 1997, Christian Legal Society luncheon, Jackson, Mississippi College School of Law. I spoke on the faith of different American public figures. A copy of my talk is attached.

April 18, 1997, Hinds County Bar court practice seminar. I was on a panel that discussed the work of the court. Our joint hand-out is attached.

May 16, 1997, Mississippi Association of Legal Assistants spring seminar. I spoke on the work of the Court. My hand-out is attached.

October 23, 1997, Fall Conference for Court Administrators and Legal Research Assistants, Harvey Hotel, Jackson, Miss. I spoke about pro se litigants and on the work of the Court of Appeals. A copy of my outline is attached.

December 17, 1997, Supreme Court reception room, on retirement of Chief Justice Dan Lee. A copy of the remarks that I have on behalf of the Court of Appeals is attached.

January 6, 1998, Pascagoula, Miss. Kiwanis Club luncheon. I spoke on the need for truth and other virtues in judges. Copy of notes of talk attached.

April 13, 1998, Jones County Bar Association luncheon. I discussed the Court of Appeals. A copy of my notes is attached.

May 1, 1998, Hinds County Bar Association Seminar on Court Practice, University Center, Jackson. I was on a three-judge panel to discuss the Court of Appeals. Copies of the outline for my remarks included.

February 23, 1999, North Jackson Rotary Club luncehon, Primos Northgate Restaurant. Lessons of Life. Some rather elliptical, ambiguous notes are attached.

January 21, 2000, Jackson, Miss., Jackson Young Lawyer's monthly luncheon. I had been a guest on Brian Lamb's C-SPAN program on Christmas Eve morning, 1999. I spoke about my experience. Copy of notes attached.

February 18, 2000, Mississippi College Law School AnnualLabor & Employment Law seminar, Sports Hall of Fame. I was on a panel with two other judges. I do not remember the questions. A copy of the program is attached.

May 10, 2000, Fifth Circuit Judicial Conference, Hyatt Regency Riverwalk, San Antonio, Tex. I was on a three-person panel whose topic was "Evolving Federalism – What's Ahead." Then-Texas Attorney General John Cornyn and Professor Cheney Joseph (LSU) were the other panelists. Copy of prepared remarks attached.

January 16, 2002, Clinton (Miss.) Rotary Club luncheon. Talked about judicial ethics. My outline, which is confusing now even to me, is attached.

October 17, 2002, Library Building, New Albany, Miss. I spoke to a monthly lunch meeting about my book on presidential also-rans. A copy of my power-point slides is attached.

June 13, 2002, American Legion Boy's State annual convention, Delta State University auditorium. Spoke on virtue and achievement in life. Copy of notes attached.

June 6, 2003, Mississippi Bar, Young Lawyers Division, Videoconference, at Eagle Ridge Conference Center, Raymond, Miss. I spoke on "Recent Mississippi Appellate Decisions and Revisions to Court Rules." Copy of hand-out attached.

2003. At some point I gave a talk to a Sunday morning class at my church on C.S. Lewis, but I do have copies of any notes nor do I recall exactly when it was.

February 24, 2004, annual dinner of Jackson Legal Professionals Association, meeting room of Steam Room Grille, Jackson. I spoke on the court, judicial elections, and judges generally. A copy of my outline is attached.

June 2, 2004, CLE seminar at Mississippi College School of Law. I spoke on the military ethics rules. Copy of hand-out attached.

August 2, 2004, swearing-in of new law clerks, Mississippi Court of Appeals courtroom. On behalf of the assembled judges, I spoke to the new clerks about the importance and honor of their new duties. Copy of prepared remarks attached.

March 2006, St. Richard Catholic Church, Jackson, "Timely Topics" adult Sunday morning class. I presented a talk on my experiences in Iraq, using powerpoint slides that consisted solely of photographs from Iraq. I have not printed those for this submission to the Committee, as other than an occasional caption to a photo, only pictures would be seen.

May 9, 2006, Hinds County Bar Annual Dinner Honoring the Judiciary, Old Capitol Inn, Jackson, Miss. Talked on experiences in Iraq. Copy of speech attached.

August 2006. Swearing-in of new law clerks, Mississippi Court of Appeals courtroom. My remarks are attached.

e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Clippings and other materials included. These are the general categories:

(1) One transcript is from my work at the Department of Justice. I spoke at a press briefing about the deposition of former President Reagan in the prosecution of Admiral Poindexter.

(2) Political campaigns of George H.W. Bush. I served as state campaign coordinator in 1980 and state steering committee chairman in 1988.

(3) Candidate for judicial office, 1994 and 1996.

(4) Interviews about my book *Presidential Also-Rans & Running Mates*.

(5) A few miscellaneous stories.

(6) I participated in three television interviews. One interview was by Brian Lamb on C-Span on December 24, 1999; the subject was the *Also-Ran* book and a poll I had conducted of historians. The second was with a local television news anchor about the 1988 Bush campaign. The final is from the summer of 2004 when I was interviewed about my departure on active military duty.

14. **Judicial Office**: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

    Judge, Mississippi Court of Appeals (1995-2006, with leave of absence Aug. 2004-Jan. 2006). Elected 1994 for initial 4-year term; re-elected 1998 for 8-year term. Did not run for re-election in 2006. This is a general jurisdiction intermediate appellate court.

15. **Citations**: If you are or have been a judge, please provide:

    a. citations for all opinions you have written (including concurrences and dissents).

       Lists are attached to the questionnaire. The list of published opinions was generated through a Westlaw search and is in reverse chronological order. The separately-compiled list that refers to unpublished opinions is in standard chronological order.

    b. a list of cases in which certiorari has been requested or granted.

       The lists that respond to the previous question contain references to grants of certiorari.

    c. a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings.

1. *Johnson v. State*, 924 So. 2d 527 (Miss. Ct. App. 2004), rev'd 925 So. 2d 86 (Miss. 2006). The Supreme Court sought in its decision to resolve a multi-year ambiguity regarding whether prior felons could upon a subsequent conviction receive a suspended sentence despite a statute that prohibited "probation" in sentencing prior felons. The Court of Appeals for several years had interpreted two statutes as being consistent and as prohibiting probation or its equivalent from being available. The Supreme Court in *Johnson* determined that the later of the two statutes was trying to restore what the previous statute had prohibited but by using a different name. The Court overruled one of its precedents that it stated was the origin of the confusion.

2. *Crider v. Crider*, 905 So. 2d 706 (Miss. Ct. App. 2004), rev'd 904 So. 2d 142 (Miss. 2005). This was a divorce action in which joint custody was awarded the parents without a joint request. For years, this Court of Appeals had interpreted the relevant statute as requiring a joint request. Finally the Supreme Court ruled, holding in what it called "an issue of first impression" that the statute should not be interpreted to require a joint request.

3. *Barber Seafood, Inc. v. Smith*, 906 So.2d 1 (Miss. Ct. App. 2004), rev'd 911 So. 2d 454 (Miss. 2005). In this workers compensation case, I interpreted the commission's decision as concluding that the worker had not reached maximum medical improvement and that his partial disability continued. The Supreme Court disagreed with my interpretation of this part of the commission order and concluded that permanent disability benefits were appropriate.

4. *Rankin v. Clements Cadillac, Inc.* 905 So.2d 710 (Miss. Ct. App. 2004), rev'd 903 So. 2d 749 (Miss. 2005). This involved the interpretation of a settlement agreement in earlier litigation. I found that the settlement covered the claims involved in this subsequent litigation and also discussed another issue at some length. The Supreme Court found that I had "concentrated on the question of whether Rankin was bound by the settlement agreement, rather than the dispositive question of whether the settlement agreement reached the claims in Rankin's separate litigation against Clements." Maybe my concentration waned, but I addressed what the Supreme Court found to be controlling and reached a different conclusion than did the higher court.

5. *Sanderson v. State,* 881 So.2d 878 (Miss. Ct. App.), rev'd 883 So.2d 558 (Miss. 2004). This criminal case had a two-count indictment. I wrote to affirm on the conviction on the first count of aggravated assault but found that the second count on conspiracy to be fatally defective because it did not name any victim against whom the conspiracy was to operate. The Supreme Court disagreed with my interpretation of precedents and said that the two counts of the indictment did not need to be self-contained, and the victim's name from the first count could be implied as the victim of the conspiracy in the second count.

6. *Watson v. State,* 841 So.2d 218 (Miss.Ct. App. 2003); *Harris v. State*, 826 So.2d 765 (Miss. Ct. App. 2002); *Badger v. State*, 826 So.2d 777 (Miss. Ct. App. 2002). In these cases, I applied the Court of Appeals position that Miss. Rule of Appellate Procedure 4 limited the right of a trial judge to grant an out-of-time appeal to 180 days. After 180 days, a criminal defendant was limited to bringing post-conviction relief. The Supreme Court held in 2004 that despite the reference to 180 days in the rule, the trial judge had discretion that was not limited in time. I wrote on the remand of that decision and cited our precedents – including these three that I wrote – that should be considered overruled by the Supreme Court's holding. *DeLoach v. State*, 890 So.2d 934 (Miss. Ct. App. 2004).

7. *Jackson v. State Farm Mut. Auto. Ins. Co.*, 852 So.2d 641 (Miss. Ct. App. 2003), rev'd 880 So. 2d 336 (Miss. 2004). This summary judgment appeal concerned notice that must be given an insurer regarding a claim. I found a factual issue regarding prejudice to the insurer, and also interpreted a Supreme Court precedent about the date for accrual of a cause of action against an insurer for underinsured motorist benefits. I found accrual was when plaintiffs knew or reasonably should have known that the damages suffered exceeded the limits of insurance available from alleged tortfeasor. The Supreme Court found no factual issues on prejudice and disagreed as to when the cause of action accrued.

8. *Morrison v. Mississippi Dept. of Human Services,* 852 So.2d 578 (Miss.Ct. App. 2002), rev'd 863 So. 2d 948 (Miss. 2004). This was a collateral attack on a six-year old contempt and child support modification order. I affirmed the trial court's judgment, but the Supreme Court found that proper notice of the hearing had not been given the father.

9. *Estate of Law v. Law,* 852 So.2d 33 (Miss.Ct. App. 2002), rev'd 869 So. 2d 1027 (Miss. 2004). For the Court, I wrote to reverse a finding that a deed was procured by fraud. I did not find the substantial evidence needed for such a ruling though the facts of the case were suspicious. The Supreme Court reversed, saying that there was sufficient evidence.

10. *Estate of Temple*, 1998-CA-01190 (Miss. Ct. App. Mar. 28, 2000), rev'd 780 So. 2d 639 (Miss. 2001). Issue was the ownership of a certificate of deposit after the death of the person who had obtained it. I found that a change in ownership during the lifetime of the initial owner, if made consistent with the bank's rules, could alter the ownership even if the certificate of deposit itself had not been reissued. The original certificate was lost, but a copy was provided. The Supreme Court found that the name on the face of the certificate controlled.

11. *Harrison v. State,* No. 1998-KA-01278 (Miss. Ct. App. Feb. 8, 2000), aff'd after rejecting my reasoning, 800 So. 2d 1184 (Miss. 2001). I had found that a new statute increasing the penalty for speeding in a work zone when workers were present did not abolish the right of the Department of Transportation to mandate slower speeds even when workers were not present; the Supreme Court disagreed but affirmed on alternative grounds.

12. *Grant v. Martin,* 744 So.2d 817 (Miss. Ct. App. 1999), rev'd 757 So.2d 264 (Miss. 2000). I wrote to reverse and render on an issue of custody of a minor child. The Supreme Court found that a remand would have been appropriate under the standard that I was applying; that was correct. In addition, though, the Supreme Court adopted a new standard that would apply to decisions in which a parent had previously relinquished custody of a minor child and was now trying to regain custody.

13. *Carter v. State*, No. 98-CP-00303 (Miss. Ct. App. Apr. 20, 1999), rev'd, 754 So. 2d 1207 (Miss. 2000). After our opinion, the Supreme Court reversed a precedent on which we relied regarding whether to consider the length of probation when determining the maximum sentence to be given a defendant after conviction.

14. *Bennett v. State*, 738 So.2d 300 (Miss. Ct. App. 1999). The Supreme Court cited this opinion in a list in which it overruled several opinions of their own as well as of the Court of Appeals, regarding the nature of the convictions that were usable as impeachment under Rule of Evidence 609. *White v. State*, 785 So.2d 1059 (Miss. 2001).

15. *Soileau v. Mississippi Coast Coliseum Com'n,* 730 So.2d 101 (Miss. Ct. App. 1998). At the time of this opinion, the Supreme Court's latest holdings were that there must be strict compliance with the statute that required notice prior to a tort suit against a governmental agency. Later, the Court changed the standard to one of substantial compliance and listed this opinion as one of those that was overruled. *Williams v. Clay County*, 861 So.2d 953 (Miss. 2003).

16. *McRee v. State*, 723 So.2d 1247 (Table) (Miss. Ct. App. May 5,1998), rev'd, *McRee v. State*, 732 So. 2d 246 (Miss. 1999). The Supreme Court found that there was insufficient circumstantial evidence to link the accused to the burglary.

17. *Ricks v. Mississippi State Department Health*, No. 95-CC-00908 (Miss. Ct. App. Nov. 18, 1997), rev'd 719 So. 2d 173 (Miss. 1998). The nurse licensing board barred from further employment a nurse who had negligently let a patient fall. I found that the statutory word "neglect" as a basis for barring employment could not be mere negligence but required a consciously indifferent act. On rehearing, the Department presented evidence that a relevant federal agency interpreted neglect to be simple negligence. I found that inconclusive on the issue

of what the Miss. legislature did when it adopted the statute prior to the federal events. In interpreting the state statute, the Supreme Court gave what it called "deference" to the federal agency view of "neglect" and reversed.

18. *Turnbough v. Ladner*, 1998 WL 881776 (Miss. Ct. App. Dec. 18, 1998), rev'd 754 So. 2d 467 (Miss. 1999). In this personal injury action, I found that a waiver signed by a deep sea diver prior to being taken on a dive was binding; the Supreme Court (5-4) found that it did not contain sufficiently clear and express language to be enforceable.

19. *Nicholson v. State*, 691 So.2d 1046 (Table) (Miss.Ct.App. Jan 28, 1997) (NO. 93-KA-01378-COA), rev'd, 704 So. 2d 81 (Miss. 1997). I found that accused, when he denied ever abusing a child, had opened door to cross-examination about sexual acts with child other than victim of the indicted crime. Supreme Court reversed.

20. Hickson v. State, 691 So.2d 1035 (Table), Miss.App., Aug 20, 1996 (NO. 92-KA-00976-COA), rev'd Hickson v. State, 707 So.2d 536 (Miss. 1997). I found that pre-trial publicity had not been so severe as to require a change of venue; the Supreme Court disagreed and reversed for a new trial.

21. Jones v. Estate of Richardson, 691 So.2d 1034 (Table), Miss.App., Aug 06, 1996 (NO. 94-CA-00163-COA); rev'd, Matter of Estate of Richardson, 695 So.2d 587 (Miss. 1997). I had found that the language of the statute for determining heirship denied standing to an executor when none of the deceased's property passed by intestacy; instead, an heir would need to bring the action. The Supreme Court disagreed.

d. a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings.

   The list and citations to these opinions are in the list in response to question 15.c. above; copies are also provided on a disk.

e. a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored; and

   From 1995 until mid-1997, none of the Court of Appeals opinions were published. From the latter date until November 1998, very few opinions were published. The unpublished opinions are kept by the court. I have provided a digital copy of all my unpublished opinions. For completeness, and since I maintained them in annual electronic files that I printed out and bound in book form for my clerks as a memento of their service and for myself, I have provided a digital copy of all my opinions from 1995-2004 and for 2006.

f. citations to all cases in which you were a panel member in which you did not issue an opinion.

The Mississippi Court of Appeals decides all cases *en banc*. The initial consideration of a case is by a three-judge panel, but the remaining seven judges on the court eventually receive the panel opinion(s) and vote on them, as well as write separately if desired. The court decided about 600 cases per year during my service from 1995-2006 (with a leave of absence from August 2004 until January 2006). If the desire is to have a citation to all of the court's opinions on which I voted but did not write, that is a cite to perhaps 7,000 cases resolved by the court during my service, except for those in which I did not participate. I identified about 80 cases in which I did not participate. The published opinions of course can be accessed on the standard internet search services. The unpublished opinions on which I voted but did not write are kept at the court. I have provided digital copies of all unpublished opinions which I wrote.

16. **Recusal:** If you are or have been a judge, please provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest, or for any other apparent reason, or in which you recused yourself sua sponte. (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Please identify each such case, and for each provide the following information:

    a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

    In an appendix to this response, I have included a list of all formal recusals and also all cases in which I did not participate. There are about 80 cases total. Of those, I had a record or could reconstruct only three in which there was a motion for recusal. One of those was after I left the court, another I denied, and the third was granted. The decision not to participate in the remainder of the cases was on my own initiative.

    b. a brief description of the asserted conflict of interest or other ground for recusal;

    Each relevant case in the appendix indicates the reasons for the decision.

    c. the procedure you followed in determining whether or not to recuse yourself;

    Shortly after a case was assigned by the state supreme court to the court of appeals, it would be included on a list circulated to all judges of the latest assignments, including the parties and the lawyers. I would examine those for possible conflicts. General familiarity with a lawyer or even friendship was not sufficient, though a recent and significant association in some organization or otherwise would cause recusal. I recused when a close friend or neighbor was a party, or in one case, when a zoning issue regarding property near my home was raised.

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

In the appendix listing, there is an explanation of my decision for each of the cases in which I decided not to participate or in which I ruled on an actual recusal motion.

17. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

Appointed by governor to Mississippi Constitution Study Commission, 1985-86.
Defeated for Mississippi Supreme Court 1996
Defeated in Mississippi primary as delegate from Fourth Congressional District to 1980 Republican National Convention on George Bush slate

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

1970: Volunteer, George Bush for U.S. Senate, 1970.
1977: Volunteer, Doug Shanks for Jackson (Miss.) Mayor
1978: Volunteer, Thad Cochran for U.S. Senate; John Hampton Stennis for Congress
1979: Volunteer, Gil Carmichael for Governor, Charles Pickering for Attorney General
1980 Mississippi Campaign Manager, George Bush presidential campaign.
1982: Member, state steering committee, Haley Barbour for U.S. Senate
1983: Volunteer, Leon Bramlett for Governor campaign
1984: State campaign committee member, Reagan-Bush
1984-88 Member and officer, Capital Area Republican Club
1987: Hinds County chairman and state steering committee member, Jack Reed for Governor
1988: Chairman, Mississippi Steering Committee, Bush Presidential Campaign.
1988-89: Mississippi Republican Executive Committee; Hinds County Republican Executive Committee

18. **Legal Career:** Please answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I served as a Briefing Attorney (law clerk) for Presiding Judge John F. Onion, Jr., 1975-76, Texas Court of Criminal Appeals, in Austin.

I also served as a Law clerk for Judge Charles Clark, U.S. Court of Appeals, Fifth Circuit, 1976-77, in Jackson, Miss.

ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

Associate 1977-83, partner 1983-89, at Brunini, Grantham, Grower, & Hewes, in Jackson, Miss. P.O. Box 119, Jackson, MS 39205

Deputy Assistant Attorney General, Civil Division, U. S. Department of Justice, 1989-1993; 950 Pennsylvania Avenue, N.W., Washington, D.C.; supervised Federal Programs Branch and Office of Consumer Litigation.

Judge, Mississippi Court of Appeals, 1995-Present; 656 North State Street, Jackson, MS.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

1977-1989, primarily worked for oil and gas clients. Performed title work for explorations, defended some suits against these clients, negotiated oil and gas leases with public bodies, and prepared contracts. Also worked for school districts on general contract issues, such as disputes with builders. Handled two divorces, helped form a few corporations, and did a small amount of lobbying on school issues.

1989-93. Work at Department of Justice was in Civil Division. Supervised Federal Programs Branch (125 lawyers; defended suits brought

against the U.S. and its agencies) and Office of Consumer Litigation (25 lawyers; civil and criminal enforcement of federal consumer laws).

ii. your typical clients and the areas, if any, in which you have specialized.

Oil and gas companies were almost all multi-state corporations such as Shell Oil, Conoco, and Inexco. I worked for such companies as United Gas Pipeline and Transco Pipeline on their natural gas contract issues. Jackson School District was my principal client for school work.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

I appeared occasionally in court. Motion practice both in private law firm and at the Department of Justice. At the firm, I handled three appeals to the state supreme court and one to the Fifth Circuit. A small number, but won them all. Throughout 1977-1989, I was involved in some litigation at the firm though it was about twenty percent of my work. At the Justice Department, the vast majority of my work was involved with litigation, with occasional court appearances.

i. Indicate the percentage of your practice in:
   1. federal courts: 50%
   2. state courts of record: 50%;
   3. other courts: none.

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 70%;
   2. criminal proceedings: 30%.

d. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

From 1977-1989, I estimate that I was involved in six cases that were tried to judgment. I was chief counsel in two, sole counsel in one, and associate in three.

i. What percentage of these trials were:
   1. jury: zero percent;
   2. non-jury: one hundred percent.

e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

No practice before Supreme Court.

19. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

    a. the date of representation;

    b. the name of the court and the name of the judge or judges before whom the case was litigated; and

    c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *Queen Esther Wooten v. Consolidated Coal Co.*, Cause # 7533, Chancery Court, Kemper County, Miss., decree May 9, 1979. Lessor sued through next friend to cancel lease saying that she was incompetent to execute it. Bench trial resulted in judgment for plaintiff. I was lead counsel, presented evidence and argument, with a senior partner in attendance. No appeal taken.
Trial judge: John Clark Love, Kemper County Chancery Court (662-289-3862).
Opposing counsel: Laurel Weir and James R. Allen, Philadelphia, Miss., both deceased.
Co-Counsel: Newt Harrison, Brunini Grantham Grower & Hewes (now retired), 601-948-3101.

2. *Damson Oil Corp. v. Southeastern Oil Co.*, 370 So.2d 225 (Miss. 1979) (associate counsel). My client was Damson Oil. The parties had competing claims before the state Oil and Gas Board for drilling permits. Our client's permit was sustained on appeal.
Trial court: Wayne County Circuit Judge Lester Williamson, now deceased; trial in 1977.
Opposing counsel, Luther Thompson, Armstrong Allen firm, 2525 Lakewood Drive, Suite 200, Jackson, MS 39216. 601-713-1192
Co-Counsel: John Grower, Brunini Grantham Grower & Hewes (retired), 601-948-3101

3. *Berry v. United Gas Pipe Line Co.*, 370 So.2d 235 (Miss. 1979) (associate counsel; made Supreme Court argument). My client was UGPL. The company had laid a pipeline without getting a valid easement. In the condemnation action, the landowner argued that the pipeline was now his property since we had trespassed, and we must buy it from him as well as pay for the easement. We prevailed on the trespass issue and only had to pay the fair market value of the easement.
Trial court: Jefferson Davis County Circuit Judge R. I. Prichard, tried in 1977-78.
Opposing counsel, Michael Eubanks, now a state Circuit Judge, P.O. Box 488, Purvis, MS 39475. 601-794-6035
Co-Counsel: Newt Harrison, Brunini Grantham Grower & Hewes, 601-948-3101

4. *Continental Oil Co. v. Blair,* 397 So.2d 538 (Miss. 1981) (associate counsel). The suit concerned whether our client, Continental, when developing an oil field had to protect small tract royalty owners or only protect the entire lease from drainage of oil. Our client prevailed on the need simply to protect the original leasehold.
Trial Court: Wayne County Chancery Judge Howard Pigford, now deceased.
Opposing Counsel, Walker Watters, now at Brunini Grantham Grower & Hewes, P.O. Box 119, Jackson, MS 39205, 601-948-3101.
Co-counsel: John Grower, Brunini Grantham Grower & Hewes (now retired).

5. *Phyfer v. San Gabriel Development Corp.,*884 F.2d 235 (5th Cir. 1989). (sole counsel). I represented Jim Ling, owner of San Gabriel. Our oil and gas lessor filed suit claiming that the lease had terminated due to a breach. Both the district and the circuit court held that the lessor waived his claim of forfeiture
Trial judge: William Barbour, U.S.District Court, S. D. Miss. Now on senior status.
Fifth Circuit panel: Writing Judge Rubin, panel of Wisdom and King
Original opposing counsel, Mike Earwood, Earwood & Childers, 403 Towne Center Blvd, Suite D-2, Ridgeland, MS 39157. 601-898-8080
Later opposing counsel (conducted Fifth Circuit argument, though Earwood's name appears on report of case): Glen W. Hall, 745 Carlisle Street, Jackson, MS 39202, 601-948-7300
Co-counsel: John Grower, Brunini Grantham Grower & Hewes (now retired), 601-948-3101.

My time at DOJ involved some work on briefs and some arguments at motion hearings. I was not the primary attorney for any entire case, but only worked on some part that seemed to benefit from the involvement of a policy-level person. Cases in which I presented the argument included these:

6. *Doe v. Sullivan*, 756 F. Supp. 12 (D.D.C.), affirmed 938 F.2d 1370 (D.C. Cir. 1991). The plaintiff sought an injunction to prevent DOD from requiring troops to be administered certain drugs as they were deploying to the Persian Gulf as part of Desert Shield/Desert Storm. I presented the argument at the District Court, but did not participate in the appeal. Circuit Judge Clarence Thomas dissented on appeal, finding the issues moot.
Trial judge: Stanley S. Harris, U.S. District Court, D.D.C.
Opposing counsel. Alan B. Morrison, Michael Tankersley, Public Citizen Litigation Group, Washington, D.C.
Co-counsel: David Anderson, Mona Alderson, Patricia Russotto, all with Federal Programs Branch, Civil Division, U.S. Department of Justice

7. *United States v. Poindexter*, 951 F.2d 369 (D.C. Cir 1991) (reversal of conviction). I was the lead DOJ counsel at February 16-17, 1990 deposition of former President Reagan in Los Angeles courtroom, who gave a videotaped deposition in the independent counsel prosecution of President Reagan's former National Security Adviser, Admiral (ret.) John Poindexter. The deposition was presided over by District Judge Harold Greene, U.S. District Court, D.D.C.

Other counsel: Theodore B. Olson, counsel for President Reagan. Gibson Dunn & Crutcher,1050 Connecticut Avenue N.W. Washington, D.C. 20036 T: (202) 955-8668 Associate Independent Counsel Dan K. Webb, Winston & Strawn LLP. 35 West Wacker Drive. Chicago, Illinois 60601.312-558-5600.
Co-Counsel: David Anderson, U.S. Department of Justice.

8. *Long Island Savings Bank, FSB v. Federal Savings & Loan Ins. Corp.,* No. CV-89-2699 (E.D. NY 1989). I presented the case in December 1989 on Government's motion to dismiss and for summary judgment under the new Financial Institution Reform and Recovery Enforcement Act. The U.S. argued that Long Island was undercapitalized because of the proper elimination of supervisory good will as a permissible asset. This was one of the first cases under FIRREA and could have been the vehicle for determining the constitutionality of the tightening of accounting regulations on S&L's against attacks that it constituted a takings and breached the contract between the S&L and the FSLIC. The trial judge never entered a decision. Later the Savings Bank brought suit in the Court of Federal Claims regarding damages arising from the change in accounting rules. *Long Island Savings Bank v. United States*, 60 Fed. Cl. 80 (2004).
Trial judge: Raymond Dearie, U.S. District Court, E.D. N.Y..
Opposing counsel, Lloyd Cutler, Washington, D.C., now deceased. Cutler's co-counsel: Michael Chepiga, Simpson Thacher & Bartlett, 425 Lexington Avenue, NY, NY10017-3954 (202)-455-2598
Co-Counsel: Brook Hedge (now a D.C. Superior Court judge); Ted Hirt (still with Civil Division), Robin Ball, Jerome Epstein, and Paul Herrup.

9. *American Federation of Government Employees v. Cheney* CA No. CV-92-PT-2453-E (N.D. Ala. Dec. 21, 1992). This was a challenge to the Defense Department's decision to realign the activities at Anniston Army Depot and to move tactical missile maintenance to Letterkenny Army Depot, Pennsylvania. I presented the government's case at an evidentiary hearing and prevailed.
Trial judge: Robert Propst, U.S. District Judge, N.D.Ala.
Opposing Counsel: Tom Stewart, Gorham & Waldrep, Suite 700, 2101 6th Avenue North, Birmingham, Alabama 35203. Tel: 205-254-3216
Co-counsel: Federal Programs Branch: David Anderson (retired), Jennifer Rivera.

10. *Mackie v. Bush*, 809 F. Supp. 144 (D.D.C.), order vacated as moot 10 F.3d 13 (D.C. Cir 1993). This suit was brought by a majority of the Board of Governors of U.S. Postal Service to enjoin the President from removing some of them from office due to a dispute regarding a postal rate increase. The T.R.O. hearing was scheduled for the day after the suit was filed. I prepared the brief overnight and presented the government's position on the T.R.O. Additional proceedings occurred after I left DOJ.
Trial judge: U.S. District Judge Oberdorfer, D. D.C., (202) 354-3270
Opposing counsel: Kenneth S. Geller, Mayer, Brown & Platt, 1909 K Street, N.W., Washington, DC 20006-1101 Tel: 202-263-3225
Co-counsel: Douglas Letter, Civil Division, U.S. Department of Justice

20. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

My duties at DOJ involved supervision of the Federal Programs and Consumer Litigation branches of the Civil Division. Policy-level decisions on suits in those branches were largely my responsibility, though higher-level officials would be involved in the most significant cases. Litigation regarding the 1990 census, many suits involving financial institution fraud, litigation arising from the President's use of troops in the Persian Gulf, and settlement of a class action involving Social Security disability payments for children, and an environmental group's attempt to enjoin a shuttle launch, were among the most important and contentious.

While in private practice, I recall quite infrequently appearing before the state legislature to encourage passage of legislation. I believe most involved issues for the Jackson Municipal Separate School District. The only specific legislation I recall concerned an amendment to the state constitution to make it clear that a school oil and gas lease could be treated as leases on private lands insofar as the lease term could continue until production ceased. Such an amendment ultimately was adopted, several years after my efforts. Miss. Const. Art. 8, Sec. 211 (amended 1992).

21. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.

All the following courses were taught at Mississippi College School of Law

1. Real Estate Finance & Development, Spring 1985, summer 1986, spring 1989. The course concerned financing and security issues, as well as development variations such as condominiums, planned unit developments, etc. I no longer have a syllabus.

2. Oil & Gas Law, summer 1985. This was the introductory course. I do not have a syllabus.

[I left Jackson, Miss. to join the Civil Division, U.S. Department of Justice, in August 1989. I did not again apply to be an adjunct professor until 1997.]

3. Legislation, spring 1998, fall 1999, fall 2000. The course concerned the creation and interpretation of statutes. One semester I prepared handouts for each class instead of using a text. The disk that I have supplied contains those materials: "MCSOLlegis Handouts"

4. Consumer Law, spring 1999, spring 2000. This course primarily concerned federal consumer statutes, such as the Fair Debt Collection Practices Act.

5. Administrative Law, spring 2001, fall 2001, fall 2003. This was the introductory course.

6. Judicial Administration, Mississippi College School of Law. Fall 2002. Using this heading, I taught a course on important judges. I used a text entitled *American Judicial Tradition* written by Professor Edward White of the University of Virginia, and also discussed some Mississippi judges. The handouts are on the disk, "JudAdmin Handouts"

7. Evidence Law, Mississippi College School of Law, Fall 2006. This was the introductory course to the subject, structured around the Federal Rules of Evidence.

8. Professional Responsibility & Ethics, Mississippi College School of Law, Spring 2007. This is the introductory ethics course.

9. Trial Practice, Mississippi College School of Law, Spring 2007. This is a seminar-size practical skills course, with students required throughout the semester to conduct parts of a trial, then at semester's end to put on an entire trial. I have a co-teacher, Robert Gibbs, a former state trial judge who is now a litigation partner at one of Jackson's largest law firms.

22. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

    None.

23. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

    If confirmed, I would like occasionally to continue my teaching at Mississippi College School of Law. My service in the National Guard will continue for a short time. I will follow all guidelines in the Code of Conduct for United States Judges and obtain necessary approvals prior to engaging in any outside employment.

24. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached Financial Disclosure Report.

25. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement

26. **Potential Conflicts of Interest**:

a. Identify the parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

Because of my lengthy service on the state appellate court, followed in the spring 2007 by teaching at a law school I do not anticipate any of these potential conflicts.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

My stock portfolio is almost entirely through a 401(k). I do not have significant other investments other than in real property. There is one rather valuable stock ownership that I inherited from my mother, being two shares of Berkshire Hathaway - A. I also have some valuable stock in a bank. My family recently sold two parcels of land and I have substantial cash resulting from the sales. Investments decision need to be made regarding those funds. I cannot identify likely conflicts arising from the as-yet undefined investments. I plan to follow the Code of Conduct for United States Judges, applicable statutes and guidance from the Committee on Codes of Conduct on maintaining vigilance regarding investments and the court's docket.

27. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

In private practice, I served for one year on a pro bono project in Jackson, spending time periodically at the pro bono center fielding phone calls for legal information.

I have served on civic boards earlier mentioned. For about five years I served on the Hinds County Mental Health Association board, with a year as president. This non-profit association, funded through grants and donations, had a full-time director as its only paid employee. We provided a half-way house for some of those who had left the state

hospital outside of Jackson and were being re-integrated into the community. This took considerable effort in acquiring funding from a community development block grant. We worked with the legislature during my tenure on getting amendments to the state Vulnerable Adult Act. We provided information in various ways to the general public on mental health, including sponsoring preparation of a gallery of photographs called "Images of Madness." That was first put on display at sites around the state and now is on long-term exhibit at the state mental hospital.

I was a board member and then president of the Jackson Servant Leadership Corps. That provided a home for about five recent college graduates who worked for a year with local non-profit organizations, such as a food bank, or Habitat for Humanity, or a halfway house. We provided leadership training and religious support as well as the housing. Many of our members received a stipend from AmeriCorps. The idea was to create a cadre of experienced, committed, and young leaders in the community, many of whom would not remain full-time in charitable work but would apply their skills and interests in whatever career they pursued. We also conducted a work project every Martin Luther King Day, in which we synchronized more than a hundred volunteers with different charitable organizations and churches to provide a day of service. There was a ceremony to start the day, then one to close it out at night.

Annually since 1993 I have been a volunteer for Habitat for Humanity, though not in 2005-6. One year I spent a week working on a house that our church was sponsoring. Others years I have given a day and sometimes two days to the construction.

28. **Selection Process**:

    a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Please do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

    I am not aware of any selection commission or committee. I had been recommended by Mississippi's two U.S. Senators for a vacancy on the U.S. District Court in early 2004, and then at the end of that year for a vacancy for the Court of Appeals for the Fifth Circuit. I went to the White House Counsel's office in January and then in December 2004 to interview with associate counsels and, at the later time, also with the outgoing and incoming White House Counsel. Another person was chosen for each of those positions. While home on leave from Iraq in May 2005, I made contact with Senator Cochran and asked to be considered for a new vacancy on the U.S. District Court. The incumbent judge had announced that month that he would retire. No further interview was

conducted. I underwent a background investigation after my return to the U.S. My nomination was submitted to the Senate on June 6, 2006. My nomination was returned to the President on December 9, 2006 when the 109th Congress adjourned.

My nomination to be a United States District Court Judge was not resubmitted. On January 9, 2007, I was nominated to be a judge on the United States Court of Appeals for the Fifth Circuit.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

No one has asked any such questions or made such statements.

AO-10
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT

Calendar Year 2006

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (Last name, First name, Middle initial)	2. Court or Organization	3. Date of Report
Southwick, Leslie H	Fifth Circuit Court of Appeals	01/12/2007
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time)	5. ReportType (check appropriate type)	6. Reporting Period
Circuit Judge - nominee	(•) Nomination, Date 01/09/2007 ( ) Initial ( ) Annual ( ) Final	01/01/2006 to 12/31/2006
7. Chambers or Office Address	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.	
Mississippi College Law School 151 E. Griffith Street Jackson, MS 39201	Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

☐ NONE

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Judge	Mississippi Court of Appeals
2.	Adjunct Professor	Mississippi College School of Law
3.	Commissioned Officer	United States Army
4.	Commissioned Officer	Mississippi National Guard
5.	Visiting Professor	Mississippi College School of Law

II AGREEMENTS (Reporting individual only; see pp. 14-16 of filing instructions)

☑ NONE - (No reportable agreements.)

	DATE	PARTIES AND TERMS
1.		

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Southwick, Leslie H	01/12/2007

☐ NONE - (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1.	2005	United States Army - salary	$73, 400
2.	2006	Mississippi National Guard – drill pay	$4,000
3.	2006	Mississippi Court of Appeals - salary	$101, 500
4.			

B. Spouse's Non-Investment Income - If you were married during any portion of the reporting year, please complete this section. (dollar amount not required except for honoraria)

☐ NONE - (No reportable non-investment income.)

	DATE	SOURCE AND TYPE
1.	2006	W.S. Quinn CLU - salary
2.		

IV. REIMBURSEMENTS – transportation, lodging, food, entertainment.

☐ NONE - (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1.	Exempt	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Southwick, Leslie H	01/12/2007

☐ NONE - (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1.	exempt		

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

☑ NONE - (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
1.			

FINANCIAL DISCLOSURE REPORT
Page 1 of 1

Name of Person Reporting	Date of Report
Southwick, Leslie H	01/12/2007

VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
1. Berkshire-Hathaway - A common		None	M	T	exempt				
2. First National Bank Group, Inc. common	C	Dividend	M	T					
3. Parcel # 1, Mineral Interest, 2001 appraisal		None	J	Q					
4. Parcel # 2, Mineral interest, 2001 appraisal		None	J	Q					
5. Parcel # 3, Hidalgo County, Tex., 2001 appraisal		None	M	Q					
6. Citizens National Bank account and CD	C	Interest	N	T					
7. State Bank & Trust account and CD's	B	Interest	M	T					
8. MetLife Bank Account	D	Interest	M	T					
9. Jackson National Beneficiary Account	A	Interest	J	T					
10. Prudential Financial Variable Life: Conservative Balanced		None	J	T					
11. Prudential Financial Variable Life: Flexible Managed		None	J	T					
12. Prudential Financial Variable Life: Equity		None	K	T					
13. Prudential Financial Variable Life: Diversified Bond		None	J	T					
14. Prudential Financial Variable Life: Jennison		None	J	T					
15. Prudential Financial Variable Life: Small Cap Stock		None	J	T					
16. Trustmark National Bank account and CD	A	Interest	M	T					
17. Bancorp South CD	B	Interest	M	T					

1 Income/Gain Codes (See Columns B1 and D4)	A – $1,000 or less	B – $1,001-$2,500	C – $2,501-$5,000	D – $5,001-$15,000	E – $15,001-$50,000				
	F – $50,001-$100,000	G – $100,001-$1,000,000	H1 – $1,000,001-$5,000,000	H2 – More than $5,000,000					
2. Value Codes. (See Columns C1 and D3)	J – $15,000 or less	K – $15,001-$50,000	L – $50,001-$100,000	M – $100,001-$250,000					
	N – $250,000-$500,000	O – $500,001-$1,000,000	P1 – $1,000,001-$5,000,000	P2 – $5,000,001-$25,000,000					
	P3 – $25,000,001-$50,000,000		P4 – More than $50,000,000						
3 Value Method Codes (See Column C2)	Q – Appraisal	R – Cost (Real Estate Only)	S – Assessment	T – Cash Market					
	U – Book Value	V – Other	W – Estimated						

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Southwick, Leslie H	01/12/2007

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Southwick, Leslie H	01/12/2007

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature Leslie H Southwick Date 14 Jan 07

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks	1	010	000	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		747	179	Notes payable to relatives			
Unlisted securities--add schedule		229	140	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		3	000
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned-add schedule		555	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		105	000				
Cash value-life insurance		49	356				
Other assets itemize:							
				Total liabilities		3	000
				Net Worth	2	692	675
Total Assets	2	695	675	Total liabilities and net worth	2	695	675
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Principal Investors Fund Portfolio	$ 521,115
Berkshire Hathaway Class A Common	217,000
Prudential Financial	9,064
Total Listed Securities	$ 747,179
Unlisted Securities	
First National Bank	$229,140
Real Estate Owned	
Personal residence	$ 375,000
¼ interest, Texas farmland	180,000
Total Real Estate Owned	555,000

AFFIDAVIT

I, Leslie H. Southwick, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

26 Jan 2007
(DATE)

Leslie H Southwick
(NAME)

Bobbi R. Cole
(NOTARY)

NOTARY PUBLIC STATE OF MISSISSIPPI AT LARGE
MY COMMISSION EXPIRES: Oct 23, 2010
BONDED THRU NOTARY PUBLIC UNDERWRITERS

Senator BROWNBACK. Thank you. And congratulations on each of you being moved thus far.

I have got some questions I would like to ask, and we can go down the row if you would like. But one I would like to ask you about is just a thought or your opinion on this topic. Three of you are judges. Mr. Jonker, I believe you have clerked for a judge.

Just this notion of judicial restraint has been one where we are seeing a lot more conflict. I call it at times "tectonic plates" moving back against each other as far as the legislative and executive pushing against the judicial.

I asked John Roberts, during his confirmation hearing, what is the check and balance on the judiciary? His answer was, judicial restraint. An appropriate answer. But it needs, then, further definition. How do you determine whether or not this is a topic that the judiciary should not be involved in, that the judiciary should show restraint on?

I would just appreciate a thought, as you look at the topic of judicial restraint and you have a case coming in front of you, that this is a questionable area whether or not the judiciary should cover it or not, what goes on in your mental processes as your determination of whether this is something subject to a Federal court to review or not? Mr. Jonker?

Mr. JONKER. Thank you, Senator. I think the first place that I begin when I think about judicial restraint is with the text of Article 3 of the Constitution itself, which plainly limits the judicial power to cases and controversies that come before it.

And out of that language, as I know the Senate Committee understands and realizes, a great variety of justifiability doctrines have evolved which I think require the judge to carefully examine whether the particular issue that has come before him or her is properly conceived for judicial determination.

I think after you go through those justifiability tests, you also have the statutory jurisdiction gateways that this body puts in place which further limit and restrain what the judiciary does.

Of course, any policy choices that the Congress makes and embodies in legislative enactment must always constrain the judge in his or her role, because it is certainly not the judge's role to impose personal predilections of his or her own. Then, finally, you have the great body of case law that I think constrains every judge who is rendering a decision.

Senator BROWNBACK. Why is this an issue now? Why is this coming up more and more at this point in time in history than, say, over the past 50 years? Or perhaps it has been coming up that much and I have just not been as aware of it. But do you have a thought on that?

Mr. JONKER. Well, I do think there has been, probably since the founding of the Republic, inherent tension between the different branches of government, because I think the Founders did wisely build that into the structure of things.

I think at times when we are all cognizant of public policy issues that are coming before the country, where there are strong feelings on either side, that it is only natural that the various bodies of government would push and pull next to each other. I think that will

always be a part of the process and I think it would be incumbent on whoever has the honor of being a judge.

If the Senate so confirms that on me, to always remember that in the midst of that tension, it is the legislature that makes the policy choices and it is the judge who applies them, regardless of whether the judge agrees with them. I do pledge to you that that is what I would do, if I am fortunate enough to be confirmed.

Senator BROWNBACK. Judge Maloney?

Jude MALONEY. Thank you, Senator. To answer your second question first, I think the discussion and the public debate on this particular issue is part of a healthy debate about the relationship between the three branches of government, the executive, the legislative, and the judicial branch of government.

I think in terms of cases that come before the trial court, as Mr. Jonker has already indicated, the doctrines of justiciability are very important to first examine whether this is a case in controversy that requires the judicial branch of government to get involved.

Once having determined that, then the issue is, in my judgment, applying the law as it is given to us by the legislative branches of government, the executive branch of government, and the policy-making branches of the government, apply the law as written based on the law as it is given to us, both in statute and in case law, and apply the precedent and follow the dictates of the precedent to render a decision in the case. If I am confirmed by the Senate, that would be the approach I would take.

Senator BROWNBACK. Judge Neff?

Jude NEFF. Thank you, Senator. I think probably the watch word for judicial restraint, and indeed for most of judicial work, is intellectual honesty. If we have to look at the narrowness of the question in front of us, if we look to legislative guidelines, if we look to precedent honestly, and intellectually honestly view what is in front of us, that is ultimately, in my view, the restraint on the judge. The judge has got a role to play in our system.

The fact that there is, as Mr. Jonker has indicated, longstanding tension built into our system, and it is healthy, I think, and it is something that we struggle with all the time as a country, and it has, I think, made us healthier. It has helped to establish our judicial independence, but within the framework of the guidelines that are set by the Congress and by the executive.

Again, as the others, if I am fortunate enough to be confirmed by the U.S. Senate to sit on the Western District of Michigan, I will do my very best to remain within those confines.

Senator BROWNBACK. Judge Southwick?

Judge SOUTHWICK. Senator, it is hard for me to come up with something fresh after such comprehensive review of the issue by my three colleagues today. I would say, from my perspective as an appellate judge over the last nearly 12 years, where courts go astray is in failing to decide the case in front of them, trying to use it as vehicles to go elsewhere, maybe further than they need to go, not to decide the case purely on the facts as honestly understood, and interpretation of the law as written in the precedents; like cases are supposed to be decided alike.

I think an honest interpretation of facts and law is one of the primary restraints. To use Judge Neff's term, the intellectual honesty

of the exercise is absolutely critical for judges to keep within the bounds that they are supposed to stay in any particular case.

Senator BROWNBACK. Three of you have served as State judges, a court with general jurisdiction, and now you go to a court of limited jurisdiction. Have you, at any time, wondered when you have watched Federal judges rule, saying, I do not think that one belongs to you guys?

Jude NEFF. Well, if you will let me speak to that, Senator.

Senator BROWNBACK. I would be happy to. I have got to think you sat there in your chamber at some time and said, now, I do not think you guys ought to be chewing on that one.

Jude NEFF. One of the watch words in my chambers, and one of the first things I talked to my new law clerks about, is we are not ever going to decide anything other than what is directly in front of us. I think that is even more important on the Federal bench.

You have to make sure, first of all, that the parties in front of you have standing, second, that the court has jurisdiction, and that it is a proper topic to be justified to be there.

The narrower you can be as a judge, the more constrained you can keep your decisionmaking, in my view, the better off you are in the long run. It gets you in a lot less trouble eventually.

Senator BROWNBACK. Judge Maloney?

Jude MALONEY. Senator, I would concur with Judge Neff's comments. I cannot say that I have speculated about why a particular Federal court was handling a case as opposed to a State court, but I think the jurisdiction of the Federal court is fairly well delineated.

As Judge Neff has indicated, if I am confirmed, I will make sure that the appropriate jurisdictional bases are there before the case is decided. The parties need to have standing. Case in controversy requirements need to be met as well. So, I will be very careful on that subject matter if I am confirmed by the Senate.

Senator BROWNBACK. It strikes me, in the last campaign, I was up for reelection in 2004. One of the big issues were the courts and people feeling like things were being decided by the courts that the people ought to decide through their legislative bodies. Now, I happen to have a preference for legislative bodies deciding things, and I recognize there are pressure back and forth.

Although, through a lot of our history there has always been the push for authority that has been through the executive and legislative branch. That is usually what historians chronicle, is, well, the President was more powerful in this period of time and less powerful in that. Now I think historians would have to look at this period of time and ask about the power of the court. At least, that is what the people are feeling.

That is why judges, it seems like, become a lot more of a hot political topic, because people look at it and say there are things being decided there that I think ought to be decided by the people, and the court moves in and says it is a constitutional issue, and therefore you cannot deal with it unless you amend the Constitution.

That has really stirred a big movement across the country. I just point it out to you because I think each of you could well serve on a Federal bench for a number of years, and I hope you do. I think

each of you will do an outstanding job. It does strike me that this is going on.

I appreciate, Judge Neff, your comments that this is a healthy thing. I begin to wonder after a while when it becomes so much, that then you get legislative bodies saying, how do we limit the jurisdiction of the Federal court? Let us remove this jurisdiction under the authority that we have in the Congress.

I personally do not like that tool. That, to me, is a blunt instrument approach tool. It would be much better if there were judicial restraint, that you could just say, no, I trust the judges, that they will decide the issues that they should rather than us removing appellate court review in the Congressional bodies.

I hope this is one that we can all, through a lengthy dialog and discussion, each looking at our own roles, be one that we work through over a period of time in a healthy fashion for the good of the Republic. I think it is a very important one, and certainly a key one for our times now.

I have got to ask you, Judge Southwick, this Presidential Also-Rans, for anybody in the U.S. Senate, that is always considered a great topic. What is the key to being an also-ran? Is it just that you had this interest in people that also ran, but did not win?

Judge SOUTHWICK. Well, I have never had anybody, to my face, psychoanalyze what it means to have written a book about Presidential losers, and I do not know if anybody is reflecting on what that might mean in here right now. There seemed to be a niche there. I was interested.

Perhaps the idea of looking at what might have been intrigued my fancy. So it is a book on the losing major party nominees for 200-plus years. What makes an also- ran is also what makes a President, just not quite as much, I suppose. They have risen to the penultimate level of American politics, but could not quite get across the finish line ahead of somebody else. So, I consider it an honorable category of individuals.

Senator BROWNBACK. So is it a book of ideas or is it a book of failed campaigns?

Judge SOUTHWICK. It is biographies of the losing major party nominees. There may be some ideas in there, but I do not particularly analyze why they lost. I just try to suggest who they were in biographical form.

Senator BROWNBACK. That is an interesting topic.

Judge SOUTHWICK. Well, I did have my concern when Senator Cochran mentioned that in here, about what that might engender.

[Laughter.]

Senator BROWNBACK. Well, there is a caucus in the U.S. Senate of people who swear that they never want to run for President. I understand there are only two members.

[Laughter.]

So, there are a lot of others that say, well, all right, maybe this year.

We are pleased to have you all here. In the process, hopefully we will move your nominations going forward. I appreciate your attendance and appreciate your willingness to answer questions. There may be written questions submitted to the record, and if so, those will be sent to you directly as well.

I wish you all godspeed in moving forward. This is an important position. To be a judge is a key position, and three of you are currently serving in that. This is something that society looks up to. People can be mad at a judge or concerned, but this is a position of honor and authority, so we want to make sure that we have people who have the highest intellectual capacity and good hearts, too, so that they can process and analyze the case, but also that they have that heart that looks at it and has wisdom along with the knowledge to be able to apply that. And it is key. It is a key spot. So, I wish you all the best.

I do have a statement to put into the record for Senator Leahy, who unfortunately could not be here.

[The prepared statement of Senator Leahy appears as a submission for the record.]

Senator BROWNBACK. As I said, the record will remain open for the requisite number of days. You may have written questions submitted to you.

With that, thank you all for coming.

[Whereupon, at 3:42 p.m. the hearing was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Warner Norcross & Judd LLP
ATTORNEYS AT LAW
75TH Anniversary
1931 - 2006

ROBERT J. JONKER
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FAX 616.222.2161
rjonker@wnj.com

September 26, 2006

The Honorable Arlen Specter
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Attached are my responses to written questions from Senator Leahy.

Sincerely,

Robert J. Jonker

RJJ:joy

Attachments

cc: The Honorable Patrick J. Leahy
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

#1314262

Responses of Robert James Jonker
Nominee to be United States District Judge for the Western District of Michigan
to the Written Questions of Senator Patrick J. Leahy

1. **You have been involved in opposing the efforts of Indian tribes to develop casinos under the Indian Gaming Regulatory Act both professionally and as a member of "23 Is Enough", a Michigan Political Action Committee dedicated to stopping the proliferation of gambling venues in Michigan.**

   A. **As a federal judge, will you be able to fairly and impartially apply the law in cases involving the efforts of Indian tribes to engage in economic development projects under the Indian Gaming Regulatory Act?**

   Response: Yes.

   B. **As the one undemocratic branch, the courts have a special responsibility to make sure they are available to those Americans most in need of the courts to protect their rights. What assurances can you give that you will be open to all viewpoints and that litigants coming into your courtroom will be treated fairly regardless of their skin color or political beliefs, and regardless of whether they are rich or poor, defendant or plaintiff?**

   Response: I believe that one critical characteristic of any judge is the ability to hear and decide the cases that come before the court fairly and impartially based on the record before the court. I believe I have that characteristic and that I have demonstrated it in the course of my professional career. As a leader in my firm, I have participated in the Institute for Healing Racism, a program sponsored by the Woodrick Institute to promote understanding and healing among the races. As the former chair of our firm's Professional Staff Committee, I have worked on the law firm's diversity initiatives and embraced the firm's diversity goals. As a private attorney, I have accepted prisoner civil rights cases on a pro bono basis. I have also been active as a member and officer of the Western District Chapter of the Federal Bar Association which, among other things, regularly addresses efforts to improve legal services for the poor and underrepresented.

2. **According to your response to the Judiciary Committee's questionnaire, you are a member of "23 Is Enough", an organization that has come under fire for distributing a link to a website with racist depictions of and rhetoric about Native Americans as part of its campaign to stop the Gun Lake Tribe of Pottawatomi Indians from opening its proposed casino. Several members of the Michigan Legislature have criticized "23 is Enough" for its "racial intolerance" and "anti-Native American sentiment."**

   A. **When did you first become aware of the involvement of "23 is Enough" in the distribution of this material?**

Response: The manager of 23 is Enough (John Helmholdt) distributed an article describing the economic impact of gambling in Niagara Falls, New York, to an e-mail list. The article itself did not include any racially intolerant rhetoric or depictions, but simply described economic information regarding the situation in Niagara Falls.

A short time after Mr. Helmholdt distributed the article a representative of a Native American Tribe issued a press release stating that the author of the article maintained a website with racially intolerant rhetoric and depictions. The article that Mr. Helmholdt had distributed did not itself have any such rhetoric or depictions and did not link to any such website, and neither Mr. Helmholdt nor any member of 23 is Enough had any prior knowledge of the author's website. When Mr. Helmholdt saw the press release after the fact, he promptly investigated it, determined that the author of the article did maintain such a website, immediately sent a written apology to the Native American Tribe (copy attached), and immediately denounced, publicly and privately on behalf of 23 is Enough and all its members, any and all racially intolerant rhetoric and depictions.

B. What action, if any, did you take when you learned of it?

Response: I wholeheartedly endorsed Mr. Helmholdt's letter of apology for failing to discover in advance the tie between the article's author and the offensive website. I also endorsed Mr. Helmholdt's denouncements, on behalf of 23 is Enough and all its members, of racially intolerant depictions and rhetoric of all kind. I also endorsed Mr. Helmholdt's decision to institute new procedures for investigating the background of authors before sending out information under an author's byline.

3. **You have represented a client called Taxpayers of Michigan Against Casinos (TOMAC) in several challenges to proposed Native American casinos in southwest Michigan. These litigation efforts against the three Southwest Michigan Pottawatomi tribes resulted in a delay of their casino openings. According to press reports, your firm, Warner Norcross & Judd LLP, has received payments from Boyd Gaming, a company which operates a riverboat casino in nearby Indiana, which would be a competitor of the Indian Tribes' casinos. Press reports also describe Boyd Gaming's relationship with Kevin Flynn, a Chicago businessman with reported ties to organized crime, whom it employed to block for five years two of the three tribal land-in-trust applications TOMAC opposed through litigation in which you were involved.**

A. **How is your firm's representation of Boyd Gaming consistent with TOMAC's position against the proliferation of casinos? Was this an attempt to further Boyd Gaming's interests by preventing competition of casinos run by Indian tribes?**

Response: TOMAC is a bona fide citizen group whose members oppose proliferation of gaming venues in their community. Our firm's representation of TOMAC, and other citizen groups with similar goals in the State, has always been consistent in advocating against the establishment of any new gaming venue. To my knowledge, neither I, nor my law firm, have ever advocated a position on behalf of any party promoting the establishment of a new gaming venue.

B. **I am concerned about your firm's representation of clients with apparent conflicts in positions. Generally, federal judges have great discretion when possible conflicts of interest are raised to make their own decisions whether or not to sit on a case, so it's important that judicial nominees have a well-thought out view of when recusal is appropriate. Former Chief Justice Rehnquist made clear on many occasions that he understood that the standard for recusal was not subjective, but rather objective. It was whether there might be any appearance of impropriety. How do you interpret the recusal standard for federal judges, and in what types of cases do you plan to recuse yourself? I'm interested in specific examples, not just a statement that you'll follow applicable law.**

Response: If confirmed as a United States District Court Judge, I would follow all applicable laws and ethical rules governing recusal, including 28 U.S.C. 455. I would also seek the advice of the Ethics Committee of the Judicial Conference of the United States in appropriate cases. It is my understanding that under the laws governing recusal, a judge should recuse himself where a reasonable person, knowing all the facts, would have an objectively reasonable doubt about the judge's ability to preside impartially.

If confirmed, I would recuse myself in any case involving a matter that I have personally handled as a private attorney, or that anyone in my firm handled during my affiliation with the firm. Generally, recusal decisions would necessarily have to be made on the particulars of each individual case.

Warner Norcross&Judd LLP
ATTORNEYS AT LAW
75th Anniversary
1931 - 2006

ROBERT J. JONKER
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September 27, 2006

The Honorable Arlen Specter
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Attached are my responses to written questions from Senator Kennedy.

Sincerely,

Robert J. Jonker

RJJ:joy

Attachments

cc: The Honorable Patrick J. Leahy
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Responses of Robert James Jonker
Nominee to be United States District Judge for the Western District of Michigan
to the Written Questions of Senator Edward M. Kennedy

1) **The organization 23 is Enough, to which you reportedly belonged, has been criticized recently for distributing materials by an individual who displays racist images and rhetoric on his website.**

   a) **Please explain what role or roles you have had in the organization 23 is Enough, including any governing role you have held and the number of meetings you have attended.**

   Response: I have been a member of 23 is Enough, and have participated in several meetings. I do not know the exact number of meetings, but it is fewer than ten. I have not been an officer of the organization.

   b) **Did you remain a member of 23 is Enough after it disbursed the derogatory material? If so, why?**

   Response: As soon as the President nominated me to become a United States District Judge for the Western District of Michigan on June 28, 2006, I informed the manager of 23 is Enough, John Helmholdt, that I would no longer participate in any meetings of the group. I also informed Mr. Helmholdt that I would, if confirmed, resign my membership.

   About one month later, Mr. Helmholdt distributed an article describing the economic impact of gambling in Niagara Falls, New York, to an e-mail list. The article itself did not include any racially intolerant rhetoric or depictions, but simply described economic information regarding the situation in Niagara Falls.

   A short time after Mr. Helmholdt distributed the article, a representative of a Native American Tribe issued a press release stating that the author of the article maintained a website with racially intolerant rhetoric and depictions. The article that Mr. Helmholdt had distributed did not itself have any such rhetoric or depictions and did not link to any such website, and neither Mr. Helmholdt nor any member of 23 is Enough had any prior knowledge of the author's website. When Mr. Helmholdt saw the press release after the fact, he promptly investigated it; determined that the author of the article did maintain such a website; immediately sent a written apology to the Native American Tribe (copy attached); and immediately denounced, publicly and privately on behalf of 23 is Enough and all its members, any and all racially intolerant rhetoric and depictions.

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2) **Your questionnaire states that you have represented citizen groups, including Taxpayers Against Casinos and Citizens Exposing the Truth About Casinos. You also included two anti-gaming cases in your list of the ten most significant matters which you personally handled. Please provide a capsule summary of each anti-gaming case in which you have been involved. Describe the extent of your involvement in these matters and provide the mission statement or a summary description of the groups that you represented.**

Response: I have been involved as lead litigation counsel in three federal cases on behalf of three citizens groups from Michigan. Each group's mission involves stopping the proliferation of gambling venues in the communities of the affected citizens. The three cases are:

1) *Taxpayers of Michigan Against Casinos (TOMAC) v. Norton*, 240 F. Supp. 2d 45 (D.D.C. 2003), *aff'd* 433 F.3d 852 (D.C. Cir. 2006);
2) *Citizens Exposing Truth about Casinos (CETAC) v. Norton (now Kempthorne*, Case No. 1:02-CV-01754 (D.D.C.); and
3) *MichGo v. Norton (now Kempthorne)*, Case No. 1:05-CV-01181 (D.D.C.).

Each of the cases involves federal law issues under the National Environmental Policy Act, the Indian Gaming Regulatory Act and the United States Constitution.

I have also been involved as lead litigation counsel in one case in the courts of the State of Michigan on behalf of TOMAC. The case involves the proper procedure under the State Constitution for approving gambling compacts between Native American tribes and the State. *See TOMAC v. State*, 254 Mich. App. 23 (2002), *aff'd in part, rev'd in part and remanded*, 471 Mich. 306 (2004), *cert. denied*, 543 U.S. 1146 (2005). One portion of the case continues on remand. *See TOMAC v. State*, 268 Mich. App. 226 (2005), *lv granted* 474 Mich. 1097 (2006).

3) **In both your personal and professional capacity you have challenged Michigan Indian tribes' rights under the Indian Gaming Regulatory Act to engage in economic development projects.**

a) **What is your position on Native American sovereignty as it relates to gaming?**

Response: The United States Supreme Court has long recognized that "Indian nations possess all powers of a sovereign government except as limited by lawful federal authority." *See* Cohen's Handbook of Federal Indian Law (2005 Edition) at 4.02[1] (referencing and discussing case law development at footnote 149.) The contours of inherent tribal sovereignty and the power of the federal government continue to be a matter of litigation before the Supreme Court. *See, e.g., United States v. Lara*, 541 U.S. 193 (2004); *Atkinson Trading Company, Inc., v. Shirley* 532 U.S. 645 (2001). Moreover, the United States Congress has enacted the Indian Gaming Regulatory Act, which prescribes the conditions under which Native American tribes may construct and operate gambling venues as means of economic development. If confirmed as a United States District Court Judge, I would apply all relevant Supreme Court precedent, Sixth Circuit precedent, and statutory law in this area.

b) Do you believe that federally recognized tribes have the sovereign right to establish casinos as a means to their economic development? If you believe there are any limitations, please explain those limitations as you interpret them.

Response: The United States Supreme Court has long recognized that "Indian nations possess all powers of a sovereign government except as limited by lawful federal authority." *See* Cohen's Handbook of Federal Indian Law (2005 Edition) at 4.02[1] (referencing and discussing case law development at footnote 149.) The contours of inherent tribal sovereignty and the power of the federal government continue to be a matter of litigation before the Supreme Court. *See, e.g., United States v. Lara*, 541 U.S. 193 (2004); *Atkinson Trading Company, Inc., v. Shirley*, 532 U.S. 645 (2001). Moreover, the United States Congress has enacted the Indian Gaming Regulatory Act, which prescribes the conditions under which Native American tribes may construct and operate gambling venues as means of economic development. If confirmed as a United States District Court Judge, I would apply all relevant Supreme Court precedent, Sixth Circuit precedent, and statutory law in this area.

c) As a federal judge will you be able to fairly and impartially apply the law in cases involving Indian tribes?

Response: Yes.

23 is Enough!

Stop Casino Expansion in Michigan

161 Ottawa Ave. NW, Suite 411F, Grand Rapids, Michigan 49503
Phone: (616) 235-9360 x14 • Fax: (616) 235-9381

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August 16, 2006

Chairman D.K. Sprague
Gun Lake Band of Pottawatomi Indians
PO Box 218
Dorr, MI 49323

Dear Chairman Sprague:

On behalf of *23 is Enough*, I want to formally apologize to you and all tribal members in highlighting the opinion piece from Frank Parlato, Jr. Let me make it perfectly clear that we neither hold nor condone his racial/cultural viewpoints, and we denounce any and all of his culturally insensitive materials.

At first glance of this letter, we were immediately struck by how the consequences of the Niagara Falls casino seemed to capture the predictions we have been making for West Michigan. His piece focused solely on economic and social problems, which was the only reason we highlighted the issue. Not a single reference was made to either his website or any of his inappropriate cultural sentiments and prior to your press release, we were completely unaware of his racial viewpoints. We regret our lack of oversight in not checking his background, it is inexcusable. I assure you that had we known about his anti-Indian opinions, we would never have drawn attention to anything coming from him.

However, this does not detract from the facts surrounding the economic and social damage that the casino has forced on Niagara Falls, all of which are corroborated in literally dozens of other articles and studies. These emulate very closely what we have echoed for years:

- Pathological gambling has risen
- Bankruptcies have increased and the tribe holds 100 mortgages on local residences
- Crime is up
- One or more jobs have been lost for every one created by the casino
- Niagara Falls' convention business has been devastated
- Millions have been taken out of the local economy - $1 million gambled away every 24 hours by those who can least afford it
- Unfair competition from untaxed, unregulated businesses on tribal land like restaurants, conventional hall, hotel, gift shops, and spas
- Two hotels have foreclosed and a third has closed its doors
- Restaurants have been run out of business
- $300 million has been squandered in gambling losses

The rhetoric and materials of Frank Parlato, Jr. that have since come to light are disturbing. You and I will both agree that such opinion has no place in the dialogue concerning the proposed casino and we are ashamed that his blatant intolerance was given any undue attention because of our mistake.

Again, we sincerely apologize that our error has caused your Tribe any discomfort or pain, and we want to pledge that such an oversight will never happen again. If you feel the need to discuss this issue further, I invite you to contact me at (616) 235-9360 x14 or heimboldt@jonesgayan.com.

Sincerely,

John Helmholdt
23 is Enough

Paid for by the 23 is Enough Political Action Committee. Treasurer Bruce Courtade

SUBMISSIONS FOR THE RECORD

STATEMENT OF SENATOR CARL LEVIN ON THE NOMINATIONS OF ROBERT JONKER, PAUL MALONEY and JANET NEFF TO THE FEDERAL BENCH OF THE WESTERN DISTRICT OF MICHIGAN

September 19, 2006

I want to begin by thanking the Chairman and Ranking Member of this Committee for holding this hearing today.

I am pleased to support three Michigan nominees, Robert Jonker, Paul Maloney, and Janet Neff whom the President has nominated to the federal bench in the Western District of Michigan.

I would like to welcome Mr. Jonker. His wife Nancy and his sons Jonathan and Benjamin were not able to be here today because of school commitments. Mr. Jonker graduated with honors from Calvin College in 1982, then went on to earn his J.D., *summa cum laude*, from the University of Michigan Law School in 1985. After graduating from law school, he served as a judicial law clerk to the Honorable Judge Feikins of the U.S. District Court for the Eastern District of Michigan and has worked for almost 20 years in private practice, currently practicing in the areas of environmental and commercial litigation law. He has been granted many awards including the Order of Coif and the Robert S. Feldman Award. He also serves as a member of several professional and community organizations.

I would like to welcome Judge Paul Maloney. His wife Marie was not able to be here today. Judge Maloney graduated from Lehigh University in 1972, and received his law degree in 1975 from the University of Detroit School of Law. He served as an Assistant Prosecuting Attorney for Berrien County and was appointed Chief Assistant Prosecuting Attorney and then Prosecuting Attorney before joining the United States Department of Justice as a Deputy Assistant Attorney General in 1989. In 1993, Judge Maloney was appointed Special Assistant to the Director of the Michigan Department of Corrections. Judge Maloney currently serves as Chief Judge on the Berrien County Trial Court and is a member of the Lakeshore Rotary Club as well as various other professional and community organizations.

Finally, I would like to welcome Judge Neff, her husband David and daughter Meredith. Judge Neff graduated with honors from the University of Pittsburg in 1967, then graduated from Wayne State University Law School in 1970. Judge Neff has had a distinguished legal career. After law school, Judge Neff served as an estate and gift tax examiner for the Internal Revenue Service and then a research attorney for the Michigan Court of Appeals, before becoming an assistant city attorney for the City of Grand Rapids. Judge Neff has also worked in private practice, served as a commissioner for the Michigan Supreme Court and then as an assistant United States attorney. Judge Neff currently serves on the Michigan Court of Appeals. She has been granted numerous awards and honors, including the Outstanding Member for 2006 of the Women Lawyers Association of Michigan. Judge Neff has served on numerous professional and community organizations, including the Easter Seal Society, Women's Resource Center, Junior Achievement and United Way of Kent County.

We are fortunate to have Mr. Jonker, Judge Maloney, and Judge Neff devoted to public service. I look forward to working with my colleagues to move these nominations promptly through the Senate.

Statement of Senator Patrick Leahy
Ranking Member, Senate Judiciary Committee
Hearing on Judicial Nominations
September 19, 2006

Today, for the third straight week since the Senate returned from August recess, the Committee will hear from four candidates for lifetime appointments to the Nation's federal courts. With the work of Senators Levin and Stabenow, we are expediting consideration of three nominees for the Western District of Michigan, Paul Lewis Maloney, Robert James Jonker, and Janet Theresa Neff. Had the President tried sooner than July to provide nominations for many of these vacancies still outstanding, we could have been more productive this year. From the beginning I have urged the President to work with us on consensus nominations and I have worked hard to proceed. I do so now, even at this late date in the session, and in spite of the pocket filibusters employed by Republicans to stall more than 60 of President Clinton's qualified judicial nominees.

I worry that, like so much of the Nation's pressing business over the last two years, they could be derailed by the misguided priorities of the Bush-Cheney Administration and the Republican leadership. With so little time remaining in this Congress, I would have hoped that the Administration and the Republican leadership would be anxious to make up for lost time by trying, at last, to address the many urgent and unresolved needs of Americans.

Instead, today we will spend hours on the Senate floor debating the nomination of Alice S. Fisher for a position at the Department of Justice for which there remain significant outstanding questions and be forced to debate controversial nominees in Committee.

I had hoped that we could join together to change course from the failed policies that have stretched from the Persian Gulf to the Gulf Coast and left America less secure and set us back as a Nation. Regrettably, rather than learn lessons from these failures, it appears that the President and his political allies in the Senate are intent on staying the course.

As I have noted the last few weeks, the Administration has also chosen to stay the disastrous course on judicial nominations by choosing to renominate five extremely controversial choices for lifetime positions on the Nation's highest courts. These five nominations represent a troubling group. This Administration seems intent on heeding the marching orders of the narrow, special interest groups on the right and picking fights. While I have urged the Senate Republican leadership to join with us in the waning days of this Congress to do the work of the American people, it appears these last weeks they will take the Administration's bait and waste valuable time and resources on these troubling nominations.

Squandered Opportunities

An editorial in last Wednesday's *Richmond Times-Dispatch* entitled, "No Vacancies," highlights the Administration's bankrupt approach to judicial nominations, such as that of William James Haynes II to the Fourth Circuit. The editorial criticizes the Administration for its failure to turn vacancies into judges by pursuing political fights. According to the *Richmond Times-Dispatch*:

> "The president erred by renominating Haynes, and may be squandering his opportunity to fill numerous other vacancies with judges of right reason.
>
> This marks the third time Bush has nominated Haynes, and likely will present Senate detractors a third opportunity to deny him a seat on the bench. Much of the opposition focuses on opinions Haynes issued in his current position as general counsel to the Department of Defense. Critics say the policies Haynes helped develop led to torture, such as the abuse of prisoners at Abu Ghraib prison.
>
> As elections draw near (and as the 2008 presidential campaign approaches) the window to confirm Bush judges begins to close. At this point in his tenure it is vital that Bush forward the names of good nominees who can win the consent of the Senate. By now it is obvious Haynes is not of that stock.
>
> Indeed the administration has been derelict in sending a full slate of nominees to the Senate. Of the 14 vacancies on the federal courts of appeals, only eight have candidates up for Senate consideration -- the list includes Haynes and another 4th Circuit nominee with little hope of confirmation. On the district court level, the president and Republican senators who work cooperatively to fill these openings -- have an equally abysmal record. They have forwarded only 19 names for 32 vacancies."

Indeed, the Bush Administration has continued to push Mr. Haynes' nomination despite bipartisan concern about Mr. Haynes' role in developing and seeking to excuse this Administration's now discredited policies on the treatment of enemy combatants, the interrogation and torture of detainees, and the creation of military commissions. In two hearings, Mr. Haynes has refused to answer questions from Senators about these policies, despite disturbing developments that have come to light that relate to those policies, including the Abu Ghraib scandal and scores of other incidents of detainee abuse in Afghanistan, Iraq, and Guantanamo Bay. In addition, new press reports, declassified memoranda and letters from former high-ranking military officials have detailed Mr. Haynes' disregard for legal concerns raised by senior military and civilian lawyers within the Armed Services about these policies and his efforts to subvert their advice. It seems that Mr. Haynes ignored the policy concerns raised by military officers about the effect of his policies on the safety of American troops and American credibility around the world.

I have found inconsistencies between Mr. Haynes' testimony and that of the uniformed JAGs relating to their involvement in the development of detainee interrogation policies to be particularly troubling. Although Mr. Haynes sought at his hearing in July to allay some of these concerns regarding his disregard of the advice of uniformed JAGs, his statements were contradicted by several JAGs who testified before the Senate Armed Services Committee. Subsequently, Mr. Haynes sought to reconcile his testimony with that of the JAGs in a letter to the Committee. Unfortunately, even this letter turned out to be inaccurate, as set forth in a subsequent letter from Daniel Dell'Orto, Mr. Haynes' deputy at the Defense Department. The President had an opportunity to move beyond this controversy by sending the Senate a more qualified, consensus nominee. Unfortunately, he squandered that opportunity with this re-nomination.

The *Richmond Times-Dispatch* editorial could just as easily have been written about Judge Terrence Boyle, whom the President also re-nominated to a seat on the Fourth Circuit. He did so despite the fact that as a sitting United States District Judge and while a Circuit Court nominee, Judge Boyle ruled on multiple cases involving corporations in which he held investments. The President should have heeded the call of North Carolina Police Benevolent Association, the North Carolina Troopers' Association, the Police Benevolent Associations from South Carolina and Virginia, the National Association of Police Organizations, the Professional Fire Fighters and Paramedics of North Carolina, as well as the advice of our former colleague, Senator John Edwards, to withdraw this ill-advised nomination and not re-nominated him. Law enforcement officers from North Carolina and across the country oppose the nomination. Civil rights groups oppose the nomination. Those knowledgeable and respectful of judicial ethics oppose this nomination. This nomination had been pending on the floor calendar in the Republican-controlled Senate since June of last year when it was forced out of the Committee on a party-line vote. The Senate did the President a favor by returning this nomination to the White House before the summer recess. The President should not have re-nominated Judge Boyle.

The President also squandered an opportunity to fill Idaho's vacancy on the Ninth Circuit by re-nominating William Gerry Myers III for that seat. This is another Administration insider and lobbyist whose record has raised serious questions about his ability to be a fair and impartial judge. I opposed this nomination when it was considered by the Judiciary Committee in March 2005. This was a nomination that the so-called "Gang of 14" expressly listed as someone for whom they made no commitment to vote for cloture, and with good reason.

Mr. Myers' record as Solicitor General for the Department of the Interior suggests that he was part of a culture of corruption documented last week in the testimony of the Interior Department's Inspector General, Earl E. Devaney, at a hearing of the House Government Reform Subcommittee on Energy. Mr Devaney testified about a "culture of managerial irresponsibility and lack of accountability" at the upper levels of the Interior Department in which, "[s]imply stated, short of a crime, anything goes at the highest levels of the Department of the Interior." He also testified, "I have observed one instance after another when the good work of my office has been disregarded by the department. ...

Ethics failures on the part of senior department officials—taking the form of appearances of impropriety, favoritism and bias—have been routinely dismissed with a promise 'not to do it again.'

While Mr. Myers' anti-environmental record is reason enough to oppose his confirmation, his connection to the "culture of managerial responsibility and lack of accountability" raise further concerns. In particular, questions remain about his role in authorizing a lawyer who worked for him, Bob Comer, to arrange a sweetheart settlement agreement for a politically well-connected rancher, Frank Robbins. Mr. Comer was found in an investigation by the Department of Interior's Inspector General to have been responsible for arranging the deal. Documents have come to light recently showing that Mr. Myers had been given materials about the deal, undermining his assertions that he was merely misled by Mr. Comer. If anyone sought to proceed to this nomination, we would need to know more about these new documents and we would need to explore any connections to the lobbying scandals associated with the Interior Department and Republican lobbyist Jack Abramoff.

It is particular troubling to see Mr. Myers re-nominated because the President squandered yet another opportunity to fill a vacancy. I had suggested that he re-nominate Norman Randy Smith for the vacancy created by the retirement of Judge Thomas G. Nelson from Idaho. Instead, the President has again nominated Judge Smith to a California seat on the Ninth Circuit, effectively stealing California's seat. That is wrong. I support Senators Feinstein and Boxer in their opposition to this tactic. I again urge President Bush to resolve this impasse and turn Idaho's vacancy into a judge by withdrawing the controversial Myers nomination and nominating Judge Smith for the Idaho vacancy to which he could be easily confirmed.

Finally, the President has re-nominated Michael Wallace to a vacancy on the Fifth Circuit even though he received the first ABA rating of unanimously "not qualified" that I have seen for a Circuit Court nominee in 25 years. The hearing on his nomination scheduled for July 19 was cancelled, though not before the Committee received written testimony from the ABA regarding his rating. This testimony, which was confidential until leaked to a conservative website, details the significant concerns raised by numerous jurists around the country regarding Mr. Wallace's judicial temperament, lack of commitment to equal justice for the poor and minorities, lack of tolerance, and open-mindedness. It details concerns from judges and lawyers that Mr. Wallace "may not follow the law" and is driven by his "personal agenda." Of course, the troubling issues raised in the ABA's testimony echo significant concerns about Mr. Wallace's record on civil rights, his opposition to the Voting Rights Act, his support for tax exemptions for Bob Jones University, his opposition to prison safety regulations, and his attempt as President Reagan's director of the board of the Legal Services Corporation to undermine efforts to provide legal services to low-income clients.

This is not the first time this Administration and this Republican-led Congress has diverted resources and attention from America's needs. A steady course of misguided priorities including weeks spent on constitutional amendments to restrict Americans'

rights and the misuse of Congress's time and authority to interfere in a court battle over the medical treatment of Terri Schiavo has cost Americans progress on real issues that matter most.

With more Americans in poverty and extreme poverty and more children without health care, we must do better. With rising interest rates, rising mortgage rates, rising health care costs, rising insurance costs, we must do better for America's working families. While corporate profits are taking a greater and greater share of our GNP, wages are stagnant and those in charge refuse to allow a long overdue raise to the minimum wage. We have just come through a summer of record high gas prices, and for many families, the threat of record high home heating prices this winter looms around the corner.

As we commemorated the first anniversary of Hurricane Katrina last month, we were reminded that the situation in the Gulf Coast remains a tragedy with serious human consequences. We need to commit ourselves and our resources to helping our fellow citizens who are still in need after the appalling lack of responsiveness by this Administration. We need to provide the assistance to that region of our country where rubble remains a fixture of the landscape one year later. Many residents still do not have homes to return to or jobs waiting for them when they get there.

As we commemorate the fifth anniversary of the deadliest foreign terrorist attack on American soil last week, we should refocus our efforts and our resources there they belong; on the real terrorists and providing real security. More than five years after 9/11, Osama bin Laden remains at large, taunting us and threatening us-- this despite the bipartisan efforts by the Senate to authorize the President to use the most powerful military force in the world to bring him to justice. Had the President not diverted our forces from Afghanistan to Iraq, we would be much more successful in the war on terrorism.

Americans would be better served if we used our remaining time in this Congress to address these vital issues than to focus on fights over a handful of divisive and failed nominations.

I look forward to hearing from the four nominees before the Committee today, and I hope that I will be convinced that they are the kind of nominees who understand that the role of the judge is to act as a check and balance to protect the rights and liberties of all Americans. I welcome the nominees and their friends and families to the Committee today.

#####

Senator Trent Lott
Statement of Introduction for Leslie Southwick
Committee on the Judiciary
Judicial Nomination Hearing
Tuesday, September 19, 2006

Mr. Chairman, it is my pleasure to introduce Judge Leslie Southwick to this committee. I am delighted that the President has seen fit to nominate Judge Southwick to the United States District Court for Southern Mississippi. In Mississippi, Judge Southwick's nomination has received bipartisan support and praise. As well respected judge, his professionalism, wisdom, and judgment make it clear that he is an excellent choice to serve in the Federal Judiciary.

Judge Southwick is a *cum laude* graduate of Rice University and later graduated from the University of Texas School of Law. After graduating from law school in 1975, Judge Southwick clerked for the Presiding Judge of the Texas Court of Criminal Appeals before moving to the State of Mississippi, where he has resided since.

In Mississippi, he served as a law clerk for Judge Charles Clark on the Fifth Circuit Court of Appeals before joining the Jackson based firm

of Brunini, Grantham, Grower, & Hewes, where he became a partner in the firm. He left private practice in 1989 to serve for four years in the US Department of Justice as Deputy Assistant Attorney General in the Civil Division.

He has worked as an Adjunct Professor at the Mississippi College School of Law, and in 1985, he was appointed to the Mississippi Constitution Study Commission by the Governor.

He currently sits on the Mississippi Court of Appeals where he was Presiding Judge from February of 1999 until 2004. Judge Southwick wrote the most opinions in eight of the first ten years that he served on the Court, and he was the winner of the Judicial Excellence Award from the Mississippi State Bar in 2004.

In August of 2004, Judge Southwick began an 18 month, military leave of absence from the Court of Appeals. In 1992, he had joined the Judge Advocate General's Corp in the US Army Reserves. Having later transferred to the Mississippi National Guard, he served in 2005 as Lieutenant Colonel and Staff Judge Advocate, 155th Brigade Combat Team, mobilized in support of Operation Iraqi Freedom.

Judge Southwick is a nationally recognized author. He has written legal and historical articles which have been published nationally, and was awarded the American Library Association's award for "Best Reference Work of the Year" in 1985 for his book entitled Presidential Also-Rans and Running Mates.

Mr. Chairman, Judge Southwick's nomination should come as no surprise given his education, history of public service, reputation, and temperament. I look forward to the committee's swift approval of this fine nominee, and to quick confirmation by the full Senate.

NOMINATION OF THOMAS MICHAEL HARDIMAN, NOMINEE TO BE CIRCUIT JUDGE FOR THE THIRD CIRCUIT

TUESDAY, NOVEMBER 14, 2006

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC

The Committee met, pursuant to notice, at 2:01 p.m., in room 226, Dirksen Senate Office Building, Hon. Arlen Specter (chairman of the committee) presiding.

Also present: Senator Coburn, Santorum.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Chairman SPECTER. Good afternoon, ladies and gentlemen. It is 2, and we have made it a practice on the Judiciary Committee to start our hearings precisely on time.

Our nominee today is Thomas Michael Hardiman, a U.S. district Judge for the Western District of Pennsylvania, whose name has been submitted by the President to be on the Court of Appeals for the Third Circuit.

Mr. Hardiman comes to this position with an outstanding record, a very young man, at 41, to have already been a Federal judge. He is a graduate of Notre Dame in 1987, was a Notre Dame Scholar.

He went to Georgetown University Law Center in 1990, and was associate editor and Note and Comment editor of the Georgetown Law Journal, which is a mark of academic distinction in law school.

He was an associate at Skadden, Arps for 2 years. His leaving that firm was a sign of real dedication to something other than making money, because that is a firm which has long hours and large compensation.

Then he was an associate at Titus & McConomy, a partner in Reed Smith, and, since 2003, a judge on the U.S. district court for the Western District of Pennsylvania.

Judge Hardiman has very, very extensive professional and community activities. He was a delegate to the American Bar Association House of Delegates, a Fellow of the Academy of Trial Lawyers of Allegheny County, a Hearing Officer for the Disciplinary Board of the Pennsylvania Supreme Court, a member of the Federalist Society. They are having their annual dinner on Thursday. He has a very, very fine record.

Judge Hardiman, if you would step forward. We have been joined by Senator Santorum, a distinguished Senator from Pennsylvania,

who is completing is second term, was in the House of Representatives for 4 years, and has a phenomenal record. He is a little older than you, Judge Hardiman, but not much. Senator Santorum is 48. You two young men have accomplished a great deal before the big 5–0.

Senator Santorum, it is a pleasure to have you before the Judiciary Committee.

Senator SANTORUM. Thank you, Mr. Chairman.

Chairman SPECTER. You are recognized.

PRESENTATION OF THOMAS MICHAEL HARDIMAN, NOMINEE TO BE CIRCUIT JUDGE FOR THE THIRD CIRCUIT, BY HON. RICK SANTORUM, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SANTORUM. I got here just in the nick of time. I should know better that you start your meetings on time. I apologize.

It is an honor to be here to appear again before my colleague, Senator Specter, the great Chairman of this committee, and in particular to be here to introduce to the Committee someone who I have known for many, many years, someone who I have tremendous respect for, for his wife, for his family, his extended family. It is a great family in western Pennsylvania. He has provided tremendous service to the people of western Pennsylvania, as has his family.

It is great to be here with them to testify here in this hearing before the committee. Judge Hardiman is someone who I had the pleasure of introducing when he was up for the district court.

I said at that time that he was a young man with tremendous potential, and someone who had tremendous respect from the Bar in western Pennsylvania, and that he would be an outstanding judge in spite of his youth.

I took that as someone who got involved in loftier offices at a young age that Judge Hardiman had a better temperament than I did when I was at his age to prepare himself for this job, and in fact, he has shown that. He truly has been an outstanding judge. I can tell you that I get—as I know, Senator Specter, you do—compliments for the people that we have nominated to the bench.

I cannot think of any judge that I have gotten more compliments about, from not just litigants, but from fellow jurists, fellow judges, than I have from Judge Hardiman. So I am ecstatic to be here today to recommend him to the committee.

He is someone who has earned the respect of his peers, earned the respect of the entire bar in western Pennsylvania, and I know that, at least from the correspondence that we have received, he is someone who is universally supported for this position. So it is an honor for me to be here to put his name forward and to introduce him.

I assume, Senator Specter, even though I am sorry I missed your introduction, you usually go through all of the academic record, so I will not go through that again.

But Tom and Lori are great citizens. Lori's parents, who I know are here, and the Zappala family, which is a great western Pennsylvania family, is here also. They represent, really, the best that

western Pennsylvania has to offer. So, it is a pleasure to be here to recommend him to the committee.

Chairman SPECTER. Well, thank you very much, Senator Santorum, for those words of support and for all you have done in the nominating process. You and I have a Commission which screens for the district court, and you and I have had a voice in the submission of Judge Hardiman's name to the President, and the President has agreed with us on this occasion, which is a great tribute to Judge Hardiman. Thank you very much.

While you are standing, Judge Hardiman, if you would raise your right hand to take the oath before the committee.

[Whereupon, Judge Hardiman was duly sworn.]

Chairman SPECTER. You may be seated. Let us begin by having you introduce your family formally for the record.

STATEMENT OF THOMAS MICHAEL HARDIMAN, NOMINEE TO BE CIRCUIT JUDGE FOR THE THIRD CIRCUIT

Judge HARDIMAN. Thank you, Senator Specter. With me today is my wife, Lori, our children, Kate Josephine, Matthew Robert, Ann Marissa Frances.

I am also privileged to have my parents, Robert and Judith Hardiman, and also my in-laws, Richard and Nancy Zappala, and my sister-in-law, Jordan, who is a resident of Washington.

In addition, friends from Bethesda, Maryland, Dr. Frank and Carol Bergin, originally from my hometown of Waltham, Massachusetts, and my dear friend from Skadden, Arps, Alan Swirski and his wife are with us today.

[The biographical information of Judge Hardiman follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used.)**

Thomas Michael Hardiman

2. **Address: List current place of residence and office address(es).**

Residence: Pittsburgh, Pennsylvania

Office address: 5260 U.S. Post Office & Courthouse
700 Grant Street
Pittsburgh, PA 15219

3. **Date and place of birth.**

July 8, 1965. Winchester, Massachusetts.

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

Married to Lori (Zappala) Hardiman. Lori is a lawyer who works as General Counsel to the First City Company, Suite 212, Four Gateway Center, Pittsburgh, PA 15222.

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

Georgetown University Law Center, 1987-1990, J.D. received on May 28, 1990.

University of Notre Dame, 1983-1987, B.A. received on May 17, 1987.

Universidad Iberoamericano, Mexico City, Mexico, January - May of 1985, no degree (I participated in exchange program while enrolled at the University of Notre Dame)

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

2003- Present, U.S. District Judge for the Western District of Pennsylvania

1999-2003 Reed Smith LLP; Partner

1992-1999	Titus & McConomy LLP (f/k/a Cindrich & Titus); Partner (1996-1999), Associate (1992-1996)
1989-1992	Skadden, Arps, Slate, Meagher & Flom LLP; Associate (1990-1992), Summer Associate/Law Clerk (1989-1990)
1988-1989	Pettit & Martin; Summer Associate/Law Clerk
1987	Waltham Central Square Taxi; Taxi Driver/Dispatcher

I have held the following unpaid volunteer positions:
Hearing Officer, Disciplinary Board of the Pennsylvania Supreme Court, 1995-1999

Alternate Hearing Officer, Disciplinary Board of the Pennsylvania Supreme Court. 1999-2003

Co-Chairman, Transition Team of Allegheny County Executive James C. Roddey, 1999-2000

President, Big Brothers Big Sisters of Greater Pittsburgh, Inc., 1999-2000

Director, Big Brothers Big Sisters of Greater Pittsburgh, Inc., 1995-Present

Treasurer, Republican Committee of Allegheny County, 2000-2003

Trustee, Richard A. Zappala Family Foundation, 2000-Present

Member, St. Edmund's Academy, Trustee Committee, 2005-Present

7. <u>Military Service</u>: **Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

None.

8. <u>Honors and Awards</u>: **List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

Fellow, Academy of Trial Lawyers of Allegheny County
"AV" Rating from Martindale-Hubbell
Delegate, American Bar Association House of Delegates
Georgetown Law Journal - Associate Editor, Notes & Comments Editor
Notre Dame Scholar

9. **Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.**

United States District Court for the Western District of Pennsylvania
Co-Chair, Information Technology Committee, 2004-Present
Co-Chair, Alternative Dispute Resolution Committee, 2005-Present
Governor's Judicial Advisory Commission, 5th Judicial District; Member, 2000-2003
American Bar Association, Delegate, 1996-1998
Pennsylvania Bar Association, Member Professionalism Committee, 1999-2003
Allegheny County Bar Association, Member (1992-2003), Ex-Officio (2003-Present)

10. **Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**

To the best of my knowledge, the Federal Judges Association is the only organization that engages in lobbying activities.

I am a member of:
American Inns of Court, University of Pittsburgh Chapter
American Judicature Society
Big Brothers Big Sisters of Greater Pittsburgh, Inc.
Duquesne Club
Federal Judges Association
Federalist Society
Longue Vue Club
The Law Club of Pittsburgh

11. **Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.**

Pennsylvania Supreme Court, November 19, 1992
District of Columbia Court of Appeals, May 29, 1991
Massachusetts Supreme Judicial Court, December 20, 1990
Supreme Court of the United States, August 4, 2000
U.S. Court of Appeals for the Third Circuit, December 9, 1996
U.S. District Court for the Western District of Pennsylvania, September 15, 1992
U.S. Tax Court, November 18, 1994

There have been no lapses of membership with the exception of the District of Columbia, where I have elected inactive status. In Massachusetts I am in "Judicial" status.

12. **Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.**

Jeffrey A. Jacobs, Reform of the National Guard: A Proposal to Strengthen the National Defense, 78 Geo. L.J. 625 (1990) (I edited this law review note).

Competency to Stand Trial, The Eighteenth Annual Review of Criminal Procedure: United States Supreme Court and Courts of Appeals 1987-1988, 77 Geo. L.J. 489 (1989) (I authored portions and edited this section of this annual survey of criminal procedure).

Remarks for the Installation of the Honorable Mary Jane Bowes, January 2, 2002 (I wrote and delivered this speech).

Remarks to the Academy of Trial Lawyers of Allegheny County and Gourley Cup Mock Trial participants on February 17, 2005. (I wrote and delivered this speech).

13. **Health: What is the present state of your health? List the date of your last physical examination.**

I am in excellent health. My last physical examination was on August 22, 2006.

14. **Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

On October 27, 2003 I was appointed by President George W. Bush to be a United States District Judge for the Western District of Pennsylvania.

15. **Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.**

(1) Citations to the ten most significant opinions I have written:

1. *Viad Corp. v. Cordial*, 299 F. Supp.2d 466 (W.D. Pa. 2003).

2. *Lexington Ins. Co. v. W. Pa. Hosp.*, 318 F. Supp.2d 270 (W.D. Pa. 2004).

3. *Patsakis v. Greek Orthodox Archdiocese of America*, 339 F. Supp.2d 689 (W.D. Pa. 2004), 428 F. Supp.2d 378 (W.D. Pa. 2006).

4. *United States v. Shackelford*, No. 04-192 (W.D. Pa. June 3, 2005) (Memorandum Opinion granting Defendant's Motion to Suppress).

5. *Pinson v. Berkley Medical Res., Inc.*, No. 03-1255, 2005 U.S. Dist. LEXIS 13045 (W.D. Pa. June 21, 2005).

6. *Arbay LLC v. Duquesne Light Holdings, Inc.*, No. 03-1473 (W.D. Pa. Oct. 25, 2005) (Opinion following bench trial).

7. *Lewis v. Sheridan Broadcasting Networks, Inc.*, No. 04-1015, 2005 U.S. Dist. LEXIS 26762, 2005 WL 2977799 (W.D. Pa. Nov. 7, 2005).

8. *Bhatt v. Brownsville Gen. Hosp.*, No. 03-1578, 2006 WL 167955 (W.D. Pa. Jan. 20, 2006).

9. *Dycoal, Inc. v. Northwestern Synfuels, LLC,* No.05-679, 2006 U.S. Dist. LEXIS 25078, 2006 WL 360642 (W.D. Pa. Feb. 15, 2006).

10. *Yang v. Tsui*, ____ F. Supp.2d ___, 2006 WL 2466095 (W.D. Pa. 2006).

(2) A short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings:

1. *Wagner v. Bank of New York,* 95 Fed.Appx. 463 (Table) (Apr. 28, 2004, 3d Cir.) (not precedential): The Court of Appeals (Per Curiam) vacated an order and remanded the case in which I found that the court lacked jurisdiction to hear a bankruptcy appeal. Appellant failed to file a notice of appeal from the bankruptcy court's final order entered on August 22, 2003. Because he had appealed a prior order on August 6, 2003, however, the Court of Appeals held that this premature notice of appeal became effective upon entry of the Bankruptcy Court's subsequent final order.

2. *Altman v. Commissioner,* 124 Fed.Appx. 748, 2005 WL 555305 (3d Cir. 2005) (not precedential): The Court of Appeals (Shapiro, J., sitting by designation) reversed and remanded an order I entered affirming a decision of an Administrative Law Judge of the Social Security Administration. The Court of Appeals held that the ALJ erred by not considering a physician-approved report

that the claimant was limited to part-time sedentary work. Accordingly, the case was remanded to the ALJ to give due consideration to the report.

3. *Dubrosky v. Colonial Life & Accident Ins. Co.,* 129 Fed.Appx. 691, 2005 WL 900233 (3d Cir. 2005) (not precedential): The Court of Appeals reversed a grant of summary judgment in a contract action for unpaid commissions. When this case was assigned to me, the only outstanding issue was the amount of damages, as Judge Cindrich had already decided the merits of the case. After advising the parties that I did not believe it appropriate for me to second-guess Judge Cindrich's decision, the parties stipulated to the amount of damages and I entered an order so an appeal from Judge Cindrich's decision could be taken.

4. *Yang v. Tsui,* 416 F.3d 199 (3d Cir. 2005) (precedential): This international custody dispute presented an issue of first impression for the Court of Appeals for the Third Circuit: "whether a District Court should abstain from a Hague Convention Petition when a state court custody proceeding is pending . . . ." In light of the pendency of state court proceedings in British Columbia and in Pennsylvania, I abstained from adjudicating the matter under *Younger v. Harris,* 401 U.S. 37 (1971) and its progeny. The Court of Appeals reversed, holding that abstention was not appropriate because petitioner did not raise her Hague Convention claim in state court, her petition and the custody determinations are distinct issues, and the Hague Convention and its implementing statute, 42 U.S.C. §11601 *et seq.*, require a federal court to hear a Hague Convention petition on the circumstances of this case. *Yang,* 416 F.3d at 205.

5. *Porter v. Cancelmi,* 112 Fed.Appx. 867 (Table) (3d Cir. Aug. 11, 2005) (not precedential): In this prisoner case, Magistrate Judge Lisa Pupo Lenihan issued a Report and Recommendation that plaintiff's petition to proceed *in forma pauperis* should be denied because he had "three strikes" pursuant to 28 U.S.C. §1915(g). The Court of Appeals vacated and remanded the case, which remains pending before Magistrate Judge Lenihan.

6. *Johnson v. Blaine,* 144 Fed.Appx. 960, 2005 WL 2475082 (3d Cir. 2005) (not precedential): In this case, a prisoner brought a claim for assault. Magistrate Judge Robert Mitchell issued a Report and Recommendation suggesting dismissal on statute of limitations grounds that I adopted. On appeal, the state conceded that plaintiff's complaint was timely because the statute of limitations was tolled while plaintiff pursued his administrative remedies. Accordingly, the case was remanded and remains pending before Magistrate Judge Mitchell.

7. *Carston v. Sacks,* 157 Fed.Appx. 504, 2005 WL 3244276 (3d Cir. Dec. 2, 2005) (not precedential): In this case a prisoner appealed from a grant of summary judgment that I entered after adopting a Report and Recommendation issued by Magistrate Judge Amy Reynolds Hay. The Court of Appeals held that an issue of material fact existed as to whether plaintiff complied with prisoner

grievance procedures and properly exhausted his claims. The case remains pending before Magistrate Judge Hay.

8. *Clegg v. Falcon Plastics,* 174 Fed.Appx. 18, 2006 WL 887937 (3d Cir. Apr. 6, 2006) (not precedential): In this case, plaintiff brought several federal and state law claims against her former employer and two former co-workers. I granted summary judgment for defendants and plaintiff appealed. The Court of Appeals affirmed my rulings on the Title VII retaliation claim, the Pennsylvania Equal Rights Amendment claim and two counts of intrusion upon seclusion. The Court of Appeals reversed on plaintiff's Title VII hostile work environment claim (and the concomitant Pennsylvania Human Relations Act claim), stating: "Although we believe it is a close question, [plaintiff] has presented sufficient evidence to establish a genuine issue of material fact as to whether . . . [plaintiff] was exposed to a hostile work environment." *Id.* at *8.

(3) Citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions

1. *Underwood v. Beaver County Children & Youth Serv.,* No. 03-1475 (W.D. Pa. January 21, 2004) (Memorandum Opinion denying Motion to Dismiss).

2. *Pachis v. Greek Orthodox Archdiocese of America,,* No. 03-1896 (W.D. Pa. April 23, 2004) (Memorandum Opinion granting Defendants' Motion to Dismiss).

3. *United States v. Staten*, 03-295 (W.D. Pa. May 18, 2004) (Memorandum Opinion denying Defendant's Motion to Suppress). 2006 WL 1518840 (3d Cir. June 2, 2006)

4. *United States v. Banks,* No. 03-245 (W.D. Pa. July 1, 2004) (Memorandum Opinion denying Defendant's Motion to Suppress). U.S. v. Vampire Nation, 451 F.3d 189 (3d Cir. 2006)

5. *Shigle v. Mount Pleasant Borough*, No. 03-1433 (W.D. Pa. July 6, 2004) (Memorandum Opinion denying Motion to Dismiss Amended Complaint).

6. *United States v. Jenkins*, No. 03-283 (W.D. Pa. July 8, 2004) (Memorandum Opinion denying Defendant's Motion to Suppress). 2006 WL 1489031 (3d Cir. May 31, 2006)

7. *Shigle v. Mount Pleasant Borough*, No. 03-1433 (W.D. Pa. August 11, 2004) (Memorandum Opinion granting in part and denying in part Defendant Munk's Motion for Summary Judgment).

8. *Patsakis v. Greek Orthodox Archdiocese of America*, 339 F. Supp.2d 689 (W.D. Pa. 2004).

9. *United States v. Brown*, No. 04-55 (W.D. Pa. November 8, 2004) (Memorandum Opinion denying Defendant's Motion to Suppress).

10. *United States v. Smith*, No. 04-74 (W.D. Pa. November 12, 2004) (Memorandum Opinion denying Defendant's Motion to Suppress).

11. *United States v. Cole*, No. 04-109 (W.D. Pa. Jan. 19, 2005) (Memorandum Opinion denying Defendant's Motion to Suppress).

12. *United States v. Bailey*, No. 04-24 (W.D. Pa. February 14, 2005) (Memorandum Opinion denying Defendant's Motion to Suppress).

13. *United States v. Shackelford*, No. 04-192 (W.D. Pa. June 3, 2005) (Memorandum Opinion granting Defendant's Motion to Suppress).

14. *Parente v. City of Pittsburgh*, No. 03-938 (W.D. Pa. August 5, 2005) (Memorandum Opinion granting in part and denying in part Defendants' Motions for Summary Judgment).

15. *United States v. Holyfield*, No. 04-035, 2005 U.S. Dist. LEXIS 25078, 2005 WL 2106624 (W.D. Pa. Aug. 26, 2005).

16. *Shigle v. Mount Pleasant Borough*, No. 03-1433, 2005 U.S. Dist. LEXIS 28131, 2005 WL 3070944 (W.D. Pa. November 11, 2005).

17. *United States v. Yamba*, 407 F. Supp.2d 703 (W.D. Pa. 2006).

18. *Patsakis v. Greek Orthodox Archdiocese of America*, 428 F. Supp.2d 378 (W.D. Pa. 2006).

19. *Hoffman v. Borough of Avalon,* No. 04-1825 (W.D. Pa. August 22, 2006) (Opinion granting Defendant's Motion to Dismiss).

20. *United States v. Tilley*, No. 05-267 (W.D. Pa. August 30, 2006) (Memorandum Opinion denying Defendant's Motion to Suppress)

21. *United States v. Gniewek*, No. 06-88 (W.D. Pa. September 20, 2006) (Memorandum Opinion denying Defendant's Motion to Suppress)

22. *United States v. Yamba*, No. 04-329 (W.D. Pa. January 6, 2006) (Opinion denying Defendant's Motion to Suppress)

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

1995-1999; Hearing Officer, Disciplinary Board of the Pennsylvania Supreme Court; appointed by the Disciplinary Board

1999-2003; Alternate Hearing Officer, Disciplinary Board of the Pennsylvania Supreme Court; appointed by the Disciplinary Board

1999-2000; Co-Chairman, Transition Term of Allegheny County Executive James C. Roddey; appointed by County Executive Roddey

2000-2003; Member, Governor's Judicial Advisory Commission, 5th Judicial District; appointed by Governors Tom Ridge and Mark Schweiker.

2000-2001; Committeeman, Republican Committee of Allegheny County, 14th Ward, 5th District, City of Pittsburgh; elected

2000-2003; Treasurer, Republican Committee of AlleghenyCounty; elected

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

I did not serve as a clerk to a judge.

2. whether you practiced alone, and if so, the addresses and dates;

I never practiced alone.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Reed Smith LLP; 435 Sixth Avenue; Pittsburgh, PA 15219; Partner, 1999-2003

Titus & McConomy LLP (f/k/a Cindrich & Titus)
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Partner, 1996-1999; Associate, 1992-1996

Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, NW; Washington, D.C. 20005
Associate, 1990-1992

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

My entire legal career was devoted to litigation work, both civil and criminal. The character of my practice can fairly be divided into three periods, which are discussed below.

After graduating from law school, I joined the Washington, D.C. office of Skadden, Arps, Slate, Meagher, & Flom as an Associate in the Litigation Group. For two years I worked on a variety of litigation matters related to contracts, securities, white-collar crime, bankruptcy, and energy. Like most young associates at large law firms, I spent most of my time researching and writing, preparing discovery requests and working on document productions

In 1992, I joined the Litigation Group of Cindrich & Titus, where I hoped to obtain more in-court litigation experience than a large firm could provide. My first two years at the firm were spent working researching and writing quite a bit, but I also took numerous depositions and acted as second chair. I began to find and cultivate new clients and obtained substantial experience as lead counsel on numerous cases involving real estate, injunctions, civil rights, securities, constitutional law, taxation and non-competition agreements.

After I was elected Partner at Titus & McConomy in 1996, I was engaged in an active civil and criminal litigation practice in federal and state courts. The subject matter of the cases I handled did not change much since I first began practicing law in Pittsburgh. The principal change during these seven years was that I became lead or sole counsel on matters instead of serving as second or third chair. Thus, I spent substantial time managing my caseload and the work of several talented associates who worked with me at Titus & McConomy and Reed Smith.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

I represented individuals, corporations, partnerships and unincorporated associations. My practice encompassed a broad range of both civil and criminal matters, although I gained specialized knowledge in real estate litigation.

c. **1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.**

I appeared in court frequently. I estimate that I averaged between one and two court appearances per week during my legal career in Pittsburgh.

2. What percentage of these appearances was in:

(a) federal courts: 25%
(b) state courts of record: 70%
(c) other courts: 5%

3. What percentage of your litigation was:

(a) civil: 95%
(b) criminal. 5%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried to verdict or judgment at least nineteen cases, including three cases as sole counsel, twelve cases as chief counsel, and four cases as associate counsel.

5. What percentage of these trials was:

(a) jury: 25%
(b) non-jury: 75%

18. **<u>Litigation</u>: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:**

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *William L. Dailey, et al. v John DeFazio, et al.*
Civil Action No. 01-1911 (W.D. Pa. 2001)
U. S. District Court for the Western District of Pennsylvania
Hon. Robert J. Cindrich

In this matter I served as lead counsel to several individuals and the Republican Committee of Allegheny County in their challenge to the legality of redistricting plans adopted by Allegheny County Council after the 2000 Census. We alleged that the redistricting plan adopted by County Council violated both the United States Constitution and the Allegheny County Administrative Code. The District Court agreed that the redistricting plan violated the Administrative Code and held the plan invalid. After County Council passed a second plan, we filed another case in federal court, which was rendered moot because County Council passed a third redistricting plan shortly before trial was scheduled on the second plan. A trial on the legality of this third plan was held on December 16, 2002. The district court ruled against my clients, finding that the third redistricting plan adopted by County Council did not violate federal or state law. The case involved a matter of public interest because the voting rights of over 118,000 persons were at stake and the redistricting was adopted pursuant to a new "home rule" government.

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2. *Andy Modrovich, et al. v. Allegheny County Pennsylvania*
Civil Action No. 01-0531 (W.D. Pa. 2001), 385 F.3d 397 (3d Cir. 2004)
U.S. District Court for the Western District of Pennsylvania
Hon. Donetta W. Ambrose

I worked *pro bono* with a team of Reed Smith lawyers who were defending Allegheny County in an equity action brought by two atheists who sought to force the removal of The Ten Commandments plaque from the side of the Allegheny County Courthouse. The Commandments Plaque, erected in 1917, has substantial historical value as it was intended to honor those who perished in World War I and to endorse the rule of law over the whims of the powerful. This case was of great interest to numerous residents of Allegheny County, as indicated by the hundreds of letters and telephone calls that the County Executive received relative to the matter. Chief Judge Donetta Ambrose ruled in favor of our clients and the Court of Appeals for the Third Circuit affirmed her decision.

Co-Counsel

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3. *Beverly Powell v. Housing Authority of the City of Pittsburgh*
812 A.2d 1201 (Pa. 2002)
Court of Common Pleas of Allegheny County, Hon. R. Stanton Wettick
Pennsylvania Commonwealth Court
Pennsylvania Supreme Court

In this case I was lead counsel to the Housing Authority of the City of Pittsburgh both at trial and on appeal to the Supreme Court of Pennsylvania. The case involved the constitutionality of regulations promulgated by the U. S. Department of Housing and Urban Development that permitted housing authorities to terminate Section 8 benefits to those whose family members engage in violent criminal activity. The trial court held the regulations unconstitutional, ruling against my client. The Pennsylvania Supreme Court reversed.

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4. *Robert Smith, et al. v. Michael F. Coyne, et al.*
555 Pa. 21, 722 A.2d 1022 (Pa. 1999)
Court of Common Pleas of Allegheny County, Hon. R. Stanton Wettick, Jr.
Pennsylvania Supreme Court

This case began as a simple residential landlord-tenant case and expanded into a vigorous dispute among several parties, including individuals, corporations, public agencies, and non-profit organizations. At issue was the constitutionality of Rule 1008(B) of the Rules of District Justice Procedure, which governed a tenant's ability to remain in possession of property during the pendency of an appeal.

I represented Landlord Service Bureau, Inc., a consortium of "mom and pop" landlords interested in upholding the constitutionality of Rule 1008(B) because it required an appealing tenant to pay rent due into court in order to remain in possession during the appeal. The Housing Authority of the City of Pittsburgh, a real estate company called Pittsburgh Factors, and the American Congress of Real Estate had the same interest as my client and I cooperated with counsel for those entities in preparation of the case. Neighborhood Legal Services and the Community Justice Project represented several tenants who sought to invalidate Rule 1008(B).

In a scholarly opinion exceeding 40 pages, Judge Wettick ruled against my client and the other groups representing the landlord position. Judge Wettick held that Rule 1008(B) violated Article I, Section 6 of the Pennsylvania Constitution which guarantees the right to trial by jury. Judge Wettick rejected all of the other claims made by the tenants, including alleged violations of due process and equal protection of the law under the federal and state constitutions.

We appealed the case directly to the Pennsylvania Supreme Court and I was chosen to argue the landlord's position. The Supreme Court of Pennsylvania reversed Judge Wettick's decision unanimously.

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5. *Borough of Edgewood, et al. v. Henry Cisneros, et al.*
129 F.3d 1254 (3d Cir. 1997)
U.S. District Court for the Western District of Pennsylvania
Hon. Gustave Diamond
U.S. Court of Appeals for the Third Circuit

This high-profile case involved the purchase of single family homes – at prices above the median home price in Allegheny County – for use as public housing. I

was retained by two African-American residents of Edgewood and its Borough Council to challenge the legality of the purchases, which were made pursuant to a federal court order known as the Sanders Consent Decree. Soon after the Allegheny County Housing Authority announced that it was going to purchase eight homes in Edgewood, we filed a Motion for a Preliminary Injunction and a Complaint in Equity. The U.S. District Court for the Western District of Pennsylvania denied the Motion and dismissed the Complaint. We filed an appeal with the U.S. Court of Appeals for the Third Circuit, which upheld the District Court.

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Community Justice Project
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6. *Ronald Alexander, et al. v. Joseph Riga, et al.*
208 F.3d 419 (3d Cir. 2000), *cert. denied*, 531 U.S. 1069 (2001)
U.S. District Court for the Western District of Pennsylvania
Hon. William L. Standish
U.S. Court of Appeals for the Third Circuit

In this case I was retained to defend a husband and wife, both first-generation Italian immigrants, who were accused of violating the Fair Housing Act of 1968

and the Civil Rights Act of 1866. After a hard-fought two week trial, the jury returned a verdict in favor of my clients. The U.S. Court of Appeals for the Third Circuit reversed and remanded the case for a trial on the issues of punitive damages and attorneys' fees, despite the fact that the plaintiffs were awarded no compensatory damages. We filed a Petition for Writ of Certiorari with the U.S. Supreme Court, which was denied. This case involved several cutting-edge legal issues, including standing to sue, liability without damages, and causation.

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7. *Ravin, Inc. v. First City Company*
692 A.2d 577 (Pa. Super. 1997)
Court of Common Pleas of Allegheny County, Pennsylvania
Hon. James H. McLean
Pennsylvania Superior Court

This case was a construction dispute in which I defended a real estate management company and a related real estate partnership that developed and owned an upscale mall in Mt. Lebanon, Pennsylvania. The plaintiff construction company filed a ten count complaint against my clients, including claims for breach of oral and written contract and quasi-contract claims. Prior to trial the plaintiff withdrew four of its causes of action. After the plaintiff put its case on, the Court dismissed five of the six remaining claims by granting my Motion for Compulsory Nonsuit. We received a Directed Verdict on the tenth and final count before the case was submitted to the jury.

The plaintiff appealed the case to Superior Court, which affirmed the verdict in favor of my client. Superior Court set a noteworthy precedent regarding the exclusion of expert testimony when an expert attempts to opine regarding the value of leasehold improvements without ever having inspected the property at issue.

Co-Counsel: None

Opposing Counsel:

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8. *Hubert Hudson v. Frank Coppola, et al.*
No. 00-3369 (3d Cir. 2000)
U.S. District Court for the Western District of Pennsylvania
Hon. Gary L. Lancaster
U.S. Court of Appeals for the Third Circuit

In this case I defended the Housing Authority of the City of Pittsburgh and two of its police officers in a civil rights case brought by a man who was apprehended for drunk and disorderly conduct at one of the Housing Authority's communities. This jury trial was a unique challenge because the plaintiff represented himself at trial. Consequently, the trial took some odd twists and turns that required me to think quickly and respond to some very unorthodox tactics. The judge directed a verdict in my clients' favor on most of plaintiff's claims, but a claim for excessive use of force went to the jury. The jury returned a verdict in our favor after only fifteen minutes.

9. *Paul Mutschler v. Paul Meggitt Kay, et al.*
No. GD94-19312
Court of Common Pleas of Allegheny County, PA
Hon. R. Stanton Wettick

Paul Mutschler v. Lorasen Holdings, Inc., et al.
Civil Action No. 7295 of 2001
Court of Common Pleas of Westmoreland County, PA
Hon. Gary Caruso

We represented an individual in an executive severance and partnership dispute with his former partners and several of their closely held corporations. The case involved complicated corporate, partnership, and post-judgment issues and was further complicated by the offshore status of the defendants and several of their companies. We obtained a verdict and judgment for $450,000. After the defendants failed to pay the judgment, we pursued a garnishment action against an affiliate and received a judgment against that corporation worth over $500,000. The second judgment debtor owned valuable real estate in Western Pennsylvania which was transferred for $10 to another corporate affiliate. Ultimately, after I assumed judicial duties, the case was settled. Although this case was not significant to the public, it was important on a personal level because my colleague and I pursued justice for the client many years after his ability to pay legal fees had been exhausted.

Co-Counsel:

Brian T. Himmel, Esquire
Reed Smith LLP
435 Sixth Avenue
Pittsburgh, PA 15219
(412) 288-4058

Opposing Counsel:

Thomas E. Birsic, Esquire
Kirkpatrick & Lockhart LLP
535 Smithfield Street
Pittsburgh, PA 15222
(412) 355-6538

10. *In re: Ernesto Orellana-Hercules*
No. A27-628-430
Immigration Judge Richard Nejelski

In this *pro bono* matter, I represented a young man who emigrated from El Salvador. I filed an application for asylum and the case was litigated before an administrative law judge of the Immigration and Naturalization Service. The issue was whether Mr. Orellana possessed a well-founded fear of persecution based on his membership in a social group (*i.e.*, as a resident of Teosinte in Chalatenango Province, El Salvador). The case was challenging because although Mr. Orellana had been persecuted, the reasons for the persecution did not fit neatly into one of the categories required to be proven to entitle one to receive asylum. I was very gratified with Judge Nejelski's decision to grant asylum to Mr. Orellana because he was truly afraid to return to El Salvador.

Co-Counsel: None

Opposing Counsel:
INS District Counsel
4420 North Fairfax Drive
Room 500
Arlington, VA 22203

19. Legal Activities: **Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)**

In 1995, the Disciplinary Board of the Pennsylvania Supreme Court appointed me a Hearing Officer. When my term ended in 1999, I was appointed an Alternate Hearing Officer. In my capacity as a Hearing Officer and Alternate Hearing Officer, I sat on three-lawyer panels that adjudicated cases brought by the Disciplinary Board against lawyers who were accused of violating the Rules of Professional Conduct. This unpaid, quasi-judicial position was a rewarding professional experience and influenced my decision to seek judicial office.

In addition to my work as a Hearing Officer, I served an a arbitrator for the National Association of Securities Dealers in cases involving securities brokers and dealers who were accused of violating the common law and/or federal and state securities laws. Like my work for the Disciplinary Board, these cases were heard by three-person panels. Unlike the Disciplinary Board cases, however, I typically was the only attorney on these panels. Accordingly, I usually was asked to serve as Chairman of the panels to ensure that the arbitration hearings were conducted in an impartial, professional, and expeditious manner. There was a small stipend for this work, but it was essentially *pro bono*.

Other significant legal activities I pursued apart from trying cases included my work on the Governor's Judicial Advisory Commission for the Fifth Judicial District. This Commission met for several days to interview, consider, and report on aspiring judges for vacancies on the Court of Common Pleas of Allegheny County. It was an honor and a pleasure to serve, without compensation, in an effort to recommend judicial candidates to the Governor. Soon after his election in 2002, Governor Rendell appointed three first-rate lawyers, all of whom were recommended by our Commission, to the Court of Common Pleas of Allegheny County.

During my tenure on the U.S. District Court for the Western District of Pennsylvania I have been active in the American Inns of Court and numerous bar-related functions for the Academy of Trial Lawyers of Allegheny County, the Allegheny County Bar Association, the Federal Bar Association, and the Pennsylvania Bar Institute.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

   None.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

   I will resolve any potential conflict of interest by following 28 U.S.C. §455 and Canon 3(C) of the Code of Conduct for United States Judges, which govern judicial recusal. Both the Clerk of Courts and my chambers maintain a recusal list that includes entities in which I have a financial interest or other conflict. This recusal list is updated regularly.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

   No.

4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

   See attached Financial Disclosure Report.

5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**

   See attached Net Worth Statement.

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

Yes, I served as Finance Chairman for Bowes for Superior Court. Mary Jane Bowes ran for Pennsylvania Superior Court and was elected on November 8, 2001. My principal responsibility was to raise money for the campaign and I served for about one year. Until my nomination for District Court Judge, I served as Co-Chair for Roddey 2003, the re-election campaign for County Executive James C. Roddey.

AO-10 (WP)
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT

Nomination Report

Report Required by the Ethics in Government Act of 1978. (5 U.S.C. App. §§101-111)

1. Person Reporting *(Last name, first, middle initial)*	2. Court or Organization	3. Date of Report
Hardiman, Thomas M.	Third Circuit	September 14, 2006

4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)*	5. Report Type (check appropriate type)	6. Reporting Period
U.S. Circuit Judge - Nominee	_X_ Nomination, Date: 9/13/06 ___ Initial ___ Annual ___ Final	01/01/05 to 8/31/06

7. Chambers or Office Address
5260 U.S. Post Office & Courthouse
700 Grant Street
Pittsburgh, Pa. 15219

8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.

Reviewing Officer _____ Date _____

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

I. POSITIONS. *(Reporting individual only; see pp. 9-13 of Instructions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
	NONE (No reportable positions.)	
1	Director	Big Brothers Big Sisters of Greater Pittsburgh, Inc.
2		
3		

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of Instructions.)*

	DATE	PARTIES AND TERMS
X	**NONE** (No reportable agreements.)	
1		
2		

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of Instructions.)*

	DATE	SOURCE AND TYPE	GROSS INCOME
A.	**Filer's Non-Investment Income**		
X	**NONE** (No reportable non-investment income.)		
1			$
2			$
3			$

B. Spouse's Non-Investment Income - If you were married during any portion of the reporting year, please complete this section. (dollar amount not required except for honoraria)

NONE (No reportable non-investment income.)

1	2005	The First City Company, Salary
2	2006	The First City Company, Salary

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Thomas M. Hardiman

Date of Report: September 14, 2006

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.
(Includes those to spouse and dependent children. See pp. 25-27 of Instructions.)

	SOURCE	DESCRIPTION
	NONE (No such reportable reimbursements.)	
1		Exempt
2		
3		
4		
5		
6		
7		

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of Instructions.)*

	SOURCE	DESCRIPTION	VALUE
	NONE (No such reportable gifts.)		
1		Exempt	$
2			$
3			$
4			$

VI. LIABILITIES. *(Includes those of spouse and dependent children See pp. 32-33 of Instructions.)*

	CREDITOR	DESCRIPTION	VALUE CODE*
X	**NONE** (No reportable liabilities.)		
1			
2			
3			
4			
5			



FINANCIAL DISCLOSURE REPORT | Name of Person Reporting: Thomas M. Hardiman | Date of Report: September 14, 2006

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

	A Description of Assets (including trust assets)	B Income during reporting period	C Gross value at end of reporting period	D Transactions during reporting period	E
	Note: (X) after each asset exempt from prior disclosure	Amt. Code 1 (A-H) / Type (e.g., div., rent or int.)	Value Code 2 (J-P) / Value Method Code 3 (Q-W)	Type (e.g., buy, sell, merger, redemption)	Date (Month-Day) / Value Code 2 (J-P) / Gain Code 1 (A-H) / If not exempt from disclosure: Identity of buyer/seller (if private transaction)
	NONE (No reportable income,				
1	PNC Checking Account	A Int.	L T	Exempt	
2	ESB Bank Savings Account	A Int.	M T		
3	PNC Money Market Account	C Int.	M T		
4	Vanguard Prmcp Mut. Fund (MF)	A Div.	K T		
5	Columbia Banc Common Stk (CS)	A Div.	K T		
6	Evoxis Convertible Debt	None	J T		
	WACHOVIA EQUITY ACCT.				
7	Evergreen Money Market (MM)	D Int.	M T		
8	American Axle & Mfg.	A Div.	K T		
9	American Int'l Group	A Div.	K T		
10	Apria Healthcare Group CS	None	J T		
11	Bank of America CS	A Div.	K T		
12	BJ's Wholesale CS	None			
13	Borders Group CS	A Div.			
14	Cisco Systems CS	None	K T		
15	Citigroup CS	A Div.	K T		

1 Income/Gain Codes (See Col. B1, D1): A=$1,000 or less; B=$1,001-$2,500; C=$2,501-$5,000; D=$5,001-$15,000; E=$15,001-$50,000; F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=Over $5,000,000

2 Value Codes (See Col. C1, D3): J=$15,000 or less; K=$15,001-$50,000; L=$50,001-$100,000; M=$100,001-$250,000; N=$250,001-$500,000; O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=Over $5,000,000

3 Value Method Codes (See Col. C2): Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash Market; U=Book Value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT

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VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

	NONE (No reportable income, assets, or transactions)									
16	Coca-Cola CS	A	Div.	J	T					
17	Cooper Tire & Rubber CS	A	Div.	J	T					
18	Coventry Health Care CS		None							
19	Dell CS		None	K	T					
20	Direct TV CS		None	K	T					
21	Embarq CS	A	Div.	J	T					
22	Fairchild Semiconductor CS		None	K	T					
23	Fannie Mae CS	A	Div.	J	T					
24	First Health Group CS		None							
25	Freescale Semiconductor B CS (Motorola spinoff)		None							
26	General Electric CS	A	Div.	K	T					
27	Hasbro CS	A	Div.	J	T					
28	Helix Energy CS		None	K	T					
29	Home Depot CS	A	Div.	J	T					
30	Loews Corp. CS	A	Div.							
31	Magellan Health Svcs. CS		None	K	T					

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VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

	Description of Assets (including trust assets)	Income during reporting period (A)	Type (e.g., div., rent, or int.)	Value at end of reporting period (J)	Value Method Code (Q)	Type (e.g., buy, sell, or exchange)	Date (Month, Day)	Value (J)	Gain (K)	Identity of buyer/seller (if private transaction)
	NONE (No reportable income, assets, or transactions)									
32	Medco Health Solutions CS (Merck spinoff)		None							
33	Merck CS	A	Div.							
34	Microsoft CS	A	Div.	K	T					
35	Motorola Inc. CS	A	Div.	K	T					
36	NCR Corp. CS		None	K	T					
37	Newell Rubbermaid CS	A	Div.	J	T					
38	Newmont Mining CS	A	Div.							
39	Nextel Comm. CS		None							
40	Nokia Corp. ADR	A	None	K	T					
41	Nucentrix Broadband CS		None							
42	Peak Int'l CS		None	J	T					
43	Pfizer CS	A	None	K	T					
44	Pharmion CS		None	J	T					
45	Plato Learning CS		None	J	T					
46	PNC Financial Svcs CS	A	Div.							
47	Sprint Corp. CS	A	Div.	K	T					

1 Income Gain Codes (See Col. B1 or B2): A $1,000 or less; B $1,001 - $2,500; C $2,501 - $5,000; D $5,001 - $15,000; E $15,001 - $50,000

2 Value Codes (See Col. C1, D1): J $15,001 - $50,000; K $50,001 - $100,000; L $100,001 - $250,000; M $250,001 - $500,000; N $500,001 - $1,000,000; O $1,000,001 - $5,000,000

*3 Value Method Codes (See Col. C2): Q Appraisal

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Name of Person Reporting	Date of Report
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VII. Page 4 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

	A Description of Assets (including trust assets)	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
		(1) Amount Code 1 (A-H)	(2) Type Code 2 (e.g., Div., Rent, Int.)	(1) Value Code 1 (J-P)	(2) Value Method Code 2 (Q-W)	(1) Type (e.g., Buy, Sell, Redemption)	(2) Date (Month, Day, Year)	(3) Value Code 1 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of Buyer/Seller (if private transaction)
	NONE (No reportable income, assets, or transactions)									
48	Tyco CS	A	Div.	K	T					
49	United Online Inc. CS	B	Div.							
50	UST Inc. CS	A	Div.	K	T					
51	U. S. Treasury Bill		None	M	T					
52	Wal-Mart CS	A	Div.	K	T					
53	Waste Management CS	A	Div.							
54	Wilson Leather Exp. CS		None	J	T					
	WACHOVIA BOND ACCT.									
55	Evergreen MMF	A	Int.	K	T					
56	ABN Amro Cap VII	B	Int.	K	T					
57	Arch Capital Pfd. Stk. (PF)	A	Div.	J	T					
58	Duke Energy PF	A	Div.	J	T					
59	Eaton Vance MF	A	Div.	K	T					
60	Ryder System Inc. PF	B	Div.	K	T					
61	Safeco Cap PF	B	Div.	K	T					



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VII. Page 5 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

	Description of Assets (Including trust assets) Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type Code 2	(3) Value Code 2 (J-P)	(4) Value Method Code 3 (Q-W)	(5) Type (e.g., buy, sell, merger) (Specify)	(6) Date Month-Day	(7) Value Code 2 (J-P)	(8) Gain Code 1 (A-H)	(9) Identity of buyer/seller (if private transaction)
	NONE (No reportable income, assets, or transactions)									
62	Franklin Biotech MF	A	Div.	J	T					
63	Investment Co. MF	A	Div.	K	T					
64	Putnam New Opp. MF	B	Div.	J	T					
65	UnumProvident PF	A	Div.	K	T					
66	Wash. Mut. Inves. MF	A	Div.	K	T					
	401(k) ACCOUNT #1									
67	Principal MM	A	Int.	J	T					
68	Principal Large Cap MF	A	Div.	K	T					
69	Principal Med. Co. Bld MF	A	Div.	J	T					
70	Principal Sm. Co. Grwth MF	A	Div.	J	T					
71	Principal Int'l Stock MF	A	Div.	J	T					
72	Principal Fin. Grp Inc.	A	Div.	J	T					
	401(k) ACCOUNT #2									
73	Merrill Lynch	A	Int.	J	T					

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VII. Page 6 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

	NONE (No reportable income, assets, or transactions)										
74	Agere Sys Inc. Class A CS		None	J	T						
75	Agere Sys Inc. Class B CS		None	J	T						
76	Central Europe & Russia MF	A	Div.	J	T						
77	Cisco Systems CS		None	J	T						
78	Citigroup CS	A	Div.	J	T						
79	Connetics CS		None	J	T						
80	Dow Chemical CS	A	Div.	J	T						
81	Dreyfus Premier Gr. Ch. MF	A	Div.								
82	EMC Corp CS		None	J	T						
83	Ford Motor CS	A	Div.	J	T						
84	General Electric CS	A	Div.	J	T						
85	Intel CS	A	Div.	J	T						
86	Merck CS	A	Div.	J	T						
87	Nektar Therapeutics CS		None	J	T						
88	Panacos Pharm. CS		None	J	T						

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VII. Page 7 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

	Description of Assets (including trust assets)	Income during reporting period		Gross value at end of reporting period		Transactions during reporting period				
	Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, merger, redemption)	(2) Date Month-Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
	NONE (No reportable income, assets, or transactions)									
89	Pfizer CS	A	Div.	J	T					
90	Qwest CS		None	J	T					
91	Sirius CS		None	J	T					
92	Time Warner CS	A	Div.							
	TRUST #1									
93	PNC Trust Account	A	Int.	J	T					
94	AMCAP MF	A	Div.	J	T					
95	Fundamental Inv. MF	A	Div.	K	T					
96	Growth Fund of America MF	A	Div.	K	T					
97	Investment Co of America MF	A	Div.	J	T					
98	New Perspective MF	A	Div.	J	T					
99	Washington Mutual Inv. MF	A	Div.	J	T					
	TRUST #2									

1 Income Gain Codes: A=$1,000 or less, B=$1,001-$2,500, C=$2,501-$5,000, D=$5,001-$15,000, E=$15,001-$50,000
(See Col. B1) (M)=Over $50,000

2 Value Codes: J=$15,000 or less, K=$15,001-$50,000, L=$50,001-$100,000, M=$100,001-$250,000, N=$250,001-$500,000
(See Col. C1, D1) O=$500,001-$1,000,000, P1=$1,000,001-$5,000,000, P2=$5,000,001-$25,000,000, P3=Over $25,000,000

3 Value Methods: Q=Appraisal, R=Cost (Real Estate Only), S=Assessment, T=Cash Market, U=Book Value, V=Other, W=Estimated

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VII. Page 8 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

NONE (No reportable income, assets, or transactions)									
100 PNC Trust Account	A	Int.	K	T					
101 AMCAP MF	A	Div.	K	T					
102 Fundamental Inv. MF	A	Div.	K	T					
103 Growth Fund of America MF	A	Div.	K	T					
104 Investment Co of America MF	A	Div.	K	T					
105 New Perspective MF	A	Div.	K	T					
106 Washington Mutual Inv. MF	A	Div.	K	T					
TRUST #3									
107 PNC Trust Account	A	Int.	J	T					
108 AMCAP MF	A	Div.	K	T					
109 Fundamental Inv. MF	A	Div.	K	T					
110 Growth Fund of America MF	A	Div.	L	T					
111 Investment Co of America MF	A	Div.	K	T					
112 New Perspective MF	A	Div.	K	T					

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VII. Page 9 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

Brief Description of Assets (Including trust assets owned by spouse or dependent children)	(A) Amount Code (A-H)	(B) Type Code (A-F)	(C) Value Code (J-P)	(D) Value Method Code (Q-W)	(E) Type (Purchase, sale, or exchange)	(F) Date (Month-Day)	(G) Value Code (J-P)	(H) Gain Code (A-H)	(I) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions)									
113 Washington Mutual Inv. MF	A	Div.	K	T					
TRUST #4									
114 PNC Trust Account	A	Int.	J	T					
115 AMCAP MF	A	Div.	L	T					
116 Fundamental Inv. MF	A	Div.	L	T					
117 Growth Fund of America MF	A	Div.	L	T					
118 Investment Co of America MF	A	Div.	L	T					
119 New Perspective MF	A	Div.	L	T					
120 Washington Mutual Inv. MF	B	Div.	L	T					
REAL ESTATE PARTNERSHIPS									
121 West Moon Twp. Assoc.	E	Dist.	M	U					
122 Bensalem Realty Assoc.	F	Dist.	N	U					

1 Income Gain Codes: (See Col. B1)
2 Value Codes (See Col. C1, D3)
3 Value Method Codes (See Col. D3)

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
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VII. Page 10 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

NONE (No reportable income, assets, or transactions)									
123 Vandergrift Assoc.	G	Dist.	N	U					
124 FC Hyde Property Partners	A	Dist.	J	U					
125 FC Robinson Partners	C	Dist.	J	U					
126 FC Treesdale Assoc.	A	Dist.	K	U					
127 Rodi Land Assoc.	D	Dist.	L	U					
128 FC Donegal Assoc.	A	Dist.	J	U					
129 First City GA Partners	E	Dist.	M	U					
130 First City WV Partners	A	Dist.	J	U					
131 Saddlebrook Associates	A	Dist.	J	U					
132 McIntyre Square Associates	D	Dist.	M	U					
133 FC Hampton LP	A	Dist.	K	U					
SCHWAB ACCOUNT									
134 Amer. Pwr. Conv. CS	A	Div.							
135 Bard CR Inc. CS		None	J	T					

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VII. Page 11 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

	NONE (No reportable income, assets, or transactions)								
136	Becton Dickinson CS	A	Div.	K	T				
137	BP PLC ADR	A	Div.	J	T				
138	Clarcor CS	A	Div.	J	T				
139	Comcast CS		None	K	T				
140	Dell CS		None						
141	Dentsply CS	A	None	J	T				
142	Eaton Corp. CS		None	J	T				
143	Emerson Elec. CS	A	Div.	J	T				
144	Exxon Mobile CS	A	Div.	J	T				
145	Gallagher Arthur CS		None	J	T				
146	General Electric CS	A	Div.	J	T				
147	IBM CS	A	Div.	J	T				
148	Ingersoll Rand CS		None						
149	ITT Corp. CS	A	Div.	J	T				
150	Johnson & Johnson CS	A	Div.	J	T				

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VII. Page 12 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

NONE (No reportable income, assets, or transactions)									
151 Kimberly-Clark CS	A	Div.	J	T					
152 Leggett & Platt CS	A	Div.	J	T					
153 McGraw Hill CS	A	Div.	K	T					
154 Nokia CS		None	J	T					
155 Pepsico CS	A	Div.	J	T					
156 Pfizer CS	A	Div.	J	T					
157 Unilever CS	A	Div.	J	T					
158 3M CS	A	Div.	J	T					
159 CBL & Assoc REIT	A	Div.	J	T					
160 Liberty Property REIT	A	Div.	J	T					
161 Schwab MM	A	Int.	J	T					

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Thomas M. Hardiman	August 1, 2006

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

Part III.A - Filer's Non-Investment Income. Income was received during the reporting period as U.S. Government salary for services as a United States District Judge.

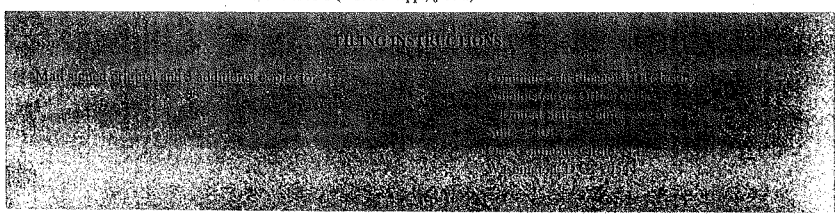
IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app., § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature Thos M. Hardiman Date September 14, 2006

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. App., § 104.)



FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		236	281	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule	1	401	330	Notes payable to relatives			
Unlisted securities--add schedule		10	000	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		253	000
Real estate owned-add schedule		975	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		140	000				
Cash value-life insurance		26	697				
Other assets itemize:							
				Total liabilities		253	000
				Net Worth	2	536	308
Total Assets	2	789	308	Total liabilities and net worth	2	789	308
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	Yes		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Unlisted Securities

Evoxis Convertible Debt	10,000

Listed Securities

Vanguard Primecap Mutual Fund	$ 22,139
Columbia Banc	13,550
American Axle	23,366
AIG	19,146
Apria Healthcare	10,195
Bank of America	15,441
Cisco Systems	21,990
Citigroup	22,207
Coca-Cola	13,443
Cooper Tire & Rubber	11,796
Dell	22,550
DirectTV	24,427
Ebay	11,128
Embarq	4,903
Fairchild Semiconductor	25,242
Fannie Mae	15,795
General Electric	17,030
Hasbro	14,210
Helix Energy	19,230
Home Depot	17,145
Magellan Health Svcs.	33,649
Microsoft	17,990
Motorola	18,704

NCR Corp	17,395
Newell Rubbermaid	13,495
Nokia	20,880
Peak Int'l	7,950
Pfizer	24,804
Pharmion	16,722
Plato Learning	10,098
Sprint Nextel	35,312
Tyco	28,765
Wal-Mart	17,888
Wilson Leather	8,289
ABN Amro	19,760
Arch Capital	12,750
Duke Energy Pfd.	19,230
Eaton Vance	34,396
Franklin Biotech	14,914
Investment Co.	37,627
Putnam New Opp.	12,706
UnumProvident	21,413
Washington Mutual Inv.	35,061
Principal Large Cap	21,136
Principal Med. Co.	4,049
Principal Sm. Co. Growth	2,184
Principal Int'l	3,445
Principal Fin. Grp. Inc.	2,857
Agere Sys Inc.	73
Central Europe & Russia Fund	4,918

Cisco	1,953
Citigroup	4,825
Connetics	1,176
Dow Chemical	3,903
EMC	1,097
Ford	1,386
General Electric	3,296
Intel	1,900
Merck	3,643
Nektar	3,668
Panacos	828
Pfizer	4,694
Qwest	809
Sirius	4,750
Wilson Leather	2,055
Amcol Int'l	2,322
Bard	15,036
Becton Dickinson	17,425
BP	11,908
Clarcor	13,477
Comcast	15,705
Dentsply	14,661
Eaton Corp.	8,977
Emerson Elec	14,376
Exxon Mobil	13,534
Gallagher, Arthur	12,060
General Electric	12,772

IBM	12,145
ITT CORP.	4,895
Johnson & Johnson	12,932
Kimberly-Clark	14,287
Leggett & Platt	14,406
McGraw Hill	15,375
Nokia	7,830
Pepsico	14,688
Pfizer	14,469
Unilever	12,516
3M	10,755
CBL & Assoc.	12,222
Liberty Property	14,361
Allegheny Cnty	25,898
Bentworth Sch. Dist.	25,106
Downington Pa.	26,570
Fox Chapel Pa.	31,869
Lower Merion Twp.	30,101
Northampton Cnty	25,381
Somerset Cnty	19,895
Total Listed Securities	$ 1,401,330

Real Estate Owned

Personal Residence	$ 975,000

Real Estate Mortgages Payable

Personal Residence	$ 253,000

III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

In my youth I was frequently instructed by my parents that "from those to whom much is given, much is expected." I have been blessed with a strong family, adequate intellect, great friendships, and good health. From the time I was in high school through the present I have consistently been involved in volunteer work with the disadvantaged. During college I became a Big Brother in the program run by the South Bend Big Brothers Big Sisters program. For the past thirteen years I have been involved with Big Brothers Big Sisters of Greater Pittsburgh as a volunteer, Director, and past President. While a resident of Washington, D.C., I volunteered as an English teacher one night a week at Sacred Heart Church School, which was run by devoted nuns who provided English classes to first-generation immigrants from all over the world.

My commitment to serve the disadvantaged has been a consistent part of my legal practice as well. As a law student at Georgetown and as a practicing attorney at Skadden, Arps, et al., I performed legal work for immigrants from Spanish speaking countries through a legal clinic called Ayuda in the Adams Morgan section of Washington, D.C. At Ayuda I assisted with client interviews and applications for employment authorization, among other issues. I cannot know the exact amount of hours volunteered at Ayuda, but it is probably between 100-200 hours.

In the two years I was at Skadden, I maintained an active *pro bono* caseload of political asylum cases and represented several immigrants, including a judge from Columbia, an accountant from Peru, and Salvadorans who were poor and uneducated. I tried two cases in immigration court by myself and was sole counsel for a woman on whose behalf I obtained a civil protection order as a result of spousal abuse. Firm records indicate over 167 hours were spent on these cases, although the actual time investment was probably greater because no bills were sent.

While in Pittsburgh, at the request of County Executive Dan Onorato (who was then a City Councilman), I took on a *pro bono* case for African-American public housing residents who sought to prevent the Department of Housing and Urban Development from converting units at Allegheny Commons East to the Section 8 program. I estimate approximately 200 hours on this case. In addition, I worked with Bob Cindrich, who became a federal judge here, for a criminal defendant who unwittingly entered a guilty plea. I estimate that I spent 50 hours on this case. I also worked with Paul Titus on a complex death penalty case for which I estimate 200 hours.

Since 2001, I have served as a Big Brother to a Little Brother. We began our match as part of a school-based mentoring program while this individual was a fifth-grader. In 2003 we converted our match to a community-based match, which is the traditional program of Big Brothers Big Sisters. This individual and I now see each other once or twice a month, usually for extensive periods of time. I estimate that I have spent about 200 hours with him over the course of our relationship.

In sum, I believe lawyers, judges, and all American citizens owe a moral duty to help those in need.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?**

No.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

There is no Judicial Nominating Commission for nominees to the Court of Appeals. I was invited by the White House Counsel's office to interview for the position of United States Circuit Judge. Following interviews with staff from the White House and Department of Justice, I underwent a background check conducted by the Federal Bureau of Investigation and the Department of Justice. I was nominated on September 13, 2006.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

No.

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the

judicial branch has usurped-many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. **A tendency by the judiciary toward problem-solution rather than grievance-resolution;**

b. **A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**

c. **A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**

d. **A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and**

e. **A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.**

The federal courts must be mindful of the separation of powers and our constitutional structure of government. The federal judiciary should neither loosen nor tighten jurisdictional requirements such as standing and ripeness. The court's duty is to adjudicate "cases" or "controversies" "arising under" federal law consistent with Article III of the Constitution. Each plaintiff deserves to have his, her, or its case adjudicated fully and fairly, without regard to the claims of other putative stakeholders who are not privy to the case. Accordingly, judges should resolve grievances whether they be brought by individuals, corporations, or other groups. Some of these cases will have wide-ranging policy implications, but these implications, if they exist, must necessarily be the consequence of the adjudication rather than the purpose thereof. Moreover, the United States Courts of Appeals are duty bound to adhere to the precedents of the Supreme Court.

AFFIDAVIT

I, Thomas M. Hardiman, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

September 22, 2006
(DATE)

Thos M. Hardiman
(NAME)

Patricia J. Pulkowski
(NOTARY)

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Patricia J. Pulkowski, Notary Public
City of Pittsburgh, Allegheny County
My Commission Expires May 23, 2009
Member, Pennsylvania Association of Notaries

Chairman SPECTER. Judge Hardiman, I begin by repeating a statement that I first heard 24 years ago from Senator Thurmond. The occasion was the hearing for Judge Manisman, who was up for district court, and in the Middle District, Judge Caldwell.

Senator Thurmond asked them in his inimitable Southern drawl, "If you are confirmed, do you promise to be cuhrteous?" Translated into English, that is, "If you are confirmed, do you promise to be courteous?"

Not surprisingly, Judge Manisman said yes, and Judge Caldwell said yes. Then Senator Thurmond said, "Because the more pohwer a person has, the more cuhrteous a person should be." "The more power a person has, the more courteous a person should be."

While I had initially thought that it was a question which had no significance because the nominee was bound to say that he/she promised to be courteous, but I have since come to think that it is a very profound question and a very significant answer.

Many nominees over the years—and when Senator Thurmond is not here—and he is not here. Senator Thurmond was 100 on December 2, 2002, and he served until January 3 of 2003, and was over 100 years old when he left the U.S. Senate and passed about 6 months thereafter. But whenever he is not here, I bring Thurmond's views to mind.

Many nominees have told me years after the fact that they thought about what Senator Thurmond had said. Because when you put on a black robe, especially a Federal black robe and you have life tenure, sometimes even a judge gets up on the wrong side of the bed and sometimes might not be as considerate or as thoughtful, and might find people not as well prepared as he or she thought, or not as direct. But that is a very wise thing to recall, so I take a few moments here today to repeat it to you.

Judge Hardiman, the basic question which is addressed to all nominees is a commitment to interpret the law and not to make the law. Tell me what you think about that general proposition.

Judge HARDIMAN. Thank you for that question, Senator. It is very important to tell you that, as a district judge, I view my role quite differently than the role of legislators, whether they be Representatives or Senators.

In the legislative branch, you make the laws. They are placed into the U.S. Code, as you know, and our role as judges is to interpret the law, not to inject our own policy preferences. So, our task is to give an honest construction to what laws are passed by the legislature.

Chairman SPECTER. Can you illustrate the application of this principle in any cases which have come before you on the district court?

Judge HARDIMAN. Well, yes, I can, Senator. In some cases it is a rather straightforward application. It may be something as basic as applying Section 1988 in the Civil Rights arena when a prevailing party in a Section 1983 action, after the case it over and they have prevailed, then it is the judge's duty to award attorneys' fees to that prevailing plaintiff, pursuant to Section 1988 of the Act.

In other instances, the statute may not be as direct or clear, but it is our role to read the statute as passed by Congress, signed into law by the President, and to interpret that law honestly and fairly.

Chairman SPECTER. Do you find any problem, Judge Hardiman, in applying a principle of law, even though you may have very profound differences with the rule that has been articulated by the higher courts?

Judge HARDIMAN. Thank you, Senator, for asking about that. Not at all. I have no hesitation in applying a law, regardless of what I might think about it. I think any good judge recognizes his or her place in our constitutional government, and that place is not to upset the will of the people as expressed through their elected representatives. So, I do not have any compunction about following the law as written by Congress.

Chairman SPECTER. Can you think of any issue which has come before you where you had an intuitive reaction that was adverse to the ruling that you felt you were required to make?

Judge HARDIMAN. I cannot say that I have, Senator. Quite honestly, we get one new civil case every business day of the year. We spend so much of our time reading the law and interpreting the law, that that does not leave much time for consideration of whether the law is prudent or might be written in a better way.

I spend all of my time, with the assistance of my law clerks, trying to read the law and interpret it and apply it to the facts presented in any particular case. So I cannot say that I have spent much time at all considering the propriety of the laws that I have had occasion to interpret.

Chairman SPECTER. Judge Hardiman, you have ethical issues which come before you. Did your service on the Disciplinary Board of the Pennsylvania Supreme Court give you any special insights into those issues?

Judge HARDIMAN. Thank you for asking about my service on the Disciplinary Board, Senator. I viewed that as a very valuable exercise. We adjudicated cases of lawyers who had done terrible things, or at least had been accused of doing terrible things, by their clients.

It was a real eye-opener because, in a very real sense, those of us who worked on the Disciplinary Board Hearing Committee saw the under-belly of the legal system that was very difficult. It has helped me keep in mind all times that not all lawyers always work in the best interests of their clients. It is a very delicate situation.

If a lawyer does not appear to the judge to be working in the best interest of the clients, I think the way to deal with that is to have hearings on the record and hope that the parties might appear.

Sometimes from the bench, or sometimes in a conference on the record, the court is in a position to give guidance that not only is for the ears of the attorney, but may also be for the ears of the litigant, him or herself.

Chairman SPECTER. With respect to case management, I have seen matters which are dragged out in a very protracted way in a court where the judge who is assigned to the case simply lets events occur, with voluminous discovery, without focusing on the issue, without narrowing what has to be done, at enormous cost to both parties.

Now, if there is a contested issue of fact, or if depositions are necessary, or if discovery has to take place, that is what the judge should permit. But I believe it is really an oversight in many, many cases of the judges not spending the time on case management to see to it that the matter is focused and resolved at an early stage, either one way or another.

Have you had experience on the application of case management principles to economize on the time of the litigants, the time of the court, and the expense of the litigants in maneuvering and pushing through a case?

Judge HARDIMAN. Yes, I have, Senator. Thank you for the opportunity to talk about case management. It is very, very important, in my view, that judges are proactive in managing their caseloads. I agree with you wholeheartedly that the litigants should not have to waste time and money to have their day in court. We try very hard in our district, and I personally, along with my colleagues, try to get cases to trial within 12 months.

Certainly you have to be considerate of the particular case. Some complex litigation in the intellectual property field or other cases involving voluminous documents might take longer. I am certainly willing, and have granted extensions of time when good cause is shown, but I think it is important to move the case along.

We have also instituted a pilot alternative dispute resolution program in our court specifically to deal with that issue. I don't know if you want me to go into that program, but that's an important initiative that Chief Judge Ambrose has started, and I am co-chairing that initiative, to address the concern that you have raised.

Chairman SPECTER. Are you sure you want to be an appellate judge? On the trial court, you have lots of action, see lots of lawyers, see lots of witnesses, see lots of people.

On the appellate court, you will be cloistered. You will have all those lengthy, scintillating, exciting briefs to read for not only decisionmaking, but entertainment.

Are you not a little young to be an appellate judge? I asked you this question when you wanted to be a district court judge, if you were not young to be a district court judge so I know you would have been disappointed not to have this question.

Judge HARDIMAN. Thank you for that question, Senator. First, let me state that I thoroughly enjoy my work on the district court. I enjoy my colleagues. Chief Judge Ambrose has been an extraordinary colleague and leader on our court. The other colleagues have been wonderful. So I am grateful for the opportunity that this Committee gave me, and the full Senate gave me, to serve as a district judge.

I do, however, wish to become a circuit judge. I think it would be an extraordinary opportunity to not only have colleagues and the collegiality that I share on the district court, but deciding cases with colleagues is an enterprise that appeals to me tremendously.

I have had an opportunity to meet many of the judges on the Court of Appeals. They are extraordinarily bright, talented people. I would learn a great deal from them and I would hope to contribute a great deal to the decisions of that court as a colleague that they would like to work with. So, that would be my goal.

You served on the Governors' Judicial Advisory Commission, in which capacity you evaluated and recommended potential judicial candidates to the Governor. Did that not whet your appetite to be an appointor, like the Governor, or perhaps an appointor, like the President, or perhaps recommender like Senator Santorum or Arlen Specter?

Judge HARDIMAN. Senator, thank you for asking about that.

Chairman SPECTER. Stated differently, are you going to stay on the bench or are you going to run for political office, Judge Hardiman?

Judge HARDIMAN. Well, with all due respect, Senator, I hold you and your colleagues in the legislative branch and the executive branch in the highest esteem. I recognize the—

Chairman SPECTER. No plan to run against me in 2008?

[Laughter.]

How about for Governor in 2010? Or how about for President in 2008, something more immediate?

Judge HARDIMAN. I feel that I have found my home in the judiciary, with all candor, Senator.

Chairman SPECTER. You have been actively engaged in the Big Brothers Big Sisters program for many years. What would you say to people to try to encourage more to join those organizations, to try to mentor the so-called at-risk young people?

Judge HARDIMAN. I would tell them, Senator, to give it a try. I think the hardest challenge we face in recruiting Bigs is to get them to take the first step, to come into the agency and to fill out the application.

Once the prospective Bigs meet the Littles, then there is tremendous desire on the part of the Bigs to serve. In my personal case, I had worked in the corporate capacity on the Board of Directors and had served as president, but I wanted to get involved with a Little.

But as a husband and a father of three children, I wasn't convinced that I had the time to do that. So we started a school-based mentoring program, and that is where I met my little brother, Saddiq. It was a 1-hour commitment a week, and I knew I could give 1 hour a week to a fourth grader. What I did not think I could do, was give more of my time.

As it turned out, Saddiq and I became such great friends that we converted our match out of the school-based program and now we are part of the traditional program so we can spend entire days together, or entire afternoons together. So, my hope would be that other busy people might take that first step and they would see what kind of experience they might have.

Chairman SPECTER. Is it possible for you to maintain any of those activities while serving on the Federal bench?

Judge HARDIMAN. Yes, certainly it is, Senator. My relationship with Saddiq has continued to grow. He is now a freshman.

Chairman SPECTER. So you are still working with Big Brothers Big Sisters?

Judge HARDIMAN. Yes. I cannot raise money. I used to do a lot of fundraising for that organization. I am not able to raise money.

Chairman SPECTER. I am sure you are sorry not to be able to do that, are you not?

[Laughter.]

Judge HARDIMAN. I have redirected my efforts in ways more important than the financial, I would like to think, Senator.

Chairman SPECTER. When I talked to you about running for office, Judge Manisman was on the State Supreme Court and ran for the U.S. Senate in 1964. That was the last time that has been done. He lost in the primary to Genevieve Blad, and he was able to stay on the bench. You could not do that as a Federal judge.

Judge HARDIMAN. No.

Chairman SPECTER. I do not even know that you could do that as a State Supreme Court justice any more.

When Chief Justice Roberts was up for his confirmation, I asked him how he thought, at the age of 50, he would be able to handle Justice Stevens, who was 85, 35 years his senior, or Justice Scalia, who was 68 and having some very strongly held views.

He responded by saying that he had appeared 39 times before the Supreme Court of the United States, and when he appeared in court to present his case it was a "dialog among equals".

So I asked Ken Starr, who had been Solicitor General, what he thought of Roberts' answer about a "dialog among equals". He said he thought it was exactly wrong. I asked Ken Olson what he thought about the dialog among equals. He agreed with Ken Starr. Olson had been Solicitor General as well.

I appeared three times before the Supreme Court. At the podium with the justices, it did not seem to me it was a dialog among equals either. But I reflect upon how Judge Edward Becker handled his courtroom, really one of the greatest jurists of all time, a recipient of the Davit Award; among some 900 Federal judges, he was the Outstanding Federal Judge.

Judge Becker conducted his courtroom almost as a dialog among equals. He had a really excellent way of dealing with his clerks when he would say that in their association he wanted no deference. No defence. He wanted the clerks to tell him exactly what they thought. That is the way he thought he would get the best work done.

An argument to encourage that kind of total openness has great merit, so I am not going to ask you whether you agree with Chief Justice Roberts. He may know whatever your answer would be and he may have some occasion to review some of your work some day, but I would commend to you his approach to oral argument, his approach to involvement of the advocates and lawyers who appear before him, as did Judge Becker.

Judge Becker's stopwatch did not work. When he was in the middle of an argument, he went on and on if he thought he was moving in a direction of greater understanding of the case.

Chief Justice Rehnquist was the opposite. When I argued the Navy Yard case in 1994, the first sitting Senator to do that since the 1920s, he cut me off in mid-sentence. I was later told that he was rather lenient because he had been looking for an opportunity to interrupt a lawyer in the middle of the word "if".

When he presided on the impeachment proceeding of President Clinton—and I apologize not only to you, but all the judges in the impeachment proceedings—he did not cut me off. We had 15 min-

utes for closing arguments. It was curious. It was a session not open to the public. All the rest of it was televised.

When we got to the important part where the Senators spoke about how they were going to decide the matter, there was a closed session. But I give you that little insight into Judge Becker, who I think would be a good model.

Without objection, I am going to introduce the statement of Senator Leahy, our distinguished Ranking Member, and in conclusion ask if you have anything you would like to add.

Judge HARDIMAN. Only to thank you, Senators, for scheduling this hearing. I want to thank the President for the nomination, and thank you for those words of advice regarding Judge Becker.

I, like Judge Becker, have scheduled many arguments on motions for 15 minutes a side, and an hour and 10 minutes later we are still hearing argument. So, I take to heart your advice in that regard. The late, great Judge Becker is certainly a role model for all of us coming behind him.

Chairman SPECTER. Well, you are being considered for a court of the highest caliber, some great judges. I think Judge Biggs was a judge on the Third Circuit even younger than you. I think he was 37. Judge Hasty, the first African-American judge to serve on the Federal Court of Appeals. Judge Maris. I do not mean to leave anybody out, but there are really some extraordinary jurists.

That concludes our hearing.

[The prepared statement of Senator Leahy appears as a submission for the record.]

[Questions and answers and a submission for the record follow.]

QUESTIONS AND ANSWERS

United States District Court
Western District of Pennsylvania
U. S. Post Office and Courthouse
Seventh Avenue and Grant Street
Pittsburgh, PA 15219

Thomas M. Hardiman
U. S. District Judge

Telephone (412) 208-7440
Fax (412) 208-7447

December 5, 2006

The Honorable Arlen Specter
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Attached are my responses to written questions from Senator Leahy and from Senator Feingold.

Sincerely,

Thomas M. Hardiman
United States District Judge

cc: The Honorable Patrick J. Leahy
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Responses of Judge Thomas Hardiman
Nominee to the U. S. Court of Appeals for the Third Circuit
to the Written Questions of Senator Patrick J. Leahy

1. You were one of at least two dozen federal judges appointed by President Bush reported in an October 31, 2006 article in *Slate* Magazine to have made contributions to key Republicans while under consideration for your nomination. According to that article, between the time you interviewed with a judicial selection committee in March 2001 and April 2003, when President Bush nominated you for the district court, you donated significant sums to Republican candidates.

Do you consider those donations to be consistent with the judicial canon that a judge must avoid even the appearance of impropriety and with the duty to promote public confidence in the judiciary?

How do you believe that this canon should apply to a person under consideration for a lifetime appointment to the federal bench?

Response: Canon 2 of the Code of Conduct for United States Judges mandates that "a judge should avoid impropriety and the appearance of impropriety in all activities." Canon 2A states: "A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." In addition, Canon 7 provides that "a judge should refrain from political activity." These judicial canons are very important and in serving as a United States District Judge for the Western District of Pennsylvania, I have endeavored at all times to follow the Code of Conduct. Prior to my nomination to the district court, I served as the Treasurer of the Republican Committee of Allegheny County. In that capacity, I was involved with fundraising for local, state, and national Republican candidates. Once nominated to the district court, I resigned my post as Treasurer and ceased all political activities. The question of whether Canon 2 or Canon 7 should apply to judicial nominees in addition to sitting judges is a question upon which reasonable minds could differ. At present, the line is drawn upon assumption of judicial duties. Despite this fact, I thought it proper to cease all political activities upon being nominated rather than waiting for confirmation.

2. In the recent confirmation hearings for Chief Justice Roberts and Justice Alito, there was extensive discussion of the amount to which judges and Justices are bound to follow previous court decisions by the doctrine of *stare decisis*.

In your opinion, how strongly should judges bind themselves to the doctrine of *stare decisis*?

Response: *Stare decisis* is a venerable doctrine that requires not only that lower federal courts follow decisions of higher courts, but also that appellate courts abide by decisions rendered by prior panels of that court. *Stare decisis* provides stability and

predictability such that the law develops in an orderly fashion. In my capacity as a trial judge, I have done my best to follow carefully the law not only as written by Congress, but also as interpreted by the Supreme Court and the Court of Appeals for the Third Circuit. The Constitution and the rule of law require nothing less. If I am confirmed to the Court of Appeals for the Third Circuit, I would carefully follow the precedents of the Supreme Court and the precedents of the Third Circuit.

3. A central question for me with any judicial nominee is whether he or she will act as a check and balance on the other branches of government. We are at a pivotal moment in American history, faced with a President making sweeping claims to nearly unchecked executive power. Last December, after the McCain Amendment prohibiting cruel, inhuman, and degrading treatment of detainees by U.S. personnel under all circumstances was strongly opposed by the Administration, President Bush worked out a deal with Senator McCain and the amendment passed the Senate with overwhelming support.

> **However, in his December 30 signing statement, President Bush ignored the public deal and wrote that the executive branch "shall construe" the McCain amendment "in a manner consistent with the constitutional authority of the President to supervise the unitary executive branch and as Commander in Chief and consistent with the constitutional limitations on the judicial power, which will assist in achieving the shared objective of the Congress and the President ... of protecting the American people from further terrorist attacks."**
>
> **If an alleged violation of the McCain Amendment prohibiting cruel, inhuman, and degrading conduct by American personnel, were to come before a court - and I am not asking you to comment on the constitutionality or propriety of the law - what weight, if any, would you attach to the President's signing statement?**

Response: Although I understand that the question of Presidential signing statements is the subject of discussion and debate, I have not had occasion to hear any case involving this issue. In addition, I am unfamiliar with the terms of the McCain Amendment passed by the Senate. Moreover, in light of the possibility that treatment of detainees could come before me, I do not believe it would be appropriate to comment in greater detail than to state that I would review the facts of the case in light of controlling law and render my decisions accordingly.

4. A year ago it was revealed that for four years President Bush has authorized the NSA to conduct warrantless wiretapping of American citizens, with no review by any court, including the FISA court specifically established by law to review such requests. To justify this practice, the President and his defenders have invoked a theory of extraordinarily broad and largely unchecked presidential power. This appears to be the same legal argument for a "Commander in Chief override" that was used by the Administration as justification for bypassing legal restraints on torture. The Administration's legal memo on torture was withdrawn but the legal arguments contained in it were never disavowed.

Do you agree with the President's defenders that there is a Commander in Chief override giving a wartime President the authority to bypass the FISA Court and authorize warrantless spying on U.S. citizens or to authorize or excuse the use of torture in interrogations of enemy prisoners, despite domestic and international laws prohibiting the practice?

Response: I have not had occasion to rule on any case involving the program referenced in the question and am not familiar with the facts related to the program. Generally speaking, if there were a challenge to the President's authority in such a circumstance, it would likely be analyzed under the framework set forth in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). I do not believe it would be appropriate to comment further in light of the possibility that I would be assigned to hear a case that involves these issues. As with any case, I would carefully consider the facts and apply the controlling law thereto in rendering decisions.

5. Over the past decade, the Supreme Court has struck down an unprecedented number of federal statutes, most notably several designed to protect the civil rights of Americans, as beyond Congress's power under Section 5 of the Fourteenth Amendment, for example, *Flores v. City of Boerne*, 117 S. Ct. 2157 (1997), *Kimel v Florida Board of Regents*, 120 S. Ct. 631 (2000), and *Board of Trustees v. Garrett*, 19 S. Ct. 2240 (1999). The Supreme Court has also recently struck down statutes as being outside the authority granted to Congress by the Commerce Clause, such as in the case of *U.S. v. Lopez*, 115 S. Ct. 1624 (1995) or *U.S. v. Morrison*, 120 S. Ct. 1740 (2000).

I am hopeful that the Court's decision last year in *Gonzales v. Raich*, 125 S. Ct. 2195 (2005) signals a turn away from the diminishing of the authority of Congress to legislate to protect the American people.

What is your understanding of the scope of congressional power under Article I of the Constitution, in particular, the Commerce Clause, and under Section 5 of the Fourteenth Amendment?

Response: Congress's enumerated powers under the Commerce Clause (Art. I, §8) and Section 5 of the Fourteenth Amendment are important Constitutional provisions. Members of Congress, like federal judges, take an oath to uphold the Constitution and Acts of Congress are presumptively constitutional. In the Court's more recent cases it has emphasized that Congress' power to regulate commerce among the states is broad, but not unlimited. Section 5 of the Fourteenth Amendment enables Congress to enforce the Fourteenth Amendment by appropriate legislation. According to the Supreme Court, the appropriate test is whether the legislation enacted under Congress' authority under Section 5 exhibits "a congruence and proportionality between the injury to be prevented and the means adopted to that end." *City of Boerne v. Flores*, 521 U.S. 507, 520 (1997). As with any other case, I would decide cases involving the Commerce Clause and Section 5 of the Fourteenth Amendment based on the facts of the case and the controlling law.

Responses of Judge Thomas Hardiman
Nominee to the U. S. Court of Appeals for the Third Circuit
to the Written Questions of Senator Russell D. Feingold

As you know, Canon 7A of the Code of Conduct for United States Judges states that: "A judge should not...solicit funds for or pay an assessment or make a contribution to a political organization or candidate...." The Code of Conduct, according to its commentary, provides that it is "designed to provide guidance to judges and nominees for judicial office."

According to the Center for Investigative Reporting, between March 29, 2001, when you first met with the Pennsylvania Judicial Nominating Commission, and February 24, 2003, just two months before you were formally nominated to the U.S. District Court for the Western District of Pennsylvania, you donated a total of $2,400 to Senator Arlen Specter and $2,000 to Senator Richard Santorum.

In light of these political contributions, the majority of which appear to have been made even after May 2002, when you were interviewed by the White House for the U.S. District Court nomination, please answer the following questions:

1. When did you learn that you would be nominated to the U.S. District Court for the Western District of Pennsylvania?

Response: To the best of my recollection, I learned that I would be nominated to the U. S. District Court for the Western District of Pennsylvania on either the day before I was nominated or the actual day of the nomination (April 9, 2003).

2. When you made the political contributions referred to above, were you aware of the prohibition on political contributions laid out in Canon 7 of the Code of Conduct?

Response: At the time I made these political contributions, I was not familiar with Canon 7 of the Code of Conduct, although I had a general understanding that federal judges were prohibited from engaging in political activity.

3. When you made the political contributions referred to above, were you aware that the Code of Conduct, according to its commentary, provides that it is "designed to provide guidance to judges and nominees for judicial office."

Response: No.

4. If your answer to the Question #2 is "yes," did you believe at the time that, as someone under consideration for a federal judicial nomination, you were governed

by the Code of Conduct or should be guided by it?

Response: N/A.

5. Do you believe that it is appropriate for individuals who know they are under consideration for a judicial nomination to make political contributions? If so, why?

Response: The Code of Conduct prohibits judges from engaging in political activity. I believe that reasonable minds could differ as to whether individuals under consideration for judicial office should refrain from making political contributions. In my case, I thought it prudent and appropriate to cease all political activities once I was nominated.

6. Senator Specter has said that if you had consulted with him about the contributions, he would have told you not to make them. Did you consider consulting Senator Specter? Did you consult Senator Santorum? Did you consult anyone else about the propriety of making political contributions? If so, what advice were you given?

Response: I neither considered consulting, nor actually consulted anyone regarding the propriety of making political contributions.

7. Do you believe that the Code of Conduct governs the conduct of judicial nominees and prospective nominees as well as judges, and thus nominees and prospective nominees should avoid making political contributions?

Response: According to its terms, the Code of Conduct applies to "United States Circuit Judges, District Judges, Court of International Trade Judges, Court of Federal Claims Judges, Bankruptcy Judges, and Magistrate Judges." It is my understanding that the Code does not apply to prospective nominees. As for actual nominees, I note that the Commentary to Canon 1 states that the Code "is designed to provide guidance to judges and nominees for judicial office."

8. If the answer to Question #7 is "no," do you think it is unreasonable for others to believe that judicial nominees and prospective nominees should refrain from making political contributions based on the guidance that the Code of Conduct provides?

Response: I do not believe it is unreasonable for others to believe that nominees should refrain from making political contributions and this is consistent with my view.

The question of whether prospective nominees should refrain from making such contributions is more difficult because the universe of prospective nominees is very large and the question of when one becomes a "prospective" nominee is not discerned as easily as when one becomes a nominee.

9. In your view, what ethical concerns are raised by judicial nominees making contributions to candidates or political parties?

Response: Although reasonable minds could differ on the question, in my view nominees should not engage in any political activity, including making donations.

SUBMISSION FOR THE RECORD

Statement of Senator Patrick Leahy
Ranking Member, Judiciary Committee
On the Nomination of Thomas M. Hardiman
November 14, 2006

The Committee returns during the lame duck session of Congress for a hearing today on the nomination of Judge Thomas M. Hardiman to an important seat on the U.S. Court of Appeals for the Third Circuit. This lame duck session comes on the heels of national elections in which Americans overwhelmingly cast their ballots for change. For too long, the White House has undermined our bipartisan process for selecting judicial nominees by refusing to work with us on consensus nominees.

In the days following the election, the President spoke about becoming a uniter and working with Congress in a bipartisan way. Regrettably, it appears he will not be keeping that promise. I understand the President intends to renominate a number of controversial nominees. That unfortunate decision evidences that he intends to stay the partisan course when it comes to judicial nominations.

This needless conflict and emphasis on partisanship over progress is nothing new for this White House, and has been aided by the Republican-controlled Congress that is now coming to a close. At the end of our last legislative session, the Republican leadership did not follow through on the hard work done by the Chairman and by this Committee to report out more than a dozen consensus judicial nominations. Democrats on the Judiciary Committee worked hard to accommodate Chairman Specter and make up for time wasted by the Republican leadership on controversial nominations. Unfortunately, Republican objections led to the Senate recessing in September without confirming additional judicial nominations.

Only 31 judicial nominations have been confirmed in the first 10 months of this year. During the 17 months the Democrats were in charge of considering President Bush's judicial nominations and I was Chairman of the Judiciary Committee, we confirmed 100 judges. In the last 22 months of Republican control, with a Republican President, we have confirmed only half that – just 53 nominees. This number could have been much higher had Republicans cooperated. Instead, Republican objections in September blocked more than a dozen nominees, and we are left with continuing vacancies instead of sitting judges.

Six of these judicial nominees would have filled vacancies that the Administrative Office of the U.S. Courts has determined to be judicial emergencies. The confirmation of Judge Kent Jordan to the Court of Appeals for the Third Circuit would end a judicial emergency. So would the confirmations of Laurence O'Neill for the U.S. District Court for the Eastern District of California, Leslie Southwick for the U.S. District Court for the Southern District of Mississippi, and three nominees – Robert Jonker, Paul Maloney, and Janet Neff – to the U.S. District Court for the Western District of Michigan.

Our progress in confirming judges was undone by some on the Republican side. It is particularly ironic that after months of Republicans repeating a new mantra, that every one of the President's nominees, whether qualified or not, whether engaged in conflicts of interest or not, whether supported by home state Senators or not, is entitled to a swift up or down vote, Republican objections stalled more than a dozen judicial nominees. Apparently Republicans who were prepared to employ the nuclear option in the Senate and change its longstanding rules are still utilizing a double standard by which concerns of Democratic Senators are to be ignored but those of anonymous Republicans prevent Senate consideration.

After the last working session in September, I learned that several Republicans were objecting to Senate votes on some of President Bush's judicial nominees. According to press accounts, Senator Brownback had placed a hold on Judge Neff's nomination, even though he raised no objection to her nomination when she was unanimously reported out of Judiciary Committee. Later, without going through the Committee, Senator Brownback sent questions to Judge Neff about her attendance at a commitment ceremony held by some family friends several years ago in Massachusetts. There is no question about Judge Neff's qualifications. Judge Neff's nomination is part of a White House agreement. She was nominated by President Bush on the recommendation of her home state Senators. She would have filled a judicial emergency vacancy.

Of course, this is not the first time Republicans have objected to an up or down vote on judicial nominees. More than 60 of President Clinton's judicial nominees were pocket filibustered by Republicans without an up or down vote. Last year the President's nomination of Harriet Miers to a vacancy on the Supreme Court was stalled and then withdrawn due to Republican objections. Republicans questioned her qualifications and demanded answers about her work at the White House and her legal philosophy. They defeated her nomination before allowing her a hearing.

I wish that earlier this year we had followed the customary practice in the Senate for the leaders, Republican and Democratic, to sit down with the Chairman and the Ranking Member of the Judiciary Committee and to work out a process to conclude the year with respect to judicial nominations. Sadly, that meeting did not occur.

I do want to acknowledge the kind words of the Majority leader who noted before the last recess that we have made "tremendous progress on confirming qualified judicial nominees." By Senator Frist's count, the Senate "has confirmed 88 percent of President Bush's judicial nominees, giving him the highest confirmation rate since President Reagan." He calculates that "95 percent of all judgeships are filled, including more than 92 percent of all circuit court judgeships and more than 95 percent of all district court judgeships." He notes that the Senate has confirmed "[n]early 160 nominees" for judgeships under the 46 months of his leadership. The only thing he leaves out is that fully 100 were confirmed during the 17 months that I chaired the Judiciary Committee and Senator Daschle was the Senate's leader. Likewise, Chairman Specter acknowledged before the recess that the Democrats on the Judiciary Committee and in the Senate have

not been the obstructionists that some in the right-wing have claimed, but instead worked in an accommodating manner.

This year, we have confirmed 31 judicial nominees so far. This far surpasses the total number of judges confirmed in the 1996 congressional session, when Republicans controlled the Senate and stalled the nominations of President Clinton. In the 1996 session, Republicans would not confirm a single appellate court judge, not one, and moved forward on only 17 district court judges all session. That was the only session of the Senate I can remember in which the Senate simply refused to consider appellate court nominations. That was part of their pocket filibuster strategy to stall and maintain vacancies so that a Republican President could pack the courts and tilt them decidedly to the right. In confirming eight Circuit Court judges this year, we have already confirmed more Circuit Court judges than in 1996, 1997, 1999, or 2000.

We also could have accomplished more this year if the White House had sent over consensus nominees early in the year. The White House did not. Many of the nominees we are now trying to consider were not even nominated until July. Regrettably, the Administration concentrated on a few highly controversial nominees and delayed until recently sending other nominations and thereby prevented us from having the time to do any meaningful review.

By contrast, there are five judicial emergencies still without any nominee at all. Nor has President Bush fulfilled his pledge to make a nomination for every vacancy within 180 days. Of the vacancies currently without a nominee, 13 have been vacant for more than 180 days. An additional 13 of the pending nominees were nominated only after their vacancies had been open for more than 180 days.

The record is clear – when we work together on consensus judicial nominees, we can make progress. When I led the Judiciary Committee for 17 months, the Senate confirmed almost twice as many of this President's judicial nominees as have been confirmed in the two years of the current Congress.

I was encouraged by President Bush's pledge this week to work with Congress in a bipartisan and cooperative way, and I hope he intends to change course and honor that pledge by working with us to confirm consensus nominees. This process starts with the President. With all the divisiveness in the country today, the American people would cheer consultation and nominees who unite instead of divide.

The American people want the Senate to be more than a rubber stamp. They want the Senate to do its job by carefully evaluating nominees for lifetime judgeships. The American people expect the federal courts to be fair forums where justice is dispensed without favor to the right or the left. These are the only lifetime appointments in our entire government, and they matter a great deal to our future. I will continue to work with Senators from both sides of the aisle to ensure the independence of our federal judiciary.

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