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S. HRG. 111–695, Pt. 4

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

OCTOBER 7, OCTOBER 21, NOVEMBER 4, NOVEMBER 18, DECEMBER 1, and DECEMBER 16, 2009

Serial No. J–111–4

PART 4

Printed for the use of the Committee on the Judiciary

VerDate Nov 24 2008 11:49 Feb 02, 2011 Jkt 063004 PO 00000 Frm 00001 Fmt 6011 Sfmt 6011 S:\GPO\HEARINGS\63004.TXT SJUD1 PsN: CMORC

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U.S. GOVERNMENT PRINTING OFFICE

63–004 PDF WASHINGTON : 2011

For sale by the Superintendent of Documents, U.S. Government Printing Office
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NOMINATIONS OF BARBARA MILANO KEENAN, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE FOURTH CIRCUIT; LAURIE O. ROBINSON, NOMINEE TO BE THE ASSISTANT ATTORNEY GENERAL FOR OFFICE OF JUSTICE PROGRAMS, U.S. DEPARTMENT OF JUSTICE; AND, KETANJI BROWN JACKSON, NOMINEE TO BE A MEMBER OF THE U.S. SENTENCING COMMISSION

WEDNESDAY, OCTOBER 7, 2009
UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC

The Committee met, pursuant to notice, at 4:03 p.m., Room SD–226, The Capitol, Hon. Benjamin L. Cardin, presiding.

Present: Senators Cardin, Specter, Franken, and Sessions.

OPENING STATEMENT OF HON. BENJAMIN L. CARDIN, A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator CARDIN. The Judiciary Committee will come to order. Senator Sessions will be joining us shortly and he has asked that we start the hearing. So let me welcome our guests that are with us today.

It is an honor to have Judge Barbara Keenan here, who is a nominee for the U.S. Circuit Court for the Fourth Circuit; Laurie Robinson, for Assistant Attorney General for Office of Justice Programs; and, Ketanji Brown Jackson, for a member of the U.S. Sentencing Commission; and, of course, my two colleagues from Virginia, Senator Webb and Senator Warner. It is a pleasure to have both of you with us today.

I take particular interest in the Fourth Circuit. So I am very pleased today that Senator Leahy has allowed me to chair this hearing on the nomination of Barbara Keenan to the U.S. Circuit Judge for the Fourth Circuit.

This will be the third hearing that I have chaired for nominees in the Fourth Circuit. I had the opportunity to chair the hearing for Justice Steven Agee, who was confirmed to be a U.S. Circuit Judge for the Fourth Circuit from Virginia, and I also chaired the confirmation hearings of Judge Andre Davis of Maryland, who was approved by our Committee 16–3 and we are awaiting full Senate confirmation of his appointment. Unfortunately, that has been delayed several months. And I say unfortunately, because the Fourth

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Circuit has the highest vacancy rate of any circuit. One-third of the judges still remain unfilled and that is unacceptable and we need to move these appointments much more rapidly.

So I share Senator Leahy's concerns about the delay in the completion of the confirmations of judges. We are backed up now for many that have been recommended by this Committee and there has been a delay by Republican Senators in allowing us to bring forward those nominations on the floor of the U.S. Senate.

I hope that can be changed, because I think it is critically important that we move as quickly as possible to fill these vacancies.

In regards to the Fourth Circuit, we are pleased that Justice Keenan's nomination has come forward. She has served on each of the four levels of the Virginia State court, the General District Court, the Circuit Court, the Court of Appeals and Supreme Court. She was admitted to the State Bar of Virginia in 1974, and she first took the bench at age 29 and it is fitting that she has served as a judge for 29 years.

She has had a balanced career and she has presided over an impressive number of cases. Now, that is a blessing and could also be a concern, because you've had to make some tough decisions, and there may well be some questions about some of the decisions that you joined either in the majority or in dissent because of the large number.

But you bring a wealth of experience and a great reputation, well known to the people in Virginia, and we are very pleased about your appointment and look forward to this hearing.

Justice Keenan has received the unanimous rating of well qualified from the American Bar Association Standing Committee on the Federal Judiciary, which is the highest rating, and I do look forward to our comments from our two Senators from Virginia.

Our second nominee today is Laurie Robinson, to be the Assistant Attorney General for the Office of Justice Programs. These is a very important appointment, but, again, I want to comment about Senator Leahy's points about so many of the Assistant Attorneys General in the Department of Justice are being held up from floor votes.

We, fortunately, just got the Assistant Attorney General for the Civil Rights Division confirmed yesterday, after a four-month delay and a cloture vote which was withdrawn at the last minute.

These delays are not helping the Department of Justice restore its rightful reputation and I hope that we can move quickly on the Office of Justice Programs. We need leadership in that department. That is very important.

And if you are confirmed, I might say, Ms. Robinson, you will be hearing from all of us, because it is a very popular position with our local officials to figure out how they are going to get help in the administration of justice.

So I am glad that I am chairing this hearing. I hope you will remember that in the future, that I chaired this Committee when——

[Laughter.]

Senator CARDIN.—when Maryland requests come forward. You have an impressive resume. Since 2004, Ms. Robinson has been the director of the master's of science program the University of Pennsylvania's Department of Criminology. From 1993 to 2000, she

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served as Assistant Attorney General at the Office of Justice Programs.

You bring a great deal of experience to this position. You have served on a number of national boards related to the justice system, including the board of trustees at the Institute of Justice, which you chair; the board of directors of the Police Foundation, advisory board of George Mason University, Administration of Justice Programs. You have published numerous articles. So you bring a wealth of experience to this position.

And I will put into the Committee record letters of support for Ms. Robinson, including the U.S. Conference of Mayors, National League of Cities, National Association of Counties, and the International Association of Chiefs of Police.

Our third nominee today is Ketanji Brown Jackson. Ms. Jackson has been nominated to be a member of the U.S. Sentencing Commission. The commission is an independent agency in the Judicial Branch of government. Its purpose is to establish sentencing policies and practices for the Federal court, including criminal sentencing guidelines, to advise and assist Congress and the executive branch in developing crime policy and to analyze and research criminal justice information, a very important position.

Ms. Jackson is of counsel at Morrison & Foerster in Washington, D.C., where she has worked since 2007. From 2005 to 2007, she was an assistant Federal public defender in the District of Columbia.

I could go through the rest of her resume, but let me point out, one of the most important parts of her resume, she is a resident of Bethesda, Maryland, which is duly noted. Graduated with a BA from Harvard University and a J.D. from Harvard Law School.

Before I turn to the Ranking Republican member, Senator Sessions, let me just thank all three of you for your willingness to continue, in some cases, to start a new challenge in public service for others. We thank you for this. I know that it is not easy to serve in public positions. I know it is difficult not only for you, but your families, and we thank you for your willingness to serve your community.

And with that, let me turn it over to Senator Sessions.

STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. Thank you, Mr. Chairman. I look forward to hearing from our Virginia Senators and our nominees, look forward to asking some questions.

Thank you and, hopefully, these nominees will meet all the tests and we can move them forward.

Senator CARDIN. Thank you. With that, let me turn to Senator Webb.

PRESENTATION OF BARBARA MILANO KEENAN, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE FOURTH CIRCUIT COURT OF APPEAL BY HON. JIM WEBB, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senaor WEBB. Thank you very much, Mr. Chairman and Ranking Member Sessions. I am privileged to join my colleague from Vir-

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ginia, Senator Mark Warner, here today for the purpose of introducing to this Committee Virginia Supreme Court Justice Barbara M. Keenan, whom the President has nominated for a seat on the Fourth Circuit Court of Appeals.

I would like to point out, also, that her husband, Judge Alan Rosenblatt, is with us today, as are a number of friends and family members that I know she will want to introduce.

I would like to thank the Committee for scheduling this hearing. The seat on the fourth circuit that Justice Keenan seeks to fill has been vacant since the death 2 years ago of Judge Emory Widener of Abingdon. It is important to the people of Virginia and to the proper functioning of this court that this vacancy be filled as expeditiously as possible.

Mr. Chairman, I believe that the President has made an extraordinary choice in nominating Justice Keenan. Earlier this year, our two Senate offices interviewed more than two dozen highly qualified candidates for this seat, including distinguished law professors, judges, private practitioners and government attorneys.

And from this very competitive field, Senator Warner and I were drawn to Justice Keenan's record of achievement on the bench, her keen intellect, her even-temperament, and, perhaps most importantly, her abiding sense of fairness.

We recommended her to the President for a nomination in June of this year. I should add that Justice Keenan is held in the highest regard by members of the Commonwealth's legal community, including the Virginia State Bar, which gave her a highly qualified rating. Justice Keenan, as you mentioned, Mr. Chairman, has a distinguished record of service to our courts in Virginia.

She was appointed to the Fairfax County General District Court in 1980 at the age of 29. She was promoted by the General Assembly to the Fairfax County Circuit Court in 1982; to the Intermediate Court of Appeals in 1985; and, finally, to the Supreme Court in 1991.

She is active in numerous boards and commissions intended to foster excellence in our judicial system. Justice Keenan is a 1971 graduate of Cornell University, a 1974 graduate of the George Washington University School of Law, and she also holds an LLM from the University of Virginia School of Law.

I am very, very pleased to be before you today endorsing her nomination. I would now like to invite my colleague, Senator Warner, to offer his comments.

Senator CARDIN. Senator Warner, pleased to hear from you.

PRESENTATION OF BARBARA MILANO KEENAN, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE FOURTH CIRCUIT COURT OF APPEAL BY HON. MARK WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senaor WARNER. Thank you, Mr. Chairman and Ranking Member Sessions. I join my colleague and good friend, Jim Webb, in wholeheartedly endorsing Justice Keenan for this very important position. I think President Obama made a wise choice in nominating Justice Keenan for this seat on the Fourth Circuit Court of Appeals.

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I will not reiterate all of the comments that Senator Webb made about her background. I would simply add a couple of additional comments.

Justice Keenan is the first judge in Virginia's judicial history to serve on all four levels of our bench. As you mentioned in your opening comments, that gives her a broad and wide range of record, 29 years serving in the judiciary.

But I can say that in the process that Senator Webb and I went through, it was a very rigorous process. We had a number of good candidates. I know we have got folks here in the audience, Mitchell Dolan and others, who helped us go through that process.

But Justice Keenan had a remarkable array of people all across Virginia, I believe many of them unsolicited, writing in on her behalf; I would add, members of the legislature from both sides of the aisle who complimented her judicial temperament and her background.

She has got an enormously impressive academic record, I would only add, and, clearly, the 29 years on the court, on all four of our courts, has been important, as well.

I would only add, as well, I had the occasion to get to know her a bit personally during my tenure as Governor. We would have every year a dinner between the Governor and our justices of the Supreme Court. With her kind of quiet confidence, she was a leader on that court. She truly reflects, I think, the right intellectual capabilities, the right judicial temperament, and she will be a great addition to the fourth circuit.

I would simply close in adding not only a note of congratulations to Justice Keenan, but I would echo what Senator Webb has said, that we do hope that this nomination will be moved expeditiously.

As you well know, Mr. Chairman, the burden on the fourth circuit at this point in terms of the number of open positions and the amount of caseload that confronts that important circuit is tremendous. This position, as Senator Webb has mentioned, has been open for a couple of years right now.

So we commend her to the Committee's consideration and hope that we will soon be able to address her as Judge Keenan of the Fourth Circuit. Thank you very much.

Senator CARDIN. Just to underscore that one point, there are five vacancies on the fourth circuit. The second circuit has four vacancies. The next are two vacancies. So we are really in serious need of filling these spots.

Let me thank both of our colleagues. Thank you very much.

Senator SESSIONS. Let me just say, one of the things that I think is healthy in this entire judicial nomination process is that key Senators are involved and that your opinions are sought. Some might think that that is unhealthy, but, really, you know the lay of the land in your states and you know if somebody has got problems, and your strong support is a factor in my evaluation, for sure, of a nominee.

Thank you very much for your insight, appreciate it.

Senator CARDIN. Which is the tradition of our Committee, we will use two panels. The first panel will consist of Barbara Keenan to be United States Circuit Judge for the Fourth Circuit.

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Judge, if you would come forward. The tradition of our Committee also is to swear the witnesses in.

[Whereupon, the witness was duly sworn.]

Senator CARDIN. Please have a seat. Your entire statement will be made part of the record. What we do ask you to do, first, if you would, is introduce the members of your family that may be here and proceed as you wish.

STATEMENT OF HON. BARBARA MILANO KEENAN, NOMINATED TO BE U.S. CIRCUIT JUDGE FOR THE FOURTH CIRCUIT

Judge KEENAN. [Off microphone.]

Senator CARDIN. Thank you very much. Let me start, if I might, asking questions that have been ones that have been of great interest to our Committee. That is, talk a little bit about your philosophy as to the importance you place on existing precedent, on the clear language of laws that are passed by Congress.

I know that you have been a state court judge, but, if confirmed, you are going to be called upon to make significant rulings concerning Federal issues. In most of these cases, it is going to be the final word. Very few cases, as you know, get accepted to the Supreme Court.

I know this Committee wants to hear your judicial philosophy as to the deference that you will give to laws that are passed by the Congress and to the precedent of the court.

Judge KEENAN. Yes, Senator. As an appeals court judge, if confirmed, I will be most mindful of precedent. That is what guides our legal system. It is our obligation as judges to apply the law and, if at all possible, to apply the plain meaning——

Senator CARDIN. I am going to ask you, if you could, just get the microphone a little closer to you.

Judge KEENAN. I am sorry. I do not do this every day. I am sorry, sir. I would be most mindful of precedent. It is what guides me as a judge and has always guided me as a judge, because our system of government is based on the certainty and predictability of the law and this guides people in their everyday affairs in order to determine what is lawful and what is not.

So as a judge, I am required to examine the precedent, examine the statutes, whenever possible, to apply the plain meaning of the statutes and to realize that it is my role to apply the law and to do it in a manner that gives full and fair consideration to all of the arguments propounded by the parties.

Senator CARDIN. In 2000, you ruled in a Virginia human rights case, expanding the ability of a person to bring a claim for employment discrimination. I agree with your holding, but it was contrary to the prior rulings, as I understand it.

I mention that because I do believe—one of my criteria for determining who I support on confirmation to the Federal bench is their passion and respect for the protections that are in our Constitution and their willingness to understand the evolution of the rights in this country.

But could you just go through for me and for the Committee why you thought it was important to ignore precedent in that case?

Judge KEENAN. Well, sir, it was not ignoring precedent. Really, the issue had come up as to whether a cause of action for wrongful

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termination for employment would lie. Under common law principles, when these principles were also principles covered by the Virginia Human Rights Act, and the Virginia General Assembly had, after the Virginia Human Rights Act had been on the books for a few years, had amended the statute to say that the statute did not create an independent cause of action.

And so the question before our court was to determine whether, if there was a cause of action under the common law, could it nevertheless be made, notwithstanding the statutory bar. And this was a question of first impression really in our court and the majority of the court held yes in the opinion that I wrote.

And the reason why is if we hadn't done that, then the fact that there was a principle in the Human Rights Act, for example, a principle supporting racial equality or gender, antidiscrimination based on gender, would provide an employer a shield. An employer could do anything he or she wanted as long as it was the principle of equality espoused in the Virginia Human Rights Act.

That could be used as a shield and that's the reason why we felt that it was important to decide the case the way we did.

Senator CARDIN. I am going to have some additional questions on this point. But at this point, with the consent of Senator Sessions, I am going to yield to Senator Specter for the purposes of an introduction.

PRESENTATION OF LAURIE ROBINSON, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE FOURTH CIRCUIT BY ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVAINIA

Senator SPECTER. Well, thank you very much, Mr. Chairman. I appreciate your yielding to me. I have come to the hearing for the introduction of Ms. Laurie Robinson, who is nominated for the position of Assistant Attorney General for the Office of Justice Programs.

Ms. Robinson brings an extraordinary resume to this important position. She is a magna cum laude, phi beta kappa graduate from Brown University. She worked for 14 years as the director of the American Bar Association's section on criminal justice.

She served in the Clinton Administration as the Assistant Attorney General for the Justice Department's Office of Justice Programs, which is the position she has been nominated for now, and, after that, served 8 years as a distinguished senior scholar at the University of Pennsylvania in Criminology and directed the University of Pennsylvania Criminology's master of science program.

She has now been nominated for this very prestigious position. Her background includes some 30 articles on criminal justice and legal periodicals, 250 criminal justice-related conference and forums, appeared before Congressional committees some 15 times.

She has been a member of some very distinguished professional organizations, served on the Board of Trustees of the Vera Institute of Justice, which she chaired, the Police Foundation, the National for Victims of Crime. So that is really an extraordinary resume, having seen quite a few in my tenure here.

I think this is a very important position, because too little of scientific research has been devoted to trying to deal with the crimi-

nal law problem. Early on, I came to the conclusion that there was a very effective way to deal with violent crime in America. It had two parts, life sentences for career criminals who commit 70 percent of the crimes and realistic rehabilitation for the others who are going to be released back into society.

Last year, we passed the legislation on the Second Chance Act, but we have had much too little insight into the ways of job training, literacy training. No surprise when a functional illiterate leaves jail without a trade or a school, they go back to the revolving door on recidivism.

We have not really made the analysis of what it takes on parole and probation to turn that around; never really made the analysis of the effectiveness of the armed career criminal bill, which provides for a mandatory sentence of life, which, in the Federal system, is 15 years to life for three major offenses.

So to see someone of her caliber in that position is very refreshing, so refreshing that I came to introduce her, even though she is not a Pennsylvanian.

[Laughter.]

Senator SPECTER. Thank you very much, Mr. Chairman.

Senator CARDIN. As I noted in my comments about her, we are all—as soon as she gets confirmed—all interested in how she is going to treat grants from our states. So we figured perhaps you had some interest because of that, also.

Senator SPECTER. Well, Mr. Chairman, had I known that, I would not have taken up the extra time of the Committee. Thank you.

Senator CARDIN. Thank you. Senator Sessions.

Senator SESSIONS. Well, I would associate myself with the remarks about Laurie Robinson. She has had fabulous service in her previous tenure; although maybe not every theory of Senator Specter's theory of crime would I totally endorse, but most of that I would endorse, too.

You had not finished, I believe. You go ahead. [Off microphone.]

Senator CARDIN. Well, let me wait until the next round. I will let you proceed, because I want to go into a couple of different areas. So I will hold for a second round.

Senator SESSIONS. Mr. Chairman, Chairman Leahy and others, I would like to start a preemptive complaint about failure to move judges. We have really not had a problem yet, in my view. There are two or three that are controversial. But I would note that there are 74 vacancies as of October 7 and the President has nominated nine for the district court bench.

So we cannot confirm people for vacancies if they do not have a nomination and when a nominee is made, then the staffs review their backgrounds and their FBI reports and share that with the Senators. If there is any problem, they are looked at. Usually, prominent lawyers and people are checked on. We get the ABA report. Cases appear sometimes that cause people concern and they are inquired into.

But I am committed to moving the good nominees rapidly forward. It does not bother me that a nominee is a Democrat or has been elected as a Democrat or been active politically. That does not bother me. We just like to see nominees that know when they put

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on the robe, something special occurs and that they are no longer in the political arena, they are in the adjudication arena, and objectivity and fairness to all parties is what is called for.

A few of the nominees that are nominated now and that are pending probably are going to be a bit controversial, but I would expect the overwhelming number of these nominees to move forward. And some of those that are not controversial now, for reasons I do not know, I understand, are not being called up for vote, and they would be promptly confirmed if the majority leader called them up.

Justice Keenan, it is great to have you. You have a background certainly worthy of this position and it is good to see your Senators are firmly in support of your nomination and we are proud of that.

I would just ask a few questions. I do not mean to suggest that I think that you have failed in some serious way, but I would just like to ask some questions about some matters.

At a commencement at William and Mary Law School in 1998, you stated that lawyers have made contributions to the progress of social justice. The contributions that we each make to the cause of social justice will be our true legacy as lawyers. I think I agree with that most totally, but I want to ask whether you meant that your role as a judge—you said lawyers, you did not say judges—that it is your duty as a judge to seek, affirmatively, I guess, to promote social justice.

Now, the reason that is significant, of course, is whose opinion of social justice and to what extent do you believe a judge should be thinking of policy matters as they render their opinions in difficult cases?

Did I ask that clearly? Not very clearly.

Judge KEENAN. No. You did. Thank you, Senator.

Senator SESSIONS. If I were before the bench, you would probably ask me to clarify the question.

Judge KEENAN. Not at all. I was—when I made that speech, I was talking to young lawyers beginning to enter the legal profession and in coining the—or in using the term "social justice," I was referring to lawyers' duty to work within the system of laws to protect people, to protect society, and to make strides for the general good of all.

A judge's role is very different, however. A judge is not an advocate and never can be. A judge is not an activist. A judge is somebody who comes with an open mind to listen to the arguments put forth, consults precedent, examines the law, makes a determination based on what the parties have advanced, whether there is any merit to the position, and then writes, very clearly and precisely, if the judge's goal is met, to apply the precedent that exists in a given situation.

And so a judge's role is very different from that of a young lawyer.

Senator SESSIONS. Well, I think that you are right. I think there is a difference. And I do think lawyers have responsibility to, if they think injustice is occurring and a party is not able to always pay full fee, that they should be prepared on occasion to step up and serve the higher good. You make a valid point there and I

think with regard to a judge, objectivity, as you stated, is important.

I think one of the biggest difficulties we face in the legal system is confusion over the establishment clause. We just had a marvelous ceremony, I was so proud to be there, to replace one of the statutes that Alabama had in Statuary Hall with a statue of Helen Keller, who perhaps did more than any single person in history to help the disabled.

It began with a prayer delivered by the chaplain of the House of Representatives and it concluded with a prayer by the chaplain of the U.S. Senate. So at any rate, I think the Supreme Court has failed to clarify what it is that is OK and what is not OK or what is permissible and not.

In *Virginia College Building Authority* v. *Lynn*, the Virginia Supreme Court considered that Regent University, a sectarian private school in Virginia, could participate in a state-run bond program. I guess it was a bond program that colleges and universities, private and public, could participate in.

You joined another justice's dissent that would have held that the university, since the university provided "religious training or theological education," closed quote, in violation of the Virginia Constitution and state statute, it would be a violation of Virginia Constitution and state statute to allow them to participate in that program, even though the university taught secular subjects, also.

Although your opinion did not directly address whether it would violate the establishment clause to allow Regent to participate in a bond program, I am concerned about your view on the separation of church and state issues.

At the time you decided this case, did other religious schools in Virginia, for example, private or parochial schools, participate in the program and if so, what made Regent different from those schools?

Judge KEENAN. Well, as I recall, Senator, that bond issue came in the context of the proposed Regent campus that was going to be for a divinity program. So that while Regent had other nonsectarian programs, such as business and law, that the bond funding was going to be used directly for that school of divinity, and that's what made a difference, in my mind, in the analysis that was applied.

We did not have an establishment clause argument. It was simply whether there was that sectarian—whether there was that overlap in terms of the bond funding and the religious purpose of the construction that was proposed.

Senator SESSIONS. Well, I would acknowledge that we have got quite a body of law that is pretty amorphous about how to decide these issues. But the Constitution prohibits establishment of a religion, but it guarantees the right to free exercise of religion. Presumably, being a minister of a religious faith is not in itself a bad thing.

Therefore, I am going to—I will just ask you to perhaps see if you can explain why it is that you would care whether they wanted to study to be a minister.

Judge KEENAN. I think it was great that they wanted to study to be a minister, I mean, certainly, but——

Senator SESSIONS. Well, why would that disqualify—why is that profession different than being a consiglieri for the mafia? They could get money if you were going to——

Judge KEENAN. Well, the issue, though, was the bond funding and whether the bonds were being used for a religious purpose and under our law, the bonds could not be used for a religious purpose, and that was——

Senator SESSIONS. Was that the State Constitution or State statute; do you recall?

Judge KEENAN. I believe it was brought under the—there was a constitutional challenge and I don't recall any particular statute, I have to say, because——

Senator SESSIONS. The State's Constitution or Federal?

Judge KEENAN. I believe it was State. But because of the passage of time, sir, I could stand corrected.

Senator SESSIONS. Well, there are difficult issues. It just seems to me that we all exercise, if somebody wants to undertake a religious career and actually counsel people on their marriages and go through their funerals with the families and help raise their children and good and healthy values, somehow that becomes unconstitutional and that other goals are not.

Thank you, Mr. Chairman.

Senator CARDIN. Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman. Welcome, Justice Keenan. That is proper, right?

Judge KEENAN. Thank you.

Senator FRANKEN. I would like to welcome your family, as well. And I agree that mafia consiglieri schools should not get funding.

[Laughter.]

Senator SESSIONS. Well, they would be able to go to New York demand it and get it.

Senator FRANKEN. Well, OK. We cannot even agree on that. This morning, we had a hearing called Workplace Fairness: Has the Supreme Court Been Misinterpreting Laws Designed to Protect American Workers from Discrimination, and Jack Gross, who was one of the witnesses, testified from the *Gross* v. *FBL Financial Services* case.

I am interested to learn more about your rulings in discrimination cases. In *Shaw* v. *Titan Corp*., you ruled that a plaintiff is not required to prove that his or her employer's discriminatory motive was the sole cause of termination.

Now, in *Gross*, the Supreme Court recently ruled on this very question and they determined that lawsuits under the Age Discrimination in Employment Act, that in lawsuits under that, that the plaintiff must show that age was the determinative factor in the termination.

I found this to be troubling and sort of thought of it as judicial activism. Can you tell me your reasoning in deciding the *Shaw* case, what led to your decision, and what you think of the Supreme Court's decision on *Gross*, which, of course, you would certainly abide by the precedence of that, since this is for the fourth circuit?

Judge KEENAN. Thank you, sir. First of all, of course, the United States Supreme Court precedent binds us all.

Senator FRANKEN. Right.

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Judge KEENAN. And the statute that they interpreted, that issue is settled and beyond dispute. The *Shaw* case came up in the context of a wrongful termination of employment. It was, as I recall, a common law claim and the question was was the plaintiff, as you say, required to prove that the employer's sole motive was the discriminatory motive.

And our court unanimously determined that the plaintiff was not so required and the reason for that was that in these situations, there are often after-the-fact reasons given. There are a myriad of reasons that come to the fore and we felt that this was an issue for the trier of fact. This is something for the jury to sort out.

Was this a reason why this person was fired as opposed to was it the only reason why this person was fired? There could be many justifications for firing, many gradations, perhaps the most serious being the discriminatory act of the employer and there being some subsidiary considerations that were really quite minimal in comparison. And so the trier of fact could make that determination.

Senator FRANKEN. Is the burden on the plaintiff in that case to show that the preponderance of the cause of being fired was a discriminatory motive?

Judge KEENAN. No. That by the preponderance—under the *Shaw* ruling, it would be that by a preponderance of the evidence, my employer fired me for a discriminatory reason. And then the employer could, by defense, come back and say, "Wait a minute. This was very, very minimal in our determination. This employee didn't show up for work on time. This employee was disloyal, leaked information to a competitor," and all sorts of a host of reasons that would be available to an employer for a defense.

Senator FRANKEN. Right. But you felt that—I mean, what you ruled was it does not have to be the sole reason, the discrimination.

Judge KEENAN. That's right. Yes, sir.

Senator FRANKEN. Thank you. Thank you, and welcome to your family again.

Judge KEENAN. Thank you, sir.

Senator CARDIN. Justice Keenan, let me just comment on one of your roles I found important and that is the removal of a district court judge, which is something that is rather unpleasant. No one likes to be involved in that.

But I want to give you an opportunity to talk a little bit about how important judicial ethics is in your life as a judge and, if you are confirmed to the Federal bench, how you see your role as far as ethics is concerned.

Judge KEENAN. Yes, Senator Cardin. I think that judges serve a very important role in terms of in their communities, in terms of always standing for the highest ethical principles.

The case to which you allude was a very difficult case for our court. A judge, as you're aware, actually had—a woman was claiming that she was injured or attacked by her husband and the judge made a very, very poor decision in terms of asking the woman to lower her pants in the courtroom to display her wound.

And although this was a restricted hearing, because it was a domestic relations court, there were still several members to whom this woman was not related who saw her exposed body. As a court reviewing this, we took the matter very seriously, because we con-

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sidered, in terms of the community, what would it say if we sent that judge back to the community having done this, having, from my perspective, ignored the dignity of the individual who was before the court.

This woman was coming before the court with a complaint. She was seeking the aid of the court and, in our view, she was degraded—she was degraded by that judge. We felt that it would be a very, very unwise course to return that judge to the bench in view of the extreme nature of his conduct and misjudgment.

Senator CARDIN. Well, thank you for that answer. It is a tough decision to remove a colleague and it was the right decision.

The oath that you will take if confirmed includes the provision of doing justice regardless of wealth, specifically mentioning the poor. I personally believe the legal community has a specific responsibility as it relates to providing access to justice to those who otherwise could not afford it, including pro bono work.

I want to hear what you have done during your career in regards to meeting this obligation of pro bono and how you see your role as a judge in furthering access to those who otherwise would not have access to our legal system.

Judge KEENAN. Thank you, Senator. I think the judge is a very important role model in terms of the legal community, in encouraging lawyers to perform pro bono work.

As an attorney, I regularly accepted reduced fee civil cases from the Fairfax Bar Association. I accepted criminal court appointed cases and I worked on many bar committees and did volunteer work for several years when I practiced as an attorney.

And then when I became a judge, I felt it was very important to continue this work and I did it at different—in very different aspects of the community. In one case, I worked as a volunteer mentor for a year in an elementary school, where once a week I met with a student and she and I went over her homework, talked about the law. I tried to give her hope for the future.

She lived with, I think it was, six siblings in a one-bedroom apartment with her mother and her grandmother, and it was a one-on-one relationship to try to give this young girl some hope.

I've worked in much larger group programs with the YMCA to encourage young students with regard to careers in the law, to excite them and interest them. I love speaking in public schools. I have done that quite a bit. My favorite grades are four, five and six, because the kids are still lacking in cynicism and they just love to learn everything they can.

I am now currently working on a judicial wellness initiative with the Supreme Court of Virginia and that is something I regard as very, very important to our state, and that is to help judges and their families who are having substance abuse problems. They also could be having bereavement problems, problems involving depression, problems that a judge normally can't get help for in a community because of the judge's leadership role.

So I have devoted a big part of my career to pro bono work.

With regard to the second part of your question, the courtroom and the court process and what we do for litigants, I think a court has to be zealous in making sure that litigants have all of the rights that they're entitled to.

In other words, if a defendant is asking for an attorney, as a trial judge, I always made sure that defendant got the attorney. When the defendant was making a motion under *Ake* v. *Oklahoma* for an investigator or whatever, I, of course, wanted to make sure that his or her plea was fully and fairly heard.

A judge has a boundary, though, that the judge cannot step over. I cannot subjectively cross over and actively try to rebalance the scales because I think somebody may have fewer resources in the legal system. I will zealously ensure that they get everything that is available and that they're entitled to, but I don't believe it's my role to, as I said, attempt to rebalance the scales, because then I become a player in the process rather than a neutral evaluator of the case before me.

Senator CARDIN. And I do believe that there have been some court decisions on that, as well, defining that role the way you just stated. So I agree with that.

In normal times, it is difficult for poor people to get access to our civil system. In a recession, it is that much more difficult. Our highest court in Maryland has passed rules underscoring the responsibilities of every member of the bar to participate in pro bono activities and having mandatory reporting as to what our lawyers are doing in regards to meeting that obligation.

I do not know whether the Supreme Court of Virginia has taken any similar steps or not. I do know that the different circuits do talk about these issues. I just want to get your interest and using your position appropriately in the leadership of the judiciary to advance what I hope you agree with me is a responsibility that all lawyers have to participate in pro bono and to help particularly in tough economic times.

Judge KEENAN. I certainly agree, Senator, that there is a great need, there is an enormous need out there, and I think that a judge—all judges should encourage lawyers to engage in this kind of work.

And it doesn't mean that a lawyer has to do one type of pro bono work over another. There is a myriad of options available to attorneys so that they can find what suits them best, suits their interests and their personal beliefs.

And I don't think that a judge should advocate for any one particular program over another, but a judge should urge lawyers to give of themselves and to give back to the community that's really given them a lot.

And so that's something I've done throughout my career and that's something I would anticipate, if confirmed, that I would take pleasure in doing on the Federal appeals bench.

Senator CARDIN. Thank you for that answer. Senator Sessions.

Senator SESSIONS. Thank you. Judge Keenan, I guess you know fairly closely what you get paid. Are you willing to serve at that salary?

[Laughter.]

Judge KEENAN. Yes, sir.

Senator SESSIONS. I asked John Roberts that, Chief Justice Roberts, he took a little longer to answer it and he has since asked for more.

[Laughter.]

Senator SESSIONS. But with the deficit we are facing, I do not think we are likely to see any huge increases. And everybody would like to be paid more, but this country is in serious financial condition.

Tell me about, just briefly, on your caseload, how would you estimate the caseload of the fourth circuit to be compared to your caseload on the Supreme Court that you serve now.

I know we have a shortage of judges, probably more in the fourth circuit than any other circuit. Some of that is due to objections from Senators from the fourth circuit to President Bush's nominees, rightly or wrongly, but some of them did not get confirmed. I will just say it that way.

But how do you feel about that? We just had a hearing last week, I guess, in which Judge Tjoflat of the eleventh circuit, I think, has the highest caseload in the country, believed that they should not add more judges because the circuit becomes more unwieldy, and some of the other circuits were requesting judges when they had substantially less.

So I guess, at any rate, do you feel a responsibility to manage cases and how do you compare the level you expect to see in the Federal court as compared to what you had to do on the Supreme Court?

Judge KEENAN. Well, I think that the biggest difference probably is the Supreme Court of Virginia, most cases do not have appeals of right. They proceed o a petition for appeal, and in the Federal court, there is the right of appeal. And so that certainly admits of the possibility of a lot more cases.

In Virginia, we handle, I think, about 3,000 cases a year in our Supreme Court and we work very hard and——

Senator SESSIONS. You write opinions on how many?

Judge KEENAN. No. We write opinions not on that many, no. We issue orders in many cases. This is an estimate, but we issue somewhere around 250 opinions, I think, a year.

I believe that the—and, see, with regard to the fourth circuit, I'm not familiar with their internal statistics, but they do issue a number of opinions and then some of them nonpublished, some of them published.

So I'm not really familiar with the numbers, but I do sense that I'm going from one pretty demanding job to another and I have to say I'm looking forward to the challenge. I like to work.

Senator SESSIONS. Well, you have got a record that has won the respect of quite a lot of people and that is something you can be proud of and I know you are pleased to have the honor of this nomination.

We will maybe submit a few more questions to you, but I appreciate the opportunity to meet you and talk with you today.

Judge KEENAN. Thank you, sir.

Senator CARDIN. Thank you, Senator Sessions. Let me point out, the record will remain open for questions by members of the Committee. I would urge all the nominees to try to get those responses back as quickly as possible and as thoroughly as possible. It will expedite the ability of the Committee to move the matter forward. So we would just urge you to give that your prompt and complete attention.

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Judge, thank you very much, appreciate it.

Judge KEENAN. Thank you, sir. Thank you, Senator.

[The biographical Information of Barbara Milano Keenan follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   Barbara Milano Keenan
   (Former names: Barbara Louise Milano and Barbara Milano Ardis)

2. **Position**: State the position for which you have been nominated.

   United States Circuit Judge for the Fourth 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.

   Office: 110 N. Royal Street, Suite 305, Alexandria, VA 22314

4. **Birthplace**: State year and place of birth.

   1950; Vienna, Austria, United States Legation Hospital

5. **Education:** List in reverse chronological order 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.

   07/1990-05/1992, University of Virginia School of Law; L.L.M., 1992

   09/1971-06/1974, George Washington University Law School; J.D., 1974

   Summer, 1970, Trinity College, no degree

   09/1967-06/1971, Cornell University; B.A., 1971

6. **Employment Record:** List in reverse chronological order 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 description.

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Judicial Service:

1991 – Present	Justice, Supreme Court of Virginia
1985 – 1991	Judge, Court of Appeals of Virginia
1982 – 1985	Judge, Circuit Court of Fairfax County, VA
1980 – 1982	Judge, General District Court of Fairfax County, VA

Appointments by the Circuit Court of Fairfax County, VA:

1975 – 1980	Commissioner in Chancery, Fairfax County, VA
1978 – 1980	Board of Zoning Appeals, Fairfax County, VA

Law Practice:

1978 – 1980	General practice of law, Keenan, Ardis, and Roehrenbeck, Fairfax, VA
1976 – 1978	General practice of law, self-employed, Fairfax, VA
1974 – 1976	Assistant Commonwealth's Attorney, Fairfax County, VA
1973 – 1974	Law Clerk, Shomette, Stanhagen, and Durrette, Falls Church, VA
1972 – 1973	Law Clerk, United States Department of Justice, United States Marshals Service, Washington, D.C.

7. **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, and whether you have registered for selective service.

None.

8. **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.

Influential Woman of the Year, Virginia Lawyers Weekly, 2009

Common Good's Annual Gatekeeper Award, 2004

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Jurisprudence Award, Fairfax Bar Association, 1995

First Annual Belva Lockwood Memorial Award, Law Association for Women The National Law Center, George Washington University, 1993

Virginia Women Attorneys Association and Metropolitan Richmond Women's Bar Association, Outstanding Women Attorneys Award, 1986

George Washington University Law School Professional Achievement Award, 1983

9. **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.

Virginia State Bar

American Bar Association, Judges' Section

Virginia Bar Association, Judges' Section

National Association of Women Judges

Virginia Association of Women Judges

Fairfax County Bar Association:
Secretary 1979 - 1980
Board of Directors 1977 - 1980
Treasurer 1977 - 1979
Grievance Committee 1977 - 1979

Judicial-related Committees:

Supreme Court of Virginia Judicial Wellness Initiative, Chairperson, 2008 - Present.
This program is being developed to address substance abuse and mental health issues of Virginia's judges.

Supreme Court of Virginia Historical Commission, Vice Chairperson, 2006 - Present.

Virginia Criminal Justice Conference, Supreme Court Member, 2006 - Present

Judicial Performance Evaluation Commission, Chairperson, 2004 - 2008

Commission on Virginia Courts in the 21st Century: To Benefit All, To Exclude None, Planning/Executive Committee, 2004 - 2006

Virginia Criminal Justice Conference Study Committee on Translators/Interpreters, 2006 - 2007

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Virginia State Crime Commission Subcommittee on Actual Innocence Legislation, Supreme Court Member, 2003 - 2004

Judicial Performance Evaluation Interim Commission, Chairperson, 2003 - 2004

Bench-Bar Relations Committee to Develop New Juror Orientation Video, Supreme Court Member, 2002 - 2003

Judicial Performance Evaluation Task Force, Chairperson, 2001 - 2002

Interlocutory Appeals Legislative Committee, Supreme Court Member, 1999

Boyd Graves Conference, Virginia Bar Association, Participant, 1988 - Present

Appellate Law Section, Virginia State Bar, 1996

Bench-Bar Relations Committee, Virginia State Bar, 1995

American Bar Association, Central and East European Law Initiative, Commentator on Draft Constitution for Belarus, 1992

Commission on the Future of Virginia's Judicial System, Quality of Justice Task Force, Chairperson, 1987 - 1988

Virginia Supreme Court Commission on Jury Management, Circuit Court Member, 1984

10. **Bar and Court Admissions:**

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.

Virginia State Bar, June 1974

There has been no lapse in membership in this admission.

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.

Supreme Court of Virginia, 1974

United States District Court for the Eastern District of Virginia, 1978

There have been no lapses in membership in these admissions.

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11. **Memberships:**

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, 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.

William & Mary Journal of Women and the Law, Advisory Panel, 2009
Women's Giving Circle of Alexandria, VA, 2007-Present
Old Town Sport and Health Club, Alexandria, VA, 2007-Present
Gold's Gym, Alexandria, VA, 2004-2007
Cape Henry Racquet Club, Virginia Beach, VA, 1995-2004
Wareing's Gym, Virginia Beach, VA, 1994-2004

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, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin 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.

These organizations and clubs have never engaged in discrimination on the basis of race, sex, religion, or national origin.

12. **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. Supply four (4) copies of all published material to the Committee.

Barbara M. Keenan and Johanna L. Fitzpatrick, *Juvenile Justice System: A Circle Closed*, 15 LEX CLAUDIA (Spring, 1997)

b. 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, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

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Supreme Court Judicial Wellness Initiative, Chairperson, 2008 - Present
No reports, memoranda, or policy statements have been prepared.

Supreme Court of Virginia Historical Commission, Vice Chairperson, 2006 - Present

I have not prepared or contributed to any reports, memoranda, or policy statements.

Virginia Criminal Justice Conference, Supreme Court Member, 2006 - Present
Letter to Cathleen Skinner and report dated August 30, 2007.

Judicial Performance Evaluation Commission, Chairperson, 2004 - 2008
Sections of reports of Judicial Council of Virginia.

Commission on Virginia Courts in the 21st Century: To Benefit All, To Exclude None, Planning/Executive Committee, 2004 - 2006

I have not prepared or contributed to any reports, memoranda, or policy statements.

Virginia State Crime Commission Subcommittee on Actual Innocence Legislation, Supreme Court Member, 2003 - 2004
Report of the Virginia State Crime Commission, "Writ of Actual Innocence Based on Non-Biological Evidence," dated 2004.

Judicial Performance Evaluation Interim Commission, Chairperson, 2003 - 2004
"Judicial Performance Evaluation Pilot Program Summary Report 2003 - 2004," dated November 1, 2004.

Bench-Bar Relations Committee to Develop New Juror Orientation Video, Supreme Court Member, 2002 - 2003
Script of video.

Judicial Performance Evaluation Task Force, Chairperson, 2001 - 2002
"Report of the Judicial Performance Evaluation Task Force," July 2001.

Interlocutory Appeals Legislative Committee, Supreme Court Member, 1999

I have not prepared or contributed to any reports, memoranda, or policy statements.

American Bar Association, Central and East European Law Initiative, Commentator on Draft Constitution for Belarus, 1992
"Comments on the Draft Constitution of the Republic of Belarus," 1992.

Commission on the Future of Virginia's Judicial System, Quality of Justice Task Force, Chairperson, 1987 - 1988
"Courts in Transition: The Report of the Commission on the Future of

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Virginia's Judicial System."

Virginia Supreme Court Commission on Jury Management, Circuit Court Member, 1984

"Standards Relating To Juror Use and Management in Virginia," dated January 1985.

c. 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.

I have not given any such testimony or made official statements or communications of this nature.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. 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 recording of your remarks, 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, furnish a copy of any outline or notes from which you spoke.

I do not have written speeches but speak extemporaneously or with written notes. I am providing to the Committee the notes and outlines I have used and retained during my career. I have made numerous other speeches on these and related subjects for which I have not retained notes.

Date unknown; Judicial Selection, Lunch speech to Bar Association

Date unknown, Should You Be A Judge? Speech to school-age children

Date unknown, General Speech on the Judiciary, Fairfax County High School

Date unknown, Plea Bargaining and Plea Agreements, Bar Associations, Continuing Legal Education Seminar

July, 1987 Appeals Process For Commonwealth's Attorneys Commonwealth's Attorneys Association

1988-1989 Criminal Cases in the Court of Appeals, Bar Associations, Continuing Legal Education Seminar

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1989	Family Court and the Court of Appeals, Bar Associations
1989-1990	The General District Court and the Juvenile Court/Impact on the Appellate Process, Bar Associations, Continuing Legal Education Seminar
1990's	Pro Se Representation in Civil and Criminal Cases, Bar Associations
1992	Certified Questions of Law Under Virginia Rule 5:42, Conference of the 4th Circuit Court of Appeals
1995	Freedom of Religion and Virginia Law, Thomas Jefferson High School, Annandale, VA
1991-Present	Various Topics, Law Day events sponsored by certain law schools and Bar Associations within Virginia
1990's	Workshop Materials Virginia Judicial Conference
1990- Present	Appellate Advocacy, Bar Associations, Continuing Legal Education Seminars
May, 1998	Commencement Speech, The College of William and Mary School of Law
May, 1998	Professionalism, Virginia State Bar Professionalism Course
2005-2009	Legal Profession, Leadership in the Law Summer Camp, Loudoun County Bar Association
1992-1993	Ethical Issues in Tort Litigation, Virginia Trial Lawyers Association Continuing Legal Education Seminar
1997	Ethics in Attorney/Client Relationship, Harry L. Carrico Course on Professionalism sponsored by the Virginia State Bar
	Juror Misconduct, Bar Associations
2001-Present	Key Qualities of Brief Writing, Virginia State Bar, Continuing Legal Education Seminar
2002-Present	Brief Writing, Virginia State Bar, Continuing Legal Education Seminar

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e. 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.

Chris M. Kormis, *Is She Tough Enough? Women on the Bench*, The George Washington University National Law Center Magazine (June 1993).

Kathleen Kocks, *Justice Supreme*, GW Law School The George Washington University (Summer 2005).

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I was appointed as a judge of the General District Court of Fairfax County, VA in 1980.

I was appointed as a judge of the Circuit Court of Fairfax County, VA in 1982.

I was appointed as a judge of the Court of Appeals of Virginia in 1985.

I was appointed as a justice of the Supreme Court of Virginia in 1991.

a. Approximately how many cases have you presided over that have gone to verdict or judgment?

I presided over several thousand cases to judgment as a judge of the General District Court of Fairfax County, VA.

I presided as a circuit court judge in approximately 600 cases that proceeded to verdict or judgment.

i. Of these, approximately what percent were:

jury trials? 25%; bench trials 75% [total 100%]

civil proceedings? 50%
criminal proceedings? 50% [total 100%]

b. Provide citations for all opinions you have written, including concurrences and dissents.

See attached list of cases.

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c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

I presided over these cases during the period that I served as a judge on the Circuit Court of Fairfax County from 1982-85. Copies of the judgments in these cases are not readily available. I did not include any criminal cases because I did not have access to those files.

1. Jackson v. Sammis Construction Co., Case No. 64015
The court held that the plaintiff was entitled to recover attorney's fees under Virginia Code § 54-145.3:5 (c), which is part of the Virginia Contractor Transaction Recovery Act, and that the statutory amendment to this section did not affect the plaintiff's right to recover such fees.

Counsel:
Lawrence C. Melton, 227 Adams Ave., Alexandria, VA 22301
Richard C. Kast, Assistant Attorney General, 1010 N. 8th Street, Richmond, VA 23219

2. Vandevender v. Wickline, Case No. 57526, and International Bldg. Methods, Inc. v. Wickline, Case No. 57469
The court denied the defendant's motion for summary judgment. The court held that the alleged defamatory statements were not privileged because the statements were made during an informal administrative proceeding that did not qualify as a judicial or quasi-judicial hearing.

Counsel:
James A. Hixon, Douglas L. Pierson, Soutzos & Pierson, 311 Maple Ave. West, Suite G, Vienna, VA 22180
Edward Ashworth, Frank Labertta, Jr., Morgan Assocs, 1899 L. Street, N.W., Washington, DC 20036
William M. Baskin, Jr., Baskin, Baskin & Jackson, 301 Park Ave., Falls Church, VA 22046
The Honorable Gerald L. Baliles, former Attorney General, 101 N. 8th Street, Richmond, VA 23219

3. Black v. Dwoskin, Case No. 62301
In this case involving an agency-principal relationship, the court granted the plaintiff's motion to strike the defendants' plea of the statute of limitations. The court held that the general rule stating that the statute of limitations begins to run upon the termination of the agency relationship was applicable in this case.

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Counsel:
Haynie S. Trotter, Boothe, Prichard, & Dudley, 4103 Chain Bridge Road, Fairfax, VA 22030
Harry Lewis MacPherson, III, Hazel, Beckhorn & Hanes, 4084 University Drive, Fairfax, VA 22030

4. Richards v. State Farm Mutual Ins. Co., Case No. 83935
In this case involving an interpretation of an insurance contract, the court held that an exclusion in the contract violated Virginia Code § 38.1-355 and that, therefore, the policy covered the medical expenses incurred by the plaintiff.

Counsel:
Gary V. Davis, 1315 Vincent Place, McLean, VA 22102
Philip B. Morris, Browder, Russell, Morris & Butcher, 1200 Ross Building, Richmond, VA 23219

5. Pierce v. Heritage/Chrysler-Plymouth Sales, Inc., Case Nos. 59047, 62129
The court sustained the defendants' demurrer based on the doctrine of res judicata. The court applied the rule announced by the Supreme Court of Virginia that when a demurrer is sustained with leave to amend upon certain terms and a litigant fails to amend the complaint, the order sustaining the demurrer becomes final and constitutes a bar to further proceedings upon the same cause against the same parties.

Counsel:
Stephen W. Robinson, Boothe, Prichard & Dudley, 4103 Chain Bridge Road, Fairfax, VA 22030
Michale P. Valois, 309 Mill Street, Occoquan, VA 22125

6. Cobb v. Parson, Case No. 84940
The court concluded that the reconciliation of the parties after their execution of a property settlement agreement did not abrogate their agreement. Thus, the court held that the agreement constituted a valid and enforceable contract that included a valid waiver of a wife's statutory rights in the estate of her late husband.

Counsel:
John H. Rust, McCandlish, Lillard, Rush & Church, 4060 Chain Bridge Road, Fairfax, VA 22030
H.J.M. Melaro, 1137 N. Highland Street #5, Arlington, VA 22201
Laurie L. Dolson, 10521 Judicial Drive, Fairfax, VA 22030

7. Nova Mechanical Constr., Inc. v. First Virginia Bank, Case No. 66241
The court held that a provision of Virginia Code § 8.4-406(4) was a notification provision, requiring that a customer preserve her rights by

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discovering and reporting an alteration to a bank by a certain time, and did not constitute a statute of limitations controlling the time in which she may bring suit against the bank.

Counsel:
Martin R. Mann, 311 Park Avenue, Falls Church, VA 22046
Kathryn Anderson, First Virginia Bank, 6400 Arlington Blvd., Falls Church, VA 22046

8. Satterthwaite v. AT&T Comm. of Virginia, Case No. 64999
The court sustained the defendant's plea in bar based upon the six-month statute of limitations as stated in Section 301 of the Labor Management Relations Act.

Counsel:
Roy J. Baldwin, 2915 Hunter Mill Road, Suite 18, Oakton, VA 22124
Stephen W. Robinson, Boothe, Prichard & Dudley, 4103 Chain Bridge Road, Fairfax, VA 22030

9. Whitley v. Bass, Case No. 61348
In this case involving a petition for writ of habeas corpus in which the petitioner was sentenced to death for capital murder, the court ordered that an evidentiary hearing be held to consider whether petitioner's trial counsel adequately interviewed witnesses and conducted a proper investigation of psychiatric evidence for sentencing. The court dismissed the petitioner's remaining claims.

Counsel:
Jaclyn Leonhard, Hall, Surovell, Jackson & Colten, 4010 University Drive, Fairfax, VA 22030
Richard Smith, Assistant Attorney General, 101 N. 8th Street, Richmond, VA 23219

10. Cessna v. Thompson, Case No. L055231 and L050823.
In this products liability case involving an allegedly faulty fuel gauge on an airplane involved in an accident, judgment was entered in favor of the defendants.

Counsel:
Patrick M. Regan, 1919 M Street, N.W., Suite 350, Washington, DC 20036
Thomas L. Appler, Wilson, Else, Moskowitz, Edelman & Dicker LLP, 844 Westpark Drive, Suite 510, McLean, VA 22102

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that

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were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

The following opinions are among the most significant decisions that I have written while serving as a justice on the Supreme Court of Virginia:

1. Alliance to Save the Mattaponi v. Commonwealth Dep't of Envtl. Quality ex rel. State Water Control Bd., 270 Va. 423, 621 S.E.2d 78 (2005), cert. denied, 126 S. Ct. 2862 (2006)
In a dispute over construction of a reservoir, the Court held that Virginia Code § 62.1-44.29 waives the Commonwealth's sovereign immunity for judicial review of Water Control Board actions. The Board properly applied Virginia Code § 62.1-44.15:5(c), and the judgment under the Administrative Process Act was affirmed. On separate claims transferred from the Court of Appeals, that portion of the circuit court's judgment holding that a particular Treaty is Virginia law was affirmed. The circuit court's judgment that it lacked jurisdiction to consider the separate Treaty claims was reversed, and those claims were remanded for further proceedings.

   Counsel:
   Deborah M. Murray, Southern Environmental Law Center, 201 W. Main Street, #14, Charlottesville, VA 22902, 434-977-4090. Counsel for appellants.

   R.R. Linker, Commonwealth of Virginia, Assistant Attorney General, 900 E. Main Street, Richmond, VA 23219, 804-786-2071, and James E. Ryan, Jr., Troutman Sanders, LLP, PO Box 1122, Richmond, VA 23218, 804-697-1200. Counsel for appellees.

2. Lovitt v. Warden, 266 Va. 216, 585 S.E.2d 801 (2003), cert. denied, 541 U.S. 1006 (2004)
In a petition for a writ of habeas corpus by a prisoner convicted of capital murder and sentenced to death, the Court held that neither the failure of the prosecution to disclose allegedly exculpatory information to defense counsel before trial, nor destruction of evidence after the trial, provided a valid basis for habeas corpus relief. Petitioner's claim that his trial counsel was ineffective was also rejected. The petition was dismissed.

   Counsel:
   Ashley C. Parrish, King & Spaulding, 1700 Pennsylvania Ave., NW, Suite 200, Washington, D.C., 20006, 202-626-2627. Counsel for appellant.

   Katherine P. Baldwin, Commonwealth of Virginia, Senior Assistant Attorney General, 900 E. Main Street, Richmond, VA 23219, 804-786-2071. Counsel for appellee.

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3. Tauber v. Commonwealth ex rel. Kilgore, 263 Va. 520, 562 S.E.2d 118 (2002), cert. denied, 537 U.S. 1002 (2002)
In an accounting of the assets of a defunct charitable corporation, the Court held that the chancellor properly applied a constructive trust, determined the value of the assets, adopted a cy pres distribution, imposed prejudgment interest, fixed the appeal bond, and denied recovery of attorney's fees and costs. The Court further held that the chancellor erred in reducing the amount of the award from the sums established in admitted testimony.

Counsel:
Stephen D. Rosenthal, Troutman Sanders, PO Box 1122, Richmond, VA 23218, 804-697-1200. Counsel for appellants.

Marc E. Bettius, Commonwealth of Virginia, Office of the Attorney General, 900 Main Street, Richmond, VA 23219, 804-786-2071. Counsel for appellees.

4. Mitchem v. Counts, 259 Va. 179, 523 S.E.2d 246 (2000)
The Court held that Virginia Code § 2.1-725(D) of the Virginia Human Rights Act (VHRA) does not bar a common law action for wrongful termination of employment based on violation of public policies not reflected in the VHRA, when the conduct alleged also violates a public policy reflected in the VHRA.
Counsel:
Terry N. Grimes, King, Fulghum, Snead, Nixon & Grimes, Elm Ave. Roanoke, VA 24016. Counsel for appellant.

Bruce M. Steen, McGuire Woods, 100 N Tyron Street, Suite 2900, Charlotte, NC 28202, 704-353-6244. Counsel for appellees.

5. Advanced Marine Enters. v. PRC, Inc., 256 Va. 106, 501 S.E.2d 148 (1998)
The Court held that (1) Virginia Code § 18.2-499 does not require proof of actual malice; rather, that statute requires proof of legal malice, namely, that the engineering firm and the former employees acted intentionally, purposefully, and without lawful justification, (2) the non-competition clause of the former employees' employment contracts was enforceable because the clause was not unduly harsh and oppressive in curtailing the legitimate efforts of the former employees to earn a livelihood, and the clause was reasonable from a public policy standpoint, (3) there was sufficient evidence to support the amount of damages and the formula upon which damages were based, and (4) the chancellor had jurisdiction to award treble damages and punitive damages under the statute.

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Counsel:
Frank K. Friedman, Woods Rogers, 10 S. Jefferson Street, Roanoke, VA 24038, 540-983-7649. Counsel for appellants.

Thomas C. Papson, McKenna, Long & Aldridge, 1900 K Street, Washington, DC, 20006, 202-496-7500. Counsel for appellee.

6. Shaw v. Titan Corp., 255 Va. 535, 498 S.E.2d 696 (1998)
Upon two questions of Virginia law certified by the United States Court of Appeals for the Fourth Circuit, the Court held that the federal district court did not err in refusing to give the jury an explicit "but-for causation, sole-cause, or mixed-motive" instruction. The Court determined that the plaintiff who asserted a cause of action for wrongful termination of employment was not required to prove that the employer's improper motive was the sole cause of the wrongful termination. The Court also held that punitive damages may be recovered for wrongful termination in violation of public policy when the public policy violated is embodied in the Virginia Human Rights Act because the cause of action derived solely from the common law and the plaintiff pleaded and proved an intentional tort under that common law.

Counsel:
K. Stewart Evans, Jr., Pepper Hamilton, 600 14th Street, NW, Washington, DC, 20005, 202-220-1200. Counsel for appellant.

Elaine C. Bredehoft, Charlson & Bredehoft, 1260 Roger Bacon Drive, Reston, VA 20190, 703-318-6800. Counsel for appellee.

7. Mueller v. Murray, 252 Va. 356, 478 S.E.2d 542 (1996)
The Court held that the "new rule" announced by the Supreme Court of the United States in Simmons v. South Carolina, 512 U.S. 154 (1994) does not apply retroactively to the defendant's conviction for capital murder the year before Simmons was announced.

Counsel:
Michael HuYoung, Barnes & Diehl, P.C., Three Paragon, 6806 Paragon Place, Suite 110, Richmond, VA 23220, 804-762-9500, and Angela D. Whitley, Boone Beale, P.C., 27 North 17th Street, Richmond, VA 22079, 804-780-1729. Counsel for appellant.

Robert H. Anderson, Commonwealth of Virginia, Office of the Attorney General, 900 E. Main Street, Richmond, VA 23219, 804-786-2071. Counsel for appellee.

8. Gilmore v. Landsidle, 252 Va. 388, 478 S.E.2d 307 (1996)
The Court held that because the enrolled House Bill 29 is the same bill

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enacted by the General Assembly, the bill was published "at length" within the meaning of Article IV, Section 12 of the Constitution of Virginia, and the bill did not impair the Governor's item veto power or his ability to ensure that expenses for the biennium did not exceed revenues. The Court refused to award a writ of mandamus as requested by the Attorney General.

Counsel:
Catherine Hammond, formerly of Commonwealth of Virginia, Office of the Attorney General, currently judge of Circuit Court of Henrico County, PO Box 90775, Henrico, VA 23273, 804-501-5022, and Gregory E. Lucyk, formerly with the Commonwealth of Virginia Office of Attorney General, currently Chief Staff Attorney for the Supreme Court of Virginia, 110 N. 9th Street, Richmond, VA 23214, 804-786-2259. Counsel for petitioners.

William Poff, Woods Rogers, 10 S. Jefferson Street, Roanoke, VA 24038, 540-983-7649. Counsel for respondent.

9. Middlekauff v. Allstate Ins. Co., 247 Va. 150, 439 S.E.2d 394 (1994)
The Court reversed the circuit court's judgment, and held that the plaintiff employee's claim for intentional infliction of emotional distress based on gender-related harassment and verbal abuse from her supervisor was not barred by the exclusivity provision of the Virginia Workers' Compensation Act because the alleged pattern of abusive behavior was not an "injury by accident" within the meaning of the Act.

Counsel:
Arthur P. Strickland, 23 Franklin Road S.W., Roanoke, VA 24001, 540-982-2909. Counsel for appellant.

Dana L. Rust, McGuire Woods, 901 E. Cary Street, Richmond, VA 23219, 804-775-1082. Counsel for appellees.

10. Hiett v. Lake Barcroft Community Ass'n., Inc., 244 Va. 191, 418 S.E.2d 894 (1992)
In this case involving a release required for a swimmer's participation in a triathlon, the Court held that that the pre-injury release from liability for negligence was void and violated public policy. The Court stated that it long had prohibited a release from liability for personal injury that might be caused by future acts of negligence, and that this prohibition had not been altered by cases upholding the right to contract for the release of liability for property damage.

Counsel:
Bernard S. Cohen, Sandra M. Rohrstaff, formerly of Cohen, Dunn &

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Sinclair. Ms. Rohrstaff is now with Reiner, Rohrstaff & Spivey, 10605 Judicial Drive, Suite B6, Fairfax, VA 22030, 703-273-9500. Counsel for appellant.

Joseph D. Roberts, Slenker, Brandt, Jennings & Johnson, 2908 Merrifield, VA 22116, 703-849-8600. Counsel for appellees.

e. Provide a list of all cases in which certiorari was requested or granted.

Supreme Court of Virginia
Cases in which I wrote the majority opinion:

Miller-Jenkins v. Miller-Jenkins, 276 Va. 19, 661 S.E.2d 822 (2008), cert. denied, 129 S. Ct. 726 (2008).

Alliance to Save the Mattaponi v. Commonwealth Dep't of Envtl. Quality ex rel. State Water Control Bd., 270 Va. 423, 621 S.E.2d 78 (2005), cert. denied, 126 S. Ct. 2862 (2006).

Pilli v. Va. State Bar, 269 Va. 391, 611 S.E.2d 389 (2005), cert. denied, 546 U.S. 977 (2005).

Lovitt v. Warden, 266 Va. 216, 585 S.E.2d 801 (2003), cert. denied, 541 U.S. 1006 (2004).

Beeton v. Beeton, 263 Va. 329, 559 S.E.2d 663 (2002), cert. denied, 537 U.S. 1020 (2002).

Yarbrough v. Commonwealth, 262 Va. 388, 551 S.E.2d 306 (2001), cert. denied, 535 U.S. 1060 (2002).

Schmitt v. Commonwealth, 262 Va. 127, 547 S.E.2d 186 (2001), cert. denied, 534 U.S. 1094 (2002).

Lovitt v. Commonwealth, 260 Va. 497, 537 S.E.2d 866 (2000), cert. denied, 534 U.S. 815 (2001).

Johnson v. Commonwealth, 259 Va. 654, 529 S.E.2d 769 (2000), cert. denied, 531 U.S. 981 (2000).

Supreme Court of Virginia
Cases in which I wrote the dissenting opinion:

Magruder v. Commonwealth, 275 Va. 283, 657 S.E.2d 113 (2008), cert. granted sub nom. Briscoe v. Virginia, ___ U.S. ___, 129 S. Ct. 2858 (2009). (No. 07-11191).

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Powell v. Warden, 272 Va. 217, 634 S.E.2d 289 (2006), cert. denied, 551 U.S. 118, 127 S. Ct. 2942 (2007).

Brown v. Commonwealth, 246 Va. 460, 437 S.E.2d 563 (1993), cert. denied 522 U.S. 1126, 118 S. Ct. 1073 (1998).

Court of Appeals of Virginia
Case in which I wrote the majority opinion:

Fitzgerald v. Bass, 6 Va. App. 38, 366 S.E.2d 615 (1989), cert. denied sub nom. Fitzgerald v. Thompson, 493 U.S. 943 (1989).

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

There are 6 appellate opinions that fall into this category.

Walls v. Commonwealth, 2 Va. App. 639, 347 S.E.2d 175 (1986).
In Commonwealth v. Jones, 267 Va. 532, 593 S.E.2d 204 (2004), the Supreme Court of Virginia rejected the analysis I had applied in Walls v. Commonwealth, 2 Va. App. 639, 347 S.E.2d 175 (1986) with regard to the "inevitable discovery" rule. I had relied on United States v. Cherry, 759 F.2d 1196 (5th Cir. 1985), cert. denied, 479 U.S. 1056 (1987), which stated a three-part test to determine whether evidence is admissible under the "inevitable discovery" exception to the exclusionary rule.

Diehl v. Commonwealth, 9 Va. App. 28, 384 S.E.2d 801 (1989).
The panel decision in Diehl v. Commonwealth, 9 Va. App. 28, 384 S.E.2d 801 (1989), which I wrote, was reversed by the Court of Appeals sitting en banc in Diehl v. Commonwealth, 10 Va. App. 139 (1990). The en banc decision was issued by order, without opinion, as is customary when the judgment of a circuit court is affirmed on appeal by "an equally divided court."

Bellfield v. Commonwealth, 11 Va. App. 310, 398 S.E.2d 90 (1990).
In Commonwealth v. Donkor, 256 Va. 443, 507 S.E.2d 75 (1998), the Supreme Court of Virginia criticized the analysis I applied in Bellfield v. Commonwealth, 11 Va. App. 310, 398 S.E.2d 90 (1990), regarding when a jury instruction should be given on a "lesser-included" offense.

Roach v. Commonwealth, 251 Va. 324, 468 S.E.2d 98 (1996), and Mueller v. Commonwealth, 244 Va. 386, 422 S.E.2d 380 (1992).

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In Morrisette v. Warden, 270 Va. 188, 613 S.E.2d 551 (2005), cert. denied, 546 U.S. 1216 (2006), the Supreme Court of Virginia held that a defendant in a capital murder trial is entitled to a verdict form in the sentencing phase of trial that expressly corresponds to the trial court's sentencing instructions, and that the statutory verdict form therefore was deficient. This holding was based on a new argument not raised in either Roach v. Commonwealth, 251 Va. 324, 468 S.E.2d 98 (1996), cert. denied, 519 U.S. 951 (1996), or Mueller v. Commonwealth, 244 Va. 386, 422 S.E.2d 380 (1992), cert. denied, 507 U.S. 1043 (1993), reh'g denied, 508 U.S. 968 (1993). In Roach and Mueller, I wrote opinions stating that the statutory verdict forms fully apprised the jury of its sentencing options when considered in conjunction with the trial court's sentencing instructions.

Johnson v. Commonwealth, 267 Va. 53, 591 S.E.2d 47 (2004).

In Roper v. Simmons, 543 U.S. 551 (2005), the Supreme Court of the United States invalidated the application of the death penalty to juvenile offenders. This holding reversed an earlier decision I had written in Johnson v. Commonwealth, 267 Va. 53, 591 S.E.2d 47 (2004), vacated, 544 U.S. 901 (2005), in which I relied on the holding of Stanford v. Kentucky, 492 U.S. 361 (1989) affirming a death sentence imposed on a capital murder defendant who was 16 years old at the time of the offense.

Further, I describe five cases below in which my decisions made as a trial judge, rendered between 1982 and 1985, were reversed, or reversed in part, by the Supreme Court of Virginia.

Cox v. Commonwealth, 227 Va. 324, 315 S.E.2d 288 (1984).

The Court held that I had erred in ruling that certain bank records requested by a party were not material to the case. The Court reversed my decision and remanded the case.

Commonwealth v. Croatan Books, Inc., 228 Va. 383, 323 S.E.2d 86 (1984)

In this case, the Commonwealth had filed a complaint against a bookstore owner seeking to enjoin a nuisance caused by homosexual, sexually-explicit activities taking place at the store. I ruled that the activities constituted a public nuisance under Virginia Code § 48-7 but that Virginia Code § 48-12, which would have required closure of the store, was unconstitutional as applied to the facts of the case because such action "reach[ed] far beyond the remedy necessary for the abatement of the complained of nuisance." Instead, I ordered a more limited remedy that permitted the bookstore to remain open. On appeal, the Court reversed my decision and held that the closure of the bookstore was a proper exercise of the Commonwealth's police power and did not constitute an impermissible infringement on First Amendment freedoms. The Court remanded the case.

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Stone v. Ethan Allen, Inc., 232 Va. 365, 350 S.E.2d 629 (1986)

In this case, certain consumers had purchased a defective refrigerator that caused a fire and damaged their property. I entered summary judgment in favor of the suppliers of the refrigerator based on the applicable statute of limitations. The Court affirmed the dismissal of the breach of warranty claims but reversed the dismissal of the negligence claims holding that the five-year limitation for those claims began to run from the time of the fire, not from the time of delivery of the refrigerator. The Court affirmed in part, reversed in part, and remanded the case.

Raney v. Four Thirty Seven Land Company, Inc., 233 Va. 513, 357 S.E.2d 733 (1987)

In this case, the Court held that I had erred in holding that a land company was a necessary party to a landowner's prior fiduciary action concerning ownership of a strip of land used by both parties to reach the public road. The Court also dissolved the injunction that I had issued and reinstated the orders entered in favor of the landowner in the fiduciary action. The Court reversed my decision and entered final judgment.

Duggin v. Adams, 234 Va. 221, 360 S.E.2d 832 (1987)

In this case, the Court ruled that I had erred in sustaining the defendant's demurrer. The Court held that the plaintiff had asserted a prima facie case of tortious interference with a contract and that the motion for judgment contained adequate factual allegations. The Court reversed my decision and remanded the case.

g. Provide 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.

As a justice of the Supreme Court of Virginia, I have not issued any unpublished opinions. During my service as a judge of the Court of Appeals of Virginia, about 22% of my opinions were unpublished. They are available either on a computerized legal database or by obtaining a copy of the opinion from the Clerk of the Court of Appeals.

h. Provide 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, provide copies of the opinions.

This list contains a representative sample of significant constitutional issues I have considered during my service on the Supreme Court of Virginia. Of particular note, I recused myself from three cases involving the constitutionality of a Virginia statute prohibiting the burning of a cross because my husband, who was a judge serving on the Circuit Court of the City of Virginia Beach, had issued

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pretrial rulings upholding the constitutionality of that statute. See Black v. Commonwealth, Elliott v. Commonwealth, O'Mara v. Commonwealth, 262 Va. 764, 553 S.E.2d 738 (2001), aff'd. in part, vacated in part, 538 U.S. 343 (2003), remanded to 262 Va. 764, 553 S.E.2d 738 (2001).

Jones v. Commonwealth, 277 Va. 171, 670 S.E.2d 727 (2009)

Gray v. Virginia Sec'y of Transp., 276 Va. 93, 662 S.E.2d 66 (2008)

Porter v. Commonwealth, 276 Va. 203, 661 S.E.2d 415 (2008) (Keenan wrote dissenting opinion.)

Virginia Baptist Homes, Inc. v. Botetourt County, 276 Va. 656, 668 S.E.2d 119 (2008)

McCain v. Commonwealth, 275 Va. 546, 659 S.E.2d 512 (2008)

Marshall v. Northern Virginia Transp. Auth., 275 Va. 419, 657 S.E.2d 71 (2008)

Gilman v. Commonwealth, 275 Va. 222, 657 S.E.2d 474 (2008) (Majority opinion written by Keenan.)

Magruder v. Commonwealth, 275 Va. 283, 657 S.E.2d 113 (2008), cert. granted sub nom. Briscoe v. Virginia, ___ U.S. ___, 129 S. Ct. 2858 (2009). (Keenan wrote dissenting opinion.)

Anderson v. Commonwealth, 274 Va. 469, 650 S.E.2d 702 (2007), cert. denied, 128 S. Ct. 2473 (2008)

Judicial Inquiry & Review Comm'n v. Shull, 274 Va. 657, 651 S.E.2d 648 (2007) (Majority opinion written by Keenan.)

McCabe v. Commonwealth, 274 Va. 558, 650 S.E.2d 508 (2007)

McDonald v. Commonwealth, 274 Va. 249, 645 S.E.2d 918 (2007)

Gray v. Commonwealth, 274 Va. 290, 645 S.E.2d 448 (2007), cert. denied, 128 S. Ct. 1111 (2008)

Kopalchick v. Catholic Diocese of Richmond, 274 Va. 332, 645 S.E.2d 439 (2007)

In re Moseley, 273 Va. 688, 643 S.E.2d 190 (2007), cert. denied, 128 S. Ct. 659 (2007)

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West v. Dir. of the Dep't of Corr., 273 Va. 56, 639 S.E.2d 190 (2007) (Majority opinion written by Keenan.)

Hoffman Family, LLC v. City of Alexandria, 272 Va. 274, 634 S.E.2d 722 (2006) (Majority opinion written by Keenan.)

Bethel Inv. Co. v. City of Hampton, 272 Va. 765, 636 S.E.2d 466 (2006)

Powell v. Warden, 272 Va. 217, 634 S.E.2d 289 (2006) (Keenan wrote dissenting opinion.), cert. denied, 127 S. Ct. 2942 (2007)

Jenkins v. Dir. of the Va. Ctr. for Behavioral Rehab., 271 Va. 4, 624 S.E.2d 453 (2006)

Alliance to Save the Mattaponi v. Commonwealth Dep't of Envtl. Quality ex rel. State Water Control Bd., 270 Va. 423, 621 S.E.2d 78 (2005), cert. denied, 126 S. Ct. 2862 (2006) (Majority opinion written by Keenan.)

Shivaee v. Commonwealth, 270 Va. 112, 613 S.E.2d 570 (2005), cert. denied, 126 S. Ct. 626 (2005)

Dixon v. Commonwealth, 270 Va. 34, 613 S.E.2d 398 (2005) (Majority opinion written by Keenan.)

Commonwealth v. Hilliard, 270 Va. 42, 613 S.E.2d 579 (2005) (Majority opinion written by Keenan.)

Martin v. Ziherl, 269 Va. 35, 607 S.E.2d 367 (2005)

Winston v. Commonwealth, 268 Va. 564, 604 S.E.2d 21 (2004), cert. denied, 126 S. Ct. 107 (2005)

Alderson v. County of Alleghany, 266 Va. 333, 585 S.E.2d 795 (2003)

In re Phillips, 265 Va. 81, 574 S.E.2d 270 (2003) (Majority opinion written by Keenan.)

Murphy v. Commonwealth, 264 Va. 568, 570 S.E.2d 836 (2002) (Majority opinion written by Keenan.)

Commonwealth v. Hill, 264 Va. 541, 570 S.E.2d 805 (2002) (Majority opinion written by Keenan.)

Commonwealth v. Washington, 263 Va. 298, 559 S.E.2d 636 (2002) (Keenan joined dissenting opinion.)

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Wilkins v. West, 264 Va. 447, 571 S.E.2d 100 (2002)

Jae-Woo Cha v. Korean Presbyterian Church, 262 Va. 604, 553 S.E.2d 511 (2001), cert. denied, 535 U.S. 1035 (2002)

Virginia College Bldg. Auth. v. Lynn, 260 Va. 608, 538 S.E. 682 (2000) (Keenan joined, concurring in part and dissenting in part.)

Earley v. Landsidle, 257 Va. 365, 514 S.E.2d 153 (1999) (Majority opinion written by Keenan.)

Gilmore v. Landsidle, 252 Va. 388, 478 S.E.2d 307 (1996) (Majority opinion written by Keenan.)

Town & Country Properties v. Riggins, 249 Va. 387, 457 S.E.2d 356 (1995)

Williams v. Garraghty, 249 Va. 224, 455 S.E.2d 209 (1995) (Keenan joined, concurring in part and dissenting in part.)

Scott v. Commonwealth, 247 Va. 379, 443 S.E.2d 138 (1994)

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have never been asked to sit on a case by designation.

14. Recusal: If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (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.) 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 in which you have recused yourself sua sponte. 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

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for recusal.

I always have been guided by the Virginia Canons of Judicial Conduct. Additionally, my general basis for assessing the necessity or propriety of recusal is when my impartiality might reasonably be questioned. The factors I use in applying this standard are: 1) my individual and family interests; 2) former professional contacts, i.e., former client, former law partner, etc.; 3) other considerations that may be suggested from the subject matter or parties involved in each individual case.

During my tenure with the Supreme Court of Virginia, I have employed an automatic recusal policy involving cases in which my husband, Alan E. Rosenblatt, participated as a circuit court judge of the City of Virginia Beach or by designation on a panel of the Court of Appeals of Virginia. Additionally, I employed an automatic recusal policy for any cases filed by an attorney in a Public Defender's Office while my husband was Interim Executive Director of the Indigent Defense Commission between July 28, 2005 and December 31, 2005.

I employed an automatic recusal system for cases appealed to the Supreme Court from the Court of Appeals that had been pending in the Court of Appeals while I was a judge of that court. A letter from Patricia L. Harrington, Clerk of the Supreme Court of Virginia is attached to this application (see Tab 14a) in verification of these procedures. I have also appended a letter from Cynthia L. McCoy, Clerk of the Court, Court of Appeals of Virginia, (see Tab 14b) confirming that I employed a general recusal policy involving any case appealed from the Circuit Court of Fairfax County in which I had signed any order in my former capacity as a judge of that court. Because the Court of Appeals does not keep a list of the specific cases from which a judge has recused himself or herself, I am unable to provide any more specific information for that period of my judicial service.

I also have employed an automatic recusal policy for cases involving BB&T Corporation and Pfizer, Inc., based on the amount of shares I hold in those entities. Pursuant to Supreme Court of Virginia policy, in other instances in which I hold a small amount of stock, the Clerk of the Court is directed to inform counsel that an unidentified judge of the Court holds a small amount of securities in the corporation before the Court and inquire whether the interested parties would prefer that the judge recuse himself or herself from the proceedings. In the one case that I have been requested to do so, I have recused myself.

I also automatically recused myself from any cases involving America Online during the time that my sister was employed as an officer of that company.

The sole case in which a litigant has requested that I recuse myself was Halifax Corporation v. Wachovia Bank, Record Number 032444. The motion for recusal was directed to any justice who held even a minimal amount of stock in Wachovia Bank. I voluntarily removed myself from the case.

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I also made the following recusals on a *sua sponte* basis:

Prieto v. CW, Rec. Nos. 082464 & 082465: I had personal knowledge of facts not included in record.

VEPCO, et al. v. Norfolk Southern Ry. Co., Rec. No. 081294: Counsel assisting me with process of applying for 4th Circuit judgeship.

Appalachian Voices v. State Corporation Commission, Rec. No. 081433: Counsel assisting me with process of applying for 4th Circuit judgeship.

Seguin v. Northrop Grumman Systems Corp., et al., Rec. No. 080217: At the time of this litigation, my brother-in-law was an attorney in law firm representing a party in case.

Heron, et al v. Transportation Cas. Ins. Co., et al., Rec. No. 061813: My niece worked on case for one party.

McLaughlin v. Schewe, et al., Rec. No. 061940: A personal friend was involved in lawsuit.

Jones, et al. v. Brandt, etc., Rec. No. 061086: My sister-in-law's law firm was counsel in case.

Juniper v. Commonwealth, Rec. Nos. 051423 & 051424: I am a personal friend of parents of major witness in case.

Judicial Inquiry Review Commission v. Judge Peatross, Rec. No. 042306: I had personal knowledge of facts not included in record.

DiJoseph v. Virginia State Bar, Rec. No. 040528: Appellant appeared regularly before me when I was a trial judge.

Bradick v. Grumman Data Systems Corp., Rec. No. 962531: My brother-in-law worked as an attorney with law firm representing one party.

Pickett v. Spain, Rec. No. 961958: Appellee was my decorator.

Sawyer v. Virginia State Bar, Rec. No. 001720: I had ongoing professional relationship with appellant when I practiced law.

Cook v. Board of Zoning Appeals, Rec. No. 911067: I had personal friendship with attorney for appellant.

Fairfax Bank v. Crestar Bank, Rec. No. 930585: I owned a relatively large amount of stock in Fairfax Bank.

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15. **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.

Board of Zoning Appeals, Fairfax County, VA, 1978-1980: I was appointed to this position by the circuit court judges of Fairfax County.

Commissioner in Chancery, Fairfax County, VA, 1975-1980. I was appointed to this position by the circuit court judges of Fairfax County.

I have not been a candidate for elected office. I was considered for appointment to the Supreme Court of Virginia in 1988 but was not appointed to the position at that time.

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, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never held membership or office in any political party or election committee. In 1975, I worked on the campaign of Robert F. Horan, Jr., who was seeking re-election as the Democratic Party candidate for Commonwealth's Attorney of Fairfax County, Virginia. I did not have a job title. My responsibilities included the distribution of yard signs.

16. **Legal Career:** 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;

July 1976 - July 1978 Sole Practitioner, General Practice, Fairfax, VA

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.

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July 1974 - July 1976 Assistant Commonwealth's Attorney, Fairfax, VA

July 1978 - January 1980 Keenan, Ardis, and Roehrenbeck,
Partner in General Practice, Fairfax, VA

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I did not serve as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

1974 - 1976: I prosecuted felony and misdemeanor cases in the Fairfax County Circuit and General District Courts.

1976 - 1980: I handled civil and criminal litigation matters. My civil litigation included representation of small businesses, personal injury claims, and family law matters. My criminal litigation included felony and misdemeanor cases.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

As a prosecutor my client was the People of the Commonwealth of Virginia. In private practice my clients were small businesses and individuals.

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.

About 80% of my practice involved litigation, and I usually appeared in court four or five days per week.

i. Indicate the percentage of your practice in:

1. federal courts	5%
2. state courts of record	35%
3. other courts (General District and Juvenile and Domestic Relations District Courts)	60%
4. administrative agencies	0%

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ii. Indicate the percentage of your practice in:
1. civil proceedings 25%
2. criminal proceedings 75%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

In courts of record, I tried about 100 cases to verdict, judgment, or final decision as sole counsel of record.

i. What percentage of these trials were:
1. jury 40%
2. non-jury 60%

e. Describe your practice, if any, before the Supreme Court of the United States. 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 did not practice before the Supreme Court of the United States.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. 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 most significant litigated matters included numerous felony jury trials, both as a prosecutor and as a defense attorney. These cases included charges of murder and rape. I was the sole counsel in these cases. Because these events occurred 30 or more years ago, I am unable to provide more specific information.

18. **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. List any client(s)

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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.)

In civil cases that did not proceed to trial, I obtained settlements for my clients in contract disputes and on personal injury claims. I also prepared wills for clients, drafted property settlement agreements in domestic cases, and conducted real estate closings. In criminal cases that did not proceed to trial, I frequently obtained plea agreements for my clients. In other cases, I obtained dismissal of the charges based on pre-trial motions to suppress. I performed all the above work as the sole attorney representing my clients.

I have never performed lobbying activities on behalf of any client or organization.

19. **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, provide four (4) copies to the committee.

    I have not taught courses of the described duration. However, I participate as a guest speaker at law schools and in continuing legal education programs in Virginia and in the Washington, D.C. metropolitan area.

20. **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. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

    None.

21. **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.

    None.

22. **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, licensing fees, 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.

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23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I would have potential conflicts of interest in cases involving Pfizer, Inc. and BB&T Corporation. My brother works as an attorney for Pfizer, Inc. In addition, a significant amount of my stock portfolio consists of shares of Pfizer, Inc. and of BB&T Corporation. I would anticipate recusing myself from cases involving these corporations.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If an issue is presented that raises a close question, or a meritorious issue, under applicable rules of ethics and/or the Code of Conduct for United States Judges, I would recuse myself.

25. **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 my work as an attorney, I accepted reduced-fee referrals from the Fairfax Bar Association for cases in which individuals could not afford the regular services of an attorney. I also accepted several court-appointed criminal cases each month. During my service as a Commissioner in Chancery for the Fairfax County Circuit Court, I waived my fee in cases involving litigants who had "lower incomes."

In the past year, my most significant pro bono work has involved the development of a judicial wellness initiative to serve the needs of judges who have substance abuse and mental health problems. I have devoted between 5 and 10 hours per week to this project.

During my tenure as a judge, I also have donated hundreds of hours in continuing legal education work, including programs related to legal services for indigent clients. I have been a frequent speaker in the public schools, including schools primarily attended by children from "lower income" families. Specific activities have included the following: Model Judiciary Program, Volunteer Judge, Virginia Bar Association and Virginia YMCA; Leadership

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in the Law Summer Camp, Volunteer, Loudoun County Bar Association; Seatack Elementary School, Volunteer Mentor, Virginia Beach; Fairfax County Public Schools, Volunteer Speaker.

26. **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. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

I submitted an application for this position to the Virginia State Bar, which recommended me as "highly qualified" by a unanimous (10-0) vote. In addition, the Virginia Women Attorneys Association "highly recommended" me for the position. The Old Dominion Bar Association rated me as "highly qualified" for the position. The Northern Virginia Black Attorneys Association "highly recommended" me for the position. The Virginia Trial Lawyers Association found that I am "highly qualified" for the position. The Asian Pacific American Bar Association "highly recommended" me for the position. The Virginia Bar Association and the Virginia Association of Defense Attorneys recommended me for the position, which was their highest category of recommendation. Finally, the Hispanic Bar Association recommended me for the position.

On May 1, 2009, I had interviews with staff members and Virginia lawyers designated by Senators Webb and Warner. On May 19, 2009, I met with Senators Webb and Warner.

I have had several telephone conversations with staff from the U.S. Department of Justice, regarding questions concerning information required to complete the paperwork for this position and the nomination process.

I had an interview with the White House Counsel staff and Department of Justice staff on August 3, 2009.

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, explain fully.

No.

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AFFIDAVIT

I, Barbara Milano Keenan, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

September 18, 2009

Barbara Milano Keenan
(NAME)

Anne-Marie Bunch
Anne-Marie Bunch, Notary Public
Commission #7013168
My Commission Expires March 31, 2010

Senator CARDIN. The next panel will consist of Laurie Robinson to be Assistant Attorney General for the Office of Justice Programs, United States Department of Justice; and, Ketanji Brown Jackson to be a member of the United States Sentencing Commission.

I am going to ask you if you would just remain standing and raise your right hand for the oath.

[Whereupon, the witnesses were duly sworn.]

Senator CARDIN. Thank you very much. Before we start the testimony, without objection, I am going to put in the record, on behalf of Ms. Robinson, a letter from the Baltimore Police Department, the police commissioner, in support of the nomination; from Ike Leggett, the county exec from Montgomery County, the director of the Department of Correction and Rehab in support of Ms. Robinson's nomination; and, the statement from Hon. Paul Ryan, a Member of Congress from Wisconsin, in support of Ms. Jackson's nomination to the Sentencing Commission.

[The information referred to appears as a submission for the record.]

Senator CARDIN. Ms. Robinson, you may begin.

STATEMENT OF LAURIE ROBINSON, NOMINATED TO BE ASSISTANT ATTORNEY GENERAL FOR THE OFFICE OF JUSTICE PROGRAMS, U.S. DEPARTMENT OF JUSTICE

Ms. ROBINSON. Thank you, Senator. If I could introduce my family, I would like to introduce my husband, Sheldon Krantz, if you could stand; my son, Ted Baab; my sister, Ann Kay; and her husband, Jeffrey Kay.

And I thank you, Senator, and, certainly, Senator Sessions, whom I've known for many years. I'm very pleased to be here, very honored to have been nominated by the administration for this position. I'm very happy to answer your questions, Senator.

[The biographical information of Ms. Robinson follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name: State full name (include any former names used).**

   Laurel (Laurie) Overby Robinson; Laurel Bender Overby

2. **Position: State the position for which you have been nominated.**

   Assistant Attorney General, Office of Justice Programs

3. **Address: List current office address:**

   Office of Justice Programs,
   U.S. Department of Justice
   810 – Seventh St., N.W.
   Washington, D.C. 20531

   If city and state of residence differs from your place of employment, please list the city and state where you currently reside:

   [redacted]

4. **Birthplace: State date and place of birth.**

   1946 – Washington, D.C.

5. **Education: List in reverse chronological order 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.**

   College: B.A. from Brown University, Providence, R.I. Attended 1964-1968. Graduated 6/3/68, Magna Cum Laude.

6. **Employment Record: List in reverse chronological order 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 description.**

   Employment:

   A. **September 14, 2009 to present** – Deputy Assistant Attorney General for the Office of Justice Programs in the U.S. Department of Justice. 810 Seventh St., N.W., Washington, D.C. 20531.
   B. **January 28, 2009 to September 14, 2009** – Principal Deputy Assistant Attorney General and Acting Assistant Attorney General for the Office of Justice Programs in the U.S. Department of Justice. 810 Seventh St., N.W., Washington, D.C. 20531.

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C. **January, 2001 to January, 2009** – Distinguished Senior Scholar/Director, Criminology Department Master of Science Program, University of Pennsylvania, 3718 Locust Walk, Suite 483, Philadelphia, PA 19104.
D. **May, 2008 to August, 2008** – Consultant, Pew Charitable Trusts, 2005 Market Street, Philadelphia, PA 19103
E. **February, 2004 to August, 2004** – Consultant, Abt Associates, 55 Wheeler St., Cambridge, MA 02138.
F. **August, 2003 to June, 2004** – Consultant, Council of State Governments, 2760 Research Park Drive, Lexington, KY 40578
G. **January, 2003 to July, 2005** – Consultant, Justice Management Institute, 1888 Sherman St., Denver, CO 80203
H. **January, 2003 to August, 2003** – President, CSR, Incorporated, 2107 Wilson Boulevard, Arlington, VA 22201.
I. **September, 1994 to February, 2000** – Assistant Attorney General, Office of Justice Programs, U.S. Department of Justice, 810 Seventh St., N.W., Washington, D.C. 20531.
J. **August, 1993 to September, 1994** – Associate Deputy Attorney General and Acting Assistant Attorney General, U.S. Department of Justice, 9th Street & Pennsylvania Ave., N.W., Washington, D.C. 20530.
K. **September, 1979 to August, 1993** – Director, Section of Criminal Justice, American Bar Association, 740 – 15th St., N.W., Washington, DC 20005. (From 1986 to 1993, I also simultaneously headed the ABA's Professional Services Division in Washington.)
L. **July, 1972 to August, 1979** – Assistant Staff Director, Section of Criminal Justice, American Bar Association, 740 – 15th St., N.W., Washington, D.C. 20005.
M. **April, 1972 to July, 1972** – Temporary Administrative Assistant, Potomac Temporaries (was located at), 201 N. Washington St., Alexandria, VA 22314 (Business no longer exists.)
N. **September, 1968 to July, 1971** – Desk Editor and Reporter, Community News Service, 209 West 125th St., New York, NY 10027. (Organization no longer exists).

Boards:

O. **May, 1990 to present,** Advisory Board Member, Federal Sentencing Reporter, 233 Broadway, 12th Floor, New York, NY 10279.
P. **December, 2007 to January, 2009** – Board of Trustees member, The C.N.A. Corporation, 4825 Mark Center Drive, Alexandria, VA 22311.
Q. **June, 2008 to January, 2009** – Advisory Board member, Police Executive Programme, Institute of Criminology, Cambridge University, Sidgwick Avenue, Cambridge CB3, 9DT United Kingdom.
R. **January, 2001 to January, 2009** – Chair (and previously Board member), Vera Institute of Justice, 233 Broadway, New York, NY 10279.
S. **January, 2002 to January 2009** – Board member, Police Foundation, 1201 Connecticut Ave., N.W., Washington, D.C. 20036.
T. **September, 2000 to January, 2009** – Board member, National Center for Victims of Crime, 2000 M St., N.W., Washington, D.C. 20036.
U. **September, 2000 to January, 2009** – Advisory Board member, George Mason University Administration of Justice Program, 10900 University Blvd., Manassas, VA 20110.
V. **August, 2001 to January, 2009** – Advisory Board Chair, George Mason University Center for Evidence-Based Crime Policy, 10900 University Blvd., Manassas, VA 20110.

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W. **June, 2000 to January, 2009** – Board member, Constitution Project, 1200 – 18th St., NW, Washington, D.C. 20036.

X. **June, 2000 to January, 2009** – Committee member, Constitution Project Death Penalty Committee, 1200 – 18th St., NW, Washington, D.C. 20036.

Y. **March, 2008 to January, 2009** – Board member, United Against Illegal Guns Support Fund, 2711 Centreville Road, #400, Wilmington, DE 19808. (Affiliated with Mayors Against Illegal Guns, co-chaired by New York City Mayor Bloomberg and Boston Mayor Menino)

Z. **April, 2005 to January, 2009** – Advisory Board Member, Coalition for Evidence-Based Policy, 900 – 19th St., N.W., Washington, D.C. 20006.

AA. **April, 2005 to January, 2009** – Commission Member, American Judicature Society's Commission on Forensic Science, 2700 University Avenue, Des Moines, IA 50311.

BB. **July, 2007 to January, 2009** – Committee member, American Society of Criminology, Committee on Liaison to Congress, 1314 Kinnear Road, Columbus, OH 43212.

CC. **January, 2001 to January, 2004** – Member, Gideon Advisory Board, Open Society Institute, 400 West 59th St., New York, NY 10019.

DD. **February, 2001 to December, 2004,** Senior Associate, The Alexandria Group of MPRI, 1201 E. Abingdon Drive, Suite 425, Alexandria, VA 22314.

EE. **2001 to 2002,** Advisory Board Member, RAND Criminal Justice Program, 1776 Main St., Santa Monica, CA 90401.

FF. **1991 to August, 1993** – Chair, National Forum on Criminal Justice (no address – this group no longer exists; it was a loose affiliation of groups in Washington interested in criminal justice issues, such as the National Governors Association, the National Association of Counties, the Police Executive Research Forum, and the American Bar Association. It had no office and no staff.

GG. **September, 1979 to August, 1993** – Ex Officio Member, Board of Regents, National College of District Attorneys, 1600 Hampton St., Suite 414, Columbia, SC 29208. (It was then located in Houston, TX).

HH. **1986 to August, 1993** – Advisory board member, ACLU National Prison Project, 915 – 15th St., N.W., Washington, D.C. 20005.

II. **1981 to 1991** – Board member, VALOR (Victim Assistance Legal Organization), 8180 Greensboro Drive #1070, McLean VA 22102.

JJ. **September, 1979 to 1984** – ABA representative to the National Coalition for Jail Reform, coalition of national organizations (such as National Sheriffs Association, ABA, National Association of Counties and others) working to remove juveniles from adult jails and other reforms. Organization lost funding in 1984. Now defunct, so no address.

KK. **September, 1979 to 1983** – Ex Officio Member, Board of Regents, National College for Criminal Defense, then located in Houston, TX, now defunct. (Note: There is a National Criminal Defense College in Macon, GA, which was started several years later, but it is not the same institution. The original NCCD was co-sponsored by the American Bar Association, for which I served as an ex officio board member. This College is not ABA-sponsored.)

LL. **1975 to 1983** – Board member, National Association of Women in Criminal Justice. (Note: This was an organization formed by me and other young women working in the criminal justice field in the mid-1970s. It did not have an office or staff. There is no address to list because it no longer exists.)

7. <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**

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from social security number) and type of discharge received, and whether you have registered for selective service.

None; I have not registered for Selective Service.

8. **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.**

Phi Beta Kappa, 1968
Edmond J. Randolph Award presented by the Attorney General of the U.S. for Outstanding Service to the Department of Justice, 2000
Roscoe Pound Award from the National Council on Crime & Delinquency, 1997

9. **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.**

While I am not a member of the bar, I have been involved in many law-related organizations and boards over the course of my professional career. In addition to my employment at the American Bar Association between 1972 and 1993, I have served on the following legal and judicially-related organizational boards:

- Vera Institute of Justice Board of Trustees – Member (and then Chair) – January, 2001 to January, 2009
- American Judicature Society's Commission on Forensic Science – Member – April, 2005 to January, 2009
- National College of District Attorneys – Ex Officio Board Member – September, 1979 to August, 1993
- National College for Criminal Defense – Ex Officio Board Member – September 1979 to 1983
- VALOR – Victim Assistance Legal Organization – Board member – 1981 to 1991

10. **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.**

I am not a lawyer.

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.**

This is not applicable since I am not a lawyer.

11. **Memberships:**

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a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, 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.

2001 to present – American Society of Criminology
2001 to present – National Criminal Justice Association
2005 to 2006 – Council for Excellence in Government
1992 to present – Palisades Neighborhood Association
1990 to 1995 – Common Cause
1985 to 1989 – Metropolitan Memorial United Methodist Church
1976 to 1990 – Foxhall Village Community Association
1973 to 1993 – American Bar Association Bar Executive Associates
1980 to 1991 – Institute of Judicial Administration

b. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin 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.

To be best of my knowledge, none of these organizations currently discriminates or formerly discriminated on the bases of race, sex, religion, or national origin.

12. 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. Supply four (4) copies of all published material to the Committee.

I have done my best to identify all such published material, including through a review of my personal files and searches of publicly available electronic databases. I have located the following (four copies of which will be supplied to the Committee):

Robinson, L., **"Federal Leadership in Addressing Crime,"** Federal Sentencing Reporter, Vol. 20., No. 5. (June, 2008).

Robinson, L., **"Commentary on McCoy -- Problem-Solving Courts,"** American Criminal Law Review, Vol. 40., No. 4 (Fall, 2003).

Robinson, L., **"Sex Offender Management: The Public Policy Challenges,"** in Robert A. Prentky, Eric S. Janus, Michael C. Seto, (Eds.), Sexually Coercive Behavior: Understanding and Management, Annals of the New York Academy of Sciences, Vol. 989, 2003.

Robinson, L., **"The Future Federal Role in State and Local Criminal Justice Assistance: Gazing into the Legislative Crystal Ball,"** Corrections Today (December, 2002).

Travis, J., Robinson, L., Solomon, A., **"Prisoner Reentry: Issues for Practice and Policy,"** Criminal Justice (Spring, 2002).

Robinson, L., **"Helpful Hints for Incoming Appointees,"** The Washington Times, (January 7, 2001).

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Robinson, L., and Travis, J., **"Managing Prisoner Reentry for Public Safety,"** Federal Sentencing Reporter, Vol. 12, No. 5 (March/April 2000).

Robinson, L., **"Sex Offender Recidivism: A Challenge for the Court,"** Court Review (Journal of the American Judges Association) (Spring, 1999).

Robinson, L., 'Introduction," What Can the Federal Government Do to Decrease Crime and Revitalize Communities, U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, Executive Office for Weed & Seed (October, 1998).

Robinson, L., **"Introduction,"** Justice Research & Policy Journal, Vol. 1, No. 1 (Spring, 1999).

Robinson, L., **"Managing Sex Offenders in the Community: Challenges and Progress,"** Perspectives (publication of the American Probation and Parole Association), (Fall, 1998).

Robinson, L., **"Linking Community-Based Initiatives and Community Justice,"** National Institute of Justice Journal, (August, 1996).

Robinson, L, **"Preface to Special Issue,"** The Justice System Journal, Vol., 17, No. 1 (1994).

Robinson, L., **"Prison Policy,"** Federal Sentencing Reporter, Vol. 5, No. 4 (January/February 1993)

Robinson, L., **"Criminal Bar Feels Impact of New Act,"** The National Law Journal, July 8, 1985.

Robinson, L., **"A Year of Crucial Change in the Law,"** The National Law Journal, August 6, 1984.

Robinson, L., **"Exclusionary Rule Changes Set,"** The National Law Journal, August 10, 1981.

Gerstein, R., and Robinson, L., **"Time to Act on Grand Jury Reforms,"** National Law Journal, February 4, 1980.

Gerstein, R., and Robinson, L., **"Remedy for the Grand Jury: Retain But Reform,"** ABA Journal, March, 1978.

Gerstein, R., and Robinson, L., **"Making the Grand Jury Fair,"** Litigation Magazine, Vol. 4, No. 4 (1978).

Gerstein, R., and Robinson, L., **"Our Grand Jury System Cries for Reform, Not Discard,"** San Diego Union, February 2, 1977.

Robinson, L., **"Women in the Criminal Justice System,"** Criminal Defense, Vol. 3, No. 3, May, 1976.

Robinson, L., **"ABA Criminal Justice Section Committee on Women and Criminal Justice,"** 62 Women Law J. 93 (1976).

Robinson, L., **"The ABA Standards for Criminal Justice: What They Mean to the Criminal Defense Lawyer,"** Journal of Criminal Defense, Vol. 1, No. 1 (Spring, 1975).

Robinson, L., **"Throwing the Books at Criminal Lawyers – The ABA Standards for Criminal Justice – What They Mean to Law Students,"** Student Lawyer, Feb., 1975.

Robinson, L., **"ABA Criminal Justice Standards Winning Nationwide Acceptance,"** Criminal Defense, Vol. 1, No.1 (Dec., 1973).

Robinson, L., **"Moving the Criminal Justice Machine,"** State Government, Vol. XLVI, No. 4 (August, 1973).

b. 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, 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 done my best to identify all such reports through a review of my personal files and searches of publicly available electronic databases. I

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have located the following (four copies of which will be supplied to the Committee):

(a) the report of the Vera Institute's Commission on Safety & Abuse in America's Prisons, co-chaired by former Attorney General Nicholas Katzenbach and the Honorable John Gibbons, former Chief Judge of the Third Circuit Court of Appeals, entitled "Confronting Confinement," issued in 2006; and (b) the report, "Mandatory Justice: The Death Penalty Revisited" issued in 2005 by the Constitution Project, overseen by a blue-ribbon committee overseeing its death penalty initiative. I served on that committee, which includes supporters and opponents of the death penalty.

c. 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.

I have done my best to identify all copies of testimony, official statements or other communications relating to matters of public policy or legal interpretation that I have presented (or were presented on my behalf) to public bodies or public officials. This included review of my personal files and searches of publicly available electronic databases. I have located the following. Four copies of each statement will be provided to the Committee:

February 11, 2009
Statement for the Record of the Honorable Laurie Robinson, Acting Assistant Attorney General, Office of Justice Programs, Before the Subcommittee on Crime, Terrorism and Homeland Security, U.S. House of Representatives.

April 24, 2007
Statement of Laurie Robinson, Director, Masters in Criminology Program, University of Pennsylvania, Before the Subcommittee on Crime, Terrorism & Homeland Security, Committee on the Judiciary, U.S. House of Representatives

March 21, 2007
Statement of Laurie Robinson, Director, Masters in Criminology Program, University of Pennsylvania, Before The Subcommittee on Commerce, Justice, Science & Related Agencies, Committee on Appropriations, U.S. House of Representatives

March 5, 2002
Statement of Laurie Robinson, Distinguished Senior Scholar, University of Pennsylvania, Before The Subcommittee on Crime, Committee on the Judiciary, U.S. House of Representatives

September 16, 1999
Statement Of The Honorable Laurie Robinson, Assistant Attorney General, Office Of Justice Programs, Before The Subcommittee On Youth Violence, Committee On The Judiciary, United States Senate

July 22, 1999
Statement Of The Honorable Laurie Robinson, Assistant Attorney General, Office Of Justice Programs, Before The Subcommittee On Crime, Committee On The Judiciary, U.S. House Of Representatives

March 30, 1999
Statement Of The Honorable Laurie Robinson, Assistant Attorney General, Office of Justice Programs, Before The Subcommittee on Commerce, Justice, State, The Judiciary, and Related Agencies, Committee on Appropriations, U.S. Senate, Espanola, New Mexico

March 25, 1999
Statement Of The Honorable Laurie Robinson, Assistant Attorney General, Office Of Justice Programs, Concerning The President's Budget Proposal For The Office Of Justice Programs And Funding For State And Local Law Enforcement, Before The Subcommittee On Youth Violence, Committee On The Judiciary, United States Senate

March 16, 1999
Statement Of The Honorable Laurie Robinson, Assistant Attorney General, Office of Justice Programs, Before The Subcommittee on Commerce, Justice, State, The Judiciary, And Related Agencies, Committee on Appropriations, U.S. House of Representatives

March 26, 1998

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Statement Of The Honorable Laurie Robinson, Assistant Attorney General, Office Of Justice Programs, Before The Subcommittee On Commerce, Justice, State, The Judiciary, And Related Agencies, Committee On Appropriations, U.S. House Of Representatives

March 25, 1998
Statement Of The Honorable Laurie Robinson, Assistant Attorney General, Office Of Justice Programs, Before The Subcommittee On Crime, Committee On The Judiciary, U.S. House Of Representatives

April 15, 1997
Statement Of The Honorable Laurie Robinson, Assistant Attorney General, Office Of Justice Programs, Before The Subcommittee On Commerce, Justice, State, The Judiciary And Related Agencies, Committee On Appropriations, U. S. House Of Representatives

April 24, 1996
Statement Of The Honorable Laurie Robinson, Assistant Attorney General, Office Of Justice Programs, Before The Subcommittee On Commerce, Justice, State, The Judiciary And Related Agencies, Committee On Appropriations, U.S. House Of Representatives

March 28, 1995
The Honorable Laurie Robinson, Assistant Attorney General, Office of Justice Programs, Concerning The FY 1996 Budget, Before The Subcommittee On Commerce, Justice, State, The Judiciary, And Related Agencies, Committee On Appropriations, U. S. House Of Representatives

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. 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 recording of your remarks, 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, furnish a copy of any outline or notes from which you spoke.

I have done my best to identify all copies of speeches, remarks, lectures, panel discussions, talks at conferences, and question and answer sessions in which I have participated. This included review of my personal files and searches of publicly available electronic databases. I have located the following. Four copies of each of these will be provided to the Committee:

2009:
September 9, 2009, Foundations Roundtable, Washington, D.C.

August 25, 2009, Community Cooperation with Law Enforcement Forum, Washington, DC

August 24, 2009, White House Conference: Gang Violence Prevention and Crime Control, Washington, DC

July 22, 2009, Fraud Awareness Training, Washington, DC

July 16, 2009, Bureau of Justice Assistance National Technical Assistance and Training Event, "Smart Responses in Tough Times: Achieving Better Outcomes for People with Mental Illness Involved in the Criminal Justice System," Washington, DC

June 24, 2009, American Council of Chief Defenders Conference, Washington, DC

June 23, 2009, National Center for Victims of Crime Conference, Washington, DC

June 18, 2009, Harvard Executive Session on Policing, Cambridge, MA

June 15, 2009, National Institute of Justice Conference, Arlington, VA

May 22, 2009, National Institute of Corrections Community Corrections Network Summit, Washington, DC

May 21, 2009, Missing Children's Day Ceremony, Washington, DC

May 18, 2009, Stakeholder Briefing on the Public Safety Officers' Benefits Program, Washington, DC

May 16, 2009, University of Pennsylvania Criminology Program Graduation, Philadelphia, PA

May 14, 2009, Concerns of Police Survivors Conference, Alexandria, VA

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May 7, 2009, National Academy of Sciences, Washington, DC

May 6, 2009, 20th Birthday Celebration of Drug Court, Washington, DC

May 1, 2009, Harvard Kennedy School Executive Session for State Court Leaders in the 21st Century, Cambridge, MA

April 28, 2009, 9th Annual Jerry Lee Crime Prevention Symposium, Washington, DC

April 24, 2009, National Crime Victim Rights Week Award Ceremony, Washington, DC

April 23, 2009, National Crime Victim Rights Week Candlelight Observance, Washington, DC

April 23, 2009, Global Justice Information Sharing Initiative Advisory Committee Biannual Meeting, Falls Church, VA

April 20, 2009, Attorney General's Law Enforcement Summit, Washington, DC

April 1, 7, 21, 2009, Constituent Group Listening Sessions, Washington, DC

March 26, 2009, Police Executive Research Forum Annual Meeting, Washington, DC
March 26, 2009 States News Service article – "Remarks of Laurie Robinson, Acting Asst. Attorney General, Office of Justice Programs"

March 24, 2009, International Community Corrections Association, Washington, DC

March 18, 2009, White House Recovery Meeting for Cities and Communities, Washington, DC

March 17, 2009, U.S. Conference of Mayors Web Cast, Washington, DC

March 17, 2009, National League of Cities Congressional City Conference, Washington, DC

March 12, 2009, White House Recovery Act Meeting, Washington, DC

March 8, 2009, National Association of Counties Legislative Conference, Justice and Public Safety Steering Committee: "Justice Reform Under the Stimulus Package," Washington, DC

March 6, 2009, Miami Police Department, Miami, FL

March 5, 2009, National Criminal Justice Association, Executive Directors Roundtable and Lunch, Washington, DC

March 4, 2009, Office for Victims of Crime, Discretionary Grantees Meeting, Washington, DC

February 20, 2009, U.S. Conference of Mayors, Meeting on the Implementation of and Accountability for the American Recovery and Reinvestment Act, Washington, DC

February 11, 2009, the Community Anti-Drug Coalitions of America 19th Annual National Leadership Forum, Washington, DC

February 9, 2009, National Narcotic Officers' Association Board of Delegates Meeting, Washington, DC

January 28, 2009, Police Executive Research Forum, "Violent Crime and the Economic Crisis," Washington, DC

2008:
October 8, 2008, Police Executive Research Forum, "National Violent Crime Summit," Washington, D.C.

July 1, 2008, Cambridge University Police Executive Programme Panel, Cambridge, United Kingdom

June 3, 2008, New England Police Chief Conference, Providence, RI

May 6, 2008, Eighth Annual Jerry Lee Crime Prevention Symposium, Washington, DC

2007:
December 3, 2007, Guggenheim Symposium – John Jay College of Criminal Justice, New York City

September 28, 2007, Temple University Department of Criminal Justice Symposium, Philadelphia, PA

April 24, 2007, Seventh Annual Jerry Lee Crime Prevention Symposium, Washington, DC

March 23, 2007, Forum on Crime & Justice , "Community Policing – Combating Guns, Gangs & Violent Crime," Washington, DC

2006:
December 7, 2006, Integrating Criminal Justice & Public Health Perspectives, Philadelphia, PA

August 25, 2006, Forum on Crime & Justice, "Suicide Bombers: Are America's Local Police Prepared?" Washington, DC

May 5, 2006, Forum on Crime & Justice, "The Fight Against Human Trafficking," Washington, DC

May 2, 2006, Sixth Annual Jerry Lee Crime Prevention Symposium, Washington, DC

January 27, 2006, "Law Enforcement & Legislative Action Against Methamphetamine," Washington, DC

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2005:
September 15, 2005, National Conference of State Legislatures – Addiction Studies Program – Philadelphia, PA

May 3, 2005, Fifth Annual Jerry Lee Crime Prevention Symposium, Washington, DC

April 8, 2005, Forum on Crime & Justice, "Intelligence-Led Policing," Washington, DC

2004:
October 21, 2004, Crime Summit – Lawrence County, PA

October 28, 2004, OJP 20th Anniversary Celebration – Washington, DC

March 30, 2004, National Academy of Sciences – Washington, DC

2003:
October 15, 2003, Rutgers Symposium on Criminal Justice Policy & Research – Newark, NJ

October 3, 2003, Forum on Crime & Justice, "The Roles of State and Local Law Enforcement in Homeland Security," Washington, DC

2002:
October 25, 2002, Forum on Crime & Justice, "Local Innovations in Oregon to Prevent Juvenile Crime," Washington, DC

September 20, 2002, Forum on Crime & Justice, "How the Criminal Justice System Responds to People with Mental Illness," Washington, DC

June 21, 2002, Forum on Crime & Justice, "Bronx & Knoxville Community Defender Agencies Combine Representation & Crime Prevention," Washington, DC

June 7, 2002, New York Academy of Sciences Conference on Sex Offenders, Washington, D.C.

May 17, 2002, Forum on Crime & Justice, Reducing Violent Felonies & Revitalizing Neighborhood High Crime Areas Through Milwaukee's Safe & Sound Initiative," Washington, DC

April 12, 2002, Forum on Crime & Justice, "Combating Inmate Substance Abuse and Future Recidivism: Delaware's Key-Crest Programs," Washington, DC

March 25, 2002, Conference on Alternatives to Incarceration – Southampton, Bermuda

March 1, 2002, Forum on Crime & Justice, "Police-Probation Teams Address Juvenile Violence in Boston: Operation Night Light" Washington, DC

January 25, 2002, Forum on Crime & Justice, "How Indianapolis Used Weed & Seed Strategy to Combat Disorder in its Neighborhoods," Washington, DC

2001:
December 7, 2001, Forum on Crime & Justice, "Innovation Information Technology – Chicago Police Department's CLEAR Program," Washington, DC

November 29, 2001, Community Policing Consortium, Washington, D.C.

2000:
December 19, 2000, U.S. Department of Justice Sex Offender Summit, Washington, D.C.

June 30, 2000, U.S. Department of Justice Conference on Indigent Defense, Washington, D.C.

June 2, 2000, National Association of Drug Court Professionals, Plenary Panel, San Francisco

February 24, 2000, National Sheriffs Association – First Responders to Weapons of Mass Destruction – Arlington, VA

February 14, 2000, American Probation & Parole Association Winter Training Institute – Nashville, TN

February 11, 2000, Executive Office of Weed and Seed Satellite Broadcast taping: Violence Among Families, Washington, DC

February 7, 2000, "Crime and Making Communities Safer: OJP As a Resource for U.S. Attorneys And Their Districts" – San Francisco

1999:
December 15, 1999, National HIDTA Conference, Washington, DC

December 13, 1999, National Symposium on Women Offenders – Washington, DC

December 8, 1999, Executive Working Group (U.S. Attorneys, NDAA, NAAG), Washington, DC

December 7, 1999, ONDCP National Assembly on Drugs, Alcohol Abuse & the Criminal Offender, Washington, DC

November 15, 1999, National Symposium on the Changing Role of U.S. Attorneys' Offices, Arlington, VA

November 10, 1999, National Criminal Justice Association Board of Directors, Washington, DC

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November 5, 1999, Executive Office for Weed & Seed Satellite Broadcast taping, Communities of the New Millennium: Sharing Success

November 3, 1999, National Advisory Council on Violence Against Women, Washington, DC

October 25, 1999, National Institute of Justice Technology Conference, Washington, DC

October 18, 1999, OJP Reentry Partnerships Initiative Meeting, Washington, DC

October 14, 1999, National Law Enforcement and Corrections Technology Centers Staff Conference, Washington, DC

October 14, 1999, DOJ Combined Federal Campaign Kickoff Rally, Washington, DC

October 12, 1999, International Corrections and Prisons Association Annual Meeting, Budapest, Hungary

September 20, 1999, IACP 1999 Victims Summit, Alexandria, VA

September 29, 1999, Criminal Justice Editors' Group, Washington, DC

September 22, 1999, Crime Victims' Fund Awards Ceremony, Closing Remarks, Washington, DC

September 10, 1999, Executive Office of Weed & Seed Satellite Broadcast, Washington, D.C.

September 9, 1999, OJJDP Media Literacy Education Seminar, Washington, DC

September 8, 1999, National Conference on Sentencing and Managing Violent Offenders Videotaping, Washington, DC

September 8, 1999, National Center on Missing & Exploited Children Headquarters Dedication, Alexandria, VA

August 25, 1999, Ground Zero: 1999 S.C. Weapons of Mass Destruction Conference, Charleston, SC

August 15, 1999, National Emergency Management Association, Des Moines, IA

July 23, 1999, OJP Mental Health and Crime Conference, Washington, DC

July 19, 1999, National Institute of Justice Three Decades of Research event, Washington, DC

July 9, 1999, Executive Office of Weed & Seed Satellite Broadcast taping for National Conference, Washington, DC

June 28, 1999, Law Enforcement Corrections Partnerships Regional Workshops, Minneapolis, Minnesota

June 25, 1999, Office of National Drug Control Policy's Summit on Substance Abuse and the Criminal Justice System, Washington, DC

June 24, 1999, National Summit on Children Exposed to Violence (Ending), Washington, DC

June 22, 1999, National Summit on Children Exposed to Violence (Opening), Washington, DC

June 18, 1999, National Narcotic Officers Association Mid-Year Meeting, Arlington, Virginia

June 10, 1999, 1999 Sentencing and Corrections Workshop, Palm Springs, California

May 20, 1999, Top-Off Exercise Planning Meeting, Fairfax, Virginia

May 17, 1999, "Putting Victims First" Conference, Jackson, Mississippi

April 26, 1999, American University National Law Day 1999 "Promoting Justice For All," Washington, DC

April 21, 1999, COMPASS Workshop, Arlington, Virginia

April 16, 1999 Law School Education Forum "Developing Problem-Solving Skills for Lawyers: Rethinking the Role of Law School Education," Washington, DC

April 9, 1999, EOWS Teleconference "Odyssey 2007...Reducing the Nation's Drug Use," Washington, DC

April 8, 1999, Associate Attorney General Fisher's Luncheon Welcome of the Federal, State, and Local Working Group on Civil Disorder, Washington, DC

April 7, 1999 BJA National Partnership Meeting, Washington, DC

March 25, 1999, Global Advisory Committee, Crystal City, Virginia

March 13, 1999 NDAA Executive Committee-No Remarks-Washington, DC

February 27, 1999, National Sheriff's Association Executive Committee/Board of Directors, Washington, DC

February 26, 1999, MCOPS Van Presentation, Washington, DC

February 25, 1999, National Symposium on Indigent Defense: Improving Criminal Justice Systems through Expanded Strategies and Innovative Collaborations, Washington, DC

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February 24, 1999, OJP African American Heritage Month Program, Washington, DC

February 2, 1999, State's Terrorism Policy Summit, Williamsburg, Virginia

February 1, 1999, EOWS Teleconference-Youth Under Siege: America's Deadly Drug Trends, Washington, DC

January 29, 1999, Police Corps Conference, Washington, DC

January 13, 1999, New Hampshire Attorney General Conference on Alternatives to Incarceration, Nashua, New Hampshire

1998:

December 14, 1998, Assistant Attorney General's Awards Ceremony, Washington, DC

December, 10, 1998, OJJDP National Conference "Focus on the Future," Washington, DC

December 1, 1998, Community Prosecution Forum, Washington, DC

November 17, 1998, Intergovernmental Information Sharing Meeting, New Orleans, Louisiana

November 13, 1998, Criminal Justice Journalists Meeting, Washington, DC

November 12, 1998, American Society of Criminology 50th Annual Meeting, Washington, DC

November 12, 1998, American Correctional Association 3rd Annual Corrections Technology Conference, Arlington, Virginia

November 6, 1998, NCJA Executive Board Meeting, Washington, DC

November 5, 1998, EOWS Teleconference-Ganging Up on Gangs, Myths, and Realities, Washington, DC

November 4, 1998, FLETC Advisory Board Meeting, Washington, DC

October 19, 1998, National Corrections Conference: Enhancing Public Safety By Reducing Substance Abuse

October 16, 1998, National Broadcast Association for Community Affairs Annual Convention, Philadelphia, PA

September 29, 1998, 1998 Annual Conference of the International Community Corrections Association, Arlington, VA

September 17, 1998, MCOPS Van Presentation, Indianapolis, Indiana

August 28, 1998, 12th Annual International Congress on Criminology, Seoul, Korea

August 1, 1998, ABA Judicial Council, Washington, DC

July 30, 1998, Gun Violence Reduction Group, Washington, DC

July 27, 1998, Annual Conference on Criminal Justice Research and Evaluation: Viewing Crime and Justice from a Collaborative Perspective, Washington, DC

June 25, 1998, IACP Hate Crime In America Summit, Alexandria, Virginia

June 8, 1998, National Workshop on Sentencing and Corrections Challenges, St. Petersburg, Florida

June 5, 1998, National Association of Drug Court Professionals 4th Annual Conference, Washington, DC

June 4, 1998, Bureau of Justice Assistance's Comprehensive Communities Program Conference of Sites, Washington, DC

May 31, 1998, Opening Ceremony for the DOJ Center for Domestic Preparedness, Anniston, Alabama

May 28, 1998, Rural Crime Symposium, Albuquerque, New Mexico

May 5, 1998, United States Attorney's National Conference Town Hall Meeting, Memphis, Tennessee

April 29, 1998, Weed and Seed Teleconference Taping, Washington, DC

April 5, 1998, Symposium on Alcohol Abuse and Crime, Washington, DC

March 12, 1998, National Association of Attorney General Violence Summit, Washington, DC

March 8, 1998, Community Justice: Transforming the System to Serve Communities, Washington, DC

February 10, 1998, National Workshop on Assessing Effectiveness of Corrections Programs, Chicago, Illinois

January 23, 1998, Annual Meeting of the Justice and Public Safety Steering Committee National Association of Counties, New Orleans, Louisiana

January 6, 1998, NIJ/EOWS Conference, Washington, DC

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1997:
December 18, 1997, Criminal Justice Editors Meeting, Washington, DC

December 17, 1997, University of Maryland Conference Preventing Crime: What Works, What Doesn't, What's Promising, Washington, DC

December 11, 1997, Prison Population Projection and Forecasting Workshop: Managing Capacity, Washington, DC

December 10, 1997, National Drug Institute Announcement, Washington, DC

December 5, 1997, Farewell Reception for Aileen Adams, Washington, DC

November 19, 1997, FLETC Advisory Committee Meeting, Washington, DC

October 17, 1997, Association for the Treatment of Sexual Abusers 16th Annual Research and Treatment Conference, Arlington, Virginia

October 14, 1997, The National Conference on Preventing Crime Panel-Making Local Case for Prevention, Washington, DC

October 9, 1997, Briefing Program for Byrne Grant Administrators, Washington, DC

October 6, 1997, Exploring the Future of Crime Mapping: National Symposium in the Use of GIS in Criminal Justice Research and Practice, Denver, Colorado

September 22, 1997, HIDTA Coordination Meeting, Mobile, AL

September 18, 1997, Indigent Defense Focus Group, Washington, DC

September 15, 1997, 3rd Annual NIJ Corrections Advisory Committee Meeting, Charleston, South Carolina

August 20, 1997, Asian/Pacific Islander American Heritage Celebration, Washington, DC

July 8, 1997, Batterers' Intervention Focus Group, Washington, DC

June 23, 1997, 1997 Annual Conference of the National Sheriff's Association, Atlanta, Georgia

June 19, 1997, Symposium on the 30th Anniversary of the President's Commission on Law Enforcement and Administration of Justice, Washington, DC

June 11, 1997, Department of Justice Symposium Curbing Youth Violence-Communities Working Together, Washington, DC

June 4, 1997, Interagency Working Group on Child Abuse and Neglect, Washington, DC

May 16, 1997, NADCP Panel Discussion, Washington, DC

May 8, 1997, LETN Spot on Child Exploitation, Washington, DC

April 30, 1997, PERF Annual Meeting, Washington, DC

April 28, 1997, 1997 Summit on Family Violence: Breaking the Cycle for Children Who Witness, Alexandria, Virginia

April 24, 1997, National Corrections Conference, New Orleans, Louisiana

April 21, 1997, Ohio Criminal Justice Research Conference, Columbus, Ohio

April 14, 1997, Opening Ceremony Jimmy Ryce Law Enforcement Training Center, Arlington, Virginia

April 10, 1997, FLETC Advanced Committee Meeting, Washington, DC

April 8, 1997, Partnering to Keep California Safer Conference, San Diego, California

March 1, 1997, NSA Board of Directors Meeting, Washington, DC

February 13, 1997, National Symposium on Victims of Federal Crime, Washington, DC

February 12, 1997, Violent Offender Incarceration and Truth-In-Sentencing Grant Program Eligibility and Implementation Workshop, Washington, DC

January 27, 1997 OVC Judicial Focus Group, Washington, DC

January 24, 1997, National Institute of Justice Locally Initiated Research Partnership Program Meeting, Washington, DC

1996:
December 12, 1996, OJJDP National Conference, Baltimore, Maryland

December 11, 1996, Annual Weed and Seed Steering Committee Meeting, North Charleston, South Carolina

November 26, 1996, National Summit: Promoting Public Safety through the Effective Management of Sex Offenders in the Community, Washington, DC

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November 18, 1996, New England Council on Crime and Delinquency's 57th Training Institute, Newport, Rhode Island

November 13, 1996 FLETC Advisory Committee Meeting DOJ, Washington, DC

October 29, 1996, IACP Executive Committee Meeting, Phoenix, AZ

October 15, 1996, Remarks for Boy Scout Merit Badge Ceremony Great Hall U.S. Department of Justice, Washington, DC

October 14, 1996, Women In Corrections and Juvenile Justice Conference, Grand Rapids, Michigan

September 19, 1996, CSAT National Advisory Council Meeting, Washington, DC

September 9, 1996, The U.S. Immigration and Naturalization Service Naturalization Ceremony, Fresno, California

September 5, 1996, Communities, Crime and Justice Conference Making Community Partnerships Work, Arlington, Virginia

August 27-31, 1996, World Congress on Commercial Sexual Exploitation of Children, Stockholm, Sweden

July 30, 1996, Symposium on Federal Pretrial Services, Washington, DC

July 21, 1996, NDAA Board Meeting, Nashville, Tennessee

July 16, 1996, Corrections Technology Committee Meeting, Charleston, South Carolina

July 11, 1996, LEAA/OJP Retrospective, Washington, DC

June 6, 1996, Drug Use Forecasting Annual Conference, Arlington, Virginia

May 28, 1996, Criminal Justice Editors Meeting, Washington, DC

May 17, 1996, University of Utah Graduate School of Social Work Conference on Family Violence and Welfare Reform: What Are the Links?, Salt Lake City, Utah

May 9, 1996, National Association of Drug Court Professionals 2nd Annual Training Conference Panel on Federal Drug Court Initiatives, Washington, DC

May 3, 1996, State Legislative Leaders Foundation Combating Crime in America: Are We on the Right Path?, University of Maryland, Baltimore, Maryland

April 26, 1996, 16th Annual National Forum on Victims Rights, Washington, DC

April 9, 1996, Correctional Boot Camp Technical Assistance Workshop, Dallas, Texas

April 1, 1996, 6th National TASC Conference on Drugs and Crime, Chicago, Illinois

January 25, 1996, Restorative Justice Symposium, Washington, DC

1995:

November 29, 1995, 1995 BJA National Conference, Atlanta, Georgia

November 12, 1995, Conference on Police Leadership for the 21st Century: The Emerging Role of Women, Washington, DC

November 9, 1995, 26th Annual Meeting of the Southeastern Council of Foundations, Jacksonville, Florida

October 16, 1995, National Association of Pretrial Service Agencies Conference, Cincinnati, Ohio

October 13, 1995, 1995 National Conference on Research, Data, and Criminal History Records: New Strategies in Criminal Justice, Philadelphia, Pennsylvania

September 18, 1995, Summit of Urban Coalitions for Public Safety and Violence Reduction, Detroit, Michigan

August 24, 1995, Mock Press Conference Kids Day at the Department of Justice, Washington, DC

July 27, 1995, Collaboration to S.T.O.P. Violence Against Women Conference, Washington, DC

July 25, 1995, National Conference of Sentencing Guidelines Commissions, Washington, DC

July 10, 1995, Annual Conference on Criminal Justice Research and Evaluation, Washington, DC

June 29, 1995, BJA Working Group Meeting for New Directors of State Administration Agencies, Washington, DC

June 28, 1995, 4th Annual Gang Information Sharing Conference, Baltimore, Maryland

June 20, 1995, Initial Meeting of the Corrections Technology Advisory Council, Washington, DC

June 2, 1995, Next Steps Panel of the National Forum on Youth Violence, Dulles, Virginia

May 15, 1995, Law Enforcement Technology for the 21st Century Conference, Washington, DC

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April 29, 1995, 9th United Congress on the Prevention of Crime and Treatment of Offenders, Cairo, Egypt

April 21, 1995, National Victim Rights Forum, Washington, DC

April 10, 1995, 5th National Conference on Drugs and Crime, Orlando, Florida

March 20, 1995, Washington Conference of the International Association of Residential and Community Alternatives, Washington, DC

February 11, 1995, ABA Mid-Year Meeting, Miami, Florida

January 13, 1995, ABA Leadership Forum, Dallas, TX

1994:
December 12, 1994, National Institute of Justice 25th Anniversary Conference, Washington, DC

December 8, 1994, State and Local Conference on Crime and Drug Abuse: Reinforcing Government and Community Partnerships, Jacksonville, Florida

December 2, 1994, Conference of State Court Administration 1994 Mid-Year Meeting, New Orleans, Louisiana

October 12, 1994, "Building on Justice In Our Communities," United States Attorney/LEC Coordination, San Diego, California

October 7, 1994, Crime Prevention Month Kick-Off, Washington, DC

October 5, 1994, Violent Crime Control Act Briefing for the National Government Association, Washington, DC

September 26, 1994, ABA Domestic Violence Task Force Meeting, Washington, DC

September 22, 1994, Department of Justice Commemoration of Hispanic Heritage Month 1994, Washington, DC

September 7, 1994, Eastern Regional Crime and Violence Prevention Seminar, Indianapolis, Indiana

August 15, 1994, Conference on Solving Youth Violence: Partnerships that Work, Washington, DC

August 6, 1994, National Conference of Bar Presidents Annual Meeting, New Orleans, Louisiana

August 3, 1994, IACP Research Feedback Meeting, Alexandria, Virginia

August 2, 1994, International Symposium on Criminal Justice Information Systems and Technology: Building the Infrastructure, Washington, DC

July 18, 1994, National Organization of Black Law Enforcement Executives Roundtable, Alexandria, Virginia

July 14, 1994, Focus on the Future: Victim Assistance in the Federal System, Arlington, Virginia

May 31, 1994, Board of Directors Meeting National Criminal Justice Association, Cambridge, Massachusetts

May 23, 1994, National District Attorney 1994 Metropolitan Prosecutors Committee Meeting, Arlington, Virginia

March 24, 1994, Commission on Accreditation for Law Enforcement Agencies Crime Law Workshop, Alexandria, Virginia

March 31, 1994, NIJ/HHS Violence Against Women Research Strategic Planning Workshop, Washington, DC

March 7, 1994, Conference on Domestic Violence: A Coordinated Response, Los Angeles, California

February 9, 1994, National Conference on Criminal History Records: Brady and Beyond, Washington, DC

January 10, 1994, American Probation and Parole Association Winter Training Institute, Charleston, South Carolina

January 7, 1994, National Conference of State Legislative Judiciary Chairs Seminar, Denver, Colorado

November 12, 1993, National Association for Court Management, Baltimore, MD

November 4, 1993, Bureau of Justice Assistance Annual Conference, Panel on Drugs & Violence, Philadelphia, PA

October 27, 1993, 10th Annual Governor's Law Enforcement Forum, Panel on Federal Criminal Justice Priorities, Albany, NY

October 6, 1993, Keynote address at Symposium on Drugs & Community Corrections, Chicago, IL

e. 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.

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I have done my best to identify all copies of interviews I have given to the media. This included review of my personal files and searches of publicly available electronic databases. I have located the following. Four copies of these interviews are being provided to the Committee:

2009
February 23, 2009, Federal Times, "Reports on stimulus spending must begin next week," pg. 8.

2006
April 27, 2006, Interview with Penn Current, publication of the University of Pennsylvania.

2000
Summer, 2000, Criminal Justice, Magazine of the ABA Section of Criminal Justice, "Questions and Answers with Former Assistant Attorney General Laurie Robinson, Interview by Myrna Raeder, Vol. 15, No. 2.

13. 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.

1994 – 2000 – Served as Assistant Attorney General for the Office of Justice Programs, U.S. Department of Justice. I was appointed by President William Jefferson Clinton and confirmed by the U.S. Senate.

2009 – Served as Principal Deputy and Acting Assistant Attorney General for the Office of Justice Programs, U.S. Department of Justice. I was appointed by President Barack Obama. Now serving as Deputy Assistant Attorney General.

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, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

(1) 1988 – Dukakis campaign – Served as volunteer member of the criminal justice committee from September, 1988 through November, 1988.
(2) 1992 – Clinton Campaign – Served as volunteer member of the Criminal Justice Policy Committee from July, 1992 to November, 1992.
(3) 2004 – Kerry Campaign – Served as volunteer member of the Criminal Justice Policy Committee from February, 2004 to November, 2004.
(4) 2008 – Obama Campaign – Served as volunteer member of the Criminal Justice Policy Committee from April, 2008 to November, 2008.

14. Legal Career

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;

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

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.

While I am not a lawyer, my professional career has been spent in the legal arena. The following are the law and criminal justice-related areas in which I have been employed:

A. **September 14, 2009 to present** – Deputy Assistant Attorney General for the Office of Justice Programs in the U.S. Department of Justice. 810 Seventh St., N.W., Washington, D.C. 20521.
B. **January 28, 2009 to September 14, 2009** – Principal Deputy Assistant Attorney General and Acting Assistant Attorney General for the Office of Justice Programs in the U.S. Department of Justice. 810 Seventh St., N.W., Washington, D.C. 20531.
C. **January, 2001 to January, 2009** – Distinguished Senior Scholar/Director, Criminology Department Master of Science Program, University of Pennsylvania, 3718 Locust Walk, Suite 483, Philadelphia, PA 19104.
D. **January, 2003 to August, 2003** – President, CSR, Incorporated, 2107 Wilson Boulevard, Arlington, VA 22201.
E. **September, 1994 to February, 2000** – Assistant Attorney General, Office of Justice Programs, U.S. Department of Justice, 810 Seventh St., N.W., Washington, D.C. 20531.
F. **August, 1993 to September, 1994** – Associate Deputy Attorney General and Acting Assistant Attorney General, U.S. Department of Justice, 9th Street & Pennsylvania Ave., NW, Washington, D.C. 20530.
G. **September, 1979 to August, 1993** – Director, Section of Criminal Justice, American Bar Association, 740 – 15th St., N.W., Washington, DC 20005. (From 1986 to 1993, I also simultaneously headed the ABA's Professional Services Division in Washington.)
H. **July, 1972 to August, 1979** – Assistant Staff Director, Section of Criminal Justice, American Bar Association, 740 – 15th St., N.W., Washington, D.C. 20005.

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or arbitrator.

b. **Describe:**

i. the general character of your law practice and indicate by date when its character has changed over the years.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

I am not a lawyer and this question is therefore not applicable.

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

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frequency of your appearances in court varied, describe such variance, providing dates.

i. **Indicate the percentage of your practice in:**
   1. **federal courts;**
   2. **state courts of record;**
   3. **other courts;**
   4. **administrative agencies**

ii. **Indicate the percentage of your practice in:**
   1. **civil proceedings;**
   2. **criminal proceedings.**

Because I am not a lawyer, this question is not applicable.

d. **State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

i. **What percentage of these trials were:**
   1. **jury;**
   2. **non-jury.**

Because I am not a lawyer, this question is not applicable.

e. **Describe your practice, if any, before the Supreme Court of the United States. 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 am not a lawyer and, therefore, do not have a practice before the Supreme Court of the United States.

15. **Litigation Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. 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.**

Even though I am not an attorney, the following are persons with whom I have worked who know me and my qualifications:

Judge Patricia Wald (retired)
U.S. Court of Appeals for the District of Columbia

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2101 Connecticut Ave., NW
Washington, D.C. 20008
(202) 232-1158

Earl Silbert
Former U.S. Attorney for the District of Columbia
DLA Piper law firm
500 – 8th Street, N.W.
Washington, D.C. 20004
(202) 799-4517

William J. Bratton
Chief of Police
Los Angeles Police Department
P.O. Box 30158
Los Angeles, CA 90030
(213) 485-3201

Robbie Callaway
Former Director, Washington Office
Boys & Girls Clubs of America
240 Bayshore Drive
Bethany Beach, DE 19930
(301) 332-6415

Judge Theodore McKee
U.S. Court of Appeals for the Third Circuit
20614 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106
(215) 597-9601

George Terwilliger, III
White & Case LLP
701 – 13th St., NW
Washington, D.C. 20005
(202) 626-3628

Judge Raymond C. Fisher
United States Court of Appeals for the Ninth Circuit
125 South Grand Avenue
Pasadena, CA 91105
(626) 229-7110

Lynne Abraham
District Attorney, City of Philadelphia
Three South Penn Square
Philadelphia, PA 19107
(215) 686-8703

Daniel Rosenblatt
Executive Director

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International Association of Chiefs of Police
515 N. Washington Street
Alexandria, VA 22314
703) 836-6767 (Ext. 203)

Dr. Sally Hillsman
Executive Director
American Sociological Association
1430 K St., N.W. – Suite 600
Washington, D.C. 20005
(202) 383-9005 (Ext. 316)

Dr. Alfred Blumstein
School of Urban & Public Affairs
Carnegie-Mellon University
5000 Forbes Avenue
Pittsburgh, PA 15213
412) 268-8269

Hubert Williams
President, Police Foundation
1201 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 833-1460

Susan Smith Howley
Director of Public Policy
National Center for Victims of Crime
2000 M St., N.W.
Washington, D.C. 20036
(202) 467-8700

16. 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. 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.)**

Over the course of my career – including the more than 20 years I spent at the American Bar Association – I have had the opportunity to work on a broad array of legal and criminal justice issues and on projects addressing such topics as juvenile justice, corrections, crime victims, police procedures, and drug abuse. During my tenure as Assistant Attorney General for the Office of Justice Programs during the Clinton Administration – with the passage of the 1994 Crime Bill and the infusion of $4 billion in annual appropriations to OJP – I was responsible for new initiatives on prisons, community-based crime control, violence against women, law enforcement technology, and drug courts. I oversaw the largest increase in federal spending on criminal justice research in the nation's history. And in 1998 – three years before 9/11 – I set up OJP's Office of Domestic Preparedness to help state and local governments and first responders prepare for dealing with terrorist incidents and weapons of mass destruction.

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From my experience as Assistant Attorney General for OJP, I learned many things – including the fact that the federal government can be an effective partner with states and localities in the area of public safety if we approach the task in a pragmatic, practical and problem-solving fashion. We have to remember that most innovations are not invented in Washington. The best ideas – such as drug courts, crime mapping, law enforcement innovations like CompStat, and effective ways to deal with domestic violence – are first pioneered at the local level. So an agency like OJP works best if it does a lot of listening.

Since I left government, I started a Criminology Master of Science program at the University of Pennsylvania aimed at better linking crime research with its end users. The graduates of that program go into law enforcement and other government agency jobs, as well as into the non-profit sector, bringing their knowledge of crime analysis and research.

* * * *

I have not undertaken any lobbying activity.

17. **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, provide four (4) copies to the committee.**

Starting in September, 2004, through December, 2008, I taught a course each semester at the University of Pennsylvania entitled "Criminology in Practice." This was part of the Master of Science program curriculum in the School of Arts & Sciences. As Director of the M.S. Program, I designed the course as an introduction to students as to how criminology can be used in careers in criminal justice policy and practice. I brought in leading practitioners and policy makers as guest lecturers to describe how they use research-based approaches to address public safety. These guests – especially agency leaders, such as the local federal SACs in Philadelphia, for example – also serve another function; many of my students want to go into law enforcement, and these speakers provide guidance and mentoring to them about careers in that field. (Four copies of each of the syllabi are being provided to the Committee.)

18. **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. Describe the arrangements you have made to be compensated in the future for any financial or business interest.**

I have no deferred income arrangements of the kind described in the question. I should note, however, that I am receiving $2,535.34/month from an American Bar Association pension plan. It is a defined benefit plan. I worked at the ABA for 21 years.

19. **Outside Commitments During Service: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service? If so, explain.**

None.

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20. **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, licensing fees, 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 required by the Ethics in Government Act of 1978 is attached.

21. **Statement of Net Worth: Please complete the attached financial net worth statement in detail (add schedules as called for).**

See attached.

22. **Potential Conflicts of Interest:**

a. **Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.**

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

Upon confirmation, I will be on an unpaid leave of absence from my position as a staff member of the University of Pennsylvania. I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of the University of Pennsylvania, unless I first obtain a written waiver pursuant to 18 U.S.C. Sec. 208(b)(1), except that, pursuant to the regulatory exemption in 5 C.F.R. Sec. 2640.203(b), I may participate in any particular matter of general applicability affecting the financial interests of the University of Pennsylvania, provided that the matter will not have a special or distinct effect on the University of Pennsylvania other than as part of a class.

My spouse is a partner in the law firm DLA Piper. For this reason, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of DLA Piper, unless I first obtain a written waiver pursuant to 18 U.S.C. Sec. 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. Sec. 208(b)(2). I also have a covered relationship with my spouse's clients. I will not participate personally and substantially in any particular matter involving specific parties in which any client of my spouse's is a party or represents a party, unless I am first authorized to participate pursuant to 5 C.F.R. Sec. 2635.502(d).

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I was employed by the American Bar Association from 1972 until August, 1973. I continue to participate in the American Bar Association defined benefit plan. Because of my participation in the defined benefit pension plan, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the ability or willingness of the American Bar Association to provide this contractual benefit, unless I first obtain a written waiver, pursuant to 18 U.S.C. Sec. 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. Sec. 208 (b)(2).

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

23. 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. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

I am not an attorney. I, therefore, do not provide pro bono legal services. However, since I left the U.S. Department of Justice in 2000, I have devoted a substantial amount of time on a volunteer basis to working in the criminal justice community. In fact, for that reason, I specifically arranged with Penn to work part-time so that I could make a substantial commitment of time on a weekly basis to a variety of criminal justice volunteer activities. These include, for example, service as Chair of the Vera Institute of Justice Board of Trustees. As an example of the system improvement work undertaken by that organization in which I have been involved, Vera in 2005-2006 launched a Commission on Safety & Abuse in America's Prisons. I sat on the Commission. We held hearings throughout the United States looking at conditions in U.S. correctional facilities. We heard from dozens of witnesses and produced a comprehensive report with recommendations.

I also have served on a number of other volunteer boards and advisory boards aimed at improving the criminal justice system. These include those of the National Center for Victims of Crime, the Police Foundation, the George Mason University Administration of Justice (and its Center for Evidence-Based Crime Policy Advisory Board, which I chaired), and the Constitution Project.

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AFFIDAVIT

I, LAUREL (LAURIE) O. ROBINSON, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

9/8/2009
(DATE)

(NAME)

(NOTARY)

ROSA M. WASHINGTON
Notary Public, District of Columbia
My Commission Expires August 14, 2013

Senator CARDIN. Thank you. Ms. Jackson.

STATEMENT OF KETANJI BROWN JACKSON, NOMINEE TO BE A MEMBER OF THE U.S. SENTENCING BOARD

Ms. JACKSON. Yes, sir. Senator, thank you very much for this opportunity to appear before the Committee today. I appreciate it. And I would like to start by thanking the President for nominating me to this position. I'd also like to thank the Chairman of the Committee and the Ranking Member, Senator Sessions.

I also appreciate the opportunity to introduce my family, beginning with my husband, Dr. Patrick Jackson, who is my support system for 13 years and a wonderful father to our two young daughters, who could not be here today, but are hopefully hard at work doing their homework right now.

I would also like to introduce my parents, Johnny and Ellery Brown, who have come here from Miami, Florida, to support me. My parents-in-law, Gardner and Pamela Jackson, who have come here from Boston, Massachusetts. My brother, Second Lieutenant Ketajh Brown, who is a member of the Maryland Army National Guard, who served in Iraq and who graduated from officer candidate school 2 weeks ago; his supportive girlfriend, Olga Butler; and, my wonderful brother-in-law and sister-in-law, Dana and William Jackson.

Other than that, Mr. Chairman, I don't have a statement, but I would like to say that if I am fortunate enough to be confirmed, I look forward to working again with the excellent staff at the Sentencing Commission. And I'm happy to take any questions that you might have.

[The biographical information of Ketanji Brown Jackson follows.]

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UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   Ketanji Brown Jackson

2. **Position**: State the position for which you have been nominated.

   Member, United States Sentencing Commission

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: Morrison & Foerster, LLP
   2000 Pennsylvania Ave, N.W. Suite 6000
   Washington, DC 20007

   Residence: [redacted]

4. **Birthplace**: State year and place of birth.

   1970; Washington, District of Columbia

5. **Education**: List in reverse chronological order 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.

   Harvard Law School (attended 8/93 - 6/96), Juris doctorate, 1996

   Harvard University (attended 8/88 - 6/92), Bachelor of Arts, 1992

6. **Employment Record**: List in reverse chronological order 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 description.

   June 2007- Present
   Morrison & Foerster, LLP
   2000 Pennsylvania Ave, N.W., 6th Floor

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Washington, D.C. 20006
Of Counsel

2005-2007
Office of the Federal Public Defender
625 Indiana Ave, N.W.,
Washington, D.C. 20004
Assistant Federal Public Defender

2003-2005
United States Sentencing Commission
One Columbus Circle, N.E.,
Washington, DC, 20002
Assistant Special Counsel

2002-2003
The Feinberg Group, LLP
455 Pennsylvania Ave, N.W.
Washington, D.C. 20004 (currently Feinberg Rozen, LLP)
Associate

2000-2002
Goodwin Procter, LLP
Exchange Place 53 State Street
Boston, MA 02109
Associate

Oct. Term 1999 (1999-2000)
Supreme Court of the United States
One First Street N.E.
Washington, DC 20543
Law Clerk for Associate Justice Stephen G. Breyer

1998-1999
Miller, Cassidy, Larroca & Lewin, LLP
2599 M St, N.W.,
Washington, D.C. 20007 (firm now defunct)
Associate

1997-1998
U.S. Court Of Appeals, First Circuit
2 Exchange Terrace
Providence, RI
Law Clerk for the Honorable Bruce M. Selya

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1996-1997
U. S. District Court, District Of Massachusetts
1 Courthouse Way
Boston, MA
Law Clerk for the Honorable Patti B. Saris

Summer 1996
Ropes & Gray, LLP
One International Place
Boston, MA 02110
Summer Associate

Summer 1995
Miller, Cassidy, Larroca & Lewin, LLP
2599 M St, N.W.
Washington, D.C. 20007 (firm now defunct)
Summer Associate

Summer 1994
Kirkland & Ellis, LLP
Citigroup Center, 153 East 53rd Street, NY, NY 10022
Summer Associate

1992-1993
Time Magazine, Inc.
1271 Avenue of the Americas
New York, NY 10020
Staff Reporter (Business and International Sections)

2004-2007
Harvard Alumni Association
124 Mount Auburn Street, 6th Floor
Cambridge, MA 02138
Elected Director

7. **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, and whether you have registered for selective service.

   I have not served in the U.S. Military. I was not required to register with the Selective Service.

8. **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.

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Harvard Law School, J.D., *cum laude*, 1996

Harvard Law Review, 1994-1996, Supervising Editor, 1995-1996

Harvard College, A.B., *magna cum laude*, 1992

Harvard College Scholarship for Academic Achievement, 1989, 1990, 1991

Elizabeth Carey Agassiz Certificate for Academic Achievement, 1989, 1990

Glamour Magazine's Top Ten College Women Competition, Semi-finalist, 1991

National Catholic Forensic League National Champion in Original Oratory, 1988

National Forensics League National Finalist in Humorous Interpretation, 1988

9. **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.

Edward Bennett Williams Inn of Court
Barrister, 2005–present

District of Columbia Bar, Criminal Justice and Individual Rights Section,
Member, 2005–present

Supreme Court Institute, Georgetown University
Moot Court Jurist, 2003–present

American Bar Association
Member, 2000–present

Women's Bar Association of Washington, D.C.
Co-Chair of Amicus Committee, 2006

U.S. District Court for D.C., Magistrate Judge Merit Selection Panel
(service on panel that investigated and recommended reappointment of Magistrate Judge John M. Facciola), 2005

10. **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.

Commonwealth of Massachusetts, admitted December 16, 1996 (no lapses)
District of Columbia, admitted January 21, 1999 (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

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in membership. Give the same information for administrative bodies that require special admission to practice.

United States District Court for the District of Columbia, 2009
United States Court of Appeals for the Fourth Circuit, 2008
United States Court of Federal Claims, 2008
United States Court of Appeals for the District of Columbia Circuit, 2005
Supreme Court of the United States, 2000
District of Columbia Court of Appeals, 1999
United States Court of Appeals for the First Circuit, 1998
United States District Court for the District of Massachusetts, 1997
(There have been no lapses in membership for any admission)

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, 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.

Harvard Alumni Association Board of Directors, *Elected Director*, 2004–2007
Harvard Black Alumni Society, *Member*, since 2003
Harvard Club of Washington D.C., *Member*, since 2002; *Interviewer*, since 2004

b. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin 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.

None of these organizations currently discriminate or formerly discriminated on the basis of race, sex, religion, or national origin either through formal membership requirements or the practical implementation of membership policies.

12. **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. Supply four (4) copies of all published material to the Committee.

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Section 10(b) and Rule 10b-5: The U.S. Courts of Appeals Apply Different Legal Tests for Assessing the Primary Liability of Secondary Actors, Morrison & Foerster LLP, Securities Litigation, Enforcement, and White Collar Group Newsletter, Spring 2009, at 10-12.

Note, *Prevention Versus Punishment: Toward a Principled Distinction in the Restraint of Released Sex Offenders*, 109 Harv. L. Rev. 1711 (1996).

Recent Case, *Racketeer Influenced and Corrupt Organizations Act (RICO)—Scope of Liability After* Reves *v.* Ernst & Young, 108 Harv. L. Rev. 1405 (1995).

Senior Honors Thesis: *"The Hand Of Oppression": Plea Bargaining Processes and the Coercion of Criminal Defendants* (available in the Harvard College Archives, 1988).

It's About Time, 4 Progressive Forensics 1, 18 (1987) (published original oratory delivered October 11-12, 1987, at 6th Annual William Faulkner Invitational High School Forensics Tournament).

b. 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, 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. 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.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. 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 recording of your remarks, 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, furnish a copy of any outline or notes from which you spoke.

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April 2, 2009. George Washington University, Professor Roger Fairfax's Adjudicatory Criminal Procedure Class (Washington, D.C.)—Guest Lecturer. I provided an overview of the content and structure of the Sentencing Guidelines and the Supreme Court's recent jurisprudence on sentencing, from *Booker* to *Kimbrough*.

March 19, 2009. Minority Corporate Counsel Association, CLE Expo (Chicago)—Faculty. I gave a power point presentation about the inner workings of the Supreme Court to a breakout session of in-house counsel. I also participated in a related panel discussion regarding recent and pending Supreme Court cases of particular interest to business.

January 9, 2008. American University, Professor Carolyn Cox Cohan's course on Women, The Law, & Litigating For Social Change (Washington, D.C.)—Guest Speaker. I discussed my education and career path and work-family balance. I also provided insight into the Supreme Court and the role/work of law clerks.

December 5, 2007. American Constitution Society event at Jones Day (Washington, D.C.)—Panelist. I participated in panel discussion regarding the representation of Guantanamo detainees and other interested persons in cases before the Supreme Court.

October 11-12, 1987. Sixth Annual William Faulkner Invitational High School Forensics Tournament in Oxford, Mississippi—Original Orator. I delivered "*It's About Time*" in the first of many high school forensics tournaments at a local and national level as a member of the Miami Palmetto Senior High School speech and debate team.

e. 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.

November 19, 2008—Telephone interview with Mark Sherman of the Associated Press regarding *Al-Marri v. Pucciarelli* (to my knowledge, no resulting article).

Saturday, August 9, 2008—Interview with Elinor Brecher of the Miami Herald regarding death of debate coach Fran Berger.

April 2007—Interview with Kevin Merida, Washington Post, regarding Justice Clarence Thomas.

December 11, 2000—Television interview with CNN host Leon Harris prior to Supreme Court oral arguments in *Bush v. Gore*.

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13. **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.

September 2005 – Commission on Juvenile Justice, Montgomery County, Maryland. I was appointed to the voluntary board by then-Montgomery County Executive Douglas Duncan and was approved by the Montgomery County Council. (I had to withdraw from service shortly after my appointment due to a family-member health issue and never served).

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, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Lawyers for Change, Obama for America Presidential Campaign— General Election Poll Monitor in Fairfax County, VA, November 4, 2008; and Primary Election Poll Monitor in Bethesda, MD, February 12, 2008.

14. **Legal Career:** 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;

From 1996-1997, I served as a law clerk for the Honorable Patti B. Saris of the United States District Court for the District of Massachusetts.

From 1997 - 1998, I served as a law clerk for the Honorable Bruce M. Selya of the United States Court of Appeals for the First Circuit.

From 1999 – 2000 (October Term 1999), I served as a law clerk for Associate Justice Stephen G. Breyer of the Supreme Court of the United States.

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

I have not practiced alone.

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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.

1998-1999
Miller, Cassidy, Larroca & Lewin, LLP
2599 M St, N.W.,
Washington, D.C. 20007 (firm now defunct)
Associate

2000-2002
Goodwin Procter, LLP
Exchange Place 53 State Street
Boston, MA 02109
Associate

2002-2003
The Feinberg Group, LLP
455 Pennsylvania Ave, N.W.
Washington, D.C. 20004 (currently Feinberg Rozen, LLP)
Associate

2003-2005
United States Sentencing Commission
One Columbus Circle, N.E.,
Washington, DC., 20002
Assistant Special Counsel

2005-2007
Office of the Federal Public Defender
625 Indiana Ave, N.W.,
Washington, D.C. 20004
Assistant Federal Public Defender

June 2007- Present
Morrison & Foerster, LLP
2000 Pennsylvania Ave, N.W., 6th Floor
Washington, D.C. 20006
Of Counsel

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator in alternative dispute resolution proceedings.

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b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

The nature of my law practice has varied widely over the years. In 1998, as an associate at Miller, Cassidy Larroca & Lewin, LLP, I worked on civil rights and breach of contract issues. My clients were typically corporations and individuals who were at the trial litigation stage in state and federal courts. Foe example, I assisted in the representation of a developer in a high-profile breach of fiduciary action and in the defense of a national media company accused of employment discrimination. I drafted pleadings and defended depositions.

From 2000 - 2002, as a general litigation associate at Goodwin Proctor LLP in Boston, I worked on trial-stage litigation matters involving federal securities fraud allegations, personal injury claims, and alleged violations of the Anti-Kickback statute. I also assisted an organization in investigating and challenging high stakes testing in education. My typical clients were corporations and organizations.

From 2002-2003, while an associate at The Feinberg Group, I assisted in the negotiated (non-litigation) resolution of mass tort claims. I attended arbitration proceedings and advised client corporations regarding trust payment structures for the resolution of mass-tort claims, such as asbestos liability. My typical clients were corporations facing mass tort liability.

Since 2003, I have been focusing on criminal law and criminal justice related issues. As an Assistant Special Counsel to the United States Sentencing Commission from 2003-2005, I drafted proposed amendments to the Sentencing Guidelines Manual, analyzed federal law and sentencing policies in regard to certain crimes, and worked on the development of various guideline-sentencing proposals prior to, and in anticipation of, *Booker*. My client was the agency and the federal criminal justice system as a whole.

From 2005-2007, I served as an Assistant Federal Public Defender, during which I represented indigent criminal appellants in the U.S. Court of Appeals for the District of Columbia Circuit. I filed briefs and motions, argued cases, and monitored criminal law developments nationwide.

My current practice as an appellate litigator in a large law firm (from 2007-present) has provided me with the opportunity to work on both criminal and civil appeals, and appeals in courts throughout the country, including the Supreme Court of the United States.

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My current law practice (from 2007 to present) can generally be characterized as a national appellate practice involving a wide range of legal issues, with a special focus on appeals involving issues of criminal law. I represent corporations, organizations, and individuals who are making legal arguments in state and federal courts of appeals.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

Typically, my clients in private practice are corporations or organizations who are filing briefs on the merits of a case as parties to an appeal or *amicus* briefs in support of a party in a case.

As an Assistant Special Counsel to the United States Sentencing Commission, my client was the agency and the federal criminal justice system as a whole.

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.

My practice is 100% appellate litigation. I am in court 2-3 times a year.

i. Indicate the percentage of your practice in:
   1. federal courts: 60%
   2. state courts of record: 20%
   3. other courts: 20%
   4. administrative agencies

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 40%
   2. criminal proceedings: 60%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have not been primarily responsible for trying any cases and have not handled any matters before a jury. I was chief counsel in approximately 15 criminal appeals in the D.C. Circuit from 2005-2007. Since 2007, I have been chief or associate counsel representing clients in the filing merits or amicus briefs and/or oral arguments, in approximately 25 cases on appeal.

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i. What percentage of these trials were:
   1. jury;
   2. non-jury.

e. Describe your practice, if any, before the Supreme Court of the United States. 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 served as counsel of record in the filing of five *amicus* briefs and one petition for a writ of *certiorari* in the Supreme Court of the United States:

Bloate v. United States, No. 08-728 (*amicus* brief on behalf of the National Association of Criminal Defense Lawyers) (matter pending)

Arizona v. Gant, No. 07-542 (*amicus* brief on behalf of the National Association of Federal Defenders) (case decided by opinion, 129 S. Ct. 1710 (2009))

Al-Marri v. Spogone, No. 08-368 (*amicus* brief on behalf of The Constitution Project, The Rutherford Institute, and The Cato Institute) (case dismissed as moot, 129 S. Ct. 1545 (2009)).

Al-Marri v. Pucciarelli, No. 08-368 (*amicus* brief in support of petition for *certiorari* on behalf of The Constitution Project and The Rutherford Institute) (petition granted, 129 S. Ct. 680 (2008)).

Boumediene v. Bush and *Al-Odah v. United States*, Nos. 06-1195 and 06-1196 (*amicus* brief on behalf of 20 former federal judges) (case decided by opinion, 128 S. Ct. 2229 (2008)).

Kosh v. United States, No. 06-6128 (petition for *certiorari* on behalf of indigent defendant client) (petition denied, 549 U.S. 940 (2006)).

15. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. 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

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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. Navron Ponds*, 454 F.3d 313 (D.C. Cir., 2006); 6/05 – 7/06 (approx.); U.S. Court of Appeals for the D.C. Circuit (Rogers, Tatel, Brown, JJ.):

I successfully represented a former attorney convicted of tax evasion in an appeal that asserted a violation of act-of-production immunity. I wrote the brief for appellant and the reply brief, and I argued the case before a panel of judges on the D.C. Circuit. The judgment of conviction was vacated and the case was remanded to the district court for a determination of the extent of the government's impermissible use of the immunized material.

Opposing counsel:
John P. Mannarino, AUSA
555 Fourth Street, NW, Room 8104
Washington, D.C. 20530
(202) 514-7088

(2) *United States v. Littlejohn*, 489 F.3d 1335 (D.C. Cir. 2007); 6/06 – 5/07 (approx.); U.S. Court of Appeals for the D.C. Circuit (Sentelle, Tatel, Brown, JJ.):

I successfully represented a defendant convicted of unlawful possession of a firearm in an appeal that asserted that the trial court had conducted an improper and prejudicial jury *voir dire*, among other things. I wrote the brief for appellant and reply brief and argued the case before a panel of judges on the D.C. Circuit. The judgment was vacated as a result of the district court's improper use of compound questions during *voir dire* and the case was remanded for a new trial.

Opposing counsel:
Sarah T. Chasson, AUSA
555 Fourth Street, NW, Room 8104
Washington, D.C. 20530
(202) 514-7088

(3) *United States v. Bussell*, No. 07-1262, 129 S. Ct. 40 (petition denied, Oct. 6, 2008); 1/08 – 10/08 (approx.); Supreme Court of the United States:

I filed a petition for a writ of *certiorari* on behalf of a defendant who was convicted of making false statements in connection with a bankruptcy petition. The petition presented issues regarding whether an objectively true response to an ambiguous question on a bankruptcy form could be the basis for a false statement conviction and whether restitution could be awarded for acquitted conduct. I drafted the petition, and, after the Court ordered the government to file a brief in opposition, the reply. The petition was ultimately denied.

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Opposing counsel:
Gregory G. Garre, Acting Solicitor General
United States Department of Justice
950 Pennsylvania Avenue, N.W., Room 5614
Washington, DC 20530-0001
202-514-2203

(4) *Salvini v. Ski Lifts, Inc.*, No. 60211-0-I (Wash. App., Oct. 20, 2008); 09/07-10/08; Washington State Court of Appeals (Lau, Appelwick, Cox, JJ.):

I assisted in the representation of ski-area operator Ski Lifts Inc. in its appeal of a $14 million personal injury judgment won by a plaintiff who was injured while ski jumping in a terrain park. I co-drafted the brief for appellant and the reply brief, which argued that the trial court had erred in instructing the jury regarding the duty of a ski-area operator, inherent risk, and proper warnings. The judgment was affirmed.

Opposing counsel:
John Robert Connelly Jr.
Law Offices of John R. Connelly, Jr.
2301 North 30th Street
Tacoma, Washington 98403-3322
(253) 593-5100

(5) *United States v. McCants*, 434 F.3d 557 (D.C. Cir. 2006); 03/05-01/06 (approx.); U.S. Court of Appeals for the D.C. Circuit (Randolph, Griffith, Edwards, JJ.):

I successfully represented a defendant who was convicted of possessing false-document-making implements in an appeal that challenged the district court's failure to make findings on contested factual issues at sentencing. I authored and filed the brief for appellant and the reply brief, and I argued the case before a three-judge panel of the D.C. Circuit. The sentencing judgment was reversed and the case was remanded for resentencing.

Opposing counsel:
Lisa H. Schertler, AUSA
555 Fourth Street, NW, Room 8104
Washington, D.C. 20530
(202) 514-7088

(6) *Boumediene v. Bush & Al-Odah v. U.S.*, 128 S.Ct. 2229 (2008); 7/07 – 6/08; Supreme Court of the United States:

I represented 20 former federal judges in the drafting and filing of an *amicus* brief that argued that the Detainee Treatment Act (DTA) was not an adequate substitute for federal habeas because the prescribed system might permit reliance on

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statements obtained through torture or other means of coercion, when reliance on such evidence was rejected at common law and has never been permitted in the American legal system. The Supreme Court reversed the judgment below on the merits, striking down the DTA as unconstitutional.

Co-counsel:
Agnieszka M. Fryszman
Cohen, Milstein, Hausfeld & Toll, PLLC
1100 New York Ave., N.W.
West Tower, Suite 500
Washington, DC 20005
(202) 408-4600

Petitioner's counsel:
Seth P. Waxman
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Avenue, NW
Washington, District of Columbia 20006
(202) 663 6800

Opposing counsel:
Paul D. Clement, Solicitor General
United States Department of Justice
950 Pennsylvania Avenue, N.W., Room 5614
Washington, DC 20530-0001
202-514-2203

(7) *Al-Marri v. Spagone*, 129 S. Ct. 1545 (2009); 8/08 – 3/09 (approx.); Supreme Court of the United States:

I drafted and filed two *amicus curiae* briefs—one at the *certiorari* stage and one on the merits—on behalf of The Constitution Project and the Rutherford Institute. The briefs argued that the lower court's ruling that the Executive can seize and detain a person who is lawfully in the United States, without charge or trial, based on a contention that the person is an enemy combatant even though the person has never taken up arms and has no affiliation with any other nation's military, is inconsistent with the laws of Congress and the Constitution. The Supreme Court granted *certiorari* but ultimately dismissed the case as moot after Mr. Al-Marri was transferred from military custody to civilian custody for trial.

Co-counsel:
Sharon Bradford Franklin
The Constitution Project
1025 Vermont Ave., N.W., 3rd Fl.
Washington, D.C. 20005
(202) 580-6920

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John W. Whitehead
The Rutherford Institute
P.O. Box 7482
Charlottesville, VA 22906
(434) 978-3888

Petitioner's counsel:
Jonathan Hafetz
American Civil Liberties Union Foundation
125 Broad Street
New York, NY 10004
(212) 549-2500

Opposing counsel:
Edwin S. Kneedler, Acting Solicitor General
United States Department of Justice
950 Pennsylvania Avenue, N.W., Room 5614
Washington, DC 20530-0001
202-514-2203

(8) *Arizona v. Gant,* 129 S. Ct. 1710 (2009); 4/08 – 4/09 (approx.); Supreme Court of the United States:

I represented the National Association of Federal Defenders as *amicus curiae* in support of respondent on the merits. The brief argued that empirical evidence from states across the country does not support the claim that the authority to search a vehicle upon the arrest of a recent occupant after the occupant is secured is necessary for police officer safety. The Supreme Court affirmed the judgment of the Arizona Supreme Court, which had reversed respondent's conviction on the grounds that the search of respondent's vehicle violated the Fourth Amendment.

Co-counsel:
Francis H. Pratt, Assistant Federal Public Defender
Office of the Federal Public Defender, E.D.VA
1650 King Street, Suite 500
Alexandria, Virginia 22314
(703) 600-0800

Respondent's counsel:
Thomas F. Jacobs
271 N. Stone Avenue
Tucson, AZ 85701
(520) 628-1622

Opposing counsel:
Joseph T. Maziarz

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Office of the Arizona Attorney General
1275 West Washington Street
Phoenix, Arizona 85007
(602) 542-5025

(9) *Quanta Computer, Inc, et al. v. LG Electronics, Inc.*, 128 S.Ct. 2109 (2008); 10/07 – 6/08 (approx.); Supreme Court of the United States

I participated in the representation of Gen Probe, Inc., a bio-tech company, in its filing of an *amicus curiae* brief on the merits in support of petitioners. The brief argued that the Federal Circuit's disregard for the established patent exhaustion doctrine stifles innovation and distorts the settled patent principles that undergird the biotechnology sector. The Supreme Court reversed the judgment in favor of the patent holder, holding that the doctrine of patent exhaustion applied.

Co-counsel:
William Bowen, Vice-President and General Counsel
Gen Probe, Inc.
10210 Genetic Center Drive
San Diego, CA 92121-4394
(858) 410-8000

Petitioner's counsel:
Maureen E. Mahoney
Latham & Watkins LLP
555 Eleventh Street, NW, Suite 1000
Washington, District of Columbia 20004-1304
(202) 637-2250

Opposing counsel:
Carter G. Phillips
Sidley Austin LLP
1501 K Street, N.W.
Washington, District of Columbia 20005
Washington County
(202) 736-8270

(10) *Clark County, Nevada v. Vacation Village, Inc.*, 128 S. Ct. 2956 (2008); 09/07-01/08 (approx.); Supreme Court of the United States

I participated in the representation of five air transportation-industry associations who filed an *amicus curiae* brief in support of the petition for a writ of *certiorari*. The brief argued that review was warranted because multimillion-dollar state law takings claims related to the alleged taking of airspace as a result of local height-restriction zoning ordinances frustrates the cooperative effort of federal and local governments to prevent hazardous obstructions near airports and, thus, should be

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deemed preempted. I drafted the amicus brief and participated in discussions related to takings and preemption issues after the Supreme Court called for the views of the Solicitor General. The petition was ultimately denied.

Primary co-counsel:
James I. Briggs, Jr.
Airports Council International - N. America
1775 K Street, N.W.
Washington, D.C. 20006
(202) 293-8500

Petitioner's counsel:
Carter G. Phillips
Sidley Austin LLP
1501 K Street, N.W.
Washington, District of Columbia 20005
Washington County
(202) 736-8270

Opposing counsel:
Paul Chastain Ray
John Peter Lee, Ltd.
830 Las Vegas Boulevard So.
Las Vegas, Nevada 89101-6723
(702) 382-4044

16. **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. 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.)

The most significant legal activity that I have pursued, outside of the matters listed above, is my work as an Assistant Special Counsel on the staff of the U.S. Sentencing Commission (2003-2005). As an Assistant Special Counsel, my primary role was to draft specific legislative proposals for amending the Sentencing Guidelines Manual and to prepare the reports and statements that the Commission published in the Federal Register and CFR. I met regularly with other Commission staff members as a member of various policy development teams that evaluated potential guideline amendments related to crimes involving hazardous materials, unsolicited commercial e-mail, and controlled substances. I attended the Commission's public meetings and assisted in the preparation of materials for the Commissioners. I also evaluated case law developments and crafted a series of alternative guideline-sentencing proposals prior to, and in anticipation of, the Supreme Court's decision in *Booker v. United States*, 543 U.S. 220 (2005).

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17. **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, provide four (4) copies to the committee.

    None.

18. **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. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

    None.

19. **Outside Commitments During 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.

    None.

20. **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, licensing fees, 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.

21. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    See attached Net Worth Statement.

22. **Potential Conflicts of Interest**:

    a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

       None.

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b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If a potential conflict were to arise, I would consult with the Commission's general counsel and review ethics rules governing my continued participation in regard to the matter. If warranted, I would propose the establishment of ethical walls that would prevent my participation in all policy discussions and votes regarding the matter.

23. **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. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

At present, approximately 60% of my time is devoted to *pro bono* representation. I routinely represent public interest organizations and non-profits seeking to file amicus briefs in state and federal appellate proceedings on significant legal and constitutional issues. I am also a member of the Fourth Circuit's CJA panel and accept court appointments to represent individuals in that court. From 2005-2007, 100% of my time was spent representing indigent criminal defendants on appeal before the U.S. Court of Appeals for the D.C. Circuit.

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AFFIDAVIT

I, Ketanji Brown Jackson, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

7/29/09
(DATE)

(NAME)

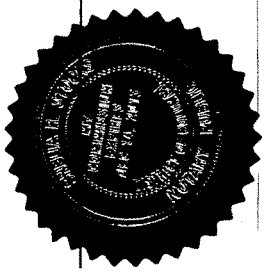
(NOTARY)

DISTRICT OF COLUMBIA : SS

Sworn and subscribed before me this 29th day of July, 2009

by SHELIA R STOCKS

SHELIA R. STOCKS, Notary Public
My Commission Expires December 14, 2013



Senator CARDIN. Well, thank you and we appreciate both of you introducing your families. It is a pleasure to have you all here in our Committee.

Ms. Robinson, if I just could begin with you. If you could just share with us, what would be your priorities, if confirmed to this position? How do you see the Office of Juvenile Justice and Delinquency Prevention, a very important part of local governments?

Give us a little idea about some of the priorities that you would look at within your portfolio of responsibilities, whether you think there is a need to change the way the priority decisions are made. How do you intend to work with the Judiciary Committee in carrying out that responsibility?

Ms. ROBINSON. Certainly, I'd be happy to. And, Senator, if I could first say, also, that I overlooked one of my family members, because I didn't know he was coming. I'd also like to introduce my brother, Peter Overby, who is seated over at the press table, because he's a member of the press. And he didn't tell me he was going to be coming.

Senator, if I'm lucky enough to be confirmed, I would want to emphasize these priorities: One of the key areas that OJP works in, of course, is partnership with the field. So I would say I'd give strong importance to strategic partnerships with state, local and tribal officials in working to reduce crime across the country.

Of course, this is a key area in which OJP has always worked, but I think there is much more that can be done to strengthen the way in which OJP—and you mentioned OJJDP, and that's a key part of this, particularly with the very difficult problems of youth violence that have so recently been highlighted just in the last few days—ways in which we can make sure that officials around the country can access the resources available through OJP and OJJDP.

In a second area, I want to make sure that what we're doing at OJP is based on what we know from science. I know that Senator Specter mentioned that, and this is an area that Senator Sessions and I have discussed in the past.

Is what we're doing based on the best evidence? We shouldn't be spending taxpayer dollars unless we know that it's on areas that really work. So that would be a second area of priority.

A third area of priority would be to ensure, working closely with the Inspector General, that we're ensuring that we're good stewards of Federal taxpayer dollars and guarding against abuse and fraud with those dollars.

Senator CARDIN. Well, the juvenile justice issues are really important. We are struggling with that in this Committee. We have had some legislation that we are considering.

If I had to pick the two areas we probably spend the most time, it would probably be juvenile justice and the drug issues, dealing with recidivism, dealing with drug treatment, dealing with how we handle the drug issues.

So you are going to get a lot of requests in both of these areas. For example, drug courts.

Ms. ROBINSON. Yes.

Senator CARDIN. Give me your thoughts as to how you would encourage, and I hope you would do this, a larger interest among the

local governments so that we can have better choices? I mean, the more interest you have, the more closely you can work with the local agencies, the better pool of requests we are going to have, the better programs we get, the best practices we all learn from each other's states.

Drug courts are working well in some states. Other states need help. How do you see your role in trying to bring this together?

Ms. ROBINSON. Senator, I think one way that OJP can do that better, if I am confirmed, I would want to set up what I call a "what works clearinghouse." I think OJP has not, in the past, done a good enough job in distilling information about the innovative programs out there that really are working well.

Have we really distilled the information from research on how well drug courts are reducing recidivism and reducing drug use? Let's help people, let's say, in Des Moines find out how the drug court in Denver is working well—or the one in Philadelphia—and show people over in Pittsburgh, just as examples.

I think if they can see how their peers around the country are using this in an effective way, not necessarily just a Federal agency telling them, but their peers in another jurisdiction, then that's a good selling point.

And if they can see the percentage reductions in recidivism, that's a selling point to their own city councils when Federal funding may run out.

Senator CARDIN. And you have a large workforce that is part of the office. Some are represented by AFSCME. Can you tell me how you would plan to work with the workers and their representatives in order to have unity for the purpose of the goal of the agency?

Ms. ROBINSON. Yes, Senator. When I was at OJP back in the 1990's, I had a very good working relationship with the union. I met regularly with the president of the union then, who was Stu Smith. We didn't always agree on every issue, but it was very good communication. And if I am confirmed, I would plan to have that same kind of regular communication and working relationship.

I believe very strongly in a fair workplace and ensuring that our managers and our supervisors at OJP are people who are fair in the way that they go about managing the workplace and that they have the training to ensure that they're good managers.

Senator CARDIN. Thank you. Ms. Jackson, I want to talk a little bit about sentencing with you. There is one issue that has been of foremost interest in this Committee, and that is disparity between crack and powder cocaine.

Now, these are statutes. So the sentence disparity needs to be corrected by Congress, I understand that. But the Sentencing Commission needs to take a look at that and is taking a look at it.

How do you see your role on the Sentencing Commission dealing with disparities in our system that are impossible to justify?

Ms. JACKSON. Well, Senator, thank you for your question. If I am fortunate enough to be confirmed, I believe that my role, along with the other commissioners, would be to look at the research, to look at the data, to consider the statistics and determine whether or not the disparities that are reflected in the data have some justification in the purposes of sentencing.

That's part of the role of the commission in setting Federal sentencing policy and it's certainly something that I know that at least with respect to crack and—the crack-powder disparity, the commission has looked at and was very forward thinking about addressing that particular disparity.

Senator CARDIN. And I do hope that our Committee will be able to deal with that issue. There is a lot of work being done by many members of our Committee to try to bring us together on that issue.

Do you have a view in regards to the Supreme Court decision in 2005, the Booker case, which held that the guidelines are not mandatory?

Ms. JACKSON. Well, it's a complicated decision, as you know, that has different aspects to it. I believe that at the end of the day, the remedial half of the opinion was the correct outcome given the constitutional holding.

And the guidelines, as you say, are now advisory and I do think that, as a result, there is additional statistical data that the commission can collect about what judges are actually doing in these cases where they now have the opportunity to sentence outside of the guidelines under the statute directly.

Senator CARDIN. Senator Webb has introduced legislation for us to take a look at the criminal justice system and our sentencing and penal issues. If that legislation is successful, your commission will have an important role in helping that study go forward.

Can you just share with me your thoughts as to Senator Webb's request that we take a more comprehensive look at our sentencing and penal policies in America?

Ms. JACKSON. Well, Senator Webb's proposal I have not studied in detail, but it certainly is a part of a national dialog that's going on right now with regard to Federal sentencing. And I believe that to the extent that his commission and working group is able to come up with proposals as to how to address sentencing, then that would certainly be welcome in the overall debate about what needs to be done now.

Senator CARDIN. Thank you very much. Senator Sessions.

Senator SESSIONS. Sentencing is such a big deal. You have got a 98 percent conviction rate. The real question in most cases is how much time will a person serve.

I am absolutely convinced, from my experience, that the fact that we have a lot of people in jail for fairly long periods of time has been a factor in—the predominant factor, in my view, in that decline in crime. Murder rates in a lot of areas are half what they were. Crime in general is down.

I became a United States Attorney in the early 1980s and people were terrified over crime. It is not as intense today and we have done some things right. But nobody should serve longer in the slammer than makes sense.

That is why I have supported substantial reductions in the crack cocaine penalties and I am working with a number of people to see if we can reach an accord. I have been supporting that for 6 years and never have gotten anything passed yet, maybe more than 6 years.

I am a little worried about where we are heading with the sentencing guidelines. Essentially, we need not go back to the situation in which two defendants are in the courthouse and one is down the hall before Judge X and one before Judge Y and they get five times the sentence for the same offense.

So the guidelines—*Booker* has opened up some real challenges for us and I hope that you will work on that.

Ms. Robinson, I really appreciated your talking about science, because what kind of defendants repeat and which ones, if you release, are likely to go back and commit serious crimes again are big factors. I support the drug courts. Senator Cardin, I really do. I think they work pretty well, but they are done quite differently in different cities.

I guess I really liked your answer to say, "Well, which one is working best?" And should we not be able to advise a community who is going to establish a drug court, especially if they are going to get a Federal grant, to ask them whether—are they going to comply with the best data we have out there on how to conduct that drug court.

Do you agree that we can do a better job of that, Ms. Robinson?

Ms. ROBINSON. Yes, Senator, I very much do. And I think a key part of what the Federal Government does best with these kinds of grants is provide technical assistance with them, which goes directly to your point.

And one of the key things about technical assistance is that the best way to provide it is to not have it be conducted by Federal employees from Washington, but have it conducted by people who are professionals from jurisdictions out in America who are doing this kind of work.

So we arrange it from an agency in Washington, but it's actually conducted out in the field by professionals, again, from one jurisdiction, maybe from Denver, going over to Des Moines or wherever.

Senator SESSIONS. I think that is a good idea and I would support that. I remember, and I have shared this story with you, Mr. Chairman, but Fred Thompson was elected to this body before I was. He chaired the Subcommittee on Juvenile Crime. At the time, there was a big emphasis on what to do about juvenile crime.

He said the only thing he was sure of when I took over that Subcommittee was that we did not know enough about why juveniles commit crime and if the Federal Government wanted to do something worthwhile, we would do some really aggressive studies into that, because 99.99 percent of juvenile cases are tried in state courts, not Federal courts. I always thought that was pretty commonsensical.

Do you think we know enough about juvenile crime, its causes, the recidivism possibilities? Do we provide enough data and information for individual juvenile judges and probation officers and juvenile prison systems around the country?

Ms. ROBINSON. No, Senator, I do not. I think we have——

Senator SESSIONS. You were there for 8 years.

Ms. ROBINSON. Seven years.

Senator SESSIONS. Seven years. What can we do to learn more about it?

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Ms. ROBINSON. Well, I think we know some things, but we need to know much more. There is very little research money actually appropriated by Congress to look into these things. There's a lot of——

Senator SESSIONS. A lot of the money that goes to Office of Justice Programs, which you administer, are earmarked or directed to things other than research and development?

Ms. ROBINSON. That's correct. Most of it goes into programmatic money, which is very important, but a very small percentage goes to research.

Senator SESSIONS. Now, you say programmatic. Is that money that goes to state and local jurisdictions mostly?

Ms. ROBINSON. Correct.

Senator SESSIONS. To help them start a drug court or run one.

Ms. ROBINSON. Yes.

Senator SESSIONS. Or a juvenile program.

Ms. ROBINSON. Or for the Byrne grants, for example, for law enforcement task forces and those kinds of things.

Senator SESSIONS. So tell us, be honest with you, at the time of our budget, if we had to choose, it seems to me we would do better to investigate rigorously some of the programs that are being tried all over America and see if we cannot help give good advice, even if we had to reduce some of the grant money or program money.

Ms. ROBINSON. The fact is that even a doubling or a tripling of the research funding would make a tremendous difference, because it's not a tremendous amount of money. But even putting $20 million more or $10 million more into research could create a great deal more knowledge about these issues and really inform the spending of the program dollars.

Senator SESSIONS. I also appreciate your willingness to examine, Mr. Chairman, the operation and structure of Office of Justice Programs. It has been cobbled together by this legislation, gets passed and we are all proud of it, and we get a director in charge of it, director in charge of this one, and they have interest groups and everything, and then, at some point, you say it is time to run this thing more streamlined and we can be more efficient and be more productive, usually somebody hollers and objects and it is difficult to get anything done.

But I hope that you would continue your willingness to examine how to, as you just said, make sure we get the best use of the taxpayers' money. Will you do that for us?

Ms. ROBINSON. I would be happy to continue those discussions with the Committee, of course.

Senator SESSIONS. I know you had some good ideas on how we could improve the structure of that when you were part of the Clinton Administration and afterwards, too, you have testified here before our Committee on that.

So, Mr. Chairman, I think we have one of the best nominees of the Clinton Administration. I think you did a great job and managed well and worked hard and were focused on doing the right things and I think it gives us an opportunity, as the Committee, to listen to your advice and suggestions and see if we cannot help you do your job better, because as this system ha developed over

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the years, it is not as productive, I think, as it should be. Thank you.

Senator CARDIN. Senator Sessions, let me agree with you. Your timing is perfect, because the budget is on the floor as we speak, being managed by my colleague from Maryland, Senator Mikulski and Senator Shelby. You are correct. We generally get involved with that as we put another little wrinkle into the program rather than looking at the overall effect.

I am very encouraged by Ms. Robinson's responses, because the purpose of the agency, the Office of Justice Programs, is to make sure that there is a national benefit to this. If it was just a funding program, we could just figure out a formula and save a lot of time.

But we are trying to make the benefit, so states can benefit from other states and that there are national strategies to help states, which are the primary agencies that deal with this problems, that there is a sharing of information and there is a more effective way for a state or local government to deal with these issues.

So I think Senator Sessions is absolutely right and, Ms. Robinson, we really do look forward to your recommendations in this area. I think we all are trying to get a better effectiveness on the use of these Federal funds. It really should not be just who can get as many earmarks to their states as possible, but how we can best utilize the funds to deal with this National priority of reducing juvenile crime and adult crime and make our communities safer in the most cost-effective way.

So I just wanted to add my support to Senator Sessions' comments.

Senator SESSIONS. What is the total OJP budget?

Ms. ROBINSON. For 2009, it was $2.8 billion.

Senator SESSIONS. So I am not saying any of this is wasted, although I am sure some is not spent well, but the idea that we do not have enough money to do good research raises questions, because $10 million or $20 million could substantially increase your ability to do research out of a multi-billion dollar budget indicates that Congress probably needs to examine how we allocate the money.

Senator CARDIN. I think that is our responsibility, you are correct. Let me thank both of our nominees. The record will remain open for 1 week, without objection. I will submit statements from—I understand, Ms. Robinson, you have an opening statement to submit for the record. That will be included in the record.

With that, the Committee will stand adjourned.

[Whereupon, at 5:24 p.m., the hearing was adjourned.]

[Questions and answers and submissions for the record follow.]

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QUESTIONS AND ANSWERS

Responses of Ketanji Brown Jackson
Nominee to be a Member of the United States Sentencing Commission
to Written Questions for the Record from Senator Jeff Sessions

1. **Pursuant to the Supreme Court's decision in *United States v. Booker*, the federal sentencing guidelines are advisory, rather than mandatory. Under the current system, it appears to me that as long as the sentencing judge (1) correctly calculates the guidelines, and (2) appropriately considers factors set forth in 18 U.S.C. 3553(a), he or she may impose any sentence ranging from probation to the statutory maximum. Following the Supreme Court's decision in *Gall v. United States*, appellate courts must apply the highly deferential "abuse of discretion" standard when reviewing these sentencing decisions. As a result, district court judges may impose virtually any sentence, and as long as the decision is procedurally sound, there is virtually no substantive review on appeal.**

   a. **Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw?**

Yes, I agree that a defendant's sentence for a particular crime should not depend on the judge who sentences him or her. The federal sentencing system should embody the principle that similar offenders who commit similar crimes should be treated similarly.

   b. **Do you believe the current sentencing structure undermines several of the key goals of the Sentencing Reform Act of 1984, specifically, reducing unwarranted sentencing disparity?**

There are clear indications that the post-*Booker* advisory guidelines scheme is less effective at reducing sentencing disparities among similarly-situated defendants than the pre-*Booker* mandatory guidelines regime. One of the stated purposes of the guidelines under the Sentencing Reform Act of 1984 was to "provide certainty and fairness in meeting the purposes of sentencing" by "avoiding unwarranted sentencing disparities among defendants," 28 U.S.C. § 991(b)(1)(B), and it is fair to say that the current advisory sentencing structure makes achievement of that statutory goal more difficult than the mandatory sentencing system that Congress originally envisioned.

2. **Statistics compiled by the U.S. Sentencing Commission suggest that the rate of sentences imposed below the guideline range has risen dramatically post-*Booker*. (Not including government sponsored sentences below range, such as those where the defendant receives credit for substantial assistance.) For instance, according to the Commission's 2009 Third Quarter Preliminary Report, a national comparison of sentences shows that district court judges imposed sentences below the guidelines range approximately 16% of the time. That is nearly four times as many below**

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range sentences than were reported for the first quarter of 2005, when the percentage was 4.3%. *Booker* was decided in January of 2005.

a. How would you propose we address what appears to be the rise in below range sentences, and the sentencing disparities that will necessarily accompany this rise?

Any proposal to address the apparent rise in below-range sentences and sentencing disparities would need to be based on aggregated data over time and must reflect realistic views about whether the current guidelines system can adequately reduce unwarranted disparities while providing judges with sufficient flexibility to impose fair sentences. Thus, if confirmed, I would want to continue gathering data, information, and opinions about the operation of the guidelines—as the Commission is currently doing through its regional hearings and data-analysis divisions—and consider structural and substantive amendments to the guidelines themselves. If those were not sufficiently effective, I would consider fashioning a broader legislative proposal to address sentencing disparities under the advisory system in the aftermath of *Booker*.

b. Do you believe that Congress should consider statutory reform that would create a binding but constitutional system?

I would certainly consider the creation of a binding and constitutional federal sentencing guidelines system. I believe that Congress should wait in its consideration of statutory reforms, however, to determine if acceptably consistent, predictable, and fair sentencing results can be achieved under the current advisory scheme and to get the results of the Commission's ongoing review.

The Commission is currently holding regional hearings across the country and receiving broad input from prosecutors, defense counsel, judges, and academics regarding the direction and future of federal sentencing. I would expect that the Commission plans to revisit the guidelines, both structurally and substantively, as a result of what it learns from this extensive information-gathering mission. If the guidelines are adjusted to reflect the new reality of the advisory system and to take into account the views of criminal justice practitioners regarding the appropriate sentences for various crimes, it is possible that the rate of judicial imposition of below-guideline sentences may decline, resulting in a reduction in sentencing disparities that would render congressional intervention unnecessary.

Congress should, of course, remain ever mindful of unacceptable disparities in sentencing that persist over time and that undermine the public's perception of the fairness of the system as a whole. Statutory reforms that reestablish a constitutional and binding sentencing system might prove necessary if the advisory guideline system itself cannot address and resolve the problem of unwarranted and unjustified sentencing disparities.

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Responses of Barbara Milano Keenan
Nominee to the U.S. Court of Appeals for the Fourth Circuit
to the Written Questions of Senator Jeff Sessions

1. **In the notes for a speech you gave to school-age children entitled "Should You Be a Judge?" you stated that "diversity in judic[ial] compos[ition]" is "essential to public confidence" in the judiciary.**

   a. **Can you explain what you meant by this statement?**

      Response: As is the case with other institutions of government, the public's perception of the judiciary is important to maintaining confidence in that institution. The perception of equal justice under the law is enhanced when the public can observe that judicial officers are drawn from many different backgrounds that reflect the richness and diversity of our great nation.

   b. **Does this statement accurately reflect your judicial philosophy?**

      Response: The above statement reflects my personal opinion. I would not characterize this opinion as a judicial philosophy.

   c. **Do you believe that an individual's race or gender affects the quality of his or her decisionmaking?**

      Response: No.

2. **At your confirmation hearing, I asked you about Virginia College Building Authority v. Lynn, 260 Va. 608 (Va. 2000), in which the Virginia Supreme Court considered whether Regent University, a sectarian private school in Virginia, could participate in a state-run bond program. The majority found that the bond program did not violate the Establishment Clause, the State Constitution, or Virginia law. The dissent that you joined concluded that Regent's primary overall purpose was to provide religious training, and as a result, the Virginia statute governing the program prohibited Regent's participation in the bond program, even though the University taught secular subjects. At your hearing, you stated that there was not an Establishment Clause issue before the Court. In fact, there was an Establishment Clause issue in the case, but the dissent focused only on the Virginia statute at issue. You also stated that the dissent's reasoning focused solely on the fact that the bond funds would have been used for the Divinity School; however, both the majority and dissent recognized that the Divinity school issue required a different analysis.**

   a. **Although your dissent did not reach the issue, please provide your analysis of the Establishment Clause issue in that case.**

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Response: An appellate court speaks only through its written opinions and orders, including its dissents. Therefore, while I am able to provide an explanation of the reasoning that I employed in any opinion that I joined or wrote, I am unable to provide an analysis of an issue that was not addressed substantively in the portion of the opinion that I joined or wrote. Accordingly, because the dissent that I joined in the VCBA case conducted a statutory analysis and review of the lower court record that I thought fully resolved the issue before the Court, it is not appropriate for me to provide an advisory opinion on an issue not reached by the dissent.

b. Your dissent did not address an argument raised by the VCBA that the statute, if interpreted to bar Regent from participating in the bond program, was "viewpoint discriminatory." The statute defined "institute of higher education" as "a nonprofit educational institution within the Commonwealth whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education." Your dissent essentially defined "religious training" to include teaching standard graduate school courses from a religious perspective and then declined to address the viewpoint discrimination claim, stating that it was waived because the VCBA raised the issue for the first time on appeal.

i. Do you believe that the statute at issue is viewpoint discriminatory?

Response: As I indicated above, because an appellate court speaks only through its opinions and orders, I am unable to provide an analysis of any issue that was not addressed substantively in the portion of an opinion that I joined or wrote. Therefore, because the issue of "viewpoint discrimination" was not addressed substantively in the dissent that I joined, it is not appropriate for me to provide an advisory opinion regarding that issue.

ii. If not, at least under your interpretation of the statute, the statute appears to treat religious institutions less favorably than non-religious institutions. In other words, colleges that teach a standard college curriculum from any number of perspectives (for example economic or political) can participate in the bond program, but colleges that teach from a religious perspective cannot. Do you agree that that is the essence of viewpoint discrimination?

Response: As I indicated above, it is not appropriate for me to provide an advisory opinion on this issue that was not addressed substantively in the dissenting opinion that I joined.

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iii. **What is the rationale for treating religious institutions less favorably?**

Response: I am unable to answer this general question because it does not address an issue that was part of an opinion that I joined or wrote.

c. **Would your opinion have prevented a university such as Georgetown or Notre Dame, assuming they were present in Virginia, from participating in this bond program?**

Response: I am unable to answer this question because it seeks an advisory opinion on a hypothetical case that was not before the Supreme Court of Virginia.

d. **In Rosenberger v. Rector and Visitors of the University of Virginia, the U.S. Supreme Court held that the University of Virginia violated the First Amendment when it withheld funds provided to student publications from a magazine that had a religious perspective.**

i. **Do you agree that Rosenberger is still the law of the land?**

Response: Unless overturned by a later United States Supreme Court decision or by an act of Congress, all United States Supreme Court decisions are the law of the land.

ii. **If confirmed, will you commit to following Rosenberger and other applicable precedent on this issue?**

Response: If confirmed, I will follow all applicable precedent, including the decision in Rosenberger.

e. **To what extent does the Establishment Clause limit the government's ability to include churches, religious schools, or other religious organizations in neutral government aid programs?**

Response: I am unable to answer this question because it seeks an advisory opinion and is unrelated to a particular case that was decided by the Supreme Court of Virginia.

3. **What in your view is the role of a judge?**

Response: The role of a judge is to consider fully all evidence presented and arguments posed by the parties to a case, to ascertain the applicable precedent governing those issues, and to render a clear and precise decision that follows the governing precedent.

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a. Do you think it is ever proper for judges to indulge their own values in determining what the law means?

Response: No.

i. If so, under what circumstances?

ii. Please identify any cases in which you have done so.

Response: There are no cases in which I have done so.

iii. If not, please discuss an example of a case where you have had to set aside your own values and rule based solely on the law.

Response: I have never been required to set aside my own values in deciding a case, because personal values are not part of my thought process as a judge. My process of deciding a case is based soley on the law and the record before the court.

b. Do you think it is ever proper for judges to indulge their own policy preferences in determining what the law means?

Response: No.

i. If so, under what circumstances?

ii. Please identify any cases in which you have done so.

Response: There are no cases in which I have done so.

iii. If not, please discuss an example of a case where you have had to set aside your own policy preferences and rule based solely on the law.

Response: In Chandler v. Graffo, 268 Va. 673, 604 S.E.2d 1 (2004), the majority opinion held that Virginia Code § 8.01-581.20, which sets forth qualifications for testifying as an expert witness in a medical malpractice case, did not permit either party the right to retain a former malpractice panel member as an expert in the case. Id. at 680, 604 S.E.2d at 4. I joined Justice Agee's dissent, which stated that while such a prohibition might be "preferred public policy," a prohobition did not appear within the written statute and, thus, the inclusion of such a prohibition in the statute was a matter for future legislative action, not for "judicial amendment" by the Court. Id. at 684, 604 S.E.2d at 6.

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4. How do you define "judicial activism?"

Response: There is no generally recognized definition of this term. I view this term as describing a situation in which a judge wrongly sets aside legal precedent and renders a decision based on personal preference and a desire to reach a predetermined result.

5. Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?

Response: I do not think that the Constitution is "constantly evolving" based on interpretations or views of "society." In each case when a court considers a constitutional issue, the court must examine the Constitution under existing precedent and render a decision based on that precedent.

6. Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit.

a. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: Yes.

b. How would you rule if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you nevertheless apply that decision of your own best judgment of the merits?

Response: The decisions of the Supreme Court of the United States, and of the United States Court of Appeals for the Fourth Circuit, are binding precedent on a judge of the United States Court of Appeals for the Fourth Circuit. If confirmed as a Court of Appeals judge, I would honor that precedent.

7. As you may know, President Obama has described the types of judges that he will nominate to the federal bench as follows:

"We need somebody who's got the heart, the empathy, to recognize what it's like to be a young teenage mom. The empathy to understand what it's like to be poor, or African-American, or gay, or disabled, or old. And that's the criteria by which I'm going to be selecting my judges."

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a. Do you believe that you fit President Obama's criteria for federal judges, as described in his quote?

Response: As a judge, I try always to remain aware that parties, whether rich or poor, come before a court because of difficult issues that they are unable to resolve, and it is the court's job to decide those issues impartially based on the law. I cannot opine regarding President Obama's criteria for selecting judges.

b. What role do you believe that empathy should play in a judge's consideration of a case?

Response: Empathy is not an analytical tool to be applied in a judge's consideration of a case. A judge must always, however, accord to all parties careful consideration of the issues presented and allow the parties to be heard fully on those issues.

c. Do you think that it's ever proper for judges to indulge their own subjective sense of empathy in determining what the law means?

Response: No.

i. If so, under what circumstances?

ii. Please identify any cases in which you've done so.

Response: There are no cases in which I have done so.

iii. If not, please discuss an example of a case where you have had to set aside your own subjective sense of empathy and rule based solely on the law.

Response: There are no such cases, because empathy is never a factor in the decisions that I reach as an appellate judge.

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Responses of Barbara Milano Keenan
Nominee to the U.S. Court of Appeals for the Fourth Circuit
to the Written Questions of Senator Tom Coburn, M.D.

1. **In Senator Mark Warner's introduction of your nomination, he mentioned that "many" of your letters of support were "unsolicited." Did you or anyone else solicit any letters of support in connection with your nomination?**

   Response: Yes.

   If so, please list the names of the individuals who were solicited and provide copies of the letters, if any.

   Response:

   Vincent J. Mastracco, Jr., Esq. (copy of letter attached)

   John A. Heilig, Esq. (copy of letter attached)

   Thomas G. Johnson, Jr., Esq. (copy of letter attached)

   The Hon. Owen B. Pickett and The Hon. Linda (Toddy) Puller also were asked to write letters of support on my behalf. I do not have copies of any letters that may have been sent by these two individuals. Of all the above-listed individuals, the only one I contacted personally was Ms. Puller.

   The above requests were made before Senator Webb and Senator Warner sent their recommendation to the White House.

2. **In *Conner v. National Pest Control Ass'n*, 257 Va. 286 (Va. 1999), a wrongful termination case, you joined a concurrence criticizing the policy outcome of the opinion but holding that your court could not "act as a super-legislative body" and reject the law the state legislature passed. That is an encouraging statement. It suggests that you understand the role of a judge or justice. However, the very next year in *Mitchem v. Counts*, 259 Va. 179 (Va. 2000), you wrote the majority opinion for a divided court, holding that a former employee could sue her former employer based on the claim that the employee rejected her supervisor's sexual advances. *Mitchem* involved the same state law as the 1999 case I just mentioned. The dissent argued that your majority opinion went against your prior statement that the court could not act as a "super-legislative body."**

   a. **How do you respond to this criticism?**

      Response: Although the decisions in Conner and Mitchem both addressed a 1995 amendment to the Virginia Human Rights Act (VHRA), the plaintiff in Mitchem asserted an additional claim not alleged in Conner. In Conner, the plaintiff alleged only that she was wrongfully

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terminated from employment based on her gender in violation of public policy stated in the VHRA, the Constitution of Virginia, and various Virginia statutes. Conner, 257 Va. at 288, 513 S.E.2d at 399. The Court held that Connor's claim was barred by the 1995 amendment to the VHRA because the legislature, in enacting that amendment to former Virginia Code § 2.1-725, eliminated causes of action for wrongful termination of employment based on any public policy reflected in the VHRA, even when the same public policy was reflected elsewhere in Virginia law other than state civil rights statutes or local ordinances. Id., 257 Va. at 290, 513 S.E.2d at 400.

Although the pleadings filed by the plaintiff in Mitchem included a claim similar to the claim asserted in Conner, the plaintiff in Mitchem also raised an alternative common law claim alleging that she was wrongfully terminated from her employment in violation of Virginia's public policy against fornication and lewd and lascivious behavior, because the plaintiff refused to commit those crimes at her employer's request. Mitchem, 259 Va. at 183, 523 S.E.2d at 248. Therefore, Mitchem raised a question of first impression not presented in Conner, namely, whether the VHRA barred a common law action for wrongful termination of employment based on a violation of public policy not reflected in the VHRA, when the conduct at issue also violated a public policy contained in the VHRA. The Court held that former Virginia Code § 2.1-725 did not prohibit a common law claim for wrongful termination of employment based on the public policies prohibiting fornication and lewd and lascivious behavior, because those policies are not reflected in the VHRA. Mitchem, 259 Va. at 190-91, 523 S.E.2d at 252-53.

b. How did the law support your conclusion in the *Mitchem* case?

Response: As previously stated, Mitchem presented a case of first impression for the Court to consider. The Court's holding was supported by existing legal precedent.

First, because former Virginia Code § 2.1-725 was enacted by the legislature in derogation of the common law, Virginia law required that the Court strictly construe the plain language of that statute. Chesapeake & O. Ry. Co. v. Kinzer, 206 Va. 175, 181, 142 S.E.2d 514, 518 (1965). Former Virginia Code § 2.1-725(D) stated, in relevant part: "causes of action based upon the public policies reflected [in the VHRA] shall be exclusively limited to those actions, procedures and remedies . . . afforded by applicable federal or state civil rights statutes or local ordinances." The plain language of this statute restricted causes of action relating only to the public policies reflected in the VHRA.

Second, Court precedent recognized a common law cause of action for wrongful termination of employment for violation of public policies underlying existing laws designed to protect the property rights, personal

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freedoms, and the health, safety, or welfare of the general public. See City of Virginia Beach v. Harris, 259 Va. 220, 232-33, 523 S.E.2d 239, 245 (2000); Miller v. SEVAMP, Inc., 234 Va. 462, 468, 362 S.E.2d 915, 918 (1987); Bowman v. State Bank of Keysville, 229 Va. 534, 540, 331 S.E.2d 797, 801 (1985). The Virginia statutes prohibiting fornication and lewd and lascivious behavior embodied public policies designed to protect the welfare of the general public.

c. Do you think that it is ever proper for judges to indulge their own policy preferences in determining what the law means?

Response: No.

i. If so, under what circumstances?

ii. Please identify any cases in which you've done so.

Response: There are no cases in which I have acted in such a manner.

If not, please discuss an example of a case where you have had to set aside your own policy preferences and rule based solely on the law.

Response: In Chandler v. Graffo, 268 Va. 673, 604 S.E.2d 1 (2004), the majority opinion held that Virginia Code § 8.01-581.20, which sets forth qualifications for testifying as an expert witness in a medical malpractice case, did not permit either party to retain a former malpractice panel member as an expert in the case. Id. at 680, 604 S.E.2d at 4. I joined Justice Agee's dissent, which stated that while such a prohibition might be "preferred public policy," a prohibition of this kind did not appear within the written statute and, thus, the inclusion of such a provision in the statute was a matter for future legislative action, not for "judicial amendment" by the Court. Id. at 684, 604 S.E.2d at 6.

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SUPREME COURT OF VIRGINIA
110 NORTH ROYAL STREET
SUITE 305
ALEXANDRIA, VA 22314

BARBARA MILANO KEENAN
JUSTICE

(703) 518-8180

October 28, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Attached are my responses to the follow-up questions from Senator Coburn in his letter to me dated October 28, 2009.

Sincerely,

Barbara M. Keenan

Barbara Milano Keenan

cc:
The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Responses of Barbara Milano Keenan
Nominee to the U.S. Court of Appeals for the Fourth Circuit
to the Follow-up Questions of Senator Tom Coburn, M.D.

1. **In response to questions 1d., 2c., and 2e., you stated that if any of the individuals who wrote or solicited letters of recommendation on our behalf appeared before you in court, you would consult and follow the applicable ruled of ethics regarding recusal, including either the Virginia Canons of Judicial Conduct or the Code of Conduct for United States Judges.**

   a. How do you think recusal should be approached generally?

   Response: In every case that a judge is assigned to hear, the judge must consider whether an issue of recusal exists. These issues may arise from a judge's own consideration of the case, or from issues that the litigants present to the judge. A judge must consider any issue of recusal very thoroughly and carefully. This includes giving extended consideration to issues involving the appearance of impropriety, as well as to issues of actual impropriety. Litigants must be assured that the judge deciding their case will be free from bias, whether actual or perceived. In addition, full consideration of recusal issues is necessary to maintain public confidence in the integrity and impartiality of the judiciary.

   b. When determining whether recusal is required do you believe the rules should be interpreted narrowly or broadly?

   Response: The applicable standards for recusal should be interpreted broadly, so that a judge will recognize and consider all issues involving the appearance of impropriety and of actual impropriety, including those that are not immediately apparent, in making a recusal decision.

      i. Please explain your reasoning.

      Response: Often, issues involving recusal are complex in nature. A judge must be certain that he or she has considered all aspects of the issues presented, including issues of the appearance of impropriety as well as issues of actual impropriety. When a judge determines that recusal is an issue in a particular case, a judge should consider all perspectives of the parties to the case and always resolve any reasonable question in favor of recusal.

   c. How will you evaluate whether you should recuse yourself in cases involving the individuals from whom you or your husband solicited letters of support for your potential nomination for a position on the U.S. court of appeals for the Fourth Circuit?

   Response: In every case that I hear as a judge, I always evaluate whether an issue of recusal is presented. In cases involving individuals from whom I or my

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husband solicited letters of support for my potential nomination, I would disclose this fact on the record of the case and ask the parties if they wish to be heard on the question whether I should remove myself from the case. I would also informally consult with my judicial colleagues regarding the issue and resolve any remaining reasonable question in favor of recusal.

2. **Canon 3C(1) of the Code of Conduct for United States Judges states that "a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonable be questioned ..." Do you believe that your impartiality might reasonably be questioned by a litigant if you participated in a case involving Mr. Sims, Mr. Mastracco, Mr. Heilig, Mr. Johnson, or Ms. Puller given you and your husband's solicitations for letters of support from them relating to your potential nomination?**

Response: As a general matter, I do not think that my impartiality might reasonably be questioned by my participation in a case involving the above individuals. However, in the event that other persons participating in such a case have a different perspective, I would carefully consider their different perspectives, informally consult with my colleagues regarding the matter, and resolve any remaining reasonable question in favor of recusing myself from such a case.

i. If not, why?

Response: Such letters solely addressed my professional qualifications based on my public record of judicial service. However, in a future case of the above-referenced nature, I would disclose on the record the fact that these individuals were asked to send letters of support on my behalf. I also would informally consult with my judicial colleagues and consider their perspectives on the subject. Further, I would invite the parties to state whether they would prefer that I recuse myself from the case. I would consider fully their perspective and would be strongly inclined to grant any reasonable recusal request simply to avoid any appearance of impropriety. To date, in the rare instances in which I have been asked to recuse myself for any particular reason, I have never refused such a request.

ii. Do believe that your impartiality might reasonably be questioned by a litigant if you participated in a case involving legislation that Ms. Puller had sponsored or cosponsored given your solicitation of a letter of support from her?

Response: No, I do not believe that my impartiality might reasonably be questioned by a litigant if I participated in a case involving legislation that Ms. Puller had sponsored or cosponsored. Although I did not see any letter that she may have written on my behalf, I would expect that it stated my professional qualifications for the job on the basis of my public record

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of judicial service. However, in a future case of the above-referenced nature, I would disclose on the record that I had asked Ms. Puller to write a letter on my behalf. I would invite the litigants to state any concerns on the record and would give those concerns my full consideration. I would informally consult with my judicial colleagues on the issue and consider all points of view that they express. I would invite the parties to state whether they prefer that I recuse myself from the case. I would consider fully their position and would be strongly inclined to grant any reasonable recusal request simply to avoid any appearance of impropriety. To date, in the rare instances in which I have been asked to recuse myself for any particular reason, I have never refused such a request.

iii. Please explain your reasoning.

Response: Although I do not believe that my impartiality might reasonably be questioned in such instances, I must always be aware that other persons may entertain a different point of view on the subject. When individuals entertaining a different point of view have a case before me, I must be very careful to consider their perspectives. In any question of recusal, a judge must always consider the issues from the differing perspectives presented. I think that the fact that I have never refused a recusal request demonstrates my commitment to the principles of impartiality and integrity in the judicial process, and my general willingness to recuse myself from a case when asked to do so based on a reasonable concern.

3. **You stated in response to question 1b. that: "[a]s a matter of practice, [you] never conduct research or otherwise attempt to determine who was a sponsor or cosponsor of legislation that is before [you] as a judge." If you do not conduct such research, how do you determine whether there might be a conflict of interest or recusal issue in the case?**

Response: The identity of a sponsor or cosponsor of legislation is never part of my analysis of a case, and I cannot recall ever having been aware of the sponsor or cosponsor of legislation that was litigated before me either as a trial judge or as an appellate judge. Therefore, the identity of such a legislator does not present an issue of conflict of interest or recusal sua sponte.

a. Will you begin conducting this type of research if confirmed as a circuit court judge, especially in light of the letter of support you solicited from a legislator to help obtain the position?

Response: I do not plan to undertake this type of research if confirmed as a circuit court judge, because such an inquiry has never been part of my procedure in analyzing a statute. Further, I am not aware of any federal judge who conducts such research, despite the fact that many of those judges have personal

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relationships with legislators on both the federal and state level. However, I will fully and carefully consider any motion for recusal made by a party to a case. I have never refused a request for recusal that a party has placed on the record of a case. I believe that this fact demonstrates my awareness of the sensitivity and importance of recusal issues. I will consider each such future request from all perspectives presented.

b. If you do not conduct this type of research, do you take the position that legislative history is not relevant to determine the meaning of a statute?

Response: Legislative history, in certain cases, can be important in determining the meaning of the text of a statute. In Virginia, however, there is rarely any substantive legislative history to be considered. In the future, if confirmed as a circuit court judge, I will consider legislative history whenever appropriate in the context of the issues presented.

c. If you do think legislative history is relevant to statutory interpretation, how can you determine legislative history without knowing the sponsor or cosponsor of the legislation?

Response: I agree that when considering the legislative history of a statute, I likely will learn who was the sponsor or cosponsor of a particular statute.

d. Do you consider yourself a textualist?

Response: I am not certain what you mean by the term "textualist." However, if your inquiry seeks my approach to statutory analysis, I offer the following answer: A court is required to apply the plain meaning of a statute, whenever possible. In most instances, the language of a statute is plain on its face. However, there are unusual instances in which the language of a statute is ambiguous, in that the language can be interpreted to have more than one meaning. In such instances, a court should consider the intent of the legislative body in enacting a particular statute, in order to assist the court in interpreting that statute. In these types of cases, a court seeks to interpret the statute at issue to enable the enactment to remedy the particular situation at which it is directed.

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Responses of Barbara Milano Keenan
Nominee to the U.S. Court of Appeals for the Fourth Circuit
to the Follow-up Questions of Senator Tom Coburn, M.D.

1. **You personally solicited a letter of support from The Hon. Linda (Toddy) Puller, a Virginia State Senator. Has Ms. Puller ever appeared before you in court either in her personal capacity or in her official capacity?**

Response: No. Ms. Puller has never appeared before me in court in either a personal or an official capacity.

a. If yes, how did you handle recusal issues?

b. Have you ever ruled in a case involving legislation sponsored or cosponsored by Ms. Puller?

Response: As a matter of practice, I never conduct research or otherwise attempt to determine who was a sponsor or a cosponsor of legislation that is before me as a judge. I cannot recall any case before me as a judge in which I was aware that Ms. Puller was a sponsor or a cosponsor of legislation at issue in the case, nor have I since become aware of any such situation.

c. Is it possible that you could rule on a matter involving Ms. Puller or legislation that she has sponsored or cosponsored in the future?

Response: Yes, it is possible that a matter involving Ms. Puller or legislation that she has sponsored or cosponsored would come before me as an appellate judge in the future.

d. How will you handle recusal issues in the future if Ms. Puller has a case before you or your court is handling legislation that has sponsored or cosponsored?

Response: If the case is before the Supreme Court of Virginia and personally involves Ms. Puller, who is not an attorney, or involves legislation that I am aware she has sponsored or cosponsored, I would consult and follow the Virginia Canons of Judicial Conduct regarding my participation in such a case. If I am confirmed as a judge of the United States Court of Appeals for the Fourth Circuit, and if such a case comes before that Court, I would consult and follow the Code of Conduct for United States Judges and any other pertinent directives, including 28 U.S.C. § 455, regarding the ethical duties of United States judges.

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2. You stated that letters of support were solicited from Vincent J. Mastracco, Jr., Esq., John A. Heilig, Esq., Thomas G. Johnson, Jr., Esq., and The Hon. Owen B. Pickett, but you did not solicit these letters. Who solicited these letters on your behalf?

Response: My husband, Alan E. Rosenblatt, asked John A. Heilig, Esq., and The Hon. Owen B. Pickett, both of whom he has known for over twenty-five years, to write letters on my behalf. Hunter W. Sims, Esq., whom I have known for over 30 years, asked his law partner, Vincent J. Mastracco, Jr., Esq., to write a letter on my behalf. My friend and colleague on the Supreme Court of Virginia, Justice S. Bernard Goodwyn, asked his former law partner, Thomas G. Johnson, Jr., Esq., to write a letter on my behalf.

These letters were written before my interview with Senators Webb and Warner, and before they recommended me to the White House. The letters were intended to inform the Senators about support within the legal community regarding my application and about my judicial service to the Commonwealth of Virginia. I understood that the Senators welcomed such information regarding judicial candidates.

a. Has the person who solicited the letters on your behalf ever appeared before you in court? Is it possible that they could appear before you in the future?

Response: Neither my husband nor Justice Goodwyn has ever appeared before me in court, and it is not possible that they will do so in the future. Hunter W. Sims, Esq., has appeared before me in court in the past. It is possible that he would appear before me in court in the future.

b. If they have had a case before you, how did you handle recusal issues?

Response: To the best of my recollection, Hunter W. Sims, Esq., has not appeared before me in court since he requested Vincent J. Mastracco, Jr., Esq., to write a letter on my behalf. In his prior appearances, there was no recusal issue for consideration.

c. How will you handle recusal issues in the future with regard to the person who solicited these letters?

Response: If Mr. Sims appears before the Supreme Court of Virginia in the future, I would consult and follow the Virginia Canons of Judicial Conduct regarding my participation in such a case. If I am confirmed as a judge of the United States Court of Appeals for the Fourth Circuit, and if a case involving Mr. Sims comes before that Court, I would consult and follow the Code of Conduct for United States Judges and any other

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pertinent directives, including 28 U.S.C. § 455, regarding the ethical duties of United States judges.

d. Has Vincent J. Mastracco Jr., Esq., John A. Heilig, Esq., or Thomas G. Johnson, Jr., Esq., ever appeared before you in court either as an attorney representing a client or a litigant or is it possible that they would in the future?

Response: To the best of my recollection, Vincent J. Mastracco, Jr., Esq., John A. Heilig, Esq., and Thomas G. Johnson Jr., Esq., have never appeared before me in court either as an attorney representing a client or as a litigant. It is possible that any of these three attorneys would appear before me in court in the future.

e. If they do appear before you in the future, how will you handle recusal issues?

Response: If any of these three attorneys appears before me in the Supreme Court of Virginia in the future, I would consult and follow the Virginia Canons of Judicial Conduct regarding my participation in the case. If I am confirmed as a judge of the United States Court of Appeals for the Fourth Circuit, and if a case involving any of these three attorneys comes before that Court, I would consult and follow the Code of Conduct for United States Judges and any other pertinent directives, including 28 U.S.C. § 455, regarding the ethical duties of United States judges.

f. To whom was the letter from The Hon. Owen B. Pickett addressed?

Response: I never saw a copy of the letter that I was told former Congressman Pickett wrote. Assuming that such a letter was sent, it likely was sent to Senator Jim Webb.

3. Did anyone instruct or advise you to request these letters of support, including anyone at the U.S. Department of Justice or the White House?

Response: No, no one instructed or advised me to request the above letters of support, including anyone at the United States Department of Justice or the White House.

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Responses of Barbara Milano Keenan
Nominee to the U.S. Court of Appeals for the Fourth Circuit
to the Follow-up Questions of Senator Jeff Sessions

1. **Sessions Question 2(a). In your response, you stated that you were "unable to provide an analysis of an issue that was not addressed substantively in the portion of the opinion that [you] joined or wrote" and that to do so would constitute "an advisory opinion on an issue not reached by the dissent." I understand your hesitancy to provide what might be characterized as an "advisory opinion." Please answer the following questions:**

   a. **In *Virginia College Building Authority v. Lynn*, 260 Va. 608 (Va. 2000), the dissent did not reach the question whether the bond program violated the Establishment Clause; however, the majority did reach the issue. Do you agree with the majority's conclusion?**

      Response: The dissent that I joined did not reach the Establishment Clause issue, because the case could be resolved under a statutory analysis that did not involve application of the Constitution. It is an established principle of law in Virginia that courts generally will not address a constitutional issue when a statute can be interpreted in a manner that avoids a constitutional question. See Marshall v. Northern Virginia Transp. Auth., 275 Va. 419, 428, 657 S.E.2d 71, 75 (2008); Yamaha Motor Corp. v. Quillian, 264 Va. 656, 665 (2002). Because the opinion I joined did not address an Establishment Clause analysis, I do not believe that it is appropriate to do so here.

   b. **Do you agree with the majority's reasoning?**

      Response: For the reasons stated above, I do not believe that it is appropriate for me to comment on the majority's reasoning.

   c. **If not, please describe the type of analysis you would conduct if confronted with that question and detail the factors you would have considered in your analysis.**

      Response: If confronted with an Establishment Clause issue of this nature in a future case, I would apply United States Supreme Court precedent. A landmark case in Establishment Clause jurisprudence relating to governmental aid to religious institutions and programs is Lemon v. Kurtzman, 403 U.S. 602 (1971). There, the Supreme Court articulated a three-part test to be applied in Establishment Clause cases: "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster 'an excessive entanglement with religion.'" Id. at 612-13 (citations omitted). Later, in Agostini v. Felton, 521 U.S. 203 (1997), the Supreme Court reaffirmed this basic test and further stated that the primary consideration in such cases requires a

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determination "whether the government acted with the purpose of advancing or inhibiting religion" and "whether the aid has the 'effect' of advancing or inhibiting religion." Id. at 222-223. The Court stated that in conducting this analysis a court must consider the "character and purposes of the institutions that are benefited, the nature of the aid that the State provides, and the resulting relationship between the government and religious authority." Id. at 232. The Court further explained that if a governmental aid program does not result in governmental indoctrination, define its recipients by reference to religion, or create an excessive entanglement, that governmental aid program is permissible. Id. at 234.

These cases provide the basic framework for an Establishment Clause analysis relating to governmental aid to religious institutions and programs. I would apply these and other Supreme Court precedent in conducting an Establishment Clause analysis. As the Supreme Court precedent illustrates, Establishment Clause cases of this nature are very fact-intensive. Accordingly, I would meticulously analyze the facts presented in the context of applicable Establishment Clause principles, and would apply existing Supreme Court precedent, and precedent of the United States Court of Appeals for the Fourth Circuit, guided solely by the rule of law.

2. **Sessions Questions 2(b)(i) and (ii). In your responses, you again indicated that you were unable to provide an analysis of whether the statute at issue was "viewpoint discriminatory" because it might be construed as an "advisory opinion." Please answer the following questions:**

a. How would you define viewpoint discrimination?

Response: The United States Supreme Court has not provided a fixed definition of viewpoint discrimination but has held that the government is not permitted to regulate speech based on its substantive content or the message conveyed by that speech. Rosenberger v. Rector & Visitors of the University of Virginia, 515 U.S. 819, 828 (1995). Thus, discrimination against speech because of its content is presumptively unconstitutional. Id. In Rosenberger, the Supreme Court held, in part, that the University engaged in viewpoint discrimination in violation of a student's right of free speech by refusing to make payment from a student activities fund based on the content of a student organization's publication. In another case involving viewpoint discrimination, Lamb's Chapel v. Center Moriches Union Free School District, 508 U.S. 384 (1993), the Supreme Court held that a school district may not permit school property to be used for the presentation of views on family and the raising of children but refuse to allow presentation of viewpoints on those issues when expressed from a religious perspective. Id. at 393-394.

These two cases are among the leading Supreme Court decisions addressing the issue of viewpoint discrimination. In deciding an issue of viewpoint discrimination as an appellate judge, I would consider these and all other cases in

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which the Supreme Court, and the United States Court of Appeals for the Fourth Circuit, have addressed this important issue.

b. Please provide an example, if any, of a case in which you determined that a statute or law was "viewpoint discriminatory."

Response: I have never ruled on a question whether a statute or law was "viewpoint discriminatory."

c. If none, please describe the type of analysis you would conduct if confronted with a viewpoint discrimination claim in a case where a statute or law treated religious institutions less favorably than non-religious institutions.

Response: As the decisions in Rosenberger and in Lamb's Chapel illustrate, the Supreme Court has not articulated a uniform analysis to be employed in these cases. However, because decisions in viewpoint discrimination cases are often resolved narrowly on the particular facts presented, any analysis of allegedly discriminatory treatment accorded religious institutions would require a meticulous factual discussion in the context of applicable First Amendment principles. In conducting this analysis, I would rigorously apply existing precedent and be guided solely by the rule of law.

3. Sessions Question 2(e). This question asked the following: To what extent does the Establishment Clause limit the government's ability to include churches, religious schools, or other religious organizations in neutral government aid programs? You stated that you were unable to answer "because it seeks an advisory opinion and is unrelated to a particular case that was decided by the Supreme Court of Virginia." I disagree that this question asks for an "advisory opinion." Rather, the question simply asks you to state the law on Establishment Clause jurisprudence. Please provide an answer to the question.

Response: The law on Establishment Clause jurisprudence requires the analysis that I described in my response to Question (1)(c). As noted there, a landmark case in Establishment Clause jurisprudence relating to governmental aid to religious institutions and programs is Lemon v. Kurtzman, 403 U.S. 602 (1971). There, the Supreme Court articulated a three-part test to be applied in Establishment Clause cases: "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster 'an excessive entanglement with religion.'" Id. at 612-613 (citations omitted). Later, in Agostini v. Felton, 521 U.S. 203 (1997), the Supreme Court reaffirmed this basic test and further stated that the primary consideration in such cases requires a determination "whether the government acted with the purpose of advancing or inhibiting religion" and "whether the aid has the 'effect' of advancing or inhibiting religion." Id. at 222-223. The Court stated that in conducting this analysis a court must consider the "character and purposes of the institutions that are benefited, the nature of the aid that the State provides, and the resulting relationship between the government and religious authority." Id. at

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232. The Court went on to explain that if a government program does not result in governmental indoctrination, define its recipients by reference to religion, or create an excessive entanglement, that program will be permissible. Id. at 234.

These cases provide the basic framework for an Establishment Clause analysis relating to governmental aid to religious institutions and programs. I would apply these and other Supreme Court precedent in conducting an Establishment Clause analysis. As the Supreme Court precedent illustrates, Establishment Clause cases of this nature are very fact-intensive. Accordingly, I would meticulously analyze the facts presented in the context of applicable Establishment Clause principles, and would apply existing Supreme Court precedent guided solely by the rule of law.

4. **Sessions Question 3(a)(iii). In response to my question, you stated that you "have never been required to set aside [your] own values in deciding a case." Please answer the following question:**

Do you believe that judges are ever required to choose between their personal values and the rule of law in deciding a case?

Response: A judge is never required to make such a choice, because personal values are never properly a part of a judge's decision-making process. The rule of law is the sole source of authority that must be applied in the resolution of every case.

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Responses to the Follow-up Questions of Senator Tom Coburn, M.D.
"Nominations"
United States Senate Committee on the Judiciary
October 19, 2009

Laurie O. Robinson

1. **Since 2000, the Office of the Inspector General has continuously ranked grant management as one of the DOJ's top management challenges every year. In fact, at Attorney General Holder's confirmation hearing, he recognized that this must be treated as a "consistent priority" to prevent problems.**

   a. **What specific steps do you plan to take to improve grant management at DOJ?**

   Transparency and oversight are among the Department's highest priorities. If confirmed, I am committed to ensuring that grant award decisions at the Office of Justice Programs (OJP) are transparent and that OJP is held accountable for effective grant management. I will ensure that OJP posts all its award decisions on the OJP website, including the type of award, the recipient, and the award amount.

   In addition, I will build on steps OJP has taken to improve the quality and completeness of grant monitoring across the agency. OJP has already embraced the Office of the Inspector General's (OIG's) February 2009 report entitled, "Improving the Grant Management Process," and implemented many of its recommendations. OJP has also implemented OIG recommendations relating to grant program development, application and award processes. If confirmed, I will work to ensure that at every possible opportunity, OJP is implementing agency-wide corrective actions in response to OIG grant-related and program-specific audit recommendations.

   Lastly, OJP's Office of Audit, Assessment, and Management (OAAM) is dedicated to the oversight of OJP monitoring activities and the assessment of grant program performance. If confirmed, I will support OAAM in continuously evaluating the quality and level of monitoring of grants and conducting OJP-wide assessments of program initiatives and operations to measure performance, enhance internal controls, and identify opportunities for improvement.

   b. **Are there any particular grants administered by OJP that you believe deserve particular attention and review?**

   Yes. OJP already has a strong process in place to identify such grants, which OJP staff refers for high-risk designation. OJP staff refers grantees for high-risk designation when they become aware of serious programmatic or financial noncompliance issues. Such issues are detected through fiscal integrity reviews;

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programmatic and/or financial monitoring; OIG audit resolution activity; single audit resolution activity; OIG investigations; referrals from other Department of Justice grant-making components; referrals from other Federal grant-making organizations; and the media. Grantees designated as high risk are provided with enhanced oversight and monitoring. Special conditions are also imposed on awards to high risk grantees, including mandatory OJP-sponsored training on financial management and the prevention and detection of fraud, waste, and abuse.

In addition, OJP program offices and the Office of the Chief Financial Officer (OCFO) systematically assess risk associated with grants and grantees in the development of their monitoring plans. Monitoring efforts are coordinated within and between bureaus and program offices, as well as with the OCFO and their financial monitors. With enhanced coordination, OJP has been able to establish a more comprehensive, coordinated oversight effort.

Lastly, if confirmed, I will direct that OJP work closely with the DOJ Inspector General to provide information and assist in ongoing audits and investigations of grantees.

2. **I assume you have spent some time reviewing the grant programs you will oversee at OJP. Can you give me some specific examples of waste at OJP that you intend to clean up (i.e., any egregious grants about which you have read, or know of any bad practices, etc.)?**

I am, and always have been, very concerned that all spending of taxpayer dollars at OJP, whether through grant programs or otherwise, be as efficient and free of waste as possible. As described above, the career staff at OJP work diligently to review and monitor the performance of grantees. Much of this effort is accomplished through annual desk reviews of grants and on-site monitoring. Desk reviews include a comprehensive review of materials available through the grantee file to determine administrative, financial and programmatic compliance, as well as grantee performance. On-site monitoring serves to verify grantee activity and address any issues identified during the desk review. On-site monitoring is the most intensive form of monitoring and can be helpful for gathering information in addition to documentation submitted by the grantee.

In addition, the Office of Audit, Assessment, and Management conducts program assessments of OJP grant programs to measure performance against intended outcomes and assess compliance with applicable regulations and statutes. Program assessments, much like performance audits, provide OJP leadership with valuable information on the short- and medium-term performance of grant programs and grantee compliance. Assessment reports also contain targeted recommendations for making program improvements or enhancing grant oversight practices.

At this point, I am not aware of a particular grant or program that is ill-considered. Among the approximately 16,300 grants currently administered by OJP, there is likely

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some waste, despite the agency's best efforts. If confirmed, it will be my responsibility to minimize such waste and, when brought to my attention, to address it promptly. I commit to doing so.

a. If confirmed, will you commit to review all of OJP's grants for such examples, and get back to me as soon as possible with your results?

As described above, OJP administers thousands of grants at a time. For this reason, it is not feasible for any one person to review each grant. I do, however, commit to you that, if confirmed, I will review all of OJP's policies and practices for eliminating waste and arrange a time to brief you in person on the results of that review.

3. In describing the problems with the Department's grant management process, the OIG noted that this included "maintaining proper oversight over grantees to ensure the funds are used as intended." The OIG further stated that "recent OIG audits of grant recipients demonstrated a continuing need for improved grant oversight by the Department."[1]

a. What changes, if any, do you plan to make to OJP's grant oversight process and/or OJP staff assigned to review grant applications?

If confirmed, I am committed to working toward continuous improvement in OJP's oversight and monitoring of grantees and grant programs. I will strengthen the efforts OJP has already begun to establish common procedures and guidance to improve the quality and completeness of monitoring across the agency, as well as providing effective tools to its grants managers to properly document desk reviews and on-site monitoring, formally communicate with grantees through the system, and track the resolution of open issues. OJP's Office of Audit, Assessment, and Management will also continue to oversee the monitoring activities of OJP program offices and assess and report on the adequacy, level, and quality of monitoring conducted.

b. Do you believe OJP should have mechanisms in place that provide for a review of past grant recipients and monitor the use of federal funds to avoid waste, fraud and abuse?

i. Should that include a requirement that grantees report on how they use federal funds in order to receive a grant?

OJP has a rigorous application screening process. During that process, the Office of the Chief Financial Officer and program offices review prior grantee performance, which can be a major factor in consideration for future funding.

[1] *Top Management and Performance Challenges in the Department of Justice-2008*, Office of the Inspector General, *available at* http://www.usdoj.gov/oig/challenges/2008/index.htm#8.

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ii. What role, if any, do you believe these results should play in making future grant awards?

I support OJP's current practice of taking into consideration whether grantees have appropriately managed past grant award funding prior to making new grant awards.

4. What will your priorities be as Assistant Attorney General for OJP?

If I am confirmed as Assistant Attorney General, I envision three key priorities:

First, I would strengthen strategic partnerships with state, local and tribal partners, working to continue an ongoing dialogue with the criminal and juvenile justice field to address crime.

Second, I would integrate evidence-based approaches into the work of the Office of Justice Programs. We can learn so much more from science about how to prevent crime and how to effectively address crime when it occurs. A "What Works" Clearinghouse could better share that information with busy practitioners and policymakers.

Third, I would work closely with the Office of the Inspector General to ensure that OJP's grant funds are spent in a way that avoids waste, fraud and abuse. It is imperative that OJP be a good steward of taxpayer dollars.

a. According to your testimony, you believe there should be "strong accountability to guard against waste, fraud and abuse." If this is "one of your highest priorities," how will you work with the Office of the Inspector general to clean up waste, fraud and abuse at OJP?

There are a number of ways in which OJP can work closely with the OIG in addressing grantee issues identified in grant audits conducted by the OIG and audits conducted in accordance with OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*. For example, OJP has streamlined audit follow-up activities to ensure that outstanding audit recommendations are tracked and promptly addressed, which has lead to closure of a significant number of older grant and single audit reports. OJP's audit follow-up process with grantees ensures that issues identified by the OIG are timely resolved by either repaying unallowable grant expenditures, providing further support that substantiates the grantees' expenditures, or developing appropriate procedures to ensure future compliance. If confirmed, I will ensure that work of this kind continues.

This year over 500 OJP staff attended OIG-led trainings on detecting and preventing fraud. OJP also works with OIG staff to coordinate grant fraud training at OJP-sponsored conferences and meetings. Additionally, a grant fraud

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component has been included in the OCFO Regional Financial Management training seminars.

Finally, since the enactment of the American Recovery and Reinvestment Act (Recovery Act), OJP has worked closely with the OIG to proactively collaborate on methods to prevent the risk of waste, fraud, and abuse in the grant application and award process. For the duration of the Recovery Act post-award period, OAAM will meet routinely with the OIG to discuss programmatic progress and implementation issues, as well as to discuss strategies for improving grant program management. OAAM will also coordinate its activities to maximize effectiveness and eliminate overlap with OIG efforts. If confirmed, I will support the continuation of these productive, collaborative efforts.

5. **What is your view of earmarks? Do you believe that funds earmarked in accounts you manage at OJP can and should receive the same scrutiny as funds that are competitively bid? Or are your hands tied by Congress, such that you are obligated to award them, regardless of their merit?**

Earmarks restrain the ability of OJP to target funds based on evidence of success or need. Earmarks are not subject to peer review before being awarded, unlike grants made through the competitive process. While it is clear that earmarks should never be used as a vehicle for waste, fraud or abuse, it is ultimately for Congress to decide whether earmarks should, or should not, be awarded using OJP funds. That said, earmarks should be subject to the same monitoring and performance standards as any other grant.

   a. **Will you commit to thoroughly vetting earmarked requests and reporting to Congress when your assessment shows they should not be awarded?**

   As with any OJP grant, I commit to thoroughly vetting earmarked grants and reporting to Congress when OJP's assessment shows they should not be awarded.

6. **With our federal debt at $11.8 trillion and skyrocketing by the day, coupled with Congress' inability to control and reduce federal spending on lower priorities, grantees should be very concerned about availability of future federal funding. No doubt grantees want future funding to be consistent. Requiring grantees to match federal grant funds will ensure more fiscal stability for them in the future by relying less on the federal government so they can stand on their own. In addition, as a grantee invests additional funds into its services, it is more likely to remain truly committed to developing new and innovative strategies to help those who benefit from these grant programs. Do you agree?**

I agree that matching requirements can help to ensure program stability when grantees contribute their own resources into their projects. This stability can make it more likely that a project can continue after federal funding has ceased. The goal at OJP is to work in partnership with states, local governments, tribes, and community organizations, and matching requirements are consistent with this goal. Matching requirements may not be

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effective with every program, however. For example, for programs designed to serve communities with few resources, strict matching requirements might prevent support from going to areas and populations in critical need.

7. **When President Obama took office, he promised to usher in a new era of transparency and accountability in our government. In fact, in a January 21, 2009 Presidential Memo, the President stated, "[m]y Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government."[2]**

   a. **In my estimation, the federal grant-making process, which awards billions of dollars in taxpayer money each year, has the greatest need for transparency and deserves the highest level of scrutiny. If confirmed, will you commit to upholding the same level of openness that President Obama has advocated? If so, how will you promote transparency at OJP?**

      Yes. If confirmed, I will commit to upholding the same level of openness advocated by the President. Transparency and accountability are among this Administration's top priorities. If confirmed, I will work continuously to promote transparency. A number of initiatives have already been undertaken at OJP in this regard. In Fiscal Year 2009, OJP posted all award decisions on its website, listing the type of award, the recipient, and the award amount.

   b. **If confirmed, will you be forthcoming with this Committee when you see grant programs or practices that aren't working the way Congress intended?**

      Yes. If confirmed, I will be forthcoming with this Committee when I see grant programs or practices that aren't working the way Congress intended.

   c. **If confirmed, will you also commit to promptly providing this Committee and other Senators with any requests for information related to programs falling under your jurisdiction?**

      Yes. If confirmed, I will commit to promptly responding to requests for information from this Committee or any Member of Congress consistent with the Department's responsibilities.

8. **Recently, you served as a board member of United Against Illegal Guns, which is an organization is affiliated with Mayors Against Illegal Guns (MAIG). Although MAIG is ostensibly supportive of the Second Amendment, it has taken a number of positions antithetical to the rights of law abiding citizens to own, possess and carry firearms. For instance: (1) in June of this year, MAIG opposed the Concealed Carry Reciprocity bill ("Thune Amendment"), which would have required states**

[2] *Transparency and Open Government*, Presidential Memorandum, January 21, 2009.

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that grant concealed weapon permits to honor concealed weapon permits issued by other states; (2) MAIG opposed Senator Wicker's Amendment to the FY 2010 Transportation-Housing and Urban Development appropriations bill that required Amtrak to accept firearms in checked luggage; and, (3) MAIG vigorously opposes the "Tiahrt Amendment." The Tiahrt Amendment restricts the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATF) from releasing data from the Firearms Trace System database to anyone other than federal, state and local law enforcement agencies and prosecutors, and then only "in connection with and for use in a bona fide criminal investigation or prosecution." Further, the amendment makes such information inadmissible in any civil proceeding, other than one commenced by BATF. Both the Fraternal Order of Police (FOP) and the BATF support the Tiahrt Amendment.

a. **Will you commit not to issue any grants or monies to organizations or entities such as United Against Illegal Guns and Mayors Against Illegal Guns that do not fully support the Second Amendment?**

   The Office of Justice Programs' mission is to provide, "innovative leadership to federal, state, local, and tribal justice systems, by disseminating state-of-the art knowledge and practices across America, and providing grants for the implementation of these crime fighting strategies." Grants should be provided to organizations demonstrating that they can make the best and most appropriate use of federal grant dollars, in accordance with Congressional mandates. If confirmed, I commit to making grants within that mission, the laws of Congress, and the Constitution.

b. **Will you commit not to issue any grants or monies to organizations or entities conducting studies of gun use that might later be used to restrict gun rights?**

   OJP's research and statistics bureaus – the National Institute of Justice and the Bureau of Justice Statistics – are dedicated to conducting and funding objective scientific research, not studies aimed at furthering specific policy goals. I remain firmly committed to these values. As described above, I fully support transparency in government, which includes making research prepared with OJP funding available to the public through the OJP Website. In addition, it should be noted that objective research can be used in support of policy agendas unrelated to the researcher.

9. **As you may know, I am the ranking member of the Judiciary Committee's Subcommittee on Human Rights and the Law. I am concerned about the results of a 2008 audit of the management of OJP's grant programs for human trafficking victims. In that audit, the OIG found that, while these grants "were effective in building the capacity to serve victims of human trafficking…the programs were not effective in identifying and serving significant numbers of trafficking victims, ensuring that award amounts were consistent with the anticipated number of victims to be served, and ensuring that service providers and task forces reported**

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accurate performance data on victims identified and served." The OIG also found that "OJP had not established an effective system for monitoring service providers and task forces..."[3]

a. The focus of human trafficking grants should be to rescue innocent victims by providing assistance to help them restore dignity to their lives. The OIG found that there was a wide variation of funds awarded compared to the number of victims served by grantees, as well as inaccurate financial reports, questionable expenditures and poor monitoring of sub-grantees. The OIG made 15 recommendations for improved management of these grants. If confirmed, will you ensure that those recommendations are implemented?

Yes. If confirmed, I will ensure that the recommendations contained in the 2008 OIG Grants for Human Trafficking Victims Report are implemented. The report made fifteen recommendations to improve the management of OJP's trafficking programs, eleven of which have been resolved and closed. OJP continues to work closely with OIG to close the remaining recommendations.

10. Do you believe staff conducting grant application reviews should be experts in the individual policy areas addressed by each grant?

a. Specifically, the Justice and Mental Health Collaboration Program/Mental Health Court grants fund "projects that seek to mobilize communities to implement innovative, collaborative efforts that bring system-wide improvements to the way the needs of adult offenders with mental disabilities or illnesses are addressed." Do you believe staff who review grants such as these should have expertise in the area of mental health in order to effectively evaluate the viability of various collaborations proposed by grant applicants?

Peer review is required of all applications for OJP competitive discretionary funding. The Justice and Mental Health Collaboration Program (JMHCP) is one such program; therefore, all applications for JMHCP funding are subject to OJP's rigorous peer review process. Peer review provides both objective, independent application review as well as subject matter expert evaluation of application strengths and weaknesses. While OJP staff members do not participate in peer review – it would be a conflict of interest as federal employees for them to do so – they are knowledgeable in their subject areas and experienced in program administration. If confirmed, one of my highest priorities will be to maintain the highest standards of fairness, transparency, and accountability in the review and selection processes for OJP grant programs.

[3] *Office of the Inspector General Semiannual Report to Congress*, U.S. Department of Justice, April 1, 2008-September 30, 2008, at 29.

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SUBMISSIONS FOR THE RECORD

Criminology & Criminal Justice Policy Coalition





The Honorable Senator Patrick Leahy
433 Russell Senate Office Building
United States Senate
Washington, DC 20510

The Honorable Senator Jeff Sessions
335 Russell Senate Office Building
United States Senate
Washington, DC 20510

September 28, 2009

Dear Senators Leahy and Sessions:

On behalf of the Academy of Criminal Justice Sciences and the American Society of Criminology, we write to express our strong support for the nomination of Laurie Robinson to the position of Assistant Attorney General Laurie Robinson for the Office of Justice Programs (OJP), and urge you to act quickly in confirming her nomination.

Robinson currently serves as the Principal Deputy Assistant Attorney General for OJP and brings to the position a breadth and depth of experience that makes her an exceptionally qualified candidate for this post. During the Clinton Administration she served as Assistant Attorney General for OJP, where she helped establish the Office on Violence Against Women and provided crucial leadership in the national movement toward drug courts and other problem-solving courts. Under her stewardship, the OJP enjoyed an unprecedented reputation for scientifically-supported policy making.

The Office of Justice Programs has several important functions. It promotes innovation in crime and justice through its grant program in support of new state and local justice initiatives. It advances the scientific foundation for crime and justice policy by funding important studies on crime and justice and by disseminating their results nationally. It serves as convener for policy makers, providing a crucial linchpin between the practice of criminal justice and the knowledge base being built by the scientific community. In so doing, it ensures that new state and local policies are based upon a growing foundation commonly called "what works." In short, OJP is the federal government's support system for new developments in crime and justice in state and local criminal justice systems. While good work is currently moving forward, the full effect of

OJP's leadership in crime and justice initiatives cannot be felt until all of its presidentially appointed directors are confirmed.

There is no candidate whose experience and proven capabilities provide a better foundation for leading the OJP than Laurie Robinson. She is a distinguished criminologist who has served admirably as a leading policy maker and reformer in a long list of roles, including heading the American Bar Association's (ABA) Criminal Justice Section (for 14 years) and founding its Juvenile Justice Center. Her leadership in the ABA enabled her to shape policy development in all aspects of criminal justice, from policing to corrections; there is no important national-level reform in criminal justice in the last 25 years about which she has not has at least some role.

While serving in her current position, Robinson has proven herself the right person for this job. She has shown inspired leadership in the way she has brought a diversity of stakeholders together to engage in broad discussions of OJP priorities, and her work to date heralds a new era of strategic justice policy leadership at the federal level. In just a few short months she has begun to pave the way for revitalization of cooperative work between the federal justice programs and initiatives at the state and local levels, and she has already strengthened the foundation for high-quality, high-impact crime and justice research.

On behalf of our members, we urge you to act quickly to confirm Laurie Robinson as the new Assistant Attorney General of the Office of Justice Programs. As nominations for heads of other offices within OJP must await the confirmation of its director, confirmation of the OJP Assistant Attorney General is the necessary first step in assembling a full leadership team for the Office of Justice Programs. With this confirmation, the Office of Justice Programs can turn its full attention to its agenda of effectiveness in criminal justice.

Sincerely yours,

Todd R. Clear
President, 2008-2009
American Society of Criminology
Distinguished Professor
John Jay College of Criminal Justice
The City University of New York

Janice Joseph
President, 2009-2010
Academy of Criminal Justice Sciences
Richard Stockton College of New Jersey
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September 14, 2009

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Jeff Sessions, Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman and Ranking Member Sessions:

I am writing on behalf of the American Correctional Association, our President Harold Clarke, and our 19,000 members to express our full support for the nomination of Laurie Robinson to become Assistant Attorney General. It is hard to imagine anyone more deserving of a swift confirmation than Ms. Robinson.

Ms. Robinson is a proven leader who has worked hard to enhance and strengthen our criminal justice system. She has the experience and leadership skills necessary to succeed as Assistant Attorney General and as a liaison for state and local law enforcement.

The American Correctional Association was supportive of Ms. Robinson when she previously served at the Office of Justice Programs, was pleased to hear of her nomination by the President for this term and is looking forward to working with her again on the many issues and concerns facing the corrections profession and the criminal justice system.

She is a proven leader, with an impeccable record of integrity and is well respected in our profession. She deserves confirmation and we strongly encourage you to support the nomination of Laurie Robinson as Assistant Attorney General and to move swiftly with her confirmation.

Sincerely,

James A. Gondles, Jr., CAE
Executive Director

American Probation and Parole Association

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District of Columbia

Erika Preuitt
Oregon

AT-LARGE AFFILIATE REPRESENTATIVE
Carl Fox
Arizona

EXECUTIVE DIRECTOR
Carl Wicklund

September 11, 2009

The Honorable Patrick Leahy
Chairman
Senate Judiciary Committee
U.S. Senate
224 Dirksen Office Building
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Senate Judiciary Committee
U.S. Senate
335 Russell Office Building
Washington, DC 20510

Dear Senator Leahy and Senator Sessions:

I am submitting this letter in support of the confirmation of Laurie Robinson as the Assistant Attorney General (AAG) to oversee the Department of Justice's Office of Justice Programs (OJP).

During Ms. Robinson's previous tenure as AAG, she left a compelling and positive legacy for the staff and future directors of OJP. She uniquely raised the bar of excellence for future OJP directors. Currently (as Acting AAG) and in the past she has ensured cohesion and spirit of cooperation throughout OJP. The open and collegial manner in which she operates, and expects others within OJP to operate, is both refreshing and effective. She is universally respected and admired by OJP staff. Through her past leadership, OJP not only grew, but it became a major force for sound advice and incalculable aid while also being a driving force for good public policy and practice. She manages to seek solutions while not being overly prescriptive. She encourages an empowering rather than directive approach towards those that seek assistance from OJP. The justice community is vastly improved its effectiveness and humanitarianism through her current and past compassionate and intelligent leadership.

In the face of political pressures Ms. Robinson has encountered she has continually demonstrated the open door policy of a true public servant. She has not visibly let the political atmosphere poison her approach to others or the job. The Capitol Hill curse of aloofness and bitterness has never successfully cast its sinister spell on Ms. Robinson. She is gracious, approachable and down-to-earth. She represents OJP and the Department of Justice with grace and dignity while maintaining an open and welcoming spirit.

In closing I would only add that the people of the United States would be hard pressed to find a more appropriate candidate to direct the Office of Justice Programs.

Sincerely,

Carl Wicklund
Executive Director

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AMERICAN SOCIETY OF CRIMINOLOGY

Senator Patrick Leahy
433 Russell Senate Office Bldg
United States Senate
Washington, DC 20510

June 2, 2009

Dear Senator Leahy:

I write as president of the American Society of Criminology, at the request of its Executive Board and on behalf of its 2,500 members, to urge you to act quickly in confirming the nomination of Acting Assistant Attorney General Laurie Robinson, to direct the Office of Justice Programs (OJP).

The Office of Justice Programs has several important functions. It promotes innovation in crime and justice through its grant program in support of new state and local justice initiatives. It advances the scientific foundation for crime and justice policy by funding important studies on crime and justice and by disseminating their results nationally. It serves as convener for policy makers, providing a crucial linchpin between the practice of criminal justice and the knowledge base being built by the scientific community. In so doing, it ensures that new state and local policies are based upon a growing foundation commonly called "what works." In short, OJP is the federal government's support system for new developments in crime and justice in state and local criminal justice systems. While good work is currently moving forward, the full effect of OJP's leadership in crime and justice initiatives cannot be felt until all of its presidentially appointed directors are confirmed. Confirmation of the OJP Assistant Attorney General is the necessary first step in assembling a full leadership team for the Office of Justice Programs, because the presidential nominations for heads of various OJP offices must await the confirmation of its director.

There is nobody whose experience and proven capabilities provide a better foundation for leading the OJP today than Laurie Robinson. She is a distinguished criminologist who has served admirably as a leading policy maker and reformer in a long list of roles, including heading the American Bar Association's (ABA) Criminal Justice Section (for 14 years) and founding its Juvenile Justice Center. Her leadership in the ABA enabled her to shape policy development in all aspects of criminal justice, from policing to corrections. It is fair to say that there is no important national-level reform in criminal justice in the last 25 years about which she has not has at least some role.

She brought this strong record of applied policy leadership to the Office of Justice Programs within the Justice Department during the Clinton administration. While there, she helped establish the Office on Violence Against Women and provided crucial leadership in the national movement toward drug- and problem-solving courts. Under her stewardship, the OJP

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AMERICAN SOCIETY OF CRIMINOLOGY

enjoyed an unprecedented reputation for scientifically-supported policy making. This has meant the she enjoys strong support from the practitioners in the field and academics, alike.

Even while serving in her acting role, AAG (designee) Robinson has proven herself the right person for this job. She has already shown inspired leadership in the way she has brought a diversity of stakeholders together to engage in broad discussions of OJP priorities, and her work to date heralds a new era of strategic justice policy leadership at the federal level. In just a few short months she has begun to pave the way for revitalization of cooperative work between the federal justice programs and initiatives at the state and local levels, and she has already strengthened the foundation for high-quality, high-impact crime and justice research.

I urge you to act quickly to make her permanent, so that the Office of Justice Programs can turn its full attention to its agenda of effectiveness in criminal justice.

Sincerely yours,

Todd R. Clear
President, 2008-2009

Distinguished Professor
John Jay College of Criminal Justice
The City University of New York

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Carnegie Mellon

Alfred Blumstein
University Professor and
J. Erik Jonsson Professor of
Urban Systems and Operations Research

H. John Heinz III School
of Public Policy and Management
Carnegie Mellon University
5000 Forbes Avenue
Pittsburgh, Pennsylvania 15213-3890
[redacted]

May 28, 2009

Senator Patrick Leahy
Chair, Senate Judiciary Committee
433 Russell Senate Office Building
Washington, DC 20510

Dear Senator Leahy:

I understand that Ms. Laurie Robinson has been nominated as Assistant Attorney General responsible for the Office of Justice Programs (OJP). It would be hard to find a more capable or appropriate individual to fill that position. As you undoubtedly know, she was most effective in managing that program during the Clinton administration. That was a time when crime rates were very high, taxing the skills and resources of the nation's criminal justice system. As a result, it was a time when the resources that had to be managed increased significantly, and there is considerable evidence that those resources were applied with great skill in ways that were demonstrably cost-effective. As a result, while there is still a long way to go, the technical and managerial skills of the nation's criminal justice system improved considerably and we saw a major drop in crime rates. Obviously, Ms. Robinson deserves considerable credit for those accomplishments.

One of the difficult challenges facing the OJP director is managing a coherent program with at least five presidential appointees reporting to her. One of the impressive features of Ms. Robinson's term was the significant degree to which she was able to maintain coherent and innovative programs within the Office. I knew most of those presidential appointees and they clearly demonstrated cooperation with each other and with their supervisor. This was particularly impressive in NIJ and BJS, which had statutory independence, but nevertheless their directors worked closely with Ms. Robinson to achieve common goals. That independence was surreptitiously lifted in 2001, and still did not come close to achieving the effectiveness that characterized Laurie Robinson's earlier management. I would hope that the Congress would restore that independence to those two agencies because it is such an important feature of maintaining the integrity of their programs and products. I understand that Ms. Robinson would be fully supportive of that restoration.

When she left OJP at the end of the Clinton administration, Ms. Robinson has been very effective in addressing criminal justice needs in other settings. She has worked as a senior scholar in the criminology program at the University of Pennsylvania, and in 2004 she initiated and has since directed the Master of Science program for their criminology department. She has also been involved in a variety of other activities related to criminal justice. For example, until she returned to the Justice Department, she

chaired the board overseeing the Vera Institute, a major research and innovation institution located in New York City.

In view of the complexities of the many programs in OJP, she was recruited by the Obama administration to serve as acting director of OJP to keep the program moving forward in the right direction. This was particularly important in view of the sizable stimulus package that had to be managed by OJP. Even in the short time she has been there, OJP has been far more effective than it would have been without her. Indeed, many of us who care about that program's performance are most grateful that Ms. Robinson has reconsidered her original intention to be there for only a short time.

It is clear that the nation's criminal justice system will be extremely well served by the competence, experience, and esteem that characterize Laurie Robinson. I strongly urge you and the Judiciary Committee to move quickly to approve her nomination and to ensure effective management of this important function.

I hope these comments are helpful in considering her case. Please feel free to call on me if I can provide any additional information. For your background I am enclosing a brief biographical statement.

Yours truly,

Alfred Blumstein

http://judiciary.authoring.senate.gov/hearings/testimony.cfm

United States Senate Committee on the Judiciary

< Return To Hearing

Statement of

The Honorable Benjamin L. Cardin

United States Senator
Maryland
October 7, 2009

OPENING STATEMENT OF

SENATOR BENJAMIN L. CARDIN

CONFIRMATION HEARING FOR

BARBARA MILANO KEENAN,
U.S. CIRCUIT JUDGE FOR THE FOURTH CIRCUIT

LAURIE O. ROBINSON, AAG FOR
OFFICE OF JUSTICE PROGRAMS

KETANJI BROWN JACKSON,
MEMBER, U.S. SENTENCING COMMISSION

SENATE JUDICIARY COMMITTEE

October 7, 2009

The Committee will come to order. Let me thank Chairman Leahy for asking me to chair today's hearing.

Today we consider three of President Obama's nominations to the federal bench, Department of Justice, and an independent judicial branch agency.

Our first panel consists of Barbara Milano Keenan to be U.S. Circuit Judge for the Fourth Circuit.

I take a special interest in the 4th Circuit, as it includes my home state of Maryland. In May 2008 I chaired the confirmation hearing for Justice Steven Agee, who also served on the Virginia Supreme Court and was confirmed to be a U.S. Circuit Judge for the Fourth Circuit. In April 2009 I chaired the confirmation hearing for Judge Andre Davis of Maryland, who is currently a federal district judge in Baltimore. He was favorably reported by this committee by a strong bipartisan vote of 16 to 3 in June of 2009, but unfortunately the full Senate has yet to vote on this nomination.

I mention these nominations by way of background for my colleagues, because the Fourth Circuit has one of the highest vacancy rates in the country today. Out of the 15 seats authorized by Congress, 5 are vacant, which means that one-third of the court's seats are now vacant. Our Circuit Courts of Appeals are the final word for most of our civil and criminal litigants, as the Supreme Court only accepts a handful of cases. I hope that President Obama and the Senate move quickly to nominate and confirm qualified candidates for these seats. I also look forward to increasing the diversity of the judges of the Fourth Circuit.

As I evaluate judicial candidates, I use several criteria. First, I believe judicial nominees must have an appreciation for the Constitution and the protections it provides to every American. I believe each nominee much embrace a judicial philosophy that reflects mainstream American values, not narrow ideological interests. I believe a judicial nominee must respect the role and responsibilities of each branch of government. I look for a strong commitment and passion for the continued forward progress of civil rights protections.

Justice Keenan comes to this committee with an impressive amount of experience. She has served on each

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of the four levels of the Virginia State courts: General District Court, Circuit Court, Court of Appeals, and Supreme Court. She was admitted to the State Bar of Virginia in 1974. She first took the bench at the age of 29, and fittingly has served for a judge for the last 29 years. Before serving as a judge, she worked as an attorney in private practice and as a local prosecutor.

Justice Keenan has presiding over an impressive amount of cases. She presided over several thousand cases of to judgment as a judge of the General District Court of Fairfax County, Virginia, which includes misdemeanors and smaller civil cases. As a circuit court judge, she presided over 600 cases that proceeded to verdict or judgment, and handled a wide range of criminal and civil cases, including both jury trials and bench trials. Finally, Justice Kennan now serves on the Virginia Supreme Court, a position she has held since 1991. I understand that under Virginia law, Supreme Court Justices serve 12 year-terms, and then must seek reappointment by the state General Assembly. Justice Keenan was unanimously reappointed by the General Assembly.

If confirmed, Justice Keenan would be the first woman from Virginia to serve on the Fourth Circuit. I understand that Judge Keenan has already been breaking down barriers in Virginia, when she became the first female general district court judge, the first female circuit court judge, the first female judge on the Virginia Court of Appeals, and the only second female justice on the Virginia Supreme Court.

Justice Keenan earned her B.A. from Cornell University, her J.D. from the George Washington University Law School, and her L.L.M. from the University Of Virginia School Of Law.

She received a unanimous rating of "well qualified" by the American Bar Association's Standing Committee on the Federal Judiciary, which is their highest rating. I look forward to her introduction by Senators Webb and Warner.

Our second nominee today is Laurie O. Robinson, to be the Assistant Attorney General for the Office of Justice Programs.

By way of background, let me agree with Chairman Leahy that this Committee should move quickly to continue restoring the morale and integrity of the Department. I must say that I am disappointed by the pace of our confirmation for many of Attorney General Holder's deputies. Less than half of the current Assistant Attorneys General have been confirmed, leaving major policy-making functions in the DOJ vacant, such as tax, environment, and legal advice and policy. The Senate should vote on these nominees without further delay.

The Office of Justice Programs (OJP) provides leadership to federal, state, local, and tribal justice systems, by disseminating knowledge and best practices across America, and providing grants for the implementation of these crime fighting strategies. OJP does not directly carry out law enforcement and justice activities. Instead, OJP works in partnership with the justice community to identify the most pressing crime-related challenges confronting the justice system and to provide information, training, coordination, and innovative strategies and approaches for addressing these challenges.

OJP has multiple offices under its umbrella including: Bureau of Justice Assistance, Bureau of Justice Statistics, Office of Civil Rights, Office of Victims of Crime, National Institute of Justice, and Office of Juvenile Justice and Delinquency Prevention.

Ms. Robinson, if confirmed, would return to her previous position in government. From 1993 to 200, she served as Assistant Attorney General at the Office of Justice Programs. Ms. Robinson oversaw the largest increase in federal spending on criminal justice research in the nation's history. Under her leadership, the annual appropriations for the Office of Justice Programs grew substantially - from $800 million in 1993 to over $4 billion in 2000. During this time, she also spearheaded a number of initiatives in areas ranging from comprehensive community-based crime control to combating violence against women, law enforcement technology, drug abuse and corrections.

Since 2004, Ms. Robinson has been the director of the Master of Science Program in the University of Pennsylvania's Department of Criminology. And since 2001, she also has served as a Distinguished Senior Scholar in the University's Jerry Lee Center of Criminology, and as Executive Director of its Forum on Crime & Justice. Prior to joining the Department of Justice in 1993, Ms. Robinson was the director of the American Bar Association's Section of Criminal Justice for 14 years, where she founded the ABA's Juvenile Justice Center and had responsibility for policy development, work with Congress, and development of special projects in such areas as crime victims, prisons, police procedures, and computer crime.

Ms. Robinson served on a number of national boards relating to the justice system, including the Board of Trustees of the Vera Institute of Justice (which she chairs), the Board of Directors of the Police Foundation, and the Advisory Board for the George Mason University Administration of Justice Program. She has published numerous articles in criminal justice and legal periodicals, and has spoken at hundreds of criminal justice-related conferences and forums. She is a magna cum laude graduate of Brown University and a member of Phi Beta Kappa.

I am also pleased Letters of support for Ms. Robinson including: the US Conference of Mayors, National League of Cities, National Association of Counties, and the International Association of Chiefs of Police. These letters and others relating to this nomination will be made part of the record.

The third and final nominee today is Ketanji Brown Jackson. Ms. Jackson has been nominated to be a

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member of the U.S. Sentencing Commission. The Commission is an independent agency in the judicial branch of government. Its purpose is to establish sentencing policies and practices for the federal courts, including criminal sentencing guidelines, to advise and assist Congress and the executive branch in developing crime policy, and to analyze and research criminal justice information.

Ms. Jackson is Of Counsel at Morrison & Foerster, LLP in Washington, D.C., where she has worked since 2007. From 2005 to 2007, she was an Assistant Federal Public Defender in the District of Columbia. From 2003 to 2005, Ms. Jackson served as Assistant Special Counsel to the U.S. Sentencing Commission. For several years, Ms. Jackson was in private practice. She has previously served as a law clerk to the Judge Patti B. Saris, U.S. District Court of Massachusetts, Judge Bruce M. Selya, U.S. Court of Appeals for the First Circuit, and Supreme Court Justice Stephen G. Breyer.

Ms. Jackson graduated with a BA from Harvard University and a JD from Harvard Law School. She is a resident of Bethesda, Maryland.

I will now turn to the Ranking Member for any comments he would care to make, and then we will turn to Senators Webb and Warner to introduce our first nominee.

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Wisconsin State Public Defender
315 N. Henry St. - 2nd Floor
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Office Number: 608-266-0087 / Fax Number: 608-267-0584
www.wisspd.org

Protecting Justice for all Since 1977

Nicholas L. Chiarkas
State Public Defender

Kelli S. Thompson
Deputy State Public Defender

September 16, 2009

Senator Russ Feingold
506 Hart Senate Office Building
Washington, DC 20510-4904

Re: Laurie O. Robinson Confirmation as Assistant Attorney General

Dear Senator Feingold:

I am honored to write to you in support of the confirmation of Laurie O. Robinson as an Assistant Attorney General.

I have known Ms. Robinson for more than twenty years. She undoubtedly is one of the brightest and genuinely decent people I know. She always demonstrates to me a keen sense of context and impeccable judgment. She consistently performs with excellence, diligence and imagination. She also functions flawlessly, and with ease, as a team leader and in collaboration with team members. Ms. Robinson is a skilled and experienced attorney who has earned the respect of everyone with whom she has worked.

I have no doubt that Ms. Robinson will manage with uncompromising dexterity the competing demands of an Assistant Attorney General's time and attention while dealing with the myriad of sensitive issues that she would face in such a critical role. She has shown these abilities through her work as a smart-on-crime policy advocate who has spearheaded initiatives in a wide range of areas such as comprehensive community-based crime control, violence reduction against women, enhanced law enforcement technology, reduction of drug abuse and corrections reforms. At the same time, Ms Robinson is a strong advocate for a fair due-process based justice system that aims to guarantee our nation's poorest citizens the same rights all our citizens enjoy. I assure you, based on my combined experience as the Wisconsin State Public Defender, a former New York City police officer, and a federal investigator/prosecutor, Ms. Robinson will be an outstanding Assistant Attorney General.

I appreciate the opportunity to recommend that Ms. Robinson be confirmed as an Assistant Attorney General of the United States. If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

NICHOLAS L. CHIARKAS
Wisconsin State Public Defender

Wisconsin Forward Award Mastery Recipient



Mayor of Providence

David N. Cicilline

September 24, 2009

The Honorable Patrick J. Leahy
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Jeff Sessions
Ranking Member
Senate Judiciary Committee
335 Russell Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Sessions:

I am writing to express my strong support for the confirmation of Ms. Laurie Robinson as the Deputy Assistant Attorney General for the Office of Justice Programs at the U.S. Department of Justice.

During the Clinton Administration, from 1993 through February 2000, Ms. Robinson served as the Assistant Attorney General at the Office of Justice Programs. Under her leadership, the Office of Justice Programs experienced unprecedented growth in federal funding, growing from $800 million in 1993 to over $4 billion in 2000. These federal resources produced many innovative programs ranging from community-based crime control initiatives, violence against women prevention programs, law enforcement technology, and prisoner reentry initiatives. The cumulative effect of these various progtams was a major drop in crime and many of these programs are still making positive impacts in our cities today.

Ms. Robinson has demonstrated a commitment to work in close partnership with Mayors and city leaders to learn first-hand about the public safety challenges that they faced. Most importantly, Ms. Robinson has always been accessible to city leaders to share her expertise whether at the Justice Department or her recent tenure in academia at the University of Pennsylvania. Through her knowledge of the issues, vision, proven leadership ability, integrity, and commitment to building local partnerships, Ms. Robinson will be an outstanding Deputy Assistant Attorney General for the Office of Justice Programs.

I strongly urge the Committee to confirm Ms. Robinson and I look forward to working in partnership with her.

Sincerely,

David N. Cicilline
Mayor

City of Providence, Rhode Island 02903
Phone (401) 421-7740 Fax (401) 274-8240

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JUSTICE CENTER
THE COUNCIL OF STATE GOVERNMENTS
Collaborative Approaches to Public Safety

June 12, 2009

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
Committee
United States Senate
224 Dirksen Office Building
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member, Senate Judiciary

United States Senate
335 Russell Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

On behalf of the Council of State Governments Justice Center board of directors—leaders of a national organization that serves policymakers at the local, state, and federal levels from all branches of government to increase public safety and strengthen communities—we are writing to urge you to approve the nomination of Laurie Robinson to the position of Assistant Attorney General for the Office of Justice Programs.

Ms. Robinson has been a national leader on crime policy for decades. Whether serving as Assistant Attorney General, directing the Jerry Lee Center on Criminology at the University of Pennsylvania, or leading crime policy efforts for the American Bar Association, she has enjoyed broad support among local law enforcement executives, court officials, corrections administrators, and victim advocates. She is so respected because she possesses an extraordinary combination of skills and experiences, which uniquely position her to lead the Office of Justice Programs.

First, she has consistently demonstrated a commitment to data-driven, evidence-based policies. She resists promoting policy that might "sound good," insisting on rigorous evaluation of policies and programs to measure their effectiveness. At the same time, she recognizes that state and local governments cannot wait years on end for a multi-year, longitudinal study, and she works tirelessly to ensure practical information gets in the hands of policymakers and practitioners that they can use quickly to deal with today's challenges. Indeed, she recognizes that the federal government is most helpful to state and local governments when it tests ideas and promotes what works in real-world terms.

Second, she has always appreciated that every state and county criminal justice system is different and that there is no one-size-fits-all approach to crime-fighting. When she previously headed OJP, she made sure its agencies were equally responsive to large urban areas and small rural counties and took the time to understand the distinct organization and roles of authorities from one county to another.

Third, she understands that enduring crime policy should be consensus-based and enjoy broad bipartisan support. Even when running a multi-billion dollar agency, she was always accessible and down-to-earth, and went to great lengths to listen to the perspectives diverse stakeholders and worked hard to address their comments.

Fourth, understanding that state and local government agencies interface with multiple agencies at OJP, Ms. Robinson always made it a priority to ensure coordination among the grant programs that BJA administered, the research NIJ spearheaded, the data BJS collected and analyzed, the juvenile-focused work OJJDP coordinated, and the efforts OVC led to assist victims.

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JUSTICE★CENTER
THE COUNCIL OF STATE GOVERNMENTS
Collaborative Approaches to Public Safety

As elected and appointed state officials, we know that it will take someone with vision, an ability to navigate partisan politics, a comprehensive understanding of the issues, and a successful management style to direct OJP. Ms. Robinson has demonstrated these abilities time and again.

We thank you for considering the views of state legislators, judicial leaders, and executive branch officials as you decide the appointment of the next Assistant Attorney General for the Office of Justice Programs.

Sincerely,

Pat Colloton

Rep. Pat Colloton (R-KS)
Chair, Committee on Corrections and Juvenile Justice
Justice Center Executive Committee Member

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June 1, 2009

Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

Honorable Jeff Sessions
Ranking Minority Member
Committee on the Judiciary
United States Senate
335 Russell Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

This letter is to support the nomination of **Laurie O. Robinson** to serve as Assistant Attorney General for the U.S. Department of Justice.

You have gotten other correspondence about her qualifications and career service so I will not repeat any of that here.

I have known Laurie professionally since 1994 when I was on loan to the Office for Victims of Crime (OVC) from the California Youth Authority. She was responsible for implementing the far ranging Crime Act and I was the OVC representative assigned to work with her. In all of my dealings with her, she was professional, smart, and sensitive to the tri-service areas of crime victims, offender programming and accountability, and community safety.

As the survivor of a homicide victim (my 84 year old mother) and an ardent crime victim advocate, I am often highly critical of government appointees because too often they pay 'lip service' to victimization issues and then do not do anything.

That is not true of Laurie Robinson however; we can count on her to support further progress in the crime victim field which she championed during her last tour of DOJ/OJP duty.

If there are any questions, feel free to contact me at [redacted]

Sincerely

Sharon J. English

cc. Laurie Robinson

Dean M. Esserman
Chief of Police

David N. Cicilline
Mayor

Providence Police Department
"Building Pride in Providence"

September 24, 2009

The Honorable Patrick J. Leahy
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Jeff Sessions
Ranking Member
Senate Judiciary Committee
335 Russell Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Sessions:

I am writing to express my enthusiastic support for the confirmation of Ms. Laurie Robinson as the Deputy Assistant Attorney General for the U.S. Department of Justice's Office of Justice Programs.

I have known Ms. Robinson both professionally and personally for over 10 years. Her vast intellect, exceptional record of accomplishment, and unquestioned dedication and commitment to public service will serve her well in the Justice Department. While serving as Assistant Attorney General in the 1990's, Ms. Robinson oversaw the largest increase in federal spending on criminal justice programs in the nation's history. She worked closely with Police Chiefs to understand their needs and provided the necessary funding to create innovative law enforcement programs to address those needs. Ms. Robinson is a trusted partner with law enforcement and has earned the respect and admiration of Police Chiefs and Sheriffs throughout the United States.

As a member of the Board of Trustees for the Vera Institute which Ms. Robinson chaired, I saw first-hand Ms. Robinson's exceptional grasp of issues ranging from prisoner incarceration, victims of crime, youth programs, and neighborhood-based policing initiatives. As a Police Chief, my Department has benefited from the various grant programs funded under the American Reinvestment and Recovery Act. The administration of these programs is a daunting task but under Ms. Robinson's leadership the distribution of these funds was handled expertly and the funding is making a real difference in enhancing public safety here in the City of Providence.

Ms. Robinson's recent experience in academia as the Director of the Master in Science Program in the University of Pennsylvania's Department of Criminology provides her with additional insight into creating, implementing, and evaluating criminal justice policy and programs.

325 Washington Street * Providence, Rhode Island 02903 * (401) 272-3121 * Fax: (401) 243-6464

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From a personal standpoint, Ms. Robinson is a person of strong character and integrity. She will be a tremendous asset to the Justice Department. I strongly urge the Committee to report her confirmation favorably and look forward to working with Ms. Robinson as our next Deputy Assistant Attorney General for the Office of Justice Programs.

Sincerely,

Dean M. Esserman
Colonel
Chief of Police

HEILIG

JOHN A. HEILIG
Licensed in VA and NC

Attorneys Counselors at Law
SPECIALIZING IN ALL ASPECTS OF PERSONAL INJURY LAW

ROBERT E. MORELAND
Licensed in VA and NC

February 6, 2009

Personal & Confidential
Senator James Webb
7960 W Beach Dr NW
Washington, DC 20012

Re: The Honorable Barbara M. Keenan
Justice, Supreme Court of Virginia

Dear Delta Six (6) Actual,

I am writing to express my respect and support for Justice Keenan to fill the upcoming vacancy on the United States Court of Appeals for the Fourth Circuit. I have known Justice Keenan, both personally and professionally, since 1985. Her husband, The Honorable Alan Rosenblatt, (retired), was a Circuit Court Judge for the City of Virginia Beach, until his retirement five (5) years ago, and was likewise known as an astute, no-nonsense judge.

Justice Keenan would bring to the Court of Appeals a wealth of experience, which began in 1974, following receipt of her J.D. from The George Washington University Law School. She prosecuted cases for the office of the Fairfax County Commonwealth's Attorney. Thereafter, after four (4) years in private practice handling both criminal and civil matters, Justice Keenan was appointed as a General District Court Judge for Fairfax County. From 1982 to 1985, Justice Keenan served on the Circuit Court, until in 1985, she was elevated to the Court of Appeals of Virginia, where she participated in panel and *en banc* decisions in domestic and criminal appeals from the Circuit Courts and in administrative agency and worker's compensation appeals.

Finally in 1991, and to the delight of virtually every trial attorney I know, Justice Keenan became a Justice on the Supreme Court of Virginia where she presently sits. During her tenure on The Court, Justice Keenan has participated in appeals decisions in criminal and civil cases from the Court of Appeals and from Circuit Courts. In addition, Justice Keenan has also participated in the decision of cases from the State Corporation Commission and original jurisdiction matters such as requests for injunctive relief, and petitions for *writs of habeas corpus and mandamus.*

Halifax Building, Suite 325 6161 Kempsville Circle Norfolk, Virginia 23502
(757) 461-1300 Fax (757) 461-4240 1-866-HEILIG1 (434-5441) www.theheiligfirm.com

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I am hopeful that you will have the opportunity to do your own research on Justice Keenan and in so doing, you will doubtlessly, find first, hand that she is eminently qualified to sit on our United States Court of Appeals.

Thank you for your consideration, Jim. Please make sure you give me a call if you are ever in my A.O.

Very truly yours,

John A. Heilig

(Alpha Six (6) Actual)

JAH/klt

bcc: John W. Drescher, Esq.

June 3, 2009

Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

Honorable Jeff Sessions
Ranking Minority Member
Committee on the Judiciary
United States Senate
335 Russell Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

I am writing to join the esteemed individuals and organizations that have written to you in support of the President's nomination of Laurie Robinson to the position of Assistant Attorney General, Office of Justice Programs, U.S. Department of Justice. Unlike other supporters, my endorsement of Mrs. Robinson's nomination is based on firsthand knowledge of her leadership, and management skills and abilities. I served in a career Senior Executive Service position at the Department of Justice, Office of Justice Program during her tenure as Assistant Attorney General during the Clinton Administration.

As Assistant Attorney General, Mrs. Robinson demonstrated the highest standards of public service, competence, and integrity beyond reproach. A savvy visionary and demanding public servant, Mrs. Robinson took the agency to new levels of achievement and respect based on three simple principles: listen to those who rely on the mission of the agency; listen to the priorities of the President and Congress; and engage the employees in meaningful participation in executing policy and programs and respect their institutional knowledge and dedication to public service. Her experience at the American Bar Association proved integral to her commitment to cutting-edge programs and new technologies to improve criminal justice policy and programming.

In her role as coordinator of the five statutorily mandated agencies – the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime, Laurie Robinson saw and encouraged opportunities for collaboration among these critical criminal justice prevention and intervention functions of the agency. She also identified opportunities for broader collaboration across the Department of Justice, e.g., the Bureau of Prisons, the Executive Office of United States Attorneys, the Office on Violence Against Women, the Criminal Division, and the Federal Bureau of Investigation, and also with the various nongovernmental criminal justice organizations.

By confirming her for the position of Assistant Attorney General, you have an opportunity to bring demonstrated leadership back to the Office of Justice Programs, and get the criminal justice priorities of the country moving forward in the right direction at a rapid pace. I believe Laurie Robinson possesses the right blend of knowledge, integrity, compassion, and leadership to restore the public's confidence in the criminal justice programs administered by the Office of Justice Programs. I encourage you to move rapidly to confirm her as Assistant Attorney General.

Sincerely,

Carolyn A. Hightower

DISTRICT ATTORNEY OF THE COUNTY OF KINGS
RENAISSANCE PLAZA AT 350 JAY STREET
BROOKLYN, N.Y. 11201-2908

CHARLES J. HYNES
DISTRICT ATTORNEY

July 14, 2009

Honorable Patrick J. Leahy
United States Senator, Vermont
Chair, United States Committee
on the Judiciary
433 Russell Senate Office Building
Washington, DC 20510

Dear Senator Leahy:

I know you have previously recalled that at the direction of my boss, Brooklyn District Attorney Gene Gold, I assisted you with the investigation of a drug dealer in your jurisdiction when you were the Chittenden County District Attorney. Incidentally, Gene is well and he sends you his best wishes.

I am writing to you to express my strong support for Senate confirmation of Laurie Robinson to the office of Assistant Attorney General for the Office of Justice Programs.

By way of my background, in 1989 I was elected Brooklyn District Attorney. I am serving my fifth term and this year I will run unopposed for re-election. Presently, I am a Vice President of the National Association of District Attorneys and, in addition, I am Chair-elect of the Criminal Justice Section, American Bar Association.

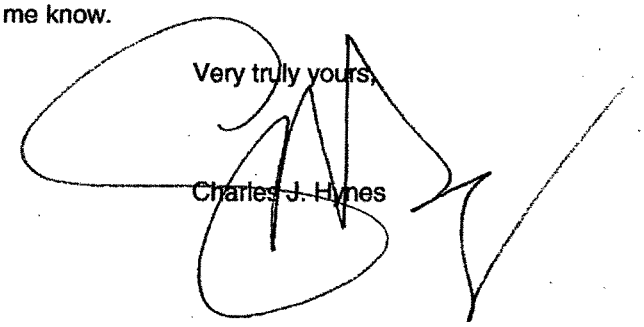
I first met Ms. Robinson when she served as Assistant Attorney General in the Office of Justice Programs under United States Attorney General Janet Reno. While the Attorney General, herself a former local prosecutor, set the standard for the Department of Justice and its interaction with local prosecutors, Laurie Robinson was extremely effective in executing that policy creating an unusual spirit of cooperation between federal and local authorities. I am sure you recall from your experiences as the Chittenden County District Attorney the tension

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between federal authorities and local prosecutors. Janet Reno and Laurie Robinson by contrast established a comfort level which unfortunately is rare among federal and local law enforcement agencies. I am particularly pleased that President Obama was able to persuade her to leave her position at the University of Pennsylvania to take this important policy post. I have initiated a great many alternatives to prosecution programs in Brooklyn, e.g. a residential drug treatment program (19 years in operation) and a re-entry program for the formerly incarcerated (for the last 9 years). It is my hope to collaborate with Ms. Robinson to implement and expand 2nd Chance initiatives for my Office and other prosecutors. I believe that Laurie Robinson will have a lasting impact on the face of Criminal Justice in this Country.

If I can in any other way helpful to the confirmation of Ms. Robinson please let me know.

Very truly yours,



Charles J. Hynes

CJH:mk

International Association of Chiefs of Police
515 North Washington Street
Alexandria, VA 22314-2357
Phone:703-836-6767; 1-800-THE IACP
Fax: 703-836-4543
Web: www.theiacp.org

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Algonquin Police Department
Algonquin, IL

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Chief of Staff
James W. McMahon
Alexandria, VA

September 9, 2009

The Honorable Patrick Leahy
Chairman
Senate Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy:

On behalf of the more than 22,000 members of the International Association of Chiefs of Police (IACP), I am pleased to inform you of our support for the nomination of Ms. Laurie Robinson to be Assistant Attorney General for the Office of Justice Programs (OJP). The IACP believes that Ms. Robinson's years of service have clearly demonstrated she has the qualifications and experience necessary to be an effective leader of the OJP.

Ms. Robinson's broad base of experience provides her with a unique perspective on criminal justice issues. During her service in this same position from 1993 to 2000, OJP programs grew substantially—from $800 million in 1993 to over $4 billion in 2000. This increase led to strong initiatives on community-based crime control, violence against women, and law enforcement technology.

As a result, the IACP believes that, as Assistant Attorney General, Ms. Robinson's background will allow her to foster and enhance the crucial partnership among federal, state, local, and tribal law enforcement agencies.

The IACP urges you to confirm Ms. Robinson's nomination rapidly.

I look forward to your positive response to this request. If you have any questions on this matter, please contact the IACP at 703-647-7211.

Sincerely,

Russell B Laine

Russell B. Laine
President



September 14, 2009

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
U.S. Senate
224 Dirksen Office Building
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member, Senate Judiciary Committee
U.S. Senate
335 Russell Office Building
Washington, DC 20510

Dear Senator Leahy and Senator Sessions:

I write to you on behalf of the Board and members of the International Community Corrections Association (ICCA) in support of the nomination of Laurie Robinson to serve once again in the capacity of Assistant Attorney General for the Office of Justice Programs. ICCA has had much experience with Ms. Robinson over the years and knows her fine character, excellent qualities, and devotion to public service.

The ICCA is a non-profit membership association whose agency members operate some 1500 community-based residential, treatment, day-reporting and other correctional programs throughout North America. ICCA was organized in 1964 and, in the words of Ms. Robinson herself, has "been doing prisoner reentry since before reentry was cool." In pursuit of our work – reintegrating individuals safely back into their families and communities – we have learned to rely upon the expertise, knowledge, and wisdom of Ms. Robinson as she has served in her various capacities with the American Bar Association, the U.S. Department of Justice, and as a scholar with the University of Pennsylvania.

What we value especially in Ms. Robinson is her commitment to collegiality, her genuine interest in listening to those in the field and learning from their grass-roots experience. A great strength of hers is promoting research and evidence-based practices, while maintaining an open mind to field-generated innovations that seize upon new opportunities as they arise. As you can see from our logo, ICCA is committed to "Doing What Works," and this makes us a strong partner for a person of Ms. Robinson's demonstrated dedication to protecting the public safety.

We know from years of experience that Ms. Robinson in indefatigable in the pursuit of justice for victims, for children and youth, and for people striving to take advantage of a second chance at responsible citizenship. We are eager to continue collaborating with her at the Office of Justice Programs as partners in optimizing our collective resources in achieving community justice.

Sincerely,

Jane Browning

Jane Browning
Executive Director

International Community Corrections Association
8701 Georgia Avenue, Suite 402 * Silver Spring, Maryland, 20910
PHONE 301-585-6090 * FAX 301-585-6094 * EMAIL info@iccaweb.org * WEB iccaweb.org

INTERNATIONAL UNION OF POLICE ASSOCIATIONS AFL-CIO

THE ONLY UNION FOR LAW ENFORCEMENT OFFICERS

SAM A. CABRAL
International President

DENNIS J. SLOCUMB
International Executive Vice President
Legislative Affairs

TIMOTHY A. SCOTT
International Secretary-Treasurer

September 8, 2009

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
United States Senate
224 Dirksen Office Building
Washington, D.C. 20510

The Honorable Jeff Sessions
Ranking Member, Senate Judiciary Committee
United States Senate
335 Russell Office Building
Washington, D.C. 20510

Dear Senators Leahy and Sessions:

On behalf of the International Union of Police Associations (I.U.P.A.) representing more than 100,000 active-duty, rank and file law enforcement professionals across the nation, I am writing to urge your confirmation of Ms. Laurie O. Robinson to the position of Assistant Attorney General / Principal Deputy Attorney General, Office of Justice Programs.

We have worked with Ms. Robinson since she was the Assistant Attorney General from 1993 to 2000. During that period, as you recall, appropriations for the Office of Justice Programs grew from $800 million to more than $4 billion dollars. She provided leadership that resulted in initiatives which improved the performance of law enforcement in the areas of drug abuse, corrections, technology and violence against women.

She has remained active in the law enforcement community as the Director of the Master of Science Program in the University of Pennsylvania's Department of Criminology and as the Distinguished Senior Scholar in the University's Jerry Lee Center of Criminology. She was also the Executive Director of its Forum on Crime and Justice.

Apart from her professional credentials, the personal commitment Ms. Robinson brings to the Department of Justice should also weigh into your consideration The I.U.P.A., in conjunction with the leaders of every other law enforcement group representing all facets of the police community, feels that we have a personal relationship with Ms. Robinson. We know that she can be easily reached when we have questions regarding the department or one of its many programs. Even when those issues fall outside the aegis of the Office of Justice Programs, she is always willing to steer us to the proper desk to answer our questions and address our concerns. She seeks our input and makes certain that we are kept abreast of programs and policies impacting our members.

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We have thoroughly and sincerely enjoyed working with Ms. Robinson in her role as Acting Assistant Attorney General and look forward to continuing our mutually productive relationship with her when she is confirmed in that role. I am available to answer any questions that you or your staff may have concerning our support.

Very Respectfully,

Dennis Slocumb
International Vice President

SINCE 1895

WILLCOX & SAVAGE

ATTORNEYS AT LAW

Thomas G. Johnson, Jr.
(757) 628-5548
tjohnson@wilsav.com

April 28, 2009

The Honorable Mark S. Warner
Member, United States Senate
B40C Dirksen Senate Office Building
Washington, DC 20510

Re: U.S. Court of Appeals for the Fourth Circuit Vacancy/Barbara Keenan

Dear Mark:

I want to add my emphatic voice in support of Barbara Keenan's candidacy for the current vacancy on the Fourth Circuit.

Barbara is eminently qualified for the Fourth Circuit. She brings all of the criteria that you could look for in a judge.

Before going on the bench, she had extensive experience as an Assistant Commonwealth Attorney and in private practice. I can't overemphasize from a practicing lawyer's standpoint that we need judges who actually dealt with the practicalities of practice. Being a law professor and being bright isn't enough. Justice Holmes long ago said the "life of law has not been logic; it has been experience." He was right.

Starting in 1980 she served as a General District Judge that was followed by being a judge on the Circuit Court of Fairfax County for four years. She then sat on the Court of Appeals for Virginia and finally capped her judicial service with the State of Virginia by serving on the Supreme Court of Virginia from 1991 to the present.

Her role in judicial organizations exemplifies her dedication to public service. She has unquestioned integrity and the ideal temperament for a judge. Her entire career has been marked by one of respect for the law, lawyers and other judges.

She will do you and the State of Virginia proud if appointed and I urge your support for her candidacy.

Reply to Norfolk Office

ONE COMMERCIAL PLACE SUITE 1800 NORFOLK, VIRGINIA 23510 757.628.5500 FACSIMILE 757.628.5566
222 CENTRAL PARK AVENUE SUITE 1500 VIRGINIA BEACH, VIRGINIA 23462 757.628.5600 FACSIMILE 757.628.5659

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If you have any questions, don't hesitate to give me a call. With best regards, I remain

Yours truly,

Thomas G. Johnson, Jr.

TGJ:vbm

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http://judiciary.authoring.senate.gov/hearings/testimony.cfm

United States Senate
Committee on the Judiciary

< Return To Hearing

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
October 7, 2009

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On Executive And Judicial Nominations
October 7, 2009

Today, we will hear from three well-qualified nominees—one for a lifetime appointment on the Federal bench and two for important positions in the executive branch. I thank Senator Cardin for chairing this hearing and I thank the Senators from Virginia, Senator Webb and Senator Warner, for their support and introductions of Justice Barbara Keenan, who has been nominated to fill a vacancy on the Fourth Circuit.

With this hearing today, and with four judicial and three executive branch nominations on the agenda for our Executive Business Meeting tomorrow, the Committee continues to make steady progress in considering nominations. I accommodated the request of the Ranking Member and Republican Senators on the Committee this summer in postponing hearings on other nominations while we considered the Sotomayor nomination. Since then, I have also accommodated their requests to delay consideration of nominees. I hope that we will be able to move forward tomorrow.

This week, with the hard work of Senator Cardin, we were finally able to move forward to confirm Tom Perez to head the Civil Rights Division at the Justice Department. His nomination was stalled for four months before the Senate, despite the fact that he was approved 17 to two by this Committee. At the last minute, Senate Republicans abandoned an ill-fated effort to filibuster the nomination, and asked that the cloture vote be vitiated. He was finally confirmed with more than 70 votes in the Senate.

That still leaves another eight executive branch nominees reported by this Committee for key positions, as well as seven judicial nominations, awaiting action, some after months of needless delay. An opinion piece in The Washington Post today says it well: the Republican opposition has turned the advice and consent role of the Senate into advice "and stall." As Ruth Marcus wrote, advice and consent has "degenerated into sit around and wait." There are still four more Assistant Attorney General nominees to lead key divisions at the Justice Department that are delayed for no good reason. As Ms. Marcus concluded in her column today, "Being in the minority isn't fun. Gumming up the works with holds is one of the few ways to get attention—and action. But it's no way to run a government." The stalling has reached unprecedented proportions. This is the first year of the President's term, when he is traditionally accorded deference and is able to appoint the people he nominates to help administer the executive branch.

With respect to judicial nominees, the story is even worse. President Obama's made his first judicial nomination, that of David Hamilton to the Seventh Circuit, in March, and it has been stalled on the Executive Calendar since early June, despite the support of the senior Republican in the Senate, Senator Lugar. The nomination of Judge Andre Davis to the Fourth Circuit was reported by the committee on June 4 by a vote of 16 to three, but has yet to be considered by the Senate. The nomination of Judge Beverly Baldwin Martin to the Eleventh Circuit has the support of both of Georgia's Senators, both Republicans, and was reported unanimously from the Committee by voice-vote on September 10, but has yet to be considered or scheduled for consideration by the Senate.

The Senate can and must do a better job of restoring our tradition of regularly considering qualified, noncontroversial nominees to fill vacancies on the Federal bench without needless and harmful delays. This is a tradition followed with Republican Presidents and Democratic Presidents. During the 17 months I chaired the Judiciary Committee during President Bush's first term, we confirmed 100 of his judicial nominees and 185 of his executive nominees. And yet, 10 months into President's Obama's first term, we

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have confirmed only two of his nominations for circuit and district courts and 30 of his executive nominees. Fifteen of the President's nominations, many of which the Judiciary Committee reported unanimously, remain stalled on the Senate's executive calendar.
The delays in considering judicial nominations pose a serious problem in light of the alarming spike in judicial vacancies on our Federal courts. There are now 95 vacancies on Federal circuit and district courts and another 25 future vacancies already announced—that is 120 vacancies total. These vacancies are at near record levels. Justice should not be delayed or denied to any American because of over-burdened courts. We can do better. The American people deserve better.

I hope that, instead of withholding consents and threatening filibusters of President Obama's nominees, the other side of the aisle will join us in treating them fairly. We should not have to fight for months to schedule consideration of the President's nominations for critical posts in the executive branch. Today we will hear from another nominee to be an Assistant Attorney General today, Laurie Robinson, to run the Office of Justice Programs. I hope that her nomination can be considered expeditiously and without delays so she can return to a post in which she has previously served with great distinction.
None of the nominees we hear from today should face obstruction and delay. Each of them is incredibly well -suited for the position to which she has been nominated.

President Obama nominated Justice Barbara Milano Keenan to serve on the Fourth Circuit. She is currently a justice on the Supreme Court of Virginia, with an impressive judicial background. Justice Keenan has been a judge for the last 29 years—half of her life—and has served on each of the four levels of the Virginia State courts.

If confirmed, Justice Keenan would be the first woman from Virginia to serve on the Fourth Circuit. She was also the first female general district court judge in Virginia, the first female circuit court judge in that State, the first woman named to the Virginia Court of Appeals, and the second female justice on the Virginia Supreme Court.

The American Bar Association's Standing Committee on the Federal Judiciary has unanimously rated her "well qualified"—its highest rating—to sit on the Fourth Circuit. The Virginia State Bar rated her "highly qualified" by unanimous vote, and bar associations throughout the State gave her their highest recommendation. Many of the lawyers who make up those associations have practiced before Justice Keenan, so their strong support of her nomination is telling.

I commend Laurie Robinson for her willingness to return to government service. She is a former Assistant Attorney General for the Office of Justice Programs (OJP) who has been nominated for a second tour of duty. Ms. Robinson served as Assistant Attorney General for OJP for seven years, from 1993 to 2000, which already makes her the longest-serving AAG in the 25-year history of that office. Ms. Robinson's substantial experience and institutional knowledge will surely be of immeasurable benefit upon her permanent return to the OJP.

From 2001 until President Obama appointed her be Acting Attorney General for OJP in January 2009, Ms. Robinson was a Distinguished Senior Scholar and Executive Director of the University of Pennsylvania's Forum on Crime & Justice. She was also as the director of the university's Criminology Master of Science Program, which she worked to launch in 2004.

The Judiciary Committee has received numerous letters of support for Ms. Robinson's nomination from prosecutors and defense attorneys, from police chiefs and police unions, corrections officers, local and state government officials, and advocates for the victims of crime. The National Association of Police Organizations wrote that "it strongly believes that Ms. Robinson's distinguished career and institutional knowledge alone qualify her for the position,?yet it is her collaborative relationship with NAPO and other state and local partners that we feel will be invaluable to the position." The National Legal Aid & Defender Association also wrote to the Committee in support of Ms. Robinson's nomination. It noted her "distinguished career[, which] provides ample evidence of her qualifications to lead" and highlighted her "firm understanding of how all the components of the justice system are inextricably intertwined."

President Obama has nominated Ketanji Brown Jackson to serve as a member of the U.S. Sentencing Commission. Ms. Jackson has established herself as dedicated public servant and a top-notch appellate attorney. She is currently of counsel at a Washington, D.C., law firm, Morrison & Foerster, and she formerly served as Assistant Federal Defender for the District of Columbia. Ms. Jackson knows the Sentencing Commission well, having served as Assistant Special Counsel to the Commission. Ms. Jackson was also a law clerk to three Federal judges, including Justice Stephen G. Breyer on the U.S. Supreme Court.

I look forward to hearing from the nominees today and welcome them and their families to the Committee.
# # # # #

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Tulsa, Oklahoma
Vancouver, British Columbia
Virginia Beach, Virginia
Washington, DC
Winnipeg, Manitoba

June 2, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Dear Messrs. Leahy and Sessions:

On behalf of the Major Cities Chiefs, representing the 56 largest jurisdictions across the Nation, I am writing to support the nomination of Laurie Robinson to become Assistant Attorney General; she deserves swift confirmation by the Senate.

Ms. Robinson has been Acting Assistant Attorney General since the early days of the Administration and we are pleased that President Obama has nominated her to take this job permanently. The Office of Justice Programs (OJP) is a critical link between the law enforcement community and DOJ and we applaud her efforts to enhance and strengthen the criminal justice system.

This will not be Ms. Robinson's first time at DOJ. During her first stint at the Justice Department, Ms. Robinson ably led OJP and built strong relationships with state and local law enforcement. We welcome her back and look forward to working with her again.

American law enforcement has always looked to you for leadership and we again turn to you to move the nomination of Laurie Robinson quickly through the confirmation process.

Sincerely,

William J. Bratton
Chief of Police
President, Major Cities Chiefs

KAUFMAN & CANOLES
A Professional Corporation
Attorneys and Counselors at Law

Vincent J. Mastracco, Jr.
757 / 624-3213
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757 / 624-3000
fax: 757 / 624-3169

Mailing Address:
P.O. Box 3037
Norfolk, VA 23514

150 West Main Street
Suite 2100
Norfolk, VA 23510

February 27, 2009

The Honorable Jim Webb, Senator
United States Senate
144 Russell Senate Office Building
Washington, D.C. 20510

Re: ***Barbara Milano Keenan, Justice, Supreme Court of Virginia***

Dear Jim:

I am writing to ask that you consider nominating Supreme Court of Virginia Justice Barbara Milano Keenan as a judge of the United States Court of Appeals for the Fourth Circuit. I cannot think of anyone more highly qualified to serve on the bench of the Fourth Circuit Court of Appeals than Justice Keenan.

Throughout her highly distinguished career as a long-time Virginia judge, she has been recognized every step of the way as the perfect embodiment of what the public and the Bar expect of our judicial system. She is extremely bright, thoughtful and insightful while at the same time conducting her court in a professional and dignified manner befitting of the judicial process.

Justice Keenan has a broad range of experience as a Virginia judge. Her judicial career commenced in 1980 as a judge of the Fairfax County General District Court handling civil, traffic and criminal cases in Virginia's lower court where small, but always important, disputes are resolved. In 1982, she was appointed as a judge in the Fairfax County Circuit Court, which is one of the busiest trial courts of record in the Commonwealth, where she conducted jury and non-jury civil and criminal trials as well as various other matters which came before that court.

In 1985, she was appointed as a judge of the Court of Appeals of Virginia, which handles civil, domestic and criminal appeals from Virginia circuit courts and various administrative agencies. In 1991, she was appointed as a justice of the Supreme Court of Virginia and has served in that capacity since that time. Her almost 30 years of service as a judge in every court in Virginia would serve her well as one of Virginia's judges for the United States Court of Appeals for the Fourth Circuit. She has a broad range of experience from trials, where factual disputes are most often paramount, to appeals, where academic legal arguments are the focus. Throughout her career, she has been widely recognized as "the best of the best."

Prior to becoming a judge, Justice Keenan served as an Assistant Commonwealth's Attorney in Fairfax County, where she prosecuted state crimes. Thereafter, she was engaged in the private

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practice of law, handling business matters and civil and criminal trial matters. During her time in private practice, she also served as a Commissioner in Chancery for Fairfax County and as a member of the Fairfax County Board of Zoning Appeals.

Based upon her legal experience alone, in my view there is no person better qualified than Justice Keenan to serve as a judge of the United States Court of Appeals for the Fourth Circuit. Her qualifications also include broad experience over numerous years engaged in various court activities and bar and community activities. Furthermore, she has served as a faculty member in various continuing legal education seminars and has received several distinguished awards. It is obvious from her service to the Court, the Bar and the community that she has never viewed her appointment as a judge as a "retirement." She has always been proactive in advancing justice as it is dispensed through our judicial system.

I have enclosed a copy of Justice Keenan's curriculum *vitae*. Once again, there is no one who is more qualified than Justice Keenan to serve as one of Virginia's judges on the United States Court of Appeals for the Fourth Circuit. Thank you for your consideration of her as a candidate for this most important position.

If you have any questions concerning Justice Keenan, please do not hesitate to contact me.

Very truly yours,

Vincent J. Mastracco, Jr.

VJM/lsw

Enclosure

1452173

THOMAS J. MILLER
ATTORNEY GENERAL

Department of Justice

ADDRESS REPLY TO:
HOOVER BUILDING
DES MOINES, IOWA 50319
TELEPHONE: 515/281-5164
FACSIMILE: 515/281-4209

October 26, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate

VIA E-MAIL

Dear Chairman Leahy and Ranking Member Sessions:

I am writing to express my support for the nomination of Laurie Robinson for Assistant Attorney General for Office of Justice Programs (OJP). Ms. Robinson would influence policies concerning how the Federal government relates to State Attorneys General, as well as state, county and local law enforcement officials. I believe that Ms. Robinson has the knowledge, experience and judgment necessary to head the Office of Justice Programs and work effectively with law enforcement officials at all levels.

Ms. Robinson brings substantial experience to the position, having previously served as Assistant Attorney General at the Office of Justice Programs from 1993 to 2000. In that capacity she oversaw the largest increase in criminal justice research in the nation's history. During her previous tenure as Assistant Attorney General for OJP, Ms. Robinson also spearheaded a number of initiatives that significantly helped the states in areas ranging from comprehensive community-based crime control to violence against women, law enforcement technology and drug abuse and corrections reform. We are confident that Ms. Robinson would continue to work to provide support for state and local law enforcement so that we and our colleagues at the state and local level can continue to be effective in our mission.

It should be noted that prior to joining the Department of Justice in 1993, Ms. Robinson was the director of the American Bar Association's Section of Criminal Justice for 14 years, where she founded the ABA's Juvenile Justice Center and had responsibility for policy development, interaction with Congress, as well as development of special projects in such areas as assistance for crime victims, safety and abuse in the United States prison system, computer crimes and technical assistance and training of state and local law enforcement officials.

Throughout her career, Ms. Robinson has displayed the professionalism and good judgment that is so important to this position. Therefore, I urge you to confirm the nomination of Laurie Robinson for Assistant Attorney General for the Office of Justice Programs.

Sincerely,

Thomas J Miller
Attorney General of Iowa

NACo National Association of Counties
The Voice of America's Counties

September 11, 2009

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
United States Senate
SD-224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member, Senate Judiciary Committee
United States Senate
SR-334 Russell Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

I understand you will soon be conducting a hearing on the nomination of Laurie O. Robinson to be the Assistant Attorney General at the Office of Justice Programs.

On behalf of the National Association of Counties (NACo), I am very pleased to express NACo's strong support for Laurie Robinson's appointment to this most important position. NACo first worked with Laurie during the fourteen years she served as Director of the American Bar Association's Section of Criminal Justice, and following that as Assistant Attorney General for the Office of Justice Programs in the Clinton Administration. In all of these positions, she performed magnificently with superb judgment.

Laurie would bring great intelligence and much intellectual and practical experience to this important policy position.

In addition to being a magna cum laude graduate of Brown University and a member of Phi Beta Kappa, Laurie is a very advanced student of county, municipal and state government. Since 2004 she has been the director of the Master of Science Program in the University of Pennsylvania's Department of Criminology. She has also served as a Distinguished Senior Scholar in the University's Jerry Lee Center of Criminology.

In short I recommend her in the very highest terms. She is by character, experience and intellect superbly qualified for this position.

Sincerely,

Larry E. Naake
Executive Director

25 Massachusetts Avenue, NW / Suite 500 / Washington, DC 20001 / 202.393.6226 / fax 202.393.2639 / www.naco.org

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NATIONAL ASSOCIATION OF DRUG COURT PROFESSIONALS
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Connie Payne
Frankfort, KY
Hon. Louis Presenza *(Emeritus)*
Philadelphia, PA
Hon. William Ray Price, Jr.
Jefferson City, MO
Hon. Robert Rancourt
Center City, MN
Larry Robinson
Newport News, VA
Hon. Robert Russell *(Emeritus)*
Buffalo, NY
Terree Schmidt-Whelan
Tacoma, WA
Hon. John R. Schwartz
Rochester, NY
Hon. Chuck Simmons *(Chair)*
Greenville, SC
Hon. Keith Starrett
U.S. District Court, MS
Hon. Jeff Tauber *(Emeritus)*
Berkeley, CA
Lee Webber
Honolulu, HI
Hon. Robert Ziemian
Boston, MA

CHIEF EXECUTIVE OFFICER

West Huddleston

May 18, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

On behalf of the over 22,000 judges, prosecutors, public defenders, probation and law enforcement officers, court administrators, substance abuse and mental health treatment professionals, and community leaders the National Association of Drug Court Professionals represents, it gives me great pride to strongly support the nomination of Acting Assistant Attorney General Laurie Robinson for the position Assistant Attorney General.

Throughout her career, Acting Assistant Attorney General Robinson has lead multiple innovative initiatives, from an array of positions as a dedicated public servant, and as a distinguished scholar to improve our criminal justice system and our communities.

In fact, as Director of the Masters in Criminology Program at the University of Pennsylvania, in a statement before the U.S. House of Representatives Subcommittee on Crime, Terrorism and Homeland Security, Ms. Robinson makes clear her credence for the use of federal dollars to help localities to implement proven effect pilot programs, which, as the success of the program is established and evident, these jurisdictions willingly take the responsibility of funding the continuation of the program. Ms. Robinson goes on to affirm that "drug courts are a good example of this phenomenon." Also, as Director of the American Bar Association's Section of Criminal Justice, Laurie Robinson founded the American Bar Association's Juvenile Justice Center.

The Acting Assistant Attorney General has worked relentlessly throughout her career and pioneered numerous innovative approaches, to increase and improve the function of our criminal justice system, and has helped us to better understand the link between humanity and criminal justice. Laurie Robinson understands that a strong relationship between accountability, enforcement, and treatment, along with administrative structures and efficient expenditure of federal dollars, are key components to abolishing the drug epidemic in this country.

The nomination of Laurie Robinson presents an opportunity for the White House Office of National Drug Control Policy to stem the tide of substance abuse and crime by implementing a policy that incorporates accountability, enforcement, prevention and treatment. Acting Assistant Attorney General Robinson is the right choice to develop and execute this policy and her expedient confirmation is soundly endorsed by the National Association of Drug Court Professionals. Thank you for your continued leadership and for considering this letter of support.

Best Regards,

C. West Huddleston, III
Chief Executive Officer
And Executive Director

NADCP

NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.

Representing America's Finest
317 South Patrick Street. ~ Alexandria, Virginia ~ 22314-3501
(703) 549-0775 ~ (800) 322-NAPO ~ Fax: (703) 684-0515
www.napo.org ~ Email: info@napo.org

THOMAS J. NEE
Boston Police Patrolman's Association

MICHAEL J. PALLADINO
Detectives' Endowment Association of New York City

MICHAEL McHALE
Florida Police Benevolent Association

SEAN M. SMOOT
Police Benevolent & Protective Association of Illinois

CHRIS COLLINS
Las Vegas Police Protective Association

KEITH DUNN
New Jersey State Policemen's Benevolent Association

WILLIAM J. JOHNSON

September 9, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Sessions:

On behalf of the National Association of Police Organizations (NAPO), representing 241,000 rank-and-file law enforcement officers throughout the United States, I am writing to advise you of our endorsement of the nomination of Laurie O. Robinson for Assistant Attorney General for the Office of Justice Programs (OJP), Department of Justice. Serving as Acting Assistant Attorney General/Principal Deputy Assistant Attorney General since January 28, 2009, Ms. Robinson has played a crucial role in reestablishing the Department's relationship with its state and local law enforcement partners.

Ms. Robinson's success in bringing the state and local law enforcement and criminal justice communities to the table over the past year is evidence of the respect members of the community have for her and her work. Her extensive experience in the criminal justice field speaks for itself. She previously served as Assistant Attorney General for OJP from 1993-2000. Prior to joining the Department of Justice, she was the director of the American Bar Association's (ABA) Section of Criminal Justice for fourteen years, where she founded the ABA's Juvenile Justice Center and was responsible for policy development, working with Congress, and developing special projects in such areas as crime victims, prisons, and police procedures.

Before returning to the Department of Justice in January, Ms. Robinson served as a Distinguished Senior Scholar in the University of Pennsylvania's Jerry Lee Center of Criminology and as Executive Director of its Forum on Crime & Justice before establishing, and later directing, the University's first Criminology Master of Science Program in 2004.

NAPO strongly believes Ms. Robinson's distiguished career and institutional knowledge alone qualify her for the position of Assistant Attorney General for OJP, yet it is her collaborative relationship with NAPO and other state and local partners that we feel will be invaluable to the position. Therefore, we urge you to confirm the nomination of Laurie Robinson for Assistant Attorney General for the Office of Justice Programs. If you have any questions, please feel free to contact me, or NAPO's Director of Governmental Affairs, Andrea Mournighan, at [redacted].

Sincerely,

William J. Johnson
Executive Director



National Association of State Alcohol and Drug Abuse Directors, Inc.

President
Flo Stein
North Carolina

First Vice President
Tori Fernandez Whitney
District of Columbia

Vice President for Internal Affairs
Onaje Salim
Georgia

Vice President for Treatment
Kimberly Beniquez
Delaware

Vice President for Prevention
Craig PoVey
Utah

Immediate Past President
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Vermont

President -NDIIC
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Region VI
Mark Stringer, MO
Region VII
JoAnne Hoesel, ND
Region VIII
Renée Zito, CA
Region IX
Bethany Gadzinski, ID
Region X

Interim Executive Director
Robert I. L. Morrison

September 11, 2009

Senator Patrick Leahy
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Jeff Sessions
Ranking Minority Member
Senate Judiciary Committee
335 Russell Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

On behalf of the National Association of State Alcohol and Drug Abuse Directors (NASADAD), and our component organizations the National Prevention Network (NPN), and National Treatment Network (NTN), thank you for your leadership on the Senate Judiciary Committee. We appreciate your work and stand ready to continue our partnership on issues within the Committee's jurisdiction.

We are writing to express our full support of the nomination of Ms. Laurie O. Robinson to serve as the Assistant Attorney General at the Office of Justice Programs (OJP) within the Department of Justice (DOJ). We are hopeful that the Committee will soon consider this important nomination and recommend action that will lead to a quick confirmation process.

Ms. Robinson has considerable experience with the criminal justice system. Currently Ms. Robinson serves as the Acting Assistant Attorney General/Principal Deputy Assistant Attorney General at the Office of Justice Programs (OJP). From 1993 to 2000, Ms. Robinson served as Assistant Attorney General at OJP where she helped effectively manage federal funding for criminal justice programs—including community-based drug treatment programs for criminal justice populations.

In addition to her extensive federal experience with the criminal justice system, Ms. Robinson has considerable public sphere and academic experience with the criminal justice system. Ms. Robinson previously served as the director of the Master of Science Program in the University of Pennsylvania's Department of Criminology as well as a Distinguished Senior Scholar in the University's Jerry Lee Center of Criminology.

NASADAD is pleased to support Ms. Robinson's nomination and request quick action in order to confirm Ms. Robinson as the Assistant Attorney General at OJP. We believe Ms. Robinson's unique blend of federal and local experience—coupled with her demonstrated commitment to working with a variety of stakeholders to improve policies and programs—would help her be an excellent leader at OJP.

1025 Connecticut Avenue NW, Suite 605 • Washington, DC 20036 • (202) 293-0090 • Fax: (202) 293-1250 • Email: dcoffice@nasadad.org

Again, thank you for your leadership. Should you or your staff have any questions or require additional information, do not hesitate to contact me or Barbara Durkin, NASADAD Senior Policy Analyst, at 202-293-0090.

Sincerely,



Robert I.L. Morrison
Interim Executive Director

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63004.150



June 1, 2009

Honorable Patrick Leahy
Honorable Jeff Sessions
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

The National Association of VOCA Assistance Administrators represents the 56 state agencies that administer the Victims of Crime Act (VOCA) state victim assistance formula grants. As such, our members are responsible for the management of hundreds of millions of dollars that are dedicated to support direct assistance services to victims of all types of crimes. Each year, state VOCA victim assistance funds provide critical help to some four million crime victims, including victims of domestic violence, sexual assault, child abuse, drunk driving, survivors of homicide victims and all other types of crimes.

Our Association and its members have worked very closely with the Office for Victims of Crimes which is a component of the Office of Justice Programs. In that capacity, NAVAA most heartily supports the confirmation of Laurie Robinson to be Assistant Attorney General for the Office of Justice Programs.

We have been proud to have known and worked with Ms. Robinson since her first tenure in this position. She has more than demonstrated her professional qualifications to once again provide vital Federal leadership and vision for our nation's criminal justice system. She has been especially attuned to the importance of providing support and assistance to crime victims, recognizing not only their critical role in the proper functioning of the criminal justice system, but our government's basic commitment that crime victims should be treated with fairness, dignity and respect. It is especially notable that Ms. Robinson always ensured that issues of importance to crime victims were thoroughly considered throughout the Office of Justice Programs.

We are especially pleased that Ms. Robinson recognizes that the success of OJP depends greatly upon the cooperation and collaboration of all components and interests involved in public safety programs and to establish partnerships with all constituencies at the Federal, State, local and tribal levels. Since returning to OJP, first as part of the transition team and as Acting Assistance Attorney General, Ms. Robinson has continued her practice initiated during her first tenure to actively reach out to and communicate with all OJP stakeholders, including representatives of crime victim organizations. She has convened numerous meetings that are truly "listening" sessions that she uses to solicit input and ideas in the formulation of effective, evidence-based programs and policies.

Of special interest to our Association, Ms. Robinson has been a strong and forceful defender of the Crime Victims Fund which provides the revenues to support VOCA-funded services to crime victims. Her support of the non-taxpayer financed Crime Victims Fund is especially notable in contrast to the attempts in recent years to entirely eliminate the Fund balances and transfer those amounts into the General Treasury, thereby depriving crime victims of the essential resources that Congress, for the past 25 years, dedicated solely for the use of crime victim services.

5702 Old Sauk Road, Madison, WI 53705 · Tel 608-233-2245 · Fax 815-301-8721 · www.navaa.org

We are confident that with Attorney General Holder and Laurie Robinson's leadership, we can look forward to working together to continue improving rights and services for crime victims.

We enthusiastically urge the Committee to recommend and the Senate to confirm Ms. Robinson's appointment as Assistant Attorney General for the Office of Justice Programs.

Sincerely,

Steve Derene
Executive Director



September 21, 2009

The Honorable Patrick Leahy
433 Russell Senate Office Building
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the National Crime Prevention Council (NCPC), I write in support of the nomination of Laurie O. Robinson for the position of Assistant Attorney General for the Office of Justice Programs (OJP) in the U.S. Department of Justice. She is an outstanding choice for this position and we urge her confirmation as soon as possible.

NCPC, the home of McGruff the Crime Dog®, is the nation's center of excellence for crime prevention. A private, non-profit, tax-exempt 501(c)(3) organization, NCPC's primary mission is to be the nation's leader in helping people keep themselves, their families and their communities safe from crime. Through a variety of materials, programs, public service campaigns, training curricula and websites, NCPC enables families and neighborhoods to create healthy and safe communities for children and youth. NCPC is a regular and frequent partner with OJP and its bureaus in its important crime prevention work.

As you know, Ms. Robinson has been serving as Acting Assistant Attorney General/Principal Deputy Assistant Attorney General for OJP since January 28, 2009. Her previous service as Assistant Attorney General at OJP from 1993-2000 makes her uniquely qualified to take over its leadership on a permanent basis, especially now when law enforcement agencies all over the country are faced with budget cuts and spiking crime rates.

During her successful previous tenure at the helm of OJP, Ms. Robinson oversaw the largest increase in federal spending on criminal justice in the nation's history as OJP's annual appropriations grew from $800 million to $4 billion. She managed that budget while demonstrating a fealty to spending federal dollars wisely. She spearheaded a number of initiatives in areas ranging from comprehensive, community-based crime control to violence against women, law enforcement technology, drug abuse and corrections. Throughout her distinguished career, she has been a tireless advocate for juvenile justice delinquency prevention.

Ms. Robinson has also shown her skills as an accomplished administrator. She ran OJP, and coordinated with others in DOJ and other agencies, in order to get the job done and get it done on time and right.

2345 Crystal Drive
Fifth Floor
Arlington, VA 22202
tel 202-466-6272
fax 202-296-1356
www.ncpc.org

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Since leaving OJP in 2001, Ms. Robinson has served as a Distinguished Senior Scholar in the University of Pennsylvania's Jerry Lee Center of Criminology and as Executive Director of its Forum on Crime and Justice. She has also been the director of the Master of Science Program in the University's Department of Criminology.

Prior to joining the Department of Justice in 1993, Ms. Robinson directed the Criminal Justice Section of the American Bar Association for 14 years. She serves on the boards of criminal justice organizations and has written and spoken extensively in the field.

It is hard to imagine a more qualified candidate than Ms. Robinson to serve as the Assistant Attorney General for the Office of Justice Programs. It is important that OJP have its permanent leadership in place as soon as possible. We therefore, look forward to Ms. Robinson's prompt confirmation.

Sincerely yours,

Ann M. Harkins
President and CEO

Laurie has been a
will be a tremendous
asset to the Department's
programs across the
country.
Warm personal regards,
Ann

63004.154

National Crime Victim Assistance and Allied Justice Organizations

June 8, 2009

Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

Honorable Jeff Sessions
Ranking Minority Member
Committee on the Judiciary
United States Senate
335 Russell Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

The nomination of **Laurie O. Robinson** to serve as Assistant Attorney General for the U.S. Department of Justice has strong support from a broad coalition of national crime victim assistance and allied justice organizations. Throughout an entire career devoted to justice and public safety, Ms. Robinson has consistently supported innovations that promote better treatment of crime victims, beginning in the 1980s during her tenure as Director of the American Bar Association's Section on Criminal Justice, and continuing through her previous tenure as AAG for the Department of Justice Office of Justice Programs from 1993 to 2000, and as a Distinguished Senior Scholar at the University of Pennsylvania's Department of Criminology.

During her tenure as AAG at the Office of Justice Programs, she was a staunch supporter of crime victims' rights and services, and was diligent in ensuring that crime victim issues were addressed across all OJP Bureaus and Offices. For example, she offered her continuing support for the National Crime Victimization Survey conducted annually by the Bureau of Justice Statistics, which manifested itself in arguing for appropriations to sustain and expand the survey to address emerging victimization issues. Representatives from the State agencies administering federal funding always appreciated her efforts to enlist their ideas as OJP developed new regulations, policies and programs that affected their state efforts.

Ms Robinson is not only a remarkable leader, but also a strong "team player." At OJP, she routinely convened meetings to gather input from the field regarding emerging issues that should be addressed by the agency in its strategic planning. We appreciated that in all these efforts, she clearly demonstrated the value that she placed on the Office for Victims of Crime (OVC) by including the office's leadership in these meetings, and in her meetings with officials in the Office of the Attorney General and in other components of the Department. Ms. Robinson emphasized the importance of accountability for *all* OJP Offices and Bureaus in using their appropriated funds to support innovations in crime victim services and programming. Perhaps most important, she joined the OVC Director in recognizing and promoting the significance of the Crime Victims Fund, and how decisions to limit resources available in this Fund would have an adverse affect on State and Local program efforts.

Laurie Robinson has not only our strong support, but also our admiration for her ongoing commitment to *always* including crime victims, survivors and those who serve them in her efforts to promote justice and public safety. We encourage her confirmation by the U.S. Senate so she can continue to provide the vision and leadership that has been a hallmark of her career.

Sincerely,

Organizations

Association of Prosecuting Attorneys
ATTIC Correctional Services, Inc.
Colorado Organization for Victim Assistance
The Damian Corrente Memorial Youth Foundation
Denver District Attorney's Office
IllinoisVictims.org
International Organization for Victim Assistance
Justice Solutions, Inc.
Mary Byron Project
Maryland Crime Victims Resource Center
National Alliance to End Sexual Violence (Monika Johnson Hostler, President)
National Association of Crime Victim Compensation Boards
National Association of VOCA Assistance Administrators
National Coalition of Victims in Action
National Crime Victim Law Institute
National Crime Victims Research and Treatment Center
National District Attorneys Association
National Organization for Victim Assistance
National Organization of Parents of Murdered Children
National Organization of Victims of Juvenile Lifers
Renee Olubunmi Rondeau Peace Foundation
Security On Campus, Inc.
Survivors Network, Michigan

Individuals

Rachel Atkinson, Community Activist, Agawam, MI
Janet Burt, Detroit, MI
Sharon English, National Victim Advocate, San Clemente, CA
Anne Seymour, National Victim Advocate, Washington, DC
Pamela Pupi, Survivor and Advocate
Gail Burns Smith, National Victim Advocate, Connecticut

Individual/Organizational Letters

International Organization for Victim Assistance
Security on Campus
Denver District Attorney's Office
Sharon J. English
Carolyn A. Hightower
Anne Seymour

63004.156

NCJA National Criminal Justice Association

PRESIDENT
David O. Steingraber†
Executive Director
Wisconsin Office of Justice Assistance

VICE PRESIDENT
Roland Mena†
Executive Director
Montana Board of Crime Control

IMMEDIATE PAST PRESIDENT
David E. Jones†
Executive Director
North Carolina Governor's
Crime Commission

EXECUTIVE DIRECTOR
Cabell C. Cropper†

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Arizona Criminal Justice Commission

Robert P. Boehmer
Director
Institute for Public Safety Partnerships
University of Illinois at Chicago

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Division of Programs and Services
Virginia Department of
Criminal Justice Services

J. Norbert Federspiel †
Director
West Virginia Division of
Criminal Justice Services

Burke Fitzpatrick
Administrator
South Carolina Office of Justice Programs

Jerome Ierome
Executive Director
Commonwealth of N. Mariana Islands
Criminal Justice Planning Agency

Anne Jordan
Commissioner
Maine Department of Public Safety

James Kane†
Executive Director
Delaware Criminal Justice Council

Gary Kendell†
Director
Iowa Governor's Office of Drug
Control Policy

Christian Kervick
Deputy Director
Delaware Criminal Justice Council

Mary Marshall
Public Information Officer
Arizona Criminal Justice Commission

Kathleen Moore
Executive Director
Ohio Office of Criminal Justice Services

Jeanne Smith
Director
Division of Criminal Justice
CO Department of Public Safety

Thomas Weissmuller
Chief Judge
Mashantucket Pequot Tribal Nation

† denotes Executive Committee

September 10, 2009

The Honorable Patrick J. Leahy, Chairman
The Honorable Jeff Sessions, Ranking member
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Leahy and Sessions:

We are very pleased to have this opportunity to express our enthusiastic support for Laurie Robinson for Assistant Attorney General. Members of the National Criminal Justice Association (NCJA) include the state, territorial and tribal chief executive officers of criminal justice agencies charged with managing federal, state, and tribal justice assistance resources as well as practitioners from all components of the criminal and juvenile justice systems. As an association and as the representatives of their individual jurisdictions, our members work closely with the Department of Justice's Office of Justice Programs.

Ms. Robinson, having served as Assistant Attorney General in the Clinton Administration, is well known to NCJA members. Throughout her prior tenure at the department, Ms. Robinson worked tirelessly to understand the needs and address the challenges facing state, local, and tribal criminal justice practitioners. She earned the deep respect of NCJA members for her knowledge of the issues, her unrelenting focus on measuring results and developing a body of evidence based practices, her ethical conduct in all matters particularly grants management, and her commitment to building partnerships across the criminal justice system.

In her eight month tenure as Acting Assistant Attorney General, Ms. Robinson has shown that her commitment to these issues has not waned. From the first days of the Obama Administration, Ms. Robinson has devoted countless hours to engaging representatives of the criminal justice community in a dialogue about our nation's policy and funding priorities, seeking our input and offering her guidance. She has skillfully guided the implementation of the Recovery Act investment in the Byrne Justice Assistance and other grant programs. Her commitment to partnership is extraordinary and greatly appreciated.

Ms. Robinson has the confidence, trust and support of the state practitioners and, in our members' experience, of practitioners across the entire criminal justice spectrum nationwide. Her record, judgment, expertise, and commitment are unquestioned. We strongly urge her speedy confirmation.

Sincerely,

Roland Mena
President

Cabell Cropper
Executive Director

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63004.157

National District Attorneys Association
44 Canal Center Plaza, Suite 110, Alexandria, Virginia 22314
703.549.9222/703.863.3195Fax
www.ndaa.org

June 15, 2009

The Honorable Patrick Leahy
Chairman
The Honorable Jeff Sessions
Ranking Member
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

On behalf of the National District Attorneys Association, the oldest and largest organization representing over 39,000 of America's state and local prosecutors, we offer our full support for the nomination of Laurie O. Robinson to become the next Assistant Attorney General/Principal Deputy Attorney General within the United States Department of Justice.

Ms. Robinson's past work experience within the Department of Justice has allowed her to develop and maintain strong relationships with the state and local criminal justice professionals who work closely with DOJ, including outstanding working relationships with state and local prosecutors. Ms. Robinson previously served as Assistant Attorney General at the Office of Justice Programs from 1993 to 2000, where she oversaw the largest increase in federal spending on criminal justice research in the nation's history. During this time, she also spearheaded a number of initiatives in areas ranging from comprehensive community-based crime control to violence against women, law enforcement technology, drug abuse and corrections. At a time where close collaboration between federal, state and local criminal justice professionals is crucial for America's continued safety, Ms. Robinson has proven she understands the importance and value of working as partners with state and local criminal justice professionals.

The National District Attorneys Association believes that Ms. Robinson would be an outstanding addition to Attorney General Holder's staff in the Department of Justice. We are happy to offer our full support for Ms. Robinson's nomination to serve as Assistant Attorney General/Principal Deputy Attorney General and encourage her swift nomination by the Senate.

Sincerely,

Joseph I. Cassilly
President

To Be the Voice of America's Prosecutors and to Support Their Efforts to Protect the Rights and Safety of the People

To strengthen and promote cities as centers of opportunity, leadership, and governance.

National League of Cities

1301 Pennsylvania Ave., N.W.
Washington, D.C. 20004-1763
202-626-3000
Fax: 202-626-3043
www.nlc.org

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Kathleen M. Novak
Mayor
Northglenn, Colorado

First Vice President
Ronald O. Loveridge
Mayor
Riverside, California

Second Vice President
James E. Mitchell, Jr.
Council Member
Charlotte, North Carolina

Immediate Past President
James C. Hunt
Councilmember
Clarksburg, West Virginia

Executive Director
Donald J. Borut

September 11, 2009

The Honorable Patrick Leahy
Chairman
Senate Judiciary Committee
U.S. Senate
224 Dirksen Office Building
Washington, D.C. 20510

The Honorable Jeff Sessions
Ranking Member
Senate Judiciary Committee
U.S. Senate
335 Russell Office Building
Washington, D.C. 20510

Dear Senators:

On behalf of the 19,000 cities and towns represented by the National League of Cities (NLC), I am writing to express our unambiguous support for the nomination of Ms. Laurie O. Robinson to be the next Assistant Attorney General, Office of Justice Programs, United States Department of Justice.

Ms. Robinson is no stranger to the Department of Justice having previously served in this capacity from 1993 – 2000. During her previous tenure with the Department, Ms. Robinson oversaw the largest increase in federal investment on criminal justice research. This research continues to play an important role in the crime prevention, intervention, and enforcement efforts of city officials all across the country.

Ms. Robinson's impressive track record of public service is further bolstered by her achievements in the criminal justice policy arena. Between 2001 and January 2009, she served as a Distinguished Senior Scholar in the University of Pennsylvania's Jerry Lee Center of Criminology, and as Executive Director of its Forum on Crime and Justice. In addition, in 2004, Ms. Robinson launched a Criminology Master of Science Program at the University, which she continued to direct until leaving to return to the Department of Justice earlier this year.

Before joining the Department of Justice in 1993, Ms. Robinson served for 14 years as the director of the American Bar Association's (ABA) Section of Criminal Justice, where she founded the ABA's Juvenile Justice Center and had responsibility for policy development, work with Congress, and special project development in areas such as crime victims, prisons, and police procedures.

Past Presidents: **John DeStefano, Jr.**, Mayor, New Haven, Connecticut • **Brian J. O'Neill**, Councilman, Philadelphia, Pennsylvania *Directors:* **John S. Brenner**, Mayor, York, Pennsylvania • **Carl Brewer**, Mayor, Wichita, Kansas • **William G. "Bill" Brooks**, Mayor, Belle Isle, Florida • Jim Byard, Jr., Mayor, Prattville, Alabama • **Malcom Chapman**, Alderman, Rapid City, South Dakota • **Miguel M. Chavez**, Councilor/Mayor Pro Tem, Santa Fe, New Mexico • **Brad Cole**, Mayor, Carbondale, Illinois • **Mildred C. Crump**, Councilwoman at-Large, Newark, New Jersey • **Joseph A. Curtatone**, Mayor, Somerville, Massachusetts • **Joe Davis**, Sr., Alderman, Milwaukee, Wisconsin • **Gretchen Driskell**, Mayor, Saline, Michigan • **Doug Echols**, Mayor, Rock Hill, South Carolina • **James J. Fisley, Jr.**, Executive Director and CEO, Connecticut Conference of Municipalities • **Larry G. Frang**, Executive Director, Illinois Municipal League • **J. David Fraser**, Executive Director, Nevada League of Cities and Municipalities • **Dan Furtado**, Councilmember, Campbell, California • **Miriam Hair**, Executive Director, Municipal Association of South Carolina • **Rap Hankins**, Council Member, Trotwood, Ohio • **Deborah A. Hill**, Councilwoman, Warrensville Heights, Ohio • **Edna Branch Jackson**, Mayor Pro-Tem/Alderman at-Large, Savannah, Georgia • **Bobby G. Kilgore**, Mayor, Monroe, North Carolina • **George Lewis**, Executive Director, Mississippi Municipal League • **Sylvia L. Lovely**, Executive Director, Kentucky League of Cities, Inc. • **Myron Lowery**, Council Member, Memphis, Tennessee • **Sam Mamet**, Executive Director, Colorado Municipal League • **James F. Miller**, Executive Director, League of Minnesota Cities • **Mark Mitchell**, Council Member, Tempe, Arizona • **Garret L. Nancolas**, Mayor, Caldwell, Idaho • **Frank C. Ortis**, Mayor, Pembroke Pines, Florida • **Tzeitel Paras-Caracci**, Council Member, Duarte, California • **Elizabeth C. Paterson**, Mayor, Mansfield, Connecticut • **Randall W. B. Purvis**, Council Member, Colorado Springs, Colorado • **Debbie W. Quinn**, Councilmember, Fairhope, Alabama • **Sonja Reece**, Mayor Pro Tem, Normal, Illinois • **Ed P. Reyes**, Councilmember, Los Angeles, California • **Sergio Rodriguez**, Alderman, New Haven, Connecticut • **Steve Salazar**, Councilmember, Dallas, Texas • **Audwin M. Samuel**, Mayor Pro Tem, Beaumont, Texas • **Sharyn T. Tallman**, Councilor, Parkersburg, West Virginia • **James Taylor**, Councilman, Littleton, Colorado

In closing, Ms. Robinson's expertise and commitment to these issues will be an invaluable addition to the Department of Justice's efforts to partner with cities and towns to improve the quality of life in our communities. We are proud to support her nomination.

Sincerely,

Donald J. Borut
Executive Director

NATIONAL LEGAL AID & DEFENDER ASSOCIATION

1140 Connecticut Avenue NW, Suite 900
Washington, DC 20036
T: 202.452.0620
F: 202.872.1031
www.nlada.org

September 17, 2009

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
U.S. Senate
224 Dirksen Office Building
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member, Senate Judiciary
U.S. Senate
335 Russell Office Building
Washington, DC 20510

Dear Senators Leahy and Sessions:

We are writing to add our vigorous support to the nomination of Ms. Laurie O. Robinson to be Assistant Attorney General for the Office of Justice Programs (OJP).

The National Legal Aid & Defender Association (NLADA), founded in 1911, is the oldest and largest national, nonprofit membership organization devoting all of its resources to advocating equal access to justice for all people. NLADA champions effective legal assistance for people who cannot afford counsel and serves as a collective voice for both civil legal services and public defense services throughout the nation. Through its long history, NLADA has established itself as a leader in the development of national standards relating to the delivery and provision of legal services and has been a longstanding partner with the United States Department of Justice on standards development and other initiatives that advance the administration of justice.

Ms. Robinson's distinguished career provides ample evidence of her qualifications to lead the Office of Justice Programs in carrying out its mission to "increase public safety and improve the fair administration of justice across America through innovative leadership and programs." NLADA worked closely with Ms. Robinson from 1993 to 2000 when she held the same position for which she is being nominated now. She is a strategic, effective leader who understands the complexities of justice systems and how to deploy resources and utilize research, data and other tools to strengthen systems. Under her leadership, the annual appropriations for the Office of Justice Programs grew substantially ---from $800 million to $4 billion – and she led the development of initiatives that are now hallmarks of quality criminal justice administration, including community-based crime control and increased investments in preventing and treating drug abuse.

Ms. Robinson has a firm understanding of how all components of the justice system are inextricably intertwined, including each of the three "legs" of the criminal justice adjudication function: the courts, prosecution and defense, and must be supported in tandem for fairness and efficiency to prevail. As Assistant Attorney General in 1999, Ms. Robinson led the development of the first ever National Symposium on Indigent Defense. Bringing together state policymakers and justice officials, the conference

spurred substantial, beneficial public defense system reforms. As recently as June 24 when she addressed NLADA's American Council of Chief Defenders as the Acting Assistant Attorney General for the Office of Justice Programs, Ms. Robinson reiterated a point that Attorney General Eric Holder had made to the audience just moments before, "...we believe that our criminal and juvenile justice systems work ONLY if we provide EVERY DEFENDANT WITH COMPETENT COUNSEL." She went on to stress the importance of "giving public defenders the tools they need to do their jobs effectively. This means training. This means technology. It means standards. It means data and research so that we can gain a better understanding of the needs of public defense systems."

We have complete confidence that Ms. Robinson will deliver on the intentions she expressed to those conference attendees. She did it with resolve and success under the stewardship of Janet Reno. She will do it with equal fervor under the leadership of Attorney General Holder.

We thank you for the opportunity to support such an outstanding nominee. We hope the Committee will grant her the respect and consideration she so richly deserves.

Sincerely,

Jo-Ann Wallace

Jo-Ann Wallace
President & CEO

NATIONAL ORGANIZATION OF BLACK LAW ENFORCEMENT EXECUTIVES
HUBERT T. BELL., JR. OFFICE COMPLEX
4609 PINECREST OFFICE PARK DR. • SUITE F
ALEXANDRIA, VA 22312-1442
(703) 658-1529 • FAX: (703) 658-9479
Website: http/www.noblenational.org

September 10, 2009

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
U.S. Senate
224 Dirksen Office Building
Washington, D.C. 20510

Dear Chairman Leahy:

I write as the Executive Director of the National Organization of Black Law Enforcement Executives (NOBLE) to encourage you to take prompt action to confirm the nomination of Laurie O. Robinson as the Assistant Attorney General for the Office of Justice Programs in the U.S. Department of Justice.

As you may know, NOBLE was established in 1976 and is dedicated to ensuring equity in the administration of justice in the provision of public service to all communities.

We have worked closely with Ms. Robinson since the time she served as Assistant Attorney General for OJP during the 1990s. We know her to be a strong ally of the law enforcement community and of the principles and goals that NOBLE espouses. As examples, she was instrumental in working on Department initiatives in the 1990s involving steps to improve relations between citizens and police as well as on improving crime victim assistance in minority communities.

Since she left the Justice Department in 2000, Ms. Robinson has continued to work closely with law enforcement. She has been an active member on the board of directors of the Police Foundation. Ms. Robinson knows the issues and can bring strong leadership to the federal government's partnership with state and local law enforcement.

We believe the Department of Justice and the American public will be well served by Ms. Robinson's confirmation. We strongly support the nomination of Laurie Robinson to be the next Assistant Attorney General for the Office of Justice Programs.

Sincerely,

Jessie Lee
Executive Director

NATIONAL SHERIFFS' ASSOCIATION
1450 Duke Street • Alexandria, VA 22314-3490 • 703-836-7827 • Fax 703-683-6541
WWW.SHERIFFS.ORG • NSAMAIL@SHERIFFS.ORG

May 29, 2009

The Honorable Patrick J. Leahy, Chair
The Honorable Jeff Sessions, Ranking Member
Senate Committee on the Judiciary
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Sessions:

On behalf of the National Sheriffs' Association (NSA) and the over 3,000 elected sheriffs nationwide, we are writing to express our strong support for the nomination of Laurie O. Robinson to be the Assistant Attorney General for the Office of Justice Programs (OJP), United States Department of Justice (DOJ). We respectfully request that you confirm her nomination without delay.

The Office of Justice Programs is one of the most significant offices within the federal government to state and local law enforcement agencies. Predominately, funding for vital state and local law enforcement programs, such as Byrne-JAG and SCAAP, is administered through OJP. Therefore, the individual tasked with overseeing this critical office must understand how valuable OJP is to state and local law enforcement agencies across the country.

Ms. Robinson is the ideal candidate for this important position. Not only does she understand OJP's significance to state and local law enforcement, but she is one of the main reasons why OJP is so highly esteemed. Under former President William Jefferson Clinton, Ms. Robinson served as the Assistant Attorney General for OJP from 1993 until 2000. While previously leading this Office, the appropriations substantially expanded from $800 million in 1993 to over $4 billion in 2000, thus increasing the essential funding available for state and local law enforcement.

Furthermore, as the former Assistant Attorney General, Ms. Robinson led initiatives focusing on a variety of issues within the criminal justice system, from law enforcement, corrections, combating violence against women, and curbing drug abuse throughout the United States. In 1998, she was also instrumental in establishing a domestic terrorism preparedness office within OJP to provide training and funding to state and local first responders. Little could she know then, that in the coming years, such training and funding for first responders would become extraordinarily essential.

The National Sheriffs' Association has had the distinct privilege of working with Ms. Robinson, while she was the former Assistant Attorney General and while she currently serves as the Acting Assistant Attorney General. We have been continually impressed

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with not only her extensive experience and qualification, but of her willingness to meet with sheriffs and address any concerns they have regarding programs within OJP.

As the Assistant Attorney General for OJP, under Attorney General Holder, NSA is confident that Ms. Robinson will continue to fully support critical state and local law enforcement programs, further fostering the relationship between sheriffs and OJP and enabling sheriffs to continue to protect and serve their communities throughout the United States.

As one of the largest law enforcement organizations in the nation, the National Sheriffs' Association is calling upon the United States Senate to swiftly confirm Laurie O. Robinson as the Assistant Attorney General for the Office of Justice Programs.

Respectfully,

Sheriff David A. Goad
President

Aaron D. Kennard
Executive Director

Serving Our Nation's Sheriffs Since 1940



National Troopers Coalition

National Troopers Coalition
c/o Dutko Worldwide
412 First Street, SE Suite 100
Washington DC, 20003
Phone: 202.479.7162
Fax: 202.863.1980

MICHAEL EDES (ME)
NTC Chairman

DAVID P. CORTESE (MA)
First Vice Chairman

DANNY KINGSMORE (SC)
Second Vice Chairman

THOMAS H. MUNGEER (NY)
Corresponding Secretary

GLEN JONES (WI)
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DAVID M. LATIMER III (SC)
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East Coordinator

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West Coordinator

LARRY SCHNEIDER
Legal Counsel

MICHAEL F. CANNING
Government Relations

A. BRADFORD CARD
Government Relations

MICHAEL MUTH
Director of Communications

DENNIS J. HALLION (NJ)
Past Chairman

September 15, 2009

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
United States Senate
224 Dirksen Office Building
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member, Senate Judiciary Committee
United States Senate
335 Russell Office Building
Washington, DC 20510

Dear Senators Leahy and Sessions:

On behalf of the National Troopers Coalition (NTC) and its 40,000 State Troopers and Highway Patrol Officers, I am pleased to offer our unqualified support for the nomination of Laurie O. Robinson as Assistant Attorney General for the Office of Justice Programs in the United States Department of Justice.

Ms. Robinson has been a leader on criminal justice issues for more than two decades. She has earned the trust and confidence of state and local law enforcement and her efforts have made our nation safer. Her prior experience running this office means she is able to hit the ground running, and she has deep knowledge of the challenges faced by law enforcement agencies across the nation. This experience is crucial at a time when many communities face both persistent public safety challenges as well as shrinking state and municipal budgets. We are not aware of anyone who is more qualified for this position.

NTC wholeheartedly supports and stands behind Ms. Robinson. We urge her swift confirmation by the United States Senate. Thank you for your attention to this important matter.

Respectfully submitted,

Michael S. Edes

Michael S. Edes
Chairman

Representing over 40,000 Troopers Nationwide

POLICE EXECUTIVE
RESEARCH FORUM

Chuck Wexler
Executive Director

September 14, 2009

The Honorable Patrick J. Leahy
Chairman, Senate Judiciary Committee
SD-224 Dirksen Office Building
Washington, D.C. 20510

The Honorable Jeff Sessions
Ranking Member, Senate Judiciary Committee
335 Russell Office Building
Washington, D.C. 20510

Dear Senators Leahy and Sessions:

On behalf of the Police Executive Research Forum (PERF), I am writing to endorse wholeheartedly the nomination of Laurie Robinson for Assistant Attorney General for the Office of Justice Programs.

PERF is a Washington, D.C.-based professional association of police chiefs and other leaders of local and state police departments. PERF also serves as a research and technical assistance organization specializing in helping police agencies to improve their policies and operations. PERF is governed by a board of directors of leading police chiefs.

I have known Laurie Robinson for 20 years, and can tell you that she is one of the most respected leaders in the criminal justice field. During her previous service as Assistant Attorney General in the 1990s, and throughout her career, Ms. Robinson has been actively engaged in issues in the criminal justice field and has spoken on numerous occasions at our national meetings. Just over the last year, she has made time in her schedule to join us at several PERF meetings. So police chiefs from across the nation know Laurie well, and I don't know of any chief who has not been impressed with her dedication and commitment to improving the justice system. Her nomination has been universally praised by the field, because people recognize that she is a person of character and integrity.

Furthermore, we are grateful that Ms. Robinson agreed to place her academic career at the University of Pennsylvania on hiatus in order to return to the Justice Department, because it will be a tremendous benefit to have such an experienced leader at OJP. Ms. Robinson has a depth of knowledge about what works in criminal justice and what does not work. She is known for having a "systemwide" approach to justice issues, an understanding that a multi-disciplinary view is required because the justice system is inherently fragmented across various types of separate agencies, from police and prosecutors to prisons, probation and parole. Ms. Robinson is committed to prevention as well as enforcement, and has always promoted innovation and continuous improvement in justice operations.

And of course, anyone who meets Ms. Robinson is quickly impressed by her strong intellect, her work ethic, and her lifetime of public service.

On behalf of PERF, I urge you to give expeditious consideration to Laurie Robinson's nomination and to confirm her appointment to this critically important post in the Justice Department.

Respectfully,

Chuck Wexler
Executive Director

■ WE PROVIDE PROGRESS IN POLICING

1120 Connecticut Avenue, NW Suite 930 Washington, D.C. 20036
Tel: 202-466-7820 Fax: 202-466-7826 TTY: 202-466-2670 www.PoliceForum.org perf@policeforum.org

STATEMENT OF
LAURIE O. ROBINSON
NOMINEE FOR ASSISTANT ATTORNEY GENERAL
FOR THE OFFICE OF JUSTICE PROGRAMS
OF THE UNITED STATES DEPARTMENT OF JUSTICE

BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

PRESENTED
OCTOBER 7, 2009

Mr. Chairman and Members of the Committee:

I am very pleased to be here today, and very honored to have been nominated to this important position in the U.S. Department of Justice. Before proceeding, I would like to introduce my husband, Sheldon Krantz, and my son, Ted Baab, who are here with me.

Statistical reports tell us that crime has stabilized on a national level, but we still know that many cities, as well as rural and tribal communities in this country, experience problems with gangs, drugs, and violence. And newer challenges – like internet crimes against children and identity theft – confront state and local law enforcement officials, even as they struggle with limited resources.

Over the past three decades, I have had the chance to work with professionals throughout the criminal and juvenile justice system – prosecutors, law enforcement, judges, corrections officials, victim advocates, and tribal leaders. They want to know what Washington can do to help address crime.

From my past experience in the Justice Department, I learned many things – including the fact that the federal government can be an *effective partner* with states, localities, and citizens – if we approach the task in a pragmatic and problem-solving fashion.

Few cutting edge innovations are invented in Washington. The best ideas in public safety – like crime mapping, drug courts, and CompStat – come from pioneers at the local level. So it is imperative that we get outside the Beltway and talk to front-line practitioners.

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Many people ask why I would be willing to come back to head the Justice Department's Office of Justice Programs, if confirmed. The answer is two-fold.

First, the challenges facing criminal justice in this country are clearly different now than they were when I left nine years ago. The greatest change, of course, is that we are now in a post-September 11th environment; local police chiefs and sheriffs must not only address crime, but also be vigilant about terrorism. At the same time, jurisdictions are struggling to deal with these challenges with more limited budgets.

But the second reason that draws me back is that the field has grown more sophisticated in dealing with crime – and that gives me optimism. There is much greater understanding of evidence-based approaches – for example, using risk assessment in deciding what offenders can be safely released on parole, and the adoption of "hot spots" policing – how to effectively target patrols to make the best use of resources.

It is critical that taxpayer dollars fund programs that really work, and that we aggressively share with the field distilled information about new research. Busy policymakers and police chiefs have no time to read academic journals. So one of my goals, if confirmed, would be to establish a "What Works" Clearinghouse to get information in summarized form out to the field.

One more point that I would like to underscore: Particularly with passage of the Recovery Act, OJP is responsible now for *billions* of dollars in grant funds and the oversight and monitoring of *thousands* of grants. It is imperative that there be a system of internal controls and strong accountability to guard against waste, fraud and abuse. Building on my prior experience, this will be one of my highest priorities if confirmed, working closely with the Justice Department's Office of Inspector General.

To conclude, it is clear we face a host of challenges in addressing public safety in this country. Even though criminal justice in the United States is largely a state and local enterprise, the federal government has a key leadership role to play. There is a real opportunity to build innovative partnerships that can meet the greater crime challenges we face today – and will likely confront in the years to come. But I look forward to those challenges and will, if confirmed, welcome the opportunity to address them.

Mr. Chairman, that concludes my statement. I am happy to answer any questions you or the Members may have.

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133 Ivy Lane, Suite 200
King of Prussia, PA 19406-2101

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fax: (610) 768-0646
e-mail: soc@securityoncampus.org
www.securityoncampus.org

June 8, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
433 Russell Senate Office Building
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
335 Russell Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

As advocates for safer college campuses and crime victims' rights we were very pleased to see that Laurie O. Robinson has been nominated to serve as Assistant Attorney General and urge her prompt confirmation.

During her prior tenure as Assistant Attorney General, from 1993 to 2000, the leadership she demonstrated brought about significant improvements in crime research, crime prevention, and crime victim assistance. Also, her time at the U.S. Department of Justice saw the first significant review of and response to campus violence issues, including violence against women. That work continues to have a positive impact to this day.

Thank you in advance for your consideration.

Sincerely,

Jonathan M. Kassa

Jonathan Kassa
Executive Director

S. Daniel Carter

S. Daniel Carter
Director of Public Policy

c.c.: Sen. Arlen Specter

Anne K. Seymour
National Crime Victim Advocate
[redacted]

June 9, 2009

Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

Honorable Jeff Sessions
Ranking Minority Member
Committee on the Judiciary
United States Senate
335 Russell Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

It gives me great pleasure to offer my support for the nomination of **Laurie O. Robinson** to serve as Assistant Attorney General for the U.S. Department of Justice, Office of Justice Programs (OJP).

As evidenced by the strong, collective support for Ms. Robinson from the crime victim assistance field, she is the ideal person to provide vision and leadership at OJP. I have had the pleasure of knowing her, personally and professionally, for over 20 years. Her understanding of and commitment to issues that affect the rights and needs of crime victims and survivors are exemplary. And her career-long outreach to victims and those who serve them as "team players" in criminal and juvenile justice is much appreciated by our field.

I urge your Committee and the U.S. Senate to confirm Laurie O. Robinson as soon as possible, as there is much work to do *right now* to promote victims' rights, justice and public safety.

I appreciate your consideration of my recommendation.

Sincerely,

Anne Seymour

ANNE SEYMOUR
National Victim Advocate

MITCHELL R. MORRISSEY
District Attorney
SECOND JUDICIAL DISTRICT

Steve Siegel
Director of Program Development
[redacted]

State of Colorado
OFFICE OF THE DISTRICT ATTORNEY
DENVER

201 West Colfax Avenue
Dept. 801
Denver, CO 80202-5328
720-913-9022
Fax 720-913-9913

June 8, 2009

Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

Honorable Jeff Sessions
Ranking Minority Member
Committee on the Judiciary
United States Senate
335 Russell Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

It is my honor to offer my support to the nomination of Laurie Robinson for the position of Assistant Attorney General. In my thirty two years of public service in the criminal justice field, there have been few who have shown the range and depth of content mastery of Ms. Robinson. At this time in our history, the Department of Justice Office of Justice Programs is critical to national, state and local efforts to address crime and victimization. Laurie Robinson possesses the knowledge, experience, compassion and passion to lead us forward.

My father-in-law spent his life in government service and would always preach to me that the source of great leadership was the insight to view the large picture and the ability to roll up your sleeves and work within the realities of the populous. I believe that is an apt description of your nominee. A successful justice system in our complex world is reliant on forging new and creative partnerships and collaborations. Simply put, Laurie "gets that!"

I have been fortunate in my career to oversee projects that range from crime victims rights, to offender rehabilitation and restorative community justice, to DNA technology, and to witness protection and crime prevention. Laurie Robinson understands these issues (and more), expects excellence and facilitates those around her to be the best that they can be. What more would we want in this important national leadership position?

In closing, let me reiterate that your support of Laurie Robinson's nomination is the right thing for this country at a time of great challenge and opportunity. I am available for any questions that you may have of me. Thank you for your consideration.

Very Truly Yours,

Steve Siegel

Steven R. Siegel
Director, Special Programs Unit

THE UNITED STATES CONFERENCE OF MAYORS

1620 EYE STREET, NORTHWEST
WASHINGTON, D.C. 20006
TELEPHONE (202) 293-7330
FAX (202) 293-2352
TDD (202) 293-9445
URL: www.usmayors.org/uscm

September 15, 2009

The Honorable Patrick Leahy
Chairman
Senate Judiciary Committee
United States Senate
224 Dirksen Office Building
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Senate Judiciary Committee
United States Senate
335 Russell Office Building
Washington, DC 20510

Dear Senators Leahy and Sessions:

I write on behalf of America's mayors to register our strong support for the confirmation of Laurie Robinson as Assistant Attorney General for the Office of Justice Programs. We applaud President Obama for nominating her and urge you to confirm her nomination quickly.

Ms. Robinson provided strong leadership to the Office of Justice Programs when she served as Assistant Attorney General during the 1990's. Her management of the Office on an acting basis this year – particularly the quick and responsive implementation of the funds provided to the Office through the American Reinvestment and Recovery Act – has been superb. The funds were administered efficiently and effectively and are making a real difference in cities across the nation – providing jobs and enhancing public safety.

Beyond her service in the U.S. Department of Justice, Ms. Robinson brings a wealth of other important experience and knowledge to the job. Her recent work at the University of Pennsylvania involved both academic expertise and practical approaches to preventing and responding to crime, along with strong management responsibilities. Her earlier work at the American Bar Association demonstrated her knowledge of a range of criminal justice issues and of the ways of Washington.

We can think of no better candidate for Assistant Attorney General than Laurie Robinson. We look forward to working with her to make our cities safer.

Sincerely,

Tom Cochran

Tom Cochran
CEO and Executive Director

DEPARTMENT OF CORRECTION AND REHABILITATION

Isiah Leggett
County Executive

Arthur M. Wallenstein
Director

October 5, 2009

The Honorable Patrick J. Leahy, Chair
and Members of the Senate Judiciary Committee
Dirksen Senate Office Building, Room 224
Washington, DC 20002

Re: Letter in Support - Laurie Robinson – Nominated for Assistant Attorney General, Office of Justice Programs, US Department of Justice

Dear Senator Leahy and Members of the Senate Judiciary Committee:

I learned last Friday that the Senate Judiciary Committee would conduct a formal hearing on the nomination of Laurie Robinson as Assistant Attorney General for Justice Programs this coming Wednesday afternoon at 4:00 PM. I am very pleased that I learned of the hearing as I wanted to offer brief comments in support of the President's nominee and the Judiciary Committee's review of her qualifications and fitness for this key position in national criminal justice operations.

I have direct knowledge of Laurie Robinson's professional qualifications for this position. I have worked with her on public policy issues and national correctional policy through our joint appointment to the National Institute of Corrections Advisory Board. We worked in this capacity from 1994 through 2000 and I continued on through 2004. I was privileged to work directly with then Assistant Attorney General Robinson and I should be very direct – this is one of the most focused, engaged and diligent senior public managers I have ever encountered in a career that has extended almost 40 years in the field of criminal justice and corrections. I doubt there is a more respected senior public service manager in the country in this area of public policy than Laurie Robinson. She holds a unique role and a very unique level of support across a broad spectrum of line practitioners just as she earned and retained the respect of many legislators during her previous tenure at the Justice Department.

The Office of Justice Programs and its scope, focus. and level of national involvement demands quality management. It also must generate the highest level of trust and acceptance of evidence and quality based practice for submissions that flow from almost every jurisdiction in the country. Ms. Robinson is accepted as a no nonsense senior manager – commitment to evidence based practice will be a hallmark and guiding principle of her administration if confirmed.

51 Monroe Street, 11th Floor • Rockville, Maryland 20850 • 240-777-9975 • 240-777-9992
www.montgomerycountymd.gov/cor

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This is not simply talk – she has been deeply involved with the Campbell Partnership in a leadership role and understands what "evidence based practice" means on the real world shop floor of criminal justice practice. It will not be some blind and thoughtful conceptual best practice language. Laurie Robinson will translate this prescription into real world practice throughout criminal justice operations and programs and grant evaluation and program development in her area of focus within the Justice Department. I could not imagine a finer nor better prepared senior manager to hit the ground moving. Laurie Robinson demonstrated her commitment to quality and her commitment to staying in place and providing unique stability of leadership during her previous tenure at Justice and this will continue in the future if confirmed.

I have lectured in her courses in the graduate program at the University Of Pennsylvania Jerry Lee Institute Of Criminology (without any form of compensation). When Laurie Robinson calls you consider it an honor to be asked and you do it. Her focus and determination to improve criminal justice operations in this country is firm, without qualification and projected as a professional policy and operational leader. People from across the criminal justice progression – policy and operations – will gravitate to her circle of interest given her reputation and her past productivity and commitment to quality. Her sense and practice of ethical standards is exemplary – this is a career professional deeply respected across the country for the quality of her work and her commitment to substance at every level of performance and practice.

The Senate Judiciary Committee will not be making a thoughtful but reasoned guess if Laurie Robinson is confirmed. The Committee and then the full Senate will be supporting the arrival of one of the singularly most respected and deeply qualified criminal justice senior managers and public policy managers in this country. I earnestly, eagerly, and professionally urge her confirmation for the position of Assistant Attorney general – Office of Justice Programs. Please call upon me if I might provide any further, information to the Judiciary Committee as this matter moves to formal review. I look forward to attending the hearing in support of this splendid colleague.

Respectfully submitted,

Arthur Wallenstein
Director

IOVA
international organization for victim assistance

Marlene A. Young, PhD, JD
President
32465 NE Old Parrett Mountain Road
Newberg, Oregon, USA
[redacted]

May 28, 2009

Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Honorable Jeff Sessions, Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senators Leahy and Sessions,

I write to express our enthusiastic support for the nomination of Laurie O. Robinson as Assistant Attorney General for the Office of Justice Programs.

I have known Ms. Robinson since the late 1970s, when she was the staff director of the Criminal Justice Section of the American Bar Association. There she was as much an instigator of policy ideas as she was an administrator of the section's policy positions. The bar association gained widening respect for the polite activism she fomented across many criminal justice policy areas. We in the incipient victims' movement were especially appreciative of her embracing our vision of victim rights and services, and fostering their advancement not only among her own constituents but among others in the organized criminal justice community, of which she became a respected colleague.

In her previous tenure in the same post for which she is now the nominee, Ms. Robinson sustained her traditional practice of thoughtful, probing rethinking of how criminal justice should be administered. In the main, her work in the arena of victims' rights and services significantly advanced its progress. When, on occasion, we and our colleagues disagreed with a policy idea she was considering, she welcomed our views with uncommon civility, ultimately reinforcing the deep respect she has earned in our sector of the justice system.

The crime victims' movement here and abroad has been aided in extraordinary ways by a few gifted public administrators in the U.S. Government. That movement would be profoundly appreciative to see one of those champions returned to office, and we urge you and your colleagues to make that happen.

Sincerely,

Marlene A. Young, Ph.D., J.D.
President

NOMINATIONS OF JANE BRANSTETTER STRANCH, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE SIXTH CIRCUIT; AND BENJAMIN B. TUCKER, NOMINEE TO BE DEPUTY DIRECTOR FOR STATE, LOCAL AND TRIBAL AFFAIRS, OFFICE OF DRUG CONTROL POLICY

WEDNESDAY, OCTOBER 21, 2009

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC

The Committee met, pursuant to notice, at 2:53 p.m., Room SD–226, Dirksen Senate Office Building, Hon. Amy Klobuchar, presiding.

Present: Senator Sessions.

OPENING STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. I see the surprise on my two Tennessee Senators' face. I'm calling the meeting to order, but I'm authorized to do so by the Democratic leadership.

We'd be glad to hear your statements at this time on the nominees, the nominee that you'll be speaking on. All of us on the Committee value very much the opinions of the State Senators.

Senator Alexander.

PRESENTATION OF JANE BRANSTETTER STRANCH, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE SIX CIRCUIT BY HON. LAMAR ALEXANDER, A U.S. SENATOR FROM THE STATE OF TENNESSEE

Senator ALEXANDER. Thank you, Mr. Chairman. I knew Republicans were doing better, but I didn't know it had come this far.

[Laughter.]

Senator ALEXANDER. So, thank you. It's my great pleasure today to introduce to the Committee Jane Branstetter Stranch from Nashville, Tennessee. She's been nominated by the President to be a judge on the United States Court of Appeals for the Sixth Circuit.

She has a distinguished academic background: summa cum laude, Phi Beta Kappa from Vanderbilt, Vanderbilt School of Law, top grades there. She has lots of practical experience, having taught law at Belmont—labor law at Belmont College.

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Her law firm is a family affair. Her father, who I think is watching today, is one of Nashville's best-known and most respected attorneys, Cecil Branstetter. He introduced legislation to allow women to serve on juries back in the 1950s, so I know he gets some special pride today to see that his daughter has been nominated by the President to be a judge.

Maybe more important than any of these other things, she's been very active in the PTA, in her church, and in the community in Nashville.

So, Senator Sessions, Mr. Chairman, as Governor, I appointed about 50 judges. I didn't ask them their politics, I didn't ask them how they felt about issues. I tried to determine if they had the character and the intelligence and the temperament to be a judge, whether they would treat people before the bench with courtesy, and most important, whether they were determined to be impartial to litigants before the court, and I am convinced that Jane Stranch will be and I'm pleased to recommend her to the Committee.

Senator SESSIONS. Thank you, Senator Alexander. I know, having watched you in the Senate, that you, as a lawyer, have high ideals for the bench, and I appreciate so often your input into the discussions involving the judiciary and legal issues in the Senate.

Senator Corker.

PRESENTATION OF JANE BRANSTETTER STRANCH, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE SIXTH CIRCUIT BY HON. BOB CORKER, A U.S. SENATOR FROM THE STATE OF TENNESSEE

Senator CORKER. Well, thank you, Mr. Chairman. It is good to see you in that role. I am just thinking, as you said that. Lamar has done so many things in his life that were so distinguishing, I forgot that he was a lawyer.

[Laughter.]

Senator CORKER. So I'm glad you're——

Senator SESSIONS. As a businessman, that's probably all right.

Senator CORKER. I am pleased, always, to come before this Committee, and others, with Tennessee who have been recommended for positions like this. We are proud of the people that have served our country in public office. Jane Stranch is someone who I haven't gotten to know except through this process. What I do know about her though, and I know this for a fact, she comes from a family that is one of the most esteemed families in Nashville.

I have served with her brother on civic boards and know of the type of character that this family embodies. I know she's here with people that I greatly respect who are in support of her nomination. I can tell you that I know that she is someone who cares deeply about her community. I know she embodies integrity in everything that she does, and I'm very happy to be here today with Lamar Alexander, supporting her and being presented to this Committee.

I know this Committee will go about this process in a very fair way, as this Committee has done in most recent times, and I look forward to that process. I look forward to hearing what the Committee's recommendation is. But I am very, very honored to be here and I thank her for her willingness to serve our country in this regard.

I know I talked at length with her about that, and while she, I know, loves serving as an attorney in her community and has represented many people across this country, I know she feels it's time for her to give back in this way. So, with that, Mr. Chairman, I thank you, I thank Lamar for allowing me to join him, and I certainly thank Jane Stranch for her willingness to serve her country in this way.

Senator SESSIONS. Thank you very much. Good words, indeed.

Senator CORKER. I am looking forward to your filibuster at this point.

[Laughter.]

Senator SESSIONS. I will ask that the nominees step forward. If you would raise your right hand and remain standing, we'll take this oath.

[Whereupon, the witnesses were duly sworn.]

Senator SESSIONS. Thank you. Please have a seat.

We will just be delighted to hear any comments each of you have, and then if you would like to introduce family or guests that are with you, we would be pleased for you to do that.

I guess, Ms. Stranch, do you want to start? We'd be glad to hear from you.

STATEMENT OF JANE BRANSTETTER STRANCH, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

Ms. STRANCH. Thank you. I would like to introduce my family members and friends who are here, if I might: my husband of 37 years and my law partner, Jim Stranch; our oldest son Gerard, who practices law with us, and his wife Patty, who is an attorney also. They did not bring their 2-year-old son, our oldest grandchild, for obvious reasons. But our daughter Abigail is here, Abigail Tyler, and she is here with our second grandchild, our 4-month-old, Hudson Tyler. With her is her friend, Elise Fellman, who is holding Hudson. Elise is an honorary daughter in our family.

I have my brother, Dewey Branstetter here, who is also my law partner, and his son Hunter Branstetter, who will begin law school next year. I have friends with us also. George Barrett and Mary Barrett Brewer are here in support of what's going on today.

I would also like to say that there are a few people that could not come whose names I would like to mention. Our other two children, Ethan and Grace, are not able to be here because they are observing the Stranch rule that studies come first, and they are at school in Memphis, med school and undergraduate school.

My parents, Cecil and Charlotte Branstetter, were not able to be here today. My father will be 89 in December and does not travel as much as he did previously, but would say to you how grateful he is for this opportunity for me. As Senator Alexander indicated, he served in the Tennessee legislature for one term and sponsored the bill that allowed women to serve on juries, because they had not before. I think it's an honor, and in a way coming full circle, that he has a daughter now that might be able to serve as a judge.

So, I appreciate your time. I appreciate being nominated by President Obama, and I appreciate so much the introduction of our Senators. I know that they believe what I believe: ultimately we're

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Tennesseeans working together to make this system function well. So, I am grateful. Thank you.

Senator SESSIONS. We are joined by Senator Klobuchar. We just had the opening statements from the two home State Senators, Alexander and Corker, and Ms. Stranch's statement.

Senator KLOBUCHAR. Well, very good. Congratulations, Ms. Stranch, on your nomination. I was very impressed when I looked at your background and your legal career and the fact that you also have done all this with both—is it true you practice with your husband? Is that right?

Ms. STRANCH. Yes.

Senator KLOBUCHAR. And that's also a big thing. Very good.

Ms. STRANCH. And with our son and with my father, which makes it a bit difficult to get away from the practice.

Senator KLOBUCHAR. Well, this certainly shows that you get along with everyone and are able to work out conflicts in the workplace.

Then also, I apologize for being late. We had a vote and I had a meeting afterward, but I also wanted to recognize Mr. Tucker, who is now going to speak, who has been nominated to be the Deputy Director of State, Local and Tribal Affairs at the Office of National Drug Control Policy. This is a very important job.

As you know, you will be responsible for coordinating Federal efforts to disrupt the market for illegal drugs, managing a program that provides grants to counter-drug task forces and supporting State and local governments in their efforts to reduce substance abuse at the community level, among other responsibilities. It's a big job, but your background should serve you incredibly well, if you're confirmed. I noted that you got letters supporting your nomination from the National Sheriff's Association, the Police Executive Research Forum, and from the Major City Chiefs.

You began your career as a New York City police officer, right on the front line, so you know what life is like on the front lines for our officers. You have continued your work with local law enforcement after leaving the NYPD as the head of the Office of School Safety and Planning for New York City, not an easy job, and in national government as the Deputy Director for Operations in the COPS office at the Department of Justice. So, we welcome your experience and look forward to hearing from you today.

STATEMENT OF BENJAMIN B. TUCKER, TO BE DEPUTY DIRECTOR FOR STATE, LOCAL AND TRIBAL AFFAIRS, OFFICE OF DRUG CONTROL POLICY

Mr. TUCKER. Thank you very much, Senator. Senator Klobuchar, Ranking Member Sessions, thank you for holding this hearing today. It's a privilege to appear before you and to allow me to give you my views of the new work that I hope to be doing.

Please allow me to introduce my members of my family who are with me today: my wife Diana, my mother-in-law, Constantia Beecher, and my son, Scott Tucker.

I am honored that President Obama has put my name forward to serve as Deputy Director for State, Local and Tribal Affairs of the White House Office of National Drug Control Policy. If confirmed, I look forward to continuing my strong commitment and ca-

reer-long efforts to improving community safety through the use of efficient and effective prevention and crime control practices.

I understand the importance of the ONDCP mission and I do not take lightly the responsibilities of the position for which I am nominated. My return to Washington in this new capacity offers opportunities for me to use my experience in the management and oversight of four critical programs: the High-Intensity Drug Impact/ Drug Trafficking Areas; the Drug-Free Communities Program; the National Youth Anti-Drug Media Campaign; as well as the Counter-Drug Technology Assessment Center.

I am ready to work with Director Kerlikowske and the ONDCP team as they lead the administration's efforts to address drug problems manifested by challenges presented by both treatment and enforcement in communities across our country.

It has been my experience over the years that we can solve the problems that threaten our communities more effectively when we pool our resources. I have spent the better part of my career finding ways to use evidence-based research to inform my decisions and to craft sound practices and policies. In my view, our success in reducing drugs and drug crimes lies fundamentally in our ability to work together, to share information, to be open to new ideas, and develop thoughtful approaches and apply tested strategies.

This approach seems entirely consistent with the Office of National Drug Control Policy mandate to develop and oversee the effective coordination of the President's drug control strategy, as prescribed by the Congress. I believe I have much to offer and hope the members of the Committee will agree.

In closing, please know that I would very much like to add my voice, as well as my thoughts and ideas, to the efforts under way to shape a successful drug control policy. I am happy to answer any questions you may have.

[The prepared statement of Mr. Tucker appears as a submission for the record.]

Senator KLOBUCHAR. Thank you very much.

Do you want to begin, Senator Sessions?

Senator SESSIONS. No, go ahead.

Senator KLOBUCHAR. OK. Ms. Stranch, you're one of our—you know, we have had a number of people, nominees, come through for judge jobs, and you're one of the first that didn't actually have judicial experience. I don't necessarily think that is a bad thing, but I want you to talk a little bit about your legal practice and how you came to focus on certain areas of litigation.

Ms. STRANCH. I have over 30 years of experience in litigation, much of it in the Federal courts. I do believe that that would prepare me for a position as a judge. The primary emphasis of my present practice has been in ERISA, the Employee Retirement Income Security Act. In that, there is a broad range of work that I do. I do complex litigation across the Nation, representing individuals who have lost their pensions, and some of the corporate problems that have occurred in the past decade.

I also represent health funds, pension funds, as entity representation under ERISA, and represent individuals in pension matters. That practice has taken me to many different courts and courts of appeals as well, and has given me the experience of being able to

see different judging styles, shall we say, and hopefully to draw from those the best of what I've seen.

I also have an extensive labor law practice. I am proud to have represented working men and women across America, and individuals as well as labor organizations. That has given me statutory experience in interpretation of the law, as well as board experience in administrative capacities.

Probably the other largest component of what is a very general practice, coming from the South, we have a number of things that we do. And mine, the third one would probably be entity representation of small entities, primarily utility districts, which under Tennessee law are quasi-municipalities. I've provided the full range of defense and corporate work and instruction and entity representation to those districts that are very important in the State of Tennessee because they provide the ability for development in both commercial/industrial and residential. I think those are the primary components of what is a fairly general practice.

Senator KLOBUCHAR. Thank you.

And how would you characterize your judicial philosophy, if you had to describe it? What kind of judge do you want to be?

Ms. STRANCH. I would say that understands authority. Being a litigator over the years, I well recognize that when I go before a judge it's the judge who decides my case. Now I understand that if I am in the position of that judge, I am constrained by like limits: the law constrains me, the percedent constrains me, and I will honor and comply with those things that would govern how I would act as a judge.

Senator KLOBUCHAR. What about the precedents within your own Circuit? How much deference will you give to decisions on issues that aren't necessarily—have not been before the Supreme Court, but have been before your Circuit?

Ms. STRANCH. I understand the deference to existing law. Stare decisis would have a stand on the decisions as they are. Although the final word may not be through the Supreme Court, it would leave an opening to examine those issues in accordance with all of the law and facts that govern that particular case. I would do so, but always understanding that there is a deference to the cases that have been decided and that there is a reason for that deference, to assure the litigants that they can understand the nature of the law and its continuing applicability to the actions that they take.

Senator KLOBUCHAR. And how about when you are on panels and you're working with the other judges? What's your view of trying to get consensus and agreement?

Ms. STRANCH. I have a strong belief in collegiality, and I think perhaps even a stronger belief in civility. Having practiced across this Nation in a number of courts, I would like to say that everywhere I go I receive the same reception, but I can't say that that's always the case. In some circumstances, the method by which courts are run is not always as civil as I would honestly like to see it be.

It's my belief that if you want the courts to be respected, then you need to treat both the litigants and the counsel before you with comparable respect. In doing so, that includes how I would treat

the people that I would work with. As you know, I'm working with my family for a long time.

Senator KLOBUCHAR. That's the best evidence.

Ms. STRANCH. Self-restraint is a learned trait.

[Laughter.]

Ms. STRANCH. But I look forward to the collegiality of a court that I would be able to work with and share ideas with. I think it's extremely important.

Senator KLOBUCHAR. Thank you very much.

Senator Sessions.

Senator SESSIONS. Thank you. Good questions.

Well, I think your experience is a valuable one. I think you are right, that you may not know how to describe it, but you know some judges handle parties and litigants better than others. I appreciate, I think, a sincere commitment on your part to treat the litigants fairly and objectively and to render a decision based on the law and the facts, and comply with the oath, which is to be impartial. You will take that oath. It also requires you to do equal justice to the poor and the rich, and it also requires you to serve under the law, under the Constitution and the law of the United States, and not above them.

So I really appreciate people who have had a good practice. And, what? Eighty-something percent of your practice has been in Federal court?

Ms. STRANCH. It has been. That has been my expertise and my interest. I have enjoyed that.

Senator SESSIONS. One thing you haven't had much experience with, it appears, is criminal law, which is a big part of the Federal court and docket. The sentencing guidelines have, to a large degree now, been declared advisory, but they represent a huge commitment of time, effort, and research and data to try to figure out what appropriate penalties are for crimes and, I think, deserve a great deal of deference. I was rather flabbergasted when the Supreme Court declared them advisory, and still remain so. But irregardless, that is apparently the state of the law.

What deference and what approach would you take toward your responsibility to be in compliance with the guidelines, advisory or not?

Ms. STRANCH. I recognize that there has been an alteration in the guidelines from mandatory to advisory, but I also recognize that there's a great deal of law that exists out there on how the guidelines have been applied over time. That law is instructive and is something that would have to be considered and looked to in each new case and to see how it applied to the particular facts of that case. So the governing rule for me would be, what exists in the law, what decisions are there, and were due process rights provided in accordance with the Constitution?

Senator SESSIONS. Well, I think that's true. I would just say to you, my advice—for what it's worth, as a prosecutor for 15 years in Federal court—I'd suggest start applying them, following them. As the years go by or the time goes by and you think that this case might be an exception—but there is a danger, because when I started prosecuting, judges could sentence a person from zero to 20

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years, and some judges would give them probation and somebody else would give them 20 years for the same offense.

There was a real concern of aberrational sentencing, inconsistencies in sentencing. The amount of punishment a person got depended on the judge before whom they appeared. The guidelines have been, I think, a very positive development. I think the judges that have grown up under it feel real comfortable with it and I think most of them try to follow it whenever possible. You just don't want to get to the point of view of deciding the sentence based on the preacher's plea. They always have a preacher come plea. It's sad. I mean, these things are tough, they're no fun.

Ms. STRANCH. Thank you.

Senator SESSIONS. Now, as a judge, you're aware that rulings against prosecutors are normally not appealed. In a number of decisions you make, the prosecutor is unable to appeal. That's a pretty awesome power for a judge. I guess I would ask you, do you recognize that the person representing the people of the United States, seeking to protect them from criminal predators, they're entitled to a fair shake in court also?

Ms. STRANCH. Yes, sir, I would. I believe that everyone is fair—should have a fair shake and should have an equal opportunity before the courts.

Senator SESSIONS. You know, we've had lawyers that represent business interests and they've been questioned about their fairness. You've represented the AFL–CIO and other labor interests. You will take the oath to do equal justice to the poor and the rich and to be impartial. Will you be able to give the parties before the court a fair hearing, even though you've had a background more from the labor side?

Ms. STRANCH. Yes, Senator, I would. If I will have the privilege of serving, I will do what the law calls me to do, not to be a respecter of anyone, but to be an equal treater of all.

Senator SESSIONS. Thank you. I'm impressed with your record and impressed with the recommendations from your two Senators. I think you'll make a good nominee, from what I know.

Ms. STRANCH. Thank you, sir.

Senator KLOBUCHAR. Thank you very much, Ms. Stranch.

Ms. STRANCH. Thank you.

Senator KLOBUCHAR. Mr. Tucker, could you talk a little bit about your 22 years as a police officer in New York City and how that has shaped your approach to this job?

Mr. TUCKER. Yes, Senator. Interestingly enough, I started out my career, and one of the first assignments in my career was being trained to be an instructor and to be an educator of policies and issues and the treatment around drug issues. So it's ironic that I'm here today, sitting here as the nominee for the Deputy Director of State, Local and Tribal Affairs for ONDCP.

I was a beat cop after that, and in doing that, my day-to-day operations involved making arrests, and on occasion arrests for narcotics and other types of crimes. So the training started out pretty much, and the job was pretty much uneventful, nothing extraordinary. During the time that I was a police officer, I went to school and got my undergraduate degree and law degree while I was a police officer. After getting a law degree, taught at the police acad-

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emy, taught law, and then subsequently went to the Legal Bureau of the New York City Police Department, where I served as a legal advisor for the department for a few years.

Subsequent to that, I moved on to the Civilian Complaint Review Board within the police department, where I served as the Deputy Director for pretty much investigations in the agency, and thereafter worked for the New York City mayor as the liaison for Law Enforcement Services as assistant director there, where I spent time working on problems and issues involving coordination efforts between and among our local criminal justice agencies of Probation, Juvenile Justice, and so forth. Thereafter, I left the agency and ran the Human Rights Commission for about 18 months on behalf of the mayor, and subsequent to that retired from city government. So, it was kind of a diverse employment career early on.

Thereafter, when I moved into other areas, I became a researcher and worked with a program focused on substance abuse called the Substance Abuse Strategy Initiative that was then based at the Wagner Graduate School of Public Service at NYU, and subsequently merged with an organization that still exists called CASA, the Center on Addiction and Substance Abuse, where I was director of Field Operations and senior research associate, focusing on a variety of at-risk populations and developing program demonstrations.

In particular, focused on one demonstration program focused on at-risk youth, and the goal of that program, we were trying to test different strategies that would provide us with best practices for keeping pre-adolescents from becoming involved in drugs and crime. We ran that in the five different cities—that program in five different cities around the country, and it was rigorously evaluated, both from an impact perspective as well as a process perspective.

That gave us, I think, and informed the entire community on the issue of how we deal with the variety of issues that students face and how to protect communities, both from a public safety perspective as well as how to keep children from—our youth from becoming involved in drugs and crime.

We also developed a program—and I was the person who developed some of the community policing aspects of that—focused on ex-offenders and reentry. So we spent a fair amount of time. Again, this was a multi-site program, working with ex-offenders to test some of the early strategies surrounding the issues of how we get ex-offenders who are leaving incarceration to enter society—reenter society in a way that was productive. Most of those folks, the offenders who were returning, were offenders who were drug-addicted, so we were trying to build a variety of services around supporting those individuals in terms of housing, employment, and of course drug treatment, at the time.

Then more recently, as you pointed out, I had the honor to serve in the Clinton administration as the Deputy Director of COPS, where I was responsible for managing the grants administration program principally, but also training and technical assistance to State and local jurisdictions, as well as setting up a network of regional community policing institutes, which are actually still active.

They were designed to help continue some of the work that came out of the funding that we provided during the administration at

the time, and were intended to survive the COPS office once it moved on. So, those regional community policing institutes are still active and providing a variety of services in support of local communities and partnerships with universities, police officers, law enforcement, and such.

Senator KLOBUCHAR. Thank you very much.

Senator Sessions.

Senator SESSIONS. Thank you.

Mr. Tucker, I think this is an important office that you're about to be a part of. It's the first czar's office, I guess, that we had. Maybe it didn't go back as far as the Romanoffs, but the first drug czar in that office was designed to try to create some coordination in our enforcement of drug activities. There are so many independent entities, as you well know from your background: sheriffs, and police departments, and State prosecutors, and prison systems, and drug treatment programs, and this, that, and the other, educational groups, school groups, all involved in trying to reduce the number of people involved with drugs.

Some people were critical of President Reagan's war on drugs and Just Say No program, but I was there. We had over 50 percent of the high school seniors that admitted using an illegal drug substance in 1979, according to a University of Michigan study, an authoritative study. By the time I think he left office, or President Bush left office, it was half of that. That was a huge progress, and part of it, I believe, was a consistent message that drug use is not acceptable, it's not funny, it's not a joke, it's not recreational. It's serious, dangerous business.

Now, you've been on sort of both sides, as a law officer and a part of the CASA program. You've studied this and tried to think it through. I would just suggest to you that one of your roles may be, like General McCafferty, I think, found his under President Clinton, to try to make sure that administration isn't caught up too much in being soft on these issues, in trying to be nice about it, and to take the hard issues that are necessary to keep drug use down in the country.

So let me ask you one question. There's been some news lately about it. That's the California medical marijuana thing. That was a big mistake, in my opinion. General McCafferty opposed it when that came up under President Clinton. Bill Bennett opposed it when he was drug czar. Mr. Bob Weiner, President Clinton's White House Director on Public Affairs for ONDCP, said this recently, warning the Obama administration: "Be careful about the new lax enforcement policy for medical marijuana because you may get way more than you bargained for. Prescription marijuana use may explode for healthy people. "

Do you think that's a concern, and would you share that?

Mr. TUCKER. Thank you, Senator. It's an important issue. Glad you raised it. As a former law enforcement official and in various capacities, I've always been focused on enforcing the law. Wherever we have statutes that exist that require or identify conduct that is illegal, then my view is that those laws should be enforced, whether they be local laws or Federal laws.

Having said that, I'm not fully versed on the status of the latest issue regarding medical marijuana, except to say that I've read

some of the articles and dealt with some—and read some of the issues that are on the table. If I were to join the administration, I would obviously be committed to following whatever the wishes are and whatever the processes are coming out of the administration.

Senator SESSIONS. Well, I understand that. I would just say to you, I think you probably have a good perspective. There's always people that just think that if we could just legalize all this, the problems would go away. But that's not so. It's just not. In places that have legalized drugs, they've generally had difficulties. It looks like California is having a real problem with this medical marijuana gimmick.

I think—I'm not sure Mr. Ogden's—the Deputy Attorney General's—memorandum titled "Authorizing Medical Use of Marijuana," sets a good policy, because you've got to be careful about the message. Don't you think one of the main things that the drug policy board should do is send a clear message about drug use and the dangers of it, and to utilize the power of your office to be a national spokesman for efforts to contain illegal drug use?

Mr. TUCKER. You are absolutely correct, that is the mission of the Office of National Drug Control Policy, and that is the mission that I would wholeheartedly support at all costs, if I am confirmed.

So, yes. I don't—marijuana is illegal. It is a substance—it is, in our schedule of substances, a Schedule 1—I believe a Schedule 1 illegal drug, and as a result of that, the laws against marijuana should be enforced, as far as I'm concerned.

Senator SESSIONS. Well, thank you. I don't want to go much longer.

Senator KLOBUCHAR. Go ahead.

Senator SESSIONS. But also, your organization, ONDCP, has been active with schools, dealing with young people and drug use, particularly—a particular emphasis of that organization. You've been involved in New York in that, and I commend you for it.

Can you—do you have any observations, briefly, about the connection between drug use and drop-outs and violence by young people?

Mr. TUCKER. No, I don't have any specific information, Senator. But I think that's a good question. Some of the research that I worked on personally while I was a researcher with CASA focused on preventing—recognizing, first of all, that the pre-adolescents that we were working with, it was determined that they were clearly at risk for getting involved in drugs and crime. In fact, we determined perhaps the focus on pre-adolescents may have been the age—we should have started, perhaps, at a younger age to sort of get the message out.

So, yeah. I think the message that ONDCP tries to send in every possible way is to make it clear to young people in particular, and through our media campaign I understand that the agency has in the past placed heavy emphasis on directing their messages to young people between 12 and 17 years of age.

As someone who worked in schools, there's no question that our students, our young people, have to be reminded repeatedly about the illicit effects of narcotics and dangerous drugs, so we can't give enough or put enough information out there to dissuade them, in

my view. So we—if I'm confirmed and I go to ONDCP, one of the ways in which I think I would focus my attention would be on that issue. I'm familiar with it.

I was in the trenches with young people at schools around the clock, and that was working with not only schools around other—schools in other parts of the country when I was a researcher, but while I ran the New York City—safety for the New York City school system, which is the largest in the country.

Senator SESSIONS. Well, I would just say, that's—I'm glad to hear you say that. I remember when I was a U.S. Attorney in the early 1980s, we had the Partnership for Youth and Coalition for a Drug-Free Mobile, I was on the board of both of those. We spent years working on this. I truly believe that that was as much a part of the reduction in drug use by youth as anything that occurred.

And you are correct to say, even though the teachers may be, and the volunteers may be a little tired of saying it and they're not as enthusiastic as they were when they first rose up, somehow we've got to figure out a way to keep that message out there. We do not want those numbers to start going up again to a significant degree.

Thank you, Madam Chairman. I have one more thing. I will submit a question to you in writing. But I do believe we need to deal with the disparity between crack and powder cocaine. I've had an amendment to take some substantial steps to reduce that problem and make it better for the last 10 years. But I am concerned that some of the policies indicate a willingness to go too far that could create an impression that we're on the road to legalizing drugs, and that drug use is not a serious problem in our country.

That's one thing you and your organization will need to be engaged in. It's not just the Department of Justice, but your organization is dealing with policy. What are the right sentences for serious drug dealers in America today? We can't eviscerate those penalties, but we can change them and make them better, and we must do so, actually. We've gone too long without addressing that. So, I look forward to working with you on that.

Mr. TUCKER. So do I, Senator. Appreciate it. Thank you.

Senator KLOBUCHAR. Thank you.

And Senator Sessions, I do appreciate your support for eliminating that disparity. I think it's very important.

Also, Mr. Tucker, thank you for your explanation on the drug policy. I know those are difficult issues. I think one of the things that law enforcement is confronted with every day is just the triaging and trying to decide where to put the resources for the best bang for your buck, so to say.

So could you talk a little bit about your priorities for drug enforcement and that side of things?

Mr. TUCKER. Sure. Just one comment with respect to the crack/powder cocaine—crack issue. I agree 100 percent that the issue of parity should be dealt with, an I would commit to talking with you and look forward to talking with you further about that in the future.

As it relates to the more general question that Senator Klobuchar just raised, I think generally, because of the areas of responsibility that I have in HIDTAs, as well as the Drug-Free Communities in particular, we will be looking at, and I hope to bring

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sort of my experience to looking at both the treatment and the enforcement aspects of this as much as possible.

Of course, the High-Intensity Drug Trafficking Area is totally committed, the 28 HIDTAs, as well as the Southwest border, are all trying to do as you suggested, triage, and to deal with both the violence as well as the drug trafficking, dismantling, and disrupting as many drug trafficking organizations as possible. So we hope to certainly keep that commitment and working with all the Federal, State and local agencies to stay the course.

The same, I think, is true with respect to the Drug-Free Communities from another perspective, and that is at the local level, to be sure that we engage with communities and various members of communities, in addition to law enforcement to ensure that any of the best practices that are coming out of some of the grants that have been funded make their way to other communities by way of educating them in ways in which they can reduce the use of drugs by our youth, but also deal with the other issues that become a blight on our communities as a result of the drug trafficking.

Senator KLOBUCHAR. And one of the things I get concerned about, as resources are tight in our local government units and people are feeling it everywhere, is just, I've felt that as we've seen these reductions in crimes—I know my town of Minneapolis went from being called "Murderopolis" by the New York Times—that was a low point, let's say—in the 1990s, to a point where we have reduced the murder rate to really incredibly low rates. A lot of it was not just some good prosecution, if I would tout our own office, but also of the bigger crimes, but the fact that we paid attention to the drug crimes and some of the lower-level property crimes.

With respect to the drug crimes, we had a drug court. When I came in there was a lot of distrust from the police of the drug court, and it's still not perfect, but we ended up taking the gun cases out of it and tried to focus more on some of the lower-end users, with the idea being not to give them a free pass, but to have that continuing checking and handling things differently.

As I say that, I always balance that with, we want to make sure there's carrots, but also sticks in the enforcement. So if you could talk about drug courts, and then just your view of some of that low-level enforcement in general.

Mr. TUCKER. Sure. I'm a huge fan of drug courts, first of all. I mean, they've been around for, I guess, about 20 years now. And as a result, I think—and they've grown. I mean, they've focused. They've become some specialized and focused on different areas, but I think the general theme or thesis of that that supports the drug court theory makes perfect sense. I think we do have to have a balance.

For non-violent offenders, I think the drug courts have proven to be an effective and viable alternative to incarceration and to dealing with people who happen to be drug-addicted, and also happen to be part of the criminal justice system. So I would—if—if I'm confirmed, would seek to continue to focus on and do what I can to help provide resources and support the drug court efforts that are already underway.

As I understand it, there is some—has been some reduction in funding regarding those courts, so we would try to, I hope, bring

some evidence-based information that supports more robust activities and that would justify additional funding, perhaps, for drug courts.

Senator KLOBUCHAR. Then my last question here is, your job also will involve not just local and State efforts, but also tribal affairs. We have a number of tribes and reservations in our State and there's always cooperation issues. We had a horrible shooting at one of our schools on the reservation, with a number of children dying. The Federal Government, the U.S. Attorney's Office, was very involved in that case and working with the tribe. I was just actually up there years later, this last summer, and things have much improved there. But that being said, talk a little bit about how you're going to be able to work with tribal government.

Mr. TUCKER. That's another really important question. I have some familiarity with the tribal issues, primarily having to do with my experiences at the COPS office. We worked closely with the Bureau of Indian Affairs in providing resources during that time, the last time I was in Washington. I would hope—I guess I would like to know whether or not, and how much more has been done since I was here 10 years ago.

So I was pleased to know that this particular position involves my ability to work with tribes as well. Again, my whole career is based on this idea of sort of figuring out how to collaborate, how to use resources, how to have different resources coming from different sources, coming from different parts of the system, support for some of the problems that exist.

I would hope that through our HIDTAs and through our Drug-Free Communities, that we would also be able to bring to bear some—create some solutions, or additional solutions for some of the problems that you cite that may exist and do exist on Native American reservations. So I look forward to engaging in that part of the process as well.

Senator KLOBUCHAR. Thank you very much.

Senator Sessions.

Senator SESSIONS. Thank you, Madam Chairman.

I agree that the drug courts, well run, are very effective. I would not favor reduction of funding for that. In fact, I would think there are many areas that are less priority than the drug courts. They've just got to be run well. It can't be an excuse to turn people loose and treat drug offenses as if they're not serious. But if properly monitored, many of the people who go through those courts do change their lives and do better, so I think it's a good program.

What about the weed-and-seed program? Have you ever had any experience with that, Mr. Tucker?

Mr. TUCKER. I did, Senator, when I was at the COPS office as well. The weed-and-seed concept, as I remember, was effective in some—as is often the case, in some jurisdictions and more effective in others. So I'm not sure what the status of weed-and-seed is—those projects are now. I recall that the intent was to, through the weed-and-seed program, try to institutionalize some of the strategies that flowed from that particular operation back then.

Senator SESSIONS. I would just wrap up, but I know we've got a limited time. I would just say, I hope you consider that. I saw it in Mobile. There was no money available when we started that

program. We had a town meeting in the Martin Luther King area of Mobile, where crime was—drug crimes particularly—were very, very prevalent. The good citizens rose up and they said they wanted something done about it. The chief of police responded, the mayor responded, the FBI and DEA. Nobody had—just priorities. And they worked together and developed a plan and completely altered that neighborhood.

I go there every now and then just to see the progress that's been made. It doesn't require a lot of money, but if you've got housing money, if you've already got police money, if you've got drug treatment money, working all that together can really be a positive impact.

Madam Chairman, thank you for this hearing.

Ms. Stranch, I would ask you one thing. We need somebody—the President says, for the nominees to the bench, "We need somebody who's got the heart, the empathy to recognize what it's like to be a young, teenaged mom, the empathy to understand what it's like to be poor or African-American, or gay, or disabled, or old, and that's the criteria which I'm going to be selecting my judges."

How does your philosophy—how would you describe your philosophy with regard to empathy and the requirements of objectivity in judging?

Ms. STRANCH. Thank you. I know that's an important concern to people. I can't explain exactly what was the basis of my selection, though I am deeply honored to be selected. I would say to you that I will be objective and fair, and I do recognize that I am bound by existing precedent and by law, and that those are the things that will govern my decisionmaking.

Senator SESSIONS. Thank you.

Thank you, Madam Chairman.

Senator KLOBUCHAR. Thank you very much, Senator Sessions.

But you will make sure you still have some empathy for your husband when he's practicing alone now at the law firm.

[Laughter.]

Ms. STRANCH. Yes, I will. Thank you.

Senator KLOBUCHAR. All right. Good.

Well, I wanted to thank both of you. This was a very good hearing. I'm going to put into the record Chairman Leahy's statement. He couldn't be here today, but he has a good statement about both of you, so I will put that in the record.

[The prepared statement of Chairman Leahy appears as a submission for the record.]

Senator KLOBUCHAR. Also, some letters of support that we got in favor of Mr. Tucker, and it is from the president of the Police Foundation, the president of the John Jay College of Criminal Justice, and from the Major Cities Chiefs Association, the National Sheriffs Association, and the Police Executive Research Forum.

[The letters appear as a submission for the record.]

Senator KLOBUCHAR. The record will remain open for follow-up questions for 1 week for other members of this Committee.

So I want to thank you so much for being here and for your families. See, you guys? It wasn't that bad, right? OK. Good. Thank you so much, and we look forward to working with you in the future.

The hearing is adjourned.

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[Whereupon, at 3:46 p. m. the Committee was adjourned.]

[The biographical information, questions and answers and submissions for the record follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   Jane Branstetter Stranch

   maiden name: Kathy Jane Branstetter

2. **Position**: State the position for which you have been nominated.

   United States Circuit Judge for the Sixth 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.

   Branstetter, Stranch & Jennings, PLLC
   227 Second Avenue North, 4th Floor
   Nashville, Tennessee 37201-1631

4. **Birthplace**: State year and place of birth.

   1953; Nashville, Tennessee

5. **Education**: List in reverse chronological order 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.

   1975 – 1978, Vanderbilt University School of Law; Doctor of Jurisprudence, 1978

   1973 – 1975, Vanderbilt University; Bachelor of Arts, 1975

   1972 – 1973, University of Tennessee; no degree

   1971 – 1972, University of Virginia; no degree

6. **Employment Record**: List in reverse chronological order 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 description.

63004.177

1975 – present
Branstetter, Stranch & Jennings, PLLC
227 Second Avenue North, 4th Floor
Nashville, TN 37201-1631
Member – 1/1/06 to present (since firm became a PLLC)
Partner – 1994 to 12/31/05 (while firm was a partnership)
Associate – Summer 1978 (following Bar Exam) to 12/31/93
Law Clerk – 1975 through Summer 1978 (primarily Summers during Law School and part-time during preparation for the Bar Exam)

Branstetter & Stranch (Partnership owning an office building)
C. Dewey Branstetter, Jr., Partner
227 Second Avenue North, 4th Floor
Nashville, TN 37201-1631
Partner - 12/29/93 to present

Branstetter Family Partners, Inc. (BFP) (Family Partnership holding land for sale)
Cecil D. Branstetter, Sr., President
Branstetter Properties, Inc.
227 Second Avenue North, 4th Floor
Nashville, TN 37201-1631
Partner - 1996 to present

Other affiliations:

St. Bartholomew's Episcopal Church
Suzy Floyd, Director
St. Bartholomew's Episcopal Church
4800 Belmont Park Terrace
Nashville, TN 37215
Mothers' Day Out Board of Directors - 1/1/09 to present

Episcopal Church Women of St. Bartholomew's – 2004 to present
Reverend Dr. Jerry Smith
St. Bartholomew's Episcopal Church
4800 Belmont Park Terrace
Nashville, TN 37215
President – 2008 through 2009

Property Tax Assistance, Inc. (Non-profit to assist needy with property taxes)
Charlie Cardwell, Metropolitan Trustee
800 2nd Ave. North
Nashville, Tn. 37201
Board of Directors – 2006 to present

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Bellevue Family YMCA and Turner Senior Center Advisory Board,
Laurel Wilson, Executive Director
Bellevue Family YMCA and Turner Senior Center
8101 Highway 100
Nashville, TN 37211
Board President 2006-2008

AFL-CIO Lawyers Coordinating Committee
Jonathan P. Hiatt, General Counsel
816 Sixteenth Street, N.W.
Washington, DC 20006
Board of Directors 2003 - 2006

Poplar Creek Development Company, Secretary
(Family company for land development)
12/03/84 to 9/17/04 (Dissolution)

Poplar Creek Estates Homeowners' Association Board
Charlie Tygard (Bookkeeper for Association)
Accurate Tax & Bookkeeping Service
2606 Eugenia Avenue
Nashville, TN 37211
Secretary-Treasurer – 1987-1998

Metropolitan Nashville/ Davidson County PTA Executive Boards - 1985 to 2004
Served for a total of 14 years on the PTA Boards of several elementary, middle schools and high schools

7. **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, and whether you have registered for selective service.

I have not served in the U. S. Military and was not required to register for selective service.

8. **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.

B.A. Degree, Vanderbilt University, Summa Cum Laude
Phi Beta Kappa

Vanderbilt School of Law, J.D. Degree
Order of the Coif
Appellate Argument Oralist and Brief Writing Awards

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Fellow – Nashville Bar Foundation

Best Lawyers in America, Labor and Employment

Super Lawyers – Mid-South, Employment and Labor

Bellevue YMCA Volunteer of the Year 2006

9. **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.

American Bar Association – 2005 to present
Tennessee Bar Association – 1978 to present
Nashville Bar Association – 1978 to present
Admissions Committee (2 years)
Social Committee (1 year)
Law Association for Women (LAW) early 1990's to present

10. **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.

1978 - Tennessee Bar Association

There has been no lapse in membership.

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.

Supreme Court of Tennessee – September 30, 1978
Supreme Court of the United States – January 8, 1996
United States Court of Appeals for the Sixth Circuit – April 30, 1982
United States Court of Appeals for the Ninth Circuit – February 22, 2008
United States District Court, Middle District of Tennessee – December 7, 1979
United States District Court, Eastern District of Tennessee – April 3, 1991
United States District Court, Western District of Tennessee – March 19, 2008
United States District Court for the District of Colorado – May 21, 2002
United States District Court, Eastern District of Michigan – July 18, 2005
U. S. Tax Court – 1980

There has been no lapse in membership to any court.

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11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, 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.

Episcopal Church Women of St. Bartholomew's – 2004 to present
President – 2008 - 2009

Invisible Children and Child Mothers of Uganda Project
Project Steering Committee – 2006 to present

Nashville Women's Political Caucus - 2005 to present

Episcopal Diocese of Tennessee
Vice-Chancellor – January 2004 to present
Insurance Committee – 2009 forward
Chair, Committee on Elections – 2008 and 2009 Diocesan Convention

Bellevue YMCA and J. L. Turner Senior Center Advisory Board
Board Chair – 2006 – 2008

AFL-CIO Lawyers Coordinating Committee
Board of Directors – 2003 – 2006

General Convention of The Episcopal Church - 2006
Canons Committee

American Anglican Council - 2006

Episcopal Diocese of Tennessee
Chair, General Resolutions Committee – 2004 Diocesan Convention

Tennessee Anglican Council – 2003-2007

Bellevue YMCA and J. L. Turner Senior Center
Co-Chair Capital Campaign 2002-2005

Metropolitan Nashville and Davidson County Public Schools
Citizens Search Advisory Committee – 2001

Episcopal Diocese of Tennessee
Constitution and Canons Committee – 1998 to mid-2000

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Commission on Ministry – 2001 - 2004

Vanderbilt University School of Law National Alumni Board – 1994-1997

St Luke's Community House
Chair, Two Capital Campaigns between 1993 and 1998

Metro Nashville Public Schools Parent Teacher Association 1984-2006
PTA Executive Boards of various schools – 14 years

Phi Alpha Delta Legal Fraternity – admitted during Law School

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, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin 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.

None.

12. **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. Supply four (4) copies of all published material to the Committee.

For many years, I have submitted educational articles on legal issues to the Tennessee Utility News for a column my firm writes titled "Counsel Corner". The paper is published for utility districts, governmental entities and their service providers and suppliers.

Letter to the editor dated June 26, 2006 concerning the Bellevue YMCA that I wrote along with another Board member.

b. 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, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I do not recall any such documents.

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c. 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.

I do not recall any such testimony or documents.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. 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 recording of your remarks, 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, furnish a copy of any outline or notes from which you spoke.

Bellevue Community YMCA
Founders Club Dinner Speech – October 26, 2004

Tennessee State Council of Machinists
State Convention – September, 2001
Murfreesboro, Tennessee
Dinner speaker on history of labor movement.
No notes or text available.

National Rural Waterworks Association
2000 NRWA Management & Technical Conference
Kansas City, Missouri
October 9-10, 2000 – Series of programs on "Board Leadership" for Utility Boards and City/County governments
No notes or text available

American Constitution Society, Vanderbilt University, Law School Chapter Panel member - Discussion of the interplay of politics and the judiciary and analysis of developments in various areas of law – Fall, 2004
No notes or text available.

United Food and Commercial Workers
Attorneys Conference – October, 1996
Carlsbad, California
"Update on Supreme Court and Other Appellate Decisions"

American Federation of Labor and Congress of Industrial Organizations
Lawyers Coordinating Committee Southern Regional Meeting
April 1, 2004; "Economic Issues Facing Health and Welfare Plans"

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AFL-CIO Union Lawyers Conference – April 27-29, 2003
New Orleans, Louisiana
"Union-Side Law Firm Practice Issues"

AFL-CIO Union Lawyers Conference – May 5-6, 1993
Chicago, IL
"Rights and Duties of Organized Labor Under the Americans with Disabilities Act"

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America
Lawyers Conference – October 18-21, 1992
Palm Springs, California
"Rights and Duties of Organized Labor Under the Americans with Disabilities Act"

Branstetter, Kilgore, Stranch & Jennings Seminars
October 4, 1991 Labor Law Today
"The Duty of Fair Representation"
"Bill of Rights of Members of Labor Organizations 29 U.S.C. § 411"

October 30, 1992 Labor Law Today
"Americans with Disabilities Act"
"Update on Bill of Rights of Members of Labor Organizations"
"Update on The Duty of Fair Representation"

November 19, 1993 Labor Law Today
"Termination Hearings for Public Employees"
"Duty of Fair Representation"

United Garment Workers of America
Staff Meeting – November 19-20, 1992
Nashville, Tennessee
"Update on the Duty of Fair Representation"

Tennessee Bar Association
TBA Labor & Employment Law and TBA Corporate Counsel Sections
The 9th Annual Labor & Employment Law Forum – April 7, 2005,
Nashville, Tennessee
"New Developments in Labor Law Relations"

Tennessee Association of Utility Districts
Annual Conferences

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these

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interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

YMCA Volunteer of the Year – 2006
Interview given to The Tennessean newspaper concerning the YMCA.

The Tennessean – December 4, 2008

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held a judicial office.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____

i. Of these, approximately what percent were:

jury trials? ___%; bench trials ___% [total 100%]

civil proceedings? ___%; criminal proceedings? ___% [total 100%]

b. Provide citations for all opinions you have written, including concurrences and dissents.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

e. Provide a list of all cases in which certiorari was requested or granted.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

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g. Provide 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.

h. Provide 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, provide copies of the opinions.

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (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.) 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 in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not held a judicial office.

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.

15. **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.

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, identify the particulars of

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the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Tennessee Democratic Party, member since 1970's

Tennesseans for Ned McWherter – support of and fund raising for election of Governor McWherter, Governor of Tennessee 1987-1995

Obama Caucus Delegate to the Davidson County, Tennessee and 5th Congressional District Caucuses – early 2008

I have often participated in political fund raising (with groups of people) by having my name listed on an invitation to a campaign event for a candidate for public office. I do not consider that a "position" or "role" in a campaign.

16. **Legal Career:** 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 clerk for 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.

1/1/06 – Present
Branstetter, Stranch & Jennings, PLLC
227 Second Avenue North, 4th Floor
Nashville, Tennessee 37201-1631
Attorney and Member

1978 – 12/31/05
Branstetter, Kilgore, Stranch & Jennings
227 Second Avenue North, 4th Floor
Nashville, Tennessee 37201-1631
Attorney and Partner (1994 – 2005)
Attorney and Associate (1978 – 1994)

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iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not professionally served as a mediator or arbitrator.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

I began a general practice in 1978, with some emphasis in labor, employment (including discrimination), ERISA, personal injury (including worker's compensation) and wrongful death, and utility law. My practice rarely included criminal work, tax or domestic relations law. Throughout the 1980's, my work encompassed litigation in both federal and state courts (including courts of record and those not of record), appellate work and some work with administrative agencies. During some of that timeframe, I practiced law part time and/or took time off to be home with our children.

During the late 1980's and through the 1990's, my appellate practice at the 6th Circuit increased, primarily in labor matters. My basic practice areas continued but even more of my practice took place in the federal courts. In the latter part of the 1990's, my practice included more ERISA work, not just fund representation, but also more complex litigation cases.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

By the end of the 1990's and to the present, my complex litigation practice has expanded to encompass class work across the nation. Though I have done a variety of complex litigation, my primary emphasis is the representation of classes of plan participants who have lost their individual account pensions due to fiduciary breaches, often concurrent with corporate scandals. During that time frame, I have significantly reduced my practice in personal injury and general law but have retained the other areas of practice. Since I began practicing, I have consistently represented ERISA funds, utilities (quasi-municipalities under Tennessee law), and some small corporations, providing the full range of advice, defense and entity representation services.

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.

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A substantial majority of my practice has been in litigation, with an emphasis on brief writing and oral argument. I have also had a significant appellate practice.

i. Indicate the percentage of your practice in:

1. federal courts: 85%
2. state courts of record: 13%
3. other courts: 1%
4. administrative agencies: 1%

ii. Indicate the percentage of your practice in:

1. civil proceedings: 95%
2. criminal proceedings: 5%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried approximately 20 to 25 cases. I was sole counsel in a small number. I tried the majority with my partners.

i. What percentage of these trials were:
1. jury: 20-25%
2. non-jury: 75-80%.

e. Describe your practice, if any, before the Supreme Court of the United States. 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 filed one brief in the Supreme Court of the United States in October 1995 in opposition to a petition for Writ of Certiorari. The matter was:

Akins v. Zeneca, Inc., 1995 U.S. App. LEXIS 21536 (6th Cir. Tenn. July 27, 1995)

Writ of Certiorari was denied:

Akins v. Zeneca, Inc., 516 U.S. 1158, 116 S. Ct. 1041, 134 L. Ed. 2d 188 (1996)

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. 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

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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. Albert Akins, et al, and Tony Brock, et al., v. Zeneca, Inc., Rhone-Poulenc, Inc., Rhone-Poulenc Basic Chemical Company, Stauffer Chemical Company, International Union of Operating Engineers, AFL-CIO, Local 912 International Union of Operating Engineers, AFL-CIO; No. 95-841U. S. District Court for the Middle District of Tennessee, Columbia Division. The case was heard before U. S. District Court Judge Thomas A. Higgins (Retired). Decisions on the appeals to the U. S. Court of Appeals for the Sixth Circuit and U. S. Supreme Court are listed below:

Akins v. Zeneca, Inc., 1995 U.S. App. LEXIS 21536 (6th Cir. Tenn. July 27, 1995)
Akins v. Zeneca, Inc., 516 U.S. 1158, 116 S. Ct. 1041, 134 L. Ed. 2d 188 (1996)

Case Summary:
This case involved the closure and resulting layoff of employees of one of two plants represented by Local 912, my firm's client. In 1991, alleging they should not have been the employees laid off, the employees brought a hybrid claim, Section 301 (against the company)/duty of fair representation (against the Unions). My partner and I represented the Local at the jury trial and I was also primarily responsible for the legal briefing and argument. The Court granted the Rule 50 motion for judgment as a matter of law following the Plaintiffs' proof. I handled the appeal to the 6th Circuit successfully and successfully opposed issuance of a Writ of Certiorari by the Supreme Court.

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Frank Steiner
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Counsel for Defendant, Rhone-Poulenc, Inc. and Rhone-Poulenc Basic Chemicals Company:
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Phone: (615) 742-6232

Counsel for Defendant Zenea, Inc.:
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2. Donald L. Black v. Ryder/P.I.E. Nationwide, Inc., Teamsters Local #519, Joint Council #87 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Southern Conference of Teamsters, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Case Nos. 92-5611 and 92-5694. U. S. District Court for the Eastern District of Tennessee, Judge James H. Jarvis (deceased). Citations to the three appeals to the U. S. Court of Appeals for the Sixth Circuit are:

Black v. Ryder/P.I.E. Nationwide, 930 F.2d 505, 1991 U.S. App. LEXIS 6016, 137 L.R.R.M. (BNA) 2091 (6th Cir. Tenn. 1991)
Judges: David A. Nelson, Harry W. Welford, and Charles W. Joiner

Black v. Ryder/P.I.E. Nationwide, 970 F.2d 1461, 1992 U.S. App, LEXIS 15981, 140 L.R.R.M. (BNA) 2904 (6th Cir. Tenn. 1992)
Judges: David A. Nelson, Danny Julian Boggs, and Harry W. Wellford

Black v. Ryder/P.I.E. Nationwide, 15 F.3d 573, 1994 U.S. App. LEXIS 1725, 145 L.R.R.M. (BNA) 2387 (6th Cir. Tenn. 1994)
Judges: James Leo Ryan, Danny Julian Boggs and Gerald E. Rosen

Case Summary: This case involved the denial of Plaintiff's grievance after which he filed, on 6/14/85, a hybrid claim: Section 301 (against the company, Ryder)/duty of fair representation and Section 411 claim (against Teamsters Union entities, Local 519, Joint Council 87, Southern Conference, and International). My firm represented Local 519, Joint Council 87 and the Southern Conference. The case went to the 6th Circuit three times where I argued and briefed the appeals. Following the first, nonjury, trial of the

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hybrid claim, the case was dismissed by the Court. That decision was reversed on the first appeal and the case remanded for a jury trial. The Section 411 claim was severed and tried to a jury in 9/89 that found against my clients. Upon my motion, a new trial was granted by the District Court and the Section 411 case was retried to a jury in 6/90, resulting in a second jury verdict against Local 519 and Joint Council 87, the Southern Conference having been dismissed. The second appeal was of the Section 411 case. The award against Local 519 was affirmed; however, I was successful in obtaining reversal of the award against the Joint Council and in holding the denial of attorney fees to Plaintiff. In 2/92, the hybrid case was tried again to a jury, resulting in a verdict against Local 519 that was affirmed on appeal.

Counsel for Plaintiff:
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White, Carson & Alliman, PC
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Phone: (423) 442-9000

Counsel for Defendant Southern Conference of Teamsters:
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Baab & Denison
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Dallas, TN 75207
Phone: (214) 637-0750

3. In re Nortel Networks Corp. ERISA Litigation; U. S. District Court of Middle Tennessee, Nashville, Tennessee, MDL Docket No. 3:03-md-01537; Judge John T. Nixon and Magistrate Judge John S. Bryant.

Case Summary:
In 2001, I filed an ERISA breach of fiduciary duty class action case against Nortel (American and Canadian companies) and individual fiduciaries on behalf of the employees who lost most of their 401k account assets when Nortel stock precipitously declined after revelations of accounting and securities violations. In this hard fought case, we calculated losses to Plaintiffs in the billions of dollars. In 2003, the Multi-District Litigation Panel consolidated the Nortel ERISA cases in the Tennessee District Court before Judge John Nixon and I was appointed co-lead counsel for Plaintiffs. The case has been through extensive motion practice and deposition and document discovery, including millions of documents. I managed the case with co-lead counsel Collins and we oversaw the work from members of our firms and attorneys from the several other firms involved. I had responsibility for a number of depositions, much of the briefing and most of the Court argument. The parties engaged in mediation unsuccessfully but another meeting is scheduled. Nortel has filed for bankruptcy in Canada and America.

Plaintiffs' Co-Lead Counsel:
Todd S. Collins

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Primary Co-Counsel include:
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Nortel Defense Counsel:
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4. In re Qwest Savings and Retirement Plan ERISA Litigation, U. S. District Court of Colorado, Civil Action No. 02-cv-00464-REB-PAC; Judge Robert E. Blackburn

Case Summary:
In 2002, I filed an ERISA breach of fiduciary duty class action case against Qwest and individual fiduciaries on behalf of the employees who lost most of their 401k and/or ESOP plan account assets after the merger in which Qwest took over US WEST, Inc., a Colorado utility. Revelation of corporate improprieties resulted in serious decline in the value of Qwest stock mandatorily held in the plan. My firm and the firm of Whatley Drake were named as co-lead counsel after the cases were consolidated in the Colorado District Court. There was extensive motion practice and discovery, including millions of documents in an on-line repository. As well as managing the case with co-lead counsel, I had responsibility for a number of depositions, much of the briefing, Court argument and

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settlement documents and procedures. The case underwent extensive mediation in which I participated and presented. The case was ultimately settled for $33 million, a guaranteed recovery amount in the securities case from Qwest defendants and $4.5 million from co-defendant Deutsche Bank. The ERISA settlement was finalized in 2007.

Plaintiffs' Co-Lead Counsel:
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Counsel for Defendant Qwest:
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Allison Lee
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Presently with U.S. Securities & Exchange Commission
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Michael B. Carroll
Sherman & Howard, L.L.C.
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In-House Counsel, Qwest:
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Heather Shull
Qwest Communications
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Denver, CO 80202
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Defense Counsel – Deutsche Bank:
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Steptoe & Johnson, LLP
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Phone: (202) 429-3000

5. Jack R. McCormick v. Tennessee Department of Environment and Conservation, Division of Water Supply and Robert Foster, Deputy Director of the Division of Water Supply in His Individual and Official Capacity, and Savannah Valley Utility District, Intervenor, Before the Tennessee Water Quality Control Board, Tennessee Department of Environment and Conservation, Nashville, Tennessee, Docket No. 04.02-031364A. Administrative Law Judges Robert Fellman and Lynn M. England.

Case Summary:
This case began with a 2/02 Notice of Intent to Sue and a subsequent Petition before the Water Quality Control Board (Board) of the Tennessee Department of Environment and Conservation (TDEC) alleging violations of the Safe Drinking Water Act (PHSA) and state and federal regulations. The petition against TDEC was for alleged violations at a well producing water used by the customers of Savannah Valley Utility District (SVUD), my client. I intervened in the case on behalf of SVUD, successfully defended the motion to dismiss and litigated the case to the Board in a trial before an Administrative Law Judge. The case turned on EPA promulgated rules regarding surface and ground water. I was successful at the trial and on the motion for reconsideration, the Board denying the Petition on 2/25/03.

Counsel for Plaintiff:
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Phone: (615) 826-7245

Counsel for Defendant, TDEC:
Alan M. Leiserson
State of Tennessee
Department of Environment and Conservation
Office of General Counsel
401 Church Street
Nashville, TN 37219-2310
Phone: (615) 532-0131

6. Kay W. Austin v. Averitt Express, Inc., Demory McCoy, and Harry E. Lawrence, Case No. 39891, In the Circuit Court for Rutherford County, Tennessee at Murfreesboro. This case was before Circuit Judge Don R. Ash.

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Case Summary:
I filed this wrongful death action against a trucking company and two individuals on 4/03/98 on behalf of Kay Austin, the widow of a man killed when a semi truck crossed the median and ran over his car. The case involved cross claims among the defendants. I engaged in discovery, took depositions and prepared for trial before the Court ordered a settlement conference. The case went to mediation on 10/18/00 before Tracy Shaw and was settled. The final order was entered 12/21/00.

Mediator
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Howell & Fisher, PLLC
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Counsel for Defendant Averitt Express, Inc. and Demory McCoy
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Miller & Martin PLLC
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Counsel for Harry E. Lawrence
Dinah J. Michael
McClellan, Powers, Ehmling & Rogers, PC
Court Square Building, Suite 201
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Murfreesboro, TN 37130
Phone: (615) 895-2529

7. Thomas M. Irvin, et al. and Equal Employment Opportunity Commission v. American Telephone and Telegraph Company, U. S. District Court Middle District of Tennessee, Nashville Division, Civ. Nos. 3-89-0424 and 3-89-0646. Judge John Nixon

Case Summary:
This was an age discrimination case my firm brought in 1989 on behalf of a group of employees who were laid off from employment by AT&T based on their age. The EEOC subsequently filed a complaint alleging the same discrimination and the cases were consolidated. My partner and I undertook extensive document discovery along with other pre-trial work and trial preparation. The case was ultimately settled for individual monetary awards. Mr. Irvin was also put back to work.

Counsel for Plaintiff EEOC:
Carson Owen

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Previously with the Memphis EEOC
1407 Union Avenue, 9th Floor
Memphis, TN 38104
Phone: (800) 669-4000

Counsel for Defendant:
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Kramer Rayson LLP
800 S Gay St Ste 2500
PO Box 629
Knoxville, TN 37901-0629
Phone: 865-525-5134

8. In re Xcel Energy, Inc. Securities, Derivative & ERISA Litigation, U. S. District Court of Minnesota, Master File No. 02-2677, MDL No. 1511; Judge David S. Doty

Case Summary:
In 2002, my firm filed this ERISA breach of fiduciary duty class action case against Xcel Energy, Inc. and individuals seeking to recover losses suffered by the 401k and ESOP pension plans. Our firm and several others were named Class Counsel. Following motion practice and discovery, the parties engaged in mediation along with the securities case. After several attempts, a settlement agreement was entered, preliminarily approved by the Court, noticed to the public and granted final approval in 2005. I was primarily responsible for much of the brief writing, settlement documents and court presentation, and was named as Class Counsel in the public notices.

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Glen M. Connor
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Phone: (205) 488-1213

Additional firms with limited involvement in Plaintiffs' case were:
Barrett, Johnston & Parsley
Robins Umeda & Fink, LLP
Brauer Buescher, Goldhammer, Kelman & Dodge
Gilbert & Sackman
Cochrane & Bresnahan, PA

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Counsel for Securities Plaintiffs:
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Chestnutt & Cambronne
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Counsel for Xcel Energy, Inc.:
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Jones Day
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9. In re Providian Financial Corp. ERISA Litigation, U. S. District Court of Northern District of California, San Francisco Division, Case No. 3:01-05027. Judge Charles R. Breyer

Case Summary:
In 2001, ERISA breach of fiduciary duty class action cases were filed against Providian Financial Corp. and individual fiduciaries on behalf of the employees who lost pension plan assets due to corporate and fiduciary improprieties. The ERISA cases were consolidated in a California District Court and I was appointed co-lead counsel. I worked with co-lead counsel on all phases of the litigation. Early filings resulted in a plan amendment to allow participants to direct the investment of their matching contribution in non-Providian stock. During motion practice, the parties initiated settlement discussions that were finalized and approved in mid-2003.

Plaintiffs' Co-Lead Counsel:
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Counsel for Defendants:
Gregory C. Braden
Alston & Bird, LLP

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10. In Re: Columbia/HCA Healthcare Corp., Billing Practices Litigation, U. S. District Court, Middle District of Tennessee, Nashville Division, Case No. 3:98-md-1227. Senior Judge Thomas A. Higgins (Retired)

Case Summary:
My firm filed this case in 1998, alleging improper billing practices in violation of ERISA. I served as local counsel participating in all aspects of the litigation. We had a document repository in Nashville containing millions of documents for review. I participated in motion practice, discovery and discovery disputes, writing and also appeared in Court. The case was ultimately settled in 2003 and, because it involved issues concerning the adequacy of hospital staff, included establishment of a fund providing scholarships for the education of nurses.

Co-Counsel:
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David S. Stellings
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Counsel for Defendant, Columbia/HCA Healthcare Corp.:
H. Lee Barfield, II
Robert Dale Grimes
Bass, Berry & Sims
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Nashville, TN 37238
Phone: (615) 742-6200

18. **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. 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.)

The most significant legal activity not involving a specific trial in which I have had the opportunity to participate is the development of ERISA law applicable to remedies for losses suffered by individual account pension plan participants. Over the past decade, district courts, circuit courts, and now the Supreme Court, have ruled on a significant

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number of challenges (often through motions to dismiss) to the existence of jurisdiction and/or remedies for the loss of pensions suffered by such plan participants. Briefing and arguing those issues in courts across the nation, or watching or reviewing the efforts of others to do so, has given to me the privilege of witnessing and, in some measure, participating in the development and refinement of a significant body of law.

19. **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, provide four (4) copies to the committee.

    Belmont College: 1981 – 1983
    Instructor, Labor Law
    General introductory course to Labor Law

20. **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. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

    At present, there are none. I am a participant in the existing office pension plan.

21. **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 plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the court, if confirmed. I would hope to continue to be involved in charitable activities in which the judiciary is authorized to participate.

22. **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, licensing fees, 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.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    See attached Net Worth Statement.

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24. **Potential Conflicts of Interest**:

a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

If I were appointed to the Court of Appeals, automatic disqualifying relationships would include my family members who are attorneys: James G. Stranch, III, my husband; J. Gerard Stranch, IV, our son; Cecil D. Branstetter, Sr., my father; C. Dewey Branstetter, Jr., my brother; and, Patty Daniel Stranch, my daughter-in-law. I understand that a conflict would also exist with the Firm with which I have practiced, Branstetter, Stranch & Jennings, PLLC. For any other conflicts, I would consult the applicable statutes, the Code of Conduct for United States Judges and/or seek advice from the entities authorized to provide such information.

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 make an effort to avoid or dispose of investments likely to require recusal. I would consult the applicable statutes, the Code of Conduct for United States Judges and/or seek advice from the entities authorized to provide such information.

25. **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.

I have participated in service to the disadvantaged through established programs, the provision of free services to persons who seek legal assistance from our firm and cannot afford to pay and through personal charitable involvement. Through the CASA (Court Appointed Special Advocates) program, I participated in a training seminar in 1997 for the Early Truancy Intervention Program and accepted a truancy case in the Juvenile Court. I was appointed Guardian ad Litem to Robert Brooks, the oldest son of a single mother. I worked with the mother and Robert, and subsequently his two younger siblings, through 2002 to assure their attendance at school, aid them in receiving the educational assistance each needed and assist with other needs, such as summer camp for inner city youths.

I have also sought to aid the disadvantaged in the course of other charitable work. For example, I used my legal training to help establish a program for the provision of materials and/or funds to aid the Invisible Children and Child Mothers of Uganda. The project in which I participated began in 2006 by providing needed products for the

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Invisible Children and the refugees in IDP Camps (Internally Displaced Persons Camps) including sewing materials (and later sewing machines) for the Child Mothers. Cottage industries were established and products sent to us for sale. The director of ChildReach Africa, Catherine Piwang, our contact in Africa, visited Nashville this May and we were able to assist her in affiliating with organizations that will market the products now being made by the Child Mothers in Uganda.

Since its creation in 2006, I have also provided ongoing legal work for Property Tax Assistance, Inc., an organization that assists the needy, primarily the elderly, with their property tax payments. I have provided pro bono legal services in a variety of ways to my church and my Diocese. Since 2004, I have served as Vice-Chancellor to two Bishops rendering legal services on a significant number of issues.

26. **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. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

When Judge Daughtrey announced her intention to take senior status, friends in the legal profession asked whether I was interested in serving on the 6th Circuit. I indicated that I was. Tennessee does not have a selection commission for the federal courts so my interest was conveyed to the Tennessee Congressional delegation.

I was contacted by White House Counsel's office on 4/24/09. I provided information about myself and my practice to that office on 4/29/09. I received a follow-up contact on 5/8/09 in which I was invited to a meeting in Washington with representatives of the White House Counsel's office. That meeting occurred on 5/13/09 and I submitted additional materials on 5/21/09. I was contacted by the Department of Justice on 6/4/09 by telephone and was then provided forms to complete. I have been in touch with DOJ representatives regarding the logistics of completing such forms. Early in the week of 6/8/09, I was contacted by the DOJ and a telephone interview was scheduled and completed on 6/11/09. I was invited to and attended a meeting in Washington on 8/3/09 with representatives of the White House Counsel's office and the Attorney General's office. My nomination was submitted to the Senate on August 6, 2009.

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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, explain fully.

No.

AFFIDIAVIT

I, Jane Branstetter Stranch, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

9/4/09
(DATE)

Jane Branstetter Stranch
(NAME)

Sara S. Goodman
(NOTARY)

SARA S. GOODMAN
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY, TENN.

My Commission Expires JULY 5, 2011

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UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name**: Full Name (include any former names used)

   Benjamin Burgess Tucker; Benjamin B. Tucker

2. **Position**: State the position for which you have been nominated.

   Deputy Director for State, Local and Tribal Affairs, Office of National Drug Control Policy, Executive Office of the President

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.

   One Pace Plaza
   New York, New York 10038

   [redacted]

4. **Birthplace**: State date and place of birth.

   January 4, 1951
   Brooklyn, New York

5. **Education**: List in reverse chronological order 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.

   Fordham University School of Law, 8/77-5/81;
   Degree awarded: Juris Doctor, 5/81

   John Jay College of Criminal Justice, City University of New York, 1/70-6/77;
   Degree awarded: Bachelor of Science, 6/77

6. **Employment Record**: List in reverse chronological order 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 description.

Pace University
One Pace Plaza
New York NY 10038
Professor & Criminal Justice Coordinator *September 2004 to present*
Professor & Criminal Justice Coordinator *September 1999 –August 2002*
Note: on leave of absence from September 2002-June 2004

Estate of Harold L. King
Surrogate's Court, Suffolk County, State of New York
320 Center Drive
Riverhead New York 11901
Executor *August 2006-September 2009*

Estate of Edward Anderson
Surrogate's Court, Kings County, State of New York
2 Johnson Street
Brooklyn, New York 11201
Administrator *May 2007-September 2009*

The Urban Institute - Justice Policy Center
2100 M Street, NW
Washington, DC 20037
Consultant *June 2004 –December 2008*
Consultant *August 1999-September 2002*

New York City Department of Education
52 Chambers Street
New York, NY 10038
Chief Executive for School Safety and Planning *September 2002 to May 2004*

Benjamin B. Tucker and Associates
470 Montauk Highway
Southampton, New York, 11968
Management Consultant *August 1999 to September 2002*

Abt. Associates
55 Wheeler Street
Cambridge, MA 02138
Consultant *September 1999 –April 2001*

National Center for Victims of Crime
2000 M Street, NW
Washington DC 20036
Consultant *September 2000-August 2002*

U.S. Department of Justice/Office of Community Oriented Policing Services

1100 Vermont Avenue NW
Washington, DC 20530
Deputy Director for Operations *September1995 to June 1999*

Center on Addiction and Substance Abuse at Columbia University (CASA)
152 West 57th Street
New York, New York 10019
Director of Field Operations/Senior Research Associate *January 1994 to September 1995*

Substance Abuse Strategy Initiative Project, Wagner Graduate School of Public Service
New York University
921 Broadway
New York, New York 10013
Operations Coordinator/Senior Research Associate *January 1992 to January 1994*

Manhattan Borough President's Office
1 Centre Street
New York, New York 10038
Chief of Operations *January 1990 to June 1991*

New York City Commission on Human Rights
52 Duane Street
New York, New York 10038
First Deputy Commissioner/Executive Director *April 1989 to December 1989*
Deputy Commissioner Community Relations *May 1988 to April 1989*

Mayor's Office of Operations
100 Church Street
New York, New York 10038
Deputy Assistant Director, Law Enforcement Services *October 1986 to May 1988*

New York City Police Department, Civilian Complaint Review Board
200 Park Avenue South
New York, New York 10003
Assistant Director *July 1983 to July 1986*

New York City Police Department, Office of the Deputy Commissioner of Legal Matters
One Police Plaza
New York, New York 10038
Legal Advisor *January 1981 to July 1983*
Sergeant *July 1983-June 1991*
Police Officer *January 1972 to July 1983*
Police Trainee/Precinct Service Officer *November 1969 to January 1972*

BOARDS:

The Urban Assembly School of Criminal Justice
4200 16th Avenue
Brooklyn, NY 11204
Advisory Board Member 2/09-9/09

Center for Alternative Sentencing and Employment Services (CASES)
360 Broadway
New York, NY 10013
Trustee*, 08/99; 09/05- 8/09*

New York City Criminal Justice Agency (CJA)
52 Duane Street
New York, NY 10007
Director*, 09/04-8/09*

Atterbury Hills Landowners Association
PO Box
Southampton, NY 11969
Member *08/97-present*
Director *09/03-9/07*

Brooklyn Legal Services Corporation "A"
260 Broadway
Brooklyn, NY 11211
Advisory Board Member*, 11/90-9/95*
Director *09/00-2002*

Fordham University School of Law Alumni Association
140 West 62nd Street
New York, NY 10023
Member 6/81-present

OTHER AFFILIATIONS

National Center for Victims of Crime
2000 M Street
Washington DC 20036
Committee member 2000 – 12/07

New York City Emergency Management Task Force
City Hall
New York, NY 10038
Member, 9/03-12/03

Yale Law School China Law Center
127 Wall Street

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New Haven, CT 06520
Pro Bono Consultant, 6/01

7. **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, and whether you have registered for selective service.

   I registered for selective service and was eligible for the draft but never served in active duty because ultimately I was deferred given my employment in the New York City Police Department and my marital status.

8. **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.

   Drug Enforcement Agency - Award in recognition for support and collaboration to increase drug awareness, September 19, 2006

   Oxford Roundtable on Criminal Law – invited participant in residence, Oxford England March, 2006

   Attorney General of the United States- certificate in recognition of service as a member of the Senior Executive Service, 1999.

   Proclamation from the President of the Borough of Manhattan – in recognition and appreciation of his service to the people of Manhattan- I now Proclaim June 28, 1991 as "Ben Tucker Day" in the borough of Manhattan.

   Mayor's Award as a "Star" in the administration of Edward I. Koch – for dedicated service to the city of New York, 1989.

   Fordham University School of Law Black American Law Students Association- Ruth Whitehead Whaley Award- in recognition of outstanding leadership, unselfish contribution and commitment to excellence. May, 1980

   69th Precinct Community Council Award - for outstanding professionalism and service to the community. April 24, 1979

   The National Conference of Christians and Jews Brotherhood Award – for outstanding service to the ideals of Brotherhood. May 21, 1978

   69th Precinct Community Council Award – in recognition of activities furthering the growth and development of police community programs for more effective law enforcement. October 27, 1975

The New York Police Department Commendation medal – for outstanding police investigative work, resulting in the arrest of six gang members for the arson deaths of seven people. September, 1973

9. **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.

Member, Brooklyn Bar Association September, 2000-present
This is merely a voluntary professional membership. (The Brooklyn Bar is a non-licensing professional association and membership is open to persons who are not admitted to practice.)

10. **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.

    I have never been admitted as a member of the Bar in any jurisdiction.

    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.

    I have never been admitted to practice before any court or administrative body.

11. **Memberships**:

    a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, 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.

The Urban Assembly School of Criminal Justice
Advisory Board Member, 2/09-9/09

Pace University Board of Trustees
Student Affairs Committee Faculty Representative, 2/06- 8/09

Center for Alternative Sentencing and Employment Services (CASES)
Trustee, 8/99; 9/05- 8/09
Audit Committee member, 2005-present

New York City Criminal Justice Agency (CJA)
Director, 9/04-8/09

Atterbury Hills Landowners Association
Member, 08/97-present
Director, 9/03-9/07

Brooklyn Legal Services Corporation "A"
Advisory Board Member, 11/90-9/95
Director, 9/00-2002

Fordham University School of Law Alumni Association
Member, 6/81-present

American Society of Criminology
11/00-present

Pace University, Society of Fellows, 5/02-present

b. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin 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.

To the best of my knowledge, none of these organizations has engaged in discrimination on the basis of race, sex, religion or national origin.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, and letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

TAB A:

1) Tucker, B.B. Book Review, (January, 2006), Police and Society, 3rd Edition, Roy Roberg, Kenneth Novak, and Gary Cordner.

2) Tucker, B. B. (March, 2004), Book Chapter: Crisis Planning and Management in New York City," School Safety and Security, Lessons in Danger, 54-61 OECD Publishing, Paris, France.

3) Tucker, B.B., Klein, J., and Young, L., (September, 2003), revised "Citywide Standards of Discipline and Intervention Measures" for the New York City Department of Education.

4) Tucker, B.B. (February, 2003), Abstract: Crisis Planning: Preparing for the Unexpected, International Conference on School Safety and Security, Paris, France.

5) Ryan, J. and Tucker, B.B. (August, 2002), "Proactive Management: Reflections on the Development and Implementation of a Model Protocol Responding to Stalking," chapter submitted to the National Center for Victims of Crime for inclusion in a Report to the Office of Community Oriented Policing Services.

6) McDonald, D., Hayeslip, D. and Tucker B. (April, 2001), the Eisenhower Foundation Youth Safe Haven /Police Mini-Station Replication Initiative: An Assessment of Program Implementation (Report to the Bureau of Justice Assistance), Cambridge, MA: Abt Associates Inc.

7) Tucker, B.B., How Do We Reduce Crime and Preserve Human Decency? The Role of Leadership in Policing For a Democratic Society, Fordham Urban Law Journal, Special Issue: The Challenge of Urban Policing, (December 2000):601-617.

8) Tucker, B.B. (July, 2000), Letter to the Editor, The New York Times: "A Social Contract, An Officer's Duty."

b. 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, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

TAB B:

The New York City Emergency Response Task Force Report: Enhancing New York City's Emergency Preparedness-A Report to Mayor Michael R. Bloomberg (2003). I served as a Member of the Task Force and contributor to the report.

c. 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.

TAB C:

1) Tucker, B.B. (September, 2003), Int. No. 490: "A Local Law to amend the Charter of the city of New York, in relation to requiring the Department of Education, in consultation with the New York City police Department, to install video security cameras at all entrances and exit doors of each New York city public school," testimony presented at a joint committee hearing before the committees of Public Safety and Education, the City Council of the City of New York.

2) Tucker, B.B. (February, 2003), Oversight Hearing: Briefing on the Status and Activities of the New Office of School Safety and Planning, testimony presented at a joint committee hearing before the Public Safety and Education committees, the City Council of the City of New York.

3) Tucker, B.B. (March, 1988) Public policy testimony re: Int. No. 958: "urging passage of A Local Law proposing to address problems caused by the concentration of food vendors at certain locations within New York City." Testimony presented before the City Council of the City of New York

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. 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 recording of your remarks, 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, furnish a copy of any outline or notes from which you spoke.

TAB D:

1) Keynote Address, (June, 2004), Erasmus Hall Campus, High School for Science and Mathematics Graduation ceremony.

The following constitutes a list of other talks, remarks, panel discussions, conferences and question and answer sessions in which I participated. I had no formal text or prepared remarks for these.

1) National Constitution Center, Philadelphia, PA, Roundtable discussion participant - 2/26-27/08

This event was sponsored by the newly formed John Jay College of Criminal Justice Leadership Academy. I was one of several experts invited to share ideas related to the academy's core mission of developing a global forum and professional study for public safety executives in the public and private security sectors.

2) Co-Presenter (August 2006) Briefing Session for Polish National Police Executives, One Pace Plaza New York, NY 10038

This event was designed to provide an overview of the American policing system and the community policing philosophy to six visiting police executives from the Polish National Police.

3) Conference Host (October, 2006), U.S. State Department "Fighting International Crime" Roundtable, Office of International Leadership Program, One Pace Plaza, New York, New York

Pace University and the Department of Criminal Justice hosted this event by providing the space and refreshments. The program and content was organized and conducted by the State Department representatives.

4) Panelist, The Absence of Black and Latino Males in Academia: Reality or...? (October, 2006) The event was sponsored by the Pace University Office of Multicultural Affairs.

I was one of 4 or 5 panelists invited to participate in the discussion moderated by the director of the office of multicultural affairs. I had no prepared remarks and simply participated in the question-and-answer session.

5) Citation Reader, (May, 2006), honorary degree presented to the Hon. George Mitchell, at the Pace University undergraduate graduation ceremony, Radio City Music Hall, New York City.

I simply read the prepared text of the citation.

6) Opening remarks and host (May, 2006) for the "We Rise: A Celebration of the Nathaniel Project" event on behalf of the Center for Alternative Sentencing and Employment Services. One Pace Plaza New York New York. No prepared text.

In my capacity as a member of the board, I hosted the award ceremony at Pace University and made brief remarks welcoming the guests and introduced the President of the organization.

7) Dyson Annual Student Awards Ceremony (May 2006), read the charter of the Society of Fellows during closing ceremony. One Pace Plaza, New York New York.

I was invited to recite the contents of the charter as part of the closing of the award ceremony.

8) Panelist (Spring-Summer 2005), the NYC Mayoral Candidates series, hosted in partnership with Pace University Office of Government and Community Relations and the Citizen's Crime Commission at Pace University, One Pace Plaza New York, New York.

I was one of four panelists who asked questions of the respective candidates following their presentations to the audience.

9) Conference Presenter (November 2003), U.S Department of Education, 400 Maryland Avenue, SW Washington DC 20202

This is an annual conference hosted by the U.S Department of Education bringing together several of the chief executives in charge of school safety and security from cities across the country. I offered remarks describing an overview of the structure and function of the newly formed office of school safety and planning in the New York City Department of Education.

10) Tucker, B. (March, 2002), Panelist at the Center for Excellence Forum entitled "Terrorism and Society"; question-and-answer session.

This was a panel designed to engage the audience of students in the discussion of the various issues raised by the impact of terrorism in a democratic society.

11) Tucker, B. (November, 2000), presentation/briefing on Community Policing Philosophy, Policy and Operations to a visiting delegation from the People's Republic of China, National People's Congress, at the request of the Yale Law School China Law Center, No prepared text.

This session consisted of an overview of the community policing philosophy and examples of how various jurisdictions throughout the U.S. have implemented and applied it. Pace WTC Institute, Two World Trade Center, New York, New York.

12) Guest lecturer (May, 2000), "The history of policing and gun control in America," presented to the Society of Fellows of Dyson College, Pace University, One Pace Plaza, New York, New York.

I provided an overview of the issues related to the development of policing in America and the role of police in gun control.

13) Panelist (March, 2000), at the forum sponsored by the Center for Multicultural Affairs at Pace University entitled: "One Death...Multiple Truths: The Diallo Verdict", No prepared remarks, question-and-answer session. Pace University, One Pace Plaza, New York, New York.

I was one of several panelists invited to offer comments and field questions from students concerning the controversial shooting of an African immigrant who was mistakenly shot and killed by New York City police officers.

14) Featured presenter, (February, 2000), New York State Regional Community Policing Institute, Community Policing Domestic Violence Conference, John Jay College of Criminal Justice, New York, New York.

I was invited to speak as the former Deputy Director for Operations in the Office of Community Oriented Policing Services, U.S. Department of Justice, who over saw the establishment of the Regional Community Policing Institutes (RCPIs). I offered brief comments on the intent and purpose for the RCPIs and congratulated John Jay on the work of its RCPI in the area of Domestic Violence.

15) Panelist/Discussant (November, 1996), the National Evaluation of "COPS ON THE BEAT", at the American Society of Criminology Annual Meeting, Chicago Illinois.

I was one of three or four panelists offering comment and fielding questions concerning the evaluation, in my capacity as the Deputy Director for Operations in the Office of Community Oriented Policing Services, U.S. Department of Justice.

e. 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.

TAB E: I have not kept records of interviews but a search of public databases has been conducted. Below are a list of cites, and the actual text of the interviews or quotes and attributions are attached at TAB E.

1. **March 2007, *Criminalizing the Classroom The Over-Policing of New York City Schools*. New York Civil Liberties Union Report.**

2. **October 18, 2006, "Office of Multicultural Affairs' Symposium Questions Societal, Educational Structures" *New York Times***

3. **April 28, 2004 "Metro Briefing New York Manhattan: School Safety Chief Quits," *New York Times***

4. **October 10, 2003, "Union Cites Growing Violence on Teachers" *New York Times***

5. **August 29, 2003, "New Student Discipline Code Gets Mostly Positive Response" *New York Times***

6. August 19, 2003, "List of Dangerous' Schools Lists Few, Puzzling Many," *New York Times*

7. July 2003, "NYC's Newest Safety Plan: New Schools for Troublemakers," *District Administration*

8. April 23, 2003, "Plan to Remove Rowdy Pupils From Classes Is Short of Goal," *New York Times*

9. February 28, 2003, "City to Open Centers for Disruptive Students." *New York Times*

10. January 29, 2003, "Senior Officials Sent Packing in Overhaul of City's Schools" *New York Times*

11. December 19, 2002, "New York City Establishes Foundation to Turn Education System Around,"
Mayor Michael Bloomberg Outlines Education Accomplishments in 2002,
Press Conference

12. November 26, 2002, "School Chancellor Plans New Trouble for Troublemakers," *New York Times*

13. November 6, 2002, "Metal Detectors Making Students Late, if Not Safer," *New York Times*

14. October 24, 2002, "City Schools Announce Plan to Add 285 Security Guards," *New York Times*

15. October 9, 2002, "Criminal justice professor leaves, missed by students,"
Pace Press

16. October 4, 2002 "Chancellor Hires old Clinton cronies," *The Daily News*

17. September 19, 2002, "Mike's Mission," *The New York Post*

18. September 18, 2002, "Comp stat to Tackle HS Crime," *The Daily News*

19. September 18, 2002, "School Security Plan: Closer Ties With Police," *Newsday*

20. September 18, 2002, "When It Comes to School Discipline, Bloomberg's Motto is Safety First" *New York Times*

21. September 17, 2002, "Benjamin B. Tucker Appointed Chief Executive of Office of School Safety and Planning," Mayor Michael R. Bloomberg and Schools Chancellor Joel I. Klein Announce Creation of New Office of School Safety and School Safe Initiative.

22. Summer 2000, "An Architect of Justice," *Pace Magazine*

23. March 2000, Magazine Article in *The American Lawyer*

24. September 22, 1995 , Press Announcement Office of Community Oriented Policing Services, U.S. Dept. of Justice

25. December 1989, "Messinger Picks 'Cabinet' Aides in Borough Post," *New York Times*

26. December 1989, "Messinger Staff of Manhattan Mosaic," *The New York Voice*

27. December 15, 1985, "Messinger fills 7 Cabinet Spots," *The Daily News*

28. September 15, 1985, "Fighting Use of Hearsay to Curb Abuse," *New York Times*

29. July 18, 1983, "Smelling Like Roses," *New York Post*

30. December 12, 1974, "Police-Youth Dialogue Program," *The Cansarie Courier*

31. 1973, New York Police Department, Field Services Bureau Publication

32. September 17, 1972, "Kids Write Off Graffiti Cleaner." *Daily News*

13. **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.

I have never held any public office, either elected or appointed, in the past.

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, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

None.

14. **Legal Career:** 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 have never served as a clerk to a judge.

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

I have never practiced as an attorney.

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.

Office of the Deputy Commissioner of Legal Matters
New York City police department
One Police Plaza
New York, New York 10038
Legal Advisor *January 1981 to July 1983*

New York City Police Department, Civilian Complaint Review Board
200 Park Avenue South
New York, New York 10003
Assistant Director *July 1983 to July 1986*

Mayor's Office of Operations
100 Church Street
New York, New York 10038
Deputy Assistant Director, Law Enforcement Services *October 1986 to May 1988*

New York City Commission on Human Rights
52 Duane Street
New York, New York 10038
First Deputy Commissioner/Executive Director *April 1989 to December 1989*
Deputy Commissioner of Community Relations *May 1988 to April 1989*

Substance Abuse Strategy Initiative Project, Wagner Graduate School of Public Service, New York University
921 Broadway
New York, New York 10013
Operations Coordinator/Senior Research Associate, *January 1992 to January 1994*

Center on Addiction and Substance Abuse at Columbia University (CASA)
152 West 57th Street
New York, New York 10019
Director of Field Operations/Senior Research Associate *January 1994 to September 1995*

U.S. Department of Justice, Office of Community Oriented Policing Services
1100 Vermont Avenue NW
Washington, DC 20530
Deputy Director for Operations *September1995 to June 1999*

Benjamin B. Tucker and Associates
470 Montauk Highway
Southampton, New York, 11968
Management Consultant, *August 1999 to September 2002*

New York City Department of Education
52 Chambers Street
New York, NY 10038
Chief Executive *September 2002 to May 2004*

Pace University
One Pace Plaza
New York NY 10038
Professor & Criminal Justice Coordinator *September 2004 to present*
Professor & Criminal Justice Coordinator *September 1999 –August 2002*
Note: on leave of absence from September 2002-June 2004

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

With respect to my legal work within the Office of the Deputy Commissioner of Legal Matters, my clients were members of the department, e.g., police officers and detectives performing patrol duties on the street as well their supervisors, who required assistance and answers to questions concerning substantive, procedural, and constitutional legal issues pertinent to ongoing investigations. I also conducted hearings to determine the merits of applications submitted by persons seeking to obtain a pistol license.

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With respect to my legal work at the Civilian Complaint Review Board, I reviewed all case investigations for both substantive and legal sufficiency derived from citizen complaints against police officers alleging misconduct in the nature of use of force, abuse of authority, discourtesy, and ethnic slurs. When necessary, I conducted hearings and finally made recommendations to review board members based on the outcome of the investigations.

With respect to my legal work at the Mayor's Office of Operations, it generally involved the formulation, recommendation, and implementation of policy and legislation; I directed the city's law enforcement strategy to regulate practices of legal and illegal street vendors, bicycle traffic and sidewalk usage.

With respect to the other agencies and offices listed under paragraph 15, a, iii, above, I was not directly engaged in performing legal work but had responsibility for management decisions the implications of which did from time to time rest on legal considerations.

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. Indicate the percentage of your practice in:
      1. federal courts;
      2. state courts of record;
      3. other courts;
      4. administrative agencies

   I have never practiced law.

   ii. Indicate the percentage of your practice in:
      1. civil proceedings;
      2. criminal proceedings.

   I have never practiced law.

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

   I have never practiced law.

   i. What percentage of these trials were:
      1. jury;
      2. non-jury.

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e. Describe your practice, if any, before the Supreme Court of the United States. 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 practiced law.

15. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. 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:

I have never handled any litigation matters.

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.

16. **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. 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.)

With respect to my legal activities within the Office of the Deputy Commissioner of Legal Matters, New York City Police Department, essentially, my clients were members of the department, e.g. police officers and detectives performing patrol duties on the street as well their supervisors, who required assistance and answers to questions concerning substantive, procedural, and constitutional legal issues pertinent to ongoing investigations. I conducted hearings to determine the merits of applications submitted by persons seeking to obtain a pistol license. I drafted search warrant affidavits and supervised the drafting of the same by others. I conducted in-service training in the area of constitutional law for newly promoted detectives and supervisors.

With respect my legal work at the Civilian Complaint Review Board, New York City Police Department, I reviewed all case investigations for both substantive and legal sufficiency derived from citizen complaints against police officers alleging misconduct in the nature of use of force, abuse of authority, discourtesy, and ethnic slurs. When necessary, conducting hearings and finally made recommendations to review board members based on the outcome of the investigations.

My legal activities at the Mayor's Office of Operations, New York City, generally involved formulating and implementing policy and legislation in coordination with the office of the city's corporation counsel; I directed the city's law enforcement strategy to regulate practices of legal and illegal street vendors and other regulatory matters involving the use of public space.

17 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, provide four (4) copies to the committee.

TAB F:

1. **Criminal Justice 150 - Introduction to Criminal Justice –**
   Pace University, Spring 2009 Day Session, Spring 2009 Evening Session, Fall 2008 Day Session, Fall 2008 Evening Session, Spring 2008 Day Session, Spring 2008 Evening Session, Fall 2007 Day Session, Spring 2007 Day Session, Spring 2007 Evening Session, Fall 2006 Day Session, Spring 2006 Evening Session, Spring 2006 Day Session, Fall 2005 Evening Session
   An introduction to the concepts of administration of criminal justice and crime prevention in the United States.

2. **Criminal Justice 240 - Comparative Criminal Justice Systems** (On-line/Travel course)
   Years taught – 2006
   A study of selected criminal justice systems around the world and their comparison to the American criminal justice process.

3. **Criminal Justice 250 - Community Relations in the Criminal Justice system**
   Pace University, Spring 2009, Spring 2008, Spring 2006
   Exploration of the complexity of human relations as it affects the interactions of the criminal justice system within communities, involving police, prosecution, defense, judges, probation and corrections as they impact civil liberties.

4. **Criminal Justice 255 - Structure and Function of Police Organization**
   Pace University, Fall 2008, Fall 2007, Fall 2006 Fall 2005
   Analysis of the role of police in the criminal justice system and the examination of fundamental principles in organization and administration.

5. **Criminal Justice 341 - Management Science in Criminal Justice**
   Pace University, Fall 2004
   Explores management techniques, analysis and model building relating to criminal justice operations.

6. **University 101 – Freshman Seminar: Introduction to University Community**
   Years taught –2008, 2007

This a course required for all incoming freshmen. The course is organized around four key areas of student transition to college learning: liberal learning, self- reflection, advising, and educational planning.

7. **Criminal and Constitutional Law**
New York City Police Academy, 1979, 1980, 1981

I do not have the syllabi for the following courses that I taught. However, in many cases, the curriculum for these courses was virtually the same as the syllabi provided above and reflect similar content with respect to the reading and writing assignments.

Criminal Justice 150 - 1999, 2000, 2001

Criminal Justice 240 - 2008

Criminal Justice 250- 1999, 2000, 2001, 2005

Criminal Justice 255 -1999, 2000, 2001

University 101 – 2001

Criminal Justice 261 - Criminal Investigation
Year taught – 2000, 2001
An introduction to the techniques of investigation, theories of investigation, collection and preservation of evidence, laboratory analysis, interviews , admissions confessions, and searches.

Criminal Justice 341 - Management Science in Criminal Justice
Years taught- 1999, 2000, 2001
Explores management techniques, analysis and model building relating to criminal justice operations.

Criminal Justice 391 & 392- Internships in Criminal Justice
Years taught – 1999, 2000, 2001, 2004, 2005, 2006, 2007, 2008, and 2009
This is involves students working in a supervised placement in criminal justice, victim services and other not-for-profit agencies for a minimum of 120 hours. **I do not prepare or distribute syllabi for these courses.**

Criminal Justice 395 - Independent Study in Criminal Justice
Years taught - 2005
With the approval of the faculty member, department chairperson, and the academic dean Students may select a topic for guided research that is not part of the regular course offerings. **I did not prepare or distribute a syllabus for this course.**

18 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. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

1. Pension – New York Police Department Pension Fund Article 2 – 7/91-present. Currently receiving monthly payments and an annual variable supplement payment for overall annual amount of $50,000.

2. Sergeant's Benevolent Association Annuity Fund– current value: $20,117, may begin receiving benefits 7/2010.

3. Pace University 401k – current value: $43,788, may begin receiving benefits 7/2010.

4. Thrift Savings Plan 401k/US Government – current value: $68,000, may begin receiving benefits 7/2010.

5. National Center on Addiction and Substance Abuse at Columbia University 401k-current value: $36,310, may begin receiving benefits 7/2010.

17. **Outside Commitments During 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.

18. **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, licensing fees, 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 the attached SF 278, Financial Disclosure

19. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

Please see attachment at TAB G

20. **Potential Conflicts of Interest**:

    a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

    In connection with the nomination process, I have consulted with the Office of Government Ethics and the Office of National Drug Control Policy's designated agency ethics official to identify potential conflicts of interest.

Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with ONDCP's designated agency ethics official.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Office of National Drug Control Policy's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with ONDCP's designated agency ethics official.

21. **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. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

The Urban Assembly School of Criminal Justice
Advisory Board Member, 2/09-present
Attend four board meetings a year, as well various events at the school during the school year. Average 20-25 hours per year

Pace University Board of Trustees, Student Affairs Committee Faculty Representative, 2/06- present Attend two board meetings each year as well as various scheduled events. Average 10-12 hours per year.

Center for Alternative Sentencing and Employment Services (CASES)
Trustee, 8/99; 9/05- present
Audit Committee member, 2005-present
Attend two to four board meetings and three audit committee meetings per year, as well as scheduled special events. Average 16-20 hours per year.

New York City Criminal Justice Agency (CJA)
Director, 9/04-present
Attend two to four board meetings per year. Average 6 hours per year.

Atterbury Hills Landowners Association
Member, 08/97-present- Attend one board meeting per year. Average 2 hours per year
Director, 9/03-9/07 – Attended two board meetings per year. Averaged 6 hours per year.

Brooklyn Legal Services Corporation "A"
Advisory Board Member, 11/90-9/95 Attended two Advisory board meetings per year, as well as special events. Average 10 -15 hours per year
Director, 9/2000-2002- Attended two board meetings per year. Averaged 6 hours per year.

QUESTIONS AND ANSWERS

Responses of Jane Branstetter Stranch
Nominee to the U.S. Court of Appeals for the Sixth Circuit
to the Written Questions of Senator Jeff Sessions

1. **Over the course of your extensive career in private practice, you have represented several labor unions and union locals. You were also a member of the Board of Directors of the AFL-CIO Lawyers Coordinating Committee, which, according to the AFL-CIO's website, "is comprised of more than 1,800 union-side labor lawyers."**

   a. **Do you think you can be impartial in cases filed by or on behalf of unions? Please explain your answer.**

   Response: I think I can be impartial in such cases. My wide ranging and varied practice has included the representation of labor organizations as one component. I recognize that the oath of office I would take if confirmed requires that I administer justice "without respect to persons" and that I treat equally all who come before me. I would honor that oath and act with impartiality in cases involving labor organizations and any of the other categories of persons or entities I have represented.

   b. **Have you ever represented a party in a matter who was adverse to a union, other than a union local?**

   Response: I have participated in my firm's representation of parties, including individuals, against unions, other than a union local, including matters related to employment issues and/or issues relating to pension and other benefit matters.

2. **What, in your view is the role of a judge?**

   Response: The role of a judge is to act as a fair and impartial arbiter of legal disputes, applying the governing law and precedent.

   a. **Please describe your judicial philosophy.**

   Response: My judicial philosophy is that judges must honor their commitment to faithfully and impartially perform their duties, treating all that come before them fairly and with civility, and must honor the division of authority that entrusts to them the application of legislation created by another body, Congress, and which requires them to act in accordance with precedent established by the Supreme Court.

   b. **How would you define "judicial activism"?**

   Response: It appears to me that the term "judicial activism" has as many meanings as there are people who use it. It is my experience that using a term with no commonality of definition inhibits the ability to converse with one another; therefore, I have not formulated a definition of judicial activism. However, I can address the subject matters

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that are frequently associated with the concept. I recognize that federal courts are courts of defined and, therefore, limited jurisdiction, that their decisions are bound by applicable laws promulgated by Congress and that their decisions are subject to the rulings of the Supreme Court. To the extent that judicial activism is defined as conflicting with these standards, I reject it.

c. Do you think it is ever proper for judges to indulge their own values in determining what the law means? If so, what circumstances?

Response: I do not think that it is ever proper for a judge to indulge his or her own values in determining what the law means. The job of a judge is to ascertain the facts as appropriate, apply the laws as written by Congress, honor applicable precedent and observe and enforce the Constitution.

d. Do you think it is ever proper for judges to indulge their own policy preferences in determining what the law means? If so, under what circumstances?

Response: I do not think that it is ever proper for a judge to indulge his or her own policy preferences in determining what the law means. The job of a judge is to ascertain the facts as appropriate, apply the laws as written by Congress, honor applicable precedent and observe and enforce the Constitution.

3. Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit.

a. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: I recognize that each Court of Appeals is bound by the rulings of the United States Supreme Court and I am committed to following those rulings if I am confirmed, even if I personally disagree with such.

b. How would you rule if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision?

Response: If I am privileged to serve on the Court of Appeals, I would be bound by and would follow the applicable rulings of the Supreme Court. I also recognize that prior rulings of my own Circuit Court are due great deference and decisions to overturn them should be rare.

i. Would you nevertheless apply that decision of your own best judgment of the merits?

Response: Where there is Supreme Court precedent factually and legally applicable to the case at bar, I would be bound by that precedent. Where there is a prior decision of my own Circuit Court factually and legally applicable to the

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case at bar, I recognize that the holding is due great deference and a decision to overturn it would be rare.

4. At your hearing, I asked you to describe your judicial philosophy with regard to President Obama's "empathy standard," and the requirements of the judicial oath of objectivity and fairness without respect to persons.

a. Do you believe that you fit President Obama's criteria for federal judges, as described in his quote? Please explain your answer.

Response: I cannot speak to whether I satisfy President Obama's criteria, though I am honored to be nominated. I can confirm that if allowed to serve, I will do so with objectivity and fairness and without respect to persons.

b. What role do you believe that empathy should play in a judge's consideration of a case? Please explain your answer.

Response: I believe that any personal feelings a judge might have about a case are circumscribed by the duties of the job. A judge's job is to apply the law and Constitution, to honor precedent and, where appropriate, to determine the facts.

c. Do you believe that a judge should identify with either party in a case? Please explain your answer.

Response: I do not think it is part of a judge's job to identify with the parties to litigation. The judge's job is to apply the law and Constitution, to honor precedent and, where appropriate, to determine the facts.

d. Do you believe that empathy should play a role in sentencing a criminal defendant? Please explain your answer.

Response: Empathy should not be the determiner of sentencing. Sentencing is governed by the law, including sentencing guidelines, and the Constitution, as applied to the facts established in the case.

e. Do you think that it is ever proper for judges to indulge their own subjective sense of empathy in determining what the law means? If so, under what circumstances. Please explain your answer.

Response: I do not think that it is ever proper for a judge to indulge his or her own subjective sense of empathy in determining what the law means.

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5. **As we discussed at your confirmation hearing, under the Supreme Court's decisions in *United States v. Booker*, 543 U.S. 220 (2005) and *Blakely v. Washington*, 542 U.S. 296 (2004), the federal sentencing guidelines are advisory, rather than mandatory. Under the current system, it appears to me that as long as the sentencing judge (1) correctly calculates the guidelines, and (2) appropriately considers factors set forth in 18 U.S.C. 3553(a), he or she may impose any sentence ranging from probation to the statutory maximum. Following the Supreme Court's decision in *Gall v. United States*, 552 U.S. 38 (2007), appellate courts must apply the highly deferential "abuse of discretion" standard when reviewing these sentencing decisions. As a result, district court judges may impose virtually any sentence, and as long as the decision is procedurally sound, there is virtually no substantive review on appeal.**

   a. **Do you agree that the highly deferential standard enunciated in *Gall* has basically eviscerated substantive appellate review of sentencing decisions? If not, why? Please explain your answer.**

      Response: I am not in a position to characterize the Supreme Court's decision in *Gall* or to opine on whether it "eviscerated substantive appellate review" as, should I be confirmed to the Circuit Court, I would be bound to honor and apply that precedent. The *Gall* Court, referring to its decision in *Booker*, determined that the abuse-of-discretion standard of review now applies to appellate review of sentencing decisions. The Court provided direction regarding the duty of the district judge and the factors for consideration by the appellate courts. If confirmed, I will comply with the standards set out by the Supreme Court in *Gall*.

   b. **Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw? If not, why? Please explain your answer.**

      Response: I believe that sentences for a specific crime in like circumstances should be comparable without regard to what court a defendant happens to appear before or to where a defendant happens to reside.

   c. **Under what circumstances do you believe it appropriate for a district court judge to depart downward from the sentencing guidelines?**

      Response: In *Gall*, the Supreme Court provided guidance that governs all sentencing proceedings. It outlined the requirements as beginning with the applicable Guidelines range, argument, consideration of all *18 U.S.C.S. Section 3553(a)* factors, consideration of any Guideline deviation and justification therefor, and full explanation of sentencing to allow for meaningful appellate review and to promote the perception of fair sentencing. Any departure from the Guidelines would have to satisfy these standards which bind both the district and appellate courts.

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d. Do you believe that mandatory minimum sentences are appropriate for:

i. Recidivist child abusers?

Response: I believe such mandatory sentences are the province of Congress and were such the law, I would follow it.

ii. Child pornographers?

Response: I believe such mandatory sentences are the province of Congress and were such the law, I would follow it.

iii. Illegal alien smugglers?

Response: I believe such mandatory sentences are the province of Congress and were such the law, I would follow it.

iv. Drug dealers?

Response: I believe such mandatory sentences are the province of Congress and were such the law, I would follow it.

e. What is your position on the disparity between crack cocaine and powder cocaine sentences?

Response: It is my understanding that research supports the efficacy of addressing this disparity and there is general agreement regarding doing so. That decision falls within the province of Congress. If Congress chooses to reduce or eliminate this disparity, I would enforce such.

f. How would you characterize the sentencing process since the Supreme Court's decisions rendering the guidelines advisory?

Response: I have not handled a criminal matter requiring a sentencing decision since the Supreme Court's decisions and am not in a position to fairly characterize the process.

6. Please describe with particularity the process by which these questions were answered.

Response: The questions were forwarded to me by the Department of Justice (DOJ). I undertook some research and spoke with colleagues. I drafted answers to these questions then discussed them with representatives of the DOJ. I then finalized my responses.

7. Do these answers reflect your true and personal views?

Response: Yes.

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Responses of Jane Branstetter Stranch
Nominee to the U.S. Court of Appeals for the Sixth Circuit
to the Written Questions of Senator Tom Coburn, M.D.

1. **What principles of constitutional interpretation would you look to in analyzing whether a particular statute infringes upon some individual right?**

   Response: There are a number of recognized tools of constitutional interpretation employed by the courts, including: textual, historical, structural, doctrinal, ethical and prudential. The Supreme Court has issued opinions that address the use of such tools in particular individual rights cases. For example, in the recent case of *District of Columbia v. Heller*, 128 S. Ct. 2783 (U.S. 2008), the Supreme Court employed several of these interpretation tools, emphasizing some, such as textual, historical and doctrinal, and finding limited or lack of applicability of others, such as "interest balancing." I would be bound by the Supreme Court's articulations of the applicable standard and its determinations regarding individual rights.

2. **As you know, the Second Amendment right to bear arms is one of that is very important to all Americans, but particularly to those in my home state of Oklahoma. Do you believe that the Second Amendment is an individual right or a collective right? Please explain your answer.**

   Response: The recent Supreme Court case of *District of Columbia v. Heller*, 128 S. Ct. 2783 (U.S. 2008) determined that the Second Amendment contains an individual right to keep and bear arms. That decision is binding precedent on the circuit courts.

   a. **Do you believe an individual Second Amendment right exists outside the context of military service or hunting? If so, please explain.**

      Response: The Supreme Court in the *Heller* case addressed that issue and determined that the Second Amendment contains an individual right to keep and bear arms in self defense.

   b. **Do you believe the right to bear arms is a fundamental right?**

      Response: *Heller* recognized an individual right to keep and bear arms but left open the question of whether the Second Amendment is a fundamental right, incorporated as to the States through the due process clause. Whether the Second Amendment is incorporated as to the States either through the due process clause or the privileges or immunities clause of the Fourteenth Amendment is before the Supreme Court in *McDonald v. Chicago*, writ of certiorari granted, on appeal from the Seventh Circuit decision in 2009, U.S. App. LEXIS 11721 (2009). The Court's decision in *McDonald* will govern lower courts' interpretation of Second Amendment rights as they apply to the States. It is not appropriate for a nominee to a circuit court to opine on an issue that is pending before the

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Supreme Court. I can confirm that I would follow any decision issued by the Supreme Court.

c. What constitutional analysis would you employ to determine whether it is a fundamental right?

Response: The Supreme Court has accepted certiorari in *McDonald v. Chicago* in which the 7th Circuit affirmed dismissal of an action challenging a municipal ban on the possession of most handguns. Noting that it is the prerogative of the Supreme Court to overrule one of its own precedents, the 7th Circuit affirmed on the basis of three historic Supreme Court cases, *Cruikshank, Presser* and *Miller*, that had refused to apply the Second Amendment to the States. The Supreme Court noted in the *Heller* case that *Cruikshank* did not engage in the Fourteenth Amendment inquiry now required; however, it found that question was not presented by *Heller*. The Supreme Court has since accepted certiorari in *McDonald* where it is presented with the question of whether the Second Amendment is incorporated as to the States either through the due process clause or the privileges or immunities clause of the Fourteenth Amendment. The Supreme Court will explicate the appropriate Constitutional analysis and its decision will be binding on the lower courts. It is not appropriate for a nominee to a circuit court to opine on an issue that is pending before the Supreme Court. I can confirm that I would follow any decision issued by the Supreme Court.

d. Do you believe the right to self defense is a fundamental right?

Response: *Heller* recognized an individual right to keep and bear arms in self defense but left open the question of whether this is a fundamental right. The Supreme Court has since accepted certiorari in *McDonald* where it is presented with the question of whether the Second Amendment is incorporated as to the States either through the due process clause or the privileges or immunities clause of the Fourteenth Amendment. Its decision will be binding on the lower courts. It is not appropriate for a nominee to a circuit court to opine on an issue that is pending before the Supreme Court. I can confirm that I would follow any decision issued by the Supreme Court.

3. The Second Amendment states: "A well regulated Militia, being necessary to the security of a free State, *the right of the people* to bear Arms, shall not be infringed." (Emphasis added). In contrast, nowhere in the Constitution is there a statement of or reference to any right to privacy. How, then is the right to privacy considered a "fundamental right," but the right to bear arms is apparently not?

Response: The Supreme Court has found a right to privacy to be inherent in the Constitution, noting that a number of Amendments address rights, centered on the concept of inviolable individual privacy, that are enforceable as to the States. In *Griswold v. Connecticut,* 381 U.S. 479 (1965), the Court found a state statute criminalizing the use of contraception to be an

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unconstitutional incursion into "the zone of privacy created by several fundamental constitutional guarantees." Whether the right to bear arms is a fundamental right has not been resolved. The three historic Supreme Court cases, *Cruikshank, Presser* and *Miller,* had rejected application of the Second Amendment to the States under the privileges or immunities clause of the Fourteenth Amendment. The Supreme Court has since accepted certiorari in *McDonald* where it is presented with the question of whether the Second Amendment is incorporated as to the States either through the due process clause or the privileges or immunities clause of the Fourteenth Amendment. Its decision will be binding on the lower courts.

a. Do you agree that this is a perverse result?

Response: We await the determination of the Supreme Court on this issue. I do not think it would be appropriate for me, a judicial nominee, to comment on whether a pending decision of the Supreme Court might be considered a "perverse result."

4. Since at least the 1930s, the Supreme Court has expansively interpreted Congress' power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.

a. Generally speaking, are *Lopez* and *Morrison* consistent with the Supreme Court's earlier Commerce Clause decisions?

Response: The Supreme Court in *Gonzales v. Raich*, 545 U.S. 1 (2005), took the position that its decisions in *Lopez* and *Morrison* are wholly consistent with its earlier, New Deal era decisions, which granted expansive legislative powers under the Commerce Clause.

b. Why or why not?

Response: The Court in *Raich* distinguished the circumstances presented in *Lopez* and *Morrison*. The challenge in *Raich* sought to excise individual applications, there as to medical marijuana, of a concededly valid statutory scheme under the Controlled Substance Act. The prior cases challenged their statute or provision as outside Congress' commerce power in its entirety. The Court also distinguished the nature of the statutes themselves, noting the appropriate economic nature of the larger regulatory scheme in *Raich* as opposed to the noneconomic, criminal nature of the statutes in *Lopez* and *Morrison*.

5. Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?

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Response: I think referring to the Constitution as a document "constantly evolving as society interprets it" misses the mark. The Constitution is the supreme law of our land and its wording does not change absent amendment; however, the Supreme Court tells us what those words mean as it applies them to new situations. The Supreme Court is charged with the ultimate authority to apply the law of the Constitution to the facts of a particular case. If confirmed to serve, I will uphold the Constitution and honor legal precedent interpreting its provisions.

6. **In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the "evolving standards of decency" to hold that capital punishment for any murderer under the age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy's analysis?**

Response: In cases where the Supreme Court has ruled, whether a judge agrees with the analysis or the outcome is not relevant as the judge is bound by the Supreme Court's determinations.

a. **How would you determine what the evolving standards of decency are?**

Response: The Supreme Court in *Roper* articulated both the standard and the factors considered in applying that standard. As a portion of its explanation, the Court noted, "The prohibition against 'cruel and unusual punishments,' like other expansive language in the Constitution, must be interpreted according to its text, by considering history, tradition, and precedent, and with due regard for its purpose and function in the constitutional design. To implement this framework we have established the propriety and affirmed the necessity of referring to 'the evolving standards of decency that mark the progress of a maturing society' to determine which punishments are so disproportionate as to be cruel and unusual. *Trop v. Dulles*, 356 U.S. 86, 100-101, 2 L. Ed. 2d 630, 78 S. Ct. 590 (1958) (plurality opinion)." *Roper* at 560-61. The Court held that the beginning point of that determination is its review of objective indicia of consensus as expressed by enactments of legislatures. The exercise of the Court's independent judgment regarding the proportionality of the punishment followed. I am bound to the standard set and the determination made by the Court in accordance with the doctrine of *stare decisis*.

7. **In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution?**

Response: The Supreme Court has provided guidance on this question. I am aware of only a very few cases in which it has referenced non-U.S law in a majority opinion, including *Roper*. In these few cases, references to foreign law were made for such purposes as extrapolating on societal norms and standards of decency, refuting contrary assertions or confirming American views. *Roper* specifically noted that the foreign law references were not "controlling" and were presented for the purpose of confirmation of

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the Court's conclusions. None of these cases used foreign or international law to interpret a constitutional text. The Supreme Court's restraint on this issue is a model for the lower courts.

a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: I would follow the Supreme Court's restraint in which such law, if referenced at all, would be used as confirmatory only. The fact that such references are so rare at the Supreme Court level suggests even rarer usage in the lower courts.

b. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: I would follow the Supreme Court's restraint in which such law, if referenced at all, would be used as confirmatory only. The fact that such references are so rare at the Supreme Court level suggests even rarer usage in the lower courts.

8. Does the oft-quoted phrase "wall of separation of church and state" appear anywhere in the Constitution?

Response: It does not.

a. To what extent does this phrase, authored by Thomas Jefferson in his letter to the Danbury Baptists, reflect your view of the proper understanding of the Constitution's Establishment Clause?

Response: The Supreme Court's determination of how the Establishment Clause is to be understood and applied would be binding on me, were I confirmed. The Court's test in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), taken in context with more recent Supreme Court decisions interpreting the *Lemon* test, governs the interpretation of the Establishment Clause by all lower courts. The Court stated the test: "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster 'an excessive government entanglement with religion.'" *Lemon* at 612-3. That test, and the more recent Supreme Court cases interpreting it, would govern my view and decision making.

b. Is the First Amendment right to freedom of religion a fundamental right?

Response: The Supreme Court has found this right to be fundamental, noting that the First Amendment is made applicable to the states by the Fourteenth Amendment. In general terms, the First Amendment has been found to guarantee a right to free

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exercise of religion, a right to be free of government entanglement with religion, and a right to religious belief. See *Everson v. Board of Education*, 330 U.S. 1 (1947).

9. Over the course of your career in private practice, you have represented labor unions and union locals and were a member of the Board of Directors of the AFL-CIO Lawyers Coordinating Committee, which "is comprised of more than 1,800 union-side labor lawyers in more than 500 firms and union legal departments nationwide. Since its inception in 1983, the LCC has provided a unique opportunity for lawyers who represent unions to share information and resources."

a. You have clearly spent a great deal of your career representing unions. Will you recuse yourself from cases involving unions or a union local that you represented or the AFL-CIO?

Response: I have had a varied practice that includes representation of labor organizations, individuals, municipalities, and a variety of companies and entities. I would have to examine the parties and particular facts and issues of each case to determine if, under the governing rules, recusal is warranted.

i. Please explain how you will determine whether recusal is warranted in these cases.

Response: A determination of whether recusal is warranted is a fact intensive process. If confirmed, I would automatically recuse myself from cases in which I was providing representation when appointed to the bench and from cases in which my family members are counsel. For an appropriate period of time, I would also recuse myself from cases in which my law partners are counsel. For any cases that include as a party a union client I have represented during my 30 plus years of practice, I would err on the side of caution, examining the case for even the appearance of impropriety. I would be guided by the recognized procedures, including review of applicable statutes, the Code of Conduct for United States Judges, and where helpful, I would consult with the entities authorized to render advice on these issues as well as my colleagues on the bench. Where appropriate, I would disclose facts on the record of the case and consider the positions of the parties.

b. When determining whether recusal is required, do you believe the rules should be interpreted narrowly or broadly?

Response: It appears to me that the rules of recusal should be interpreted broadly. This enables the judge to consider all the factors that might impact even the appearance of impropriety and supports public confidence in the impartiality of the judiciary.

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i. Please explain your reasoning.

Response: Public respect for and confidence in the impartiality and fairness of the judicial system is very important. One of the most effective ways to inspire that confidence is to assure that all judges are reviewing recusal issues using the same method and rules. That is why review under the Code of Conduct of United States Judges and adherence to established precedent are important. There is a well developed system in place to review these issues and to provide support and advisory assistance in making determinations regarding conflicts of interest. I would review all recusal issues under these established rules because I believe that consistent adherence by all the judiciary to the established process can be as important as the result.

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Tucker Answers to Senator Grassley
Director for State, Local and Tribal Affairs, Office of National Drug Control Policy
October 21, 2009

(1) What do you believe are the responsibilities of the Deputy Director for State, Local and Tribal Affairs (OSLTA)?

Answer:

I believe the position for which I am nominated involves managing and providing general oversight for initiatives currently operating within ONDCP's Office of State, Local, and Tribal Affairs. These include the High Intensity Drug Trafficking Areas Program (HIDTA), Drug-Free Communities (DFC), National Youth-Anti-Drug Media Campaign, and Counter-Drug Technology Assessment Center (CTAC). If confirmed, it would be my responsibility to ensure the activities of these programs are consistent with the mission of ONDCP and to promote the implementation of the Administration's National Drug Control Strategy.

More specifically, if confirmed, my responsibilities will involve facilitating the coordination of the federal, state, local, and tribal law enforcement agencies in their demand and supply reduction efforts; and supporting their efforts in gathering, analyzing, and sharing information and intelligence relative to drug enforcement and control. At the same time, I will seek to foster and encourage the continuation and expansion of locally driven community-based drug control strategies that make the best use of all available resources for the express purpose of reducing the demand for, and the supply of illegal drugs.

(2) What qualifications do you have to effectively run OSLTA?

Answer:

Having served as a local law enforcement officer, as well as in the federal government, I am uniquely qualified for this position. My past work experiences have allowed me to see ONDCP from the perspective of local government as well as from a national perspective. My career in the criminal justice arena spans more than 35 years, and my varied experiences are relevant and well suited to the work I hope to do if confirmed. I started my career with the New York City Police Department, where, as part of my first special assignment as a precinct service officer, I received training from medical experts and drug treatment professionals. Following that training I was assigned to give lectures in local schools and colleges as part of a drug prevention program designed to prevent and reduce the use of illicit drugs by young people. Later, after serving as a beat officer, police academy law instructor, and legal advisor, I was appointed to serve as Assistant Director of the Civilian Complaint Review Board overseeing the investigations process. This was my first management position and it was followed by other positions including, Deputy Assistant Director in the Mayor's Office of Operations, a policy office where

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I handled a broad range of law enforcement-sensitive inter-agency coordination matters, as well as street enforcement issues. I was then appointed Executive Director of the New York City Human Rights Commission. I completed my career in city government while serving as Chief of Operations for the Manhattan Borough President, where I managed personnel and administration, community and constituent services, and was criminal justice advisor to the Borough President. Subsequently, I was a Senior Research Associate and Director of Field Operations, respectively, with two social policy organizations, the Substance Abuse Strategy Initiative and the Center on Addiction and Substance Abuse at Columbia University. As a member of the research team, I helped design and implement, two multi-site research demonstration projects. The first, implemented in five cities, focused on pre-adolescents who were at-risk for getting involved in drugs and crime. We sought to test drug prevention and public safety strategies that might be institutionalized if proven successful. The second project, also implemented in five cities, focused on providing services to drug addicted ex-offenders as they re-entered society.

Finally, I served as Deputy Director at the Justice Department's Office of Community-Oriented Policing Services (COPS). I was responsible for managing the Grants, Research Planning and Evaluation, and Training and Technical Assistance programs. At the same time, I oversaw the creation of 26 Regional Community Policing Institutes that continue to provide technical assistance to local police agencies on myriad community policing and crime prevention. All of these experiences will serve me well if I am confirmed.

(3) What do you see as the biggest challenge for OSLTA?

Answer:

I believe strongly that all units of an organization should work together, communicate, share information, and keep abreast of how the agency is doing overall, with each agency seeing their particular role or function as integral to the success of the overall agency mission. My experience at the COPS office reflected this approach, and our success was shared by the entire agency. I also know that it can sometimes be a challenge to reset or redirect the organizational culture. Since much of the National Drug Control Strategy relies upon drug control program agencies operating outside the ONDCP chain of command, I believe it will be an extraordinary challenge coordinating all of the moving parts. If confirmed, I will be dedicated to finding ways to bridge this gap and foster an effective organizational culture.

(4) What specific background do you have in community based drug prevention?

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My background in community-based drug prevention draws on my experiences working as a research associate, described above in my response to question number two. Moreover, I received drug prevention training early in my career with the New York Police Department and the research demonstration projects I helped design and implement. The first project, formerly called "Children at Risk", now a recognized program model known as "CASASTART" project, has been recognized and designated as an Exemplary Program for Safe, Disciplined and Drug-Free Schools by the U.S. Department of Education, as well as a Model Program by the Substance Abuse and Mental Health Services Administration and the Office of Juvenile Justice and Delinquency Prevention.

(5) If you are confirmed, will drug prevention be a major priority for you? If so, what will you do to ensure that a much greater emphasis is placed on preventing drug use before it starts, specifically as it relates to the Drug Free Communities (DFC) program and the Media Campaign?

Answer:

Yes. If confirmed, I will review closely the strategies that have been employed through both the Drug Free Communities (DFC) program and the Media Campaign to strengthen drug prevention efforts to prevent drug use before it starts.

(6) With the recently announced reorganization of the Office of National Drug Control Policy (ONDCP), several programs, including the DFC grant program, were moved into OSLTA. Will you be reorganizing OSLTA to ensure that these programs get the proper attention they deserve and that there is properly trained and qualified staff to effectively oversee and administer these programs both individually and collectively?

Answer:

If confirmed, one of my priorities will be to meet with respective program staff as part of my assessment of each of the programs. I recognize the importance to the ONDCP mission of having staff who are qualified and properly trained to effectively oversee and administer the programs.

(7) The DFC grant program is one I have long-supported because it relies on what works best, local communities joining together to prevent drug use from starting.

- If confirmed, will you support this program?

Answer:

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Yes. I believe strongly in the DFC Program and if confirmed, I will absolutely support this excellent program.

- Will you use this successful model, which relies on active and effective community coalitions to produce local results, rather the model that imposes a national agenda on state and local communities?

Answer:

Yes. I agree that the model for DFC is strong. DFC embodies community-based drug prevention at its best and I agree that local problems demand local solutions.

- How will you ensure that the DFC program will be an Administration priority both in terms of policy emphasis and funding?

Answer:

With regard to funding, I believe the DFC program has consistently demonstrated its effectiveness, and therefore, deserves continued funding. With respect to policy, I believe it must be informed by evidence-based research and if confirmed, I will look to the national evaluation of the program to inform my decisions on how to make the program even stronger. I will be committed to strengthening the program with a view toward enhancing community-based drug prevention efforts.

- How will you ensure that the DFC program maintains its status as a major policy priority within the ONDCP, with a seat at the policy table with the Director, given the fact that it was previously administered directly under the Director and Deputy Director's Offices rather than in an operation division of the ONDCP?

Answer:

Director Kerlikowske has asked me to join his team as full partner in ONDCP's efforts to reinvigorate the National Drug Control Strategy. The DFC Program does have well-established connections within the funded communities, but it can benefit from building connections with other national efforts. Moving DFC into OSLTA will allow for a synergy across all the ONDCP programs. I have heard clearly from both the Director and Deputy Director that DFC is a priority for our office.

- How will you ensure that the DFC program will get at least equal attention and emphasis in terms of funding and personnel as the other programs under OSLTA?

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Answer:

If confirmed, I will advocate for the necessary resources to ensure that DFC receives the optimal resources it requires to effectively continue serving local communities as a critical partner in our national drug control strategy.

- Will you work off of the existing DFC infrastructure when implementing the Administration's drug prevention efforts?

Answer:

If confirmed, I would want to fully evaluate the current infrastructure before determining the best way to proceed. However, if confirmed, I assure you I will be a voice within ONCDP encouraging the use of existing infrastructure and resources that have proven effective to support any new efforts.

- What specific groups and networks do you plan to contact to enhance the DFC program? How do you plan to coordinate and work with these networks?

Answer:

I have not yet been briefed on this aspect of the DFC Program. However, I look forward to discussing these issues with staff and DFC grantees to better understand how we might maintain and create effective national partnerships to support this important program. As I noted earlier, I am a strong supporter of community-based efforts. Since my days a police officer, I have been in the habit of reaching out to the various networks and coalitions within the communities with which I have worked. If confirmed, I expect to find ways to continue this practice.

- How do you intend to utilize the National Community Anti-Drug Coalition Institute to prepare more communities to be eligible to apply for DFC grants in the future?

Answer:

I have not been fully briefed on the work of the National Community Anti-Drug Coalition Institute. However, the Institute appears to be doing a great job of providing training and technical assistance for the program. If confirmed, as part of my stated commitment in support of the DFC, I look forward to getting a better assessment of the Coalition Institute and its work through discussions with grantees and staff to determine if we are making the most effective use of the Institute's resources and expertise.

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(8) The DFC's application process was designed to be clear and easy for new coalitions to understand and use. Additionally, the drafters intended that the DFC Act provide grantees with a fair, transparent, and timely application and appeals process. Unfortunately, some of my constituents have told me that the application process has become more and more complicated, and some were not treated fairly or provided with an appeals process when they were defunded.

- Have these problems been remedied? If so, how do you intend to ensure that these kinds of problems do not occur again under your watch?

Answer:

It is my understanding that the Program has instituted safeguards to resolve the problems that existed in 2005 and 2006.

- Will you ensure the application process is easy to use?

Answer:

Yes. Drawing on my experience as the Deputy Director for Operations at the Justice Department's Office of Community Oriented Policing Services, where I was responsible for the grants program, I understand how critically important it is to keep the process simple and easy to use. If confirmed, I assure you that I will be committed to making the application process user-friendly for all prospective grantees.

- Will you make a fair, transparent, and timely appeals process for grantees and potential grantees?

Answer:

I will commit to making the appeals process fair, transparent, and timely.

- Do you pledge to work with my office to address any other concerns that may arise in the DFC grant program?

Answer:

Absolutely, I conveyed that message when I met with your staff and I look forward to building a positive relationship with you and your office.

(9) The National Youth Anti-Drug Media Campaign (campaign) will also be administered by OSLTA under the ONDCP restructuring plan. The campaign remains the most visible facet of our nation's drug abuse prevention efforts. However, a Government

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Accountability Office (GAO) report concluded that the campaign was ineffective in reducing youth drug use trends. The GAO further concluded that the government should limit or eliminate funding for the campaign until ONDCP provides credible evidence that the campaign is having a positive impact in reducing youth drug use.

- Do you believe the media campaign is effective in preventing youth drug use? Why or why not?

Answer:

I am aware of the GAO reports that you cite, but, it is my understanding that the findings were released more than five years ago. As I understand it, the current campaign underway over the last four years has not been formally evaluated, but monthly surveys show evidence of effectiveness. We know that teen drug use is down and that teens most exposed to the campaign have more favorable anti-drug attitudes. We also know that the campaign reaches the majority of teens who are not reached through drug-free coalitions or effective school based drug education programs.

Moreover, with respect to the troubling trend in teen prescription drug abuse, we know the campaign has shown promising results from its two-year long effort to increase awareness of this problem. For example more than 75% of parents said they are motivated to safeguard prescription drugs in order to protect their teens; and we have seen a correlation between parents' actions and a reduction in teen drug use.

- Do you believe that Congress should withhold funds from ONDCP until credible evidence that the campaign is having a positive impact is presented? Why or why not?

Answer:

I believe Congress should not withhold funds because the value of the campaign is in my view its ability to be persistent in its messages to teens. This is especially important in light of the rising tide of pro-drug messages permeating the teen social and digital environments.

- Do you believe any changes should be made to the campaign to improve its reach or effectiveness? If so, please describe what these changes will be.

Answer:

Yes, changes can and should be made. ONDCP Director Kerlikowske has recently convened a 25-member expert panel that has made recommendations regarding the campaign. It is my understanding that those recommendations are under review by

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ONDCP. If confirmed, I will be vigilant in fostering efforts to keep the anti-drug message fresh and to target the campaign in the most effective ways possible.

(10) The Counterdrug Technology Assessment Center (CTAC) will also be moved into OSLTA. Congress has drastically slashed funding for CTAC in recent years. Committee reports cited the waste of scarce resources and poor management as primary reasons for the decrease in funding for CTAC.

- What role do you believe CTAC should have within OSLTA?

Answer:

CTAC will augment the other programs in OSLTA, serving constituents in the State, Local, and Tribal arenas. Research initiatives under CTAC may be coordinated through the other programs in OSLTA using the existing coalitions and partner agencies to identify ideas for projects that will add value to the efforts of the counterdrug community. This coordination within OSLTA will result in a coherent focus of the CTAC research consistent with and supportive of the goals of the National Drug Control Strategy.

If confirmed, will you make changes within CTAC to improve its effectiveness? Why or why not?

As I understand it, changes are underway under the leadership of A. Thomas McLellan as Chief Scientist. CTAC will pursue improved effectiveness through coordinated meetings with stakeholders to assure that research funded under the program is not redundant and that it meets the needs of stakeholder agencies.

(11) The High Intensity Drug Trafficking Areas (HIDTA) program has been a highly successful program that has made significant contributions to the disruption of the illegal drug trade in the United States. Over the years, HIDTA's throughout the country have disrupted or dismantled thousands of Drug Trafficking Organizations, and have seized billions of dollars worth in bulk cash, drugs, and weapons.

- If confirmed, will you continue OSLTA's strong support for this program?

Answer:

The HIDTA Program is an integral part of the President's National Drug Control Policy, and is equally important to the Vice President and Director Kerlikowske. The success of the HIDTA program is evident and it is clearly a significant and indispensible tool in the Administration's commitment to reduce illegal drug trafficking. If confirmed as Deputy Director for OSLTA, I would certainly continue to provide strong support for the program. It is more than simply a grant program; it is an opportunity to facilitate a partnership among Federal,

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State, Local, and Tribal law enforcement that has proven invaluable as we strive to achieve the President's goals under the National Drug Control Strategy.

- Do you believe more needs to be done to improve HIDTA's effectiveness? Why or why not?

Answer:

The HIDTA Program is very effective. The model is sound and the combined efforts of Federal, State, Local, and Tribal enforcement communities working within a task force framework ensures all of the participants are treated equally, and their input is valued. The HIDTA Investigative/Intelligence Support Centers provide all partners with immediate feedback on specific pending actionable information.

Nevertheless, more can be done to improve its effectiveness. I believe it makes sense to engage in the routine performance assessments and the examination of program operations and special initiatives. This kind of introspective reevaluation will often reveal opportunities to further improve the effectiveness and efficiency of drug control efforts. I am aware that some of the HIDTAs are engaged in prevention activities. If confirmed, I would like to see more HIDTAs find ways to focus on prevention in addition to ongoing enforcement efforts. I would encourage the HIDTA Regions to explore leveraging their limited resources and consider ways in which they might combine their efforts. I will establish a relationship with the HIDTAs in support of their respective threat-specific strategies.

(12) According to the Partnership for a Drug Free America, 2,500 teenagers each day use prescription medications to get high for the first time. Many times, the source for these medications is the family medicine cabinet. The rise of abuse of over-the-counter (OTC) drugs, such as cough medicines containing dextromethorphan, is also very troubling. It is vital that we educate the public on how dangerous these drugs can be if used without a doctor's advice, and the best ways are to safeguard the family medicine cabinet.

- If confirmed, how would you address the rise in prescription and OTC drug abuse among youth on a national scale?

Answer:

If confirmed, I intend to meet with Director Kerlikowske and my other colleagues at ONDCP with a view toward getting a clear sense of how we will approach this as part of the drug control strategy. More specifically, the Media Campaign, Drug-Free Communities and HIDTA programs are all platforms that should be used to get the message out to the communities. OSLTA's relationship with state and local government leaders, law enforcement, agencies, and business leaders are all vehicles to help address this growing problem. I will use every opportunity to expand efforts already under way to get the message out to teens and as well as parents.

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- What can OSLTA do to educate the public and reduce prescription and OTC drug use?

Answer:

Director Kerlikowske has been in the media addressing this issue. If confirmed, I will begin to address the problem through our National Youth Anti-Drug Media Campaign. As we have seen in recent years, the campaign can be very effective in changing the behavior and reducing the level of drug use by our youth. I will also use the resources of the other OSLTA programs, as noted above and would partner with other drug control agencies to enlist their support in addressing the problem.

(13) Since Congress passed the Combat Meth Act progress has been made in limiting domestic methamphetamine production. However, the Drug Enforcement Administration estimates that over 80% of the meth in the U.S. now comes across the border from Mexico. The National Drug Intelligence Center (NDIC) has stated that recent actions by the Mexican government to reduce meth precursor chemicals have resulted in a decrease in the amount of meth coming into the U.S. As a result, the NDIC believes these actions will result in an increase in domestic meth production.

- If confirmed, how would you ensure that regional drug trends- such as methamphetamine epidemics in the Midwest get national attention from OSLTA and are simply not ignored?

Answer:

Methamphetamine use and addiction constitute pressing threats that must not be ignored. Regional drug threats are a critical part of the work I will be responsible for if confirmed as the Deputy for State, Local, and Tribal Affairs. If confirmed, I will work with our HIDTAs in the Mid-West region to ensure that they have the necessary data to permit the law enforcement agencies to identify and effectively dismantle meth labs and interrupt a growing threat in the region.

(14) The presence of performance-enhancing drugs in professional sports and entertainment continues to have a detrimental impact on America's youth and the integrity of sports. The daily, ongoing revelations of star athletes who have used destructive substances to cheat their way to the top raises concerns about the impact these stories and athletes have upon impressionable youth. For instance, the most recent National Survey on Drug Use and Health found that 2.2% of high school seniors have admitted to using steroids at least once last year.

- If confirmed, what will you do at OSLTA to discourage young athletes from turning to steroids?

Answer:

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I am aware of and concerned about the health and ethical dangers posed by doping in sports. The use of steroids, particularly among our young people, poses a significant public health threat that requires vigilance and education efforts. If confirmed, I will continue the efforts already underway by ONDCP to discourage young athletes from turning to steroids and other illegal performance-enhancing drugs. ONDCP's leadership and active role in the governance of the World Anti-Doping Agency (WADA), allows ONDCP to play a prominent role in this important issue. If confirmed, I look forward to joining in the ongoing support for these efforts.

(15) The Obama Administration recently issued a policy memorandum to U.S. Attorneys regarding the prosecution of individuals in states with laws permitting the use of marijuana for medical purposes. This new policy establishes guidelines for the prosecution of marijuana users and dispensers who are complying with state law. This new memorandum sends the wrong message to our children. It sends the message that it is okay to use marijuana sometimes even though there is no known medical benefit to smoking marijuana.

- Do you believe this new policy will hinder OSLTA programs in any way?

Answer:

The primary aim of these guidelines is to effectively utilize the Justice Department's limited resources to prosecute and dismantle criminal organizations, violent actors, and significant drug traffickers. Drug traffickers who attempt to hide behind claims of compliance with state "medical marijuana" laws to mask their activities will face federal prosecution. While I support the Justice Department guidelines as they provide clear, consistent guidance to United States Attorneys with respect to the exercise of prosecutorial discretion, I also believe that state laws legalizing marijuana may be counterproductive to prevention programs, and negatively affect the anti-drug messages of the National Youth Anti-Drug Media Campaign, Drug Free Communities, HIDTAs and the efforts of our drug control partner agencies.

- Do you believe that local governments that choose to opt out of a state medicinal marijuana policy should have federal assistance in prosecuting those who violate the Controlled Substances Act in the local jurisdiction? Why or why not?

Answer:

There are a number of examples where local police and prosecutors and federal prosecutors have collaborated on enforcement initiatives. One such example involved Project Safe Neighborhoods where gun cases meeting specific criteria could be prosecuted at the federal level instead of the local level. So I can imagine

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circumstance where similar cooperation might occur surrounding the question you have posed.

- Do you believe changes will have to be made to OSLTA programs to reflect this policy change?

Answer:

In addition to the potential impact discussed in my response above, I plan to study this issue further if confirmed and I would be happy to discuss it with you again after I have had the chance to do so.

- Do you support this policy change?

Answer:

Yes, I do support this change.

(16) I hear a lot from state and local law enforcement that the Federal Government isn't always the most helpful partner when it comes to sharing information. In Iowa, the lack of information sharing hasn't been a major problem because of the extensive use of HIDTA's and drug task forces under the Byrne/JAG program in combating narcotics. I think that other jurisdictions could learn from the cooperation that occurs in Iowa in prosecuting narcotics offenses at the Federal level.

Answer:

It would be difficult to find a local law enforcement agency anywhere in the country that has not experienced this problem. I witnessed this while I was a member of local law enforcement, as well as from the Federal perspective while working at the Justice Department. The Federal Government must do a better job in this area. President Obama, Vice President Biden, Director Kerlikoswke, and I all recognize and acknowledge the tremendous expertise and wealth of knowledge that resides in our local police departments, large and small. It seems clear that this Administration is committed to sharing information, leveraging resources, and finding ways to remove the walls that prevent valuable exchange. I believe strongly in this approach and if confirmed, I will consistent with my mandate as Deputy Director for State, Local and Tribal Affairs, make this as a priority. Furthermore, I will ensure that the staff working in OSLTA programs practice this as well. I will also ensure that the HIDTA Investigation Support Centers (ISCs) are coordinating with each other.

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- What is your plan for improving relations and information sharing between Federal, State, and local law enforcement entities?

Answer:

As a former local law enforcement officer, I am familiar with the concerns you have raised. I do believe that the HIDTA's have gone a long way in reducing the tensions and improving the information sharing relationship between federal and state and local agencies but more remains to be done. If confirmed, I will be involved in and assist with resolving the problem with a view toward building trust and establishing long term resolution.

- Aside from drug task forces and HIDTA's, do you believe any new information sharing models could be developed with the help of ONDCP to facilitate information exchange between Federal, State, and local law enforcement? If so, please describe in detail your ideas.

Answer:

The nature of the problem and whether it is isolated or systemic will in my view dictate the approach to be used to address it. I have spent a significant part of my career crafting solutions to address problems fostered by the unwillingness of parties to share or exchange information. I have found that when it comes to the best or most appropriate solution, one size does not fit all. Clearly technology is part of the solution. HIDTA's coordination and exchange with the National Drug Intelligence Center (NDIC) on a strategic level and the El Paso Intelligence Center (EPIC) at the tactical level are both critical.

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Senator Jeff Sessions
Questions for the Record
Benjamin B. Tucker

1. Last week, the Department of Justice issued a memorandum to U.S. Attorneys outlining guidelines for prosecuting so-called "medicinal marijuana" cases. The Department instructed U.S. Attorneys not to pursue individuals who are in "clear and unambiguous compliance with existing state laws providing for the medical use of marijuana." The Department issued its decision even though the Drug Enforcement Agency remains officially opposed to the legalization of marijuana, including for "medical" purposes, because "medical marijuana" already exists in the form of an FDA approved pill called Marinol. I am deeply disappointed in this decision because of the message it sends, particularly to our youth, as it de-emphasizes the seriousness of marijuana use and undermines our efforts to combat drug use.

   a. At your hearing, you stated that "the laws against marijuana should be enforced, as far as I'm concerned." Given your view that federal drug laws should be enforced, do you disagree with the Justice Department's memorandum instructing U.S. Attorneys not to pursue cases involving medicinal marijuana in states that have legalized the drug?

Answer:

As I stated at my hearing, I believe laws against marijuana should be enforced and the Administration is committed to enforcing the Controlled Substances Act in all states. This position is not inconsistent with, nor do I disagree with, the Justice Department guidelines. The primary aim of these guidelines is to effectively utilize the Justice Department's limited resources to prosecute and dismantle criminal organizations, violent actors, and significant drug traffickers. Drug traffickers who attempt to hide behind claims of compliance with state "medical marijuana" laws to mask their activities will face federal prosecution.

   b. Do you believe that state laws legalizing marijuana undermine ONDCP's efforts, including the programs you will lead?

Answer:

I am opposed to legalizing marijuana. I agree that state laws legalizing marijuana could be counter productive to prevention programs and weaken the influence of anti-drug messages of the National Youth Anti-Drug Media Campaign, as well as Drug-Free Communities, HIDTA, and our National Drug Control partner agencies. Director Kerlikowske recently stated that "Marijuana legalization is a non-starter in the Obama Administration." If confirmed, I look forward to contributing to ongoing efforts to reduce drug use.

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c. Do you agree with the Drug Enforcement Agency's position that legalization of marijuana, regardless of context, will come at the detriment of our children and public safety?

Answer:

Yes.

d. Given that the FDA prohibits other drugs that can be smoked, such as opium, do you believe that the FDA should prohibit medicinal marijuana?

Answer:

I believe we should rely on the FDA to determine the best course of action to take regarding how it addresses issues raised within the medical marijuana debate.

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Follow-up Questions of Senator Tom Coburn, M.D.
Benjamin B. Tucker
Deputy Director of State, Local, and Tribal Affairs
Office of National Drug Control Policy
United States Senate Committee on the Judiciary
October 28, 2009

1. Do you believe that marijuana should remain listed as a schedule I drug in the Controlled Substances Act?

Answer:

Yes. Controlled substances are listed as Schedule I if they have a high potential for abuse and no accepted medical use. Smoked marijuana does not have any accepted medical use, and since marijuana can be highly addictive, I believe that marijuana should remain a Schedule I controlled substance.

2. Do you support the use of smoked marijuana for medical purposes?

Answer:

No, I do not support the use of smoked marijuana for medical purposes.

3. As you know, the FDA is responsible for approving drugs as safe and effective for their intended uses. Although it has not approved marijuana for any medical use, some states have passed their own laws allowing such use in limited circumstances. In your opinion, is it either wise or safe for states to essentially bypass the FDA and permit use of a drug that has not been approved by that agency?

Answer:

Policies involving the control of marijuana should be evaluated by a scientific process, not by popular vote. In general, I believe that voting on a medical issue can set a dangerous precedent.

4. Do you have any predispositions or personal conflicts of interest that might interfere with your ability to stringently enforce the nation's traditional drug control policies, particularly with respect to marijuana?

Answer:

No.

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5. On October 19, 2009, the Deputy Attorney General, David Ogden, issued a memorandum to U.S. Attorneys in states that have laws authorizing the use of medical marijuana directing prosecutors not to "focus federal resources" on individuals whose actions are in "clear and unambiguous compliance" with state law.

   This is a dramatic break with Bush administration policy, which demanded the prosecution of marijuana distributors, even those acting in accordance with state law. Marijuana use is prohibited for any purpose at the federal level, meaning that no matter the state's laws, it is still a federal crime to use marijuana. The Obama Administration is saying that it will simply not enforce federal laws, as long as you are legal in your state.

   a. Senator Sessions asked you about this new policy regarding medical marijuana at your hearing and you responded that you were "not fully versed" in the new policy. Now that you have had time to review DOJ's new policy, do you agree with it?

      i. Given your extensive work in law enforcement, what potential complications do you see that could arise from this policy, if any?

Answer:

Although I do not envision complications arising from this policy, I would certainly continue to study and monitor the situation if confirmed. The primary aim of these guidelines is to effectively utilize limited Justice Department resources to prosecute and dismantle criminal organizations, violent actors, and significant drug traffickers. Drug traffickers who attempt to hide behind claims of compliance with state "medical marijuana" laws to mask their activities will face federal prosecution. My understanding is that both local and federal law enforcement will, in the normal course of their enforcement actions, continue to target offenders that pose a great risk to public safety.

The policy also directs prosecutors not to investigate caregivers if they appear to be complying with state law. Distributor centers for medical marijuana and their staffs could be considered caregivers under this directive could they not?

   ii. Do you agree that including caregivers in this policy could cause serious problems for prosecutors and law enforcement trying to discern the difference between illicit dealers and distributors?

Answer:

I do not believe this will cause a serious problem for law enforcement. I believe local law enforcement will continue to apprehend those who are violating the law, and federal and local law enforcement will continue to cooperate in addressing the problems posed by the illicit distribution of marijuana.

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b. Former Clinton White House Director of Public Affairs, White House Office of National Drug Policy Bob Weiner was recently quoted as warning the Obama Administration to "be careful about the new lax enforcement policy for medical marijuana [because] you may get way more than you bargained for. Prescription marijuana use may explode for healthy people." Senator Sessions asked you about Mr. Weiner's statement at your hearing. Now that you have had time to review DOJ's policy, do you agree with Mr. Weiner's concerns?

   i. Why or why not?

Answer:

I do not agree with Mr. Weiner's premise. The Obama Administration is not endorsing medical marijuana; it is simply stating to United States Attorneys that they must use their limited resources wisely to target the most serious threats. Marijuana remains a Schedule I Controlled Substance pursuant to the CSA and therefore persons who possess or sell the drug in violation of that law remain subject to prosecution.

c. Mr. Tucker, you have worked in law enforcement and as a coordinator and research associate for several organizations focusing on substance abuse, including the Substance Abuse Strategy Initiative Project and the Center on Addiction and Substance Abuse so you no doubt have witnesses the detrimental effects of drug abuse. Don't you agree that weakening federal drug enforcement efforts with regard to medical marijuana will result in more people abusing marijuana?

Answer:

I do not view the recent guidelines as weakening federal drug enforcement efforts. I believe that enforcement will continue following priorities that have always been set at the local level.

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Answers to Questions for the Record
Confirmation Hearing of Benjamin B. Tucker
Senate Judiciary Committee October 21, 2009
Nominated as Deputy Director for State, Local, and Tribal Affairs
Office of National Drug Control Policy

Questions from Senator Dianne Feinstein

As you know, the High Intensity Drug Trafficking Areas (HITDA) Program leverages funding with other federal, state, local and tribal resources from participating agencies to focus on the drug trafficking threat in each HITDA region. This year, in meetings with local, State and Federal law enforcement in California, law enforcement personnel expressed consensus that increasing HITDA resources is the best approach to enhancing the fight against the narcotics trade and related border violence.

Over the past decade, baseline funding to the HITDA programs has remained virtually stagnant while inflation has risen 28%. Although the HITDA programs produce impressive results, stagnant funding has led to the loss of full time employees, less overtime for drug operations, the inability to upgrade technical equipment, and impacted their ability to target major drug trafficking organizations, gangs, meth labs and large scale marijuana grows on public lands.

As the U.S. continues to combat narcotics trafficking and related violence, the HITDAs are critical to support our federal, state and local agencies in their attempts to secure the highest level of public safety. The hard work of the HITDA program has been clearly demonstrated through its success in disrupting drug trafficking organizations, methamphetamine producing organizations, large scale marijuana cultivators and drug gangs. With proper resources and leadership, I am confident that the HITDA programs will continue this success.

1. Do you believe the HIDTAs are adequately resourced, notably along the Southwestern border? As the Office of Drug Control Policy Deputy Director for State, Local, and Tribal Affairs, will you examine the impact that stagnant funding and inflation has had on the ability of the HIDTAs to meet their mission?

Answer:

As you have indicated, the HIDTA Program budget has indeed been fairly constant for the last decade. Despite this flat funding, the HIDTA Program in general, and the Southwest Border, specifically, have had notable successes in the disruption and dismantling of major Drug Trafficking Organizations (DTOs) and in the disruption of the flow of narcotics into this country from Mexico through collaboration among their Federal, State, and Local law enforcement partners. Much of that success can be attributed to the initiatives lead by the HIDTA Directors and their respective executive board members.

If confirmed, I commit to examining the budget with your specific concerns in mind. I look forward to working with you and your office to address these matters. Concerning the HIDTA funding generally, I will explore the impact that stagnant budget and inflation has on the ability of HIDTAs to meet their mission. I will consider this important question as part of my initial assessment looking at the range of the program's priorities.

KIRSTEN E. GILLIBRAND
NEW YORK
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SUBMISSIONS FOR THE RECORD
United States Senate
WASHINGTON, DC 20510–3205

COMMITTEES:
ENVIRONMENT AND PUBLIC WORKS
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SPECIAL COMMITTEE ON AGING

October 28, 2009

The Honorable Patrick Leahy
Chairman, Senate Committee
On the Judiciary
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member, Senate Committee
On the Judiciary
Washington, DC 20510

Dear Chairman Leahy, Ranking Member Sessions and Distinguished Members of the Committee,

I am pleased to write to you in strong support of fellow New Yorker, Benjamin B. Tucker, for the position of Deputy Director for State, Local, and Tribal Affairs in the Office of National Drug Control Policy. Mr. Tucker has dedicated his entire career to law enforcement and the criminal justice system. His long and distinguished career spanning over 40 years, has given him wide ranging experience in various aspects of our criminal justice system, specifically in the areas of drug prevention and education.

Mr. Tucker began his career as a beat cop with the New York City Police Department, serving honorably for nearly twenty-two years. He was among a select group of precinct service officers educated by medical experts to conduct innovative drug prevention and education programs in New York City schools and colleges. During his service as a police officer, Mr. Tucker earned his B.S. in criminal justice from the John Jay College of Criminal Justice at the City University of New York. He then earned his Juris Doctor from Fordham University, becoming a legal advisor and later sergeant within the department.

After his distinguished service to the New York Police Department, Benjamin Tucker devoted himself to drug prevention and education as the coordinator of operations at the Substance Abuse Strategy Initiative at New York University and later as the director of the field operations at Columbia University's Center on Addiction and Substance Abuse. Following his service there, he had a key role in implementing community policing initiatives as the deputy director of operations in the Office of Community Oriented Policing Services (COPS) at the United States Department of Justice.

Mr. Tucker returned to New York City to work on drug prevention and education initiatives following his service at the Department of Justice. As the director of the Office of School Safety and Planning in the New York City Department of Education, he coordinated among various city agencies and schools on issues of safety, truancy, discipline, and drug prevention. He is now an associate professor at Pace University, working as the criminal justice program coordinator. He has published various articles on our criminal justice system, including a law review article on the need

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COMMITTEES:
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United States Senate

WASHINGTON, DC 20510-3205

for police departments to become directly involved with their communities in order to prevent crime, and a letter to the editor published by the New York Times on gender related violence. In addition to being an educator, he has also served and continues to serve on numerous government panels regarding community policing and has been a consultant to national organizations dedicated to reducing drug abuse and crime.

The efforts of Mr. Tucker to increase the awareness of drug prevention and education have not gone unnoticed. The Drug Enforcement Agency gave him in an award in 2006 in recognition for his work to increase awareness of drug-related issues. His work at the Department of Justice was recognized by Attorney General Janet Reno, and both New York City Mayor Edward Koch and the New York City Police Department have recognized and commended him for his outstanding service to the people of New York City. His nomination has been endorsed by the National Sheriffs' Association, Major Cities Chiefs Association, and the Police Executive Research Forum, among others, because of his distinguished career and experience in the area of drug policy.

The Deputy Director of State, Local, and Tribal Affairs at the Office of National Drug Control Policy is responsible for disrupting the market for illegal drugs by supporting state and local communities in their efforts to reduce substance abuse and by managing grants to counter drug task forces. It is essential that this position be filled by someone who is extremely capable and knowledgeable about the complexities of drug policy and the criminal justice system at the community level.

Benjamin Tucker possesses these essential qualities, gleaned from his more than two decades of experience in law enforcement, outstanding depth of knowledge with community policing, and his career-long commitment to drug policy. He is a tremendously well qualified individual and I am confident that he would make a superb deputy director. That is why I strongly endorse him for this position and urge the committee to favorably report his nomination.

Sincerely,

Kirsten E. Gillibrand

Kirsten E. Gillibrand
United States Senator

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Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
October 21, 2009

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On Executive And Judicial Nominations
October 21, 2009

Today, we will hear from two more of President Obama's well-qualified nominees, one for a lifetime appointment on the Federal bench, and one for an important position in the executive branch. I thank Senator Klobuchar for chairing this hearing. I look forward to hearing from the Senators from Tennessee and appreciate their support for Jane Branstetter Stranch, who has been nominated to fill a vacancy on the Sixth Circuit. I hope that with their support, she will receive better treatment than that accorded this President's other judicial nominees.

Our Committee will now have held hearings for 15 of President Obama's nominations to fill district and circuit court vacancies. We have reported 13 of these nominations favorably. The nomination of Judge Keenan is on the Committee's agenda for consideration this week. To date, only three of these nominations have been given an up or down vote by the full Senate, and that third confirmation only took place moments ago.

It is October 21. By this date in the administration of George W. Bush, we had confirmed eight lower court judges. By this juncture in the administration of Bill Clinton, we had confirmed eight lower court nominations. The Senate has confirmed just three lower court nominees this year—less than half of those considered by this date during President Bush's tumultuous first year in office, and less than half of those confirmed by this date during President Clinton's first year--despite the fact that President Obama sent nominees with bipartisan support to the Senate two months earlier than did President Bush.

The first of those lower court confirmations took place on September 17, months after the nomination of Judge Gerard Lynch had been reported out of Committee with no dissent. Finally, after months of needless delay, the Senate confirmed Judge Lynch to serve on the Second Circuit by an overwhelming vote of 94 to three. That filled just one of the five vacancies this year on the Second Circuit. Its bench remains nearly one-quarter empty with four vacancies among its 13-member bench.

Judge Viken, the first of just two district court judges the Senate has been allowed to vote on this year, was confirmed on September 29, by a unanimous 99-0 vote. Minutes ago, the Senate voted

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to confirm Roberto Lange, who was reported by the Committee on October 1. It took three weeks to proceed to Judge Lange's nomination despite the fact that he, like Judge Viken, had the support of both his home state Senators, one a respected Democratic Senator and the other a Republican Senator who is a member of the Republican Senate leadership.

South Dakota has had its two vacancies filled this year, but vacancies in 35 other states remain unfilled, and the Senate's constitutional responsibilities are going unfulfilled. There was – there is – no reason for the Republican minority to impose these unnecessary and needless delays to judicial confirmations. There are 10 other judicial nominations on the Senate Executive Calendar awaiting action and being stalled by Republican holds. All 10 were reported favorably by the Senate Judiciary Committee. Two were reported in June and have been waiting for more than four months for Senate consideration.

In a recent column, Professor Carl Tobias wrote:

"President Obama has implemented several measures that should foster prompt appointments. First, he practiced bipartisanship to halt the detrimental cycle of accusations, countercharges and non-stop paybacks. Moreover, the White House has promoted consultation by seeking advice on designees from Democratic and GOP Senate members, especially home state senators, before official nominations. Obama has also submitted consensus nominees, who have even temperaments and are very smart, ethical, diligent and independent."

When I served as chairman of the Senate Judiciary Committee during President Bush's first term, I did my best to stop the downward spiral that had affected judicial confirmations. Throughout my chairmanship I made sure to treat President Bush's judicial nominees better than the Republicans had treated President Clinton's. During the 17 months I chaired the Judiciary Committee during President Bush's first term, we confirmed 100 of his judicial nominees. At the end of his presidency, although Republicans had chaired the Judiciary Committee for more than half his tenure, more of his judicial nominees were confirmed when I was the chairman than in the more than four years when Republicans were in charge.

In spite of President Obama's efforts, however, Senate Republicans began this year threatening to filibuster every judicial nominee of the new President. They have followed through by dragging out, delaying, obstructing and stalling the process. The result is that 10 months into President's Obama's first term, the Senate has confirmed only three of his nominations for circuit and district courts while judicial vacancies skyrocket around the country. The delays in considering judicial nominations pose a serious problem in light of the alarming spike in judicial vacancies on our Federal courts. There are now 95 vacancies on Federal circuit and district courts and another 24 future vacancies already announced. These vacancies are at near record levels. Justice should not be delayed or denied to any American because of overburdened courts. We can do better. The American people deserve better.

Professor Tobias' observations about the Second Circuit hold true throughout the country, and accurately reflect this President's efforts to work cooperatively with respect to judicial nominations. President Obama made his first judicial nomination, that of Judge David Hamilton to the Seventh Circuit, in March, but it has been stalled on the Executive Calendar since early

June, despite the support of the senior Republican in the Senate, Senator Lugar. The nomination of Judge Andre Davis to the Fourth Circuit was reported by the committee on June 4 by a vote of 16 to three, but has yet to be considered by the Senate. The nomination of Judge Beverly Baldwin Martin to the Eleventh Circuit has the support of both of Georgia's Senators, both Republicans, and was reported unanimously from the Committee by voice vote on September 10, but has yet to be considered or scheduled for consideration by the Senate. The nomination of Joseph Greenaway to the Third Circuit has the support of both Pennsylvania Senators, and was reported unanimously from the Committee by voice vote on October 1, but has yet to be considered or scheduled for consideration by the Senate. All of these nominees are well-respected judges. All will be confirmed, I believe, if only Republicans would consent to their consideration by the Senate. Instead, the President's good efforts are being snubbed and these nominees stalled for no good purpose.

The Senate can and must do a better job of restoring our tradition of regularly considering qualified, noncontroversial nominees to fill vacancies on the Federal bench without needless and harmful delays. This is a tradition followed with Republican Presidents and Democratic Presidents.

In addition, four nominations to be Assistant Attorneys General at the Department of Justice remain on the Executive Calendar, three of them for many months. Republican Senators have also prevented us from moving to consider the nomination of respected Federal Judge William Sessions of Vermont to be Chairman of the United States Sentencing Commission for over five months, even though he was twice confirmed as a member of that Commission. The Majority Leader has been forced to file a cloture motion in order to end the obstruction of that nomination.

Four out of a total of 11 divisions at the Department of Justice remain without Senate-confirmed presidential nominees because of Republican holds and delays--the Office of Legal Counsel, the Tax Division, the Office of Legal Policy, and the Environment and Natural Resources Division. Earlier this month, with the hard work of Senator Cardin, we were finally able to move forward to confirm Tom Perez to head the Civil Rights Division at the Justice Department. His nomination was stalled for four months, despite the fact that he was approved 17 to two by the Judiciary Committee. At the last minute, Senate Republicans abandoned an ill-fated effort to filibuster the nomination, and asked that the cloture vote be vitiated. He was finally confirmed with more than 70 votes in the Senate.

I hope that, instead of withholding consents and threatening filibusters of President Obama's nominees, the other side of the aisle will join us in treating them fairly. We should not have to fight for months to schedule consideration of the President's judicial nominations and nominations for critical posts in the executive branch.

Today we will hear from Jane Branstetter Stranch, who has been nominated to a seat on the Sixth Circuit. In her 31-year legal career at Nashville law firm Branstetter, Stranch & Jennings, Ms. Stranch has focused on issues related to labor and employment law and has developed an active appellate practice before the court to which she has now been nominated. Ms. Stranch is a leader in her community with impressive academic credentials, earning her J.D., Order of the Coif, and her B.A., summa cum laude and Phi Beta Kappa, from Vanderbilt University.

We will also hear from Professor Benjamin Tucker, President Obama's nominee to be the Deputy Director for State, Local, and Tribal Affairs at the Office of National Drug Control Policy. Professor Tucker has 40 years of experience in the criminal justice field. He began his career as a beat cop in the New York Police Department when he was just 19-years-old. Since then, Professor Tucker has served as a high-ranking official in the New York City government, worked in the Justice Department's Office of Community Oriented Policing Services to implement the 1994 crime bill, and led efforts to increase school safety in New York City's public schools. He is currently a professor of criminal justice at New York City's Pace University. While serving as a police officer, Professor Tucker earned his B.S. in criminal justice from the John Jay College of Criminal Justice at City University of New York and his J.D. from Fordham University School of Law.

I look forward to hearing from the nominees today and welcome them and their families to the Committee.

# # # # #

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October 6, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Dear Messrs. Leahy and Sessions:

On behalf of the Major Cities Chiefs, representing the 56 largest jurisdictions across the Nation, I am writing to support the nomination of Benjamin Tucker to be the Deputy Director for State, Local and Tribal Affairs at the Office of National Drug Control Policy (ONDCP).

Mr. Tucker is an unparalleled expert in criminal justice and we look forward to welcoming him back to Washington. As you know, work at ONDCP is a top priority for law enforcement agencies across our Nation and Mr. Tucker will be a tremendous asset to the drug control policy team. Mr. Tucker has worked in law enforcement and criminal justice for more than 40 years. He started his professional life as a cop in New York City and progressed through the criminal justice field holding various senior positions at several agencies including the COPS office and the NYC Mayor's office. As a professor of criminal justice at Pace University, Mr. Tucker has most recently provided guidance for those who will be our leaders in the future

American law enforcement has always looked to you for leadership and we again turn to you to move the nomination of Ben Tucker quickly through the confirmation process. ONDCP is too critical an agency not to have all of the top officials in place.

All the best,

William J. Bratton
Chief of Police, Los Angeles, California
President, Major Cities Chiefs' Association

NATIONAL SHERIFFS' ASSOCIATION

October 15, 2009

The Honorable Patrick J. Leahy, Chair
The Honorable Jeff Sessions, Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senators Leahy and Sessions:

On behalf of the National Sheriffs' Association (NSA), I am writing to express our support for the nomination of Benjamin B. Tucker to be Deputy Director for State, Local and Tribal affairs, Office of Drug Control Policy (ONDCP). We respectfully urge you to confirm his nomination without delay.

The Deputy Director of the Office of State, Local and Tribal Affairs (OSLTA) would be responsible for the activities of the High Intensity Drug Trafficking Areas Program and supporting State and locals in their efforts to reduce substance abuse at the community level. Thus, the Deputy Director of OSLTA has an important role in coordinating drug control efforts among local, State, and Federal law enforcement agencies across the country aimed at reducing illicit drug use, drug trafficking and drug-related crime and violence. Mr. Tucker's vast experience and qualifications make him the ideal candidate to fulfill this role.

NSA is confident in Mr. Tucker's ability to work with the Nation's sheriffs to combat and reduce illegal drugs in the United States. He has illustrated his commitment and knowledge in criminal justice policy and the needs of local law enforcement throughout his career as an academic at Pace University, having served in various capacities for New York City working closely with the local law enforcement community, and at the U.S. Department of Justice, Office of Community Oriented Policing Services (COPS).

As you know, in order to carry out the Nation's response to illegal drugs, the coordination and collaboration among local, State and Federal law enforcement agencies is critical. As the former Deputy Director for the COPS Office, Mr. Tucker has vital experience in interagency cooperation necessary to assist the ONDCP in establishing the objectives for the Nation's drug control program.

As one of the largest law enforcement associations in the United States, the NSA urges the Senate to swiftly confirm Benjamin B. Tucker as Deputy Director for State, Local and Tribal affairs, Office of National Drug Control Policy.

Respectfully,

Aaron D. Kennard
Executive Director

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POLICE EXECUTIVE
RESEARCH FORUM

Chuck Wexler
Executive Director

October 2, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Leahy:

On behalf of the Police Executive Research Forum (PERF), I am writing to support wholeheartedly the nomination of Benjamin B. Tucker to serve as Deputy Director of State, Local and Tribal Affairs at the White House Office of National Drug Control Policy (ONDCP).

PERF is a Washington, D.C.-based professional association of police chiefs and other leaders of local and state police departments. PERF also serves as a research and technical assistance organization, specializing in helping law enforcement agencies to improve their policies and operations. PERF is governed by a board of directors of leading police chiefs.

Those of us in law enforcement understand that the associate director position at ONDCP is critically important, because it is through the associate director that local and state police agencies can bring their perspectives on a wide range of drug issues to the attention of ONDCP.

I have known Mr. Tucker for more than a decade, and I had the opportunity to work with him in a variety of capacities when he was Deputy Director for Operations at the Justice Department's COPS Office. I have been impressed by his capabilities, his breadth of understanding of criminal justice and law enforcement issues, and his integrity. I know that Mr. Tucker is well liked and respected in the field of law enforcement across the country, and he is deeply committed to serving our nation's criminal justice and law enforcement needs.

On behalf of PERF, I urge you to give expeditious consideration to Mr. Tucker's nomination and to confirm his appointment to this important post at the White House Office of National Drug Control Policy.

Respectfully,

Chuck Wexler
Executive Director

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JOHN JAY COLLEGE
THE CITY UNIVERSITY OF NEW YORK
OF CRIMINAL JUSTICE

PRESIDENT
JEREMY TRAVIS

October 5, 2009

Honorable Patrick J. Leahy
Committee Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Senator Sessions:

I am writing this letter to urge the Senate to confirm the nomination of Benjamin B. Tucker for the position of Deputy Director of the Office of National Drug Control Policy.

Allow me first to establish the basis for this lettter of support. I have known Mr. Tucker for about 25 years. We first met when I was Special Counsel to the Police Commissioner of the City of New York, and Mr. Tucker was the Assistant Director of the Civilian Complaint Review Board of the New York City Police Department. In our respective capacities, we worked closely together on an analysis of the effectiveness of the police department's handling of civilian complaints of police misconduct. I was immediately impressed with Mr. Tucker's command of the material, his openness to new ideas, and his ability to think through reform proposals in this highly sensitive area of policing.

My positive impressions of Mr. Tucker have since been confirmed in a number of professional interactions. Based on our close working relationship in the Police Department, I brought Mr. Tucker to the Mayor's office to serve as my Deputy when I was Director of Law Enforcement Services in the Mayor's Office of Operations. When Mayor Koch revamped the city's Human Rights Commission, following a critical review that I produced for the Mayor, he called upon Mr. Tucker to serve as deputy commissioner of this important agency. In both of these capacities, Mr. Tucker earned a reputation as a no-nonsense leader, someone who gets things done by listening to other people and then moving forward with a reform agenda. He was able to bridge the gap between government officials -- particularly those in enforcement agencies -- and the public that we served. He testified frequently before the City Council and earned high marks as a government official whose word could be trusted.

When I went to Washington to serve as Director of the National Institute of Justice, I was proud to recommend Ben Tucker to Attorney General Reno as she was putting together the leadership team for the Office of Community Oriented Policing Services, or the COPS Office. In his role as Deputy Director, Ben gained a national reputation as one of the most thoughtful people on the challenges facing American policing. He is able to combine his experience as a front-line police officer, with his vast government experience in other policy sectors, and his particular sensitivity for young people and communities of color -- and the combination is a rare individual who is equally comfortable with police officers and those who are most skeptical of police officers.

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He would bring these strengths to the position of Deputy Director of the Office of National Drug Control Policy, and in addition would bring direct experience in the area of drug policy. His position at the Center for Alcoholism and Substance Abuse (CASA) overseeing national drug treatment and drug prevention demonstration projects provided him with exposure to the literature in this field. His tenure as chief safety officer at the New York City Department of Education has underscored the importance of working closely with educators and parents on issues of children at risk. His position as a tenured faculty member at Pace University has exposed him more extensively to the research literature on criminal justice issues.

Ben Tucker will add great strength to the leadership team being assembled at the Office of National Drug Control policy. He understands local government. He is conversant with the challenges facing policing. He can speak to the issues confronting young people and minority communities struggling with the burdens of drug abuse. I strongly urge the Senate to confirm his nomination.

Sincerely,

Jeremy Travis
President

STATEMENT OF BENJAMIN B. TUCKER
NOMINEE FOR DEPUTY DIRECTOR FOR STATE, LOCAL, AND TRIBAL AFFAIRS
OFFICE OF NATIONAL DRUG CONTROL POLICY BEFORE THE
COMMITTEE ON THE JUDICIARY
OF THE
UNITED STATES SENATE

Chairwoman Klobuchar, Ranking Member Sessions, and Members of the Judiciary Committee, I am honored to come before you today seeking your confirmation of my nomination as Deputy Director for State, Local and Tribal Affairs of the White House Office of National Drug Control Policy (ONDCP).

As a criminal justice professional whose commitment to, and vision of, justice has been shaped by more than 35 years of life experiences, I am honored and eager to work with the many talented and dedicated professionals at the state and local level to reduce drug production, trafficking, use, and the consequences of the drug trade in our communities. Throughout my career, I have been steadfast in my commitment to improving the health and safety of others. When I joined the New York City Police Department at the age of 18, I had just gotten married and enrolled at the John Jay College of Criminal Justice. It was the beginning of a personal and professional journey I could not have imagined; one that has prepared me to take on the role and responsibilities required of the position for which I am nominated.

Before sharing the specifics of what I bring to this position, I would like to introduce members of my family who are here with me today: my wife Diana, our son Scott, and my mother-in-law Constantia Beecher; all of whom have provided their love, unconditional support, and inspiration throughout my career.

For more than three and a half decades, I have been an advocate for innovation in criminal justice practice. After joining the New York City Police Department in 1969, I was one of sixty young Precinct Service Officers to receive special training from substance abuse experts. After the training, I was assigned to develop and conduct drug prevention education programs in New York City schools and colleges. That experience had a profound influence on my future as a police officer and every other position I have held throughout my career, including my role as

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mediator and liaison for the police department to communities in Brooklyn experiencing racial strife and violence as a result of school busing policies in the 1970s. In July 1983, I was sworn in as Assistant Director of the New York City Civilian Complaint Review Board. I spent the next three years leading efforts to eliminate case backlogs, reviewing the dispute resolution process and improving the complaint and investigations processes. Later, I served as Deputy Assistant Director for Law Enforcement Services in the Mayor's Office of Operations.

After leaving City government, I joined the staff of the Substance Abuse Strategy Initiative (SASIP) Project at New York University, where, as a senior research associate, I designed and oversaw implementation of the community policing and public safety component of the "Children at Risk" program, a research demonstration program focused on preventing pre-adolescent youth from becoming involved in drugs and crime. Following the merger of SASIP with the Center on Addiction and Substance Abuse at Columbia University, I served as director of field operations and senior research associate, and worked on the development and implementation of the "Opportunity to Succeed" demonstration program, which was designed to provide post-incarceration services for substance abusing ex-offenders. The outcomes of both of these research efforts resulted in better understanding among law enforcement officials, educators, families, communities, and policy makers of how to more effectively reduce risk and create safer communities.

With respect to my service at the Federal level, I had the privilege of serving at the Justice Department during the Clinton Administration as Deputy Director of Operations in the Office of Community Oriented Policing Services. My primary responsibility was directing the grant making operation and overseeing the distribution of several billion dollars in grant funding. The role required broad collaboration, not only with my Federal colleagues and Members of Congress, but also with state and local law enforcement agencies, state and local government officials, community organizations, and school officials. That collaboration helped ensure a grant making process that was rigorous, practical and effective, and reminds me of how my collective life experiences, from walking the streets of Brooklyn as a beat cop to walking the halls of the Justice Department as an advisor to the Attorney General of the United States, all serve to broaden and inform my worldview, and my approach to questions of policy. In my

conversations with Director Kerlikowske, I've been impressed with how much value he places on cooperating across jurisdictions. I look forward to working with him on such endeavors.

In closing, I want to assure the Committee that my experiences have taught me a great deal about the challenges we face in reducing drug use and consequences. At the same time, I know there is much to learn, and I am eager to join Director Kerlikowske, the ONDCP staff, this Congress, and our Nation's communities in developing thoughtful, comprehensive, and effective solutions to the drug problem. Thank you for the opportunity to address your Committee. I look forward to answering any questions you may have.

POLICE
FOUNDATION

October 1, 2009

Honorable Patrick J. Leahy
Committee Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

William G. Milliken
Chairman of the Board

Hubert Williams
President

Dear Senator Leahy:

I am writing to wholeheartedly endorse the candidacy of Mr. Benjamin B. Tucker for the position of Deputy Director for State, Local, and Tribal Affairs, White House Office of National Drug Control Policy. I have had extensive experience and contacts with him during his tenure as the Deputy Director for Operations, Office of Community Oriented Policing Services of the U.S. Department of Justice, and have interacted periodically with him since his departure from that post.

Ben Tucker is the consummate professional. He understands human nature and recognizes the value of a smile and a positive disposition, even when faced with tough and difficult decisions. Ben is a people person with great communication skills who has not lost the common touch. He understands administration, management, and the challenges facing police chiefs, as well as the cop walking the beat.

Moreover, his broad range of experience, combined with his educational accomplishments, ensures that this critical position is held by someone who recognizes the complexity of the drug issue and the need for an interdisciplinary approach to address it. Ben has served as a New York City police officer, lawyer, college professor, and as the Executive Director of the New York City Commission on Human Rights. He was part of a select group of new precinct service officers educated by medical and other substance abuse experts to conduct innovative drug prevention and education programs in city schools and colleges. I believe that if given the opportunity, Ben Tucker would do an outstanding job in this position.

Sincerely,

Hubert Williams

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NOMINATIONS OF THOMAS I. VANASKIE, NOMINEE TO BE A JUDGE IN THE U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT; CHRISTINA REISS, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF VERMONT; LOUIS B. BUTLER, JR., NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WISCONSIN; ABDUL K. KALLON, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ALABAMA; AND VICTORIA ANGELICA ESPINEL, NOMINEE TO BE INTELLECTUAL PROPERTY ENFORCEMENT COORDINATOR, EXECUTIVE OFFICE OF THE PRESIDENT

WEDNESDAY, NOVEMBER 4, 2009

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 2 p.m., Room SD–226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Kohl, Feingold, Specter, Franken, Sessions, and Coburn.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Good afternoon. As always happens in the Senate, there are a half a dozen hearings going on, so you may see Senators drifting in and out.

We will hear from five of President Obama's well-qualified nominees, four for lifetime appointments on the Federal bench and one for an important position in the executive branch. I am especially pleased that we will be able to welcome to the Judiciary Committee today Judge Christina Reiss from Essex Junction, Vermont.

Judge Reiss was nominated by President Obama to a seat on the District Court in Vermont, and when confirmed, as I'm certain she will be, she will be the first woman to serve on that court. I was honored to recommend Judge Reiss to the President and I look for-

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ward, at the appropriate time in the proceeding, to introduce her to the Committee.

I would also welcome to the Committee Victoria Espinel, who is nominated to be the first Intellectual Property Enforcement Coordinator in the Executive Office of the President. She will bring an incredible breadth of experience. It's an important new Senate-confirmed position, created by legislation that I shepherded through the last Congress, so we can better enforce intellectual property protections. The notion of a coordinator was strongly pressed by Senators Bayh and Voinovich, and I look forward to when they can introduce Ms. Espinel to the Committee.

All of the judicial nominees appearing before the Committee today are from the home State of members of this Committee. We welcome Abdul Kallon, who has been nominated to serve in the Northern District of Alabama, the home State of the Committee's Ranking Member, Senator Sessions. His nomination also has the support of Senator Shelby.

We will welcome Justice Louis Butler, who is the first African-American to serve on the Wisconsin Supreme Court and, if confirmed, will be the first African-American to serve in the Western District of Wisconsin. He'll be introduced by two members of this Committee, his home State Senators, Senators Kohl and Feingold.

Judge Thomas Vanaskie from Senator Specter's home State of Pennsylvania has been nominated to a seat on the Third Circuit, having served for more than 15 years in the Middle District of Pennsylvania. Senator Specter and Senator Casey will introduce Judge Vanaskie to the Committee.

I would hope that each would be treated well by the Committee and receive the prompt consideration these nominations deserve. We have tried to hear nominations in regular order, and I think that we will continue to do so. I wish the Senate as a whole would be able to do that. We do know that Senate Republicans began this year threatening to filibuster every judicial nominee of the new President.

I've been here 35 years. I've never heard that done by either party, for a President of either party. Back through history, I never found an incidence of that. Apparently the only time such a threat has ever been made has been against President Obama's nominees, and I think it's unfortunate. It's even more unfortunate they followed through on that threat by obstructing and stalling the process, delaying for months the confirmation of well-qualified consensus nominees.

Last week, the Senate was finally allowed to consider the nomination of Judge Irene Berger, who had been slowed up by the other side. She's now been confirmed as the first African-American Federal judge in the history of West Virginia. We had to fight for 3 weeks while it was being stalled after her nomination had been endorsed unanimously by the Judiciary Committee.

Incidentally, after blocking it, when we finally were able to force an actual roll call vote where people could not block it anonymously but actually had to vote, she was confirmed 97 to nothing. There's been no answer to why they have subjected this qualified nominee to weeks of unnecessary delay.

Why did it take 3 weeks and 2 hours to debate for the Senate to consider the nomination of Roberto Longe to the District of South Dakota after his nomination was reported unanimously. And when we finally were allowed to vote and people could not use anonymous holds back, so you had to stand up and either vote "aye" or "no", it voted 100 to zero for him.

I wonder why the Senate has confirmed only a single Circuit Court nomination, when there are five, stalled by Republicans on the Senate executive calendar, including two that have been pending since June. It is November 4th. By this date, in President George Bush's first year in office, the Senate, controlled by Democrats, confirmed a total of 12 lower court judges, including four Circuit Court judges. I know, because that July I began serving as Chairman of the Committee, and in 17 months confirmed 100 of President Bush's nominees.

We did that in spite of the attacks of September 11th, despite the anthrax-laced letters sent to the Senate that closed our offices, one directed to me which killed at least two people, and while working virtually around the clock on the PATRIOT Act for 6 weeks.

But unlike the speedy way that the Democrats confirmed President Bush's nominees, the Republican Minority has only allowed action on four judicial nominees to the Federal Circuit and District Court.

We reduced judicial vacancies as low as 34 last year, even though it was the last year of President Bush's second term, and of course could not be re-elected. Now those vacancies have doubled. There are 96 vacancies in our Federal Circuits and District Courts, and 23 more have been announced, approaching record levels.

The American people expect more of the conscience of the Nation from the U.S. Senate. We now have held hearings for 19 of President Obama's nominees for District and Circuit Court vacancies. We've reported 14 of these nominations favorably. With the cooperation of Senator Sessions, we can continue the progress we're making on this Committee. We should not be delayed then for months because of anonymous holds, especially when people have to actually step forward and no longer hide because anonymity and they then vote for the people they've held up.

Senator Sessions, did you wish to——

Senator SESSIONS. Well, I don't really wish to get in a tit-for-tat over the confirmations, but I would note that there are 98 vacancies, according to our calculations, and only 22 nominations. Some of those are going through background checks or review and I am sure we will move them forward. I would expect I will vote for well over 90 percent of these nominees, as I did for President Clinton. I think we'll move forward with them. We've got a nominee I think the Majority is holding up—I don't know why—Beverly Martin. I just happened to learn the other day, that one's been sitting, ready to be voted on. We ought to do that now.

I would say that there are a few nominees that are going to be controversial and we're going to have a lot of debate about, but most—I agree with you, Mr. Chairman, if we get them nominated, then we'll evaluate them and the good ones we'll move forward, and the non-controversial ones will.

I look forward to this hearing, and maybe we can move some more, and one I know is a good one and I intend to support.

Chairman LEAHY. Well, let me—we're going to have introductions, and I'm going to do this the usual way, by seniority. I will introduce Judge Reiss and Ms. Espinel. Senator Specter will introduce Thomas Vanaskie. Senator Kohl will introduce Louis Butler, followed by Senator Feingold, followed by Senator Sessions for Abdul Kallon, and then followed by Senator Casey for Thomas Vanaskie.

Let me—we're trying to do this fairly, by seniority. I am proud to introduce to the Committee a fellow Vermonter, Judge Christina Reiss. Judge Reiss will be taking the chair at an appropriate point and will be able to introduce her family. Judge Reiss lives in Essex Junction, Vermont. She's been nominated to serve on Vermont's Federal District Court.

As I stated before, if confirmed, she'll be the first woman to do so. She has considerable criminal and civil experience. For the past 5 years she's been a State trial court judge in Vermont. I would note, incidentally, that was a position to which she was appointed by Governor Jim Douglas, a Republican, and confirmed unanimously.

She formerly was a partner in two Vermont law firms. She earned her B.A. from St. Michael's College, a wonderful college. I graduated from there, and Erica Shebeaux, the press secretary of this Committee, did. She earned her J.D. with high honors from University of Arizona College of Law. She was editor-in-chief of *The Law Review*.

I recommended Judge Reiss to President Obama after she excelled in her interviews before a Vermont judicial nominating commission. She demonstrated in those interviews she could relate to litigants of many backgrounds. She has a keen understanding of the powerful role a judge plays in the lives of litigants before her. She acknowledged how important it is for judges to possess humility, as well as an understanding of the effects legal rulings have on people's lives.

I told her, the only criteria I have for a judge, other than the obvious legal abilities, is that if I was representing a litigant, either as plaintiff or defendant, poor, rich, Republican, Democratic, Independent, whatever, if I came before that judge I could look and tell my client, you will have a fair hearing; you will win or lose based on the law and the merits.

Judge Reiss is the type of person I could say that very easily about. She's known for her strong intellect, her diligence, her well-reasoned decisions. She has an excellent reputation among the advocates who have appeared before her, as well as among courthouse staff. As a testament to her reputation among her fellow judges, she was recently selected to be the presiding judge over Vermont's busiest State courthouse this September.

I noticed that the Chief Federal Judge of Vermont, Judge William Sessions, is also here for this hearing. I hope that while I am very proud of her as a Vermonter, being the presiding judge in Vermont's busiest State courthouse, I'm looking forward to when she hits the Federal courthouse in Rutland to serve as the U.S. District Court judge. So, I congratulate you, and welcome you and

your family. Incidentally, on a personal note, I know how proud your father was of you. I know how proud he would be. We have to assume he's looking down to see you.

We will also welcome Victoria Espinel to the Committee. Ms. Espinel is nominated to be the Nation's first Intellectual Property Enforcement Coordinator, a Senate-confirmed position created by legislation I authored last Congress. Five other Senators on this Committee also co-sponsored this legislation that takes a comprehensive approach to intellectual property protection. It provides Federal, State, and local law enforcement tools and resources they need to combat intellectual property theft. The nomination of Ms. Espinel shows that the administration is serious about protecting intellectual property to spur our economy, create jobs.

Ms. Espinel has extensive experience with intellectual property issues, both foreign and domestic. She worked on these issues in and out of government. President Obama picked her, knowing about that experience, including service in the Bush administration as the Assistant U.S. Trade Representative for Intellectual Property and Innovation. She's currently the president of Bridging the Innovation Divide, a nonprofit organization she founded to further intellectual property education in minority communities.

She's an Assistant Professor of Intellectual Property and International Trade at George Mason University School of Law. She earned her B.S. from the Georgetown University School of Foreign Service. Her Juris Doctoris—and I'm glad to see—I don't know if this just is coincidence—is from my other alma mater, the Georgetown University Law Center, and her LLM, with merit, from the London School of Economics and Political Science.

I will now yield to Senator Specter to introduce Thomas I. Vanaskie to be a Judge in the U.S. Court of Appeals for the Third Circuit.

PRESENTATION OF THOMAS I. VANASKIE, NOMINEE TO BE A JUDGE IN THE U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT BY HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you, Mr. Chairman. I join my distinguished college, Senator Casey, in presenting to this Judiciary Committee the nomination of Judge Thomas Vanaskie to be a Judge of the Court of Appeals for the Third Circuit.

In January of 1994, I had the pleasure of presenting then-citizen Tom Vanaskie to the Judiciary Committee and he was confirmed. He has had 15 illustrious years on the U.S. District Court for the Middle District. He has excelled there. I have watched his progress and have been proud to have been a part of his recommendation to the President, President Clinton, and join Senator Casey in recommending Judge Vanaskie for the Court of Appeals for the Third Circuit.

He brought to the bench and outstanding academic and professional record: a Bachelor of Arts degree, cum laude, from Lycoming College; J.D. from Dickinson School of Law, magna cum laude; was on *The Law Review* editorial staff; and has been recommended by the American Bar Association unanimously as being Well-Qualified.

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There is a great deal that could be said about Judge Vanaskie, but I think his record speaks for itself. Racip salupiter. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Senator Kohl, you, I understand, wish to introduce Mr. Butler.

PRESENTATION OF LOUIS B. BUTLER, JR., NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WISCONSIN BY HON. HERB KOHL, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator KOHL. Thank you so much. It is my pleasure today to welcome and introduce Justice Louis Butler to this Committee. We also welcome several members of the family here with us today. As those who do not know Justice Butler will soon learn, he is an exemplary lawyer whose legal career has been distinguished across the board, from advocate to judge, to Wisconsin Supreme Court Justice. Justice Butler was born and raised in Chicago, but he has been a Wisconsinite for more than 35 years. He received his B.A. from Lawrence University, and his law degree from the University of Wisconsin.

Justice Butler served for more than 13 years in the State Public Defender's Office, where he argued hundreds of cases on behalf of indigent clients. Justice Butler was an accomplished advocate and was the first Wisconsin Assistant Public Defender to argue a case before the U.S. Supreme Court.

In 1992, Justice Butler joined the Milwaukee Municipal Court, where he served for 10 years before becoming a trial court judge. He was a judge in the Milwaukee County Circuit Court, until being appointed to the Wisconsin Supreme Court in 2004. Over his many years on the bench he has earned a reputation of being a tough, but fair, jurist. Justice Butler not only has an impressive legal background, but he is a fine man. He's a deeply committed man to his family, to his community, and to the law. He possesses all the best qualities that we look for in a judge: intelligence, diligence, humility, and integrity. We are confident that the people of Madison, and all of Wisconsin, will be enormously proud of him and that he will serve us all well.

Justice Butler's nomination proves once again that the process we use in Wisconsin to choose Federal judges ensures excellence. The Wisconsin Federal Nominating Commission has been used to select Federal judges and U.S. Attorneys in Wisconsin for 30 years. Through a great deal of cooperation and careful consideration and by keeping politics to a minimum, we always find highly qualified candidates like Justice Butler.

Justice Butler, we are pleased to have you with us today and look forward to your testimony.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you, Senator Kohl.

Senator Feingold.

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PRESENTATION OF LOUIS B. BUTLER, JR., NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WISCONSIN BY HON. RUSS FEINGOLD, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator FEINGOLD. Thank you, Mr. Chairman.

I, too, am honored to introduce Justice Louis B. Butler, Jr., and I'd like to add my congratulations to this extraordinary public servant. Louis Butler, as was mentioned, was a former justice on Wisconsin's highest court. He has been appointed by President Obama to serve as a U.S. District Court Judge for the Western District of Wisconsin. Senator Kohl has already reviewed his academic background. I would add that he was also awarded an honorary Ph.D. in Humanities from his alma mater, Lawrence University, in 2007.

During his career, Butler has served as an advocate, a teacher, a judge, and a mentor. In the words of President Obama, "Butler has dedicated his career to public service", and "he has displayed unwavering integrity and an unyielding commitment to justice."

Upon his nomination, Justice Butler received a unanimous "Well-Qualified" rating from the American Bar Association.

Justice Butler has had an impressive legal career, and Senator Kohl outlined the highlights of it already. I noticed, since the Judge is, in fact, somebody I've known as a personal friend for many years, I was able to get to know him personally and see, for example, his manner and approach during his 10 years as a judge in Milwaukee, Wisconsin's largest and most diverse metropolitan area, and he was re-elected three times to that. Then he was elected to the Milwaukee County Circuit Court in 2002, and then fortunately Governor Doyle appointed him to the Wisconsin Supreme Court.

Justice Butler's appointment marked an important moment in Wisconsin history, as he became the first African-American to serve on the court. Because of his background, he brought a unique perspective to the court, but he recognized that his overriding goal should be, as he put it, "to treat every litigant fairly and equally and apply the law without bias in a neutral, detached, impartial, and independent manner." Justice Butler has written, "I first became a lawyer, then a judge, because I am dedicated to achieving equal justice for all people, including the downtrodden and those who lack resources. I embrace the sentiment that injustice to anyone is intolerable and that everyone should have access to the courts and a right to be heard."

Mr. Chairman, I believe these words are a very appropriate calling card for a U.S. District Court Judge, and I strongly support Justice Butler's nomination.

Chairman LEAHY. Thank you very much.

Senator Sessions, you wished to introduced Mr. Kallon.

Senator SESSIONS. Thank you, Mr. Chairman.

I see Senator Casey here. I'm going to be here through the end of the hearing. If his schedule is such that he would like to, I would yield to him at this time.

Chairman LEAHY. I appreciate it, because Senator Casey has been extraordinarily helpful to this Committee. He's been extraordinarily helpful to the White House in helping to vet who the nominees might be. We've had many talks. Of course, he's one of the

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most respected members of the Senate, so I thank you very much for that courtesy.

Senator Casey.

PRESENTATION OF THOMAS I. VANASKIE, NOMINEE TO BE A JUDGE IN THE U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT BY HON. ROBERT P. CASEY, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator CASEY. Mr. Chairman, thank you very much. I want to commend your work as Chairman of this Committee. I am honored to appear here. I want to especially thank Ranking Member Sessions for letting me jump the line. It doesn't happen too often in the Senate, and we're grateful.

And to the other members of the Committee, my distinguished colleagues, and of course my colleague from Pennsylvania, Senator Specter, we're honored to be with him today.

I'm also grateful for the nomination of Judge Vanaskie made by President Obama. We're grateful for that nomination. Senator Specter gave a good summation of Judge Vanaskie's academic record, as well as his experience. I'll just add a few words to that.

Tom Vanaskie is someone I've known a long time. He's a son of the coal country of Northeastern Pennsylvania, a place where many of us have been exposed to what I would say was a history and a heritage of hard work and sacrifice. In Tom's case, growing up in a region like that, he dedicated himself at a very young age to that hard work and sacrifice that I spoke of earlier.

His academic record is beyond stellar, a record of academic achievement and excellence that few could claim, whether it was graduating with honors from Lycoming College or graduating with honors as well from law school at Dickinson, serving on *The Law Review*, and then clerking for Judge William Neelon, someone who has had a long and distinguished career on the bench, himself appointed to the bench by President Kennedy and had high standards for his clerks. I know just from that of Tom's ability.

Judge Vanaskie, after his clerkship, worked in several law firms in Pennsylvania, one of them just happened to be the Dilworth law firm where my father was practicing at the time. Although my father was a public official for a good part of his adult life, he probably spent more years as a lawyer. I know of his ability as a lawyer. He was an excellent lawyer and demanded high standards of those around him.

I think I probably, if I could speak for him in this way, would say that he had the highest regard for Tom Vanaskie's ability, his intellect, but also his work ethic, two critically important characteristics of a successful lawyer, and now we know as a successful judge the last 15 years.

He served, as Senator Specter said, since 1994 on the U.S. District Court for the Middle District of Pennsylvania, was made the Chief Judge in 1999, appointed to the Information Technology Committee of the Judicial Conference of the United States by Chief Justice Rehnquist, and I think, in conclusion, I'd say if you look at his academic record, his work as a lawyer, and now his work for 15 years as a judge, there are a couple of ways to describe all of

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those and I think is a forecast of what he would do on the U.S. Court of Appeals for the Third Circuit.

The following, I think, distinguishes him: excellence, knowledge of the law, fairness, temperament, and character, all of the elements or all of the characteristics that we would hope every judge possesses. So I am honored, both honored and proud, to recommend to this Committee the confirmation of Judge Thomas I. Vanaskie for the U.S. Court of Appeals for the Third Circuit.

Thank you.

Chairman LEAHY. Well, thank you, Senator Casey. The recommendation means a great deal. As you know, the admiration I had for your late father, what you say about him, that carries also a great deal of weight. I also know that you have a back-to-back schedule the rest of the afternoon and will have to be leaving us, but I appreciate you being here.

So, Mr. Vanaskie, if you would step forward, please. I should say Judge Vanaskie. Please raise your right hand and repeat after me.

[Whereupon, the witness was duly sworn.]

Chairman LEAHY. Thank you. Please sit down, sir.

Judge, did you have an opening statement that you wished to give?

STATEMENT OF THOMAS I. VANASKIE, NOMINEE TO BE JUDGE IN THE U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT

Judge VANASKIE. Senator Leahy, I do not have an opening statement. If I could be so bold as to request to introduce some of the members of my family who are here today.

Chairman LEAHY. Of course. Please. Please do so, sir.

Judge VANASKIE. I'm awfully proud to say that my mom, who will be 86 years young later this month, is here with us today, Delores Vanaskie. I know my dad, John, is here with us in spirit, the World War II Pearl Harbor survivor, a World War II veteran who was a great influence on us all.

My wife, Dot, is here. Dot is a preschool teacher back in Scranton, Pennsylvania. Joining us are my daughter Diane, who is an English teacher—high school English teacher—in Massachusetts, along with her husband, Todd Mulligan, our son-in-law.

Our son Tom is with us as well. He's a recent summa cum laude graduate from the Washington College of Law at American University, and now clerking for Hon. Royce Lamberth, Chief Judge of the D.C. District Court.

I know my daughter Laura, and architectural historian and architect/designer in Southern California is with us by webcast, and I want to commend the Committee for making these proceedings available, and so accessible and so transparent.

Also with me today is my oldest brother, Dr. Michael Vanaskie, a child psychologist in Concord, New Hampshire, and my sister, Mary Lou Osevala, who runs a cardiac care unit at the Hershey Medical Center, and with her is her husband, Ron. I have a number of friends and others, and workers who are with us here today as well, including Joe Gaughan, Marty Pane, Tawny Alvarez and her husband Greg, Tom Brown, who practiced law with me for a long time, Kyle Elliott, one of my current law clerks, Shintaro

Yamaguchi, who was a former law clerk of mine, and others, and I thank them for being here.

Chairman LEAHY. Would they all please stand up, the ones just introduced by Judge Vanaskie. Boy, you sure know how to pack a room.

[Laughter.]

Chairman LEAHY. Thank you all for being here. I am not singling anybody out particularly, but having your mother here must be of particular pleasure. I know, to have at least my first two terms in the Senate, my parents there was very special, both for them and for me.

Judge VANASKIE. It certainly is, Senator. It was certainly special to have our father, my dad, with us 15 years ago when I had my first confirmation hearing.

Chairman LEAHY. I was going to say, that was—I know the record showed that he was there, and I appreciate that.

Now, the courts, Judge, as you know as well as anyone, with your extensive experience on the bench, are the one undemocratic branch of our government—undemocratic in the sense that you're appointed and that's it, you're there for life. So I think that they have a special duty to the American people, especially the people who have the least amount of power and least amount of protection.

Now, you have had 15 years on a trial court, a very active, real one. I've read the background of the cases you've held, and all. What has that done to teach you about the difference in backgrounds in people and the need to be sensitive to them?

Judge VANASKIE. Well, it's taught me a lot, Senator. It's taught me a lot in terms of being sensitive to the different backgrounds that people bring, to the different circumstances in which they find themselves that result in a controversy, being in a court of law. I come from a blue collar background and so I'm certainly sensitive to the fact of economic deprivation.

But more importantly, I've learned a lot about cultural differences that are brought to bear on the cases that must be adjudicated. I've learned that you must try to understand that those differences exist in looking at the motivations of those who appear before you. So I think, if anything, it's caused me to be more sensitive to things that, as a practicing lawyer, maybe I didn't pay enough attention to, sir.

Chairman LEAHY. Well, even as a practicing lawyer, did you have cases where somebody had to stand up for what would be considered the less powerful against the more powerful?

Judge VANASKIE. I did, Senator. I accepted court appointments. I represented an inmate who was challenging the legality of long-term administrative segregation. I was appointed by the Court of Appeals to argue that matter before the Court of Appeals and brief that. I represented individuals in employment discrimination cases, both in terms of gender discrimination—a woman who had applied to become a police officer and had scored the highest on the civil service exam but was not selected, and we were successful in that endeavor. I represented individuals in age discrimination cases, including my father in an age discrimination case.

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Chairman LEAHY. Well, Judge, you also—I've noticed in recent decades we've had a very activist Supreme Court, especially in the last 10 or 15 years. They've struck down an unprecedented number of Federal statutes, most notably several designed to protect the civil rights of Americans beyond Congress' power under Section 5 of the Fourteenth Amendment, as far as *Flores* v. *City of Boerne*.

Senator Specter, I, and several others have talked about the Supreme Court basically legislating. During the argument on the Voting Rights Act, it looked like some were about to strike down a key provision on the Voting Rights Act. There was a very significant outcry across the country and they limited, from what appeared from their questions, what they were going to do.

But they, in recent decades, struck down statutes as being outside the authority granted Congress by the Commerce Clause, such as *U.S.* v. *Lopez*, *U.S.* v. *Morrison*, and then in 2005 we have *Gonzalez* v. *Raish*. What's your understanding of the scope of Congressional power under Article 1 of the Constitution, particularly the Commerce Clause. I fully understand that as a Court of Appeals judge, you are bound by decisions of the Supreme Court. But what is your understanding of Congressional power?

Judge VANASKIE. Well, Senator, in reference to the Commerce Clause, my understanding of Congressional power is that it is extremely broad and that deference must be given to Congressional judgments based upon Commerce Clause powers, supported by findings of fact, so that in my judgment, the power is extremely broad.

Chairman LEAHY. We have heard nominees, especially for the Supreme Court, speak of reliance on stare decisis, understanding of course the Supreme Court can overrule even their past decisions. But would you please give me your philosophy on stare decisis?

Judge VANASKIE. Yes, Senator. With respect to stare decisis, I believe that the stability of the law depends upon lower courts following the pronouncements of higher courts, and that stare decisis is an important, important principle in our system of justice. Litigants and the public need to know that they can rely upon courts following precedents that are controlling or governing in a particular situation, and so it's a bedrock principle, as far as I'm concerned, of our system of justice, and that is that stare decisis is to be—is to be respected. I think that any approach to the decision of a case has to—has to take that into account, has to recognize that.

Chairman LEAHY. Thank you. You know, I'm always looking at the question of checks and balances. We have the Congressional check, we have Congressional oversight, but we also have the courts as checks against abuse of executive or Congressional powers. You'll be in a stronger position in the Court of Appeals. I assume, based on everything I've heard about you, everything I've read about you, that's a responsibility you're willing to take on and exercise. Is that correct?

Judge VANASKIE. It is a responsibility that I am willing to take on and exercise, Senator, but it's also one that I recognize, the authority has to be exercised very carefully and only under very extreme circumstances.

Chairman LEAHY. Thank you very much, Judge.

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Senator Sessions.

Senator SESSIONS. Judge, congratulations on your nomination. To follow up on Senator Leahy's questioning, you recognize, do you not, that the Constitution is the supreme law of the land and you're bound by that?

Judge VANASKIE. Absolutely, sir. I took an oath to defend, obey, and show true faith and allegiance to it.

Senator SESSIONS. And as a Court of Appeals judge, you're bound by the plain holdings of the U.S. Supreme Court with regard to the Constitution.

Judge VANASKIE. Yes, sir.

Senator SESSIONS. Judge, in 2007, you spoke before an adult education class regarding the current sentencing regime and the disparity between crack and powder cocaine. I agree with you that that disparity is too great and have offered legislation for almost 10 years now to fix it, and maybe this year we will be able to do that.

In your remarks, though, you suggested that the International Convention on the Elimination of All Forms of Racial Discrimination, which prohibits signatories from having laws that have "an invidious discriminatory impact regardless of intent" could be used to challenge that Congressionally passed law.

You then cited Supreme Court cases of *Lawrence* v. *Texas* and *Roper* v. *Simmons* as a precedent for that. And with respect to *Lawrence* you said, talking about the Supreme Court in *Lawrence*, "The court utilized international law to strike down an unjust domestic statute." And with respect to *Roper* you said, "Because of the overwhelming international consensus prohibiting this practice, the court found that it violated the Eighth Amendment", *Roper* being the death penalty for minors, is that correct?

Judge VANASKIE. That's correct, sir.

Senator SESSIONS. Well, these were established laws of the United States. As the crack/powder—I feel like we need to fix it, but we haven't been able to get it done. But do you think that if you feel like a statute is unjust, that you can look around the globe and see if you can find a global opinion and that that would justify you striking it down?

Judge VANASKIE. Senator, thank you for that question. No, I don't think that if I feel a law is unjust I could look around to see how that particular matter has been handled by other foreign nations. In the context of that particular talk I gave at a class, my reference to the International Covenant on Elimination of All Forms of Racial Discrimination was from an academic perspective and was just suggesting a type of argument that may be made, recognizing that in the intervening years the Supreme Court has made decisions in the crack cocaine area that have changed how judges may approach that particular disparity in terms of the 101:1 ratio.

So, no, sir, Senator. I do not believe that you can, because you feel a law is unjust, look to international sources.

Senator SESSIONS. Well, you know, when they talk about "overwhelming international consensus", first, I don't know there is one on this subject. And usually when people say that, they usually mean somewhere in the world they can find some people who agree

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with them. No surveys are done on this. We also make reference to the world community. I'm not sure they call a roll and have the world community vote. People just say "the world community thinks this and that."

I just would—I'm glad—I think your answer is respectful of the Constitution. I hope—I believe—it is on what you just said. But I do think we have to understand that judges, do you not agree, regardless if there is a world opinion contrary, your obligation, your oath is to render your verdict under the Constitution of the United States.

Judge VANASKIE. I understand that, sir.

Senator SESSIONS. You also said in a speech, "I also propose that the rule of law is best preserved by a model of judicial restraint, and that the executive and legislative branches are in the best position to make policy judgments." Do you still stand by that?

Judge VANASKIE. I still stand by that. Yes, sir.

Senator SESSIONS. Good. And you stated that judicial restraint is intended "to assure that decisions are not based upon personal values or preferences but are instead made according to law," and I think those are good statements.

Thank you, Mr. Chairman. My time is up.

Chairman LEAHY. Thank you, Senator Sessions.

Senator Kohl.

Senator KOHL. Judge Vanaskie, although you're bound by the precedent of your circuit and the precedent of the U.S. Supreme Court, as a Federal judge you will be called upon to decide cases where there is no precedent or where the precedent does not clearly determine the outcome. How do you intend to approach these kinds of cases?

Judge VANASKIE. I intend to approach those kinds of cases, Senator Kohl, in the way that I would approach any particular issue: first, with utmost impartiality; second, with careful attention to the language that has been chosen at the instrument that is under consideration, the document, whether it be the Constitution, or a statute, or a contract; the apparent purposes of the instrument in question; the parallel provisions that may exist in that particular instrument to try to understand what may be intended by the language that has been used in that particular instance that's under consideration; the precedent that may be analogous to it, or precedent from other jurisdictions that may help to form a better understanding—when I say "other jurisdictions," other courts of appeal is what I'm referring to—and all of those factors, as well as traditional understandings, traditional sources of laws.

Senator KOHL. All right.

How would you describe your judicial philosophy?

Judge VANASKIE. I would describe, Senator Kohl, my judicial philosophy along those lines, that is, one where, first, it is important that the jurist approach every matter, both with impartiality and the appearance, the utmost appearance of impartiality, fairness, and even-handedness and openness, receptiveness to considering the arguments of each party that is presented to you for purposes of understanding the argument and making sure that each litigant understands they've received a fair hearing, and left with the un-

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derstanding that, regardless of the outcome, they've been treated with the respect and fairness to which they're entitled.

Senator KOHL. Judge Vanaskie, you've been a trial court judge for 15 years now. If you're confirmed as an appellate court judge, you'll be sitting on panels of three judges, and in order to form a majority opinion, will need to convince at least one other judge to agree with you. How will you approach this difference in decision-making? How will you seek to reach consensus with your colleagues?

Judge VANASKIE. Thank you, Senator Kohl, for that question. I've thought a lot about that. I've had the occasion now to sit, by designation on the U.S. Court of Appeals for the Third Circuit, three times in the last 3 or 4 years, so I've been in that position where I have engaged in the discussions where an attempt is made to reach common ground on particular issues. I would try to use the power of persuasion.

My analysis of the facts and my understanding if the law, in order to try to reach a majority, or preferably unanimous conclusion with respect to the matter. Failing that, if I'm unable to convince another person, then I hope to have the courage to write an appropriate opinion that expresses my point of view.

Senator KOHL. Very good.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you very much.

Senator Specter.

Senator SPECTER. Judge Vanaskie, again, congratulations on your nomination, and congratulations on your outstanding career. It's nice to have so many of your friends and family with you today to share in this honor. It's a very nice day for you, your family, and for Pennsylvania.

When you talk about the judicial role to interpret rather than to make law, those concepts have been amplified on a longstanding debate between original intent as to what the founding fathers meant and what the drafters of the amendments meant, contrasted, as Palko would say, with the changing values of a society.

It comes into sharp conflict, say, with original intent on the Fourteenth Amendment, adopted in 1868 on equal protection, at a time when the Senate galleries were segregated and the Senate voted for equal protection. But no doubt they didn't have integration in mind on the segregation.

Now, you may not be called upon to decide cases exactly in that framework, but if you were, how would you balance those considerations of evolving societal values contrasted with original intent?

Judge VANASKIE. Senator Specter, that is an extremely interesting question and one that certainly there is tremendous amount of debate in academia. From a judge's perspective, I start with an understanding that the Constitution is to be an enduring document. It is one that is to be interpreted, first with an effort to understand its terms, the apparent purposes behind particular provisions.

Senator SPECTER. Would that enduring document include the intent of the founding fathers over societally evolving values?

Judge VANASKIE. I think, Senator, to answer your question, it would be an attempt to understand how the founding fathers would

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have intended the constitutional provision to be applied in the current setting.

Senator SPECTER. Judge Vanaskie, have you come across the Doctrine of Proportionality and Congruency in an evaluation of the adequacy of a congressional record? It used to be sufficient to have a rational basis, but more recently the Supreme Court has said the standard is "proportionate and congruent". I've been trying to figure out what that means. Could you help me?

Judge VANASKIE. I'm afraid I cannot, Senator, as I am not familiar with that.

Senator SPECTER. Well, Judge Vanaskie, as bright as you are and as excellent as your record is, if you are familiar with it, I don't know your answer would be any different.

[Laughter.]

Senator SPECTER. Have you confronted the situation where there have been circuit splits? The Third Circuit has not ruled—and I ask this question in the context of the Supreme Court having turned down circuit splits. I pressed for a long time to require the Supreme Court to be televised, and I'm about to modify that approach with a sense of the Senate resolution to urge the Supreme Court to accept television, to have some transparency and accountability.

You have lifetime appointments and you have virtual lack of knowledge anywhere on the intricacies of the Supreme Court, unless you're really good at reading footnotes. There are many circuit splits where the court doesn't decide it, citizens were treated differently depending on where they live, and in other circuits which have not decided the district judge would be battling, should I follow the Fourth Circuit or the Eleventh Circuit. Have you faced that problem?

Judge VANASKIE. Senator Specter, I certainly have faced that problem.

Senator SPECTER. Do you like it?

Judge VANASKIE. I do not like it, sir, because now I'm trying to determine what the result would be of our Court of Appeals when it finally gets there.

Senator SPECTER. Well, now I've set you up for the real question of this sequence, Judge Vanaskie, and that is your sense of television. I've been questioning many—television in the court.

[Laughter.]

Senator SPECTER. Senator Leahy and I have discussed the subject for decades, eons, and twice the Committee has voted out legislation, once during my tenure as Chairman, once during Senator Leahy's tenure as Chairman, and it's been introduced again. I've decided to take a little different approach because Judge Souter has left the bench, and he said cameras would roll in over his dead body. There's a great reluctance in the court to go against somebody's view.

Judge Sotomayor, Justice Sotomayor, testified about a good experience she had had. Do you think that television in the Supreme Court would inhibit or materially affect the conduct of the lawyers or the justices, balanced against the insight that it would give to the public as to this great institution which has the last word on

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so many tremendous decisions without any transparency, and lifetime appointments? A pretty good insulator. What do you think?

Judge VANASKIE. Well, Senator Specter, it certainly is not my call to make. If you are asking for my personal opinion, I happen to favor more transparency in court proceedings in general. I know what the Judicial Conference policy is, and I served as a member of the Judicial Conference. I know the policy is to prohibit televised court proceedings. But I think we go a long way to opening up and promoting understanding of the workings of the courts if we were more open-minded with respect to that particular matter.

Senator SPECTER. It's hard to do, Judge Vanaskie, but you've just won my more enthusiastic support.

Chairman LEAHY. I think, Senator Specter, we had already marked him down here as tentatively leaning your way.

[Laughter.]

Senator SPECTER. The Chairman understates things.

[Laughter.]

Senator SPECTER. I have one final question, Mr. Vanaskie, which I don't think will be determinative of your nomination. But I note in your resume you were inducted into the Shimoken, Pennsylvania chapter of the Pennsylvania Hall of Fame, recognized as the First Academic All-American in football. Two questions. What does that mean?

[Laughter.]

Senator SPECTER. And second, how has it helped you in your career?

[Laughter.]

Judge VANASKIE. The coal country has a proud tradition of its athletics, and it was a great honor for me to be named to be part of the Shamoken chapter of the Pennsylvania Sports Hall of Fame for my career in football.

Senator SPECTER. Were you quarterback?

Judge VANASKIE. I was a defensive back. I was a safety, and I returned punts and kick-offs.

Senator SPECTER. You played two ways?

Judge VANASKIE. In high school two ways, but in college just one way.

Senator SPECTER. Thank you very much, Judge Vanaskie.

Chairman LEAHY. I would note, Judge Vanaskie, in 35 years on this committee, that's the first time I've heard that question asked as to what you played, football.

[Laughter.]

Chairman LEAHY. I would also note that while we tell you to always be fair, and careful, and everything else, even on this Committee I can make a mistake. I had not seen Senator Coburn come in, and he should have gone, followed Senator Kohl. I've already apologized to him, but I would note that for the record. I'm rather scrupulous trying to protect everybody's rights on this Committee.

So, Senator Coburn.

Senator COBURN. Well, welcome.

Judge VANASKIE. Thank you, Senator.

Senator COBURN. I have a few questions for you.

The first one I would ask, you just agreed that the power under the Commerce Clause is very broad. Can you give me your opinion

as to what limitations the Constitution places on this power to regulate interstate commerce?

Judge VANASKIE. Senator Coburn, that, again, is a very interesting question and one that certainly divides the courts, not only academic community. I'm not sure I can give you a definition. I think part of the problem is trying to determine where the line should be drawn.

Senator COBURN. How about the limitations that you would see?

Judge VANASKIE. I suppose, Senator, in the abstract, there must be—since it is the power to regulate commerce, there has to be a determination as to when commerce is impacted by the particular congressional enactment, if that is the found of the authority for the congressional enactment. And I know there have been Supreme Court decisions—they were mentioned, *Lopez* and *Morrison*—which drew lines and determined that they were beyond the authority of Congress under the Commerce Clause. I'm not prepared, sir, to say that those were appropriately drawn.

Senator COBURN. That's fair.

The reason that question is important to me is, we're debating health care bills that are going to mandate a fine, a tax on individuals in this country if in fact they don't purchase something that we think they should be forced to purchase. So it may be something that's very much in front of you in the next year or so, as I'm sure somebody's going to challenge that if it gets through this institution.

I want to go to a couple of things that I go to with every Circuit Court nominee, and it has to deal with the utilization of foreign law. Can you state for me anywhere you find in our founding documents, the Constitution, or even the Federalist Papers, any authorization for a Federal judge to use a consideration of what other countries think in their legal system in terms of interpreting our codes, our Constitution, and our treaties?

Judge VANASKIE. Senator, I couldn't cite to you anything in the Constitution or in the Federalist Papers, but I don't pretend to be an expert on the Federalist Papers, other than perhaps 78 and 79 that deal specifically with the judiciary, and I cannot think of anything that would be in there.

I do think, however, that when it comes to treaty obligations, a common source of interpretation of treaty obligations can be how other member nations have applied certain provisions that may be an issue or that may not be clear. I will say to you, Senator, that in one case I had I did cite to decisions from other states—that was the *Kazam* case—because at issue in that case was the Convention Against Torture, whether, for example, in our case, whether diplomatic assurance could be deemed reliable so as to enable a state to return an alien, I looked to foreign—to authority of foreign jurisdictions for purposes of deciding how other states have handled diplomatic assurances. In that case, I found other states recognized the authority of diplomatic assurances and therefore we could recognize diplomatic assurances.

I looked at it from another perspective as well, and that is what other states have done in terms of addressing the argument that there could be no impartial review of the reliability of a diplomatic assurance, and looked at, when the argument is made—when the

argument in our case was made that it would interfere with the executive's foreign relations prerogative, and I did rely on authority not in terms of any binding precedent but in terms of understanding—certainly it would never be binding, but in terms of understanding how other jurisdictions, how other states had considered that particular issue.

Senator COBURN. Fair enough.

Do you believe that there is a—believe the right to self-defense is a fundamental right? I'll put it in doctors' terms. Do you believe I, as an individual, have a fundamental right to defend myself, my body, my person?

Judge VANASKIE. I think, in terms of a right of self-defense, it depends upon the context and circumstances and I'm not prepared to answer that particular question in terms of the hypothetical you gave in terms of an infant. I haven't—I know it is a very important issue and one that may come before the court.

Senator COBURN. I'm not sure I mentioned infant. I'm just talking about me personally. Do I have a personal, fundamental right to self-defense?

Judge VANASKIE. I think if you're——

Senator COBURN. Sitting here right now.

Judge VANASKIE. I think if somebody attacked you, you would have a fundamental right of self-defense.

Senator COBURN. All right. Thank you.

Do you believe the right to bear arms is a fundamental right?

Judge VANASKIE. I—I think it is a right that has been recognized by the U.S. Supreme Court. I think how that right is applied in particular instances with respect to particular types of weapons is an issue that still needs to be addressed and still needs to be resolved, and I think certainly there's legislative authority in that area.

Senator COBURN. Okay. Thank you.

What principles of constitutional interpretation would you look to in analyzing whether a particular statute—and you can think of any one that you've got—infringes on some individual right guaranteed in the Constitution? Just kind of walk me through your thought process or the principles that you would use to lay that out and discover that for yourself and apply the law.

Judge VANASKIE. With respect to a law that implicates a particular right, I would look to the Constitution to see what purpose was intended to be served by that particular right, how it was valued, how the legislative enactment impacts on the exercise of that right, does it substantially burden the exercise of that right or is it an insubstantial burden? Is there a way to interpret the statute in such a way that a constitutional decision need not be made, if it can be interpreted that way, to reconcile the legislative provision with the constitutional right at question.

Ultimately, however, if under the existing—and I certainly would start with existing precedent and what existing precedent tells us to do in terms of our analytical framework and analyze it in that way, ultimately if I were to conclude that the fundamental right is infringed by the particular provision, then I think my oath to be faithful to the Constitution would require that result.

Senator COBURN. Thank you.

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Mr. Chairman, if I might, just one more. I've got to leave. Well, I was supposed to leave at 3:00 p.m. But one of the problems—and you may have a lot of experience in that—is when you look at some of the statutes that we pass, is trying to determine congressional intent. I'm just wondering, how often do you read the statements, the majority opinions, the report language for a lot of these statutes that we pass? Do you frequently look at that to see what the majority/minority opinions were on that in terms of the intent of what we're trying to accomplish rather than what the statute actually says?

Judge VANASKIE. Senator, I try to start and hopefully confine myself to the language of the statute itself. If the language of the statute is clear, there's no need to go beyond it. It should be applied as written.

Senator COBURN. But if it's not clear?

Judge VANASKIE. If it's not clear, then I would go to other sources of legislative interpretation, considering the overall purpose of the statute, considering the structure, other parallel provisions. I drafted an opinion in an environmental case back when I sat on the Third Circuit in the 1990s that did just that, looked at traditional understanding. As a last—I think, Senator, as a last resort you can consider, and should consider, legislative history, but it should not be the starting point of the analysis.

Senator COBURN. All right. Thank you very much.

Thank you for the indulgence.

Chairman LEAHY. No, thank you, Senator Coburn. I appreciate you being here.

Unless there are further questions, Judge Vanaskie, thank you very much for being here. I know you—it's going to empty the room a little bit when you leave here, but we will stand in recess for about 3 minutes while you have a chance, and your friends and family, to leave, or stay if you'd like, but you probably have other things to do, to leave, and we'll re-set the table for the next panel.

Judge VANASKIE. Thank you very much, Senators. Thank you.

[Whereupon, at 3:07 p.m. the hearing was recessed.]

AFTER RECESS [3:12 p.m.]

Chairman LEAHY. If we could reconvene. Judges Reiss, Butler, Kallon, Espinel, if everybody can just take the seats that have your names in front of them. Please sit down.

For the introduction of Mr. Kallon, I would yield to my friend from Alabama, Senator Sessions.

PRESENTATION OF ABDUL KALLON, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ALABAMA BY HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. Thank you, Mr. Chairman. I am pleased to introduce Mr. Abdul Kallon, who's been nominated to the U.S. District Court for the Northern District of Alabama.

He's had a distinguished law career. He received his undergraduate degree from Dartmouth in 1990, grew up in this area of the country. He got his law degree from University of Pennsylvania in 1993. Following law school, Mr. Kallon clerked for Judge U.W. Clemon, Chief Judge of the Northern District of Alabama, who I

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see here with him in support, I know, of Mr. Kallon. So, that's the same court for which he's being considered today. I'm sure Judge Clemon is pleased to have someone of his caliber replacing him on the bench.

Following his clerkship, Mr. Kallon joined the law firm of Bradley, Arent, Bolt, Cummings in Birmingham, which I suppose they would say was a premier law firm in the State, certainly it was the biggest law firm in the State for many years, and I guess that it still is. He became an associate in 1994 and became a partner, and continues to practice with Bradley Arent today.

Mr. Kallon's practice has focused primarily on labor and employment law. He received some impressive accolades for his work. In both 2007 and 2008, he was listed in the Best Lawyers in America for Labor and Employment Law, and in each of the last 3 years was listed in Chamber's U.S.A. America's Leading Lawyers for Labor and Employment Law.

In addition to his impressive legal credentials, he's been active and dedicated to the community. For the past 9 years he's worked closely with Big Brothers and Big Sisters. He's also been a member of the board of directors of Children's Village since 2004, and the board of directors of Girls, Inc. of Central Alabama since 2007.

Mr. Chairman, I talked to a number of lawyers in the Birmingham area who know Mr. Kallon and they all speak universally very highly of his integrity and judgment and legal ability.

Chairman LEAHY. Well, thank you very much, Senator Sessions.

I would note that Representative Artur Davis has also given me a statement that, by consent, we'll put in the record, praising Mr. Kallon. I should also say, as you have, praises Judge Clemon. To make sure that the Congressman knows that the judge is here, and make sure also we get a copy of the statement both to Mr. Kallon and to Judge Clemon, that will be part of the record.

[The prepared statement of Representative Davis appears as a submission for the record.]

Chairman LEAHY. I'm going to ask the four of you to stand. I'll swear you in and we'll do introductions of family.

[Whereupon, the witnesses were duly sworn.]

Chairman LEAHY. The record will show that each one said "I do".

Beginning with you, Judge Reiss, I know that you have family members and friends here. As this will go someday in the Reiss family archives, would you please tell us who is here, and ask them if they would stand?

Judge REISS. Thank you, Chairman. I brought with me today my husband, Kevin Hastings, my daughter Lilly and my daughter Tess. My oldest daughter, Mia, is taking mid-terms at McGill University at this point in time. I also have with me my oldest sister, Joan Wry, and my youngest sister, Katherine Brunelle, my brother, James Reiss, and his daughter, Kendell Reiss, who is my godchild. I am very happy to have Judge William Sessions, III, present with me. If confirmed, he will be my colleague. He has been encouraging, supportive, and helpful every step of the way.

Chairman LEAHY. Thank you very much. Thank you all for being here. I might note parenthetically that Judge Sessions has said very nice things to me about you.

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Mr. Butler, please, would you tell us who is here from your family?

Justice BUTLER. Thank you, Mr. Chairman. I have here with me today my wife, wonderful wife of 28 years, Irene, our oldest daughter, new attorney, Jessica Butler. I have with us her daughter, our granddaughter, Aliana, who is a first grader in Milwaukee. We have with us my mother, very proud mother, Gwendolyn Prescott Johnson. We have with us her sister, my aunt, Dr. Jane Prescott Brown. I also have here two friends, one from the University of Wisconsin Law School where I teach. Professor Alta Charo is with us today, and we have from the Department of Justice, the Office of Tribal Justice, Deputy Director Kathy Zebell as well.

My brothers could not be here, Anthony and Eric. Anthony is a recovering patient at this point in time, the same with my stepdad, Roy, and the same with our daughter, youngest daughter and our stepson Harry and Erica. I am convinced that they are watching by webcast, and we appreciate that you are broadcasting these proceedings here today. In spirit, we also have looking down from above, my father Louis and my sister Judith.

Chairman LEAHY. Well, thank you very, very much. Thank you all for being here. I would note something that, even as good a lawyer as you are, you may not have noticed. In the Constitution there is hidden a requirement that grandparents are supposed to spoil grandchildren.

[Laughter.]

Justice BUTLER. And we try very hard, Senator.

[Laughter.]

Chairman LEAHY. Mr. Kallon.

Mr. KALLON. Good afternoon, sir.

Chairman LEAHY. And do you have family members here that you would like to introduce?

Mr. KALLON. I do. I also have a lot of friends here as well, since I grew up in this area. With your indulgence, let me first introduce my mom, Mrs. Hawah Bah, who started this journey in 1978 when she emigrated to the United States. My sister, N'Dorah Tarawally, is here as well. My aunt, Odette Davis is here. My uncle, Alimama Bangura is here. I've got a list of friends here. A particular individual, Senator Sessions, who came all the way from Alabama on very short notice, and at this point I would like to ask all of my friends who are here today to please stand as well for me to say thank you to them personally for coming here on very, very short notice.

Chairman LEAHY. Wow!

[Laughter.]

Mr. KALLON. Thank you.

Chairman LEAHY. We're going to need bigger rooms.

[Laughter.]

Chairman LEAHY. Thank you. After, if we can have a list of the names, we can add the names to the record.

Mr. KALLON. Thank you.

Chairman LEAHY. Thank you.

Ms. Espinel, I know you have friends here, some very close to this Committee. Would you like to tell who's here from your family?

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Ms. ESPINEL. Thank you very much, Senator. I have here with me today my mother, Rosalie Cornelius, my mother, Jean Lord Espinel, my father, Dr. Carlos Espinel, my wonderful husband, John Stubbs, my 2-year-old son, Joachim Stubbs, who I believe is entertaining himself in the hallway at this moment. I also have here my very dear friend Mario Corea and my friend Lindsay Levin. My brother, Dr. Francisco Espinel, was not able to be here, but I know he is watching. And somewhere, I believe, fairly close by is my dear sister, Selena Espinel.

Chairman LEAHY. Thank you. Thank you all very much.

Beginning with you, Judge Reiss. You served as a Vermont State court judge for the past 5 years, trial judge for the past 5 years. You've previously worked in private practice 14 years. The obvious difference is, you as an experienced lawyer know, between the State courts and the Federal courts, but there are other things that you would bring with it. What do you think would be one of the most important things you would bring from your experiences as a State court judge that you would be able to transfer to experience as a Federal court judge?

Judge REISS. When I became a State court judge I was amazed at the awesome responsibility that I had undertaken. I really thought a lot about it, am I the right person to do this? I was surprised at the magnitude of the decisions I was making and I really committed myself to being the best judge I could be. I think the transition to Federal court will carry with it that transition and I will understand the awesome responsibility that I'm undertaking and the importance of careful attention to the litigants in front of me, careful preparation. So I think I understand that this is a very important position, it's very powerful, and it's so important to take it seriously.

Chairman LEAHY. You also, in private practice, represented plaintiffs under our Right to Know law in Vermont to get the information from Governor Dean—former Governor Dean's daily schedule during the time he was running for President. You used the Vermont Access Public Records Act. The Vermont Supreme Court ruled in your favor. Now, as one who has written significant parts of the Freedom of Information Act, one of the strong supporters of it, I ask this question.

You're going to be called as a Federal judge, possibly, to rule on requests under the Freedom of Information Act. Will you be able to take each case on its own and do the balance between the—oftentimes the balancing factor between the public's right and interest to know with the competing interest possibly of withholding information to either protect one's privacy or national security. Do you feel you can do that?

Judge REISS. I do. I understand that it is a balance. I think we start with the presumption that freedom of information is important in a democratic society, that we have open courtrooms and open records, and that we look carefully at the balancing test, narrowly apply it, and make sure that information that is kept from public scrutiny is information that should be kept from public scrutiny because of a compelling competing interest.

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Chairman LEAHY. As a trial judge, you've had occasion to issue rulings involving Miranda warnings. You have any problem facing the fact you may still be issuing such rulings in the Federal court?

Judge REISS. I don't. I would say that, even in a State court, if you were in a district court rotating, Miranda issues come up all the time, that it is a significant area of litigation in criminal defense. I anticipate that would continue in Federal court.

Chairman LEAHY. I know your answer to this question has been discussed. Would it make any difference to you who comes into your courtroom, plaintiff or defendant, what their political background, economic background, or even the nature of their case might be?

Judge REISS. No, it would not.

Chairman LEAHY. I believe you.

Justice Butler, when you were on the Wisconsin Supreme Court, you issued opinions. You had the constraints of Wisconsin law, of course, the Wisconsin constitution, the U.S. Constitution, prior decisions. And if you are confirmed here, do you have any problem with the fact that your circuit, the Seventh Circuit, the decisions of the Seventh Circuit and the U.S. Supreme Court would be binding on you?

Justice BUTLER. Not at all, Senator. My understanding is that, if confirmed by the Senate and appointed by the President, my job as a District Court judge would be to interpret and apply the law based on the precedent set forth first by the U.S. Constitution, and then by the superior circuit, in this instance, the Seventh Circuit Court of Appeals.

Chairman LEAHY. Mr. Kallon, you've had an extensive and very admirable background. But also, because of all the different cases you've handled and others, there may well be instances where you have to recuse yourself on the Federal bench. How do you interpret the Federal recusal statute? Can you give me some specific examples of the type of cases you would feel, certainly in the early part of your career in the District Court, that you would have to recuse yourself from?

Mr. KALLON. Certainly, sir. With respect to cases, I think the easiest ones will be, any that I'm working on now, obviously, I cannot hear, as a judge. But other than that, I don't foresee any particular subject being areas where I would need to recuse myself. With respect to recusal, obviously if I've got a financial interest in a particular company and it's it front of the court, I'll recuse myself. And if the lawyers believe that because of my relationships with a particular company or because of a particular set of lawyers, then we will deal with that under the rules set forth by the courts.

Chairman LEAHY. And Ms. Espinel, I know you have a statement for the record which will be made part of the record.

[The prepared statement of Ms. Espinel appears as a submission for the record.]

Chairman LEAHY. I have just one question, and I neglected to ask each of the members of the panel if they had an opening statement they would wish to give.

But if you are confirmed as Intellectual Property Enforcement Coordinator, or IPEC, would you be willing to appear before this Committee and testify?

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Ms. ESPINEL. Yes, I would. As you know so well, this role was created and defined by legislation and this position is fully accountable to Congress. Among the duties I would have, if I were confirmed, would be to submit an annual report to Congress that would report on the activities of the interagency Committee that I would chair. If I am confirmed, I look forward to working closely with this Committee and ensuring that you receive information that is both timely and useful.

Chairman LEAHY. Good.

Judge Reiss, did you have a statement that you wished to make?

STATEMENT OF CHRISTINA REISS, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF VERMONT

Judge REISS. I would like to thank President Obama, Chairman Leahy and the members of the Senate Judiciary Committee. I'm very honored to be here.

Chairman LEAHY. Thank you. That statement won't hurt you a bit.

[Laughter.]

Chairman LEAHY. Justice Butler.

STATEMENT OF LOUIS B. BUTLER, JR., TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WISCONSIN

Justice BUTLER. Thank you, Senator. I would also like to thank the President for his confidence in nominating me as a District Judge for the Western District of Wisconsin. I would like to thank my State Senators for their wonderful introduction here this afternoon. I would like to thank this Committee, the Chair, and the Ranking Member and other members of the Committee who are here who are considering this important nomination. That's pretty much it. Thank you.

Chairman LEAHY. You're represented by two wonderful Senators.

Mr. Kallon.

STATEMENT OF ABDUL K. KALLON, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ALABAMA

Mr. KALLON. Likewise, Chairman. I'd like to thank the President for the nomination, this Committee for these hearings, and Senator Sessions for the great introduction. Thank you all.

Chairman LEAHY. Senator Sessions, I know, has rearranged his schedule just so he could be here, and I appreciate both him being here and his introduction of you.

Ms. Espinel, as I said, your full statement will be placed in the record, but is there anything you wish to add to it?

STATEMENT OF VICTORIA ANGELICA ESPINEL, TO BE INTELLECTUAL PROPERTY ENFORCEMENT COORDINATOR, EXECUTIVE OFFICE OF THE PRESIDENT

Ms. ESPINEL. I would say that I would like to thank the President, I would like very much to thank you, Chairman Leahy and the members of the Committee. I am greatly humbled to be here, and I want to thank you for your leadership in creating this position, and then supporting the intellectual property that supports our country.

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Chairman LEAHY. Senator Sessions.

STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. Thank you, Mr. Chairman.

I appreciate all of you that have been nominated. This is, I guess, the one opportunity we have to ask some questions. Members will be allowed to file written questions, and you'll receive those. I may submit some myself; I suspect that I will. You are, at least with regard to the judges, being considered for a lifetime appointment.

I hope you know, and I think you do, that once you assume that role your own personal sense of discipline, responsibility and integrity is what constrains you from abusing the office, because you can't be voted out of it and wrong decisions don't get you impeached. So we look for that and expect that out of each one of you.

You take an oath, judicial nominees, that you will do equal justice to the poor and the rich, that you will conduct your office impartially, and that you will serve under the Constitution and laws of the United States. So I guess I would ask, first, each one of you, do you understand the import of that oath? Do you commit yourself to it, and will you be able to take it faithfully, if you're given that opportunity? Ms. Reiss.

Judge REISS. I would fully comply with the oath. It would be an honor to do so. It is my opinion that a judge needs to be a role model, both inside and outside the courtroom, and that people look to judges as an example of the judiciary. It may be their only experience in the courtroom. We uphold the Constitution and we treat people respectfully. I take that very seriously. Thank you.

Senator SESSIONS. Justice Butler.

Justice BUTLER. Yes, Senator. I agree with Judge Reiss, this is a very important position and I think we are dedicated to applying the Constitution and applying the laws equally and fairly amongst any individuals that would appear before us, rich or poor, or in any setting. It's our obligation to listen carefully. After all, we're involved in dispute resolution when people come into court. Listen carefully to the issues that the parties present and make our determinations based upon the facts and based upon the law.

Senator SESSIONS. Mr. Kallon.

Mr. KALLON. Senator, I concur with my colleagues. I certainly will carry the oath faithfully, and I hope I have the opportunity to do so.

Senator SESSIONS. Well, you know, we had a little stir over the President's empathy standard in which he talked about the heart and feelings as being part of the role of a judge. But empathy is not a legal standard. Now, I don't know what kind of standard it is, but it's not a legal standard. I recall, I think I had here Judge Sotomayor's reference to it. She said it was facts, not feelings, that decide cases, I think is essentially what she said. So I just think those are important concepts to keep in mind.

Mr. Kallon, you've practiced before these very judges that you will now be colleagues with, if you're confirmed. Do you have any thoughts about how you would conduct yourself, remembering that you've been a lowly lawyer, for a number of years practicing before the bench? Do you have any thoughts about how you might conduct

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yourself in a way that brings a good image to justice and to the court?

Mr. KALLON. Absolutely. I think I intend, essentially, to carry on in the same manner. By that, I mean I've always treated the courts and the litigants with the utmost respect, even those individuals that I disagree with wholeheartedly. I've always pointed out that you can win your case without having to be disrespectful to the other side, and certainly as a judge I think you can rule even with litigants who perhaps may not have been as respectful as they need to be without embarrassing someone in front of the other lawyers, and certainly not in front of their clients, unless of course that individual has, despite repeated warnings, refused to follow the rules and the regulations of the court.

Senator SESSIONS. Well, I think we shouldn't forget the difficulties lawyers have, too, in their days and the legitimate interests that their clients have, and fairness.

Mr. Butler, in a campaign event entitled Young and Powerful for Obama, you stated the following: "While all judges have a desire to interpret and apply the law, the cases that get to the Supreme Court are the ones that have no easy answers. Thus, the background, personal beliefs, and policy decisions of the justices selected will influence how they vote on difficult cases before them."

Well, it seems to me that the ideal of American justice is impartiality, as used in the oath, to achieve a degree of objectivity so that your personal feelings don't cause you to favor one litigant over another, but give fair justice down the line, down the middle. How would you explain that statement that you made?

Justice BUTLER. Well, Senator, I believe what I intended by that statement is a recognition that, particularly in a court of last resort, when you do have difficult cases that have to be decided, perhaps where there is no precedent, where there is no guiding principle, which is why the court took the case in the first instance, it helps to have as many different backgrounds and as many different perspectives in the room as possible. For example, if you've got people that have criminal background, people who have civil background in their practice experience, people from different environments, different upbringings.

I think just having every idea at the table and sitting down and making a difficult decision when deciding how the law should be applied, particularly in the absence of any controlling or guiding principles, I think it would weigh in to the thought processes—not necessarily the decision processes, but the thought processes—that the judges will go through when trying to decide how to apply the law and how to apply the Constitution to various statutes.

Senator SESSIONS. With regard to the President's statement on empathy, Justice Sotomayor, when asked about his standard, replied, "We apply law to facts, we don't apply feelings to facts." I thought that was what a judge does.

Justice BUTLER. I agree with that, Senator.

Senator SESSIONS. But in your speech I just quoted from earlier about allowing personal beliefs and policy decisions to influence how judges vote, you say that's the main reason I support President Obama. How do you explain the difference there?

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Justice BUTLER. Senator, when a judge makes a determination, the first thing you look at, in my experience, is the language of a statute, the language of a law that applies. You look at whether or not there are any constitutional implications that have to be decided. You look at any prior precedent, the controlling precedent from higher courts.

You look at—if there is no controlling precedent, you look at various influential or persuasive precedents from other jurisdictions, particularly if you're dealing in different circuits, which we don't have in our State because everything is precedential in Wisconsin, and then you have to make a decision that will resolve the dispute in a fair and impartial manner.

So the backgrounds, the different experiences that one can bring to the table, whether it's practice experience or other types, I think helps to expand the discussion in a conference room, particularly when you're dealing with a collegial decisionmaking body.

Senator SESSIONS. Well, these are difficult issues. I don't think they're insignificant. In other words, I think you do have to decide whether or not you have a commitment to a certain group. In your speech, you said, referring to President Obama, "his commitment to the working people, the poor, and to the country as a whole has been shown throughout his life". Well, but does that mean that you think a judge, instead of doing "equal justice to the poor and the rich", has—since you would have a commitment—more commitment to one or the other?

Justice BUTLER. No, Senator. I think it's important for any judge in any position to treat everyone equally, and impartially, and fairly. For me, the importance of a courtroom setting is a process question. One way that you can ensure that everyone is treated fairly is to make sure that everyone is treated with the same process—with the same process.

Senator SESSIONS. Well, everyone—I think we can—I do believe that the legal standard and requirement of judges is that we do equal justice to all parties, based on the facts and not on personal feelings or beliefs.

I'm past my time. I might like to ask a few questions later, but on a second round, Mr. Chairman.

Senator KOHL. Thank you so much.

Justice Butler, are you comfortable with the answers you've given at this point?

Justice BUTLER. Yes, I am, Senator. Thank you very much.

Senator KOHL. Justice Butler, some have criticized your "judicial activism". On the Wisconsin Supreme Court, they claimed that you thwarted the will of the State legislature for the court majority's own policy views. Would you like to respond to this criticism and explain your views about the role of the court in interpreting the laws written and passed by the elected legislative bodies?

Justice BUTLER. Thank you for the question, Senator. As a member of the court, it's important to make decisions that resolve the disputes of the parties that come before the court. And any time parties come to court, you're dealing in a litigation setting, at least 100 percent of the time 50 percent of the people are going to leave the courtroom unhappy, sometimes more. Not everyone is going to be satisfied with a given decision, and many people have differing

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views and differing descriptions of what judicial activism might be and how it might be applied, who it might apply to.

For me it's always been taking the facts of a case and applying the applicable law. I try to make decisions based on the case that's before the court. I've done that in the 16 years I've served as a judge, 12 years as a trial court judge, 4 years on the Wisconsin Supreme Court. I understand and recognize and accept that there will always be critiques of any opinion from various parties that goes along with making decisions, making tough decisions, but I've tried to make my decisions based upon facts and based upon the law.

Senator KOHL. Thank you.

For the three judges who are up for promotion here today, in the past many years there's been a growth in the use of so-called protective orders in product liability cases. We saw this, for example, in the settlements arising from the Bridgestone-Firestone lawsuits. Critics of this argue that those protective orders oftentimes prevent the public from learning about the health and safety hazards in the products that they use. In fact, a U.S. District Court for the District of South Carolina passed a local rule banning the use of sealed settlements altogether.

Do you believe that a judge should be required to balance the public's right to know against a litigant's right to privacy when the information sought to be sealed could keep in secret a public health and safety hazard, and what would be your views regarding that local rule in the District of South Carolina on this issue, which bans the use of sealed settlements altogether? We'll start with you, Judge Reiss.

Judge REISS. Thank you. As a lawyer, I represented a number of media entities: radio, television, newspapers. I start with the presumption that the public has a right to know, that the courtrooms are public and that full access to the courtroom is important to ensure that they are just and impartial institutions. I think any exception to that needs to be extremely narrowly construed and it must be supported by a compelling interest. So I do not see a role for broad-based protective orders shielding large portions of cases from the public scrutiny.

That being said, I am certain that there are certain instances in which there is no relevance to the information or it doesn't impact the public's right to know. It may be a trade secret. I would look at that exception with the idea that the presumption would be public access and that any exception to that would be narrowly construed.

Senator KOHL. OK.

Judge Butler.

Justice BUTLER. Senator Kohl, I, like Judge Reiss, also agree that you start with a presumption that a courtroom is a public proceeding. There is a balancing that has to take place in looking at, when a protective order is requested, whether it should be applied in a particular instance. But like Judge Reiss, it should be narrowly construed to determine whether there's a compelling public interest that would override the public right to know.

Senator KOHL. Judge Kallon.

Mr. KALLON. Senator Kohl, likewise. I will take a very, very limited approach. Certainly there are privacy concerns at play. That's

one good route to perhaps grant a protective order. If there are trade secrets that need to be protected, that's another ground. But aside of those two arenas, I definitely will hear the arguments that are made, but the arguments will need to be extremely compelling for me to foreclose the public's right to know about aspects of society that they need to know about.

Senator KOHL. Thank you so much.

Chairman LEAHY. Thank you.

Senator Feingold.

Senator FEINGOLD. Mr. Butler, I just want to follow up with something Senator Sessions was questioning you about. As U.S. District Court judge, will you allow your personal belief or policy preferences to override the law as set forth in Federal statutes, or controlling precedents, or the Seventh Circuit, or the Supreme Court?

Justice BUTLER. No, Senator, I would not. I don't believe I did that as a member of the Wisconsin Supreme Court or as a member of the Circuit Court or Municipal Court either. That is not how I view a role of a judge.

Senator FEINGOLD. Your most significant judicial experience has been as an appellate judge on the Supreme Court of Wisconsin, though you did have some experience as a trial judge as well. How has your experience on the Wisconsin Supreme Court made you better prepared to be a trial court judge at the Federal level?

Justice BUTLER. Senator Feingold, my experience has been varied, both in practice as well as on the bench. I've been both a trial lawyer and an appellate lawyer and I've been a trial judge and an appellate judge. From those various experiences, I've had an opportunity to see litigation in a variety of settings. I've had an opportunity to see different difficult issues come into the court, either in a trial court setting or an appellate court setting.

By sitting as an appellate court judge and having the opportunity to overview the entire criminal justice and—justice system as a whole, I've had an opportunity to gain perspectives on how the system operates—operated within the State of Wisconsin. I think the experience, both as an appellate and trial judge, greatly benefited my background, experience, and knowledge, and hopefully prepared me for the awesome experience, should this Committee vote to submit my name to the full Senate and should I be confirmed.

Senator FEINGOLD. Justice, you've been a public defender, but not a prosecutor. That puts you in a minority among nominees to the Federal bench. Can you talk about the importance of having good defense attorneys to our adversarial system of justice, and how will that experience assist your work as a Federal judge?

Justice BUTLER. Yes, Senator. As I have indicated, I believe it's important to have all different types of experiences, serving at various levels of the judiciary, for a number of reasons. I mean, judges talk to each other, they go to lunch together, they discuss issues together, and I think it helps to know from an experiential basis how the various decisions that are being made actually impact the people that the decisions are being made for.

So I think it helps to have prosecutors, I think it helps to have defense lawyers, I think it helps to have civil plaintiffs' lawyers, civil defense lawyers serving at various aspects of the judiciary. I

think that's a beneficial thing for all. As each of you have indicated, these decisions are supposed to be made impartially and fairly and neutrally, but it helps to have the various backgrounds at the table when these decisions are being made.

Senator FEINGOLD. Thanks, Justice.

Ms. Espinel, your prepared testimony certainly is a strong statement about the importance of enforcing intellectual property rights, and no one could really argue with that. You speak convincingly about the coordination among the various agencies that's needed to ensure that enforcement and protection are done efficiently.

Can you give me an idea of what steps you'll take to make sure that these enforcement activities do not undermine public access to information that is so crucial for innovation and other priorities of the United States, and specifically, do you see it as part of your portfolio to coordinate with science and information library agencies on this issue?

Ms. ESPINEL. Thank you, Senator. I think it's part of this position to coordinate and find a consensus among all of the different agencies and offices inside the U.S. Government that are charged with protecting and enforcing intellectual property and place importance on intellectual property. I think intellectual property is a long-term strategy in many ways, and so there will always be issues, as with all policy areas, where there will have to be balances that will be found.

One of the things that I think this position is poised to do is to try to work with, in a very open and transparent way, all of the agencies and all of the stakeholders and the general public of the United States to try to develop a strategy that will protect intellectual property efficiently and effectively, but will do that taking account of the variety of views and opinions that exist.

Senator FEINGOLD. So do you agree that over-zealous enforcement of intellectual property rights could reduce our citizens' legitimate access to information, and will you ensure transparency in policy development so that all of the ramifications of these enforcement activities can be assessed with the maximum public involvement?

Ms. ESPINEL. This administration is very committed to transparency. If I am confirmed by the Senate, I will uphold that policy of transparency and take it very seriously, and I will look for the appropriate forum to do so within the office that I will head.

Senator FEINGOLD. Thank you, Mr. Chairman.

Chairman LEAHY. Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman. Congratulations to all of you for your nominations.

Ms. Espinel—and this is—I want all of you to think about this in constitutional terms a little bit, too. The FCC recently put out a proposal for a more free and open Internet, net neutrality rules. I think what they're doing is critically important. When Justice Sotomayor was in her hearings, I raised this issue as a constitutional issue of making sure that the—that information flows freely on the Internet.

Ms. Espinel, I also want to prevent piracy. You talked about balance. So speaking of balancing, how should regulations balance the

need to stop piracy with the need to protect the free flow of information on the Internet?

Ms. ESPINEL. Thank you, Senator. I think that's an excellent and very important question these days. Clearly, Internet piracy is a very serious problem our country is facing and has serious ramifications for our economy. At the same time, openness on the Internet is one of the reasons that the Internet has been so successful and helpful to so many over the past few decades.

Openness, however, doesn't apply to unlawful content and I believe there is a way to ensure that the Internet is open and we're not restricting access to legitimate information to people, while trying to contain the very serious problem of Internet piracy that we face. As you mentioned, the FCC is looking at this at this moment. If I were confirmed, I would certainly be working with the FCC, as well as the other relevant agencies, to try to develop a strategy that would efficiently protect and try to stop Internet piracy, but one that is consistent with this administration's policy of transparency and trying to ensure that we promote the Internet.

Senator FRANKEN. OK. But what do you see as some of the main tensions there? I'd just like to get your thoughts on that because, you know, there's all kinds of issues of, you know, maintaining your network and people trying to download enormous files versus the free flow and no restrictions. What do you see as the tensions in net neutrality and this whole issue of intellectual property?

Ms. ESPINEL. I guess I don't—I don't know that there necessarily have to be those tensions. I know that they exist. It seems to me that there has to be a way we can find to move forward where we can ensure that the Internet is open, ensure that there is reasonable management of networks, and at the same time try to ensure that the Internet is not being used as a means of distribution for all types of illegal content, including pirated content.

So, you know, I think—and if I was confirmed, I think one of the first—one of the issues that I would be grappling with, in coordination with the other agencies, is how we go forward in devising a strategy that accomplishes both of those goals.

Senator FRANKEN. OK. Thank you.

Do any of you three have any thoughts on constitutional issues regarding net neutrality?

Judge REISS. Clearly, this is Ms. Espinel's area of expertise, but I was thinking about, what would the restrictions look like? Would they be content-based, which would be concerning to me from a constitutional perspective? I would want to make sure that the focus was on the process as opposed to impeding the free flow of information by focusing on content-based restrictions.

Senator FRANKEN. OK. I'm not sure that anyone's really talking about that so much. More of what I see are the conflicts between managing networks and the free flow of information. Anybody else have any thoughts?

[No response].

Senator FRANKEN. Well, thank you all. Again, congratulations.

Chairman LEAHY. Thank you very much.

Mr. Kallon, I mentioned earlier that I was placing in the record a statement from Congressman Davis, very complimentary of you.

Mr. KALLON. Thank you.

Chairman LEAHY. And also retiring Judge Clemon. But I would note that the Congress—just for the record, the Congressman is here in the room and has joined us. Senator Sessions has further questions. I know we're about to—we're going to have a roll call before too long on the floor, and I will yield to Senator Sessions.

Senator SESSIONS. Thank you, Mr. Chairman.

It's good to see Congressman Davis. He was an Assistant U.S. Attorney and knows something about Federal courts himself, a Harvard Law graduate. So, I know you strongly support Mr. Kallon, and that's been very important to me, Congressman Davis. I value your opinion. We've talked about these appointments over the years.

Mr. Butler, your decision in *Thomas* v. *Mallet* has been widely criticized. There you held that lead paint manufacturers could be held liable for an injury from a product that, as a dissent in the case said, "they may or may not have produced, which may or may not have caused a plaintiff's injuries, based on conduct that may have occurred over 100 years ago when some of the defendants were not even part of the relevant market". That was the dissent.

With your decision, Wisconsin became the only State in the country to adopt a far-reaching theory of liability in such cases. In other words, whether a company actually produced the lead paint that harmed the claimant is irrelevant to his guilt or innocence. Former dean of the University of Maryland Law School, Donald Gifford, said that Thomas was "the single most radical departure from the principles of tort law in recent decades. It is a decision that puts Wisconsin dramatically out of line with the law of any other State in the country". How would you respond to that criticism and to the dissent's comments?

Justice BUTLER. Senator, with respect to the dissent's comments, I know that the majority in the opinion did respond, I believe, on a number of occasions. Within the opinion itself, I don't agree with the dissent's characterizations of the majority opinion. Let me just begin by saying, in case my recollection is at all faulty, I stand on the words of the opinion. That's why we draft opinions. That's why we write them.

But my understanding of the case that was decided by a majority of the Wisconsin Supreme Court was that we were applying prior precedent, prior Wisconsin precedent, the case of *Collins* v. *Eli Lilly*, and we were applying that to a Wisconsin constitutional provision, Article I, Section 9 of the Wisconsin constitution.

So we were relying on precedent. We were relying on the Wisconsin constitution. It was a difficult case. We applied a limited risk liability theory with respect to negligence as strict liability claims. We rejected other claims that were brought by the plaintiff in that matter. The case ultimately, when decided at the lower courts, did not result in the type of criticism that we heard, the type that was called out by the dissent in the case. In fact, the plaintiff in the action lost the case at the trial court level. This was a summary judgment action and involved an access to the courts. It was an access to the courts issue.

Senator SESSIONS. I appreciate that and will look at that record. But in fact the defendant could be liable for an injury they didn't cause, under the logic of your opinion. Isn't that correct?

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Justice BUTLER. The opinion basically looked at whether or not a particular manufacturer produced and marketed a product and marketed it as safe when in fact it was dangerous without warning consumers that it was in fact dangerous. This was—according to the information that is contained right within the body of the opinion, this was with knowledge that dated back to internal memos to 1904, and this was still being done. And the question under Wisconsin——

Senator SESSIONS. That action was the cause of this plaintiff's injury, correct?

Justice BUTLER [continuing]. The issue in the case was, once a particular manufacturer marketed, produced, sold it in a particular area—one of the things that the plaintiff would have to establish is that it was done and sold in that area during the time period in question. Then the burden would shift to the manufacturer to show that it was, indeed, not their product.

Senator SESSIONS. It would seem to me that would create uncertainty about who might be liable for what, and you acknowledged that in a way in your opinion, stating the goal of certainty is not necessarily achievable and that is not necessarily a bad thing. How would you suggest that uncertainty could be a good thing?

Justice BUTLER. I believe the decision, Senator, was one that dealt with issues of accountability and who—the actions taken by the manufacturers in this particular case. What the decision did was said that if a company knowingly marketed as safe a product and put it out there as safe when it in fact it knew to the contrary, that we would not limit the access to the courts of the plaintiff to bring in and challenge the actions of the manufacturer.

Now, they would still have to meet the burden of proof in the actual case in question, and in fact to the best of my knowledge in every case that's come up subsequent to that in Wisconsin the plaintiffs have not succeeded. But this was a summary judgment action, it was access to the court, and the question was whether or not the plaintiff should have a trial.

Senator SESSIONS. In *Ferden* v. *Wisconsin Patients Compensation Fund*, you joined the majority of the court in striking down the punitive damages cap of $350,000 that had been enacted by the State legislature. In other words, they limited the amount of liability, which I think California and Texas do, and Alabama, and others have passed laws to that effect. You found that it violated the State Equal Protection Clause because it lacked a rationale basis. Do you agree that under the court's version of the rational basis test, virtually any statute would be subject to being struck down? It seems like to me that the legislature could have a rational interest in containing aberrational verdicts or high insurance rates and that kind of thing.

Justice BUTLER. As to the question of whether any statute, the answer is no, Senator. With respect to this particular statute, this did fall within the rational basis test, as defined by the majority. I also joined the concurring opinion written by Justice Crooks that recognized that constitutional caps could be created by the legislature. Just this particular cap was not constitutional.

Senator SESSIONS. Well, the legislature did it. They wanted to make malpractice insurance "available and affordable" in Wis-

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consin. Other States have done that and it's been upheld. And they turned out—those caps turned out to be successful. In 2004, the American Medical Association judged Wisconsin to be one of only six States not in a medical malpractice crisis, and yet the court engaged in an aggressive, I would say, reassessment of the legislature's policy decisions that they made. How is it that caps are not rationally related to malpractice insurance available in the State?

Justice BUTLER. Senator, a lot of that is explained in the chief justice's opinion. In large part, we have a medical malpractice fund that protects the insurance rates within the State of Wisconsin, and as the opinion explains, the price and the cost of insurance has very little to do with the caps issue within our State as a result of the medical malpractice fund that exists within Wisconsin.

Senator SESSIONS. Well, thank you.

Let me ask you this. It's something that all of us in politics know, the authority of the people to make decisions. But you ran for the Supreme Court and were not successful. You were then appointed when a vacancy occurred, and then you had to stand for election and your record was examined and criticized and you were defeated by a 2:1 margin, as I understand it. How would you explain the circumstances of that?

Justice BUTLER. Actually, Senator, the margin was 51 percent to 49.

Senator SESSIONS. OK. That's different than what I've been told.

Justice BUTLER. And there may be a number of explanations.

Senator SESSIONS. That's pretty close.

Justice BUTLER. That was a close election, Senator. And there may be a number of explanations. Perhaps the best that I can give to you, Senator, is that after 16 years on the bench I think I may be a better judge than politician. Having said that, I do note for the record that I was elected by a pretty large majority in the community in which I served in Milwaukee County and I was elected in the Western District of Wisconsin, where I would be serving if confirmed by the Senate. I had the majority of citizens in that portion of the State. So the people that know me best did support me.

I also acknowledge the fact that, as far as elected politics are concerned, I think the election that is supposed to matter is the one for President and who to select as a judge, not the one in an elective judicial race.

Senator SESSIONS. Well, that's somewhat true. But we get to vote in this body.

Justice BUTLER. That's true, Senator.

Senator SESSIONS. Congratulations on the nomination. Thank you for those answers. I'm glad you clarified that error in my understanding. I think you were entitled to have a chance to explain that.

Justice BUTLER. Thank you, Senator.

Senator SESSIONS. Thank you, Mr. Chairman.

Chairman LEAHY. I would note in that election, I've read that, one, it was a 51:49, and those who contend your defeat came about after special interest groups poured millions of dollars into a sleazy and dishonest attack campaign that "played on racial stereotypes" and was condemned by Democrats and Republicans, liberals and conservatives. I understand that there has also been the Wisconsin

judicial ethics—commission on ethics complaint in that case. Not against you, but opponents under the rules that they—when a candidate lies about their opponents in these judicial matters. So I would note that you faced some rather unprecedented opposition for it.

But Senator Kohl, did you wish to say something?

Senator KOHL. No.

Chairman LEAHY. Senator Feingold, did you wish to? Senator Feingold.

Senator FEINGOLD. Thank you, Mr. Chairman.

Let me just follow on what you were just commenting on, the April 2008 election where Justice Butler unfortunately lost his seat on the Supreme Court of Wisconsin. We do have popularly elected judges in Wisconsin. In recent years, however, these elections have become regrettable political battlegrounds. It is one of the most troubling things that is going on in our State at this point, and there are not only bipartisan, but nonpartisan groups that are desperately trying to figure out some solution to the problem that we have in these Supreme Court races.

In this selection, as the Chairman indicated, special interest groups spent nearly $2 million in advertising. One particular ad run by Justice Butler's opponent, in fact, resulted in a judicial ethics complaint that remains unresolved to this day. Losing 51:49 is not exactly a mark of shame or rejection. The Justice is right, he won the Western District of Wisconsin, in which he would serve as a Federal judge.

But that's not really the point. We have Federal judges for life who do not face a popular election for a reason. The founders of the country did not say, if you've lost a previous popular election you're disqualified to be a Federal judge. That's the actual opposite of the judgment that is made in the Constitution of this country. People in the State of Wisconsin made a different judgment, that we want to elect judges, and I agree with that.

But the notion that somehow a completely different standard would disqualify somebody who went through a process where not only the President of the United States who is duly elected, but the Senators who are duly elected, and who appointed an independent commission that looked at all these nominees and concluded that this man is the most qualified person. That's the actual record of what happened here. So the idea that somehow the Supreme Court popular election would in any way undermine this appointment, I would have to reject out of hand.

Thank you, Mr. Chairman.

Justice BUTLER. Thank you, Senator.

Chairman LEAHY. Thank you very much.

If there are no further questions, then we will keep the record open for 1 week for any other questions. Normally we would have a mark-up next Thursday, but the Senate will not be in session next Thursday so it'll be the week after. I would hope that everybody will get any questions in because I would hope we could move—especially as the year is drawing to a close, we could move these nominees quickly to the floor—he said with hope springing eternal.

We stand in recess.

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[Whereupon, at 4:10 p.m. the Committee was recessed.]
[The biographical information follows.]
[Questions and answers and submissions follow.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   Louis Bennett Butler, Jr.

2. **Position**: State the position for which you have been nominated.

   United States District Judge for the Western District of Wisconsin

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: University of Wisconsin Law School
   975 Bascom Mall, Room 7103
   Madison, WI 53706-1399

   Permanent Residence: [redacted]

4. **Birthplace**: State year and place of birth.

   1952; Chicago, Illinois

5. **Education**: List in reverse chronological order 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.

   1973 – 1977, University of Wisconsin Law School; J.D. Degree, 1977.

   1969 – 1973, Lawrence University; B.A., 1973

6. **Employment Record**: List in reverse chronological order 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 description.

   October 1, 2008 to present
   University of Wisconsin Law School
   975 Bascom Mall

Madison, WI 53706-1399
Justice in Residence; Senior Visiting Lecturer

1997 – Present
National Judicial College
Judicial College Building/MS 358
Reno, NV 89557
Non-paid Volunteer Faculty (Criminal Procedure)

2004 – 2008
Wisconsin Supreme Court
16 East State Capitol
Madison, WI 53701-1688
Justice (August 25, 2004 to July 31, 2008)
Reserve Judge effective August 2008 to present

2002 – 2004
State of Wisconsin
Milwaukee County Courthouse
901 N 9th St
Milwaukee, WI 53233
Circuit Court Judge

1992 – 2002
City of Milwaukee
951 N. James Lovell St.
Milwaukee, WI 53233
Presiding Judge (August 2000 to July 2002)
Municipal Court Judge (June 14, 1992 – July 31, 2002)

1991 – 1992
Marquette University Law School
Sensenbrenner Hall
1103 West Wisconsin Avenue
Milwaukee, Wisconsin 53201
Adjunct Assistant Professor of Law

1988 – 1992
Wisconsin State Public Defender, Trial Division
819 N. 6th St. - RM 908
Milwaukee, WI 53203-1606
Deputy First Assistant (March 12, 1990 to December, 1990)
Staff Supervisor (December 1989 to March 12, 1990)
Assistant State Public Defender (January 25, 1988 to December 1989; December 1990 to June 14, 1992)

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1979 – 1988
Wisconsin State Public Defender, Appellate Division
735 N. Water St. - Suite 912
Milwaukee, WI 53202-4116
Assistant State Public Defender

1978 – 1979
Independence Bank of Chicago
7936 S Cottage Grove Ave
Chicago, IL 60619
Attorney

1977 - 1978
Legal Assistance Foundation of Chicago
111 West Jackson Boulevard, 3rd Floor
Chicago, IL 60604
Legal Intern, Prisoner Legal Assistance

1976 – 1977
Bureau of Mental Health, State of Wisconsin
1 West Wilson Street
Madison, WI 53703
Hearing Examiner (December 1976 – June 1977)
Patients Rights Advocate (June – December, 1976)

1975 – 1976
Judge Gordon Myse (retired)
Outagamie County Circuit Court
Justice Center
320 S Walnut St Appleton, WI 54911
Judicial Intern (May, 1975 – August, 1975 and January, 1976)

1975
Legal Assistance to Inmates Program at Waupun State Prison, University of Wisconsin Law School
975 Bascom Mall
Madison, WI 53706-1399
Student Intern

1974 – 1976
University of Wisconsin Law School
975 Bascom Mall
Madison, WI 53706-1399
Legal Writing Teaching Assistant (November, 1974 – May, 1975; January – June, 1976)

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1974
Courts Staff, Wisconsin Council on Criminal Justice
1 West Wilson Street
Madison, WI 53703
Law Clerk

1973
Gilbert Paper Co.
PO Box 260
Menasha, WI 54952-0260
General Maintenance

7. **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, and whether you have registered for selective service.

   I have never served in the military, though I did register for selective service, and was classified 1Y by the draft board.

8. **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.

   Honorary Ph.D., Humanities; Lawrence University; June, 2007

   Fellows of the Wisconsin Law Foundation; November 2008

   Thomas G. Cannon Equal Justice Award from the Legal Aid Society of Milwaukee, 2008

   William M. Coffey Memorial Award, "The Defender," from the Wisconsin Association of Criminal Defense Lawyers, December, 2008

   2009 Heroes Among Us Community Leadership Award, conferred in Milwaukee on February 22, 2009 by Mercy Memorial Church and the Youth Ambassadors of Hope

   Named "Humanitarian of the Year" by the American Federation of Teachers, Local 212, 2006

   NAACP Foot Soldiers' Award, July 2005

   Outstanding Citizen's Award from the Wisconsin Council of Deliberations, Prince Hall Masons, November 2005

   2002 and 2004 Trail Blazer Award presented by Alpha Kappa Alpha Sorority

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Panelist for the Sandra Day O'Connor Project on the State of the Judiciary, 2008 Conference: Our Courts and Corporate Citizenship, at Georgetown Law School, October 2008

Milwaukee's Top Municipal Judge, Milwaukee Magazine, 1997

Career Youth Development Judge of the Year, 2007

Milwaukee Times Black Excellence Award, February 2002

100 Black Men of Greater Milwaukee, First Annual 100 Award, January 2002

Madison Area Urban Ministry Certificate of Recognition as First African-American Justice on the Wisconsin Supreme Court, September 2004

League of Martin Sterling Award, 1994

NAACP Madison Chapter President's Service Award, February 2004

UW Badgers Then and Now Hall of Fame, 2007

Shepherd Express Reader's Choice Award for Best Judge, 2003

Shepherd Express Reader's Choice Award for Best Justice, 2004

ALFA – Recognition of Outstanding Contributions to ALFA's Client Education Programs, November 2007

Wisconsin Department of Workforce Development Certificate for Dedication to Promoting Black History Month, February 2007

Numerous other awards from Social Development Commission and Career Youth Development

Nominated for Charter Membership in the American College of Appellate Lawyers by Hon. William Moser of the Wisconsin Court of Appeals, 1987

First Wisconsin Assistant State Public Defender to argue a case before the United States Supreme Court in 1988

In 1995, I was selected as one of three finalists for appointment as a United States District Court Judge for the Eastern District of Wisconsin by Wisconsin's Federal Nominating Commission

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9. **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.

Wisconsin Bar Association (1979 – present)
Membership Committee (1989 – 92)
Government Lawyers Pro Bono Task Force (1994 – 96)

Illinois Bar association (nonresident) (1978 – present)

American Bar Association, including member on Standing Committee on Judicial Independence (2008 – 11)

Faculty Council for the National Judicial College in Reno, Nevada (2008 – present)

Permanent Faculty member of the National Judicial College (1997 – present)

Final Bench for Southwestern Law School Moot Court Competition (2005 – present)

James E. Doyle Inns of Court (2004 – present)

Milwaukee Bar Association (on and off, current now) (1992 – present), including Legal Services to Indigents Committee and Bench Bar Committee (2003 – 04)

Wisconsin Association of African-American Lawyers (including Wisconsin Black Lawyer's Association and Wisconsin Association of Minority Attorneys) (1979 – present), including President (1985 – 86), and Treasurer (1984 – 85)

Milwaukee Trial Judge's Association (2003 – 04)

Wisconsin Municipal Judge's Association (1992 – 2002), including President (1997 – 99) and Legislative Trustee (1995 – 97)

Board of Directors (1989 – 93, 2000 – 04) and Past Chair (2002 – 03) of the Individual Rights and Responsibilities Section of the State Bar of Wisconsin

Board of Directors of the Criminal Law Section of the State Bar of Wisconsin (2001 – 2003)

Criminal Benchbook Committee of the Wisconsin Supreme Court (2002)

Government Lawyers Division Task Force (1991 – 93)

Committee for Diverse Judiciary (1992 – 96)

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Legal Action of Wisconsin Board of Directors (1988 – 92), including Chair of Milwaukee Area Grievance Committee (1990 – 92)

10. **Bar and Court Admission**: (none have lapsed)

    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 Wisconsin – March 1, 1979

    State of Illinois – November 3, 1978 (presently on inactive status)

    There have been no lapses in membership.

    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.

    Supreme Court of the United States – March 28, 1983

    United States Court of Appeals for the Seventh Circuit – June 11, 1979

    United States District Court for the Eastern District of Wisconsin – June 5, 1979

    United States District Court for the Northern District of Illinois – April 9, 1979

    There have been no lapses in membership.

11. **Memberships**:

    a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, 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.

    Community Brainstorming Conference Board of Directors (1993 – present), including Chair (1996 – 97)

    Subscribing Life Member, National Association for the Advancement of Colored People (NAACP) (1995 – present) (a lobbying organization)

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Milwaukee Area Television Access (MATA) Board of Directors, 1995 – 99, including Chair of Protocol Committee (1996 – 99)

Community Systemwide Response on Underage Alcohol (1994 – 96)

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, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin 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.

None of these organizations discriminate on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

12. **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. Supply four (4) copies of all published material to the Committee.

"Message from the Chair," 27 Rights News, Spring 2003, pg. 1, published by the Individual Rights and Responsibilities Section of the State Bar of Wisconsin.

"Selling Location Rights May Solve Issue," The Milwaukee Journal Sentinel, June 28, 1996, Pg. unknown

"Time to Demand Black Judge," The Milwaukee Journal, August 19, 1994, Pg. unknown

"But They Owe the Public a Debate," The Milwaukee Journal Sentinel, January 21, 2000, Pg. 15A

I recall having published a letter to the editor to either the Milwaukee Journal or the Milwaukee Sentinel that praised the efforts of a sheriff's deputy who was traveling with me to another city outside his jurisdiction to make a presentation at a continuing legal education seminar when we came upon a fatal accident. The deputy stopped and offered his assistance before resuming our trip. He made his portion of the presentation in blood-stained clothes. I no longer have the letter, and do not know when it was published.

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"Weighing the Options," The Appleton Post Crescent, sometime in March, 2000, pg. unknown

"Supreme Court Justices' Questions and Answers," The Madison Times, Vol. 9, No. 14, March 31 - April 6, 2000, pg. unknown

2006 Course Catalog for the National Judicial College, quote on rear cover

b. 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, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

On April 30, 2009, the City of Milwaukee Alcohol Beverage Licensing Task Force, which I chaired, submitted its 87 page Final Report and Recommendations to Milwaukee's Common Council.

As a member of the ABA Standing Committee on Judicial Independence, I have participated in the drafting of some resolutions that may be considered by the Board of Governors, but they are in draft stage at this time.

As a member of the Individual Rights and Responsibilities Section and the Criminal Law Section Boards of Directors of the State Bar of Wisconsin, Our boards would often vote on whether to urge the State Bar to support or oppose pending legislative proposals. I have no recollection of specific bills or votes.

c. 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.

In May, 1999, I, along with a number of other public officials in two news conferences, supported the passage of the Impartial Justice Bill, which would provide full public funding of Supreme Court campaigns. Others who participated included Wisconsin Citizen Action, 3 state representatives, 1 Milwaukee alderman, and the Milwaukee president of the League of Women Voters.

On November 3, 1995, I sent a letter urging then Governor Tommy Thompson, State Senate President Brian Rude, and Assembly Speaker (now Justice) David Prosser to call a joint special session of the Wisconsin Legislature to deal with issues concerning race affecting our society in Wisconsin. I was supported in this effort by Senator Feingold, Senator Kohl, and Representative Moore (then a state senator), among others.

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As Legislative Trustee and President of the Wisconsin Municipal Judge's Association between 1995 and 1999, I would sometimes testify before committees of the Wisconsin Legislature on bills having an impact on Wisconsin's court system. I have no recollection of specific bills or dates of testimony.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. 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 recording of your remarks, 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, furnish a copy of any outline or notes from which you spoke.

LECTURES/TEACHING:

While this list may not be exhaustive, due to the number of presentations given over the course of my career being too voluminous to catalogue in its entirety, I have been able to identify the following:

State Bar of Wisconsin Annual Convention, "Staying in Wisconsin: Best Practices for Bar Diversity," 2008

University of Wisconsin Law School Contracts Classes, "The Economic Loss Doctrine," November 17, 2008

University of Wisconsin Undergraduate Lecture, "Courtroom and the Jury," November 4, 2008

Southwestern Law School Moot Court Competition Final Bench, 2005-present:
April 4, 2009
April 12, 2008
April 14, 2007
April 1, 2006
April 2, 2005

National Judicial College, Reno, Nevada, Special Courts and Advanced Special Courts programs, Criminal Procedure, 1997-present:
June 7 – 12, 2009
April 27 – 2, 2008
May 13 – 17, 2007
April 30 – May 5, 2006
May 14 – 20, 2005
April 25 – 30, 2004

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April 27 – May 3, 2003
September 15 – 20, 2002 (Stone Mountain, Georgia)
May 12 – 17, 2002
May 13 – 18, 2001
August 13 – 18, 2000
March 14 – 19, 1999
March 22 – 27, 1998
May 8 – 13, 1997

National Judicial College, Handling the Criminal Case: Nigerian Judges, May 14 – 17, 2007

State Public Defender Conference, 1986-present (on and off)

Wisconsin State Public Defender Conference, "Recent Decisions of the Wisconsin Supreme Court," October 12, 2007

Family Court Commissioners Conference, "The Court's Administrative and Supervisory Function," 2007

"Appellate Practice Seminar," for the Wisconsin Department of Justice in Madison, December 10, 2006

State Bar of Wisconsin Annual Convention, "A View of Law from the Bench," 2005

Wisconsin Department of Justice, "Appellate Practice for Wisconsin Prosecutors," 2004

Discussion Panel for State Bar of Wisconsin CLE, "All Deliberate Speed: Brown v. Board of Education," moderated by Tom Boykoff, May 6, 2004

Moderated a Discussion panel, "How Can We Ensure an Adequate Education for All Wisconsin Students," State Bar of Wisconsin CLE, May 5, 2004

Wisconsin State Public Defender Office, "Consent Searches," February 5, 2004

Marquette Law School, Career Panel with Professor Greg O'Meara, "Why Public Interest," January 22, 2004

Milwaukee County Sheriffs Academy, "Bill of Rights," August 8, 2003

Wisconsin Municipal Judges Association, March 22, 2001

State Public Defender Conference, "Fourth Amendment Hot Topics," June 18, 1999

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State Public Defender Conference, "Suppression Motions," November 13, 1997

Wisconsin Municipal Judges Association, "Traffic Law Update," May 20, 1997

State Public Defender Conference, "Motion Practice," October 31, 1996

Lecture for Judicial Interns at Marquette Law School for Professor Charles Clausen, March 25, 1996

Wisconsin Municipal Judges Association, "New Laws – New Cases," and "Conducting a Mock Trial," March 21 – 22, 1996

State Public Defender Training – Milwaukee Office, "Confession Law," January 11, 1996

Lecture for Judicial Interns at Marquette Law School for Professor Charles Clausen, November 9, 1995

State Public Defender Conference, "New Lawyer Skills," October 20, 1995

Wisconsin Municipal Judges Association, July 13, 1995

State Public Defender Conference, "Preliminary Hearings," October 7, 1994

Municipal Judge Education Committee, "Presumptions in Ordinance Cases," June 24, 1994

State Public Defender New Attorney Training, "Confession Law," October 8, 1993

State Public Defender, "Trial Skills Seminar," May 13, 1993

Wisconsin Municipal Judges Association, "New Developments in the Drunk Driving Law," March 5, 1993

State Public Defender Training, "Confession Law," February 27, 1993

Marquette Law School Criminal Law Lecture for Atty. Ron Langford, February 20, 1993

University of Wisconsin Milwaukee Lecture for Atty. Nick Bokas on Criminal Law, January 28, 1993

State Public Defender Training, "Confession Law," January 14, 1993

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State Public Defender New Attorney Training, "Confession Law," December 17, 1992

Marquette Law School Public Defender Clinic, "Confession Law," November 18, 1992

Mock Trial Judge at Marquette Law School, October 31, 1992

State Public Defender New Attorney Training, October 29, 1992

State Public Defender New Attorney Training, "Protecting the Record," July 10, 1992

Wisconsin Association of Criminal Defense Lawyers, "Trial of an Arson Case," April 1992

State Public Defender New Attorney Training, "Confession Law," January 23, 1992

State Public Defender, "Selected Issues in Child Sexual Assault Cases," November 14 – 16, 1991

State Public Defender New Attorney Training, October 4, 1991

Wisconsin Association of Criminal Defense Lawyers, "The Trial of a Sexual Assault Case," May 10 – 11, 1991

State Public Defender, "New Attorney Training Seminar," July and April, 1990

National Legal Aid & Defender Association in Indianapolis, Appellate Defender Training Program, April 4 – 7, 1990

State Public Defender, "Criminal Defense Conference," November 9 – 10, 1989

State Bar of Wisconsin Mock Trial at State Fair Park in Milwaukee, August 5, 1989

State Bar of Wisconsin Young Lawyers Division, "Criminal Practice," 1987-1989

State Bar – Young Lawyer's Division, "Basic Criminal Practice Course," September 22 – 23, 1988

Wisconsin Court of Appeals, "Appellate Practice Seminar," December 16, 1988

Wisconsin Supreme Court, Judicial Criminal Law and Sentencing Institute, May 16 – 17, 1988

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University of Wisconsin Extension School for Seniors, "Role of the Public Defender in Helping Low-Income People," 1987

Milwaukee Bar Association, "Confession Law," 1986

SPEECHES: While this list is not exhaustive, due to the number of presentations given over the course of my career being too voluminous to catalogue in its entirety, I have identified the following. I have very few copies of any speeches.

Commencement Address, University of Wisconsin Law School, May 15, 2009

Judicial Selection Issues as a panel member for the Dane County Bar Association, May 12, 2009

Dane County Law Day Breakfast Speaker on Pro Bono Service, First United Methodist Church, May 1, 2009

"Is Dr. King's Dream Still Relevant?," University of Wisconsin Oshkosh, April 27, 2009

"Thoughts on Judicial Independence," Wisconsin Association of Criminal Defense Lawyers, December 6, 2008

"WISCONSIN'S 2008 SUPREME COURT ELECTION: DO WE HAVE THE AUDACITY TO HOPE FOR A BETTER FUTURE?" 2008 Minnesota annual conference of judges, December 3, 2008

Milwaukee County Democratic Party Meeting guest speaker, October 27, 2008

"Judicial Elections," at Madison Urban Ministry, October 23, 2008

"Judicial Elections in Wisconsin," Sandra Day O'Connor Project at Georgetown Law School, October 2, 2008

Young and Powerful for Obama Event speaker, September 25, 2008

"Judicial Elections in Wisconsin," at Bobfest in Baraboo, WI, September 6, 2008

ADA S. McKINLEY COMMUNITY SERVICES 5TH ANNUAL CELEBRITY GOLF OUTING Keynote speaker, Tinley Park, Illinois, August 5, 2008

"Thoughts on Judicial Independence," National Association of Criminal Defense Lawyers, in Milwaukee WI August 1, 2008

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Wisconsin Municipal Judges Association Luncheon Speaker and Award Presenter, LaCrosse, WI, July 24, 2008

Keynote Address, UW-Milwaukee Multicultural Student Recognition Program, May 4, 2008

Webcast Wispolitics Luncheon Debate for Supreme Court in Madison, March 3, 2008

Dane County Bar Association Supreme Court Candidates debate Madison, February 25, 2008

Brown Deer Middle School, Speech for Black History Month, February 14, 2008

Election Speech to Professional Dimension's group in Milwaukee, January 23, 2008

"Is King's Dream Still Relevant Today?", Wisconsin Department of Administration, Martin Luther King, Jr. Celebration in Madison, January 16, 2008

"Is King's Dream Still Relevant Today?", U.S. Army Garrison, Fort McCoy, Wisconsin, Martin Luther King, Jr. Celebration, January 7, 2008

Welcome Remarks at the State Bar Pro Bono CLE Program in Madison, December 3, 2007

Commencement Address, Wisconsin Patrol Academy, November 16, 2007

Labor and Employment Law Seminar, Ruder and Ware Law Firm in Eau Claire, November 9, 2007

Department of Public Works Conference, Madison, November 8, 2007

LaCrosse County Bar Association, LaCrosse, October 22, 2007

WCAIO Gandhi's Birthday Celebration, October 7, 2007

NAACP Freedom Fund Banquet (brief remarks) in Madison, October 5, 2007

University of Wisconsin Madison SEALS Group, October 2, 2007

Jewish Social Services in Madison, Beth Israel Temple, October 1, 2007

Malawi Judges with U.S. Attorneys Office in Madison at Supreme Court, September 27, 2007

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Women's Court/Civic Conference in Milwaukee, September 19, 2007

Judge Tim Hinkfuss' Investiture in Green Bay, July 31, 2007

University of Wisconsin Extension High School Students, July 26, 2007

Oshkosh Rotary, July 13, 2007

Commencement Address, Lawrence University, June 10, 2007

"Thoughts on Judicial Independence," Sheboygan High School Mock Trial Awards Banquet, June 1, 2007

Dream Chasers at Solomon Community Temple UMC in Milwaukee, May 19, 2007

Commencement Address, University of Wisconsin Law School, May 18, 2007

"Behind the Bench," Milwaukee Bar Association Luncheon Speaker, March 28, 2007

"A Day in the Life of a Justice," Teachers Institute in Madison, March 3, 2007

"For the Common Good, Is King's Dream Still Relevant Today?", Milwaukee Federal Employees, Black History Month program, February 22, 2007

Leadership Fond du lac Speech at Supreme Court, February 21, 2007

"A Black Man in the Legal Field," Wisconsin Department of Workforce Development, February 21, 2007

Southwest Rotary in Oshkosh, February 7, 2007

"Is Dr. King's Dream Still Relevant," Martin Luther King Birthday Celebration at Lawrence University Chapel in Appleton, January 15, 2007

Milwaukee County District Attorney John Chisolm's Investiture, January 9, 2007

"Education vs. Corrections: Pay Me Now or Pay Me Later," Racine YWCA, February 17, 2006

"For the Common Good, Is King's Dream Still Relevant Today?", Fox Cities Martin Luther King, Jr. Celebration, January 15, 2007

"Thoughts on Judicial Independence," Wisconsin Academy of Trial Lawyers, December 1, 2006

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Appleton Rotary Luncheon Speaker, November, 28, 2006

"Voting Our Values and Valuing Our Vote," Janesville NAACP Freedom Fund event, November 17, 2006

"Excellence in Education," American Federal of Teachers-Local 212, September 30, 2006

Keynote Address, Legal Aid Society of Milwaukee 91st Anniversary Celebration, September 6, 2007

Commencement Address, Wisconsin Patrol Academy, August 25, 2006

National Organization of Black Law Enforcement Officers (NOBLE) luncheon keynote speaker, Madison, May 27, 2006

"Leaders in the Law," Wisconsin Law Journal Leaders in the Law event, March 29, 2006

Keynote Address, Racine NAACP Youth Council Luncheon, February 25, 2006

Racine YWCA Luncheon Speaker, February 17, 2006

"The Tie that Binds: Identifying the Roots of Community Consciousness in the Legal Profession," National Black Law Students Association, February 4, 2006

"31 Years of Service and Counting," League of Martin Annual Banquet, December 16, 2005

"Thoughts on Judicial Independence," Junior State of America Fall Convention, November 19, 2005

"Thoughts on Judicial Independence," American Constitution Society, November 18, 2005

Keynote Address, State Council on Affirmative Action Annual Diversity Awards, October 20, 2005

"Thoughts on Judicial Independence," Ozaukee Bar Association, October 5, 2005

"Thoughts on Judicial Independence," Milwaukee Young Lawyers Association, October 21, 2005

"Education vs. Corrections: Pay Me Now or Pay Me Later," Wisconsin Department of Public Instruction, September 22, 2005

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"What's on the Justice's Mind? Judicial Independence!", Midwest Regional

Young Lawyers Conference, September 15, 2005

"What's on the Justice's Mind? Judicial Independence!", Rock County OIC, September 15, 2005

"Legal Ethics: A Perspective," NAACP 96th Annual Convention, July 11, 2005

Commencement Address, Madison East High School, June 10, 2005

"Diversity in the Legal Profession," Legal Education Opportunities Program (LEO) at University of Wisconsin Law School, April 9, 2005

"The Importance of Using a Juris Doctor to Benefit the Community," Marquette Black Law Students Association, February 25, 2005

"Making a Difference in Children's Lives," Dane County Court Appointed Special Advocate Program (CASA) Banquet, February 11, 2005

Keynote Address, United Auto Workers, Martin Luther King, Jr. Celebration, January 22, 2005

Keynote Address, Gateway Technical College, Martin Luther King, Jr. Celebration, January 17, 2005

Luncheon Speaker for Civil Trial Counsel of Wisconsin in Milwaukee, December 10, 2004

"First Impressions," Community Brainstorming Conference in Milwaukee, November 27, 2004

"First Impressions," Court of Appeals District II Luncheon Speaker, November 19, 2004

Keynote Address, NAACP Freedom Fund Dinner in Milwaukee, September 25, 2004

Luncheon Talk Following Supreme Court Investiture for LEO Students at the University of Wisconsin Law School, August 25, 2004

"Brown v. Board of Education," NAACP – Madison Branch, May 1, 2004

"Keeping Our Children Out of the Criminal Justice System," NAACP-Madison Branch, February 28, 2004

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Felmers Chaney Anniversary Dinner, Milwaukee, November 1, 2003

"What Are Best Friends For?", Rotary Club of Madison Ethics Symposium, February 7, 2003

American Civil Liberties Union Youth in Government Keynote Speaker at the University of Wisconsin Milwaukee, January 31, 2001

United Auto Workers Martin Luther King Program Speaker in Kenosha, Wisconsin, January 22, 2000

Cluge School Graduation Speaker, Milwaukee, June 10, 1998

Milwaukee Police Academy Swearing-in Ceremony, November 17, 1997

Judge Jeffrey Conen's Investiture, August 28, 1997

Introduction of Silas Purnell for Honorary Doctorate at Chicago State University, January 18, 1997

Alverno College in Milwaukee, "The Role of A Judge – Justice as a State Public Defender," February 11, 1995

Luncheon Speaker at Gateway Technical College in Kenosha, Wisconsin, "Urban Crime," November 17, 1994

Graduation Speaker at Shalom Alternative High School, Milwaukee, June 10, 1994

York Rite Masons and Eastern Stars Banquet Speaker, November 13, 1993

Browning Elementary School in Milwaukee, March 17, 1988

e. 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.

Statewide televised "We the People Debate for the Wisconsin Supreme Court Election," on Wisconsin Public Television, March 28, 2008.

FRIDAY, March 21, 2008 chat transcript, Milwaukee Journal Sentinel online, http://www3.jsonline.com/story/index.aspx?id=730750

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Candidate questionnaire - Louis Butler, State Supreme Court Justice, Posted: March 17, 2008, Milwaukee Journal Sentinel online, http://www3.jsonline.com/story/index.aspx?id=729074

Supreme Court Judicial Forum for the Milwaukee Bar Assoc., March 12, 2008

Interview with Madison Isthmus Newspaper, March 3, 2008

"Here and Now" television interview during election campaign, February 29, 2008

PantherTalk Live, University of Wisconsin Milwaukee radio show, hosted by Kyle Duerstein, January 29, 2008, http://www.blogtalkradio.com/PantherTalkLive/2008/01/29/PantherTalk-Live

Supreme Court Debate, March 25, 2008, the State Bar of Wisconsin, http://www.wisbar.org/am/template.cfm?section=state_bar_events&template=/cm/contentdisplay.cfm&contentid=70645#

Television Interview by Mike Gousha, WTMJ Television in Milwaukee, December 20, 2004

Radio Campaign Interview from Chicago Radio Station (unknown), November 24, 2007

Radio Campaign Interview, Heart and Soul Radio in Madison, November 17, 2007

Radio Interview by Bob Burnell, WOSH Radio in Oshkosh, August 23, 2004

Radio Interview by Keith Murphy, WMCS Radio in Milwaukee, August 23, 2004

"Hear and Now" Television Interview with Fredericka Frieberg, August 20, 2004

Interview for Black Nouveau Television Show In Milwaukee, April 18, 2000

"Supreme Court Justices' Questions and Answers," The Madison Times, Vol. 9, No. 14, March 31 – April 6, 2000

Molly Faye Television Interview for TV6, Milwaukee, April 3, 2000

"Weighing the Options, Wisconsin Supreme Court Election," Appleton Post-Crescent, March 19, 2000, Pg. I-1

Statewide televised "We the People Debate for the Wisconsin Supreme Court Election," on Wisconsin Public Television, March 24, 2000.

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Appleton Post-Crescent Endorsement Interview, March 23, 2000

Wisconsin Public Radio Interview, March 17, 2000

Dane County Bar Association Televised Election Debate, March 17, 2000

Dave Melnick's Radio Show, WTMJ Milwaukee, March 13, 2000

Oshkosh Northwestern Endorsement Interview, March 9, 2000

The Tom Clark interview on Wisconsin Public Radio, March 7, 2000

Green Bay Press Gazette Endorsement Interview, March 3, 2000

Wisconsin Law Journal Interview with Jane Pribek, September 20, 1999

Dave Melnick's Radio Show, WTMJ Milwaukee, January 15, 1998

Tony Aiello Television Interview for TV6, Milwaukee, November 12, 1995

Tony Aiello Television Interview for TV6, Milwaukee, July 10, 1995

WNOV Milwaukee Radio Interview, June 22, 1994

Press Conference regarding the Death Penalty in Wisconsin by a number of Elected Officials, October 18, 1993

Leonard Sykes Interview for Milwaukee Journal, October 22, 1992

Leonard Sykes Interview for Milwaukee Journal, June 18, 1992

CBN (Christian Broadcast Network) Television Interview by Joseph Helm and John McLario, March 31, 1989

MATA Community Media Broadcast Interview, March 24, 1989

Candidate Endorsement Interview for Milwaukee Sentinel, March 22, 1989

Candidate Endorsement Interview for Milwaukee Journal, March 21, 1989

Chester Sherard Interview for Milwaukee Sentinel, March 8, 1989

"Making Black History," The Capital City Hues, by Jonathan Gramling, Vol. 3, No. 4, February 21, 2008

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The Joy Cardin interview on Wisconsin Public Radio, March 19, 2008, http://www.wpr.org/webcasting/audioarchives_display.cfm?Code=jca&StartRow=961&Repeats=yes

League of Women Voters of Wisconsin Education Fund VOTERS' GUIDE, 2008 Spring Election, https://wiscmail.wisc.edu/attach/VG%20Spring%202008.pdf?sid=I7xO6Df7JJc&mbox=INBOX&charset=escaped_unicode&uid=3497&number=4&filename=VG%20Spring%202008.pdf

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Milwaukee Municipal Court, June 14, 1992 – July 31, 2002
This was a court of limited jurisdiction. The matters heard were civil city ordinance violations, including quasi-criminal matters, traffic matters, building code violations, and minor juvenile ordinance violations. During a ten year period, my branch heard approximately 465,000 cases total. Most were resolved by way of default judgment. All trials were to the court. I was appointed by Milwaukee's Common Council on June, 14, 1992, and elected without opposition in April 1993, April 1995, and again in April 1999. Milwaukee Municipal Court was not a court of record under Wisconsin law.

Milwaukee County Circuit Court, August 1, 2002 – August 24, 2004
This was a court of general jurisdiction, and a court of record. I was elected to the position in April, 2002, defeating the incumbent. I served first in criminal misdemeanor court, and rotated to domestic violence court on August 1, 2004. In the misdemeanor branch, I heard non-felony criminal matters, including criminal traffic matters, as well as county ordinance violations and county traffic violations. I also heard appeals of municipal ordinance matters, de novo.

Wisconsin Supreme Court, August 25, 2004 – July 31, 2008
This was a court of appellate jurisdiction, this state's court of last resort. As such, it was a law development court. Jurisdiction was statewide, and of all matters. Our jurisdiction was discretionary as well. I was appointed to the Court by Governor Jim Doyle on August 18, 2004. I was defeated in a contested election on April 1, 2008. In the Supreme Court, approximately 300 opinions were drafted by the justices during the 4 years I was there. Including Office of Lawyer Regulation cases, 569 individual cases were disposed of while I was on the Court. Between 4,000 and 5,000 petitions for review, petitions for bypass, certifications by the court of appeals and original actions were decided during that period.

a. Approximately how many cases have you presided over that have gone to verdict or judgment?

I presided over 2500 cases in Municipal Court, and 61 in Circuit Court.

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i. Of these, approximately what percent were:

Municipal Court
jury trials? 0%; bench trials 100% [total 100%]

civil proceedings? 100%; criminal proceedings? 0% [total 100%]

Circuit Court
jury trials? 36%; bench trials 64% [total 100%]

civil proceedings? 41%; criminal proceedings? 59% [total 100%]

b. Provide citations for all opinions you have written, including concurrences and dissents.

WISCONSIN SUPREME COURT MAJORITY OPINIONS:

Mared Industries v. Mansfield, 2005 WI 5, 277 Wis. 2d 350, 690 N.W.2d 835
Petta v. ABC Ins. Co., 2005 WI 18, 278 Wis. 2d 251, 692 N.W.2d 639
Solie v. Employee Trust Funds Bd., 2005 WI 42, 279 Wis. 2d 615, 695 N.W.2d 463
State v. Reed, 2005 WI 53, 280 Wis. 2d 68, 695 N.W.2d 315
Anderson v. MSI Preferred Ins. Co., 2005 WI 62, 281 Wis. 2d 66, 697 N.W.2d 73
State v. Manuel, 2005 WI 75, 2005 WI 75, 281 Wis. 2d 554, 697 N.W.2d 811
Clean Wisconsin, Inc. v. PSC, 2005 WI 93, 282 Wis. 2d 250, 700 N.W.2d 768
State v. Bush, 2005 WI 103, 283 Wis. 2d 90, 699 N.W.2d 80
State v. Denis L.R., 2005 WI 110, 283 Wis. 2d 358, 699 N.W.2d 154
Johnson v. Rogers Memorial Hosp., 2005 WI 114, 283 Wis. 2d 384, 700 N.W.2d 27
State v. Love, 2005 WI 116, 284 Wis. 2d 111, 700 N.W.2d 62
State v. Knapp, 2005 WI 127, 285 Wis. 2d 86, 700 N.W.2d 899
Thomas v. Mallett, 2005 WI 129, 285 Wis. 2d 236, 701 N.W.2d 523
State v. Armstrong, 2005 WI 199, 283 Wis. 2d 639, 700 N.W.2d 98
State v. Maloney, 2006 WI 15, 288 Wis. 2d 551, 709 N.W.2d 436
Village of Cross Plains v. Haanstad, 2006 WI 16, 288 Wis. 2d 573, 709 N.W.2d 447
Orion Flight Servs. v. Basler Flight Servs., 2006 WI 51, 290 Wis. 2d 421, 714 N.W.2d 130
Landwehr v. Landwehr, 2006 WI 64, 291 Wis. 2d 49, 715 N.W.2d 180
Affordable Erecting v. Neosho Trompler, Inc., 2006 WI 67, 291 Wis. 2d 259, 715 N.W.2d 620
Robin K. v. Lamanda M., 2006 WI 68, 291 Wis. 2d 333, 718 N.W.2d 38
Metropolitan Ventures v. GEA Assoc., 2006 WI 71, 291 Wis. 2d 393, 717 N.W.2d 58
State v. Roberson, 2006 WI 80, 292 Wis. 2d 280, 717 N.W.2d 111
Sonday v. Dave Kohel Agency, Inc., 2006 WI 92, 293 Wis. 2d 458, 718 N.W.2d 631
Kenosha County DHS v. Jodie W., 2006 WI 93, 293 Wis. 2d 530, 716 N.W.2d 895
Dairyland Greyhound Park v. Doyle, 2006 WI 107, 295 Wis. 2d 1, 719 N.W.2d 408
State v. Parent, 2006 WI 132, 298 Wis. 2d 63, 725 N.W.2d 915
State v. Johnson, 2007 WI 32, 299 Wis. 2d 675, 729 N.W.2d 182
Kasten v. Doral Dental, 2007 WI 76, 301 Wis. 2d 598, 733 N.W.2d 300
Kristi L.M. v. Dennis E.M., 2007 WI 85, 302 Wis. 2d 185, 734 N.W.2d 375
Kolupar v. Wilde Pontiac Cadillac, 2007 WI 98, 303 Wis. 2d 258, 735 N.W.2d 93

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Meyers v. Bayer AG, 2007 WI 99, 303 Wis. 2d 295, 735 N.W.2d 448
City of Milwaukee v. Washington, 2007 WI 104, 304 Wis. 2d 98, 735 N.W.2d 111
Stoughton Trailers v. LIRC, 2007 WI 105, 303 Wis. 2d 514, 735 N.W.2d 477
Szleszinski v. LIRC, 2007 WI 106, 304 Wis. 2d 258, 736 N.W.2d 111
Steinmann v. Steinmann, 2008 WI 43, 309 Wis. 2d 29, 749 N.W.2d 145
Estate of Matteson v. Matteson, 2008 WI 48, 309 Wis. 2d 311, 749 N.W.2d 557
Liebovich v. Minnesota Ins. Co., 2008 WI 75, 310 Wis. 2d 751, 751 N.W.2d 764
Walgreen Co. v. City of Madison, 2008 WI 80, 311 Wis. 2d 158, 752 N.W.2d 687
Town of Madison v. County of Dane, 2008 WI 83, 311 Wis. 2d 402, 752 N.W.2d 260
Stuart v. Weisflog's Showroom Gallery, Inc., 2008 WI 86, 311 Wis. 2d 492, 753 N.W.2d 448
Sands v. Whitnall School District, 2008 WI 89, 312 Wis. 2d 1, 754 N.W.2d 439
State v. Doss, 2008 WI 93, 312 Wis. 2d 570, 754 N.W.2d 150
Hornback v. Archdiocese of Milwaukee, 2008 WI 98, 313 Wis. 2d 294, 752 N.W.2d 852

WISCONSIN SUPREME COURT CONCURRING AND DISSENTING OPINIONS:

Baumeister v. Automated Products, Inc., 2004 WI 148, 277 Wis. 2d 21, 690 N.W.2d 1
Gehin v. Wisconsin Group Ins. Bd., 2005 WI 16, 278 Wis. 2d 111, 692 N.W.2d 572
State v. Brown, 2005 WI 29, 279 Wis. 2d 102, 693 N.W.2d 715
Dane County DHS v. P.P., 2005 WI 32, 279 Wis. 2d 169, 694 N.W.2d 344
OLR v. Polich, 2005 WI 36, 279 Wis. 2d 266, 694 N.W.2d 367
State v. Trujillo, 2005 WI 45, 279 Wis. 2d 712, 694 N.W.2d 933
State v. Tucker, 2005 WI 46, 279 Wis. 2d 697, 694 N.W.2d 926
State v. Stuart, 2005 WI 47, 279 Wis. 2d 659, 695 N.W.2d 259
Everson v. Lorenz, 2005 WI 51, 280 Wis. 2d 1, 695 N.W.2d 298
State v. Anderson, 2005 WI 54, 280 Wis. 2d 104, 695 N.W.2d 731
Chen v. Warner, 2005 WI 55, 280 Wis. 2d 344, 695 N.W.2d 758
OLR v. Felli, 2005 WI 58, 281 Wis. 2d 25, 697 N.W.2d 42
OLR v. Backes, 2005 WI 59, 281 Wis. 2d 1, 697 N.W.2d 49
Gottsacker v. Monnier, 2005 WI 69, 281 Wis. 2d 361, 697 N.W.2d 436
Clean Wisconsin, Inc. v. PSC, 2005 WI 93, 282 Wis. 2d 250, 700 N.W.2d 768
Hanneman v. Boyson, 2005 WI 94, 282 Wis. 2d 664, 698 N.W.2d 714
Kohn v. Darlington Community Schools, 2005 WI 99, 283 Wis. 2d 21, 698 N.W.2d 794
State v. Smith, 2005 WI 104, 382 Wis. 2d 57, 699 N.W.2d 508
State v. Jerrell C.J., 2005 WI 105, 283 Wis. 2d 145, 699 N.W.2d 110
Carney-Hayes v. Northwest Wis. Home Care, 2005 WI 118, 284 Wis. 2d 56, 699 N.W.2d 524
John Doe 67 v. Archdiocese of Milwaukee, 2005 WI 123, 284 Wis. 2d 307, 700 N.W.2d 180
State v. Dubose, 2005 WI 126, 285 Wis. 2d 143, 699 N.W.2d 582
Dane County v. McGrew, 2005 WI 130, 285 Wis. 2d 519, 699 N.W.2d 890
Sauk County v. Aaron J.J., 2005 WI 162, 286 Wis. 2d 376, 706 N.W.2d 659
State v. Shomberg, 2006 WI 9, 288 Wis. 2d 1, 709 N.W.2d 370
Rebernick v. Wausau Gen. Ins. Co., 2006 WI 27, 289 Wis. 2d 324, 711 N.W.2d 621
OLR v. Gamino, 2006 WI 32, 290 Wis. 2d 1, 712 N.W.2d 873
Coleman v. McCaughtry, 2006 WI 49, 290 Wis. 2d 352, 714 N.W.2d 900
State v. Hibl, 2006 WI 52, 290 Wis. 2d 595, 714 N.W.2d 194
Wisconsin Auto Title Loans v. Jones, 2006 WI 53, 290 Wis. 2d 514, 714 N.W.2d 155

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State v. Brockdorf, 2006 WI 76, 291 Wis. 2d 635, 717 N.W.2d 657
State v. Mark, 2006 WI 78, 292 Wis. 2d 1, 718 N.W.2d 90
Bartholomew v. Wis. Patients Comp. Fund, 2006 WI 91, 293 Wis. 2d 38, 717 N.W.2d 216
State v. Young, 2006 WI 98, 294 Wis. 2d 1, 717 N.W.2d 729
State v. Campbell, 2006 WI 99, 294 Wis. 2d 100, 718 N.W.2d 649
State v. Kelty, 2006 WI 101, 294 Wis. 2d 62, 716 N.W.2d 886
Lassa v. Rongstad, 2006 WI 105, 294 Wis. 2d 187, 718 N.W.2d 673
Acuity Mut. Ins. v. Olivas, 2007 WI 12, 298 Wis. 2d 640, 726 N.W.2d 258
Industrial Roofing v. Marquardt, 2007 WI 19, 299 Wis. 2d 81, 726 N.W.2d 898
State v. Jensen, 2007 WI 26, 299 Wis. 2d 267, 727 N.W.2d 518
Buswell v. Tomah School District, 2007 WI 71, 301 Wis. 2d 178, 732 N.W.2d 804
State v. Lackershire, 2007 WI 74, 301 Wis. 2d 418, 734 N.W.2d 23
State v. Mayo, 2007 WI 78, 301 Wis. 2d 642, 734 N.W.2d 115
State v. Bannister, 2007 WI 86, 302 Wis. 2d 158, 734 N.W.2d 892
City of Janesville v. CC Midwest, 2007 WI 93, 302 Wis. 2d 599, 734 N.W.2d 428
HSBC Realty Credit Corp. v. City of Glendale, 2007 WI 94, 303 Wis. 2d 1, 735 N.W.2d 77
State v. Jenkins, 2007 WI 96, 303 Wis. 2d 157, 736 N.W.2d 24
Milwaukee Med. Ctr. v. City of Wauwatosa, 2007 WI 101, 304 Wis. 2d 53, 735 N.W.2d 156
Frisch v. Henrichs, 2007 WI 102, 304 Wis. 2d 1, 736 N.W.2d 85
Helgeland v. Wisconsin Municipalities, 2008 WI 9, 307 Wis. 2d 1, 745 N.W.2d 1
State v. Hambly, 2008 WI 10, 307 Wis. 2d 98, 745 N.W.2d 48
Judicial Commission v. Ziegler, 2008 WI 27, 309 Wis. 2d 253, 750 N.W.2d 710
Stone v. Acuity, 2008 WI 30, 308 Wis. 2d 558, 747 N.W.2d 149
Eichenseer v. Madison-Dane County Tavern, 2008 WI 38, 308 Wis. 2d 684, 748 N.W.2d 154
State v. Plude, 2008 WI 58, 310 Wis. 2d 28, 750 N.W.2d 42
State v. Straszkowski, 2008 WI 65, 310 Wis. 2d 259, 750 N.W.2d 835
Hipp v. Circuit Court for Milwaukee County, 2008 WI 67, 310 Wis. 2d 342, 750 N.W.2d 873
Larry v. Harris, 2008 WI 81, 311 Wis. 2d 326, 752 N.W.2d 279
State v. Sanders, 2008 WI 85, 311 Wis. 2d 257, 752 N.W.2d 713
State v. Hubbard, 2008 WI 92, 313 Wis. 2d 1, 752 N.W.2d 839
J.G. v. Wangard, 2008 WI 99, 313 Wis. 2d 329, 753 N.W.2d 475

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

At the municipal court level, none of these cases would be considered significant, and I have no independent recollection of any individual matter. What was of significance was the fact that almost all abortion protest cases were heard in Milwaukee Municipal Court during this period, as very few of these cases were prosecuted in Criminal Court by the then District Attorney.

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At the circuit court level, I can only think of one case I would consider significant, the case of Thomas P. Vitrano, case no. 01CM7337, for retail theft. Mr. Vitrano was I believe either in federal custody, or being questioned by the FBI for something to do with the making of or threats by bombs when his case went to jury trial for retail theft. He was also under a suicide watch, and showed serious mental health issues, though he was competent to stand trial. I recall he wore a Mohawk at his trial, and had to be physically restrained by a leg iron during the proceedings. He was found guilty, and sentenced by me to serve 7 months in the House of Correction consecutive to any sentence with credit for 2 days served; straight time. For the prosecution, then ADA Eric DeFort, 608-266-8514. For the defense, Robert Webb, State Public Defender Milwaukee Trial Office, 819 N 6th St Ste 908, Milwaukee, WI 53203-1606, Phone: (414) 227-4179

The rest of the cases at circuit court were neither significant nor memorable. I will therefore provide the most recent cases that went to trial that I presided over.

1. May 10, 2004, *State v. Hernandez*, 2002CM6147, one count of criminal damage to property, contrary to sec. 943.01, Stats. After the jury was selected, the prosecutor moved to dismiss the charges, as it was unable to proceed. The court ordered the case dismissed without prejudice. For the prosecution, ADA Jennifer Rhodes, 414-278-4646. For the defense, Lori Schmitz, telephone unknown

2. April 7, 2004, *State v. King*, 2003CM8113, one count of battery, contrary to sec. 940.19(1), Stats. Defendant was found guilty by the jury following a three day trial. Sentencing was adjourned to September 16, 2004, with the case being reassigned to the Hon. Kevin Martens, and defendant was sentenced to 75 days at the House of Correction (HOC) and fined $200 plus costs. For the prosecution, then ADA Eric DeFort, 608-266-8514. For the defense, Michael Chernin, 414-272-1234.

3. April 2, 2004, *State v. Villegas*, 2002CT12427, one count of OWI (4th) and one count of operating with a PAC .02 or more (4th), contrary to secs. 346.63(1)(a) and (1)(b), Stats. Defendant was found guilty by the jury following a three day trial, and sentenced to 11 months at the HOC on count 1 and fined $2400 plus costs, with a suspended sentence on count 2. For the prosecution, then ADA Eric DeFort, 608-266-8514. For the defense, Richard Thomey, 414-258-7123.

4. March 17, 2004, *State v. Fuentes-Sanchez*, 2003CT10689, one count of hit and run, contrary to sec. 346.67(1), Stats. Defendant changed his plea during the second day of trial to guilty, and was sentenced to 5 days at the HOC and fined $300 plus costs. For the prosecution, then ADA Eric DeFort, 608-266-8514. For the defense, Isa Gonzalez-Zayas, 414-257-5736.

5. February 10, 2004, *State v. Wilder*, 2003CM6645, one count of disorderly conduct, contrary to sec. 947.01, Stats. Jury found defendant not guilty after a

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two day trial, and a judgment of acquittal was entered. For the prosecution, then ADA Eric DeFort, 608-266-8514. The defendant was pro se.

6. April 4, 2004, *State v. Santiago*, 2004CM182, one count of violation of domestic abuse injunction, contrary to sec. 813.12(8)(a), Stats. A judgment of acquittal was entered after the state notified the court that it could not proceed during the trial. For the prosecution, ADA Grant Huebner, 414-935-7459. For the defense, Nelida Cortes, 414-227-4967.

7. July 26, 2004, *State v. Ronkiewicz*, 2001CT3750, one count of OWI (4^{th}) contrary to secs. 346.63(1)(a), Stats. Defendant was found guilty after a three day trial, and sentenced to 10 months at the HOC and fined $1000 plus costs. The matter was affirmed by the court of appeals December 1, 2005, following a no merit report in appeal no. 2005AP655NM. For the prosecution, then ADA Eric DeFort, 608-266-8514. For the defense, Scott Wales, 414-357-7501.

8. May 25, 2004, *State v. Oliver*, 2003CM5323, one count of Obstructing an Officer contrary to sec. 946.41(1), Stats. Defendant was found guilty after a 2 day trial, and fined $250 plus costs. For the prosecution, ADA Jennifer Rhodes, 414-278-4646. For the defense, Geneva McKinley, 414-278-5101.

9. April 15, 2004, *State v. Marshall*, 2003CT14889, one count of hit and run, contrary to sec. 346.67(1), Stats. Defendant was found not guilty, and a judgment of acquittal was entered. For the prosecution, then ADA Eric DeFort, 608-266-8514. The defendant was pro se.

10. November 25, 2003, *State v. Krueger*, 2003CT703, one count of OWI (2^{nd}) and one count of operating with a PAC .10 or more (2^{nd}), contrary to secs. 346.63(1)(a) and (1)(b), Stats. Defendant was found not guilty after a 2 day trial. For the prosecution, then ADA Eric DeFort, 608-266-8514. For the defense, Jonathan LaVoy , 262-796-1400.

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. *Thomas v. Mallett*, 2005 WI 129, 285 Wis. 2d 236, 701 N.W.2d 523 (majority). For the plaintiff-appellant-petitioner, oral argument by Peter G. Earle (Law Office of Peter Earle, 839 N Jefferson St Ste 300, Milwaukee, WI 53202-3740, Phone: (414) 276-1076) and Robert J. McConnell (Fidelma Fitzpatrick and Motley Rice, LLC, Providence, RI). For the defendants-respondents, Atlantic Richfield Company, E.I. du Pont de Nemours & Co., Con-Agra Grocery Products Company, NL Industries, Inc., American Cyanamid Co., and Millennium Inorganic Chemicals, Inc. (f/k/a SCM Chemicals, Inc.), oral argument by Bruce

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Kelly (Arnold & Porter, New York)(on behalf of American Cyanamid Co., et al.). For the Sherwin-Williams Company, oral argument by Charles H. Moellenberg, Jr. (Paul Michael Pohl, Charles H. Moellenberg, Jennifer B. Flannery and Jones Day, Pittsburgh, PA).

2. *Clean Wisconsin, Inc. v. PSC*, 2005 WI 93, 282 Wis. 2d 250, 700 N.W.2d 768 (majority and concurring opinions). For the respondents-co-appellants-cross-respondents, Public Service Commission of Wisconsin and Wisconsin Department of Natural Resources, oral argument by Edward S. Marion (716 Ottawa Trl, Madison, WI 53711, Phone: (608) 334-9741). For the petitioners-respondents-cross-appellants-cross-respondents, Clean Wisconsin, Inc. and S.C. Johnson & Son, Inc., oral argument by Carl A. Sinderbrand (Axley Brynelson LLP, 2 E Mifflin St # 200, PO Box 1767, Madison, WI 53701-1767, Phone: (608) 260-2472). For the interested parties-co-appellants-cross-respondents, Wisconsin Public Power, Inc. and Madison Gas & Electric Company, oral argument by Richard K. Nordeng (222 W Washington Ave # 900, PO Box 1784 Madison, WI 53701-1784, Phone: (608) 259-2612). For the interested parties-appellants-cross-respondents, Wisconsin Electric Power Company, W.E. Power, LLC and Wisconsin Energy Corporation, oral argument by R. Ryan Stoll. For the interested party-respondent-cross-appellant, City of Oak Creek, oral argument by William J. Mulligan (Davis & Kuelthau SC
111 E Kilbourn Ave # 1400, Milwaukee, WI 53202-6677, Phone: (414) 225-1429).

3. *Dairyland Greyhound Park v. Doyle*, 2006 WI 107, 295 Wis. 2d 1, 719 N.W.2d 408 (majority). For the plaintiff-appellant, oral argument by Stephen L. Morgan (Murphy Desmond SC, 33 E Main St Ste 500, PO Box 2038, Madison, WI 53701-2038, Phone: (608) 268-5572). For the defendants-respondents the cause was argued by Thomas C. Bellavia, Maura FJ Whelan, John S. Greene, Charles D. Hoornstra, assistant attorneys general (Wisconsin Department of Justice, 17 W Main St, PO Box 7857, Madison, WI 53707-7857).

4. *State v. Knapp*, 2005 WI 127, 285 Wis. 2d 86, 700 N.W.2d 899 (majority). For the plaintiff-appellant-cross-respondent the cause was argued by William L. Gansner, assistant attorney general (Wisconsin Department of Justice, 17 W Main St, PO Box 7857, Madison, WI 53707-7857, Phone: (608) 266-3539). For the defendant-respondent-cross-appellant, oral argument by Robert G. LeBell (LeBell, Dobroski & Morgan LLP, 309 N, Water St # 350, Milwaukee, WI 53202-5772, Phone: (414) 276-1233.

5. *State v. Jensen*, 2007 WI 26, 299 Wis. 2d 267, 727 N.W.2d 518 (concurring in part, dissenting in part). For the plaintiff-appellant-cross-respondent the cause was argued by Marguerite M. Moeller (Wisconsin Department of Justice, 17 W Main St, PO Box 7857, Madison, WI 53707-7857, Phone: (608) 266-8556). For the defendant-respondent-cross-appellant, oral argument by Craig W. Albee,

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Glynn, Fitzgerald & Albee SC, 526 E Wisconsin Ave, Milwaukee, WI 53202-4503, Phone: (414) 221-9600).

6. *City of Milwaukee v. Washington*, 2007 WI 104, 304 Wis. 2d 98, 735 N.W.2d 111 (majority). For the respondent-appellant-petitioner, oral argument by William J. Tyroler (State Public Defenders Office Appellate Division, 735 N Water St # 912, Milwaukee, WI 53202-4105, Phone: (414) 227-4134). For the petitioner-respondent there was a brief and oral argument by Stuart S. Mukamal (Milwaukee City Attorneys Office, 200 E Wells St Rm 800, Milwaukee, WI 53202-3515, Phone: (414) 286-2601), assistant city attorney.

7. *State v. Jerrell C.J.*, 2005 WI 105, 283 Wis. 2d 145, 699 N.W.2d 110 (concurring). For the respondent-appellant-petitioner there were briefs and oral argument by Eileen A. Hirsch (State Public Defenders Office Appellate Division, 17 S Fairchild St 3rd Fl, PO Box 7862, Madison, WI 53707-7862, Phone: (608) 264-8566), assistant state public defender. For the petitioner-respondent the cause was argued by Gregory M. Weber, (Wisconsin Department of Justice, 17 W Main St, PO Box 7857, Madison, WI 53707-7857, Phone: 266-3935) assistant attorney general.

8. *State v. Sanders*, 2008 WI 85, 311 Wis. 2d 257, 752 N.W.2d 713 (concurring). For the plaintiff-respondent-petitioner the cause was argued by Anne C. Murphy, (Wisconsin Department of Justice, 17 W Main St, PO Box 7857, Madison, WI 53707-7857, Phone: 266-9224) assistant attorney general. For the defendant-appellant there was a brief and oral argument by Patrick M. Donnelly, (State Public Defenders Office Appellate Division, 17 S Fairchild St 3rd Fl, PO Box 7862, Madison, WI 53707-7862, Phone: (608) 266-7092) assistant state public defender.

9. *State v. Reed*, 2005 WI 53, 280 Wis. 2d 68, 695 N.W.2d 315 (majority). For the defendant-appellant-petitioner, oral argument by David H. Weber (Liebmann, Conway, Olejniczak & Jerry SC, 231 S Adams St, PO Box 23200, Green Bay, WI 54305-3200, Phone: (920) 437-0476 x235). For the plaintiff-respondent the cause was argued by David J. Becker, assistant attorney general (Wisconsin Department of Justice, 17 W Main St, PO Box 7857, Madison, WI 53707-7857, Phone: (608) 266-7447).

10. *Walgreen Co. v. City of Madison*, 2008 WI 80, 311 Wis. 2d 158, 752 N.W.2d 687 (majority). For the plaintiff-appellant-petitioner, oral argument by Robert A. Hill (Robert Hill & Associates, Eden Prairie, Minn). For the defendant-respondent there was a brief and the cause was argued by Larry W. O'Brien, assistant city attorney, Madison (Madison City Attorneys Office, 210 Martin Luther King Jr Blvd # 401, Madison, WI 53703-3345, Phone: (608) 266-4511).

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e. Provide a list of all cases in which certiorari was requested or granted.

State v. Moeck, 2005 WI 57, 280 Wis. 2d 277, 695 N.W.2d 783 (denied). I did not write the opinion.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

I know that I had 3 municipal court decisions that were reversed in Milwaukee County Circuit Court involving individuals who were incarcerated for unreasonable periods of time without being brought to court for a determination of probable cause on non-criminal matters. A pattern had emerged at the Milwaukee County jail where individuals who did not speak English were being lost in the system, and incarcerated for as long as 7 days without being brought to court on ordinance violations. I eventually dismissed the three matters with prejudice, and each was appealed to circuit court. One judge ruled that while dismissal may have been appropriate, the dismissal had to be without prejudice. One judge ruled that the only remedy available to the defendant was a lawsuit. One judge ruled that the defendant had no remedy. In any instance, all three cases were reversed. I do not know the names of the cases or who the attorneys were, but one of the judges was the Hon John Dimotto, 414-278-4366, and I believe a second judge was the Hon. Tim Dugan, 414-278-4496. I do not recall the third judge. I also do not have copies of the circuit court decisions overturning my decisions.

I had no decisions reversed as a circuit court judge, and the Supreme Court of the United States did not accept certiorari on any cases arising out of the Wisconsin Supreme Court while I was there.

g. Provide 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.

At the Supreme Court, almost all of our opinions were published. The only non-published I recall was in 2004, when the court in an original action allowed Ralph Nader's name to be placed on the ballot for the 2004 presidential election. I wrote a concurring opinion, disagreeing with the court's decision to treat the matter as an original action, as there had been a previous ruling in the circuit court. I concurred with the ultimate result allowing his name to be placed on the ballot.

h. Provide 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, provide copies of the opinions.

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Please see 13b., above.

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

None.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (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.) 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 in which you have recused yourself sua sponte. 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.

Over the last 17 years, I have assessed the necessity and propriety of recusal and disqualification by following the Wisconsin Statute for mandatory disqualification, sec. 757.19, as well as the Supreme Court Rules that apply in other non-mandatory situations, pursuant to WI SCR 60.04 and 60.05. Disqualification is required whenever the judge is related to a party or counsel, is a party or material witness, acted previously as counsel in the same proceeding, prepared a document whose validity is at issue, previously handled a motion in an inferior court, has a financial or personal interest in the outcome, or can't be impartial. In non-mandatory situations, the SCR's provide for disclosure to the parties, and recusal where appropriate.

Wisconsin also has an automatic substitution of judge procedure in the trial courts, pursuant to sec. 801.58. A party may, in a timely fashion, substitute a trial judge out of the case without alleging prejudice or stating any reason for the request. As a Supreme Court Justice, I also followed the requirements of Internal Operating Procedure (IOP) 2L. Under that provision, justices do not disclose reasons for their disqualification decisions. The following are my recusals and substitutions as a judicial officer in Wisconsin.

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Wisconsin Supreme Court Recusals, 2004 – 08 (no substitutions at this level)

Opinions

Rechsteiner v. Hazelden, 313 Wis.2d 542, 753 N.W.2d 496, 2008 WL 2745132, 2008 WI 97, July 16, 2008 (No. 2006AP1521.)
WIREdata, Inc. v. Village of Sussex, 310 Wis.2d 397, 751 N.W.2d 736, 2008 WL 2512963, 36 Media L. Rep. 2414, 2008 WI 69, June 25, 2008 (Nos. 2005AP1473, 2006AP174, 2006AP175.)
State v. Chvala, 279 Wis.2d 216, 693 N.W.2d 747, 2005 WL 659193, 2005 WI 30, March 23, 2005 (No. 03-0442-CR.)
State v. Jensen, 279 Wis.2d 220, 694 N.W.2d 56, 2005 WL 659203, 2005 WI 31, March 23, 2005 (No. 03-0106-CR.)
Pierce v. Physicians Ins. Co. of Wisconsin, Inc., 278 Wis.2d 82, 692 N.W.2d 558, 2005 WL 368591, 2005 WI 14, February 17, 2005 (No. 01-2710.)

Petitions for Review

State v. Tody, 314 Wis.2d 69, 758 N.W.2d 90 (Table), 2008 WL 4976225, 2008 WI 122, July 28, 2008 (No. 2007AP0400-CR)
State v. Alexander, 314 Wis.2d 71, 758 N.W.2d 91 (Table), 2008 WL 5111391, 2008 WI 122, July 28, 2008 (No. 2007AP0740-CR)
Estate of Weidner v. General Motors Corp., 314 Wis.2d 71, 758 N.W.2d 91 (Table), 2008 WL 5128551, 2008 WI 122, July 28, 2008 (No. 2007AP1642)
Blunt v. Medtronic, Inc., 308 Wis.2d 609, 749 N.W.2d 661 (Table), 2008 WL 2102332, 2008 WI 40, April 15, 2008 (No. 2006AP1506)
State v. Santiago, 306 Wis.2d 47, 744 N.W.2d 296 (Table), 2007 WL 4896231, 2008 WI 6, November 05, 2007 (No. 2006AP1696)
Riley v. Giombi, 304 Wis.2d 610, 741 N.W.2d 240 (Table), 2007 WL 2834107, 2007 WI 120, August 14, 2007 (No. 2006AP0801)
Riley v. Giombi, 304 Wis.2d 611, 741 N.W.2d 240 (Table), 2007 WL 2834149, 2007 WI 120, August 14, 2007 (No. 2006AP0802)
State v. Anzualda, 304 Wis.2d 611, 741 N.W.2d 241 (Table), 2007 WL 2835733, 2007 WI 120, July 17, 2007 (No. 2006AP1665)
State v. Hendricks, 302 Wis.2d 106, 737 N.W.2d 432 (Table), 2007 WL 2351543, 2007 WI 114, June 12, 2007 (No. 2006AP0055-CRNM)
Tallmadge v. Boyle, 302 Wis.2d 107, 737 N.W.2d 433 (Table), 2007 WL 2353365, 2007 WI 114, May 22, 2007 (No. 2006AP1075)
Rintelman v. Boys & Girls Clubs of Greater Milwaukee, Inc., 289 Wis.2d 11, 712 N.W.2d 35 (Table), 2006 WL 980317, 2006 WI 23, January 20, 2006 (No. 2004AP2669)
State v. Hendricks, 286 Wis.2d 661, 708 N.W.2d 692 (Table), 2005 WL 3708499, 2006 WI 3, November 11, 2005 (No. 2004AP0348)
State v. Nunn, 286 Wis.2d 662, 708 N.W.2d 693 (Table), 2005 WL 3708546, 2006 WI 3, November 11, 2005 (No. 2004AP2263-CR)
State v. Smith, 285 Wis.2d 628, 703 N.W.2d 378 (Table), 2005 WL 2206601, 2005 WI 136, August 25, 2005 (No. 2004AP1077-CR)

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Advantage Leasing Corp. v. Novatech Solutions, Inc., 282 Wis.2d 720, 700 N.W.2d 271 (Table), 2005 WL 1712201, 2005 WI 134, June 01, 2005 (No. 2003AP1216)
Dunn v. Milwaukee County, 282 Wis.2d 720, 700 N.W.2d 272 (Table), 2005 WL 1712978, 2005 WI 134, May 11, 2005 (No. 2003AP3525)
State v. Lopez, 277 Wis.2d 154, 691 N.W.2d 356 (Table), 2004 WL 3105704, 2005 WI 1, December 27, 2004 (No. 04-0972-CRNM)
State v. Lopez, 277 Wis.2d 154, 691 N.W.2d 356 (Table), 2004 WL 3105705, 2005 WI 1, December 27, 2004 (No. 04-0973-CRNM)
Lakefront Neighborhood Coalition v. City of Milwaukee, 277 Wis.2d 152, 691 N.W.2d 354 (Table), 2004 WL 3091967, 2005 WI 1, November 17, 2004 (No. 03-1818)

Disciplinary Cases
In re Disciplinary Proceedings Against McNeely, 313 Wis.2d 283, 752 N.W.2d 857, 2008 WL 2747505, 2008 WI 91, July 15, 2008 (No. 2007AP208-D.)
In re Disciplinary Proceedings Against Washington, 310 Wis.2d 377, 750 N.W.2d 891, 2008 WL 2474649, 2008 WI 66, June 20, 2008 (No. 2006AP578-D.)
In re Disciplinary Proceedings Against Jones, 309 Wis.2d 585, 749 N.W.2d 603, 2008 WL 2245865, 2008 WI 53, June 03, 2008 (No. 2007AP1004-D.)
In re Disciplinary Proceedings Against George, 308 Wis.2d 50, 746 N.W.2d 236, 2008 WL 786798, 2008 WI 21, March 26, 2008 (No. 2005AP1978-D.)
In re Disciplinary Proceedings Against Berlin, 306 Wis.2d 288, 743 N.W.2d 683, 2008 WL 151822, 2008 WI 4, January 17, 2008 (No. 2007AP180-D.)
In re Disciplinary Proceedings Against Steinberg, 304 Wis.2d 577, 735 N.W.2d 527, 2007 WL 2141812, 2007 WI 113, July 27, 2007 (No. 2006AP794-D.)
In re Disciplinary Proceedings Against Washington, 301 Wis.2d 47, 732 N.W.2d 24, 2007 WL 1544581, 2007 WI 65, May 30, 2007 (No. 2006AP578-D.)
In re Disciplinary Proceedings Against Chvala, 300 Wis.2d 206, 730 N.W.2d 648, 2007 WL 1264108, 2007 WI 47, May 02, 2007 (No. 2006AP1423-D.)
In re Disciplinary Proceedings Against Nunnery, 298 Wis.2d 289, 725 N.W.2d 613, 2007 WL 18810, 2007 WI 1, January 04, 2007 (No. 2004AP2542-D.)
In re Disciplinary Proceedings Against Sostarich, 289 Wis.2d 286, 710 N.W.2d 904, 2006 WL 659499, 2006 WI 24, March 17, 2006 (No. 2004AP1911-D.)
In re Disciplinary Proceedings Against Hartigan, 286 Wis.2d 546, 706 N.W.2d 818, 2005 WL 3370465, 2005 WI 164, December 13, 2005 (No. 2005AP1017-D.)
In re Disciplinary Proceedings Against Hendree, 286 Wis.2d 34, 705 N.W.2d 84, 2005 WL 2679603, 2005 WI 142, October 19, 2005 (No. 1997AP1746-D.)
In re Disciplinary Proceedings Against Sostarich, 282 Wis.2d 712, 698 N.W.2d 711, 2005 WL 1522615, 2005 WI 97, June 29, 2005 (No. 2004AP1911-D.)
In re Disciplinary Proceedings Against Kostich, 282 Wis.2d 206, 700 N.W.2d 763, 2005 WL 1492007, 2005 WI 90, June 24, 2005 (No. 2003AP2950-D.)
In re Disciplinary Proceedings Against Hartigan, 277 Wis.2d 341, 690 N.W.2d 831, 2005 WL 97724, 2005 WI 3, January 19, 2005 (No. 03-2118-D.)
In re Disciplinary Proceedings Against Birdsall, 276 Wis.2d 385, 689 N.W.2d 46, 2004 WL 2659018, 2004 WI 143, November 23, 2004 (No. 03-0086-D.)

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In re Christnot, 275 Wis.2d 289, 685 N.W.2d 788, 2004 WL 1908238, 2004 WI 120, August 27, 2004 (No. 04-0481-D.)

Medical Incapacity Proceeding
In re Hurt, 749 N.W.2d 925, 2008 WL 2380045, 2008 WI 61, June 11, 2008 (No. 2008AP1159-D.)

Pursuant to WI IOP 2L, I have never disclosed the reasons for disqualifying myself from these cases. To the best of my recollection, I was not asked to recuse myself on any of these cases. The only time such a request came in was in the following matters:

Donohoo v. Action Wisconsin, 314 Wis.2d 74, 758 N.W.2d 93 (Table), 2008 WL 5197371, 2008 WI 122, July 30, 2008 (No. 2006AP0396), motion for reconsideration, and the related opinion of Storms v. Action Wisconsin Inc., 754 N.W.2d 480, 2008 WL 2908867, 2008 WI 110, July 30, 2008 (No. 2006AP396.)

With respect to the following motions for reconsideration, because I did not sit on the original decisions, court practice dictated that I not sit on the reconsideration requests.

Motions for Reconsideration
In re Doe Proceeding Commenced by Affidavit Dated July 25, 2001, 277 Wis.2d 75, 689 N.W.2d 908, 2004 WL 2903893, 2004 WI 149, December 15, 2004 (No. 02-3063-W.)
Donaldson v. Board of Com'rs of Rock-Koshkonong Lake Dist., 276 Wis.2d 20, 688 N.W.2d 653, 2004 WL 2423534, 2004 WI 130, October 29, 2004 (No. 01-3396.)
Hutchinson Technology, Inc. v. Labor and Industry Review Com'n, 276 Wis.2d 23, 688 N.W.2d 654, 2004 WL 2423548, 2004 WI 132, October 29, 2004 (No. 02-3328.)
State ex rel. Thorson v. Schwarz, 276 Wis.2d 24, 688 N.W.2d 654, 2004 WL 2423553, 2004 WI 133, October 29, 2004 (No. 02-3380.)
Beecher v. Labor & Industry Review Com'n, 276 Wis.2d 21, 688 N.W.2d 654, 2004 WL 2423846, 2004 WI 131, October 29, 2004 (No. 02-1582.)
Maurin v. Hall, 276 Wis.2d 18, 688 N.W.2d 655, 2004 WL 2423848, 2004 WI 129, October 29, 2004 (No. 00-0072.)
Village of Trempealeau v. Mikrut, 276 Wis.2d 25, 688 N.W.2d 656, 2004 WL 2554873, 2004 WI 135, October 29, 2004 (Nos. 03-0534, 03-0535, 03-0536, 03-0537, 03-0538, 03-0539, 03-0540, 03-0541, 03-0542, 03-0543, 03-0544, 03-0545, 03-0546, 03-0547, 03-0548, 03-0549, 03-0550, 03-0551, 03-0552, 03-0553.)
State v. Jackson, 276 Wis.2d 32, 689 N.W.2d 59 (Table), 2004 WL 2577547, 2004 WI 138, October 29, 2004 (No. 02-0947-CR)

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Milwaukee County Circuit Court, 2002 – 04
As a circuit court judge, a total of 2 substitutions and 10 recusals were filed against me.

Substitutions were filed in State v. Theodore Kinski, No. 03CT014748, and State v. Michael Hendricks, 04CM001379.

I recused myself in the following cases:
State v. Steve Johnson, 02CM009008 (do not recall why);
State v. Charles F. Weso, 02CM010320 (I was previously his lawyer);
State v. Jorje Bolas-Martinez, 02CM010321 (codefendant in previous case);
State v. Tadeusz Wyluda, 02CT007232 (court interpreter);
City of Milwaukee v. Inez Griffin, 02TR027796 (sat on cases at municipal court);
City of Milwaukee v. Inez Griffin, 02TR027797 (sat on cases at municipal ct);
State of Wisconsin v. Wendell L. Langston, 03CM002377 (do not recall why);
State of Wisconsin v. Ivan Jerome Stanfield, 03CM003874 (do not recall why);
State of Wisconsin v. Will J. Sherard, 03CM006215 (sat on cases at municipal ct);
State of Wisconsin v. Natasha L. Guard, 04CM000140 (knew victim).
[*Except for the last case, the reason for recusal was not listed on CCAP.*]

City of Milwaukee Municipal Court, 1992 – 2002
During my 10 year stint in municipal court, out of app. 466,000 total case filings, a total of 39 substitutions were filed against me, and I recused myself from a total of 135 cases. I do not have case names or case numbers for these matters.

15. **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.

I have held no public offices, other than judicial offices.

I have had no unsuccessful nominations for appointed office.

I was an unsuccessful candidate for the following elective offices:
- Defeated for retention on the Wisconsin Supreme Court on April 1, 2008
- Defeated for election to the Wisconsin Supreme Court in April, 2000
- Defeated for election to Milwaukee County Circuit Court in April, 1989

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, identify the particulars of

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the campaign, including the candidate, dates of the campaign, your title and responsibilities.

During the 1984 presidential election, Wisconsin had an open primary system. In order to vote in the Democratic primary for candidate Jesse Jackson, I had to register as a Democrat. To the best of my knowledge, that is the only time I ever joined a political party.

During the 2008 campaign for president, I gave a speech on behalf of then Senator Barack Obama in Madison, Wisconsin on September, 25, 2008.

During the 1980 presidential election, I supported the John Anderson/Patrick Lucey ticket, and spoke on behalf of their campaign in a couple of forums against then-Senator Gary George (on behalf of President Jimmy Carter) and Joe Gold (on behalf of Candidate Ronald Reagan). I held no formal position with the campaign.

In addition, while I have supported a number of judicial candidates for election to various courts, I have held no formal roles in any other campaigns.

16. **Legal Career:** 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 not 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.

1978 – 1979
Independence Bank of Chicago
7936 S Cottage Grove Ave
Chicago, IL 60619
Attorney

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1979 – 1988
Wisconsin State Public Defender, Appellate Division
735 N. Water St. - Suite 912
Milwaukee, WI 53202-4116
Assistant State Public Defender

1988 – 1992
Wisconsin State Public Defender, Trial Division
819 N. 6th St. - RM 908
Milwaukee, WI 53203-1606
Deputy First Assistant (March 12, 1990 to December, 1990)
Staff Supervisor (December 1989 to March 12, 1990)
Assistant State Public Defender (1/88 – 12/89; 12/90 – 6/92)

1991 – 1992
Marquette University Law School
1103 West Wisconsin Avenue
Milwaukee, Wisconsin 53201
Adjunct Assistant Professor of Law

1997 – Present
National Judicial College
Judicial College Building/MS 358
Reno, NV 89557
Non-paid Volunteer Faculty (Criminal Procedure)

October 1, 2008 to present
University of Wisconsin Law School
975 Bascom Mall
Madison, WI 53706-1399
Justice in Residence; Senior Visiting Lecturer

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

No.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

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I was basically a criminal practitioner during my legal career, prior to becoming a judge. From 1979 to 1988, my practice was exclusively appellate in nature at the State Public Defender's Office, Appellate Division. I argued approximately 20 cases in the Wisconsin Supreme Court, handled hundreds of cases in the Wisconsin Court of Appeals, and argued one case in the United States Supreme Court. In 1988, I transferred to the Trial Division, where I worked until I was appointed to the Municipal Court Bench in 1992. While in the Trial Division, I was appointed to serve as a staff supervisor, and then appointed as a deputy first assistant, for approximately one year between December 1989 and December 1990. In addition to handling a full trial load, I supervised 14 attorneys and 3 clerical staff members during that period. From 1991 – 92, I was also hired as an adjunct assistant professor of law at Marquette Law School, in charge of the State Public Defender Clinic.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

I represented indigent criminal defendants convicted of major felonies, misdemeanors, juvenile violations, and termination of parental rights cases during the years I worked in the appellate division. After my transfer to the trial division, I represented indigent defendants charged with major felonies and criminal misdemeanors prior to and during trial.

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. Indicate the percentage of your practice in:
   1. Federal courts: 5%
   2. state courts of record: 90%
   3. other courts:
   4. administrative agencies: 5%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 10%
   2. criminal proceedings: 90%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

In the trial division, I represented hundreds of individuals charged with a variety of crimes, including homicides. I tried over 25 criminal cases as either sole or

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lead counsel in Milwaukee County Circuit Court. I also second-chaired 2 trials while I was still in the appellate division after winning those cases on appeal.

i. What percentage of these trials were:
   1. jury: 80%
   2. non-jury: 20%

e. Describe your practice, if any, before the Supreme Court of the United States. 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 handled the appeal of Ellis T. McCoy before the Court in 1988 in *McCoy v. Wisconsin Court of Appeals*, 486 U.S. 489 (1988). I drafted and filed the briefs in that matter, and then argued the case before the court in January, 1988. We lost the appeal 5 – 3, in an opinion written by Justice Stevens, with a dissent authored by Justice Brennan, joined by Justices Marshall and Blackmun.

In 2008, I was one of 27 former State Supreme Court Justices that signed an amicus brief in *Caperton v. A.T. Massey Coal Co.*, No. 08 – 22, decided June 8, 2009.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. 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. One of the most significant cases that I handled on appeal was *McCoy v. Court of Appeals*, 486 U.S. 489 (1988), affirming *State ex rel. McCoy v. Wisconsin Court of Appeals*, 137 Wis. 2d 90 (1987). I was appointed to represent Ellis T. McCoy for purposes of appeal on January 24, 1984, following his conviction for second degree sexual assault and abduction. Following my review of the record, I determined that any appeal would be frivolous and lack arguable merit and that a No Merit brief should be filed on behalf of Mr. McCoy as part of my motion to withdraw, and if my request was granted, the conviction would be affirmed on the merits. My client authorized me to challenge the constitutionality of the Wisconsin Rule, and the rule was upheld in a 4-3

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decision of the Wisconsin Supreme Court after an original action was filed. The United States Supreme Court affirmed the ruling in a 5-3 decision, authored by Justice John Paul Stevens, who incidentally created the Wisconsin Rule being challenged when he sat on the Seventh Circuit Court of Appeals. The principal counsel for the State of Wisconsin was then Attorney General and former Judge Donald J. Hanaway, Brown County Circuit Court, 100 South Jefferson Street, P.O. Box 23600, Green Bay, Wisconsin 54350, (414) 448-4116 (now deceased). Assistant Attorney General Stephen W. Kleinmaier, 17 West Main St., P.O. Box 7857, Madison, Wisconsin 53707 (608) 266-8908, argued the case on behalf of the State.

2. Perhaps the most satisfying case I handled on appeal was *State v. Ronald Fillyaw*, 1977 CF 9490. Mr. Fillyaw was convicted of First Degree Murder following a trial by jury in 1977. Attorney Jack Schairer of the Appellate Division of the State Public Defender's Office handled the direct appeal of the conviction through federal habeas corpus, and in 1986 asked me to take over the case. On December 8, 1986, I filed a motion for a new trial alleging newly discovered evidence that was granted following a lengthy evidentiary hearing on March 3, 1987. The new evidence established that blood found at the scene of the offense and previously linked to the defendant was not his. In addition, I found an underground switchboard operator who had taken a call from the killer that described the crime scene on the night of the murder, and the switchboard operator indicated that the killer's voice did not match my client's voice. After the new trial motion was granted, I kept the case in order to retry it in Circuit Court. Ultimately, all charges were dismissed by the judge granting the new trial motion on January 14, 1989, former judge, the Honorable Gary A. Gerlach, Gunta & Reak SC, 219 N Milwaukee St Fl 5, Milwaukee, WI 53202-5818, Phone: (414) 291-7979. Ronald Fillyaw was released after ten years in prison. The prosecutor who took the case for post-conviction purposes was Douglas J. Simpson, 821 West State Street, #412, Milwaukee, Wisconsin 53233, (414) 278-5268. Mr. Simpson was supervised on this case by E. Michael McCann, former District Attorney for Milwaukee County.

3. In *Shaffer v. Clusen*, 518 F. Supp. 963 (E.D. Wis. 1981), reversing sub nom *State v. Shaffer*, 96 Wis 2d 531, 292 N.W.2d 370 (Ct. App. 1980), the Honorable Myron Gordon granted defendant's petition for habeas corpus relief, holding that a confession obtained nine minutes after defendant invoked his right to remain silent violated his Fifth Amendment privilege against self-incrimination. Defendant was convicted in 1978 of second-degree murder, and after relief was granted, I negotiated a reduction of the charge to a lesser form of homicide. The attorney representing the State of Wisconsin was Sally Wellman, Assistant Attorney General, 17 West Main St., P.O. Box 7857, Madison, Wisconsin 53707 (608) 266-1677.

4. The most bizarre case I handled on appeal was *State v. Gustafson*, 121 Wis. 2d 459, 359 N.W.2d 920 (1985), reversing 119 Wis. 2d 676, 350 N.W.2d 653 (1984) which reversed 112 Wis. 2d 369, 332 N.W.2d 848 (Ct. App. 1983). The defendant, along with his son, was convicted of two counts of second-degree sexual assault following the sexual assault of two fourteen year old girls in 1980. I was appointed to handle defendant's appeal, and after the conviction was affirmed in a published decision by the Court of Appeals, things

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got interesting in the State Supreme Court. Three of the Justices: Heffernan, Abrahamson, and Bablitch, agreed that Mr. Gustafson's right to a unanimous verdict had been violated by the trial court's failure to instruct the jury that it had to unanimously agree on the specific act committed in order to reach a verdict. The rest of the Court disagreed. Justice Ceci, however, felt that the trial court erred in admitting into evidence the son's juvenile adjudication and no contest plea and voted to reverse on that basis. Because a majority of the court agreed that the case should be reversed, a new trial was ordered. On rehearing, the Court reversed itself and reinstated the conviction. The court joined with Indiana's Supreme Court as the only courts in the nation to rule that a majority must agree not only on a mandate, but also on the reasoning in order to reverse a judgment. Handling the case for the State of Wisconsin, Assistant Attorney General Stephen W. Kleinmaier, 17 West Main St., P.O. Box 7857, Madison, Wisconsin 53707 (608) 266-8908.

5. In *State v. Ruiz*, 118 Wis. 2d 177, 347 N.W.2d 352 (1984), reversing 113 Wis. 2d 273, 335 N.W.2d 892 (Ct. App. 1983), I was appointed to represent co-defendant Antonio Servantez, who had been convicted of first-degree murder in 1981. The Court of Appeals agreed that the conviction had to be reversed in order to stop a continuing pattern of non-disclosure of evidence by the Kenosha County District Attorney's Office. 113 Wis. 2d at 286. The Wisconsin Supreme Court disagreed and reinstated the conviction, ruling that while the prosecutor did breach his duty to disclose evidence, the error did not deprive the defendant of a fair trial. Representing the State of Wisconsin was then Assistant Attorney General James H. McDermott, 17 West Main St., P.O. Box 7857, Madison, Wisconsin 53707, (608) 266-3859, now deceased.

6. In *State v. Billings*, 110 Wis. 2d 661, 329 N.W.2d 192 (1983), I was appointed to represent the defendant following his convictions for second-degree sexual assault and trespassing. The case was certified to the Supreme Court, and in a 4-3 ruling, the conviction was reversed. The defendant had invoked his right to counsel during interrogation, but was not provided one. The confession was introduced at trial, and the defendant was convicted. The question certified by the Court of Appeals was whether the harmless error standard can apply where a statement is taken after a defendant's right to counsel under *Miranda* was disregarded. Because the Court ruled that the error in this case was not harmless, it declined to reach the question, and a new trial was ordered. Representing the State of Wisconsin was Assistant Attorney General Kirbie Knutson, 2731 Park Pl, Evanston, IL 60201-1336, now suspended.

7. In *State v. Harvey*, 139 Wis. 2d 353, 407 N.W.2d 235 (1987), I was appointed to represent the defendant on appeal following his conviction in 1985 for kidnapping while armed, three counts of armed robbery and seven counts of first-degree sexual assault. The defendant pled guilty to four counts and entered an *Alford* plea to seven counts, even though he did not have the benefit of a plea bargain. Assistant District Attorney Daniel Blinka recommended 100 years, regardless of whether the case went to trial or not. Defense Attorney Alan Eisenberg showed defendant a slip of paper with the number 75 on it and said it came from the judge. Following his pleas, the Court sentenced the defendant to 100 years. The Court of Appeals reversed the conviction, but the Supreme

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Court reinstated the conviction, ruling that any misrepresentations made by counsel did not induce the plea. In a habeas corpus proceeding, District Court Judge Terence Evans ruled that defendant's right to counsel had been violated because his lawyer had lied to him, but refused to grant the petition because any error was harmless. Then Assistant Attorney General Michael R. Klos represented the State of Wisconsin on appeal, 17 West Main St., P.O. Box 7857, Madison, Wisconsin 53707 (608) 266-1684, now deceased.

8. In *State v. McCrossen*, 129 Wis. 2d 277, 385 N.W.2d 161 (1986), I was appointed to represent the defendant following her 1984 conviction for operating under the influence of an intoxicant. In affirming the conviction, the Court ruled that suppression of blood alcohol tests was a proper sanction for violation of defendant's statutory right to an alternative blood test. The Court, however, ruled that dismissal was not a proper sanction. Representing the State of Wisconsin were Kirbie Knutson (suspended) and Daniel J. O'Brien, 17 West Main St., P.O. Box 7857, Madison, Wisconsin 53707 (608) 266-9620.

9. In *State v. Cartagena*, 99 Wis. 2d 657, 299 N.W.2d 872 (1982), the Supreme Court unanimously reversed defendant's conviction for attempted first-degree murder in 1978. The Court found three errors in reaching its conclusion. To begin with, the trial court erred in failing to submit jury instructions on the lesser included offense of endangering safety. Other wrongs evidence was wrongly introduced against the defendant. And finally, another jury instruction misstated the law. Representing the State of Wisconsin was then Assistant Attorney General Jerome Schmidt, 20 Hickory Forest Dr, Hilton Head Island, SC 29926-2669, Phone: (843) 342-5761.

10. I also represented Carlton Pugh, 1979CF6615, who sat in prison for 1 ½ years for a crime he did not commit. He was originally charged with an armed robbery in Shorewood, but cleared of a homicide in Milwaukee that occurred the same night. Ultimately, I located a look-alike, Eugene Brown, who was later charged and convicted of both offenses. I do not recall who handled the case for the State. The case was dismissed on April 30, 1981.

18. **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. 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.)

    In addition to the items described above having to do with my activities at the ABA, Southwestern Law School's Moot Court Competition, and the National Judicial College, I am the former President and former Legislative Trustee of the Wisconsin Municipal Judges Association. As Legislative Trustee for the Wisconsin Municipal Judges Association, I testified before various legislative committees on behalf of the association when matters were scheduled that affected the municipal court system statewide.

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I am a former member of the Board of Directors for Legal Action of Wisconsin. I also served as Chair of the Individual Rights and Responsibilities Section of the State Bar of Wisconsin, served on the Board of the Criminal Law Section for the State Bar, and served on the Criminal Benchbook Committee for the Wisconsin Supreme Court as a circuit court judge.

I participate in activities for improving the law, the legal system and the profession. Specifically, I serve on the American Bar Association Standing Committee on Judicial Independence, with a term that ends in 2011. We meet at least 4 times a year, and have been involved with a number of issues that would protect judicial independence and the integrity of the justice system.

In October, 2008, I was a panelist for Sandra Day O'Connor Project at Georgetown Law School with respect to Corporate Citizenship and the Courts. In December, 2008, I was on a panel at the Minnesota Judicial Conference that addressed judicial elections. I also recently chaired the Alcohol and Beverage Licensing Task Force for the Common Council for the City of Milwaukee. The Task Force was created to make recommendations in response to abuses that took place with respect to aldermanic privilege and the licensing process for the City. I also serve on the Board of Directors for Community Brainstorming Conference, an organization which holds monthly forums that address issues of relevance to the African-American Community in Milwaukee, and many of those issues concern improving the legal system. I also speak at a number of churches and community organizations on issues of justice and the legal system. I serve on the final bench of Southwestern Law School's Moot Court Competition.

19. **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, provide four (4) copies to the committee.

I currently teach full time at the University of Wisconsin Law School. My title is Justice in Residence, and my rank is Senior Visiting Lecturer. I am in my second year of a two year appointment, where I teach one course in Selected Problems in Constitutional Law, Fourth, Fifth and Sixth Amendments, and one course in Appellate Advocacy. I also gave 4 lectures in the Law in Action Series to app. 50 undergraduates concerning the topics of judging and judicial review. I also gave one undergraduate lecture on the court system to assist a professor who was seriously ill during the fall semester of 2008. I finally teamed with Justice N. Patrick Crooks of the Wisconsin Supreme Court to present a lecture to all of the law school's contracts classes last semester about the Economic Loss Doctrine.

I am currently a permanent volunteer faculty member at the National Judicial College in Reno, Nevada, where I have taught Criminal Procedure and Criminal Procedure – advanced since 1997 in the Special Courts Program. From approximately 1999 to 2002, I also taught a class in Judicial Philosophy in the same program. In 2008, I was appointed to serve on the Faculty Council for NJC, with a term that ends December 31, 2009. I also

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taught criminal procedure, guilty pleas, and confession law to a group of Nigerian Judges in 2006 or 2007.

From 1991 – 92, I directed the State Public Defender Clinic at Marquette Law School, where my official rank was assistant adjunct professor of law. I taught Criminal Procedure.

I have also conducted many lectures and programs in Criminal Law and Procedure, Appellate Practice, and Municipal Law (see 12d.).

20. **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. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

    Future benefits I expect to receive are my retirement benefits from the State of Wisconsin. I have 19.88 years of service, with a balance of Employee Required Contributions totaling $279,508.67 as of January 1, 2009.

    I also expect to receive retirement benefits from the City of Milwaukee. I have 10.1083 years of service, with a balance of $108,666.91 as of December 31, 2008. I am not eligible to retire until February 14, 2014.

21. **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 anticipate continuing as a volunteer faculty member at the National Judicial College member unless the law or code of ethics precludes my doing so. I have no other plans for any outside employment.

22. **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, licensing fees, 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.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    See attached Net Worth Statement.

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24. **Potential Conflicts of Interest**:

a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

My oldest daughter, Jessica M. Butler, just graduated from the University of Wisconsin Law School on May 15, 2009. She works in the Milwaukee office of Peterson, Johnson & Murray. I would disqualify myself from any matter handled by her, should she appear in the District Court for the Western District of Wisconsin. I own no stocks or bonds (other than 3 U.S. Treasury bonds), so I expect no likely conflict issues to arise in that regard. I would, of course, be mindful of any matter in which an acquaintance or friend were appearing as a party to the action, provide full disclosure to all parties, determine whether the parties were seeking recusal, and determine whether I could be fair in handling the matter. I foresee no other likely areas of concern.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

Should an issue arise that does not require automatic disqualification or recusal, I would disclose any potential concerns to the parties of the matter that is pending before the court, and after hearing from the parties, determine whether the potential conflict is one that could, and should be waived. In all cases I will follow the Code of Conduct for United States Judges.

25. **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.

I am not currently engaged in the practice of law, as I teach full time at the University of Wisconsin Law School.

I do participate in activities for improving the law, the legal system and the profession. Specifically, I serve on the American Bar Association Standing Committee on Judicial Independence, with a term that ends in 2011. We meet at least 4 times a year, and have been involved with a number of issues that would protect judicial independence and the integrity of the justice system. In October, I was a panelist for Sandra Day O'Connor Project at Georgetown Law School with respect to Corporate Citizenship and the Courts. In December, I was on a panel at the Minnesota Judicial Conference that addressed judicial elections. I recently chaired the Alcohol and Beverage Licensing Task Force for the Common Council for the City of Milwaukee. The Task Force was created to make recommendations in response to abuses that took place with respect to aldermanic

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privilege and the licensing process for the City. I also serve on the Board of Directors for Community Brainstorming Conference, an organization which holds monthly forums that address issues of relevance to the African-American Community in Milwaukee, and many of those issues concern improving the legal system. I also speak at a number of churches and community organizations on issues of justice and the legal system. I serve on the final bench of Southwestern Law School's Moot Court Competition. Finally, I serve as volunteer faculty at the National Judicial College, where I teach criminal procedure to judges from across the country and around the world.

26. **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. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

A total of 13 people applied for the vacancy created by the retirement of District Court Judge John Shabaz. I filed my application with the Wisconsin Federal Nominating Commission on Friday, February 27, 2009. The eleven-member commission, which has been making recommendations since 1979, screened applicants and interviewed potential candidates before submitting its final recommendations to the state's two U.S. Senators, Herb Kohl and Russ Feingold. Senators Kohl and Feingold appointed 4 members each to the commission, 2 members were selected by the State Bar, and it was chaired by the Dean of UW Law School. I was interviewed by the Commission on March 29, 2009, and my name was ultimately forwarded as one of 4 finalists to the Senators on March 30, 2009. I was interviewed by Senator Kohl in Milwaukee on April 13, 2009, and by Senator Feingold in Madison on April 15, 2009. My name was one of two forwarded by the Senators to the President on May 20, 2009. Thereafter, I was contacted by staff from the Department of Justice regarding nomination paperwork. I have had subsequent conversations with staff from the Department regarding that paperwork and the nomination process. I was formally interviewed at the Department of Justice on August 31, 2009. The interview was chaired by Thomas Perrelli, with staff from the Department of Justice and from the White House Counsel's Office. My nomination was submitted to the Senate on September 30, 2009.

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

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implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No. I was asked questions by each Senator that asked about my personal views concerning a number of issues, but it was understood by me and by them that as a District Court Judge, any personal views that I might have would not control my decisions on the bench. My job would be to interpret and apply the law, not make it. I would look to the Constitution of the United States and the legislation enacted by Congress, based upon prior precedent established by the United States Supreme Court and the Seventh Circuit Court of Appeals.

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AFFIDAVIT

I, Louis Bennett Butler Jr., do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

October 9, 2009 (DATE)

(NAME)

(NOTARY)

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UNIVERSITY of WISCONSIN LAW SCHOOL

January 18, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire I previously filed in connection with my nomination on September 30, 2009 as a United States District Judge for the Western District of Wisconsin. With the following exceptions, I certify that the information contained in that document is, to the best of my knowledge, true and accurate. I am forwarding the updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire.

Q. 8 – Honors and Awards – I was elected to the Fellows of the American Bar Foundation, January, 2010.

Q. 9 – Bar Associations – Faculty Council for the National Judicial College in Reno, Nevada (2008 – 09).

Q. 21 – Outside Commitments During Court Service – In addition to my previous response, if I am confirmed by the Senate and appointed by the President, I would in all likelihood have to finish teaching the Appellate Advocacy Class this semester at UW Law School as an adjunct assistant professor. No one else has taught this course in years.

Q. 26a – Selection Process – In addition to my previous response, my nomination was reported by the Committee to the Senate on December 3, 2009, and my nomination was returned to the President on December 24, 2009.

Sincerely,

Louis B. Butler, Jr.

cc:
The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Louis B. Butler, Jr.
Justice in Residence
University of Wisconsin Law School • [redacted] • Madison Wisconsin 53706-1399

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UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

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

Victoria Angelica de los Dolores Espinel

2. **Position**: State the position for which you have been nominated

United States Intellectual Property Enforcement Coordinator

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

1301 Pennsylvania Ave, NW, Suite 700, Washington DC 20004

4. **Birthplace**: State date and place of birth.

10/16/68- Richmond, Virginia

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.

John William Stubbs
Managing Partner, Romulus Global Issues Management
1301 Pennsylvania Ave, Suite 700
Washington DC 20004

One dependent – Joaquin William Stubbs

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.

The London School of Economics and Political Science, London, U.K.
Dates attended: September 1996-August 1997
Masters of Law awarded December 1997, with Merit.
Masters Dissertation Awarded with Merit.

Georgetown University Law Center, Washington, D.C.
Dates attended: August 1989-May 1992
Juris Doctor awarded May 1992

Georgetown University School of Foreign Service, Washington, D.C.
Dates attended: August 1985-May 1989
Bachelor of Science in Foreign Service awarded May 1989

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.

Bridging the Innovation Divide | Washington, DC
President
August 2009- present
Not compensated

Founded non-profit to focus on intellectual property education and outreach to minority and disadvantaged communities, and to increase awareness of intellectual property and innovation and how they can benefit minority and disadvantaged communities.

Romulus Global Issues Management | Washington, DC
Contractor
February 2009- present

Consultant on various issues for US Chamber of Commerce, UN World Food Programme and Farmstead Wines.

George Mason University School of Law | Arlington, VA.
Visiting Assistant Professor
November 2007 - May 2009

Taught U.S. trademark law, international intellectual property law and international trade law. Research with a primary focus on intellectual property and international trade regulation and policy.

Romulus Global Issues Management | Washington, DC
Senior Counselor for IP and Innovation
November 2007-February 2009

Consultant on various issues for US Chamber of Commerce, UN World Food Programme and Farmstead Wines.

Romulus Global Issues Management | Washington, D.C.
Advisory Board
February 2009- present
Not compensated

Advisor to Romulus Global Issues Management on international trade issues.

Global Innovation Forum | Washington, D.C.
Advisory Board
March 2009 –present
Not compensated

Advisor to Global Innovation Forum on innovation issues, particularly with respect to the "innovation divide."

Office of the United States Trade Representative | Washington, D.C.

Assistant USTR for Intellectual Property and Innovation
February 2005 – November 2007
Deputy Assistant USTR for Intellectual Property
March 2004 – February 2005
Associate General Counsel
June 2001 - March 2004

- Established Intellectual Property and Innovation Office. Served as first Assistant USTR for Intellectual Property and Innovation.
- Chief U.S. trade negotiator for intellectual property and innovation policy.
- Developed, coordinated, and implemented United States trade policy on intellectual property matters and innovation policy.

Covington & Burling | Washington, D.C.; London, UK
Associate
February 1998 - June 2001

Focused on copyright and trademark public policy and intellectual property enforcement matters in Europe, Middle East and Africa.

Brown & Wood | New York, NY
Associate
Summer 1991, October 1992 - September 1996

Represented domestic and international clients in a variety of securities transactions with extensive primary drafting and negotiating responsibility.

Office of the Honorable Charles Rangel | Washington, D.C.
Intern
Fall 1991
Not compensated

Answered constituent letters, particularly with respect to Haiti.

Wiley Rein and Fielding | Washington, D.C.
Law Clerk
Fall 1990 – Spring 1991

Researched and wrote legal memoranda on various issues, including insurance and telecommunications issues.

Department of Commerce/National Telecommunications and Information Administration, Office of the Chief Counsel | Washington D.C.
Law Clerk
Summer 1990
Not compensated

Researched and wrote legal memoranda; read and analyzed comments with respect to financial syndication rules.

Levine & Williams Law Firm | Arlington, VA
Law Clerk
Summer 1990

Worked with clients applying for U.S. citizenship or visas.

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

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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.

London School of Economics and Political Science, Masters of Law, Awarded with Merit

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.

Hispanic National Bar Association – held no office
American Bar Association – held no office

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.

New York State – Aug 8, 1994 (Suspended in March 2008 due to late payment of fees; fees now current.)

Washington, DC – April 3, 1995 (Suspended from December 1, 1997- May 12, 1998 due to late payment of fees; fees now current.)

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.

None

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.

Romulus Global Issues Management | Washington, D.C.
Advisory Board
February 2009- present

Global Innovation Forum | Washington, D.C.
Advisory Board

March 2009 –present

PG Wodehouse Society
London chapter 2000-2001
DC Chapter – 2008-present
I held no office.

b. Please indicate whether any of these organizations listed in response to 12(a) 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.

None

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.

"No Outside Pressure Considered" Roll Call, April 3, 2006

The U.S. Recording Industry and Copyright Law: A Basic Overview and Recent Developments, Vol. 21, European Intellectual Property Review, Issue 2 (February 1999).

Music Distribution over the Internet: The WIPO Performances and Phonograms Treaty and U.S. Copyright Law, Vol. 9, Entertainment Law Review, Issue 2 (February 1998).

Harmony on the Internet: The Impact of the WIPO Performances and Phonograms Treaty on UK Copyright Law, Vol. 9, Entertainment Law Review, Issue 1 (January 1998).

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.

While on Mayor Sharon Pratt Dixon's Transition Task Force (November 1988-January 1991), I participated in the preparation of a report on the status of the cable system in Washington, DC. I do not have a copy of the report nor do I know where to obtain one.

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.

Testimony before House Judiciary Subcommittee on the Courts, the Internet, and Intellectual Property House Judiciary, May 17, 2005 (on intellectual property rights protection in China).

Testimony before House Judiciary Subcommittee on the Courts, the Internet, and Intellectual Property House Judiciary, May 17, 2005 (on intellectual property rights protection in Russia).

Testimony before Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, June 14, 2005, Hearing on Finding and Fighting Fakes: Reviewing the Strategy Targeting Organized Piracy.

Testimony before House Judiciary Subcommittee on the Courts, the Internet, and Intellectual Property House Judiciary, December 7, 2005 (on intellectual property rights protection in China and Russia).

Testimony before House Judiciary Subcommittee on the Courts, the Internet, and Intellectual Property House Judiciary, Hearing on International Piracy: The Challenges of Protecting Intellectual Property in the 21st Century, October 18, 2007 (Serial No. 110-67).

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.

The American Enterprise Institute for Public Policy Research holds a discussion on "Knowledge and the Growth Process: The Case of India," February 2, 2006

American Association of Publishers – China Intellectual Property, May 19, 2006

IP Enforcement and its Impact on Free Trade Agreements, Property Rights Alliance, Oct. 12 2007.

California Bar Association; Intellectual Property, November 2007

ACTA panel, Fordham Intellectual Property Law and Policy Conference, March 2008

China WTO speech, Fordham Intellectual Property Law and Policy Conference, March 2008

US Chamber of Commerce, Science and Technology Group, April 2008

"Washington Briefing," Cardozo Law School, Sept 12 2008.

Challenges of IP in the Global Arena, Capitol Hill Campus, April 16, 2008

Chamber IP Summit, October 8, 2008

Intellectual Property in the Global Economy, GMU International Society, March 24, 2008

IP and American Competitiveness, Licensing Executive Society/NASA, November 19, 2008

Patents and Patients, Loyola Law School Conference, November 14, 2008

Patent Georgetown Law School Conference, April 1, 2008

In addition, while serving at the USTR from 2001 to 2007, I spoke to various trade associations and companies, including the National Association of Manufacturers, the Software and Information Industry Association, the International Intellectual Property Association, the American Apparel and Footwear Association, the Movie Theater Trade Show, Global Business Leaders Alliance Against Counterfeiting, and the International Trademark Association. Generally my remarks were not based on written notes and consisted of a description of the various functions and duties of USTR with respect to intellectual property and innovation matters. I have not kept a list or records of each of these discussions.

I spoke at the Fordham Intellectual Property Law and Policy Conference in 2006, 2007, and 2008. I have requested transcripts of all remarks and panel participation from Fordham and will provide them to the Committee when I receive them.

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.

"Health Policy and the WTO," The Journal of Law, Medicine and Ethics, Winter 2003.

"US Officials Visiting Asia to Promote Anti-Piracy Initiative," States News Service. April 11, 2005

"US Wants S'pore as partner in battle against counterfeiting; Move follows Republic's recent beefing-up of IP protection laws," The Business Times Singapore, April 12, 2005

"US team ends Asian tour to drum up anti-piracy support," Agence France Presse, April 13, 2005

"Efforts to fight piracy win praise from US," South China Morning Post, April 14, 2005

"US team in Asia bid to stop piracy," The Standard, April 14, 2005

"US Officials seek Japan's cooperation in stopping piracy," Japan Economic Times, April 15, 2005

"US Trade Official Calls on S. Korea to Step Up Fight Vs. Piracy," Asia Pulse, April 18, 2005

"Intellectual Property: Experts Call for Stronger US Action On; China, Russia," National Journal's Technology Daily, May 17, 2005

"Studios Frustrated by pols' slow-going on piracy; so far, only low-key approach to crackdown on China, Russia," Daily Variety, June13, 2005

"Multi-Agency Effort to Curb IP Piracy Gaining Ground, Senate Panel Hears," Washington Internet Daily, June 15, 2005

"US Eyes Tougher Actions on Intellectual Property In China, Russia," States News Service, December 7, 2005

"Intellectual Property: Experts Press US to Take Stronger; Anti-piracy Stance," National Journal's Technology Daily, December 7, 2005

"US Threatens WTO action over Chinese piracy issues," China IT & Telecom Report, December 9, 2005

"White House Criticized over IP enforcement," UPI, February 8, 2006

"US Pushes to limit generic drug rights; Agreements seek to extend monopolies in exchange for improvements in trade," The International Herald Tribune, April 19, 2006

"Allegations of Piracy hit popular music web site," The International Herald Tribune, June 2, 2006.

Interview with local Indian news channel (do not remember name of TV channel), June 8, 2006

"India, US Agree to Disagree of TRIPS Agreement," Financial Express, June 9, 2006

"US Joins Industry in Piracy War," Washington Post, June 15, 2006 (also picked up by other organizations, such as TechNews)

"Tunes too cheap; NET EFFECT: How Technology Shapes the World; allofmp3.com accused of violation of intellectual property rights," Foreign Policy, September 1, 2006

"IIPA Pressures USTR to Place Canada on Special 301 Priority Watch List," Inside US Trade, January 19, 2007

Conference Call Briefing with Victoria Espinel on Annual Special 301 Report on the Adequacy and Effectiveness of IP rights Protection by US Trading Partners, April 30, 2007

"Thailand Put on List of Top IP violators," National Journal's CongressDaily, April 30, 2007

"Africa; Daily HIV/AIDS Report," Africa News, May 1, 2007

"USTR Hoping Provincial Review Moves China Toward IPR Compliance," Inside US-China Trade, May 2, 2007

"USTR's Special 301 Report Falls Short of Industry Demands," Inside US Trade, May 4, 2007

"US May Take Hard Line with China to Protect Energy Technology," Energy Washington Week, May 16, 2007

"Academics' Anti-Copyright Message Reaches Hill, Ex-Dean says," Washington Internet Daily, October 30, 2007

"IP; Experts weigh interplay of trade and IP rights," Technology Daily, October 4, 2007

"Internet Piracy Top Concern of Industry, Government" Washington Internet Daily, October 19, 2007

"China, IPR Panel Reveals Deep US-EU Split Over Film, Sound Recordings" Inside US –China Trade, August 20, 2008

"Future TRIPS in Question After WTO's China IP Ruling," Washington Internet Daily, March 26, 2009

14. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, 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.

- District of Columbia Mayor Sharon Pratt-Dixon's Advisory Committee on Resources and Budget (Washington D.C.) – 1989-1990. Appointed.
- Candidate for Advisory Neighborhood Commissioner in Washington, D.C. – 1988.

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.

- Member of Obama 2008 Economic Globalization and Trade (EGT) policy committee; member of Globalization group and Innovation, Entrepreneurship and Jobs of the Future group.
- Hosted "Globalization" fundraiser for Obama for America - 2008.
- District of Columbia Mayor-elect Sharon Pratt-Dixon Transition Task Force –November 1988-January 1991.

15. **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 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.

I have been affiliated as a lawyer with the following entities:

George Mason University School of Law | Arlington, VA.
Visiting Assistant Professor
January 2008 - May 2008

Office of the United States Trade Representative | Washington, D.C.

Assistant USTR for Intellectual Property and Innovation
February 2005 – November 2007
Deputy Assistant USTR for Intellectual Property
March 2004 – February 2005
Associate General Counsel
June 2001 - March 2004

Covington & Burling | Washington, D.C; London, UK.
Associate
February 1998 - June 2001

Brown & Wood | New York, NY
Associate
Summer 1991, October 1992 - September 1996

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

1992-1996: Associate in law firm representing investment banks, companies, trustees and institutional investors in securities transactions (primarily structured finance transactions).

1998-2001: Associate in law firm representing clients (primarily the software industry) in intellectual property enforcement and public policy advocacy, primarily in Europe, Middle East and Africa.

2001-2004: Associate General Counsel at the Office of the United States Trade Representative; providing legal counsel and support to trade negotiators on intellectual property matters.

ii. your typical clients and the areas, if any, in which you have specialized.

1992-1996: Lehman Brothers, Merrill Lynch – securities transactions
1998-2001: Business Software Alliance and Microsoft – piracy enforcement and public policy
2001-2004: USTR; Office of Services, Investment and Intellectual Property – senior lawyer on U.S. trade intellectual property matters

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.

1998-2001: 30% of my practice at Covington and Burling included managing local counsel in Europe and Africa filing enforcement cases. I never appeared in court.

2001-2004: 5-10% of my legal practice involved preparation for the United States to bring a case against the European Union at the World Trade Organization challenging the European system of protecting "geographical indications" and evaluating other WTO cases that USTR was considering. I never appeared in court.

i. Indicate the percentage of your practice in:
1. federal courts;- 0%

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2. state courts of record; - 0%
3. other courts.- 0%

ii. Indicate the percentage of your practice in:
1. civil proceedings; 2001-2004 – 15%
2. criminal proceedings.2001-2004- 15%

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.

None

i. What percentage of these trials were:
1. jury;
2. non-jury.

Not applicable

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

16. **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:

I have not personally handled any litigation matters.

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.

[redacted]

[redacted]

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 Deputy Assistant USTR and Assistant USTR, I worked on the development and coordination of US trade policy on intellectual property matters, including the drafting and negotiation of free trade agreements that were informed by existing US law. As Associate General Counsel, Deputy Assistant USTR or Assistant USTR, I led or participated in USTR briefings on protection of intellectual property abroad to members of Congress and their staff; was asked to assess legislative proposals for consistency with US legal obligations at the WTO and, in cooperation with other agencies, assessed whether requests from trading partners would be consistent with US law. While in the General Counsel's office at USTR, I analyzed whether other countries intellectual property regimes were consistent with their international WTO obligations.

I have not lobbied on behalf of any clients or organizations.

17. **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.

Copyright Law (Tutorial), 1998, 1999
London School of Economics and Political Science

International Trade Law, Spring and Fall 2008
George Mason University School of Law

Multinational Intellectual Property Law and Policy Seminar; Spring 2008, Spring 2009
George Mason University School of Law

Trademark Law, Spring 2009
George Mason University School of Law

18. **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.

Defined Contribution Plan with former employer (Covington & Burling). Since my departure from the firm, neither I, nor my employer, have made any further contributions to this plan.

19. **Outside Commitments During Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

No.

20. **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 SF 278.

21. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

22. **Potential Conflicts of Interest**:

    a. Identify any affiliations, pending litigation, financial arrangements, or other factors 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.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Office of Management and Budget's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the OMB's designated agency ethics official and that has been provided to this Committee . I am not aware of any other potential conflicts 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.

As noted in my answer above, any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with the OMB's designated agency ethics official and that has been provided to the Committee. Should any potential conflict of interest arise, I would promptly consult with OMB's designated agency ethics official to determine how to avoid the potential conflict.

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. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

Coprodeli USA– 2000-2006

Coprodeli USA aids Peruvian families by providing for fundamental needs, promoting education and job training, and developing strong self-sustaining community programs. I traveled to Peru to work in Callao and the shanty village of Pachacutec in 2000. In addition, I have contributed to and helped organize fundraising events for Coprodeli USA.

Patrick Healy Fellows mentoring program – Georgetown University, Washington, D.C. 2003

I acted as mentor to a Patrick Healy Fellow to provide career and personal guidance. Fellows are accepted based on: (1) academic achievement; (2) community service experience; (3) leadership qualities and (4) demonstrated interest in issues of concern to people of color.

Student Sponsor Partners, New York, NY, 1993-1995

SSP recruits average to below-average students who are motivated to take advantage of the opportunity for a quality high school education. Most of the students are from public middle schools and single parent families living on public assistance in New York's inner city. I acted as a Sponsor to an at-risk high school student and provided financial support and one-to-one guidance.

AFFIDAVIT

I, Victoria A. Espinel, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

October 7, 2009
(DATE)

(NAME)

(NOTARY)

District of Columbia: SS
Subscribed and Sworn to before me, in my presence
this 7th day of October, 2009

Notary Public, D.C.
My commission expires 1/14/2010

MARIA P. CHAVEZ
Notary Public, District of Columbia
My Commission Expires January 14, 2010

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   Abdul Karim Kallon

2. **Position**: State the position for which you have been nominated.

   United States District Judge for the Northern District of Alabama

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.

   Bradley Arant Boult Cummings
   One Federal Place
   1819 Fifth Avenue North
   Birmingham, AL 35203

4. **Birthplace**: State year and place of birth.

   1969; Freetown, Sierra Leone

5. **Education**: List in reverse chronological order 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.

   August 1990 to May 1993, University of Pennsylvania Law School; J.D., May 17, 1993

   September 1986 to June 1990, Dartmouth College; A.B., June 10, 1990

6. **Employment Record**: List in reverse chronological order 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 description.

   October 4, 1994 to Present
   Bradley Arant Boult Cummings
   Partner (2001 – present)
   Associate (1994 – 2000)

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August 1993 to August 1994
United States District Court for the Northern District of Alabama
Law clerk to Honorable U. W. Clemon

1991 -1993
University of Pennsylvania
W.E.B. DuBoise College House
Graduate fellow

May – July 1992
Thompson & Knight
1722 Routh Street, Suite 1500
Dallas, TX 75201
Law clerk

May – July 1991
Squire Sanders & Dempsey
4900 Key Tower, 127 Public Square
Cleveland, OH 44114
Law clerk

7. **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, and whether you have registered for selective service.

   I have never served in the military. I registered with the selective service when I turned 18 in 1987.

8. **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.

   Listed in Best Lawyers in America – Labor and Employment 2007 and 2008

   Listed in Chambers USA America's Leading Lawyers for Businesses – Labor and Employment 2006 – 2009

   Dartmouth College – Casque and Gauntlet Senior Society, Palaeopitus Senior Society, and Gary Love Prize

9. **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.

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Birmingham Bar Association – Diversity Task Force (2007); Grievance Committee (2008 – present)

Alabama Bar Association – Unauthorized Practice of Law Committee (2003 - 2005); Allied Professionals Task Force (2007 – Present; co-chair); Mentoring Program (2008 – Present)

Alabama Lawyers Association – Past Parliamentarian and Northern District Representative

Magic City Bar Association – President (2002) and Board of Directors (2003 – 2006)

National Bar Association

American Bar Association

Committee on the Re-Appointment of U. S. Magistrate Michael Putnam (August – September 2002)

10. **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.

Pennsylvania – May 16, 1994. Took inactive status when I decided to stay in Alabama

Alabama – April 28, 1995. No lapses in membership

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.

United States District Court for the Northern District of Alabama – 1995

United States District Court for the Middle District of Alabama – 1995

United States District Court for the Southern District of Alabama – 2007

United States Court of Appeals for the Eleventh Circuit – 1995

There have been no lapses in membership.

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11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, 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 am currently serving or have served on the board of the following non-profit organizations:

Legal Aid Society of Birmingham Board of Directors – 2006-2008 (President-2008)

Children's Village Board of Directors – 2004-Present (President since 2008)

Big Brothers Big Sisters – Young Advisory Board (2000 - 2003) and Board of Directors (2003-2007)

Girls Inc. Board of Directors – 2007-Present

Sister Cities of Birmingham – 2000-Present (Vice-Chair since 2007)

Alabama Center for Law and Civic Education Board – 2007-Present

Bethel Baptist Historic Renovation Board of Directors – 2007 – Present

Ethics, Legal and Social Issues Sub-Committee Member of the Project Among African Americans to Explore Risks for Schizophrenia – approximately 2003 - 2007

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, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin 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 am a member of Alpha Phi Alpha Fraternity which restricts its membership to men, although I was last active in college. The fraternity's community programs are open to all. However, like most fraternities and sororities, actual membership is restricted to a specific gender. I have not taken any action to change this practice.

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12. **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. Supply four (4) copies of all published material to the Committee.

I wrote an article in 1995 or 1996 for the Birmingham Bar Association Magazine on The Uniformed Services Employment and Reemployment Rights Act.

b. 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, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

In 2003, I was one of seven Technical Advisors for Governor Bob Riley's Commission on Education Spending. The actual Commission had 34 members. As a Technical Advisor, I was assigned to provide support and advice to the subcommittee on Education Trust Fund Accountability and Education-Related Spending, which was tasked with looking at how the state allocated and spent education trust fund dollars. At the end of the project, the entire Commission issued a report to the Governor.

c. 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

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. 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 recording of your remarks, 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, furnish a copy of any outline or notes from which you spoke.

"Recent Developments in Employment Law" seminar presentation in 1999

"Maintenance of Personnel Records and Other Documentation" seminar presentation for the Council on Education in Management in April 2000

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"Recent Significant Developments in the Law of Harassment in the Eleventh Circuit" presentation at the annual Alabama State Bar meeting in July 2001

"Dealing With Problem Employees" presentation for Lorman Education Services in October 2001

"The Changing Landscape: Electronic Discovery and Technology Issues in the Workplace" presentation to suppliers of Honda Manufacturing of Alabama in Canton, Georgia in October 2007

"Recent Developments in Labor and Employment Law" presentation to the Magic City Bar Association on December 5, 2008.

In addition to the six seminars above, I have also made the following presentations for which I cannot find the presentation materials:

March 20, 2003 presentation to the National Association of African Americans in Human Resources on employment law developments;

2001 and 2003 presentations to law students at the University of Alabama and Cumberland law schools about employment law from a management perspective, as part of the outreach program of the Labor and Employment Section of the American Bar Association

June 15, 2007 - I was one of seven panelists for the topic "Prostate Cancer Screening and Treatment: Ethical, Legal and Social Implications" at the Alabama Comprehensive Cancer Control Coalition's Prostate Cancer Call to Action Summit 2007.

e. 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.

In July 1999, I was interviewed by a *New York Times* reporter for a story on the NAACP. The story ran on July 11, 1999.

In April 2002, I did a radio interview to promote a "Know Your Rights" Law Day program by the Magic City Bar Association ("MCBA"). I was president that year and in the interview I talked about the MCBA, our mission, and the upcoming Know Your Rights program.

On December 19, 2003, the *Birmingham News* ran a story covering the settlement fairness hearing in a class action case I handled. The article referenced some of the statements I made in the hearing.

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13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

    a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____

        i. Of these, approximately what percent were:

        jury trials? ___%; bench trials ___% [total 100%]

        civil proceedings? ___%; criminal proceedings? ___% [total 100%]

    b. Provide citations for all opinions you have written, including concurrences and dissents.

    c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

    d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

    e. Provide a list of all cases in which certiorari was requested or granted.

    f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

    g. Provide 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.

    h. Provide 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, provide copies of the opinions.

    i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

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I have not held a judicial office.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (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.) 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 in which you have recused yourself sua sponte. 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.

15. **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

    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, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

    None

16. **Legal Career:** Answer each part separately.

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

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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 law clerk for Judge U. W. Clemon, Northern District of Alabama, from August 1993 to August 1994.

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

I have not 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.

1994 – Present
Bradley Arant Boult Cummings
One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203
Partner (2001 – present)
Associate (1994 – 2000)

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

Corporate civil defense at both the district and appellate court levels involving labor and employment law, general contract matters and some product liability matters. In my first three years of practice, I divided my practice equally between labor and employment and general litigation matters. However, at the end of my third year, I decided to focus primarily on labor and employment law. Since then, approximately 90 percent of my practice has involved some aspect of labor and employment law on behalf of businesses.

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ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

For-profit and non-profit entities primarily in labor and employment matters, with some general litigation work periodically.

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.

My practice is primarily litigation based and, as such, I spend the bulk of my time representing my clients in state and federal courts. I estimate that litigation accounts for approximately 75 – 85 percent of my practice, with the remaining being general advice and counseling on non-litigation matters.

i. Indicate the percentage of your practice in:
   1. federal courts: 97%
   2. state courts of record: 2%
   3. other courts: 0.5%
   4. administrative agencies 0.5%

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, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried eight cases to a jury verdict, judgment or final decision. I was lead counsel in two, was one of two lawyers in five, and was one of seven lawyers in another.

i. What percentage of these trials were:
   1. jury: 100%
   2. non-jury.

e. Describe your practice, if any, before the Supreme Court of the United States. 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 not practiced before the Supreme Court of the United States.

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17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. 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) *Holsombeck, et al. v. First Transit, et al*, Northern District of Alabama, Judge Karon Bowdre, 2:01-CV-01811-KOB – class action ADA lawsuit alleging inadequate compliance with the ADA in the paratransit bus service provided to disabled riders. I was lead counsel for First Transit and successfully negotiated the consent decree that resolved the case in December 2003. Rick Meelheim, P.O. Box 991, Gulf Breeze, FL 32562, (850) 932-1771, and Tam Yelling, Constangy Brooks, 900 One Federal Place, 1819 5th Avenue North, Birmingham, AL 35203, (205) 226-5471, represented the plaintiffs.

(2) *Harold Matthews v. Jim Walter Resources*, Northern District of Alabama, Judge U. W. Clemon, 7:94-CV-2240-UWC – ADA case involving whether employers must disregard the seniority provisions of a collective bargaining agreement to accommodate a disability. This was one of the earliest cases to address this issue and was also my first trial. Plaintiff worked underground in a coal mine and developed a hearing condition. He asked that the employer accommodate his disability by giving him a job above ground – all of which were held by employees with more seniority than the plaintiff. The case tried in 1995 and we obtained a directed verdict for our client Jim Walter Resources. My former partner Jay St. Clair, who is now at Littler Mendelson, 420 20th Street North, Suite 2730, Birmingham, AL 35203, (205) 421-4700, was lead counsel. J. Paul Whitehurst, Whitehurst & Whitehurst,1955 22nd Street, Northport, AL 35476 (205) 339-5151 and James A. Hall, Jr., 611 28th Avenue, Tuscaloosa, AL 35401 (205) 758-7202, represented Matthews.

(3) *Morgan et al v. Family Dollar*, Northern District of Alabama, Judge U.W. Clemon, and Eleventh Circuit Court of Appeals., 7:01-CV-0303-UWC. I have worked on this case since 2004. Nationwide Fair Labor Standards Act collective action by 2500 store managers contending they were improperly classified as exempt executives and paid a salary even though they were not "in charge" of their stores and performed "non-managerial" duties instead. We tried the case a second time after a hung jury in the first trial. Jury verdict for the plaintiffs in the second trial, which the Eleventh Circuit affirmed in December 2008. We filed our certiorari petition with the Supreme Court on April 15, 2009. I was one of the trial lawyers for Family Dollar, did the closing

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argument in the first trial, the opening and closing arguments in the second trial, and also did the direct and cross examinations of several witnesses and plaintiffs in both trials. My partner Matt Miller (205-521-8243), former partners Jay St. Clair (now with Littler Mendelson, 420 20th Street North, Suite 2730, Birmingham, AL 35203, (205) 421-4700), Jim May (also now with Littler Mendelson), and Arnold Umbach (now with Starnes & Atchison, P. O. Box 598512, Birmingham, AL 35259, (205) 868-6072), and Ron Kent (2790 Saddlecreek Trail, Birmingham, AL 35242, (205) 218-5073), also a former colleague, tried the case with me. J. Mark White and Augusta Dowd of the White Dowd & Arnold firm (2025 Third Avenue North, Suite 500, Birmingham, AL 35203, (205) 323-1888) were co-counsel. Robert Wiggins, Robert Childs, Michael Quinn, Rocco Calamusa, Greg Wiggins, Herman Johnson, all with the Wiggins Childs Quinn & Pantazis firm (The Kress Building, 301 19th Street North, Birmingham, AL 35203, (205) 314-0500) and J. Allen Schreiber and Mark Petro of the Schreiber & Petro firm (301 19th Street North, Suite 580, Birmingham, AL 35203, (205) 871-5080), represented the plaintiffs.

(4) *Jan Tyner v. JWR*, Northern District of Alabama, initially with Judge Sam Pointer and then with Judge U. W. Clemon, CV-97-P-2411-W – sexual harassment case over the alleged conduct of a supervisor, the company's alleged failure to train the supervisor in question, alleged failure to respond to the plaintiff's complaints, and involving application of the *Faragher/Ellerth* defenses. We tried the case to a jury in 2000 and obtained a verdict for our client. I was co-counsel with my former partner, Jim Alexander, who is now with Littler Mendelson, 420 20th Street North, Suite 2730, Birmingham, AL 35203, (205) 421-4700. James Wooten, 2001 Park Place, Suite 910, Birmingham, AL 35203, (205) 322-7707, represented Tyner.

(5) *Carmen Strong, et al. v. U. S. Pipe* – Northern District of Alabama, Judge U. W. Clemon, CV-00-C-3686 – race and gender class action alleging nationwide discrimination in promotions and employment practices. Successfully negotiated a consent decree that, among other things, implemented a posting procedure for promotion opportunities so that all interested employees could compete for the vacancies. My former partner, Jim Alexander, who is now with Littler Mendelson, 420 20th Street North, Suite 2730, Birmingham, AL 35203, (205) 421-4700, was co-counsel. Jon Goldfarb, Wiggins Childs Quinn & Pantazis firm, The Kress Building, 301 19th Street North, Birmingham, AL 35203, (205) 314-0548, represented the plaintiffs.

(6) *Elliott Evans v. Pemco Aeroplex, Inc.*, – Northern District of Alabama, Judge Lynwood Smith, CV-96-S-2801-S, 1998 WL 1048470 (N.D.Ala. Feb. 23, 1998) – race and disability discrimination case that addressed the issue of when a disabling condition actually rises to an ADA disability. Plaintiff worked as a maintenance worker on aircrafts. He subsequently developed a climbing restriction and was hampered in his ability to climb and work on certain sections of the aircrafts. We obtained summary judgment for our client. My former colleague, David Lawson, Source Medical Solutions, Inc., 100 Grandview Place, Suite 400, Birmingham, AL 35243, (205) 969-4681, was co-counsel. Cynthia Wilkinson, Wilkinson Law Firm,

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215 Richard Arrington Jr. Blvd North, Suite 811, Birmingham, AL 35203, (205) 250-7866, represented Evans.

(7) *Urban Construction v. Gaston Thacker, et al.*, Southern District of Florida, Judge Michael Moore, 1:95-CV-02326-KMM – construction breach of contract matter in which Urban alleged that Gaston-Thacker, as general contractor, caused them to delay the start of their work on the project. The principals of Urban were prominent individuals in the Haitian American community in Miami and the case had some political undertones over the Dade County School Board's decision to hire an out-of-town company as the general contractor for a $54 million project. My partner Mabry Rogers, (205) 521-8225, and I tried the case on behalf of Gaston-Thacker. Bruce King, Carlton Fields, 4000 International Place, 100 S.E. Second Street, Miami, FL 33131, (305) 539-7244, represented Urban Construction. Herman Braude, Braude Margulies, 1200 Potomac Street N.W., Washington, D.C. 20007, (202) 471-5400, represented the surety USF&G.

(8) *Ernest McAboy v. Chemical Waste Management*, Northern District of Alabama, Judge William Acker, CV-95-AR-1193-S – Title VII race discrimination case challenging a discharge tried to a jury after the plaintiff refused to settle the case for less than a million dollars even though the case was under Title VII's $300,000 cap. At the start of trial, we asked and Judge Acker advised the plaintiffs of the caps and delayed starting the trial that first day to allow the plaintiff to talk to his lawyers. Despite advice from his lawyers and from his wife to settle and an offer on the table, the plaintiff still refused to counter with a number below the $300,000 statutory cap. Instead, he continued to insist on millions and, ultimately, the jury found for the company. My former partner Jim May, who is now Littler Mendelson, 420 20th Street North, Suite 2730, Birmingham, AL 35203, (205) 421-4700, tried the case with me on behalf of Chem Waste. Jeffrey Bennitt, 121 Edenton Street, Birmingham, AL 35242, (205) 408-7240, and Robyn Bennitt, 121 Edenton Street, Birmingham, AL 35242, (205) 995-2200, represented McAboy.

(9) *Linda McGhee v. United Parcel Service*, Northern District of Alabama, Judge Buttram, CV-95-BU-1570-S – McGhee alleged that an hourly co-worker and four supervisory employees sexually harassed her, that UPS retaliated against her when she complained, and that UPS paid her less than similarly-situated male employees. In discovery, she showed up with tape recordings and a detailed diary which purportedly chronicled the alleged harassment. We were able to discredit the bulk of her evidence and eventually resolved the matter favorably. Marvin Stewart of the then Stewart Law group represented McGhee. Mr. Stewart has since been disbarred and there is no contact information for him on the state bar website.

(10) *Kenney Edwards v. The John Deere Company, et al*, Northern District of Alabama, Judge Scott Coogler, CV-03-CO-3451-W – Edwards worked for John Deere for over 20 years and headed up one of their divisions. After his retirement, he tried to purchase a Deere dealership in Tuscaloosa and claimed that he was denied approval because of his race. Byron Perkins, The Cochran Firm, 505 North 20th Street, Suite 825, Birmingham, AL 35203, (205) 244-1115, represented Edwards and used media

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outlets (Tom Joyner, Tavis Smiley, Black Enterprise) and other national officials on Edwards' behalf to mount a negative publicity campaign against Deere. We resolved the case at mediation. Eric Bossett, Covington & Burling, 1201 Pennsylvania Avenue, N.W., Washington, D.C. 20004, (202) 662-5606, was lead counsel for Deere.

18. **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. 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.)

Worked with the Southern Poverty Law Center in a matter against a nationwide mutual insurance company that provided access to various fraternal lodges it owned and maintained for its policy holders to use to socialize. Some of the lodges discriminated against African Americans. Richard Cohen of the Southern Poverty Law Center and my former partner, Robert Spotswood, (205) 986-3621, were the lead lawyers and negotiated a resolution. I was an associate at the time and was tasked with reviewing the quarterly progress reports to ascertain compliance with the settlement decree.

Worked with the Jefferson County, Alabama Teen Court program as a trainer, attorney coach and trial judge. Teen Court is an alternative sentencing program for first time non-violent offenders in which the lawyers and jurors are other teenagers. My role was to train the students to prepare them for their roles as prosecutors or defense lawyers and to work with them during the trials on those days when I was not serving as one of the judges.

Unfair labor practice charges by a union against a local company over its decision to outsource work in an effort to reduce costs. The company felt the outsourcing was essential to its survival and felt it had a right to do so under the collective bargaining agreement and prior interpretations of it by arbitrators. We lost one of the arbitrations and prevailed in the other. Ultimately, we worked out a resolution with the union.

Annual supervisory training sessions for a large number of my clients. This is an opportunity to have a forum with the individuals in the trenches to discuss problem areas and to make recommendations on how they can improve their employment practices to make the workplace more hospitable and fair to all.

Race harassment investigation involving a hangman's noose, the media, and tense moments navigating through the issues and finding a solution that included shutting down the plant for a day, retraining the employees, and creating a task force to deal with any ongoing issues.

19. **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

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briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not held a teaching position. However, I have guest lectured in a legal studies class at the University of Alabama – Birmingham (UAB) and in a history class on African Civilizations at UAB.

20. **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. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I do not have any deferred income arrangements. I expect however to continue to receive an annual distribution from the profits of Synergy Real Estate Holdings for my two percent ownership stake. In 2008, my distribution was $1132. I am also in the process of finalizing plans to purchase a small interest in a funeral home which may also result in annual distributions.

21. **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.

22. **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, licensing fees, 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

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement

24. **Potential Conflicts of Interest**:

    a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

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I do not see any categories of litigation or family relationships that will pose a conflicts of interest issue. However, I do own individual shares in various stocks and have ownership interests in a business. I will disclose these entities and add them to the automatic recusal list.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

Since attorneys routinely see conflicts when none may exist, I will review any motion suggesting a conflict as an initial matter. If it appears even remotely to have any merit, I will refer it to a magistrate. Depending on the recommendation of the magistrate, I will either recuse myself or consult with the chief judge for additional guidance. For those motions to recuse that I believe lack merit, I will hold a hearing to allow the moving party to preserve the record and also to flush out the issues further to see if I may have overlooked something in my initial reading of the motion. In all cases, I will follow the Code of Conduct for United States Judges.

25. **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.

I have represented Children's Village in a lawsuit (Lakisha Raby v. Children's Village, CV-02-B-2910-S, NDAL) and on EEOC charges (Darryl Gardner and Bertha Strickland). I have also handled matters pro bono for Alethia House, a drug rehabilitation facility, and for Bethel Baptist Church.

26. **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. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

I submitted my application for this vacancy on January 26, 2009, to Congressman Artur Davis' Alabama Advisory Committee. The Advisory Committee interviewed me on February 14, 2009 and informed me three days later that I was their top choice for the position.

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On April 27, 2009, I was contacted by staff from the Department of Justice regarding the nomination process and paperwork. I have had subsequent conversations with staff from the Department regarding that paperwork. On June 26, 2009, I interviewed with Thomas Perrelli, and staff from the Department of Justice, along with a representative of the White House Counsel's Office. I was asked about my experiences as a practitioner, the substantive areas of my practice, how I intend to learn new areas of the law if I am nominated and confirmed, and about my civic involvement. My nomination was submitted to the United States Senate on July 31, 2009.

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, explain fully.

No.

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AFFIDAVIT

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

August 26, 2009
(DATE)

Abdul Kallon
(NAME)

Sandra L. Cash
(NOTARY)
My commission expires 2/4/11

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   Christina Clair Reiss
   Christina Clair Schulz

2. **Position**: State the position for which you have been nominated.

   United States District Judge for the District of Vermont

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: Costello Courthouse
   32 Cherry Street
   Burlington, VT 05401

   Residence: [redacted]

4. **Birthplace**: State year and place of birth.

   1962; Denver, Colorado

5. **Education**: List in reverse chronological order 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.

   1986 – 1989, University of Arizona, College of Law; J.D., 1989

   1984 – 1985, University of Arizona, Master's Program in French; no degree received

   1980 – 1984, St. Michael's College; B.A., 1984

6. **Employment Record**: List in reverse chronological order 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 description.

9/2009 - Present
State of Vermont
Costello Courthouse
32 Cherry Street
Burlington, VT 05401
Presiding Judge

2004 - 2009
State of Vermont
Court Administrator's Office
Vermont Supreme Court
109 State Street
Montpelier, VT 05609-0701
District Court Judge

2001 – 2004
Gravel & Shea
76 St. Paul Street
Burlington, VT 05402-0369
Special Counsel (2001-2002); partner (2003-2004)

1992 – 2001
Sheehey Brue Gray & Furlong
30 Main Street
Gateway Square, Sixth Floor
Burlington, VT 05402-0066
law associate (1992-1994); partner (1995-2001)

1990 – 1992
Perkins, Thompson, Hinckley & Keddy
One Canal Street
Portland, ME 04112-0426
law associate

1989 – 1990
Maine Supreme Judicial Court
142 Federal Street
Portland, ME, 04112-0368
law clerk

1988
Streich, Lang, Weeks & Cardon
Phoenix, AZ
law clerk (summer of 1988)

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1987 -1988
Hecker, Phillips, and Hooker, Tucson
405 West Franklin Street
Tucson, AZ 85701
law clerk

1985 – 1987
Chandler, Tullar, Udall & Redhair,
(now Udall Law Firm, LLP)
4801 E. Broadway Blvd., Suite 400
Tucson, AZ 8571
file clerk (1985-1986); law clerk (summer of 1987)

1985 - 1986
La Paloma Country Club & Resort
3660 E. Sunrise Drive
Tucson, AZ 85718
server

1985
Tandy Radio Shack
First Avenue,
Tucson, AZ
computer instructor

1984 - 1985
University of Arizona
Department of French & Italian, Modern Languages Room 549
Tucson, AZ 85721-0067
teaching assistant in French (1984-1985)

1984
Grand Union
Pearl Street, Essex Junction 05452 and Center Road, Essex Center, Vermont;
cashier/deli/fish market (Grand Union is no longer in existence) (1984 and prior to graduating from college).

2001 - 2004
Amoskeag Woodworking, Inc.
31 Elm Court
Colchester, VT 05446
Corporate Secretary and Vice President

7. **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

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security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military.

8. **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.

National Council of Teachers of English Student Writing Award (1980)

St. Michael's College: presented papers to the Vermont Academy of Arts & Letters (1981, 1982, 1983); Dean's List every semester.

University of Arizona: Teaching Assistant; French & Italian Department (1984-1985).

University of Arizona: Most Outstanding Student as voted by College of Law Faculty (1989); Order of the Coif (1989); Editor-in-Chief, Arizona Law Review (1988-1989); Arizona Law Review Editors' Award (1989) (best editor as voted by editorial board); Rosenberg Distinguished Editor's Award (1989) (most helpful editor as voted by second year law review members); Ralph E. Aigler Leadership, Scholarship, and Citizenship Award, University of Arizona (1989); E. Blois du Bois Scholarship (1986-1989); Internship Tohono O'Odam Supreme Court, Sells, AZ (1989).

2003-2004 Chosen as a "Leading Lawyer" in Vermont by Chambers USA publication.

9. **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.

Vermont Bar Association (1992 to present)
Maine Bar Association (1990 to present)
American Bar Association (1990 to 2006 and 2009 to present).

10. **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 Maine: 5/1/90 (Inactive since 1994)
State of Vermont: 7/17/92

There have been no lapses in membership.

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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.

United States District Court for the District of Maine: 5/1/90

United States District Court for the District of Vermont: 8/10/92

United States Court of Appeals for the Second Circuit: 1/22/01

There have been no lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, 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.

Inactive member of the Essex Center Grange.

Arizona Law Review (1987-1989)

Vermont Trial Judges Association / Vice-president (2008-2009); Secretary (2006-2008).

Vermont Judicial College Committee (2008 to present).

Family Court Rules Committee (2006 to present).

Alternative Dispute Resolution Committee (2005 to present).

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, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin 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.

None of the organizations listed above discriminates on the basis of race, sex, religion, or national origin.

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12. **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. Supply four (4) copies of all published material to the Committee.

Edited: Arizona Law Review (1988-1989).

"Procedural Due Process and Municipal Boards," 55 Maine Townsman (Feb. 1992).

"Building a Successful Equitable Estoppel Defense Against State and Municipal Action," 6 Maine Bar Journal 276-82 (Sept. 1991).

"Officer, What's the Charge? Confession Law in Light of Colorado v. Spring," 20 Arizona Law Review, 551-570 (1988).

"To the Lighthouse," Onion River Review (1983).

b. 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, 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. 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.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. 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 recording of your remarks, 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, furnish a copy of any outline or notes from which you spoke.

Judicial College/ Expungement and Sealing of Records (2008)

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Bridging the Gap/Vermont Bar Association ("VBA") (2006, 2008 & 2009)
We the People/Essex Middle School (Spring 2008)
Spectrum Youth/Avoiding Criminal Activity (April 2008)
Liquor Control Board Law Enforcement Training (Spring 2007)
Mid-Winter Thaw: Family Court Issues /VBA (Jan. 2008)
Leadership Champlain/Criminal Justice and Available Community Resources (Fall 2007)
Whither Litigation/VBA (Oct. 2007)
Presenter at a Foster Parents Conference (4/25/09)
What Trial Judges Want You to Know/National Business Institute ("NBI") (5/15/09).
Devitt Award for Hon. D. Brock Hornby Presentation Remarks; Supreme Court of the United States (9/13/09)

In addition, as an attorney, I gave several presentations on land use, insurance coverage disputes, lender liability and employment law for between the years of 1992 to 2004 for the NBI, VBA, and Lorman Education Services.

e. 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.

The Essex Reporter (July 2009)

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

In August 2004 I was appointed by Governor James Douglas for a six-year term as a District Court Judge, State of Vermont. The court is a general jurisdiction court (criminal, civil, juvenile, family).

Current Assignment: Administrative Judge, Costello Courthouse, Chittenden Family and District Courts.

Prior Assignments: Lamoille County, presiding judge; Chittenden County District Court Felony Trial Judge, Burlington, Vermont (2007 to 2008); Orleans County Presiding Judge, Newport, Vermont (4/2007 to 9/2007); Chittenden County District Court Misdemeanor Trial and Arraignment Judge, Burlington, Vermont (2006 to 4/2007); Washington County Family Court Presiding Judge, Barre, Vermont (2005 to 2006); and Addison County Presiding Judge, Middlebury, Vermont (2004 to 2005).

From 2004 to present, I have also presided over trials and other matters in Franklin County District Court, St. Albans, Vermont; Franklin County Family Court, St. Albans,

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Vermont; Washington County District Court, Barre, Vermont; and Washington County Superior Court, Montpelier, Vermont.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? 250

   i. Of these, approximately what percent were:

   jury trials? 20%; bench trials 80% [total 100%]

   civil proceedings? 60%; criminal proceedings? 40% [total 100%]

b. Provide citations for all opinions you have written, including concurrences and dissents.

   Vermont trial court decisions are not published and are not maintained in a data base.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

   Vermont Human Rights Comm'n v. Benevolent and Protective Order of the Elks of United States of America , 2008 VT 34, 949 A.2d 1064; Washington Superior Court; jury trial on plaintiffs' claims of discrimination in seeking membership in a fraternal organization; outcome: Plaintiff's verdict; court issued injunctive relief; Plaintiffs' counsel: Robert Appel, Esq., Vermont Human Rights Commission, 14-16 Baldwin Street, Montpelier, VT 05633-6301; (802) 828-2482; Edwin Hobson, Esq., 289 College Street, Burlington, VT 05401-8320 (802) 863-2000; and Ethan Shaw, Esq., 2631 Telegraph Avenue, # 303, Oakland, CA, 94612 (510) 387-0951; Defendant's counsel: Norman Watts, Esq., Watts Law Firm, 19 Central Street, P.O. Box 270, Woodstock, VT 05091-0270 (802) 457-1020.

   Trickett v. Ochs, 2007 WL 5323745. Right to farm case with claims of trespass and nuisance by plaintiffs operating a bed & breakfast next to defendants' apple orchard. This case had been litigated in various forms for many years prior to resolution; outcome: compensatory and punitive damages verdict in favor of plaintiffs; the court issued an injunction on plaintiff's equitable claims; Plaintiff's counsel: Paul Gillies, Esq., Tarrant Marks & Gillies, 44 E. State Street, P.O. Box 1440, Montpelier, VT 05601-1440 (802) 223-1112; Defendant's counsel: Peter Langrock, Esq., Langrock Sperry & Wool, LLP, 111 S. Pleasant Street, PO Drawer 351, Middlebury, VT 05753-0351 (802) 388-6356.

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State of Vermont v. Kenneth Bailey, Chittenden District Court, Docket No. 3917-7-05 Cncr; murder in the first degree; outcome: case dismissed by court; State's counsel: Chittenden County Deputy State's Attorney Justin Jiron, 32 Cherry Street, Ste 305, Burlington, VT 05401 (802) 863-2865; Defendant's counsel: Kerry DeWolfe, Esq., Rubin Kidney Myer & DeWolfe, 237 N. Main Street, Barre, VT 05641-4125 (802) 479-2514.

State of Vermont v. Herman Yoh, Chittenden District Court, Docket No. 1462-3-98 Cncr; murder in this first degree; outcome: post trial sentencing after remand by Vermont Supreme Court resulting in plea agreement to first degree murder sentence with dismissal of defendant's post-conviction claims; State's counsel: Chittenden County Deputy State's Attorney Edward Sutton, 32 Cherry Street, Ste 305, Burlington, VT 05401 (802) 863-2865 and Assistant Attorney General John Treadwell, Vermont Attorney General's Office, 109 State Street, Montpelier, VT 05609-1001 (802) 828-5512; Defendant's counsel: William Nelson, Esq., 52 High Street, Middlebury, VT 05753 (802) 388-6781.

State v. Marilyn Haulenbeek, Chittenden District Court, Docket No. 30-57-7-07 Cncr, murder in the first degree; outcome: plea agreement to two counts of aggravated assault with a deadly weapon; defendant had significant mental health issues; State's counsel: Chittenden County Deputy State's Attorney Andrew Strauss, 32 Cherry Street, Ste 305, Burlington, VT 05401 (802) 863-2865; Defendant's counsel: Robert Sussman, Esq. Chittenden County Public Defender's Office, 192 College Street, Burlington, VT 05401 (802) 863-6323.

State v. Ronald Ronnquist, Chittenden District Court Docket 5180-10-05 Cncr; murder in the first degree; outcome: plea agreement to second degree murder; Defendant's blood alcohol content at the time of the offense was in excess of .3; State's counsel: Chittenden County State's Attorney T.J. Donovan, 32 Cherry Street, Ste 305, Burlington, VT 05401 (802) 863-2865; Defendant's counsel: David Williams, Esq., Sleigh & Williams, 364 Railroad Street, Ste E. St. Johnsbury, VT 05819-1688 (802) 748-5176.

State of Vermont v. Jeffrey D. Buehner, Chittenden District Court, Docket No. 647-2-07 Cncr. Lewd & lascivious conduct with a child; Defendant had previously been named "Teacher of the Year"; outcome: plea agreement to the offense charged; State's counsel: Chittenden County Deputy State's Attorney Susan Hardin, 32 Cherry Street, Ste 305, Burlington, VT 05401 (802) 863-2865; Defendant's counsel: Bradley Stetler, Esq., 32 Cherry Street, Ste 305, Burlington, VT 05401 (802) 863-2865.

State of Vermont v. Kenneth Davis, Chittenden District Court, Docket No. 598-12-06 Cncr aggravated sexual assault; outcome: guilty verdict after jury trial; State's counsel: Chittenden County Deputy State's Attorney Susan Hardin, 32 Cherry Street, Ste 305, Burlington, VT 05401 (802) 863-2865; Defendant's counsel: Michael Straub, Esq., 19 Church Street, Ste 9, PO Box 587, Burlington, VT 05402-0587 (802) 864-6766.

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State of Vermont v. Phat Nguyen, Chittenden District Court, Docket No. 358-1-07 Cncr; Dispensing a narcotic with death resulting; outcome: plea agreement to offense charged; State's counsel: Chittenden County Deputy State's Attorney Justin Jiron, 32 Cherry Street, Ste 305, Burlington, VT 05401 (802) 863-2865; Defendant's counsel: Bradley Stetler, Esq. Stetler, Allen & Kampmann, 95 St. Paul St., Burlington, VT 05401 (802) 660-8646.

State of Vermont v. Christopher Cerutti, Washington District Court, Docket No. 1535-12-06 Wncr; charges: sexual assault/no consent and possession of marijuana; outcome: guilty verdict after jury trial on sexual assault; not guilty on possession of marijuana; State's counsel: Washington County State's Attorney Thomas Kelly, Washington County State's Attorney's Office, 25 North Main St. Ste 9, Barre, VT 05641-4163 (802) 479-4220; Defendant's counsel: Scott Williams, Esq., Williams & Associates, PLC, P.O. Box 400, S. Barre, VT 05670 (802) 522-5622.

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

None of the decisions were published.

State of Vermont v. Kenneth Bailey, Chittenden District Court, Docket No. 3917-7-05 Cncr. State's counsel Chittenden County Deputy State's Attorney Justin Jiron, 32 Cherry Street, Ste 305, Burlington, VT 05401 (802) 863-2865; Defendant's counsel: Kerry DeWolfe, Esq., Rubin Kidney Myer & DeWolfe, 237 N. Main Street, Barre, VT 05641-4125 (802) 479-2514.

State of Vermont v. Herman Yoh, Chittenden District Court, Docket No. 1462-3-98 Cncr. State's counsel: Chittenden County Deputy State's Attorney Edward Sutton, 32 Cherry Street, Ste 305, Burlington, VT 05401 (802) 863-2865 and Assistant Attorney General John Treadwell, Vermont Attorney General's Office, 109 State Street, Montpelier, VT 05609-1001 (802) 828-5512; Defendant's counsel: William Nelson, Esq., 52 High Street, Middlebury, VT 05753 (802) 388-6781.

State of Vermont v. Jeffrey D. Buehner, Chittenden District Court, Docket No. 647-2-07 Cncr. State's counsel: Chittenden County Deputy State's Attorney Susan Hardin, 32 Cherry Street, Ste 305, Burlington, VT 05401 (802) 863-2865; Defendant's counsel: Bradley Stetler, Esq., 32 Cherry Street, Ste 305, Burlington, VT 05401 (802) 863-2865

State of Vermont v. Kenneth Davis, Chittenden District Court, Docket No. 598-12-06 Cncr. State's counsel: Chittenden County Deputy State's Attorney Susan Hardin, 32 Cherry Street, Ste 305, Burlington, VT 05401 (802) 863-2865; Defendant's counsel: Michael Straub, Esq., 19 Church Street, Ste 9, PO Box 587, Burlington, VT 05402-0587 (802) 864-6766.

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State of Vermont v. Phat Nguyen, Chittenden District Court, Docket No. 358-1-07 Cncr. State's counsel: Chittenden County Deputy State's Attorney Justin Jiron, 32 Cherry Street, Ste 305, Burlington, VT 05401 (802) 863-2865; Defendant's counsel: Bradley Stetler, Esq., Stetler, Allen & Kampmann, 95 St. Paul St., Burlington, VT 05401 (802) 660-8646.

State of Vermont v. George Bradford, Chittenden District Court, Docket No. 5353-12-06 Cncr. State's counsel: Chittenden County Deputy State's Attorney Susan Hardin, 32 Cherry Street, Ste 305, Burlington, VT 05401 (802) 863-2865; Defendant's counsel: Robert Sussman, Esq. Chittenden County Public Defender's Office, 192 College Street, Burlington, VT 05401 (802) 863-6323.

State of Vermont v. Marci Godin, Chittenden District Court, Docket No. 1532-4-07 Cncr. State's counsel: Chittenden County Deputy State's Attorney Julia Flores, 32 Cherry Street, Ste 305, Burlington, VT 05401 (802) 863-2865; Defendant's counsel: Richard Goldsborough; Kirkpatrick & Goldsborough, PLLC , 1223 Shelburne Road, Ste E-1, Lakewood Commons, S. Burlington, VT 05403 (802) 651-0960.

State of Vermont v. Danielle Martel, Chittenden District Court, Docket No. 466-10-07 Cncr. State's counsel: Chittenden County Deputy State's Colin McNeil, 32 Cherry Street, Ste 305, Burlington, VT 05401 (802) 863-2865; Defendant's counsel: Douglas Kallen, Esq., Bergeron, Paradis & Fitzpatrick, LLP, 27 Main Street, PO Box 925, Burlington, VT 05402-0925 (802) 863-1191.

State of Vermont v. Travis Hatin, Chittenden District Court, Docket No. 5144-12-07. State's counsel: Chittenden County Deputy's State's Attorney Shannon Dilley, 32 Cherry Street, Ste 305, Burlington, VT 05401 (802) 863-2865; Defendant's counsel: Ernest Allen, Esq., Stetler, Allen & Kampmann, 95 St. Paul St., Burlington, VT 05401 (802) 660-8646.

O'Neil Walker v. President and Fellows of Middlebury College d/b/a Middlebury College, Addison Superior Court, Docket No. 99-5-05 Ancv. Plaintiff's counsel: Devin McLaughlin, Esq., Langrock Sperry & Wool, LLP, 111 S. Pleasant Street, PO Drawer 351, Middlebury, VT 05753-0351 (802) 388-6356; Defendant's counsel: Karen McAndrew, Esq., Dinse Knapp & McAndrew, P.C., 209 Battery St., PO Box 988, Burlington, VT 05402-0988 (802) 864-5751.

e. Provide a list of all cases in which certiorari was requested or granted.

None.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

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In re Richard Laws, 2007 VT 54, 182 Vt. 66, 928 A.2d 1210 The Vermont Supreme Court reversed and remanded the case, ruling that it should not have been dismissed although venue was improper and further that dismissal based upon petitioner's failure to raise his claims in his first post-conviction relief petition required analysis of each of the petitioner's claims. The court observed that it had not previously decided whether 13 V.S.A. § 7134 barred claims that *could have been brought* in a prior post-conviction relief petition. The court adopted the standard set forth in McClesky v. Zant, 499 U.S. 467, 494 (1991).

State of Vermont v. Peterson, 2007 VT 24, 181 Vt. 436, 923 A.2d 585. In this case, the Vermont Supreme Court addressed whether the physical fruits (in this case, marijuana plants) of statements that were the product of custodial interrogation without Miranda warnings should be suppressed as "fruit of the poisonous tree." The United States Supreme Court has held that Miranda and the Fifth Amendment protect against the admission of testimonial evidence only. The "fruit of the poisonous tree" is generally a Fourth Amendment doctrine. In United State v. Patane, 542 U.S. 630 (2007), the United States Supreme Court refused to uphold suppression of the physical fruits of a Miranda violation. The Vermont Supreme Court has held that the Vermont Constitution is "synonymous" with the federal Constitution with regard to the Fifth Amendment. See State v. Rheaume, 2004 VT 35, ¶ 18 ("the Article 10 privilege against self-incrimination and that contained in the Fifth Amendment are synonymous."). The Vermont Supreme Court's decision, reversing my trial court decision and rejecting Patane, reflected a departure from its previous Fifth Amendment jurisprudence.

State of Vermont v. Bottiggilonge, 2007 VT 12, 181 Vt. 577, 917 A.2d 500. In a two-sentence Entry Order, the Vermont Supreme Court reversed my determination that the defendant was "seized" at the time of the stop as a reasonable person would not feel free to drive away with a police officer knocking on her windshield.

State of Vermont v. Casey, unpublished Entry Order decided by three-justice panel (not to be considered precedent) (attached). In this case, the panel reversed my evidentiary ruling that the defendant's prior threats to human service agencies were relevant to his intent when he placed a call to the agency which provides food stamps, threatening to come down to the agency and hold a gun to the worker's head in order to get her to do the necessary paperwork which caused a lock down in a building housing various social service agencies. Although the decision does not reflect these facts, the State sought to introduce a number of such incidents pursuant to a Notice of Other Bad Acts to prove the defendant's intent. Under Vermont law, disturbing the peace by telephone requires the defendant to have the requisite intent at the time he or she placed the call. The law thus excludes liability for threats made and intended to be made only as the conversation develops. Also not reported in the decision is the defendant's initial concession, through counsel, that he made the threat as alleged but only did so

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when he became frustrated as the call developed. In his trial testimony, the defendant subsequently denied that he ever uttered the threat alleged.

g. Provide 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.

All Vermont trial court decisions are unpublished. There is no official or unofficial data base for them.

h. Provide 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, provide copies of the opinions.

None of these cases were officially reported. Copies of these decisions are attached.

State of Vermont v. James Peterson, Addison District Court, Docket No. 462-10-04 Ancr

State of Vermont v. Kenneth Bailey, Chittenden District Court, Docket No. 3917-7-05 Cncr.

State of Vermont v. Herman Yoh, Chittenden District Court, Docket No. 1462-3-98 Cncr.

State of Vermont v. Jeffrey D. Buehner, Chittenden District Court, Docket No. 647-2-07 Cncr.

State of Vermont v. Kenneth Davis, Chittenden District Court, Docket No. 598-12-06 Cncr.

State of Vermont v. Phat Nguyen, Chittenden District Court, Docket No. 358-1-07 Cncr.

State v. George Bradford, Chittenden District Court, Docket No. 5353-12-06 Cncr

State v. Danny Savo, Chittenden District Court, Docket No. 1440-4-07 Cncr

State v. R. Craig Hall, Addison District Court, Docket No. 493-11-04 Ancr

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on any federal court of appeal.

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14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (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.) 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 in which you have recused yourself sua sponte. 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.

Kneebinding v. Howell, Lamoille Superior Court, Docket No. 74-3-09 Lecr (May 2009). This case seeking injunctive relief was brought by an attorney in a law firm in which I was formerly a partner. The attorney was not at the firm while I was there and the case was not pending or contemplated at the time I was affiliated with the firm. I had no prior knowledge of the case and so I did not initially recuse myself. The Defendant, representing himself, filed an Answer naming two of my former partners as alleged counterclaim defendants, accusing them of persecuting him, and citing cases that were handled by the firm while I was associated with it. I was concerned about the potential for an appearance of bias, especially from the prospective of a pro se litigant. I recused myself in an Entry Order. Another judge was available to take the case and did so.

Perkins v. Euro Dec, Lamoille Superior Court, Docket No. 243-9-07 Lecv (March 2009). I recused myself in this case because I had formally represented the Defendant in a bankruptcy proceeding wherein certain creditors filed objections to his discharge. In that proceeding, I became familiar with the company and its principals' business practices and finances. This lawsuit involved similar issues. I explained my prior involvement on the record and announced that I would be recusing myself.

State v. Timothy Madden, Chittenden District Court, Docket No. 5304-12-07 Cncr (Sept. 2008). This case involved a defendant who had allegedly shot his best friend while hunting, mistaking him for a coyote. It was a highly publicized case because the defendant was a probation officer who had just come back from military service in Iraq and because hunting cases of this type generally garner state-wide media coverage in Vermont. I was within days of issuing a decision on a motion to suppress and to dismiss, including dismissal for failure to state a claim, when my own father was shot and killed

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by a neighbor who was shooting at a make-shift target range next to my parents' home. My father's death was highly publicized because he was a well-known professor at a local college and because he was shot while eating dinner in his home. I decided to recuse myself so that the Madden case could be decided without interference and distraction. Although I believed I could decide the case fairly, I was concerned about the appearance of bias. I announced this decision on the record to the litigants.

State v. Shawn Hickok, Lamoille District Court Docket No. 574-9-08 Lecr. This is the only case in which a party has asked me to recuse myself. This case involved threes count of felony distribution of prescription drugs based upon controlled buys and a wire warrant. I rejected a plea agreement that imposed no jail time. I referred the request for recusal to Vermont's trial court Administrative Judge who denied it. See Judge Amy Davenport's Entry Order attached.

Family Court case. I do not recall the parties to this 2004 case. It was a highly contested divorce involving a woman who had taken care of my middle child during a lengthy hospitalization in a neonatal intensive care unit. She had also travelled by airplane with my child to Boston Children's Hospital. I did not recognize the parties by their names prior to coming on to the bench because I knew the woman only as "Nurse Linda." I disclosed my prior involvement with Nurse Linda to the parties and voiced my inclination to recuse myself. The parties agreed with this suggestion.

15. **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.

Vermont State Board of Appraisers (2003-2004); appointed by the Vermont Commissioner of Taxes.

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, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

None.

16. **Legal Career:** Answer each part separately.

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

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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;

From 1989 to 1990, I served as a law clerk for the Maine Supreme Judicial Court; 142 Federal Street, Portland, ME, 04112-0368. I clerked for Hon. D. Brock Hornby and Hon. Caroline Glassman.

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

I have not 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.

1990 – 1992
Perkins, Thompson, Hinckley & Keddy
One Canal Street
Portland, ME 04112-0426
law associate

1992 – 2001
Sheehey Brue Gray & Furlong
30 Main Street
Gateway Square, Sixth Floor
Burlington, VT 05402-0066
law associate (1992-1994); partner (1995-2001)

2001 – 2004
Gravel & Shea
76 St. Paul Street
Burlington, VT 05402-0369
Special Counsel (2001-2002); partner (2003-2004)

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

From approximately 1990 to 1992, I had a litigation practice concentrated

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in the areas of patents, land use, and commercial banking. From approximately 1992 to 2001, I had a litigation practice concentrated in the areas of media law, land use law, business law, employment law, and federal criminal law. From approximately 2001 to 2004, I had a litigation practice concentrated in the areas of media law, land use law, business law, and employment law.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

In media matters, I have represented Mt. Mansfield Television, Inc. (WCAX-TV); the Rutland Herald; the Burlington Free Press; and the Barre-Montpelier Times Argus.

In commercial and business matters, I have represented Federal Express; Green Mountain Power Corporation; Burlington Drug Company; Copelco Credit Corporation; Suss-Microtec; The Merchants Bank; The Shelburne Museum; Price Chopper; Saturn of South Burlington; Freedom Nissan; Freedom Chrysler; and Bruegger's Bagel Bakery.

In personal injury, products liability, employment, or legal malpractice matters, I have represented Volkswagen of America; the Dalkon Shield Claimants Trust; Federal Express; Porter Hospital, Price Chopper; Geiger of Austria; The Vermont Country Store; and Alps Legal Malpractice Division.

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.

My legal practice was primarily a litigation practice. On average, I appeared in court approximately twice a month with greater frequency when I was in trial.

i. Indicate the percentage of your practice in:
   1. federal courts: 20%
   2. state courts of record: 75%
   3. other courts;
   4. administrative agencies: 5%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 90%
   2. criminal proceedings: 10%

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d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

As a lawyer, I tried seven jury trials to verdict and approximately thirty bench trials to a resolution. All of these cases were either as sole counsel or as co-counsel. I also participated as associate counsel in five additional jury trials and twenty-five bench trials.

i. What percentage of these trials were:
   1. jury: 24%;
   2. non-jury. 76%

d. Describe your practice, if any, before the Supreme Court of the United States. 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 not practiced before the Supreme Court of the United States.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. 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) Burlington Drug Company v. VHA, Inc. and Cardinal Health, U.S. District Court for the District of Vermont, civil action no. 1:45-CV-15; pending before Hon. Jerome J. Niedermeier (2001-2003); co-counsel Jeffrey Behm, Esq., Sheehey Furlong & Behm, P.C., 30 Main Street, Gateway Square, Sixth Floor, P.O. Box 66, Burlington, VT 05402-0066; (802) 864-9891; opposing counsel Stephen Soule, Esq., Paul, Frank & Collins, P.C., One Church Street, P.O. Box 1307, Burlington, VT 05402-1307; (802) 860-4206. Our client, Burlington Drug Company, brought this antitrust suit which arose out of contracts governing the wholesaling of pharmaceutical drugs that included a "most favored nation" clause. The case settled before trial. I served as co-counsel during all stages of the proceedings which included extensive discovery outside the State of Vermont and substantial pre-trial motions, including motions for summary judgment.

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(2) Ethel Jugel, Administrator of the Estate of Jay Jugle v. Volkswagen of America, U.S. District Court for the District of Vermont, civil action no. 5:93-CV-51, pending before Hon. William K. Sessions III, (1993-1995); co-counsel Donald Rendall, Esq., Green Mountain Power Corp., 163 Acorn Lane, Colchester, VT 05446-6611; (802) 655-8420; opposing counsel Gary Lange, Esq., Swanson & Lange, 125 College Street, 6th Floor, P.O. Box, 5067, Burlington, VT 05402-5067; (802) 658-3025. We represented Volkswagen of America in this products liability case arising out a vehicle fire that badly burned the plaintiff who later died from his injuries. His estate brought claims in excess of a million dollars. We tried this case for approximately three weeks in federal court to a defense verdict. I served as co-counsel at all stages of the proceedings which included substantial pre-trial motions, including motions for summary judgment and *Daubert* motions.

(3) The Merchants Bank v. C.R. Davidson Company, Inc., Docket No. S644-1198 Windsor Superior Court and Docket No. 98-11733 Bankruptcy Court (1998-2000), pending before Hon. Alan Cheever and Hon. Francis Conrad; co-counsel Jeffrey Behm, Esq., Sheehey Furlong & Behm, P.C., 30 Main Street Gateway Square, Sixth Floor, P.O. Box 66, Burlington, VT 05402-0066; (802) 864-9891; opposing counsel John Paul Faignant, Esq., Miller & Faignant, P.C., 1213 US Route 7 North, P.O. Box 6688, Rutland, VT 05702-6688; (802) 775-2521. This was a lender liability lawsuit arising out of various foreclosures initiated by our client, the Merchants Bank. It involved extensive proceedings in state and bankruptcy court. I was the lead counsel for the Merchants Bank which was facing at least two other lender liability cases that were handled by other firms. The Merchants Bank identified this case as their least expensive and most successful lender liability case.

(4) In re: Carl Riccitelli, Case No. 95-10030 FGC; Carl Riccitelli v. Green Mountain Power Corp., Adv. Pro. No., 98-1005; pending before Hon. Francis Conrad (bankruptcy court) and Hon. J. Garvan Murtha (U.S. District Court for the District of Vermont); co-counsel: Donald Rendall, Esq., Green Mountain Power Corp., 163 Acorn Lane, Colchester, VT 05446-6611; (802) 655-8420; opposing counsel John Paul Faignant, Esq., Miller & Faignant, P.C., 1213 US Route 7 North, P.O. Box 6688, Rutland, VT 05702-6688; (802) 775-2521. In this case, the plaintiff asserted claims of trespass, negligence, strict products liability, breach of warranty and negligent infliction of emotional distress arising out of fire at his residence in which his brother arranged for power to supplied to the house allegedly without plaintiff's authority. The case was resolved on summary judgment in favor of my client Green Mountain Power Corp. The summary judgment decision was appealed to the U.S. District Court (Hon. J. Garvan Murtha) and to the Second Circuit Court of Appeals.

(5) Van Vlandren v. Paul, Frank & Collins, Inc. et al., Chittenden Superior Court Docket No. 1246 92CnC, pending before Hon. Linda Levitt, co-counsel Jeffrey Behm, Esq., Sheehey Furlong & Behm, P.C., 30 Main Street Gateway Square, Sixth Floor, P.O. Box 66, Burlington, VT 05402-0066; (802) 864-9891; opposing counsel: Douglas Pierson, Esq. and Chip Wadhams, Esq., Pierson Wadhams Quinn Yates & Coffrin, LLP, 253 S. Union Street, Burlington, VT 05401-4531 (802) 863-2888. This was a case of first impression

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in Vermont, establishing that a violation of Vermont's waste disposal regulations was a cloud on title. It was tried on a theory of legal malpractice which resulted in a jury verdict in favor of Plaintiffs.

(6) United States of America v. William E. Mcneely, Carlos Godoy, and Jeffrey Renaud, U.S. District Court, District of Vermont Docket No. 2:94 CR 000072-01-02; pending before Hon. Fred Parker; co-counsel Jeffrey Behm, Esq., Sheehey Furlong & Behm, P.C., 30 Main Street Gateway Square, Sixth Floor, P.O. Box 66, Burlington, VT 05402-0066; opposing counsel: Assistant U.S. Attorney Peter Hull, U.S. Attorney's Office, Federal Building, 11 Elmwood Ave., P.O. Box 570, Burlington, VT 05402-6725 (802) 951-6725. This was Mann act case tried to a jury verdict finding our client Carlos Godoy guilty as charged. Mr. Godoy's conviction was partially vacated as a result of a post-judgment motion for judgment of acquittal.

(7) In the Matter of the Search of The Offices of Northeast Medical Supply, Inc., Case No. 2:95-mj- 23-01 (pending before Hon. Mag. Jerome Niedermeier); United States of America v. NE Medical Supplies, - 1:98-cv-305 (pending before Hon. J. Garvan Murtha) co-counsel: Jeffrey Behm, Esq., Sheehey Furlong & Behm, P.C., 30 Main Street Gateway Square, Sixth Floor, P.O. Box 66, Burlington, VT 05402-0066; opposing counsel: Assistant U.S. Paul Van de Graaf, U.S. Attorney's Office, Federal Building, 11 Elmwood Ave., P.O. Box 570, Burlington, VT 05402-6725 (802) 951-6725. This was a complicated Medicare fraud case that involved a litigated search warrant and return of property.

(8) James Bruce v. Geiger of Austria, 78-4-01 Ancv, pending before Addison Superior Court; Hon. Matthew Katz (2002-2003). Opposing counsel William Miller, Esq. and Devin McLaughlin, Esq., Langrock, Sperry & Wool, 111 S. Pleasant Street, PO Drawer 351, Middlebury, VT 05753-0351; (802) 388-6356. This case was tried to a defense verdict for my client Geiger of Austria. It involved employment law claims with damages in excess of $500,000. One unique aspect of this case was that it was brought by Geiger's former director of human resources and thus the plaintiff was very knowledgeable about Geiger's employment practices and records.

(9) Herald Association, Inc. v. Governor Howard Dean, M.D., 174 Vt. 350, 816 A.2d 469 (2002); pending before Vermont Supreme Court; co-counsel: Robert Hemley, Esq., Gravel & Shea, 76 St. Paul Street, P.O. Box 369, Burlington, VT 05402-0369 (802) 658-0220. Opposing counsel: Vermont Attorney General William Sorrell; Vermont Attorney General's Office; 109 State Street, Montpelier, VT 05609-1001 (802) 828-0269; our media clients sought copies of Governor's daily schedule under Access to Public Records Act. This case involved the extent of the executive privilege.

(10) Andrew Corporation v. Gabriel Electronics Incorporated, civil action no. 83-0372p, pending in U.S. District Court for the District of Maine before Chief Judge Hon. Gene Carter; (1990-1992). Co-counsel: Hon. John H. Rich, III, now Magistrate for the U.S. District Court, District of Maine, Portland Courthouse, 156 Federal Street, Portland, ME, 04101; (207) 780-3356 ext. 2208. Opposing counsel: Stephen Rudasill, Esq. Nixon,

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Peabody LLP, Chicago, Ill. This was the damages portion of a lengthy patent infringement case relating to the technology for horn antennas. The Court of Appeals for the First Circuit reversed the District Court's finding of non-infringement by our client Gabriel Electronics Incorporated ("Gabriel"). It determined that Gabriel had in fact infringed upon the plaintiff's patent, and remanded the case for a determination of damages. Gabriel ultimately incurred a reasonable royalty liability that would permit it to remain in business. In addition, the District Court found no evidence of "willfulness" in Gabriel's infringement and declined to award attorney's fees to the plaintiff.

18. **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. 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.)

I have acted as counsel to several banks in the sale of non-performing and under-performing loan portfolios. Most of my work in this respect was performed for The Merchants Bank

As a judge, I strive to be active in all forms of legal education from presenting at conferences to attorneys and lay persons on a wide array of subjects, to assisting in planning the judicial education of Vermont trial judges. In every county in which I have presided, I have held bench-bar meetings and encouraged an open conversation with the community as to how the court can better administer justice and serve the community's needs.

19. **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, provide four (4) copies to the committee.

French I, University of Arizona, Department of French & Italian, Tucson, Arizona (1984). I do not have a copy of the syllabus.

20. **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. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I am vested in the State of Vermont Employee Pension program.

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21. **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.

    None.

22. **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, licensing fees, 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

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    See attached Net Worth Statement

24. **Potential Conflicts of Interest**:

    a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

       My primary social contacts are with my husband's and my own large family. He is the middle child of eight and I am the middle child of seven. We also socialize occasionally with a small group of close friends who are non-lawyers. I do not belong to any organizations that are likely to appear before me and I do not have any financial interests outside of my own employment and investments.

    b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

       I will carefully consider the potential for a conflict of interest and disclose all relevant information to the litigants. I will then permit them to discuss that information outside my presence. I will consult the applicable rules, precedent, and the Code of Conduct for United States Judges. After doing so, I will make a determination, and advise the parties of my decision in writing or on the record.

25. **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.

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From approximately 1994 to 2004, I represented Vermont Cares, an organization dedicated to assisting Vermonters living with HIV, and its clients on a pro bono basis in an array of matters including discrimination complaints, social security appeals, employment issues, and end-of-life decisions. This occupied approximately 5-10 % of my time on an annual basis. I also represented a number of individuals and entities on a pro bono basis, devoting at least 100 billable hours annually to this representation. I was trained and acted as a Guardian ad Litem in the Family Court.

26. **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. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

I submitted a written application to a nine-member merit selection committee. The selection committee then chose eight applicants for interviews and conducted an investigation of each of the eight candidates. Members of the public and attorneys were permitted to submit anonymous comments for the committee's consideration. The selection committee then recommended four applicants for further consideration by U.S. Senator Patrick Leahy. Senator Leahy interviewed each of the four candidates with his staff by videoconference. I then interviewed with Senator Leahy in person. He later called me and asked me further questions and ultimately advised me that he intended to recommend me to the U.S. District Court for the District of Vermont vacancy.

I was contacted by staff from the Department of Justice regarding the completion of nomination paperwork, and have had subsequent conversations with Department staff regarding that paperwork and the nomination process. On September 24, 2009 I had a formal interview at the Department of Justice with staff from the Department of Justice and from the White House Counsel's Office. My nomination was submitted to the United States Senate on October 13, 2009.

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, explain fully.

No.

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AFFIDAVIT

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

10/9/09
(DATE)

(NAME)

(NOTARY) Jennifer Brock
Exp. 2/10/11

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   Thomas Ignatius Vanaskie

2. **Position**: State the position for which you have been nominated.

   United States Circuit Judge for the Third 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.

   Office Address:
   William J. Nealon Federal Building & U.S. Courthouse
   Room 401
   235 N. Washington Avenue
   Scranton, PA 18501

   Residence: [redacted]

4. **Birthplace**: State year and place of birth.

   1953; Shamokin, PA

5. **Education**: List in reverse chronological order 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.

   1975 to 1978; Dickinson School of Law, J.D., Cum Laude, June 1978

   1971 to 1975; Lycoming College, B.A., Magna Cum Laude, May, 1975

6. **Employment Record**: List in reverse chronological order 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 description.

March 1, 1994 to the Present – United States District Judge, United States District Court for the Middle District of Pennsylvania

March 20, 1992 to February 28, 1994 – Vice-President and Member of the Board of Directors of Elliott, Vanaskie & Riley, a Partnership of Professional Corporations, in charge of its Scranton, PA office

January 1, 1986 through March 19, 1992 – Partner, Dilworth, Paxson, Kalish & Kauffman. (In charge of the firm's Scranton office since January, 1987)

September, 1980 to January, 1986 – Associate in the Scranton office of Dilworth, Paxson, Kalish & Kauffman.

September, 1978 to September, 1980 – Law Clerk to the Honorable William J. Nealon, then Chief Judge of the United States District Court for the Middle District of Pennsylvania.

1977-1978 School Year – Legal Research Consultant to Clarence D. Bell (Delaware County), Minority Chairman of the Consumer Affairs Committee, State Senate, Harrisburg, PA.

Summer of 1977 – Summer Associate at Dilworth, Paxson, Kalish & Kauffman, Philadelphia, PA

1976 to 1977 School Year – Internship in the Law Bureau of the Pennsylvania Public Utility Commission, Harrisburg, PA.

Summer of 1976 – Internship as law clerk to the Honorable Genevieve Blatt, Pennsylvania Commonwealth Court, Harrisburg, PA, and internship at the Dickinson School Law Library, Carlisle, PA.

Summer of 1975 – following the completion of college and prior to the start of law school, I worked as a construction laborer for Tabone & Barbera as well as for George Snyder & Company.

7. **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, and whether you have registered for selective service.

I have not had any military service. I had registered for selective service, but was not selected.

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8. **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.

M. Vashti Burr Award – Scholarship given annually by the Dickinson School of Law's faculty to the student deemed to be "most deserving" having in mind his economic needs and excellence of his industry and scholarship.

"Book Award" for highest grade for Torts I.

Member of the Dickinson Law Review Editorial Staff – Selection based upon ranking in the top ten percent of my class after the first year of law school. (Final rank was fourth in class of 140 students.)

Member of the Dickinson Law School Appellate Moot Court Board – Selection based upon performance in legal writing and appellate moot court practice.

Member of the Dickinson School of Law International Law Moot Court Team – Selection based upon academic performance.

Member of the Dickinson School of Law's Woolsack Society – membership based upon outstanding academic achievement.

Article published in the inaugural edition of the American Students of International Law Society International Law Journal – Selection based upon competitive writing process.

1974 – James A. Finnegan Award – The highest award given by the James A. Finnegan Fellowship Foundation. Selection is based upon a competitive essay contest, academic performance, and personal recommendations. The award provided a six week internship with a state government agency in Harrisburg, PA.

1974-1975 – Member and President of the Lycoming College Chapter of Omicron Delta Epsilon, a National Economic Honor Society.

1975 to present – Member of Phi Kappa Phi Honor Society

1975 – Lycoming College "Chieftain Award" – Given annually to the College Senior who, in the opinion of the students and faculty, had contributed the most to Lycoming College through support of school activities; had exhibited outstanding leadership qualities; had worked efficiently and effectively with the members of the college community; had evidenced a good moral code; and whose academic rank was in the upper half of the senior class. (Graduated Magna Cum Lade with a G.P.A. of 3.87/4.00, majoring in political science with a concentration in economics.)

1975 – Lycoming College "Tomahawk Award" – Given annually to the "outstanding male athlete" at Lycoming College.

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1974 – Selected to the First Team of the College Division Academic All-American Football Team; First Team of the Middle Atlantic Conference Football Team; Honorable Mention on the Associated Press All American Football Team, College Division; Honorable Mention on the Associated Press All State Football Team for both colleges and universities; Honorable Mention on the Associated Press All East Football Team in the College Division.

1993 – Inducted into the Shamokin, Pennsylvania Chapter of the Pennsylvania Sports Hall of Fame.

1990 – Selected as a Member of "Who's Who in Practicing Attorneys."

1993 – Recipient of the Our Lady of Lourdes Regional High School Alumni Association Board of Governors' Award for significant contributions to the alumni organization.

1994 – Inducted into the Lycoming College Hall of Fame

2003 – Honorary Master of the Bench of the Herbert B. Cohen Inn of Court, York Pennsylvania.

2005 – President's Award, Federal Bar Association, Middle District of Pennsylvania Chapter.

2007 – Interdependence Award presented by the Scranton Interdependence Day 2007 Committee.

2007 – Lifetime Honorary Member of the Wilkes-Barre Law & Library Association

9. **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.

October 1, 2003 to September 30, 2005; Member, Judicial Conference of the United States

October 1, 2005 to September 30, 2008, Chair, Committee on Information Technology of the Judicial Conference of the United States

2002 to Present, Chair, Information Technology Committee of the Third Circuit Judicial Council

October 1, 2001 to September 30, 2008, Member, Committee on Information Technology of the Judicial Conference of the United States

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September 1, 1999 to August 31, 2006, Member, Judicial Council of the United States Court of Appeals for the Third Circuit

September 1, 1999 to August 31, 2006, Chief Judge, U.S. District Court for the Middle District of Pennsylvania.

1999 to 2006, Member, Space and Facilities Committee of the Third Circuit Judicial Council

March 1, 1998 to November 1, 1999, Co-Chair, Third Circuit Task Force on Libraries.

1998 to 1999, Member, Board of Directors of the Federal Judges Association.

1998 to Present, Member, Library Committee of the Third Circuit Judicial Council

2005 to Present, Third Circuit EDR/EEO Appeals Committee

2009 – Appointed to the Future of District CM/ECF Working Group of the Administrative Office of the United States Court

I am a member of the following bar associations and professional organizations:

Lackawanna Bar Association
Pennsylvania Bar Association
Federal Bar Association
American Judicature Society

I served as Chair of the Continuing Legal Education Committee of the Lackawanna Bar Association from 1991 to 1994.

I was elected a member of the Board of Directors of the Lackawanna Bar Association in 1993.

In 1992, I was appointed as a member of the Board of Directors of the Northeast Pennsylvania Trial Lawyers Association.

In 1992, I was appointed to the Lawyers' Advisory Committee for the United States District Court for the Middle District of Pennsylvania.

In 1993, I was appointed to the Civil Justice Reform Act Committee for the United States District Court for the Middle District of Pennsylvania.

I was previously a member of the American Bar Association, the Pennsylvania Trial Lawyers Association, and the Northeastern Pennsylvania Trial Lawyers Association.

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10. **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.

November 27, 1978 – Pennsylvania Supreme Court
There has been no lapse in membership.

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.

November 3, 1980 – United States District Court for the Middle District of Pennsylvania

March 25, 1982 – United States District Court for the Eastern District of Pennsylvania.

June 16, 1982 – United States Court of Appeals for the Third Circuit

April 18, 1983 – The Supreme Court for the United States

There have been no lapses in membership.

11. **Memberships:**

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, 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.

1990 to 1993, President, Our Lady of Lourdes Regional High School Alumni Association.

1993 to 1996, Member Board of Governors of Our Lady of Lourdes Regional High School Alumni Association.

1990 to 1994, Scranton Area Chamber of Commerce

1990 to 1994, Scranton Area Foundation

1990 to 1994, Economic Development Council of Northeastern Pennsylvania

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1996 to 1998, Member, Board of Directors of local chapter of the American Heart Association

1997 to 2003, Member, Board of Trustees of the Scranton Preparatory School (Chair – 2001 to 2003).

2003 to 2004, Member, Board of Directors of the Community Medical Center of Scranton, Pennsylvania

2004 to Present, Member, Our Lady of Snows Church Pastoral Council

1984 to Present, Glen Oak Country Club

1987 to 1994 Paupack Hills Golf & Country Club

2004 to Present, Member, University of Scranton Board of Regents

2007 to Present, Member, Board of Counselors of Dickinson School of Law at Penn State University

2008 to Present, Member, Board of Advisors of the Wilkes University Law School Initiative

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, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin 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.

None of the organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

In college I was a member of Sigma Pi fraternity. I have had no association with this fraternity since college.

12. **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. Supply four (4) copies of all published material to the Committee.

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"The Independence and Responsibility of the Federal Judiciary," 46 Vill.L.Rev. 745 (2001)

"The United States Courts Case Management Electronic Filing System: Perspective of a District Judge," E-Filing Reporter, Vol. 8, No. 3 (April, 2007)

"The Use of Hyperlinks in the Electronic Record," In Camera, Federal Judges Association Newsletter, Vol. 18, No. 2, (June 30, 2008)

Comment, The State Sovereignty Doctrine Since National League of Cities v. Usery: A New Constitutional Interpretation under the Commerce Clause, 81 DICK.L.REV. 599 (1977)

The European Patent Convention: State Sovereignty Surrendered to Establish a Supranational Patent, 1 ASILS INTERNAT'L L.J. 73 (1977)

July 19, 2006 letter to the Editor of the Scranton Times on the Life of the Hon. Genevieve Blatt

b. 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, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

Report of the Third Circuit Task Force on Libraries (November 1, 1999)

Civil Justice Reform Act Expense and Delay Reduction Plan for the Middle District of Pennsylvania (October 1, 1994)

c. 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.

Other than my testimony at my Confirmation Hearing before the Judiciary Committee of the U.S. Senate on January 27, 1994, I have not testified before any congressional committee.

As Chair of the Committee on Information Technology for the Judicial Conference of the United States, I recommended that the Executive Committee of the Judicial Conference approve annual reports to Congress on the Federal

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Judiciary's compliance with the E-Government Act of 2002 in accordance with Section 205(g)(2) of that legislation.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. 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 recording of your remarks, 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, furnish a copy of any outline or notes from which you spoke.

June 17, 2009, Panelist, Pennsylvania Bar Institute program on Litigation Practice in the Middle District of Pennsylvania, Scranton, PA

May 6, 2009, Moderator for the Trial Courts & Technology Panel at the Third Circuit Judicial Conference in Philadelphia, PA

April 29, 2009, Presentation of Harold Miller Award to Mary D'Andrea, Lackawanna Bar Association, Scranton, PA

April 14, 2009, Electronic Discovery, Berks County Bench-Bar Conference, Reading, PA

March 21, 2009, Remarks on Judicial Independence presented at meeting of the Junior Statesmen of America Club of Scranton Preparatory School, Scranton, PA

March 18, 2009, Guest Lecturer on Electronic Discovery in Trial Advocacy Class at the Dickinson School of Law, Carlisle, PA

December 12, 2008, National District Clerks Conference, Panel of Judicial Conference Committee Chairs, San Diego, CA

December 11, 2008, National District Clerk's Conference, IT Training for Judges, San Diego, CA

December 4, 2008, Federal Bar Association, Middle District of Pennsylvania Chapter, Best Practices for Working with CM/ECF, Scranton, PA

October 11, 2008, Lecture on Electronic Discovery at the Dickinson School of Law Alumni Weekend, Carlisle, PA

September 10, 2008, Remarks as Chair of the Judicial Conference Committee on Information Technology delivered at the Fifth Circuit IT Conference, San Antonio, TX

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August 25, 2008, Introductory Remarks as Chair of the Judicial Conference Committee on Information Technology delivered at the CM/ECF Operational Practices Forum, Washington, DC

August 11, 2008, Remarks as Chair of the Judicial Conference Committee on Information Technology delivered at the First, Sixth, Seventh, and Tenth Circuits IT Conference, Indianapolis, IN

July 28, 2008, Remarks as Chair of the Judicial Conference Committee on Information Technology delivered at the Second, Third, and Fourth Circuits IT Conference, Philadelphia, PA

June 6, 2008, Panelist, Juror Questions of Witnesses, Federal Bench-Bar Conference, Philadelphia, PA

May 28, 2008, Remarks as Chair of the Judicial Conference Committee on Information Technology delivered at the Eight and Eleventh Circuits IT Conference, Lake of the Ozarks, MO

May 7, 2008, Labor and Employment CLE, PBA Employment Law Section, Scranton, PA

April 30, 2008, Panelist on Best Practices in Filing Electronically, presented at the Third Circuit Judicial Conference, Cambridge, MD

April 17, 2008, Panelist on Online System for Clerkship Application and Review ("OSCAR"), presented at the NALP Conference, Toronto, Ontario, Canada

April 10, 2008, Panelist on Electronic Discovery Program presented by the Environmental Law Section of the Pennsylvania Bar Association, Harrisburg, PA

February 27, 2008, Guest Lecturer on Electronic Discovery for Trial Advocacy Course at the Dickinson School of Law, Carlisle, PA

November 14, 2007, Remarks on Electronic Discovery, PBI E-Discovery Seminar, Philadelphia, PA

October 24, 2007, Guest Lecturer, U.S. Sentencing Policies for Crack Cocaine Offenders, University of Scranton Adult Education Class, Scranton, PA

October 12, 2007, Remarks on the Tenth Anniversary of the Placement of the Historical Marker re: Erie RR v. Tompkins, Wilkes-Barre Law and Library Association, Wilkes-Barre, PA

October 4, 2007, Panelist on Presentation by Judicial Conference Committee Chairs to the Bankruptcy Court Clerks of Court Meeting, Atlanta, GA

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October 2, 2007, Judicial Conference, IT Committee Update, presented at the National Center for State Courts Court Technology Conference, Tampa, FL

September 26, 2007, Lecture on Electronic Discovery at Dickinson School of Law Alumni Meeting, Williamsport, PA

September 19, 2007, Remarks as Chair of the Judicial Conference IT Committee delivered at the Fifth and Eighth Circuits IT Conference, St. Louis, MO

August 21, 2007, Panelist with Members of the Judicial Conference IT Committee, presented at the First, Second and Third Circuits IT Conference, Newport, RI

August 15, 2007, Remarks as Chair of the Judicial Conference IT Committee delivered at the Ninth Circuit IT Conference, Los Angeles, CA

July 23, 2007, Panelist with Members of the Judicial Conference IT Committee, presented at the Seventh and Tenth Circuits IT Conference, Washington, DC

July 9, 2007, Introductory Remarks at the CM/ECF Operational Practices Forum, Washington, DC

May 22, 2007, Remarks as Chair of the Judicial Conference IT Committee delivered at the Federal/State Joint IT Conference, State College, PA

May 5, 2007, Remarks on the Rule of Law presented at the Law Day Services, Temple Israel, Wilkes-Barre, PA

May 1, 2007, Presentation of the Harold Miller Award to Cathy Dolinish, Lackawanna Bar Association, Scranton, PA

March 2, 2007, Remarks as Chair of the Judicial Conference IT Committee delivered at the Ninth Circuit District Chief Judges Conference, San Diego, CA

February 27, 2007, Guest Lecturer on Electronic Discovery via videoconference for Civil Procedure Class of the Dickinson School of Law, delivered from Scranton, PA

February 16, 2007, Remarks on Effective Use of IT for Judges delivered at meeting convened by the Federal Judicial Center and Administrative Office of the United States Courts, Washington, DC

February 8, 2007, Guest Lecturer on Electronic Discovery for Trial Advocacy Course at the Dickinson School of Law, Carlisle, PA

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January 24, 2007, Guest Lecturer on the Right to Trial by Jury for University of Scranton Adult Education Class, Scranton, PA

December 12, 2006, Panelist, How E-Filing Has Changed the Way the Federal Courts Work, presented at the National Center for State Courts E-Filing Conference, Las Vegas, NV

November 9, 2006, New Federal Rules of Civil Procedure on Discovery of Electronically Stored Information, presented at the Wilkes-Barre Law and Library Association Annual Meeting, Wilkes-Barre, PA

October 23, 2006, Remarks on the Dedication of the Hon. Max Rosenn Memorial Library, Luzerne County Courthouse, Wilkes-Barre, PA

October 4, 2006, Remarks as Chair of the Judicial Conference IT Committee, National Conference of District Clerks, Denver, CO

September 28, 2006, Trial Practice and Advocacy in the Federal Middle District, Panel Member, presented by the Pennsylvania Bar Institute in Williamsport, PA

September 12, 2006, Remarks on the Exhibition of the Illustrated United States Constitution in the William J. Nealon Federal Building and U.S. Courthouse, Scranton, PA

August 27, 2006, Remarks as Chair of the Judicial Conference IT Committee, Seventh, Eighth, and Tenth Circuits Conference, Minneapolis, MN

August 20, 2006, State of the Middle District, presented to the Middle District of Pennsylvania Chapter of the Federal Bar Association, Scranton, PA

August 9, 2006, Report on the Activities of Judicial Conference IT Committee, Unit Executives Conference, Mystic, CT

August 1, 2006, The Federal Courts in Our Communities, presented for the People's Law School sponsored by the Lackawanna Bar Association, Scranton, PA

April 20, 2006, Panelist on E-Discovery, ABA Tech Show, Chicago, IL

April 10, 2006, Remarks as Chair of the Judicial Conference IT Committee, First, Second, and Third Circuits IT Conference, Newport, RI

March 6, 2006, A Judge's Perspective on Electronic Discovery, presented at the PBI E-Discovery Conference, Philadelphia, PA

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January 20, 2006, Panelist, Criminal Trials in High Tech Courtrooms, presented at the Pennsylvania Bar Institute Criminal Law Program, Harrisburg, PA

October 5, 2005, Guest Lecturer on Federalist Paper No. 78 at Adult Education Class conducted by the University of Scranton, Scranton, PA

May 5, 2005, Law Day Remarks on Judicial Independence, Scranton, PA

March 21, 2005, Address to the 2005 Eagle Scout Class, Columbia-Montour Council, Bloomsburg, PA

March 4, 2005, Remarks for Wyoming/Sullivan Counties Bar Association, La Plume, PA

January 13, 2005, Remarks, Federal Bar Association, Middle District of Pennsylvania Chapter Annual Meeting, Scranton, PA

November 12, 2004, Juror Questions of Witnesses, Presented at the Third Circuit Judicial Conference, St. Thomas, VI

September 13, 2004, CM/ECF – A Judge's Perspective, presented at the Western District of Pennsylvania Judges' Meeting, Findley Lake, NY

August 26, 2004, Remarks at Meeting of the Rotary Club of the Abingtons, Clarks Summit, PA

December 10, 2003, Practice in the Middle District in the Age of Electronic Filing, Scranton, PA

November 15, 2003, Electronic Case Filing, presented at the 2003 Social Security Practice Update, Dickinson School of Law, Carlisle, PA

November 7, 2003, State of the Middle District of Pennsylvania presented at the Wilkes-Barre Law and Library Association Bench Bar Conference, Wilkes-Barre, PA

October 23, 2003, Remarks at the Federal Bar Association Annual Meeting Middle District of Pennsylvania Chapter, Scranton, PA

May 15, 2003, Remarks at the National Honor Society Convocation at the Scranton Preparatory School, Scranton, PA

May 6, 2003, Tribute to Paul and Naomi Alamar, delivered at Jewish Family Service of Lackawanna County, Scranton, PA

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February 12, 2003, Presentation on CM/ECF, Herbert B. Cohen American Inns of Court, York, PA and Courtroom Technology Demonstration in Harrisburg, PA

October 18, 2002, State of the District and the New Electronic Filing System, 2002 Annual Meeting of the Middle District of Pennsylvania Chapter of the Federal Bar Association, Harrisburg, PA

October 9, 2002, Judicial Perspective on Mediation, Fourth Biennial Cumberland County Bench-Bar Conference, Carlisle, PA

September 23, 2002, Pennsylvania Bar Association Labor & Employment Law Section meeting, Wilkes-Barre, PA

July 19, 2002, Giving A National Voice to Local Initiatives, Unit Executive's Conference, Absecon, NJ

July 11, 2002, The Final Step-Using Technology in the Courtroom, Pennsylvania Bar Institute, Philadelphia, PA

June 25, 2002, The Final Step -- Using Technology in the Courtroom, Pennsylvania Bar Institute, Mechanicsburg, PA

June 17, 2002, Remarks to the Fourth Annual Middle District of Pennsylvania Bankruptcy Bar Association Conference, Grantville, PA

May 23, 2002, Remarks at the Dedication of the Law Library in the William J. Nealon Federal Building and U.S. Courthouse in honor of Judge Max Rosenn, Scranton, PA

April 15, 2002, Courtroom Dedication Ceremony-Williamsport's Courtroom No. 3, Middle District of Pennsylvania, Williamsport, PA

October 4, 2001, The Electronic Courtroom -- Commentary on Utilization, United States District Judge's Retreat, Lancaster, PA

September 26, 2001, Technology in the Courtroom; A Primer on the Use of the New Courtroom Technology Available in Federal Court, Middle District Chapter of the Federal Bar Association in conjunction with the Dauphin County Bar Association, Harrisburg, PA

August 29, 2001, Technology in the Courtroom, Commonwealth of Pennsylvania-Governor's Office of General Counsel, Harrisburg, PA

June 8, 2001, Remarks on the Centennial of the Court, Scranton, PA

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May 14, 2001, Middle District Roundtable, Third Annual Middle District Bankruptcy Conference, Grantville, PA

April 26, 2001, Remarks to the Graduating Class of Dickinson School of Law Students (this was a dinner gathering hosted by the Dean of the Law School).

April 24, 2001, Middle District Practice and Court Technology Seminar, Pennsylvania Bar Institute, William J. Nealon Federal Building & U.S. Courthouse, Scranton, PA as well as videoconference conducted to Mechanicsburg, PA

April 21, 2001, Pretrial and Trial Issues in the Digital Age -- Discovery of Electronic Information and Metadata, Digital Video Depositions, Web Databases, Experts and Trial Technology, Pennsylvania Bar Association Civil Litigation Retreat, Washington, DC

November 14, 2000, "Middle District Practice," Pennsylvania Bar Association, Harrisburg, PA

November 3, 2000, Year 2000 Amendments to the Federal Rules of Civil Procedure and Evidence, Pennsylvania Bar Institute, Pittsburgh, PA

June 4, 2000, Remarks on Leadership, Northeastern Pennsylvania Council of Boy Scouts of America, Scott Township, PA

May 22, 2000, Bankruptcy Law Conference, Middle District of Pennsylvania Bankruptcy Court, Grantville, PA

May 11, 2000, The Technology Courtroom-CJA Training, Scranton, PA

April 16, 2000, Presentation of the Portrait of the Honorable Max Rosenn, Wilkes Barre, PA

April 10, 2000, Judicial Independence, Lycoming College Professor Larry Strausser Lecture Series, Williamsport, PA

October 22, 1999, Technology in the Courtroom, Federal Bar Association CLE Seminar, Williamsport, PA

June, 1999, Commencement Address at Our Lady of Lourdes Regional High School, Coal Township, PA (my Alma Mater)

July 3, 1998, "New Trial Techniques and Technology in the Courtroom," Pennsylvania Trial Lawyer's Association, Scranton, PA

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June 24, 1998, "Recent Developments in Federal Practice," Pennsylvania Bar Institute, Scranton, PA

October 13, 1997, Erie RR v. Tompkins, remarks delivered on the occasion of the placement of an historical marker, Hughestown, PA

October 3, 1997, "Use of Experts in Federal Court," Federal Bar Association Bench/Bar Conference, Scranton, PA

April 4, 1997, "Use and Abuse of Expert Witnesses," Pennsylvania Bar Institute, Valley Forge, PA

April 4, 1997, "Courtroom Courtesy and Other Matters," U.S. Attorney's Office, Hershey, PA

November 15, 1996, "Prosecuting, Defending and Insuring Against Section 1983 Civil Rights Claims," Scranton, PA

September 10-11, 1996, "Successfully Managing Major Design and Construction Projects, II," Administrative Office of the U.S. Courts, Washington, DC

June 21, 1996, "Professionalism and Civility Seminar," Lackawanna/Luzerne Young Lawyers' Division, Scranton, PA

March 25, 1996, "Civil Litigation Update 1996," Pennsylvania Bar Institute, Mechanicsburg, PA

October 27, 1995, "Professionalism - Beyond the Rules of Ethics," Federal Bar Association Bench/Bar Conference, Scranton, PA

July, 1995, "Courthouse Design: An Introduction," Professional Development Program, Harvard University, Graduate School of Architecture, Cambridge, MA

November, 1994, "Amendments to Rule 26 of Federal Rules of Civil Procedure," Scranton, PA

e. 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.

February 5, 2007 – Interviewed by Attorney Cliff Rieders for live radio broadcast by Williamsport, PA radio station. I do not have a clip or transcript of this interview.

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I have been interviewed for documentaries on the lives of the Hon. Max Rosenn and William J. Nealon, but do not have clips of the interviews. The DVDs of the documentaries can be produced.

My lecture on Federal Courts in Our Communities in the summer of 2007 was broadcast on the local public access television station. I do not have the recording.

I have been interviewed by the Hon. Thomas Munley for a program entitled "Meet the Judges." The program aired on the local access television station. I do not have the recording.

I was interviewed by NBC in connection with the exhibition of Samuel Fink's Illustrated United States Constitution, in the William J. Nealon Federal Building and U.S. Courthouse, Scranton, PA, which was the subject of a weekend broadcast. I do not have the clip of the interview.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

After Senate confirmation on February 10, 1994, I was appointed by President Clinton to be United States District Judge for the Middle District of Pennsylvania. I entered duty on March 1, 1994. I served as Chief Judge from 1999 – 2006.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? 132

i. Of these, approximately what percent were:

jury trials? 81%; bench trials 19% [total 100%]

civil proceedings? 83%; criminal proceedings? 17% [total 100%]

b. Provide citations for all opinions you have written, including concurrences and dissents.

See attached list.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

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1. Khouzam v. Hogan, No. 3:07-cv-00992. This case concerned the question of whether diplomatic assurances that an Egyptian national would not be tortured were insulated from judicial review. Concluding that habeas corpus jurisdiction existed and that the equities weighed in favor of the petitioner, I granted a stay of deportation. See Khouzam v. Hogan, 497 F. Supp. 2d 615 (M.D. Pa. 2007). Following extensive briefing and the submission of a comprehensive factual record, I granted the habeas corpus petition, barring the deportation of petitioner unless the diplomatic assurance was exposed to review of a neutral decision maker. 529 F. Supp. 2d 543 (M.D. Pa. 2008). The Court of Appeals for the Third Circuit concluded that habeas corpus jurisdiction was lacking, and vacated my jurisdictional holding, but agreed with my conclusion that deportation on the basis of an otherwise unreviewable diplomatic assurance denied the petitioner due process. 549 F.3d 235 (3d Cir. 2008). Counsel for petitioner included Alice Clapman, Esq., American Civil Liberties Union, 125 Broad Street, 18th Floor, New York, NY 10004, 212-549-2676, Amrit Singh, Esq., ACLU, 125 Broad Street, 18th Floor, New York, NY 10004, 212-549-2618. Counsel for the respondent was Douglas Ginsburg, Esq., Office of Immigration Litigation, Department of Justice, Civil Division, P.O. Box 878, Ben Franklin Station, Washington, DC 20044, 202-305-3619.

2. Gleeson v. Robson, No. 3:CV-02-1747. This was a civil rights action asserting malicious prosecution claims. After approximately eight trial days, the case settled for $2 million. Plaintiff was represented by Barry H. Dyller, Esq., 88 North Franklin St., Gettysburg House, Wilkes-Barre, PA 18701, 570-829-4860. Defendants were represented by Attorney Harry Thomas Coleman, 76 North Main Street, Carbondale, PA 18407, 570-282-7440. This Court's decision denying the motion for summary judgment on grounds of qualified immunity, reported at 2005 WL 1210948 (M.D. Pa. May 6, 2005), was affirmed by the Third Circuit, reported at 190 F. App'x 165 (3d Cir. 2006).

3. Blackhawk v. Pennsylvania, No. 3:CV-99-2048. This case raised First Amendment free exercise of religion issues in relation to a Native American's possession of black bears for spiritual purposes. My decision concluding that the Commonwealth's requirement of a permit fee to maintain the bears was not supported by a compelling interest sufficient to overcome the burden on the plaintiff's exercise of religious beliefs is reported at 225 F. Supp. 2d 465 (M.D. Pa. 2002). The Court of Appeals for the Third Circuit affirmed in an Opinion authored by now Justice Samuel Alito. 381 F.3d 202 (3d Cir. 2004). Plaintiff was represented by Attorneys Gary S. Gilden, 150 S. College St., Carlisle, PA 17013, 717-243-4611, and Thomas B. Schmidt, III, Pepper, Hamilton, LLP, Suite 200, 100 Market Streets, P.O. Box 1181, Harrisburg, PA 17108-1181, 717-255-1164. Defendants were represented by Attorney Howard G. Hopkirk, Office of Attorney General – Litigation Section, 15th Floor Strawberry Square, Harrisburg, PA 17120, 717-783-1471.

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4. United States v. Serafini, No. 97-CR-225. This case involved a perjury claim against a state legislator. This Court's ruling striking from the indictment one of the six allegedly perjurious statements, reported at 7 F. Supp. 2d 529, was affirmed by the Court of Appeals in a published opinion at 167 F.3d 812 (3d Cir. 1999). Following a two-week trial, Defendant was convicted, and this Court's sentence was affirmed on appeal. Other opinions reported in this matter are found at 57 F. Supp. 2d 108 (M.D. Pa. 1999), and 233 F.3d 758 (3d Cir. 2000), which affirmed Defendant's conviction and sentence. The Government was represented by Bruce D. Brandler, Esq., U.S. Attorney's Office, Room 217, Federal Building, 228 Walnut Street, Harrisburg, PA 17108, 717-221-4482. The Defendant was represented by Attorney Daniel T. Brier, Myers Brier & Kelly, LLP, 425 Spruce Street, Suite 200, Scranton, PA 18503, 570-342-6100, and Attorney Sal Cognetti, Jr., Foley, Cognetti & Comerford, 700 Scranton Electric Building, 507 Linden St., Scranton, PA 18503, 570-346-0745.

5. United States v. Polishan, No. 96-CR-274. This case involved an accounting fraud at a Fortune 500 company. Mr. Polishan was the Chief Financial Officer. Following a non-jury trial that consumed more than thirty (30) trial days, Mr. Polishan was found guilty. This case resulted in a number of published Opinions, including those found at 2001 WL 848583 (M.D. Pa. July 27, 2001), aff'd, 336 F.3d 234 (3d Cir. 2003), cert. denied, 540 U.S. 1220, with post-conviction relief denied by 481 F. Supp. 2d 350 (M.D. Pa. 2007). Defendant was represented by Attorney Michael Berger, 250 Park Avenue, New York, NY 10016, 212-983-6000, Attorney Peter Goldberger, 50 Rittenhouse Place, Ardmore, PA 19003, 610-649-8200, and Attorney Timothy P. Polishan (the Defendant's son), Kelley & Polishan, LLC, 259 South Keyser Avenue, Old Forge, PA 18518, 570-562-4520. The government was represented by Attorneys Bruce D. Brandler, 717-221-4482, and Lorna N. Graham, 570-348-2800, U.S. Attorney's Office, Room 217, Federal Building, 228 Walnut Street, Harrisburg, PA 17108.

6. Hazleton Fuel Management Company v. UGI Corporation, No. 3:95-CV-0093. This case involved the question of whether UGI Utilities, Inc., could use a 15 mile pipeline to transport natural gas to a co-generation facility without first obtaining the express consent of the Hazleton Pipe Line Company. This case raised a number of interesting and complicated issues. Following a several day non-jury trial, I ruled in favor of the Hazleton Pipe Line Company in a 84 page memorandum on May 10, 1996. The parties had agreed that my decision would be final. Representing the Hazleton Fuel Management Company was Paul Michael Pohl, Esq., Jones Day, One Mellon Bank Center, 500 Grant Street, Pittsburgh, PA, 412-391-3939. Representing UGI Corporation was Alan J. Hoffman, Blank, Rome, Comisky & McCauley, Four Penn Center Plaza Philadelphia, PA 19103, 215-569-5665.

7. Patel v. Himalayan International Institute of Yoga, Science and Philosophy, et al., No. 3:CV-94-1118. This case concerned a claim of sexual misconduct of the Himalayan Institute's former "spiritual leader." Following a lengthy trial, the jury

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awarded Plaintiff $275,000 in compensatory damages and $1.6 million in punitive damages. Plaintiff was represented by John M. Humphrey, Esq., Rieders Travis Humphrey Harris Waters & Waffenschmidt, 161 W. Third St., Williamsport, PA 17701, 570-323-8711. Defense counsel included Irwin Schneider, Esq., 721 South State Street, Clarks Summit, PA 18411, 570-587-2300, and Darryl R. Slimak, Esq., McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc., 811 University Dr., State College, PA 16801, 814-238-4926. My opinion denying post-trial motions is found at 1999 WL 337477891 (M.D. Pa. Dec. 9, 1999).

8. United States v. Wiener, No. 3:95-CR-00290. Eric Weiner, an attorney, was prosecuted for wire fraud in connection with his efforts to dispose of a vehicle he had reason to know was stolen. Following a five day jury trial, a jury convicted Defendant on the wire fraud charges. In an unpublished Opinion, the Third Circuit affirmed the judgment of conviction and 15 month sentence, but remanded for reconsideration of the amount of the fine to be imposed. Defendant's Motion to Vacate his conviction was denied in an opinion reported at 127 F. Supp. 2d 645 (M.D. Pa. 2001). The government was represented by Kim Douglas Daniel, Esq., U.S. Attorney's Office, Room 217, Federal Building, 228 Walnut Street, Harrisburg, PA 17108, 717-221-4482. At trial, Defendant was represented by William C. Costopoulos, Esq., Costopoulos, Foster & Fields, 831 Market Street, P.O. Box 222, Lemoyne, PA 17043, 717-761-2121.

9. Habecker v. Clark Equipment Company and Forklifts, Inc., No.1:86-cv-00352. This case was assigned to me shortly after I became a District Judge. The case had been tried several times by the prior presiding Judge, with the Court of Appeals finding reversible error following each trial. Following a two-week trial, a jury returned a verdict in favor of the defendants. While the matter was pending before me on post-trial motions, I convened a settlement conference that ultimately resulted in an amicable resolution of the controversy. Plaintiff was represented by Gerald F. Posner, Esq., Posner, Posner & Posner, 1400 Penobscot Building, Detroit, MI 48226, 313-965-7784. Defense counsel included Richard W. Hollstein, Esq., Hollstein, Keating, Cattell, Johnson & Goldstein, P.C., Eight Penn Center, 1628 John F. Kennedy Boulevard, Suite 2000, Philadelphia, PA 19103, 215-320-3261 and F. Lee Shipman, Esq., Goldberg, Katzman & Shipman, 320 E. Market St., P.O. Box 1268, Harrisburg, PA 17108-1268, 717-234-4161.

10. Homar v. Gilbert, No. 3:93-cv-00852. This case involved the question of whether an employee suspended without pay based upon his arrest on drug related charges was entitled to notice and hearing prior to his suspension. I ruled that a pre-suspension opportunity to be heard was not required. The Court of Appeals reversed in an Opinion reported at 89 F.3d 1009 (3d Cir. 1996). The Supreme Court granted certiorari, and reversed the Court of Appeals in Gilbert v. Homar, 520 U.S. 924 (1997). The case was remanded for a determination of whether plaintiff had received an adequately prompt post-suspension hearing. I ultimately ruled that plaintiff's due process claim with respect to the timeliness of the opportunity to be heard after he was suspended from his position as a campus

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police officer was without merit and also rejected his substantive due process claims. My opinion on remand is reported at 63 F. Supp. 2d 559 (M.D. Pa. 1999). A remaining claim pertaining to his demotion to the position of grounds keeper was set for trial, and the case settled shortly prior to trial. Plaintiff was represented by James V. Fareri, Esq., Newman, Williams, Mishkin, Corveleyn, Wolfe & Fareri, 712 Monroe St., P.O. Box 511, Stroudsburg, PA 18360, 570-421-9090. Defendants were represented by Gwendolyn T. Mosley, Esq., Office of Attorney General, 15th Floor, Strawberry Square, Harrisburg, PA 17120, 717-787-1180.

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. In re: Pressure Sensitive Label Stock Anti Trust Litigation, No. 03-CV-1556, 2007 WL 4150666 (M.D. Pa. Nov. 19, 2007) (opinion granting motion for class certification in multi-district antitrust litigation). Counsel include Ira Richards, Esq., 1717 Arch Street, Suite 3838, Philadelphia, PA 19103, W. Joseph Bruckner, 100 Washington Avenue, South, Suite 2200, Minneapolis, MN, 55410-2179, 612-339-6900. Attorneys for defendants include Margaret M. Zwisler, Latham & Watkins, 555 11th Street, NW, Suite 1000, Washington, DC 20004-1304, Margarette M. Sullivan, Latham & Watkins, 202-637-2200, Patrick J. Ahern, Baker & McKenzie, 1 Prudential Plaza, 130 East Randolph Drive, 35th Floor, Chicago, IL 60601, 312-861-8000, George A. Reihner, Wright & Reihner, PC, 148 Adams Avenue, Scranton, PA 18503, Trammell Newton, Jones Day, 1420 Peach Tree Street, NE, Suite 800, Atlanta, GA 30309, 404-521-3939.

2. Bauer v. Bayer AG, 564 F. Supp. 2d 365 (M.D. Pa. 2008)(granting summary judgment in favor of manufacturer of insecticide against bee keepers' claims that insecticide decimated honey bee population). Counsel for plaintiff included James J. Riley, 1 Mahantongo Street, Pottsville, PA 17910, 570-622-2455, and Joseph Fisher, Provost Umphrey, 490 Park Street, P.O. Box 4905, Beaumont, TX 77704, 800-289-0101. Defense counsel included Joseph G. Petrosinelli, Williams & Connolly, 725 12 Street, NW, Washington, DC 20005, 202-434-5000, and Joseph A. Murphy, 638 Spruce Street, Scranton, PA 18501, 570-344-9444.

3. Khouzam v. Hogan, 529 F. Supp. 2d 543 (M.D. Pa. 2008) (see description and identification of counsel above).

4. United States v. D'Elia, No. 3:CR-06-191, 2007 WL 2458487 (M.D. Pa. Aug. 24, 2007)(granting, in part, motion to suppress in prosecution of reputed mafia leader). The government was represented by Gordon A. Zubrod, Esq., U.S. Attorney's Office, 228 Walnut St., Harrisburg, PA 17108, 717-221-4482. The defendant was represented by Attorneys James A. Swetz, Esq., Cramer, Swetz & McManus, 711

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Sarah Street, Stroudsburg, PA 18360, 570-421-5568, and Philip Gelso, Esq., Briechle & Gelso, LLC, 63 Pierce Street, Kingston, PA 18704, 570-763-0006.

5. Wolfhawk v. Schuylkill County, No. 3:CV-05-1984, 2005 WL 2810608 (M.D. Pa. Oct. 27, 2005) (denying motion for preliminary injunction that sought to restrain Children and Youth Services from taking custody of Plaintiff's newborn son on the basis of her husband's 22 year old sexual assault conviction on grounds of abstention and absence of evidence of conscience-shocking conduct). Counsel for plaintiff was Paula Kay Knudsen, Esq., American Civil Liberties Union of Pennsylvania, 105 North Front Street, Suite 225, Harrisburg, PA 17101, 717-236-6827, and Mary Catherine Roper, Esq., American Civil Liberties Union of Pennsylvania, P.O. Box 1161, Philadelphia, PA 18105, 215-592-1513, ext 116. Defense counsel was Karen Rismiller, Esq., Union Street Station, 103 East Union Street, Pottsville, PA 17901, 570-628-2333.

6. Leprino Foods Co. v. Gress Poultry, Inc., No. 02-CV-1073, 379 F. Supp. 2d 659 (M.D. Pa. 2005) (denying summary judgment in favor of bailee of eight million pounds of mozzarella on the ground that genuine issue of material fact existed as to the condition of the cheese when it was manufactured, packaged and then transported to the bailee's warehouse). Counsel for plaintiff included Benson K. Friedman, Esq., McDermott, Will & Emery, 227 West Monroe Street, Suite 4400, Chicago, IL 60606, 312-984-7654, and James R. Carroll, Carroll & Carroll, 100 Center Street, Athens, PA 18810, 570-882-8683. Defendants were represented by Jean M. Gardner, Schindel, Farman & Lipsius LLP, 14 Penn Plaza, Suite 500, New York, NY 10122, 212-563-1710, and Joseph O'Brien, Esq., Oliver Price & Rhodes, 1212 South Abington Road, Clarks Summit, PA 18411, 570-585-1200.

7. Lawson v. Gerlinski, No. 3:CV-02-02366, 332 F. Supp. 2d 735 (M.D. Pa. 2004) (granting habeas corpus relief in favor of an alien subject to deportation who had presented evidence of a substantial risk of retaliation due to his cooperation with United States law enforcement authorities). Petitioner was represented by Federal Public Defender Melinda C. Ghilardi, Esq., 116 N. Washington Avenue, Suite 2-C, Scranton, PA 18503, 570-343-6285. Respondent was represented by Daryl F. Bloom, United States Attorney's Office, 228 Walnut Street, Suite 220, Harrisburg, PA 17108, 717-221-4482.

8. Santana Products, Inc. v. Bobrick Washroom Equipment, Inc., No. 3:CV-96-1794, 249 F. Supp. 2d 463 (M.D. Pa. 2003) (in an antitrust and false advertising action, I ruled that the Noerr/Pennigton Doctrine barred all claims arising out of defendant's contacts with public entity buyers; the defendant's sales campaign was not an unreasonable restraint of trade; the plaintiff's "shared monopoly" claim was not cognizable under section 2 of the Sherman Act; and fact issues existed as to whether some of competitor's advertisements were literally false), aff'd. in part, vacated in part and remanded, 401 F.3d 123 (3d Cir. 2005) (the Court of Appeals affirmed the grant of summary judgment in favor of the defendant on the Section 1 Sherman Act Claim and tortious interference with prospective contract claim, but found that the

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false advertising claims were barred by the doctrine of laches, thus warranting entry of summary judgment in favor of the defendant). Counsel for the plaintiff included William E. Jackson, Esq., Stites & Harbison, PLLC, 1199 North Fairfax St., Suite 900, Alexandria, VA 22314, 703-739-4900, and Gerald J. Butler, Esq., 142 N. Washington Avenue, Suite 800, Scranton, PA 18503, 570-961-5824. Defendants were represented by Carl W. Hittinger, Esq., DLA Piper US LLP, 49th Floor, 1650 Market St., Philadelphia, PA 19103, 215-656-2449, and Walter F. Casper, Jr., Esq., P.O. Box 513, Carbondale, PA 18407, 570-282-6910.

9. New Dana Perfumes Corp. v. The Disney Store, Inc., No. 3:CV-00-1345, 131 F. Supp. 2d 616 (M.D. Pa. 2001) (denying motion for preliminary injunction to restrain defendant from use of "Tinkerbell" character on grounds of undue delay in seeking injunctive relief and the absence of evidence supporting the dilution claim). Plaintiff was represented by James H. Heller, Esq., Cozen O'Connor, 1900 Market Street, The Atrium, Philadelphia, PA 19103, 215-665-2189. Defendant was represented by Bonnie B. Plosker, Esq., Fitzpatrick Cella Harper & Scinto, 38th Floor, 30 Rockefeller Plaza, New York, NY 10112, 212- 218-2100. Defendant was also represented by Pasquale A. Razzano at the same address and telephone number.

10. Mariani v. United States, No. 3:CV-98-1701, 80 F. Supp. 2d 352 (M.D. Pa. 1999) (certifying to the Court of Appeals the question of whether bans on corporate and conduit political contributions violated the First Amendment, with the Court of Appeals determining that the challenge to the ban on corporate contributions was not frivolous but answering the questions in the negative). 212 F.3d 761 (3d Cir. 2000) cert. denied, 531 U.S. 1010 (2000). Plaintiff was represented by Floyd Abrams, Esq., Cahill, Gordon & Reindel, 80 Pine St., New York, NY 10005, 212-701-3000, and Mark E. Cedrone, Esq., Cedrone & Pinto, P.C., 123 South Broad Street, Suite 810, Philadelphia, PA 19109, 215-925-2500. The Government was represented by Martha E. Rubio, Esq., U.S. Department of Justice, Civil Division, P.O. Box 883, Washington, DC 20044, 202-616-0680, along with Theodore C. Hirt, Esq., U.S. Department of Justice, Room 7106, 20 Massachusetts Avenue, Washington, DC 20530, 202-514-4785. Intervenor, Federal Election Commission was represented by David Kolker, Esq., Federal Election Commission, 999 E Street, N.W., Washington, DC 20463, 202-219-3400.

e. Provide a list of all cases in which certiorari was requested or granted.

Writ of Certiorari Granted (2)

Coss v. Lackawanna County District Attorney, No. 1:CV-94-1481, 2000 WL 1372871 (M.D. Pa. Aug. 23, 2000), cert. granted, 531 U.S. 923 (2000), opinion rendered at, 532 U.S. 394 (2001).

Homar v. Gilbert, No. 3:93-cv-00852 (M.D. Pa. filed Mar. 17, 1995), cert. granted, 519 U.S. 1052 (1997), opinion rendered at, 520 U.S. 924 (1997).

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Writ of Certiorari Denied (26)

United States v. Perdomo, No. 06-cr-00073-2 (M.D. Pa. filed June 27, 2007), aff'd, 298 F. App'x 185 (3d Cir. 2008), cert. denied, No. 08-9575, 2009 WL 899625 (U.S. May 4, 2009).

United States v. Miranda, No. 06-cr-00052-7 (M.D. Pa. filed Oct. 11, 2007), aff'd, No. 07-4103, 2008 WL 4649385 (3d Cir. 2008), cert. denied, 129 S. Ct. 664 (2008).

Alexander v. Forr, No. 3:CV-04-0370, 2006 WL 2796412 (M.D. Pa. Sept. 27, 2006), aff'd, 297 F. App'x 102 (3d Cir. 2008), cert. denied, 129 S. Ct. 937 (2009).

Lewis v. Romine, No. 3:CV-00-1291, 2001 WL 1555273 (M.D. Pa. Oct. 18, 2001), aff'd, 85 F. App'x 871 (3d Cir. 2003), cert. denied, 541 U.S. 1003 (2004).

United States v. Smith, No. 3:03-cr-0045 (M.D. Pa. filed June 30, 2006), aff'd, 250 F. App'x 522 (3d Cir. 2007), cert. denied, 128 S. Ct. 2103 (2008).

Phippen v. Nish, No. 05-cv-1446 (M.D. Pa. filed Oct. 6, 2006), appeal dismissed, 223 F. App'x 191 (3d Cir. 2007), cert. denied, 128 S. Ct. 1234 (2008).

Michael v. Horn, No. 3:CV-96-1554, 2004 WL 438678 (M.D. Pa. Mar. 10, 2004), remanded, 459 F.3d 411 (3d Cir. 2006), cert. denied, Beard v. Michael, 549 U.S. 1260 (2007).

United States v. Gorko, No. 00-CR-00259 (M.D. Pa. filed Oct. 26, 2004), aff'd, 169 F. App'x 745 (3d Cir. 2006), cert. denied, 549 U.S. 946 (2006).

Santana Products, Inc. v. Bobrick Washroom Equipment, Inc., 249 F. Supp. 2d 463 (M.D. Pa. 2003), aff'd in part, vacated in part, and remanded, 401 F.3d 123 (3d Cir. 2005), cert. denied, 546 U.S. 1031 (2005).

United States v. Fulani, 277 F. Supp. 2d 454 (M.D. Pa. 2003), rev'd and remanded, 368 F.3d 351 (3d Cir. 2004), cert. denied, 543 U.S. 1091 (2005).

United States v. Polishan, No. 3:CR-96-274, 2001 WL 848583 (M.D. Pa. July 27, 2001), aff'd, 336 F.3d 234 (3d Cir. 2003), cert. denied, 540 U.S. 1220 (2004).

Garcia v. Romine, No. 01-cv-02143 (M.D. Pa. filed May 13, 2002), aff'd, 65 F. App'x 873 (3d Cir. 2003), cert. denied, 540 U.S. 929 (2003).

United States v. Chambers, No. 01-cr-369 (M.D. Pa. filed June 27, 2002), aff'd, 66 F. App'x 281 (3d Cir. 2003), cert. denied, 538 U.S. 1006 (2003).

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United States v. Yocum, No. 99-cr-00217 (M.D. Pa. filed May 23, 2001), aff'd, 281 F.3d 226 (3d Cir. 2001), cert. denied, 537 U.S. 855 (2002).

Katyle v. Hospital Ass'n of Northeastern Pennsylvania, No. 99-cv-0656 (M.D. Pa. filed Oct. 30, 2000), aff'd, 276 F.3d 577 (3d Cir. 2001), cert. denied, 535 U.S. 1040 (2002).

Fessler v. Karis, 99-cv-1324 (M.D. Pa. filed Apr. 19, 2008), aff'd, 275 F.3d 34 (3d Cir. 2001), cert. denied, Fessler v. Collins, 537 U.S. 815 (2002).

Mariani v. United States, 80 F. Supp. 2d 352 (M.D. Pa. 1999), aff'd, 212 F.3d 761 (3d Cir. 2000), cert. denied, 531 U.S. 1010 (2000).

United States v. Sweeting, No. 3:98-cr-00189 (M.D. Pa. filed April 17, 2001), vacated and remanded, 213 F.3d 95 (3d Cir. 2000), cert. denied, 531 U.S. 906 (2000).

United States v. Graves, No. 94-cr-00108 (M.D. Pa. filed Sept. 27, 2009), aff'd, 124 F.3d 189 (3d Cir. 1997), cert. denied, 522 U.S. 989 (1997).

Colelli v. Sandt, No. 95-cv-0422 (M.D. Pa. filed Sept. 20, 1996), aff'd, 118 F.3d 1574 (3d Cir. 1997), cert. denied, 522 U.S. 982 (1997).

Durko v. OI-Neg TV Products, Inc., 870 F. Supp. 1278 (M.D. Pa. 1994), aff'd, 103 F.3d 112 (3d Cir. 1996), cert. denied, 520 U.S. 1167 (1997).

United States v. Prado, No. 3:CR-94-155-01 (M.D. Pa. filed Jan. 29, 1996), aff'd, 96 F.3d 1436 (3d Cir. 1996), cert. denied, 519 U.S. 955 (1996).

United States v. Alcan Aluminum Corp., 892 F. Supp. 648 (M.D. Pa. 1995), aff'd, 96 F.3d 1434 (3d Cir. 1996), cert. denied, 521 U.S. 1103 (1997).

United States v. Jefferson, No. 94-cr-00258 (M.D. Pa. filed Dec. 7, 2005), aff'd, 88 F.3d 240 (3d Cir. 1996), cert. denied, 519 U.S. 1019 (1996).

Kalwaytis v. Preferred Meal Systems, Inc., No. 93-cv-00371, aff'd and remanded, 78 F.3d 117 (3d Cir. 1996), cert. denied, 519 U.S. 819 (1996).

Writ of Certiorari Dismissed (2)

Rodenbaugh v. Ciavarella, Jr., No. 01-cv-1228 (M.D. Pa. filed Dec. 27, 2001), appeal dismissed, 52 F. App'x 189 (3d Cir. 2002), cert. dismissed, 538 U.S. 942 (2003).

Weaver v. Frank, No. 96-cv-01761 (M.D. Pa. filed Nov. 30, 1999), aff'd, 36 F. App'x 693 (3d Cir. 2002), cert. dismissed, 538 U.S. 942 (2003).

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f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

1. Homar v. Gilbert, No. 3:93-cv-00852. By Memorandum and Order filed on March 17, 1995, I granted defendants' motion for summary judgment in this procedural and substantive due process case concerning the suspension and ultimate demotion of the plaintiff, a security guard who was arrested for drug trafficking. The Court of Appeals, in an opinion published at 89 F.3d 1009 (3d Cir. 1996), held that the plaintiff was entitled to notice and an opportunity to be heard prior to suspension without pay, and that fact issues existed concerning the employee's demotion and whether officials were motivated by bad faith such as to violate the employee's substantive due process rights. The Supreme Court reversed the Court of Appeals in Gilbert v. Homar, 520 U.S. 924 (1999), concluding that a suspension without pay based upon a drug trafficking arrest need not be preceded by notice and an opportunity to be heard. The matter was remanded for consideration of the timeliness of post-suspension process. On remand, I found that the plaintiff was afforded a timely opportunity to be heard following his suspension and that he did not have a property interest in his employment sufficient to support a substantive due process claim. The issue pertaining to his demotion was ultimately settled. My opinion on remand is at 63 F. Supp. 2d 559 (M.D.Pa. 1999).

2. Khouzam v. Attorney General, 529 F. Supp. 2d 543 (M.D. Pa. 2008), vacated, 549 F.3d 235 (3d Cir. 2008). The Court of Appeals vacated my determination that there was habeas corpus jurisdiction over the petitioner's challenge to his removal on the strength of diplomatic assurances of non-torture, but agreed with my conclusion that removal without an opportunity to challenge the validity of the diplomatic assurance denied due process.

3. Nunez v. Lindsay, No. 07-3307, 2007 WL 1875797 (M.D. Pa. June 27, 2007), rev'd, 284 F. App'x 938 (3d Cir. 2008). I ruled that the federal inmate did not have a cognizable claim arising out of his request for a transfer to a Residential Re-entry Center, concluding that the Bureau of Prisons had wide discretion to determine the place of confinement prior to an inmate's pre-release eligibility date. The Court of Appeals held that an inmate was entitled to have the Bureau of Prisons give meaningful consideration to a request for a transfer to a Residential Re-Entry Center, finding that Nunez's request had been denied on the basis of a regulation the Court of Appeals had invalidated in Woodall v. Federal Bureau of Prisons, 432 F.3d 235 (3d Cir. 2005). On remand, the petition was dismissed as moot.

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4. Allen v. American Federal of Government Employees, No. 3:06-CV-02213. On November 15, 2006, I dismissed this pro se action as frivolous. Plaintiff had alleged an elaborate conspiracy of torture and abuse throughout the Bureau of Prisons system by numerous alleged prison collective bargaining unit employees. On appeal, the Court of Appeals agreed that the conspiracy claim was obviously frivolous, but found that the claims of retaliation and denial of access to the courts were not so incredible to warrant dismissal. 276 F. App'x 197 (3d Cir. 2008). On remand, I dismissed the action when the pro se plaintiff failed to comply with an Order calling for an amended complaint. On appeal after remand, the Court of Appeals affirmed the dismissal of the action. 317 F. App'x 180 (3d Cir. 2009).

5. Michael v. Horn, No. 3:CV-96-1554. In this habeas corpus challenge to the death penalty imposed following Hubert Michael's plea of guilty to murder, I was called upon to determine whether the petitioner knowingly, rationally and voluntarily chose to waive pursuit of a collateral challenge to his state court conviction and sentence. Based upon the report and corroborating testimony of a court-appointed psychiatrist, I concluded in an Opinion dated March 10, 2004, reported at 2004 WL 438678, that petitioner was competent to do so. On appeal, the court held that post appeal letters from the expert raising doubts about prisoner's competency warranted a remand to determine whether the prisoner was competent to dismiss his appeal. 459 F.3d 411 (3d Cir. 2006). The Court of Appeals remanded the matter for the limited purpose of determining Petitioner's competence to dismiss his appeal, and if found competent, to determine whether he still wanted to dismiss his appeal. In an Order dated December 11, 2007, and after considering a supplemental report of the court-appointed expert, I determined that the Petitioner was competent and that he did not wish to dismiss the appeal he had taken in his case. The matter is now pending a decision from the Court of Appeals.

6. Citi Financial v. Gimbi, No. 3:05-CV-01230. Defendant sought to remove the state court action to federal court after judgment had been entered against her. Concluding that removal was improper so that subject matter jurisdiction was lacking, I dismissed the action in an Order dated November 8, 2005. The Court of Appeals, at 183 F. App'x 232 (3d Cir. 2006), agreed that removal was improper, but held that the better course was to remand the case rather than to dismiss it.

7. Chimenti v. Kimber, No. 3:CV-01-0273. I dismissed the pro se inmate's deliberate indifference to serious medical needs claim in unpublished opinions dated March 15, 2002 and March 19, 2003. The Court of Appeals affirmed in part and reversed in part, 133 F. App'x 833 (3d Cir. 2005), holding that allegations against the former Secretary of the Department of Corrections that he was personally involved in the denial of treatment for the Plaintiff's hepatitis C condition were sufficient to withstand a motion to dismiss, and that plaintiff had adequately exhausted administrative remedies to pursue an action against the medical director.

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8. Santana Products, Inc. v. Bobrick Washroom Equipment, Inc., No. 3:CV-96-1794. As noted above, I granted the defense motion for summary judgment in substantial part. 249 F. Supp. 2d 463 (M.D. Pa. 2003). On appeal, a majority of the Court of Appeals affirmed the decision to grant summary judgment in favor of the defendant on the Plaintiff's Sherman Act Section 1 claim, but found that the false advertising claims brought under the Lanham Act were barred by the doctrine of laches. 401 F.3d 123 (3d Cir. 2005). As a result of the Third Circuit's ruling, Defendants were entitled to judgment in their favor.

9. Zelinski v. Pennsylvania State Police, No. 3:CV-01-1979. I granted summary judgment in favor of defendants on the plaintiff's sexual harassment and retaliation claims in an opinion reported at 282 F. Supp. 2d 251 (M.D. Pa. 2003). The Court of Appeals affirmed in part, reversed in part, and remanded. 108 F. App'x 700 (3d Cir. 2004). Specifically, while agreeing that there was no evidence that the plaintiff's superior engaged in alleged acts of sexual harassment and that plaintiff had not engaged in speech protected by the First Amendment, it found that genuine issues of material fact existed as to whether harassment suffered at the hands of a co-worker were sufficiently severe or pervasive to create a hostile work environment and as to whether the plaintiff had engaged in conduct protected by the anti-retaliation provisions of Title VII of the Civil Rights Act of 1964. On remand, the case settled.

10. Spruill v. Gillis, No. 3:01-CV-01625. On May 29, 2002, I had granted defendants' motions to dismiss, reasoning that the pro se plaintiff's failure to seek money damages in his prison grievances constituted a failure to exhaust administrative remedies and that his averments did not sustain a claim of deliberate indifference to serious medical needs in light of the fact that he had received medical treatment. On appeal, the Court of Appeals affirmed in part and reversed in part. The appellate court concluded that the plaintiff had not failed to exhaust administrative remedies with respect to his claim for money damages and that the allegations were sufficient to support an Eighth Amendment deliberate indifference claim, but that dismissal of the non-medical prison official was appropriate. 372 F.3d 218 (3d Cir. 2004). On remand, I found that Defendants were entitled to summary judgment on the merits of Plaintiff's claim, and the Court of Appeals, on May 22, 2009, affirmed. 2009 WL 1470397 (3d Cir. May 22, 2009).

11. United States v. Fulani, No. 3:02-CR-049. By opinion dated August 20, 2003, I had suppressed evidence obtained during a search of luggage removed from a bus, finding that the passenger had not manifested an intention to abandon the bag when he failed to respond to officers' questions as to who claimed the bag. 277 F. Supp. 2d 454 (M.D. Pa. 2003). The Court of Appeals disagreed, and reversed the decision to grant the motion to suppress evidence. 368 F.3d 351 (3d Cir. 2004). On remand, the government moved to dismiss the original indictment and defendant plead guilty to an information charging interstate travel in aid of a

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racketeering enterprise, a charge that carried a five year maximum prison term. He was sentenced on October 14, 2005, to a prison term of 52 months.

12. United States v. Lamplugh, No. 4:95-CR-00169. Defendant Theresa Lamplugh was convicted of failure to file an income tax return. On appeal, the Court of Appeals remanded the matter to this Court to determine whether her counsel had been ineffective in producing records without having read them. On remand, I determined that counsel had been ineffective and granted a new trial in an opinion dated March 12, 2002. On appeal, the Court of Appeals reversed, concluding that the defendant could not claim that her counsel was ineffective in failing to discover her attempts to deceive the court with the records in question. 334 F.3d 294 (3d Cir. 2003).

13. Lyons v. Mendez, No. 3:98-CV-01828. In an opinion filed on September 6, 2000, I concluded that Section 235(b)(3) of the Sentencing Reform Act did not take effect until after the petitioner had committed his crime. The Court of Appeals disagreed as to the effective date of this provision of the Sentencing Reform Act, and reversed my decision with a direction to issue a writ of habeas corpus. 303 F.3d 285 (3d Cir. 2002).

14. Montrose Medical Group Participating Savings Plan v. Bulger, No. 3:94-CV-2141. I had granted summary judgment on the basis of judicial estoppel, finding that representations plaintiffs had made in a related prior litigation that the benefits plan in question was not covered by ERISA precluded plaintiffs from taking a contrary position in this litigation. 2000 WL 33775290 (M.D. Pa. Mar. 20, 2000). The Court of Appeals disagreed with the application of the doctrine of judicial estoppel, and reversed the matter. 243 F.3d 773 (3d Cir. 2001). On remand, the case was settled as to certain defendants and a default judgment was entered against the remaining defendant.

15. United States v. Watson, No. 3:98-CR-00147. The appeals court reversed Defendant's conviction following a jury trial, finding that I had erred in allowing a law enforcement officer to express an opinion concerning the Defendant's intent to distribute narcotics. 260 F.3d 301 (3d Cir. 2001). Defendant was re-tried, and found guilty a second time. The Court of Appeals affirmed the conviction. 80 F. App'x 765 (3d Cir. 2003).

16. Steele v. Blackman, No. 3:99-CV-01256. By Memorandum and Order dated January 14, 2000, I had concluded that the petitioner was ineligible to apply for a waiver of inadmissibility because he qualified as an "aggravated felon." The Court of Appeals determined that his state court convictions for criminal sale of marijuana did not qualify as aggravated felonies because they were classified as misdemeanors under state law. 236 F.3d 130 (3d Cir. 2001).

17. State Farm Mutual Automobile Insurance Company v. Coviello, No. 3:99-CV-00585. In a decision issued on November 22, 1999, I had concluded that an

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arbitration clause in an underinsured motorist policy was binding and encompassed the dispute. Accordingly, I dismissed the insurance company's declaratory judgment action. The Court of Appeals disagreed with this conclusion. 233 F.3d 710 (3d Cir. 2000). On remand, I found that the "family vehicle exclusion" in the underinsured motorist policy was applicable, comported with public policy, and precluded recovery in this case. 220 F. Supp. 2d 401 (M.D. Pa. 2002). No appeal was taken from this ruling.

18. United States v. Sweeting, No. 3:98-CR-00189. I had sentenced this single mother of five who plead guilty to a drug trafficking charge to five years probation with home confinement of twelve months. The Court of Appeals reversed, finding the sentence to be an unwarranted departure from the pre-Booker guidelines range. 213 F.3d 95 (3d Cir. 2000). On remand, I sentenced the defendant to a prison term of 27 months with a recommendation that she participate in the intensive confinement program. She successfully completed the intensive confinement program, thereby shortening her prison term. Thereafter, a motion for early termination of her supervised release was granted on the grounds that she had complied with all of the requirements of supervised release and was no longer in need of supervision.

19. Coss v. Lackawanna County District Attorney, No. 1:94-CV-1481. I had denied habeas corpus relief, finding that the ineffective assistance of counsel did not prejudice Petitioner's defense. A divided Court of Appeals reversed. 204 F.3d 453 (3d Cir. 2000). The Supreme Court granted certiorari, and, in turn, reversed the court of appeals, concluding that the petitioner's claim was not cognizable. 532 U.S. 394 (2001). Specifically, the Court overturned Third Circuit precedent which had indicated that a habeas corpus petition could be used to challenge a conviction for which the sentence had been served if the conviction was used to enhance the sentence then being served by the petitioner.

20. Duffey v. Lehman, No. 3:94-CV-1947. I held that the death-sentenced state inmate was not entitled to a stay of execution because he had inexcusably ignored available post-conviction processes for a period of more than six years, and denied a certificate of probable cause to appeal. 880 F. Supp. 303 (M.D. Pa. 1995). The stay, however, had effectively nullified the writ of execution that had been issued by the Governor of Pennsylvania. The Third Circuit, in an opinion dated May 22, 1996, vacated this Court's denial of the stay of execution, finding that the matter had been rendered moot in light of the expiration of the writ of execution. 84 F.3d 668 (3d Cir. 1996)

21. Kalwaytis v. Preferred Meal Systems, Inc., No. 3:93-CV-00371. I had granted summary judgment in favor of former employees on their Worker Adjustment and Retraining Notification Act claim and awarded damages. The Court of Appeals affirmed the liability determination, but remanded for a re-calculation of damages. 78 F.3d 117 (3d Cir. 1996), cert. denied, 519 U.S. 819 (1996). On remand, the parties stipulated to the amount of damages.

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22. Lewis v. Taylor, No. 3:CV99-0303. The court of appeals vacated my March 8, 1999 dismissal of the action, finding that the fact that plaintiff named me as a defendant in an amended pleading mandated my disqualification, even though his joinder of me was frivolous. The court of appeals ruling is not published.

23. United States v. Tucker, No. 3:CR 02-00249-001. The Court of Appeals reversed my determination that a crack cocaine offender who was sentenced within the guidelines range pursuant to Rule 11(c)(1)(C) plea agreement was eligible for a sentence reduction under the retroactive amended guidelines provision dealing with crack cocaine offenses.

g. Provide 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.

I do not make determinations as to whether my opinions are to be published, deferring to the judgment of the publishers. I estimate that approximately 30% of my opinions can be found in Federal Supplement, Federal Rules Decision, or Westlaw. Since March 1, 2003, all my opinions are available through the federal courts Public Access to Court Electronic Records (PACER) system. In addition, I have been placing my opinions on CourtWeb, a publically-accessible internet site, at http://www.nysd.uscourts.gov/courtweb/public.htm.

h. Provide 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, provide copies of the opinions.

Puifory v. Reilly, No. 3:08-CV-982, 2009 WL 839354 (M.D. Pa. Mar. 30, 2009).

Gardner v. Luzerne County, No. 3:CV-07-1947, 2009 WL 224699 (M.D. Pa. Jan. 28, 2009).

Jaslar v. Zavada, No. 3:CV-05-2080, 2009 WL 82553 (M.D. Pa. Jan. 12, 2009).

Smith v. Kyler, No. 1:CV-03-0898, 2008 WL 474252 (M.D. Pa. Feb. 20, 2008).

Khouzam v. Hogan, 529 F. Supp. 2d 543 (M.D. Pa. 2008).
Khouzam v. Attorney General of U.S., 549 F.3d 235 (3d Cir. 2008).
(Decision Vacated)

Deluzio v. Monroe County, No. 3:CV-00-1220, 2006 WL 3098033 (M.D. Pa. Oct. 30, 2006).
Deluzio v. Monroe County, 271 Fed App'x 193 (3d Cir. 2006).
(Decision Affirmed)

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Hall v. Pennsylvania Dept. of Corrections, No. 3:CV-02-1255, 2006 WL 2772551 (M.D. Pa. Sept. 25, 2006).

Wolfhawk v. Schuylkill County, No. 3:CV-05-1984, 2005 WL 2810608 (M.D. Pa. Oct. 27, 2005).

Adkins v. Luzerne County Children & Youth Services of Luzerne County, No. 3:CV-01-0470, 2005 WL 2129921 (M.D. Pa. Sept. 02, 2005).

Haynes v. Department of Homeland Sec., No. 3:CV-05-0339, 2005 WL 1606321 (M.D. Pa. July 08, 2005).

Gleeson v. Robson, Nos. 3:CV-02-1747, 3:CV-03-0552, 2005 WL 1210948 (M.D. Pa. May 06, 2005).
Gleeson v. Prevoznik, 190 F. App'x 165 (3d Cir. 2006).
(Decision Affirmed)

Lawson v. Gerlinski, 332 F. Supp. 2d 735 (M.D. Pa. 2004).

Black Hawk v. Pennsylvania, 225 F. Supp. 2d 465 (M.D. Pa. 2002).
Blackhawk v. Pennsylvania, 381 F.3d 202 (3d Cir. 2004).
(Decision Affirmed)

Brozusky ex rel. Brozusky v. Hanover Tp., 222 F. Supp. 2d 606 (M.D. Pa. 2002).

S.M. v. Lakeland School Dist., 148 F. Supp. 2d 542 (M.D. Pa. 2001).
S.M. ex rel. L.G. v. Lakeland Sch. Dist., 33 F. App'x 635 (3d Cir. 2002).
(Decision Affirmed)

Padilla v. Miller, 143 F. Supp. 2d 479 (M.D. Pa. 2001).

Black Hawk v. Pennsylvania, 114 F. Supp. 2d 327 (M.D. Pa. 2000).

Chukwuezi v. Reno, No. CIV. A. 3:CV-99-2020, 2000 WL 1372883 (M.D. Pa. May 16, 2000).

Mariani v. United States, 80 F. Supp. 2d 352 (M.D. Pa.1999).
Mariani v. United States, 212 F.3d 761 (3d Cir. 2000).
(Certifying Question Answered)
Mariani v. United States, 531 U.S. 1010 (2000).
(Denying Cert.)

Homar v. Gilbert, 63 F. Supp. 2d 559 (M.D. Pa. 1999).
Homar v. Gilbert, 89 F.3d 1009 (3d Cir. 1996).
Gilbert v. Homar, 520 U.S. 924 (1997).

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On Remand to
Homar v. Gilbert, 149 F.3d 1164 (3d Cir. 1998).

Kurilla v. Callahan, 68 F. Supp. 2d 556 (M.D. Pa. 1999).

Williams v. Fedor, 69 F. Supp. 2d 649 (M.D. Pa. 1999).
Williams v. Fedor, 211 F.3d 1263 (3d Cir. 2000).
(Decision Affirmed)

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

Jama v. Esmor Correctional Services, Inc., No. 08-2500, ___ F.3d ___, 2009 WL 2449604 (3d Cir. Aug. 12, 2009).

United States v. Kesting, No. 08-2148, 2009 WL 2371845 (3d Cir. Aug. 4, 2009).

United States v. Thielemann, No. 08-2335, 2009 WL 2357026 (3d Cir. Aug. 3, 2009).

In re Bayside Prison Litigation, No. 07-3739, 2009 WL 2170417 (3d Cir. July 22, 2009).

Araoz v. United States, No. 08-2248, 2009 WL 1886011 (3d Cir. June 29, 2009).

In re Bayside Prison Litigation, No. 08-2777, 2009 WL 1803271 (3d Cir. June 25, 2009).

United States v. Jones, No. 08-2638, 2009 WL 1783991 (3d Cir. June 24, 2009). I authored the non-precedential opinion that affirmed the District Judge's determinations concerning the amount of loss attributable to the defendant in this counterfeit credit card prosecution; defendant's obstruction of justice by providing materially false information about his financial condition; and use of sophisticated means to perpetrate the crime.

In re Bayside Prison Litigation, No. 07-3913, 2009 WL 1653893 (3d Cir. June 15, 2009).

United States v. Reina, No. 08-2417, 2009 WL 1448340 (3d Cir. May 22, 2009).

Junaidi v. Attorney General of U.S., 262 F. App'x 363 (3d Cir. 2008). I authored the non-precedential opinion that rejected the petitioner's challenge to his Order of Removal, finding that his allegation of prior counsel's ineffectiveness did not

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provide an adequate basis for tolling the period within which to move to reopen his application for cancellation of removal.

Krensavage v. Bayer Corp., No. 06-4302, 2008 WL 177802 (3d Cir. Jan. 22, 2008). I authored the non-precedential opinion that affirmed the District Judge's determination that the denial of long term disability benefits was neither arbitrary nor capricious.

United States v. Jones, 261 F. App'x 412 (3d Cir. 2008). I authored the non-precedential opinion that affirmed the sentence imposed in the matter, concluding that the defendant's waiver of the right to appeal the sentence, set forth in his plea agreement, was valid and enforceable.

In re Pittsburgh Corning Corp., 260 F. App'x 463 (3d Cir. 2008).

Mulahasawovic v. U.S. Atty. Gen., 256 F. App'x 458 (3d Cir. 2007).

Cemex, Inc. v. Industrial Contracting and Erecting, Inc., 254 F. App'x 148, (3d Cir. 2007).

United States v. Jordan, 253 F. App'x 246 (3d Cir. 2007).

United States v. Harris, 253 F. App'x 171 (3d Cir. 2007).

United States v. Strickland, 237 F. App'x 773 (3d Cir. 2007). I authored the non-precedential opinion that found that parole officers had a sufficient basis for conducting a warrantless search of defendant's residence.

U.S. ex rel. Bogart v. King Pharmaceuticals, 493 F.3d 323 (3d Cir. 2007). I authored this precedential opinion in which the court held that the party bringing the qui tam action could not recover under the common fund doctrine an attorney fee award from settlement proceeds received by non qui tam states.

Snedeker v. Commissioner of Social Security, 244 F. App'x 470 (3d Cir. 2007). I authored the non-precedential opinion that affirmed the denial of social security disability benefits on the ground that the ALJ had not erred by failing to consult claimant's treating physician and in failing to classify the claimant's hypotension as a severe impairment.

United States v. Mathis, 238 F. App'x 807 (3d Cir. 2007).

Poulos v. Nicolaides, 241 F. App'x 25 (3d Cir. 2007).

Briseno-Flores v. Attorney General of U.S., 492 F.3d 226 (3d Cir. 2007).

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United States v. White, 235 F. App'x 876 (3d Cir. 2007). I authored this non-precedential opinion that found that the District Judge had not erred in imposing a four-level enhancement in the defendant's offense level for use of a firearm during the commission of a felony and also finding that the imprisonment term of 80 months was not unreasonable.

United States v. Elliott, 235 F. App'x 879 (3d Cir. 2007).

United States v. Smith, 224 F. App'x 194 (3d Cir. 2007).

Prajoga v. Attorney General of U.S., 233 F. App'x 184 (3d Cir. 2007).

United States v. USX Corp., 68 F.3d 811 (3d Cir. 1995). I authored this precedential opinion holding that the Comprehensive Environmental Response, Compensation and Liability Act imposed transporter liability on corporate officers and shareholders only if they participated in the liability-creating conduct, and finding that genuine issues of material fact precluded summary judgment on whether officers and shareholders of a waste hauler had sufficient knowledge of the company's decision to dump hazardous wastes so as to hold them personally liable.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (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.) 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 in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

Our Court maintains an "automatic" recusal system. Judges identify entities and/or persons that warrant their recusal so that a judge will not be assigned a case involving an entity or person on his or her recusal list.

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.

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MOTIONS FOR DISQUALIFICATION .

1. Mellott, et al v. USA, et al. - 1:94-cv-02071

   Filed 2/27/1995: Motion by plaintiff for recusal and for case to be heard by judge from another district - Motion granted. Case involved Deputy Marshals in the Middle District of Pennsylvania who regularly provided security for judges of this District. Case was assigned to a Delaware U.S. District Judge.

2. Schlegel, et al v. First Eastern Bank N, et al. - 3:94-cv-01617

   Filed 12/15/1994: Motion by plaintiff for recusal. Motion was denied. Plaintiffs were pro se and moved to disqualify because they were dissatisfied with my rulings. The motion was denied. I ultimately dismissed the action, and the dismissal was affirmed.

3. Boreland v. PA Corrections, Dept, et al. - 3:95-cv-01255

   Filed 10/24/1997: I do not recall the basis for the motion, which was denied in a Memorandum and Order filed on April 24, 1998.

4. Boreland v. Braggeman, No. 3:CV-93-0544

   Plaintiff moved for recusal based upon dissatisfaction with my rulings. The motion was denied by Memorandum and Order dated March 1, 1995.

5. United States v. Alcan Aluminum Corp. - 3:99-cv-01160

   Filed 12/15/1999: Motion by defendant Alcan Aluminum Corp. for recusal based upon my purported knowledge of relevant facts. By Memorandum and Order dated February 27, 2001, I denied the motion because my limited work on a tangentially related matter more than twenty years earlier did not warrant disqualification. Alcan sought mandamus relief on this issue, which was denied by the Third Circuit and by the United States Supreme Court.

6. Deluxe Delivery Services v. United States - 3:02-cv-00543

   Filed 4/17/2002: Plaintiff was represented by a non-lawyer whom the Third Circuit had enjoined from filing complaints of judicial misconduct, and I was a member of the Third Circuit Judicial Council which took that action. I denied the motion in an Order dated May 8, 2002. My dismissal of the action for lack of subject matter jurisdiction was affirmed.

7. Gleeson v. Robson, et al. - 3:02-cv-01747

   Following settlement, Plaintiff moved to disqualify me from presiding over a dispute concerning counsel fees on the ground that I had knowledge of material facts. I denied the motion in a written opinion that explained that knowledge gained as a settlement officer did not require disqualification.

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8. Algieri v. Conway, et al. - 3:03-cv-01838

The pro se litigant moved for disqualification based upon dissatisfaction with my dismissal of his action. The motion was dismissed as moot.

9. Ascenzi v. O'Brien, et al. - 3:05-cv-01184

Pro se plaintiff moved for recusal based upon dissatisfaction with court rulings. The motion was denied because dissatisfaction with court rulings does not warrant recusal.

10. Gleeson v. Dyller, et al. - 3:07-cv-00247

Plaintiff moved for recusal on the ground that I had personal knowledge of material facts. Because any knowledge of the facts was gained as a result of presiding over the relevant judicial proceedings, I denied the motion.

11. Thomas v. Conway - 3:04-cv-1137

The pro se Plaintiff's motion to disqualify me because he had filed an action against me (which was dismissed as frivolous) was granted.

12. Beardsley, et al. v. Ranck - 3:97-cv-684

The motion for disqualification was based upon my prior representation of parties adverse to the defendant in this case. The motion was granted.

SUA SPONTE RECUSALS (NO MOTION FILED)

CASES IN WHICH I DISQUALIFIED MYSELF BECAUSE MY FORMER LAW FIRM WAS INVOLVED

3:98-cv-2133 Carter Footwear, Inc. v. Graystone World-Wide, et al., Order filed 5/11/1999

3:99-cv-1634 Gardner v. McGroarty, et al., Order filed 10/14/1999

3:99-cv-1556 Pribula v. Wyoming Area School, et al., Order filed 11/12/1999

3:00-cv-1747 Rescigno, et al. v. City of Wilkes Barre, et al., Order filed 1/18/2001

3:01-cv-142 Natale v. Marwen, Inc., et al., Order filed 3/23/2001

3:01-cv-0710 Hallisy v. Gonchar, et al., Order filed 5/10/2001

3:95-cv-834 Medico v. Medico, et al., Order filed 10/3/1995

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3:96-cv-2003 Madwed, et al. v. Gruen Marketing, et al., Order filed 11/26/96

3:96-cv-2204 Patel v. McGroarty, et al., Order filed 2/7/97

3:96-cv-2205 Shemanski, et al. v. McGroarty, et al., Order filed 2/7/97

CONFLICTS WITH PARTIES

3:96-cv-443 Singer, et al v. Cosco, Inc., Order filed 3/28/1996
I had represented the Defendant in private practice in an unrelated matter. Counsel was directed to submit written waivers of disqualification. Because all parties did not submit written waivers, I disqualified myself in an Order dated March 28, 1996.

3:01-cv-0211 Khazzaka v. University of Scranton
I served on the Board of Trustees of a private institution as did the President of the University of Scranton, which was a defendant in this case.

3:02-cv-0900 International Union v. M.V.M., Inc.
Conflict in presiding over case involving Court Security Officers in Scranton.

3:94-cv-1511 Rhodes v. United States Inc., et al.
Case involved Judge Kosik of the Middle District as a Defendant; case reassigned outside of the district.

3:94-cv-1645 Price v. Deshmukh, et al.
I represented one of the defendants in private practice. As all parties did not waive this conflict, I disqualified myself.

3:96-cv-207 Mullen, et al. v. Guthrie Clinic, Ltd., et al.
I represented one of the defendants in private practice. As all parties did not waive this conflict, I disqualified myself.

3:96-cv-709 Larrabee v. Robert Packer Hospital, et al.
I represented one of the defendants in private practice. As all parties did not waive this conflict, I disqualified myself.

3:96-cv-828 Ripley v. Goglin, et al.
I represented one of the defendants in private practice. As all parties did not waive this conflict, I disqualified myself.

3:07-cv-1590 Harvey v. Swetz, et al.
Reassigned to out-of-district judge because Middle District Judge Caputo was named as defendant.

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3:07-cv-1991 Davidson v. Lydon, et al.

I disqualified myself because of my personal acquaintance with one of the defendants.

3:07-cv-2208 Messett, et al. v. Home Consultants, Inc., et al.

I disqualified myself because of my personal acquaintance with the plaintiff.

3:02-cv-1678 American States Insurance v. Component Technologies, et al.

I became a member of the Board of Directors of Community Medical Center, which was engaged in a possible affiliation with Moses Taylor Hospital, which had a substantial interest in this litigation.

3:04-cv-938 Hartford Fire Insurance Company v. Spall, et al.

I disqualified myself because of my personal acquaintance with a person listed as a key defense witness on the joint case management plan.

3:02-cv-2297 LiVecchi v. UnumProvident Corp.

I disqualified myself because of my personal acquaintance with the plaintiff.

3:02-cv-1102 Stawinsky, et al. v. Pentasuglio, et al.

I disqualified myself because of my personal acquaintance with one of the defendants.

3:97-cv-270 Yetter v. Five Unknown Agents, et al.

I disqualified myself because defendants were determined to be members of the U.S. Marshals service assigned to the William J. Nealon Building in Scranton, PA.

3:96-cv-568 O'Neill v. Grewal, et al.

I disqualified myself because I had personal knowledge of the matter.

DISQUALIFICATION UNDER 28 USC §455

3:96-cv-857 Rock v Augello, et al., Order filed 3/20/97

Defense counsel had represented me.

3:95-cv-0457 Dongelewicz, et al. v. First Eastern Bank, et al.

I directed each party to inform the Clerk of Court as to whether each waived the grounds for disqualification -- prior representation of a party whose interests were adverse to a defendant -- so that I would not know the position taken by any party. When the Clerk informed me that not all parties had waived disqualification, I recused myself.

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3:04-cv-1403 Thomas v. Conway et al.
Sua sponte disqualification because the pro se plaintiff had named me as a defendant in an action (which was dismissed as frivolous).

15. **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.

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, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I was Counsel to Governor Robert P. Casey's Campaign Committee from 1986 to 1993. My responsibilities included communication with the Pennsylvania Bureau of Elections and rendering advice on the Pennsylvania Campaign Finance Law. I reviewed Campaign Expense and Contribution Reports for compliance with Pennsylvania law.

I served on the Finance Committee for Gerald Stanvitch, a candidate for Mayor of Scranton in 1993.

16. **Legal Career:** 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;

Sept. 1978 to Sept. 1980 – Law Clerk to the Hon. William J. Nealon, then Chief Judge of the U.S. District Court for the Middle District of Pennsylvania.

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

I have not engaged in the practice of law by myself.

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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.

1980 - 1992
Dilworth, Paxson, Kalish, & Kauffman
600 Penn Security Bank Bldg.
127 N. Washington Ave.
Scranton, PA
Associate attorney (1980 -1985)
Partner (1986 – 1992)
I was in charge of the Dilworth Scranton office from January 1, 1987 to March 19, 1992.

March 20, 1992 to February 28, 1994 - Vice-President and member of the Board of Directors of Elliott, Vanaskie, & Riley, a partnership of Professional Corporations, in charge of its Scranton, PA Office.

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I did not serve as a mediator. From time to time, I served as an arbitrator on cases referred to arbitration under a local county court rule. The cases had a value under a few thousand dollars, and I cannot recall any of the cases.

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 law practice was civil litigation, with particular emphasis in complex contract, commercial, environmental, employment, and products liability litigation. Prior to 1985 I was involved in some criminal defense matters. Since 1985, however, I restricted my practice to non-criminal defense matters. A small percentage of my practice had also been devoted to general representation of some small businesses.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

Former clients include: Individuals in employment discrimination, trade secret, restrictive covenant, contract, commercial, products liability, and personal injury litigation;

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Closely-held companies in commercial and contract litigation;

Large publicly held companies in contract, commercial, and products liability litigation;

American subsidiaries of foreign corporations in environmental, employment, and products liability litigation;

Municipal authorities in contract and grants litigation;

A legislatively established insurance organization for no-fault automobile insurance benefits in statutory interpretation and insurance coverage litigation.

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 in court frequently, having practiced in each of the three Federal District Courts in Pennsylvania, the Bankruptcy Court for the Middle District of Pennsylvania, the Bankruptcy Court for the Southern District of Florida, the United States Court of Appeals for the Third Circuit, the United States Supreme Court, the Pennsylvania Supreme, Superior and Commonwealth Courts, and the trial courts in Lehigh, Schuylkill, Northampton, Luzerne, Monroe, Lackawanna, Pike, Wayne, Lancaster, Cumberland, Wyoming, Bradford, Dauphin, Lycoming, Philadelphia, and Westmoreland counties. I also represented clients in matters pending before the Pennsylvania Environmental Hearing Board and the Pennsylvania Board of Claims.

i. Indicate the percentage of your practice in:
   1. federal courts: 50%
   2. state courts of record: 45%
   3. other courts: 5%
   4. administrative agencies

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 95%
   2. criminal proceedings: 5%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

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I tried to verdict or judgment in courts of record twelve cases. In four of those cases I served as sole counsel; in six of those cases I served as lead counsel; and in the remaining two cases I served as associate counsel.

i. What percentage of these trials were:
   1. jury: 17%
   2. non-jury: 83%.

e. Describe your practice, if any, before the Supreme Court of the United States. 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 had filed several cert. petitions, but none were granted. I do not have copies of any of the petitions.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. 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. Ragnar Benson, Inc. v. Bechtel Power Corp., 651 F. Supp. 962 (M.D. Pa. 1986), aff'd mem., 833 F.2d 303 (3d Cir. 1987). Ragnar Benson, Inc. claimed that Bechtel Power Corporation ("Bechtel") had delayed its construction of cooling towers at the Limerick Nuclear Generating Station, located near Pottstown, Pennsylvania, allegedly resulting in Ragnar Benson incurring substantial cost overruns. I represented Bechtel, which counterclaimed to recover overpayments it had made to Ragnar Benson. Ragnar Benson's claims totaled more than $750,000. Bechtel's counterclaim sought $250,000. Litigation involved thousands of records pertaining to construction of the cooling towers over a three year period. The case was tried in May of 1986 to the Honorable R. Dixon Herman of the Middle District of Pennsylvania. I handled the examination and cross examination of all witnesses, as well as presentation of all arguments and preparation of Requests for Findings of Fact and Post Trial Briefs. Following a two week trial, Judge Herman rejected Ragnar Benson's claims and awarded judgment in favor of Bechtel on its counterclaim. See 651 F. Supp. 962 (M.D. Pa 1986). On appeal, the Third Circuit affirmed, without opinion. Serving as my associate counsel at trial was John L. Heaton,

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Esq. Opposing counsel was Joseph Conway, Esq., 2510 One PPG Place, Pittsburgh, PA 15222, 412- 471-8300.

B. Czerw v. Grove Manufacturing Company, Lackawanna County Docket No. 83-CIV-6005. Plaintiff's husband was killed when the hydraulic fire truck ladder he was occupying in fighting a fire in Taylor, Pennsylvania contacted a high voltage line. I represented Grove Manufacturing Company, the manufacturer of the ladder. Defense of this claim involved coordination of expert testimony from mechanical and electrical engineers as well as professional firefighters. Following a two week jury trial in Lackawanna County before the Honorable S. John Cottone in October of 1988, a jury returned a verdict in favor of Grove Manufacturing Company. No appeal was taken. I was lead counsel at trial and conducted examination of all witnesses, jury selection and all argument. I was assisted by Kevin C. Quinn, Esq. of my firm. Opposing counsel were Patrick B. Dougherty, Esq., Dougherty, Mundy, Laventhal & Price, 459 Wyoming Avenue, Kingston, PA 18704, 717-288-1427, Paul J. Drucker, Esq., Jablon, Epstein, Wolf, Drucker, Bellevue, 9th Floor, 200 S. Broad Street, Philadelphia, PA 19102, 215-922-7100, and Marianne Gilmartin, Esq., Lenahan, Dempsey, Kane Building, N. Washington Ave., Scranton, PA 18503, 717-346-2097.

C. Tama v. Llinas, Bradford County Docket No. 86-13E. I represented Dr. Lawrence Tama in this action to enforce a covenant not to compete in a contract between Dr. Tama and his independent contractor, Dr. Llinas. The defendant claimed the right to pay liquidated damages of $50,000 in satisfaction of a two year restrictive covenant. Several attorneys had informed Dr. Tama that he could not enforce the restrictive covenant. Following a three day trial in July of 1986, Judge Williams, Senior Judge in Bradford County, enjoined Dr. Llinas from breaching the restrictive covenant. On appeal, the Pennsylvania Superior Court affirmed. Docket No. 00493HBG86 of 1986. I was lead counsel and I conducted the examination of all witnesses and argument to the court. Opposing counsel was Howard Levinson, Esq., Rosenn, Jenkins & Greenwald, 15 South Franklin Street, Wilkes-Barre, PA 18701, 717-826-5600.

D. United States v. Tabor Court Realty, Scott P. Linde, Party to the Agreement of Sale, 943 F. 2d 335 (3d Cir. 1991), cert. denied, 117 L.Bd.2d 413 (1992). I represented Scott Linde, who had contracted to purchase approximately 600 acres of land in Lackawanna County from the court-appointed Receiver of the Raymond Colliery Companies. The total consideration was approximately $1.5 million. Linde had conditionally assigned his interests under this Agreement of Sale to Carrier Coal Enterprises. Following a hearing in January of 1989, the Honorable Malcolm Muir of the Middle District of Pennsylvania concluded that the assignment improperly interfered with the court-directed bidding process on the property in question. I represented Linde on appeal to the United States Court of Appeals for the Third Circuit. Carrier Coal Enterprises elected not to appeal. In order to prevail on appeal we had to establish that the District Court had abused its discretion. In October of 1989, the Third Circuit, in an unreported opinion, agreed with our position and reversed and remanded the matter to the District Court for further hearings. Following a two day trial in April of 1990, the District Court concluded that Linde had not acted improperly in entering into the assignment. There then ensued

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litigation between Linde and Carrier Coal Enterprises as to whether the Assignment remained in effect. The District Court ruled in favor of Linde, but the Third Circuit reversed and remanded the matter once again. See 943 F.2d 335 (3d Cir. 1991). The Supreme Court denied certiorari. 117 L. Ed.2d 413 (1992). On the second remand the District Court found in favor of Carrier Coal Enterprises, and the Third Circuit affirmed without opinion. Opposing counsel were Thomas P. Brennan, Esq., Gallagher, Brenann & Gill, 300 First Eastern Plaza, 60 Public Square, Wilkes-Barre, PA 18701, 717-824-3208, and Joseph G. Ferguson, Esq., Rosenn, Jenkins & Greenwald, 15 S. Franklin Street, Wilkes-Barre, PA 18701, 717-826-5600.

E. Eckersley v. WGAL-TV, Inc., 831 F.2d 1204 (3d Cir. 1987). This litigation, brought in the Middle District of Pennsylvania under the Employee Retirement Income Security Act, was the sequel to a settlement of litigation in the Eastern District of Pennsylvania concerning Mr. Eckersley's entitlement to a bonus based upon the net profit realized on the sale of a Massachusetts television station. We claimed that the amount received in settlement should be included in the calculation of Mr. Eckersley's retirement pension. Judge Kosik of the Middle District of Pennsylvania ruled in favor of the defendant. On appeal, however, the United States Court of Appeals for the Third Circuit agreed with our position and reversed the district court ruling. Opposing counsel was K. Jane Fankhanel, Esq., Fulbright and Jaworski, 666 Fifth Avenue, 31st Floor, New York, New York 10103, (212) 318-3000.

F. Stark v. Pennsylvania National Mutual Casualty Insurance Company, Wayne County Docket No. 23 of 1987. Donna Stark, a member of the Honesdale Borough Police Force, was involved in a high speed chase of a reckless driver. The police cruiser occupied by Officer Stark spun out of control and slammed into a parked vehicle. The vehicle Officer Stark was chasing was uninsured at the time of the accident. We brought an action against the uninsured motorist carrier for the Borough of Honesdale, which defended on the ground that it enjoyed the Borough's workers' compensation immunity. This defense was based upon Pennsylvania Supreme Court precedent pre-dating the 1984 Pennsylvania Motor Vehicle Financial Responsibility Act. In May of 1989, the Hon. Robert Conway of the Court of Common Pleas of Wayne County ruled in favor of the insurance company. We appealed to the Pennsylvania Superior Court (Docket Nos. 01601-PHL-89 and 01602-PHL-89), arguing that the Pennsylvania Supreme Court precedent was no longer applicable in light of the 1984 legislation. The Superior Court agreed, ruling in Officer Stark's favor on this issue in 1990 in an unpublished opinion. The insurance company was unsuccessful in its efforts to have the Pennsylvania Supreme Court hear the case. Opposing counsel was Howard Levinson, Esq., of Rosenn, Jenkins & Greenwald, 15 S. Franklin Street, Wilkes-Barre, PA 18701, (717) 826-5600.

G. Allegheny County Sanitary Authority v. United States Environmental Protection Agency, et al., 557 F. Supp. 419 (W.D. Pa 1983), aff'd, 732 F.2d 1167 (3d Cir. 1987). This action was brought in the United States District Court for the Western District of Pennsylvania to determine the entitlement of the Allegheny County Sanitary Authority ("ALCOSAN") to a multi-million dollar grant under the Federal Water Pollution Control Act. A principal issue in this litigation was whether the state environmental agency charged with

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administering the federal funding program was amenable to suit for alleged violations of the Federal Water Pollution Control Act. In an opinion reported at 557 F. Supp. 419 (W.D. Pa. 1983), the Hon. Hubert I. Teitelbaum ruled against ALCOSAN. The Third Circuit, in an opinion reported at 732 F.2d 1167 (3d Cir. 1984), affirmed the trial court. I served as co-counsel in this litigation with Governor Robert P. Casey. I was principally responsible for the preparation of the trial and appellate court briefs. Following the Third Circuit decision, I assumed the role of lead counsel in this litigation, which was eventually decided in 1987 on a summary judgment motion. The trial court ruling on the summary judgment motion is not reported. Opposing counsel included Dean Dunsmore, Esq., United States Department of Justice, 202- 633-2216; Maxine Woelfling, Esq., 717-787-3483, who became a member of the Pennsylvania Environmental Hearing Board; and James J. Kurtz, Esq., Eckert, Seamans, Cherin & Mellott, One South Market Square Building, 213 Market Street, Harrisburg, PA 17701. This matter was handled between 1982 and 1987.

H. Precision National Plating Services, Inc. v. United States Environmental Protection Agency. I served as lead counsel, representing Precision National Plating Services, Inc. ("Precision"), in litigation concerning the Environmental Protection Agency's "emergency powers" provisions under the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA") and the Safe Drinking Water Act. EPA had threatened to issue unilaterally an Administrative Order that could have resulted in Precision incurring hundreds of thousands of dollars in investigative and remedial actions that were not compelled by any imminent threat to public health or the environment. Initially, we brought an action in the United States District Court for the Eastern District of Pennsylvania for immediate injunctive relief. No. 90-6813. Although ruling against Precision on jurisdictional grounds, the Hon. J. William Ditter expressed sympathy with Precision's "plight," observing that the record revealed that Precision had responded to all reasonable requirements imposed upon it by state environmental agencies and that the matter of which EPA was complaining certainly did not appear to involve an imminent threat to public health or the environment. 1990 WL 191968 (E.D. Pa. 1990). Subsequently, EPA issued an Administrative Order, purporting to exercise its emergency powers under both CERCLA and the Federal Safe Drinking Water Act. Because jurisdiction over orders issued under the Safe Drinking Water Act is vested in the appellate courts, we caused to be filed a Petition for Review with the United States Court of Appeals for the Third Circuit. (Docket No. 91-3158.) Following our briefing of issues involving the proper exercise of the "emergency powers" provisions and EPA's authority to effectively enforce compliance with administrative orders through the threat of accrual of substantial monetary penalties, EPA and Precision resolved the dispute in 1991 on terms favorable to Precision yet protective of public health and safety. Opposing counsel was Karen Kellen, Esq., United States Environmental Protection Agency, Region III (3RC22), 841 Chestnut Building, Philadelphia, PA, (215) 597-9800.

I. Scranton Redevelopment Authority v. Pennsylvania Department of Transportation, Pa. Board of Claims Docket No. 658. This action arose out of condemnation of properties in South Scranton. The Pennsylvania Department of Transportation ("PennDOT") had used the Scranton Redevelopment Authority as a condemnation agency to acquire a number of

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properties along a proposed right-of-way. PennDOT later scrapped its plans for the highway, and did not sign a proposed written contract with the Scranton Redevelopment Authority for the acquisition of the properties in question. An action was brought before the Pennsylvania Board of Claims, seeking to impose liability on promissory estoppel and contract theories. PennDOT defended on the ground that no written contract between it and the Redevelopment Authority existed. We were retained following the Board of Claims trial to prepare proposed findings of fact, conclusions of law, and a memorandum of law. I was the principal drafter of our filings, which were submitted in 1983. The Board of Claims ruled in our favor in 1984. The matter was subsequently settled in 1985 on appeal to the Commonwealth Court, resulting in a substantial recovery for the financially distressed City of Scranton. I served as co-counsel on this matter with Governor Robert P. Casey and James W. Brown, Esq., 225 Main Capital Bldg., Harrisburg, PA 17120, (717) 787-5403. Opposing counsel was Spencer Manthorp, Esq., then Chief Counsel for PennDOT, Department of Transportation, Room 313, Transportation & Safety Building, (717) 787-2063.

J. Maid Rite Steak Co. v. United States, 643 F. Supp. 1162 (M.D. Pa. 1986). I, along with Morey M. Myers, Esq., represented Maid Rite Steak Co. ("Maid Rite") in an action challenging the Internal Revenue Service's denial of Maid Rite's attempt to obtain an investment tax credit. The principal owners of Maid Rite had erroneously claimed the investment tax credit at issue on their personal tax returns. An examination of the owners' tax returns disclosed that the owners were not entitled to the tax credit. Thereafter, Maid Rite attempted to claim the credit, but it was denied by the Internal Revenue Service. I was principally responsible for preparation of a brief in support of our summary judgment motion. The Hon. William J. Nealon ruled in favor of Maid Rite, concluding that the owners had not made a binding irrevocable tax credit election by erroneously and in good faith claiming the investment tax credit themselves. The court also ruled that, even if such election was binding, the Internal Revenue Service abused its discretion in refusing to permit the taxpayers to amend their return. The court's decision is reported at 643 F. Supp. 1162 (M.D. Pa. 1986). Opposing counsel was Stephen Carlton, (202) 724-6514, United States Department of Justice. Co-counsel was Morey M. Myers, Scranton, PA 18505, (717) 342-6100.

18. **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. 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.)

I served as lead counsel in a Civil RICO action concerning the efforts of a healthcare provider to circumvent Certificate of Need requirements to establish a radiation therapy center. Powers v. Williamsport Hospital, et al. (M.D. Pa., Docket 89-0059). I represented a radiation oncologist whose practice was threatened by the establishment of the competing radiation therapy center. Defendants were represented by prominent

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Philadelphia, Pittsburgh and Atlanta law firms. I coordinated extensive discovery efforts. The case, along with parallel litigation in the Middle District of Pennsylvania, the Pennsylvania Commonwealth Court, and the Pennsylvania Department of Health, ultimately settled.

A significant litigation matter which settled on the eve of trial was Condella v. Duo Fast Corporation (Lackawanna County, Docket 88-CIV-6187). This was a products liability case in which I represented the plaintiffs. William Condella was severely injured when a nail from a nail gun discharged through his skull, embedding below the scalp line. Fortunately, Mr. Condella had not sustained severe neurological impairment. Extensive discovery yielded information concerning a design defect in the nail gun and negligent conduct on the part of the companies in charge of the construction site. The case was eventually settled under terms that paid Mr. and Mrs. Condella more than $4.6 million.

I provided pro bono representation to a local non-profit gymnastics training center in connection with its efforts to secure a building at which to conduct its activities for the youth of this area.

From 1991 to 1994, I served as Chair of the Continuing Legal Education Committee of the Lackawanna Bar Association. In that capacity, I developed a program of monthly continuing legal education programs presented to members of the Lackawanna Bar Association. We also invited students and professors of local universities and colleges to attend our presentations. I also participated in the development of continuing legal education programs that satisfy the requirements for mandatory continuing legal education on ethics issues.

I served as a member of the Middle District of Pennsylvania Lawyers' Advisory Committee. The Committee met with the Chief Judge of the District on a quarterly basis. Members of the Committee also attended the Third Circuit Judicial Conference. The Committee served as an advisory group with respect to procedural and other practice-related issues.

In March of 1993 I was appointed to the Civil Justice Reform Act Committee for the Middle District of Pennsylvania. Our group met on a periodic basis and finalized a Civil Justice Reform Act Plan for the Middle District.

19. **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, provide four (4) copies to the committee.

I have taught a two-credit seminar, entitled "Electronic Evidence," at the Dickinson School of Law at Penn State University. I taught the course during the fall semesters of 2007 and 2008. The course covers the discovery and evidentiary implications of the creation and storage of information in electronic format. Specifically, the course covers

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computer forensics, electronic discovery, electronic case filing, and electronic presentation of evidence.

20. **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. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

    None.

21. **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 plan to teach the seminar on Electronic Evidence during the Fall of 2009 at the Dickinson School of Law at Penn State University.

22. **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, licensing fees, 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

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    See attached Net Worth Statement

24. **Potential Conflicts of Interest**:

    a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

        None.

    b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

        I will comply with the applicable provisions of the Code of Conduct and the Opinions issued thereunder.

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25. **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.

As a Judge, I may not practice law and thus have not provided representation to the disadvantaged. I have, however, been active in law-related community activities. For example, I participated in the establishment of a program by which students from disadvantaged backgrounds were provided summer jobs in law firms and in the federal court system. Several students worked directly in my Chambers. I have also engaged in activities of a pro bono publico nature during my tenure as a District Judge. I have visited elementary schools, and hosted both elementary and secondary school classes in our courthouse. I have participated in the Open Doors of Justice program developed by the Administrative Office of the United States Courts, hosting secondary school classes for that purpose. I have served for a number of years as a presiding judge in the Pennsylvania Mock Trial Program, which provides high school students an opportunity to serve as trial advocates. My participation has included traveling to Harrisburg, Pennsylvania, where I have presided over both the semi-finals and finals of the state competition.

I participated as a presenter in the Peoples Law School program conducted by our local bar association. This program was presented to a live audience and broadcast over a local access television station.

I have participated as a speaker in Law Day Activities, and I am a frequent lecturer at continuing legal aid education programs conducted by local, state, and national bar associations.

I have participated in community service projects sponsored by the Young Lawyers' Division of our Local Bar Association, including volunteering at a local soup kitchen and working at a fundraising picnic for the St. Joseph's Center, which provides care for severely disabled children.

I have served as a board member and Chair of the Board of a local high school. I have also served as a Board Member of the local chapter of the American Heart Association and on the Board of a local hospital. I served on advisory Boards for the Dickinson School of Law at Penn State University, the Wilkes University Law School initiative, and the University of Scranton.

In private practice, I accepted appointments to represent indigent defendants in criminal cases, as well as indigent federal and state prisoners. For example, in 1987, I was appointed by the Third Circuit to represent an inmate at the State Correctional Institution in Huntington, Pennsylvania, contesting long-term incarceration in administrative segregation. I devoted more than 100 hours to the pursuit of that appeal.

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Also while in private practice I served pro bono as counsel to a non-profit corporation providing gymnastics training to hundreds of children in our area. Our representation was instrumental in establishing this non-profit training facility. I was a volunteer for the Lackawanna Bar Association pro bono project, providing pro bono representation to a number of persons of low or moderate income. Also while in private practice I served as a volunteer on the United Way Allocations Panel for Lackawanna County. I served as a coach for Little League baseball and youth basketball programs. I devoted more than fifty hours in establishing a successful ongoing continuing legal education program for the Lackawanna Bar Association.

As a Judge, I preside over our Court-Assisted Re-entry program. Partnering with the Probation Office, Public Defender's Office, and the United States Attorney's Office, the Court meets monthly with offenders who are at high risk of recidivism. The program is intended to provide intensive supervision and assistance to enable a successful re-entry into our communities.

26. **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. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

Encouraged by others, who had written letters to our State's U.S. Senators without any solicitation on my part, I made known to Senator Robert P. Casey, Jr., my interest in serving on the Third Circuit. In late May of 2009, I was contacted by Senator Casey, who informed me that the White House had authorized the Department of Justice to undertake an investigation for my possible nomination to the Third Circuit.

On May 21, 2009, I was contacted by the United States Department of Justice, requesting that I complete a number of forms preliminary to an investigation for possible nomination. I have had regular contact with staff from the Department of Justice since that date regarding the paperwork and the process. I was interviewed at the Department of Justice in Washington, DC on Tuesday, August 4, 2009 by Associate Attorney General Thomas Perrelli, and staff from the Department of Justice and from the White House Counsel Office. My nomination was submitted to the United States Senate on August 6, 2009.

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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, explain fully.

No person in the selection process has discussed with me any currently pending or specific case, legal issue or question in a manner that could be reasonably interpreted as seeking any express or implied assurance concerning my position on such case, issue, question.

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AFFIDAVIT

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

8-14-09
(DATE)

Th I. Vayaskie
(NAME)

Elaine V. McClosky
(NOTARY)

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
DIANE V. McCLOSKY, Notary Public
Wilkes-Barre, Luzerne County
My Commission Expires Oct. 27, 2010

Acting in Lackawanna County

QUESTIONS AND ANSWERS

Responses of Louis B. Butler, Jr.
Nominee to the U.S. District Court for the Western District of Wisconsin
to the Written Follow-up Questions of Senator Tom Coburn, M.D.

1. **In response to a prior written question asking you to recount the subject matters that were discussed by you during conversations you had with your home state Senators, you refused to answer stating: I believe it would be inappropriate for me to describe in any further detail my private conversations with United States Senators. . . . No one involved in the process of selecting me as a judicial nominee discussed with me 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 my position on such case, issue or question." This answer is nonresponsive. Canon 5 of the Model Code of Judicial Conduct states that a "candidate for a judicial office *shall* not: with respect to cases, controversies, or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicated duties of the office. . ." I believe that all members of the Committee are entitled to information about the topics of discussion and whether these topics included "cases, controversies, or issues that are likely to come before the court." Please reconsider the questions I asked and provide the Committee with answers.**

   Response: Senator, I can assure you that with respect to Canon 5 of the Model Code of Judicial Conduct, I have not, with respect to cases, controversies, or issues that are likely to come before the court, made pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicated duties of the office. If I am confirmed as a United States District Court Judge, I will decide cases based on the facts and the law, following established precedent from the United States Supreme Court and the Seventh Circuit Court of Appeals.

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Responses of Louis B. Butler, Jr.
Nominee to the U.S. District Court for the Western District of Wisconsin
to the Written Questions of Senator Tom Coburn, M.D.

1. **In your questionnaire, you stated that you stated that you were asked questions by "each Senator that asked about my personal views concerning a number of issues, but it was understood by me and by them that as a District Court Judge, any personal views that I might have would not control my decisions on the bench." What specifically were you asked? Please explain the questions you were asked and the answers you provided to the best of your recollection.**

Response: I believe it would be inappropriate for me to describe in any further detail my private conversations with United States Senators. As I have indicated throughout this process, any personal views that I might have would not control my decisions on the bench. My decisions would be based on governing law. No one involved in the process of selecting me as a judicial nominee discussed with me 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 my position on such case, issue or question.

a. **Were you asked about your opinion on abortion?**

Response: Please see above response.

b. **What about the Second Amendment and gun rights?**

Response: Please see above response.

c. **National security issues?**

Response: Please see above response.

d. **The Patriot Act?**

Response: Please see above response.

2. **At a 2008 Obama campaign event you stated: "[W]hile all judges have a desire to interpret and apply the law, the cases that get to the Supreme Court are the ones that have no easy answer. Thus, the background, personal beliefs and policy decisions of the justices selected will influence how they vote on the difficult cases before them. . . . And that is the main reason that I support Senator Obama." Based on that statement it appears you endorse President Obama's empathy standard, a standard that even Justice Sotomayor rejected.**

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How do a judge's "personal beliefs and policy decisions" influence how they will vote in a particular case?

Response: I do not believe a judge's personal beliefs and personal policy decisions should influence how a judge should vote in a particular case. I have not, and will not make decisions based on my personal beliefs. I have publicly made statements referencing my approach to judicial decision-making and impartiality in the past. For example, at a speech in June 2007, I stated as follows:

> Judicial decision-making should be based on the evidence and the law, however we interpret that to be, and not outside influence and improper consideration.
>
> Every judge is duty bound to make decisions with the following framework in mind: In applying the law to the facts in any given case, we look first to the Constitution of the United States, the Supreme Law of the land. Then we look to the state constitution, our state statutes, our common law, and our precedents. It is within that framework that we make our decisions.

At another speech in July 2007, I stated as follows:

> The goal of any judge is to not side with one party or another. We do not dance to the tune of special interest groups. We do not reach a result, and then figure out how to get there. We do what we can to make sure that our legal system is fair, neutral, detached and impartial. We base our decisions on the facts and the law. Our judges put on their so-called striped shirts, you call them robes, and play the role of referee every single day in order to make sure that our rules are employed in an appropriate manner.

If I am confirmed as a United States District Court Judge, I will decide cases within the above framework, basing my decisions on the United States Constitution, federal legislation, and controlling precedent from the United States Supreme Court and the United States Court of Appeals for the Seventh Circuit.

a. How is that consistent with a judge's duty to merely apply the law to the facts?

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Response: If confirmed as a United States District Court Judge, I will base my decisions on the evidence and the law, using the framework for judicial decision-making provided above.

3. **You provided notes of a speech that you gave to the Wisconsin Department of Workforce Development entitled "Experience as a Black Man in the Legal Field" on February 21, 2007 and of a speech to the National Black Law Students Association on February 4, 2006. Under the heading, "How else can others help the community?," Your notes state: "4. Judges, and now justices. A) Making sure that justice is accomplished; B) 'Do the right thing'; C. Being visible."**

   a. **What did you mean by "Making sure that justice is accomplished"?**

   Response: I do not have prepared remarks for that event, so my answer is to the best of my recollection, consistent with how I view "justice." The justice system is involved in dispute resolution. Parties come to court to get an answer to issues they have been unable to resolve on their own. The parties need to be heard, judges need to listen to them, and decisions need to be rendered in a fair, impartial, neutral and detached manner based on the evidence presented and controlling law. Parties may not agree with a court's decision, but justice is accomplished when the process has been equally and fairly applied to each party, and the law followed.

   b. **What did you mean by "Do the right thing"?**

   Response: I do not have prepared remarks for that event, so my answer is to the best of my recollection. By "do the right thing," I believe that means following the law, wherever that takes you.

4. **As you know, the Second Amendment right to bear arms is one that is very important to all Americans, but particularly to those in my home state of Oklahoma. Do you believe the right to bear arms is a fundamental right?**

   Response: *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008) recognized an individual right to keep and bear arms under the Second Amendment, but the Court has not yet ruled that the right is fundamental.

   a. **What constitutional analysis would you employ to determine whether it is a fundamental right?**

   Response: I would follow controlling precedent of the United States Supreme Court and the Seventh Circuit Court of Appeals.

   b. **Do you believe the right to self defense is a fundamental right?**

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Response: *Heller* recognized an individual right to keep and bear arms in self defense. I understand the Supreme Court has another case before it that may determine whether that right is incorporated as against the states. I would follow the decision issued by the Court.

5. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. In an interview with the *Lawrence Journal*, you said that "in applying the Constitution, you need to look at where things have evolved and adapt accordingly." Is it fair to say that you agree with that concept of a "living Constitution"?**

Response: I believe the term "living Constitution" comes from a speech given by former Chief Justice Warren Burger, and I am not sure what he meant by that term exactly. My approach is consistent with the recent United States Supreme Court decision in *Kyllo v. United States*, where Justice Scalia for the court stated that it "would be foolish to contend that the degree of privacy secured to citizens by the Fourth Amendment has been entirely unaffected by the advance of technology." Situations exist now that did not exist when the Constitution was drafted. Nevertheless, the principles enshrined in the Constitution are enduring. Situations change, the Constitution does not.

6. **In *Ferdon v. Wisconsin Patients Compensation Fund*, you voted with the majority in another 4-3 decision to strike down the punitive damages cap ($350,000) enacted by the Wisconsin state legislature, finding that it violated the state equal protection clause because it lacked a rational basis, even though the evidence showed that the caps were successful in reducing the cost of malpractice insurance. Under your version of the rational basis test, virtually any statute is subject to being struck down. Please explain why you decided to strike down a punitive damages cap that the legislature had determined was successful in reducing the cost of medical malpractice insurance?**

Response: I did not write the opinion in *Ferdon*, so my answer will be based on the opinion written for the court by the Chief Justice. Our court applied the Wisconsin Constitution to a comprehensive Wisconsin Scheme governing medical malpractice. Our court accepted the fact that the legislation in question was presumed constitutional, and that the plaintiff must establish that the statute was unconstitutional beyond a reasonable doubt. *Ferdon v. Wisconsin Patients Comp. Fund*, 2005 WI 125, 284 Wis.2d 573, 701 N.W.2d 440, par. 68. The court then applied the rational basis test under the Wisconsin Constitution for the equal protection claim that was pursued by the plaintiff by "focusing on means without second-guessing legislative ends." *Id.*, par. 79. The court ultimately concluded, for reasons stated in the majority opinion, that the malpractice cap adopted by the legislature was unreasonable and arbitrary because it was not rationally related to legislative objectives. *Id.*, pars. 113, 129, 175-76, 187. The opinion states several reasons why Wisconsin did not have a medical malpractice crisis, and those reasons were not related to the cap imposed. The Court noted that "[c]ourts across the

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country are divided about whether caps on noneconomic damages are constitutional." *Id.*, par. 17, and our court's decision was based on the Wisconsin Constitution. If confirmed as a United States District Court Judge, my decisions will be controlled by the decisions of the United States Supreme Court and the United States Court of Appeals for the Seventh Circuit.

a. Further, in this case, the majority of the court (of which you were a member) engaged in an aggressive reassessment of legislative choices. Please explain why you believe it is the role of the court to second guess the decisions of the legislature.

Response: I respectfully disagree that the majority engaged in an aggressive reassessment of legislative choices. The court applied the Wisconsin Constitution to a comprehensive Wisconsin scheme governing medical malpractice. If confirmed as a United States District Court Judge, my decisions will be controlled by the decisions of the United States Supreme Court and the United States Court of Appeals for the Seventh Circuit.

7. **In *State v. Fisher*, you voted with the majority in a 4-3 decision to uphold a conviction of a tavern owner, who kept a gun for business purposes, under a concealed carry statute that banned carrying in all instances. The Wisconsin constitution provides for the right to bear arms for a "lawful purpose," among others. In this case, the court read the specified examples of a "lawful purpose" for which there are constitutional rights to bear arms as *limitations* on its exercise and applied those restrictions in a fairly aggressive way. The majority's opinion, which you joined, resolved the conflict between the concealed carry statute and the state constitutional right by engaging in its own detailed analysis of the facts and policy judgments involved on a case-by-case basis. Please explain your analysis in this case and why you believed the words "lawful purpose" were a restriction on Second Amendment rights?**

Response: I did not write an opinion in *State v. Fisher*, 2006 WI 44, 290 Wis.2d 121, 714 N.W.2d 495, so my answer will be based on the opinion written for the court by Justice Ann Walsh Bradley. Our decision was based on earlier precedent decided before I joined the court (*State v. Cole,* 2003 WI 112, 264 Wis.2d 520, 665 N.W.2d 328, and *State v. Hamdan,* 2003 WI 113, 264 Wis.2d 433, 665 N.W.2d 785), interpreting the constitutional provision in conjunction with the carrying concealed weapon statute. In those cases, the court recognized that the right to bear arms under the Wisconsin Constitution is not absolute and that the test for the constitutionality of a regulation of that right depends on whether the regulation is a reasonable exercise of the state's inherent police power. 264 Wis.2d 520, par. 24. Although both cases occurred in high crime areas, the court drew a distinction between carrying a concealed weapon in a person's home or place of business, and carrying a concealed weapon in a vehicle. *Id.*, par. 49, and 264 Wis.2d 433, par. 67. In *Fisher*, at the time of the defendant's arrest for carrying a loaded and concealed gun in his vehicle, "he was on his way to McDonald's and was running personal errands." *Id.*, pars. 1,

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39. He first stopped at the Department of Natural Resources to contest a citation he received a week-and-a-half earlier for transporting loaded firearms that were stolen along with his vehicle after he left his vehicle running unattended. *Id.*, par. 38. "[H]e kept the gun in his vehicle even at times when he was not transporting cash." *Id.*, par. 36. He was not in his home or place of business. It was in the context of these facts and our earlier precedent that the court held that Wisconsin's Carrying Concealed Weapon statute, sec. 941.23, established by the legislature, was constitutional as applied to the defendant. *Id.*, par. 5. In reaching this decision, the court followed our earlier precedent consistent with stare decisis. The Second Amendment was not before the court.

8. In *State v. Dubose*, you joined a four-vote majority of the Court that found that the show-up procedure of eyewitness-identification was impermissibly suggestive and generally should not be admitted as evidence, departing from its longstanding tradition of following the U.S. Supreme Court's interpretation of parallel constitutional provisions. You wrote a concurring opinion specifically defending the majority's extensive use of social science studies to conclude that show-ups were unreliable. In dissent, Justice Wilcox stated that such studies are "not a valid basis to determine the meaning of our constitution. The majority fails to adequately explain how the meaning of the text of the constitution can change every time a new series of social science studies is present to the court." Justice Wilcox also made a separation of powers argument: "It is not the function of this court to create what it considers to be good social policy based on data from social science studies. That is the province of the legislature." That's a fairly strong criticism.

a. Please explain why you believe social science studies are relevant to constitutional interpretation.

Response: Under the Wisconsin Constitution, factors taken into account by the court in determining whether to adhere to precedent include whether there is a need to reach a decision that corresponds to newly ascertained facts, and whether prior decisions have become unsound, because they are based on principles that are no longer valid. The Court in *Dubose* was presented with significant and overwhelming evidence concerning wrongful convictions based on eyewitness misidentification. Our decision adopting earlier precedent from the United States Supreme Court regarding showups in *Dubose* was based on the Wisconsin Constitution as applied to the evidence received and considered by the court. Our decision in *Dubose* takes into account the fact that when an innocent person is convicted, the guilty party is free to prey upon society.

b. Does this type of analysis not lead to an evolving constitution?

Response: I do not understand the concept of an evolving constitution. If what you mean by "evolving constitution" is the concept of "living

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constitution" referred to earlier, then as I indicated earlier, situations exist now that did not exist when the Constitution was drafted. Nevertheless, the principles enshrined in the Constitution are enduring. Situations change, the Constitution does not.

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Responses of Louis B. Butler, Jr.
Nominee to the U.S. District Court for the Western District of Wisconsin
to the Written Questions of Senator John Cornyn

1. **I write to request that you provide a sufficient answer to one of the written questions submitted after your Senate Judiciary Committee hearing.**

   Rule 4.1(13) of the 2007 ABA Model Code of Judicial Conduct requires that a judicial candidate not "make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office." In particular, the comments to this section emphasize that a candidate should not make such pledges and promises to "an appointing or confirming authority." Similarly, Canon 30 of the American Bar Association's 1924 Canons of Judicial Ethics, as cited by the ABA, states that a candidate for judicial position "should not announce in advance his conclusions of law on disputed issues to secure" the support of the class of people who will determine whether the candidate attains the judicial position. And Canon 3A(6) of the U.S. Judicial Code of Conduct provides that a "judge should not make public comment on the merits of a matter pending or impending in any court."

   Any conversations that may have violated these Canons are relevant to the Senate's exercise of its advice and consent power. In exercising this power, the Senate is entitled to judge for itself whether any views you expressed on legal issues raise concerns under the applicable ethical rules.

   My previous question did not call for any private details of your conversations, or for you to reveal which Senator asked about any particular issue. The question merely asks that any views on the specific legal issues listed in the question that you may have expressed to one Senator be made available to all Senators. Please answer the question, which is reproduced below.

   > **You state in your Committee questionnaire that, during the appointment process, you were "asked about [your] personal views concerning a number of issues." Were you asked, and did you answer, questions regarding your views on any of the following: the use of foreign law in American courts; the death penalty; abortion; the scope of Congress's commerce power; affirmative action; the protections of the First Amendment; the meaning of the Second Amendment; the protections of the Fourth and Fifth Amendments; the application of the Eight Amendment; the scope of the Tenth Amendment; federal courts' limited review of state *habeas corpus* petitions; the proper enforcement of immigration laws; the effect of arbitration provisions; or the permissible application of punitive damages? If yes, please provide the answer you gave at that time.**

63004.441

Response: Senator, with regard to my conversations with United States Senators, and with reference to Rule 4.1(13) of the 2007 ABA Model Code of Judicial Conduct, I can assure you that I have not made pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicated duties of the office. I have made no such pledges or promises to "an appointing or confirming authority." With reference to Canon 30 of the American Bar Association's 1924 Canons of Judicial Ethics, I have not announced in advance my conclusions of law on disputed issues to secure the support of any class of people who will determine whether I attain this position. With reference to Canon 3A(6) of the U.S. Code of Judicial Conduct, I have not made any "public comment on the merits of a matter pending or impending in any court." If I am confirmed as a United States District Court Judge, I will decide cases based on the facts and the law, following established precedent from the United States Supreme Court and the Seventh Circuit Court of Appeals.

Responses of Louis B. Butler, Jr.
Nominee to the U.S. District Court for the Western District of Wisconsin
to the Written Questions of Senator John Cornyn

1. **You state in your Committee questionnaire that, during the appointment process, you were "asked about [your] personal views concerning a number of issues." Were you asked, and did you answer, questions regarding your views on any of the following: the use of foreign law in American courts; the death penalty; abortion; the scope of Congress's commerce power; affirmative action; the protections of the First Amendment; the meaning of the Second Amendment; the protections of the Fourth and Fifth Amendments; the application of the Eight Amendment; the scope of the Tenth Amendment; federal courts' limited review of state *habeas corpus* petitions; the proper enforcement of immigration laws; the effect of arbitration provisions; or the permissible application of punitive damages? If yes, please provide the answer you gave at that time.**

   Response: I believe it would be inappropriate for me to describe in any further detail my private conversations with United States Senators. As I have indicated throughout this process, any personal views that I might have would not control my decisions on the bench. My decisions would be based on governing law. No one involved in the process of selecting me as a judicial nominee discussed with me 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 my position on such case, issue or question.

2. **In *State v. DuBose*, 699 N.W.2d 582, 600 (2005), you wrote that one "cannot seriously argue that . . . eyewitness identifications are inherently reliable." You noted: "What we have here is a legal fiction that is simply not borne out by the facts. Unless, and until, we improve eyewitness identification procedures so that the likelihood of irreparable misidentifications is significantly reduced, we can no longer proceed as though all is good in the Land of Oz." *Id.* You also opined in *State v. Shomberg*, 709 N.W.2d 370, 394 n.2 (2006), that "[i]n general, people overestimate eyewitness accuracy and fail to understand the factors that affect it."**

   a. **Do you agree with the United States Supreme Court's ruling that eyewitness identifications are admissible unless "there is a very substantial likelihood of irreparable misidentification"? *Manson v. Brathwaite*, 432 U.S. 98, 116 (1977) (internal quotations omitted).**

      Response: If confirmed as a District Court Judge, I would have no difficulty following this Supreme Court precedent.

   b. **Likewise, do you endorse the Court's opinion that "[j]uries are not so susceptible that they cannot measure intelligently the weight of identification testimony that has some questionable feature"? *Id.***

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Response: If confirmed as a District Court Judge, I would have no difficulty following Supreme Court precedent.

c. Under what circumstances would you, if confirmed as a federal judge, likely exclude eyewitness identifications as unreliable?

Response: It would be inappropriate for a nominee to predict how future cases should be decided. I would follow controlling precedent of the United States Supreme Court and the Seventh Circuit Court of Appeals.

d. Do you agree with Justice Stevens's view that "rules to minimize the danger of convicting the innocent on the basis of unreliable eyewitness testimony" are designed "more effectively by the legislative process than by a somewhat clumsy judicial fiat"? *Id.* at 117-18 (Stevens, J. concurring).

Response: I do agree that legislative action in this area would be welcome. As a then Wisconsin Supreme Court Justice, my job was to resolve issues presented to the court in a given dispute. Under Wisconsin law, factors taken into account by the court in determining whether to adhere to precedent include whether there is a need to reach a decision that corresponds to newly ascertained facts, and whether prior decisions have become unsound, because they are based on principles that are no longer valid. The Court in *Dubose* and *Shomberg* was presented with evidence concerning wrongful convictions based on eyewitness misidentification. Our decision adopting earlier precedent from the United States Supreme Court regarding showups in *Dubose* was based on the Wisconsin Constitution as applied to the evidence received and considered by the court. I might add that Forrest Shomberg's conviction was recently vacated because DNA evidence excluded him as the source of the evidence at the scene of the crime. Our decision in *Dubose* takes into account the fact that when an innocent person is convicted, the guilty party is free to prey upon society.

3. In *State v. Knapp*, 666 N.W.2d 881 (2003) (*Knapp I*), the Supreme Court of Wisconsin concluded that a sweatshirt covered in a murder victim's blood that a suspect voluntarily pointed out to police was inadmissible on account of a *Miranda* violation. The United States Supreme Court vacated and remanded, concluding "that the fruit of the poisonous tree doctrine does not extend to derivative evidence discovered as a result of a defendant's voluntary statements obtained without *Miranda* warnings." *State v. Knapp*, 700 N.W.2d 899, 901 (2005) (*Knapp II*); *see also Wisconsin v. Knapp*, 542 U.S. 952 (2004). Writing for a majority of the Supreme Court of Wisconsin on remand, *see Knapp II*, 700 N.W.2d at 901-21, you reinstated the holding of *Knapp I*, interpreting *sua sponte* a provision of the Wisconsin Constitution to provide more protections against searches and seizures than the identical provision of the federal Constitution on which the Supreme Court based its ruling. In doing so, you addressed an argument that was not presented in *Knapp I*, and you broke with the Supreme Court of Wisconsin's longstanding tradition of

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interpreting provisions of its constitution in concert with the federal Constitution. Your opinion has been criticized as "pure unvarnished result-orientation," and Wisconsin law enforcement officials have emphasized that it "could potentially impact many areas of police decision-making in the future, increas[ing] confusion among officers." Lt. Victor Wahl, *Legal Update*, Madison Police Dep't (2005).

Do you acknowledge that, if you are confirmed as a federal district judge, it will not be within your power to go beyond the rulings of the United States Supreme Court?

Response: Yes.

Do you agree with Justice Wilcox of the Supreme Court of Wisconsin that departing from, or evading, precedent "seriously undermines the prestige, influence, and function of the judicial branch"? *Knapp II*, 700 N.W.2d at 926.

Response: In *Knapp II,* the Wisconsin Supreme Court did not depart from or evade precedent. With respect to *Knapp II*, there was no controlling precedent from the United States Supreme Court. Two decisions by the United States Supreme Court issued the same day, *United States v. Patane* and *Missouri v. Seibert*, were both plurality decisions with different voting blocks that led to different results with respect to the fruit of the poisonous tree doctrine. Justice Kennedy was the deciding vote in each matter. He concluded in *Patane* that derivative physical evidence should not be suppressed for a non-deliberate *Miranda* violation, but concluded in *Seibert* that derivative testimonial evidence should be suppressed if there was a deliberate *Miranda* violation. *Knapp I* and *II* involved a deliberate *Miranda* violation and derivative physical evidence, a situation not presented in either *Patane* or *Seibert*. Regardless, as a District Court Judge, if confirmed, I would have no such authority for departing from or evading precedent.

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Responses of Louis B. Butler, Jr.
Nominee to the U.S. District Court for the Western District of Wisconsin
to the Written Follow-up Questions of Senator Charles E. Grassley

1. **In questions 6(a) and 7, you concluded your response by stating: "Different perspectives will help the judges to assess facts presented, as well as the scope of the decisions to be rendered and how those decisions will affect the public in general." I am concerned about judges looking to opinion polls or issuing a ruling based on their view of how it might "affect the public in general." Please explain the rationale behind a judge considering public impact, rather than simply applying the law to the facts.**

   Response: My answer to question 6(a) stated: "Personal beliefs and personal policy decisions have no role in a judge's decision-making. Judges on an *appellate court* (emphasis added) often disagree on how a case should be decided. As to backgrounds, it has been my experience that it is beneficial when a court has members on it that have civil experience as well as criminal experience, former prosecutors and defense lawyers, former plaintiff's counsel as well as defense, liberals, moderates and conservatives, and judges from an urban setting as well as rural. Different perspectives will help the judges to assess facts presented, as well as the scope of the decisions to be rendered and how those decisions will affect the public in general." My answer specifically referenced appellate courts with multiple judges. This is very different than being a United States District Court Judge. At the Wisconsin Supreme Court, one of the criteria for granting review is whether "the petition for review demonstrates a need for the supreme court to consider establishing, implementing or changing a policy within its authority." Wis. Stats. (Rule) 809.62(1r)(b). Another criterion for granting review is whether "a decision by the supreme court will help develop, clarify or harmonize the law," and the "question presented is a novel one, the resolution of which will have statewide impact." Wis. Stats. (Rule) 809.62(1r)(c)2. Another criterion for granting review at that court is whether "due the passage of time or changing circumstances, such (supreme court or court of appeals) opinions are ripe for reexamination." Wis. Stats. (Rule) 809.62(1r)(e). It is within this context as a former justice on the Wisconsin Supreme Court that I answered questions 6(a) and 7. I have said many times that judges should not make decisions based on popularity or opinion polls, and that judges should make decisions based on the facts and the law. For example, please see June 1, 2007 speech I gave at the State's Mock Trial Championship. If I am confirmed as a United States District Court Judge, I will decide cases based on the facts and the law, following established precedent from the United States Supreme Court and the Seventh Circuit Court of Appeals.

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2. **In question 9(a), I quoted President Obama and asked whether you agreed or disagreed with the President's empathy standard. Please respond with a simple yes or no, followed by an explanation.**

   Response: No. As I testified at my confirmation hearing, I agree with Justice Sotomayor's statement that "We apply the law to the facts. We don't apply feelings to the facts." As I also stated in my response to your question 9(c), "Empathy should play no role in deciding the law."

3. **I want to make sure I understand your answer to question 9(b). By answering yes, are you indicating that you meet President Obama's empathy standard, or did you not read the question to include empathy as part of the standard?**

   Response: Given the fact that I was nominated by President Obama, I can only assume that I indeed met all of the standards the President has established for appointment to the federal bench. That is what I was indicating when I answered question 9(b). Having said that, once again, let me reiterate that I agree with Justice Sotomayor that judges apply the law to the facts; judges do not apply feelings to the facts.

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Responses of Louis B. Butler, Jr.
Nominee to the U.S. District Court for the Western District of Wisconsin
to the Written Questions of Senator Charles E. Grassley

1. In your opinion, what is the proper role of a judge?

Response: Courts are involved in dispute resolution. The role of a judge is to decide cases in a fair, impartial, neutral and detached manner, applying the law to the facts of a given case. I have publicly made statements referencing my approach to judicial decision-making and impartiality in the past. For example, at a speech in June 2007, I stated as follows:

> Judicial decision-making should be based on the evidence and the law, however we interpret that to be, and not outside influence and improper consideration.
>
> Every judge is duty bound to make decisions with the following framework in mind: In applying the law to the facts in any given case, we look first to the Constitution of the United States, the Supreme Law of the land. Then we look to the state constitution, our state statutes, our common law, and our precedents. It is within that framework that we make our decisions.

At another speech in July 2007, I stated as follows:

> The goal of any judge is to not side with one party or another. We do not dance to the tune of special interest groups. We do not reach a result, and then figure out how to get there. We do what we can to make sure that our legal system is fair, neutral, detached and impartial. We base our decisions on the facts and the law. Our judges put on their so-called striped shirts, you call them robes, and play the role of referee every single day in order to make sure that our rules are employed in an appropriate manner.

If I am confirmed as a United States District Court Judge, I will decide cases within the above framework, basing my decisions on the United States Constitution, federal legislation, and controlling precedent from the United States Supreme Court and the United States Court of Appeals for the Seventh Circuit.

2. Do you believe that it is ever proper for judges to indulge their own values in determining what the law means?

Response: No.

a. If so, under what circumstances?

Response: See above response.

b. Please identify any cases in which you have done so.

Response: None.

c. If not, please discuss an example of a case where you had to set aside your own values and rule based solely on the law.

Response: Please see my concurring opinion in *Industrial Roofing v. Marquardt*, 2007 WI 19, 299 Wis.2d 81, 726 N.W.2d 898. While my personal views were consistent with the majority and dissenting views that a party should not be responsible for the mistakes of the lawyer where the client is blameless, our precedent was to the contrary, and in the absence of any change implemented as part of the court's rule-making procedure, I could not join the majority opinion.

3. Do you believe that it is ever proper for judges to indulge their own policy preferences in determining what the law means?

Response: No.

a. If so, under what circumstances?

Response: See above response.

b. Please identify any cases in which you have done so.

Response: None.

c. If not, please discuss an example of a case where you had to set aside your own policy preferences and rule solely on the law.

Response: Please see both the majority opinion, which I coauthored, and my concurring opinion in *Clean Wisconsin, Inc. v. PSC*, 2005 WI 93, 282 Wis.2d 250, 700 N.W.2d 768. I had serious questions about the environmental impact statement in that case, but it was not the court's function to determine this state's energy policy or to decide whether the construction of coal-fired power plants was in the public interest. These were legislative determinations assigned to the Public Service Commission. Our court could not substitute our judgment for that of an administrative agency determining a legislative matter within its province.

4. How do you define "judicial activism?"

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Response: I have previously stated that "judicial activism" is a term I suspect is often used by those who disagree with a particular result. I am aware that others use that term without defining it to criticize opinions of various courts. To me it suggests coming up with a result, and then figuring out how to get there, or deciding issues not presented by the parties in a given case, but that is not necessarily how the term is used by others. It is also not how I decided cases. If confirmed as a District Court Judge, I would apply settled precedent of the United States Supreme Court and Seventh Circuit Court of Appeals.

5. **U.S. Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within their particular circuit.**

   a. **Are you committed to following the precedents of the higher courts faithfully, giving them full force and effect, even if you personally disagree with such precedents?**

      Response: Yes.

   b. **How would you rule if you believed that the Court of Appeals had seriously erred in rendering a decision?**

      Response: I would follow controlling precedent from the Seventh Circuit Court of Appeals.

   c. **How would you rule if you believed that the U.S. Supreme Court had seriously erred in rendering a decision?**

      Response: I would follow controlling precedent from the United States Supreme Court.

6. **In remarks to a campaign event entitled "Young and Powerful for Obama" dated September 25, 2008, you stated: "[W]hile all judges have a desire to interpret and apply the law, the cases that get to the Supreme Court are the ones that have no easy answer. *Thus, the background, personal beliefs and policy decisions of the Justices selected will influence how they vote on the difficult cases before them . . . And that is the main reason that I support Senator Obama."* (emphasis added). You obviously endorsed President Obama's candidacy based on what he said about the type of judges he would choose, which you interpreted to mean those who would be influenced by their "backgrounds, personal beliefs and policy decisions" in judging.**

   a. **What role do an individual's background, personal beliefs and policy decisions have on a judge's decisionmaking?**

      Response: Personal beliefs and personal policy decisions have no role in a judge's decision-making. Judges on an appellate court often disagree on how a

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case should be decided. As to backgrounds, it has been my experience that it is beneficial when a court has members on it that have civil experience as well as criminal experience, former prosecutors and defense lawyers, former plaintiff's counsel as well as defense, liberals, moderates and conservatives, and judges from an urban setting as well as rural. Different perspectives will help the judges to assess facts presented, as well as the scope of the decisions to be rendered and how those decisions will affect the public in general.

b. How do these relate to applying the law to the facts in a given case?

Response: See above answer.

7. **During your confirmation hearing, you stated that, in your experience, you look to the law and "then you have to make a decision that will resolve the dispute in a fair and impartial manner. And so the backgrounds of the different experiences that one can bring to the table – whether its practice experience or other types – I think it helps to expand the discussion in the conference room . . . ." Please explain what you meant by this statement.**

Response: As I noted above, it has been my experience that it is beneficial when a court has members on it that have civil experience as well as criminal experience, former prosecutors and defense lawyers, former plaintiff's counsel as well as defense, liberals, moderates and conservatives, and judges from an urban setting as well as rural. Different perspectives will help the judges to assess facts presented, as well as the scope of the decisions to be rendered and how those decisions will affect the public in general.

8. **In response to a question at your confirmation hearing regarding the role of the court, you stated: "For me it's always been taking the facts of the case and applying the applicable law." Please explain what you meant by this statement.**

Response: In applying the law to the facts in any given case, I first determined what the facts were. Sometimes the factfinder is a jury, sometimes it is the judge. I then determined whether the Constitution of the United States applied. I then looked at any applicable legislation, the common law, and prior precedent. I applied the law to the facts in a fair, impartial, neutral and detached manner to resolve the matter pending before the court.

9. **President Obama has described the types of judges that he will nominate to the federal bench as follows: "We need somebody who's got the heart, the empathy, to recognize what it's like to be a young teenage mom. The empathy to understand what it's like to be poor, or African-American, or gay, or disabled, or old. And that's the criteria by which I'm going to be selecting my judges." At her confirmation hearing, Justice Sotomayor rejected this "empathy standard" stating, "We apply the law to the facts. We don't apply feelings to the facts." At your confirmation hearing, you testified that you agreed with her statement.**

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a. Do you agree with President Obama's quote? Please explain your answer.

Response: The President has set forth some of the considerations he takes into account when selecting a Justice on the Supreme Court. If confirmed as a nominee, my role as a District Court Judge would be to apply the law to the facts in a fair, impartial, neutral and detached manner to resolve the matter pending before the court.

b. Based on your understanding of President Obama's quote, and your statements before the "Young and Powerful for Obama" event, do you believe that you fit President Obama's standard for federal judges?

Response: Yes.

c. What role do you believe that empathy should play in a judge's consideration of a case?

Response: Empathy should play no role in deciding the law. However, following a criminal conviction, at the time of sentencing, a judge must take into account several factors in fashioning an appropriate sentence. Among those factors are the sentencing guidelines, the seriousness of the offense, the character and background of the defendant, and the need to protect society. The judge must also assess the impact the crime had on individual victims and their rights. It is important to understand what a victim has suffered in fashioning an appropriate sentence.

d. Do you think that it is ever proper for judges to indulge their own subjective sense of empathy in determining what the law means?

Response: No.

i) If so, under what circumstances?

Response: See above response.

ii) Please identify any cases in which you have done so.

Response: None.

iii) If not, please discuss an example of a case where you had to set aside your own subjective sense of empathy and rule based solely on the law.

Response: Once, as a Municipal Court judge, a tavern owner appeared before the court for an underage person on the premises violation. When the owner hired the manager and the bartender on duty, the owner

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provided each of them with training that required them to check the identification of each individual entering the premises, and each individual purchasing alcohol. While the owner was out of the country, the bartender served an underage patron with alcohol, resulting in a violation of the law. The bartender was cited, as well as the manager on the premises. The owner was also cited, and chose to try the case. While I agreed with the dissent in a binding Wisconsin Supreme Court decision, controlling precedent dictated that the owner was also responsible. Therefore, I found the owner guilty.

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Responses of Louis B. Butler, Jr.
Nominee to the U.S. District Court for the Western District of Wisconsin
to the Written Follow-up Questions of Senator Jeff Sessions

1. **In response to Questions 1(a)(i), (c)(i), and (c)(ii), you stated "if confirmed as a District Court Judge, I would apply settled precedent of the United States Supreme Court and Seventh Circuit Court of Appeals." While I appreciate your commitment to follow precedent if confirmed to the district court, this statement does not answer any of the above-listed questions. Please provide a response to those questions.**

   a. **Do you agree with the dissent in *Paris Adult Theatre*? Please explain why or why not.**

      Response: As a judge, I read opinions of the United States Supreme Court to determine how to apply those opinions to cases that come before the court. The Court in *Paris Adult Theatre* held, among other things, that obscenity may be banned in public places even if confined to consenting adults. I fully accept that as precedent to be followed, and will do so if confirmed. Beyond that, having not reviewed the briefs filed by the parties, having not read all of the decisions cited within the majority and dissenting opinions, and having not heard the oral arguments in the action, I am not in a position to agree or disagree with any viewpoint taken by a dissenting justice.

   b. **Do you agree with the dissent in *Marsh*? Please explain your answer.**

      Response: The Supreme Court held that the Nebraska practice of opening legislative sessions with a prayer did not violate the establishment clause. I fully accept that as precedent to be followed, and will do so if confirmed. Beyond that, having not reviewed the briefs filed by the parties, having not read all of the decisions cited within the majority and dissenting opinions, and having not heard the oral arguments in the action, I am not in a position to agree or disagree with any viewpoint taken by a dissenting justice.

   c. **Do you agree that America's history and heritage as a Judeo-Christian nation should inform interpretation of the First Amendment?**

      Response: In response to the claim in *Marsh* that prayers at the beginning of the legislative session are in the Judeo-Christian tradition, the Court stated: "The content of the prayer is not of concern to judges where, as here, there is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief. That being so, it is not for us to embark on a sensitive evaluation or to parse the content of a particular prayer." I fully accept that as precedent to be followed, and will do so if confirmed. Beyond that, having not reviewed the briefs filed by the parties, having not read all of the

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decisions cited within the majority and dissenting opinions, and having not heard the oral arguments in the action, I am not in a position to agree or disagree with any viewpoint taken by a dissenting justice.

2. **In response to Question 1(a)(ii), you stated: "The Supreme Court has recognized that all obscenity is not beyond the reach of government regulation. If confirmed as a District Court Judge, I would apply settled precedent of the United States Supreme Court and Seventh Circuit Court of Appeals." While I appreciate your commitment to follow precedent if confirmed to the district court, your statements do not answer this question. Please provide a response to this question.**

   a. **Do you agree with Justices Brennan and Marshall that all obscenity is beyond the reach of government regulation? Please explain why or why not.**

      Response: The Court held to the contrary in *Paris Adult Theatre*. I fully accept that as precedent to be followed, and will do so if confirmed. Beyond that, having not reviewed the briefs filed by the parties, having not read all of the decisions cited within the majority and dissenting opinions, and having not heard the oral arguments in the action, I am not in a position to agree or disagree with any viewpoint taken by a dissenting justice.

3. **In response to Question 1(b)(i), you stated: "The Supreme Court has held that the death penalty is not per se unconstitutional. If confirmed as a District Court Judge, I would apply settled precedent of the United States Supreme Court and Seventh Circuit Court of Appeals." While I appreciate your commitment to follow precedent if confirmed to the district court, your statements do not answer my question. Please provide a response to this question.**

   a. **Do you agree that the death penalty is *per se* unconstitutional? If not, do you agree that it is settled law that the death penalty is constitutional?**

      Response: The Court has held that the death penalty is not *per se* unconstitutional. Beyond that, having not reviewed the briefs filed by the parties, having not read all of the decisions cited within the majority and dissenting opinions, and having not heard the oral arguments in the action, I am not in a position to agree or disagree with any viewpoint taken by a dissenting justice. As to whether it is settled law that the death penalty is constitutional, for a United States District Court Judge, any decisions by the United States Supreme Court are settled law, and would be binding precedent.

4. **In response to Question 1(d)(i), you stated: "The Supreme Court has held that illegal aliens do not have a constitutional right to free public education. If confirmed as a District Court Judge, I would apply all settled precedent of the United States Supreme Court and Seventh Circuit Court of Appeals." While I appreciate your**

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commitment to follow precedent if confirmed to the district court, your statements do not answer my question. Please provide a response to this question.

a. Do you believe that illegal aliens have a constitutional right to taxpayer-funded benefits? Please explain your answer.

Response: I believe your question asks for a response not decided in *Plyler v. Doe*. The Court decided, among other things, that "public education is not a 'right' granted to individuals by the Constitution," but any further discussion calls for me to give an answer on a question that may come before the district court that I believe has not been squarely decided by the United States Supreme Court. That is why I responded that I would follow established precedent if confirmed. Of course, if either the United States Supreme Court or the Seventh Circuit Court of Appeals has decided the question of taxpayer-funded benefits, I would be bound by those decisions, and would follow that precedent.

5. Question 3(c) asked you to "provide an example of a case where the outcome did not comport with your view of 'what's right' and/or 'what's just.'" You answered: "*Ableman v. Booth*, 62 U.S. 506 (1858). I disagree with the court's decision to uphold and enforce the Fugitive Slave Act." To clarify, please give an example of a case *in which you participated as a judge* where the outcome did not comport with your view of "what's right" and/or "what's just."

Response: I have no such examples. The goal is to provide each litigant with a fair, neutral, detached and impartial decision in each case. Whether I agreed with the result of an individual case or not, each individual litigant was provided with due process and a fair and impartial decision. Thus, each case comported with my view of what is right and just.

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Responses of Louis B. Butler, Jr.
Nominee to the U.S. District Court for the Western District of Wisconsin
to the Written Questions of Senator Jeff Sessions

1. **In a 2008 debate during your campaign for the Wisconsin Supreme Court, you identified William J. Brennan and Thurgood Marshall as the Supreme Court justices whom you most admire and align yourself with. You included them when asked the same question during your 2000 campaign. In 2004, the *Milwaukee Journal Sentinel* reported that your "judicial philosophy was influenced by [your] legal idols," Justices Brennan and Marshall. You reiterated this conviction in your application to Governor Doyle for a seat on the Wisconsin Supreme Court. You also told the *Lawrence Journal*, "If I could mold myself as a justice, I'd want to be a cross between" Justices Brennan and Marshall. Given your consistent record of praise for Justices Brennan and Marshall, I am concerned that you may adopt their activist attitudes if confirmed to the federal bench. Both Justices were viewed as having judicial philosophies far out of the mainstream and far to the left of the Court.**

   a. **In his dissent in *Paris Adult Theatre v. Slaton*, 413 U.S. 49 (1973), Justice Brennan said that he believed that the government is constitutionally barred from prohibiting any obscenity not involving minors. Justice Marshall joined this dissent. In so doing, they departed from the mainstream of the Court and its precedents in this area.**

      i. **Do you agree with the dissent in *Paris Adult Theatre*? Please explain why or why not.**

         Response: If confirmed as a District Court Judge, I would apply settled precedent of the United States Supreme Court and Seventh Circuit Court of Appeals.

      ii. **Do you agree with Justices Brennan and Marshall that all obscenity is beyond the reach of government regulation? Please explain why or why not.**

         Response: The Supreme Court has recognized that all obscenity is not beyond the reach of government regulation. If confirmed as a District Court Judge, I would apply settled precedent of the United States Supreme Court and Seventh Circuit Court of Appeals.

   b. **In their concurrence in *Furman v. Georgia*, 408 U.S. 238 (1972), Justices Brennan and Marshall wrote that they would have held that any use of the death penalty is *per se* a violation of the Eighth Amendment.**

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i. **Do you agree that the death penalty is *per se* unconstitutional? If not, do you agree that it is settled law that the death penalty is constitutional?**

Response: The Supreme Court has held that the death penalty is not per se unconstitutional. If confirmed as a District Court Judge, I would apply settled precedent of the United States Supreme Court and Seventh Circuit Court of Appeals.

ii. **Do you agree that Justices Brennan and Marshall were engaged in judicial activism when they ignored the text of the Constitution and centuries of Supreme Court precedent to try to outlaw capital punishment?**

Response: To me, "judicial activism" suggests coming up with a result, and then figuring out how to get there, or deciding issues not presented by the parties in a given case. I understand that this is not necessarily how the term is used by others. It is also not how I decided cases. Whether I agree or disagree with a particular result or opinion is irrelevant. If confirmed as a District Court Judge, I would apply settled precedent of the United States Supreme Court and Seventh Circuit Court of Appeals.

c. **Justice Brennan, joined only by Justice Marshall, dissented in *Marsh v. Chambers*, 463 U.S. 783 (1983), where a majority of the Court held that legislative chaplains were constitutional.**

i. **Do you agree with the dissent in *Marsh*? Please explain your answer.**

Response: If confirmed as a District Court Judge, I would apply settled precedent of the United States Supreme Court and Seventh Circuit Court of Appeals.

ii. **Do you agree that America's history and heritage as a Judeo-Christian nation should inform interpretation of the First Amendment?**

Response: If confirmed as a District Court Judge, I would apply settled precedent of the United States Supreme Court and Seventh Circuit Court of Appeals.

d. **In *Plyler v. Doe*, 457 U.S. 202 (1982), Justice Brennan held that taxpayers were constitutionally obligated to provide free public education for illegal aliens. In dissent, Chief Justice Burger wrote, "[t]he Constitution does not provide a cure for every social ill, nor does it vest judges with a mandate to try to remedy every social problem."**

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i. **Do you believe that illegal aliens have a constitutional right to taxpayer-funded benefits? Please explain your answer.**

Response: The Supreme Court has held that illegal aliens do not have a constitutional right to free public education. If confirmed as a District Court Judge, I would apply all settled precedent of the United States Supreme Court and Seventh Circuit Court of Appeals.

ii. **Do you agree with Chief Justice Burger that it is not the role of judges to try to remedy every social problem when cases present opportunities to do so? Please explain your answer.**

Response: Yes. Congress is generally best suited to explore solutions to every social problem.

e. **Both Justice Brennan and Justice Marshall were often characterized as sympathetic to particular social groups perceived as disadvantaged or disempowered.**

i. **Do you agree with this characterization?**

Response: No. I would characterize them as sympathetic to equal justice under the law for all.

ii. **Do you believe, as they did, that judges have a special responsibility to be empathetic to the needs and concerns of "disadvantaged" social groups?**

Response: I do not agree with that characterization. I believe that judges have a responsibility to be fair, impartial, neutral and detached in rendering decisions based on the facts and the law.

2. **In a 2005 speech at the University of Wisconsin Law School, you discussed the deliberations of the Wisconsin Supreme Court, stating:**

"Each of us brings our own experiences with us everyday . . . . Who we are, everything we have learned, everything we have experienced is valuable when it comes to . . . deciding cases as a judge or justice. I know that I have experiences that no one else has had when it comes time for us to render our decisions. I recognize that my fellow justices may not necessarily see things as I do when we have our spirited discussions, but I am comforted by the fact that my perspective is at least being shared with the other justices, just as they share their experiences and outlooks with me. That can only be good. The more perspectives that we have in our conference room, the more likely it is that we achieve justice for all."

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a. Do these statements accurately reflect your judicial philosophy? If not, please describe your judicial philosophy.

Response: These statements reflect my belief in diversity in a collegial decision-making process. As far as my judicial philosophy is concerned, I have publicly made statements referencing my approach to judicial decision-making and impartiality. For example, at a speech in June 2007, I stated as follows:

> Judicial decision-making should be based on the evidence and the law, however we interpret that to be, and not outside influence and improper consideration.
>
> Every judge is duty bound to make decisions with the following framework in mind: In applying the law to the facts in any given case, we look first to the Constitution of the United States, the Supreme Law of the land. Then we look to the state constitution, our state statutes, our common law, and our precedents. It is within that framework that we make our decisions.

At another speech in July 2007, I stated as follows:

> The goal of any judge is to not side with one party or another. We do not dance to the tune of special interest groups. We do not reach a result, and then figure out how to get there. We do what we can to make sure that our legal system is fair, neutral, detached and impartial. We base our decisions on the facts and the law. Our judges put on their so-called striped shirts, you call them robes, and play the role of referee every single day in order to make sure that our rules are employed in an appropriate manner.

If I am confirmed as a United States District Court Judge, I will decide cases within the above framework, basing my decisions on the United States Constitution, federal legislation, and controlling precedent from the United States Supreme Court and the United States Court of Appeals for the Seventh Circuit.

b. How does the presence of a number of perspectives make it more likely to "achieve justice for all"?

Response: Judges on an appellate court often disagree on how a case should be decided. It has been my experience that it is beneficial when a court has members on it that have civil experience as well as criminal experience, former prosecutors and defense lawyers, former plaintiff's counsel as well as defense, liberals, moderates and conservatives, and judges from an urban setting as well as rural. Different perspectives will help the judges to assess facts presented, as well as the

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scope of the decisions to be rendered and how those decisions will affect the public in general.

3. In a 2005 interview in Lawrence Today, you stated that, as a judge, you "always try to think in terms of what's right, what's just."

a. Please explain your view of "what's right" and/or "what's just."

Response: Justice is ultimately the goal to be achieved within the justice system. Process is important, and judges should make decisions in all cases in a fair, impartial, neutral and detached manner and provide equal justice to all appearing before the court.

b. Please provide an example of a case where the outcome comported with your view of "what's right" and/or "what's just."

Response: Any case where the decisions were made in a fair, impartial, neutral and detached manner, providing equal justice to all persons appearing before the court, comports with my view of what's right and what's just.

c. Please provide an example of a case where the outcome did not comport with your view of "what's right" and/or "what's just."

Response: *Ableman v. Booth*, 62 U.S. 506 (1858). I disagree with the court's decision to uphold and enforce the Fugitive Slave Act.

4. In a 1994 op-ed you argued that President Clinton should appoint an African-American to a vacancy on the Seventh Circuit. You stated that he

> **"should strongly consider the needs of the court and the people the court serves. Anyone who has practiced law knows that the best courts are balanced, both in terms of backgrounds and philosophies. . . . The court's judicial philosophy is well to the right. And most importantly, the court is in need of someone who has special experience in representing indigent clients and understanding the needs of poor people and the impacts that the court's decisions will have on the poor."**

In addition, in a 1992 interview, you stated: "We've got to work harder in the judicial system to reflect the population levels of the various ethnic groups."

a. Do you believe that a judge's race or ethnic background affects the quality of his or her decisionmaking? Please explain your answer.

Response: No. While I believe in diversity and balance, the quality of a judge's decision-making will depend on the amount of attention given to the facts presented, and the research and scholarship done by the judge with respect to the

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law to be applied. On a multi-judge court, the quality will also depend on the discussions among the judges that take place during the decision-making process.

b. Please provide an example of a case in which your race or ethnic background informed your decisionmaking as a judge.

Response: None.

c. How can litigants know that they are being treated fairly if a judge's perspectives or background, rather than the application of the law to the facts, affect legal decisions?

Response: Judicial decision-making should be based on the facts and the law as applied to those facts. Litigants will hopefully believe they have been treated fairly if their case has been decided in a fair, neutral, detached and impartial manner, based on the facts and based on the law, and if they believe they have been listened to.

5. According to notes you provided to the Committee, in multiple speeches in 2005, you said of the members of the Wisconsin Supreme Court, "we each try to accomplish justice in our own way by applying the law to a particular fact situation based on our legal interpretation."

a. Please explain what you meant by this statement.

Response: Judges decide cases based on the facts presented and law that applies. In applying the law to the facts in any given case, I first determined what the facts were. Sometimes the factfinder is a jury, sometimes it is the judge. I then determined whether the Constitution of the United States applied. I then looked at any applicable legislation, the common law, and prior precedent. I applied the law to the facts in a fair, impartial, neutral and detached manner to resolve the matter pending in court.

b. Please provide an example of a case in which you "accomplish[ed] justice in [your] own way."

Response: Every case I participated in accomplished justice, because of the process applied by the court by listening to the parties, in treating everyone in a fair and impartial manner, and in resolving their disputes.

6. In a 2008 article, you were asked about your judicial philosophy. You stated: "I strongly believe that the role of the judiciary is to interpret and apply the law to a given set of facts, not make law. . . . I also consider myself to be a textualist." However, in several cases during your tenure on the Wisconsin Supreme Court, you often departed from precedent, cited to non-legal authorities not in the record, and reexamined legislative factfinding and policies to invalidate legislative enactments.

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How do you reconcile the foregoing with the notion that you are a "textualist" and that the role of a judge is to "apply the law to a given set of facts, not make law"?

Response: While I respect your interpretation of the Wisconsin Supreme Court's rulings during the years I served on the court, I do not agree with your characterizations. When I indicate that I am a textualist, "I interpret and apply the law as drafted by the legislature, as opposed to what it might mean based on our construction of what the legislature may have intended to do." *Bartholomew v. Wisconsin Patients Compensation Fund and Compcare Health Services Ins. Corp.*, 2006 WI 91, 293 Wis.2d 38, 717 N.W.2d 216, at par. 155 and fn8. I look at the language of the statute as expressing the legislature's intent. "Generally, language is given its common, ordinary, and accepted meaning. . . . If the meaning is plain, we [I] ordinarily stop the inquiry." *State v. Reed,* 2005 WI 53, ¶ 13, 280 Wis.2d 68, 695 N.W.2d 315. As to applying the law to a given set of facts, I served during my last four years on the court of last resort in Wisconsin. Our court was faced with many cases of first impression, whether interpreting the Constitution, state statutes, or the common law. While our court based its decisions on the facts and the law, I accept that not everyone will agree with our decisions, just as not everyone will agree with the dissents written in those cases.

7. **Please describe with particularity the process by which these questions were answered.**

Response: The questions were forwarded to me by the Department of Justice (DOJ). I undertook some research, reviewed some of the Wisconsin Supreme Court's opinions, and reviewed some of my speeches. I drafted answers to these questions then discussed them with representatives of the DOJ. I then finalized my responses.

8. **Do these answers reflect your true and personal views?**

Response: Yes.

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Responses of Louis B. Butler, Jr.
Nominee to the U.S. District Court for the Western District of Wisconsin
to the Written Questions of Senator Orrin G. Hatch

1. **Justice Butler, you were part of the majority in *State v. Fisher* which upheld a conviction for carrying a concealed weapon. The Wisconsin Constitution contains a robust right to keep and bear arms which covers security and any other lawful purpose. The court said this did not protect a tavern owner who carried a gun in his car even though he transported large amounts of cash related to his business. It appears that the court looked at what it considered a low crime rate in the community and concluded that this constitutional right did not apply to this business owner. That seems like a differential approach to constitutional rights where some people have them and others do not depending on their circumstances, where they live, or what they do for a living. Would the case have been decided differently if the same tavern owner keeping the same gun in the same car for the same purpose done business in a different neighborhood?**

Response: I did not write an opinion in *State v. Fisher*, 2006 WI 44, 290 Wis.2d 121, 714 N.W.2d 495, so my answer will be based on the opinion written for the court by Justice Ann Walsh Bradley. Our decision was based on earlier precedent decided before I joined the court (*State v. Cole,* 2003 WI 112, 264 Wis.2d 520, 665 N.W.2d 328, and *State v. Hamdan,* 2003 WI 113, 264 Wis.2d 433, 665 N.W.2d 785), interpreting the constitutional provision in conjunction with the carrying concealed weapon statute. In those cases, the court recognized that the right to bear arms under the Wisconsin Constitution is not absolute and that the test for the constitutionality of a regulation of that right depends on whether the regulation is a reasonable exercise of the state's inherent police power. 264 Wis.2d 520, par. 24. Although both cases occurred in high crime areas, the court drew a distinction between carrying a concealed weapon in a person's home or place of business, and carrying a concealed weapon in a vehicle. *Id.*, par. 49, and 264 Wis.2d 433, par. 67. In *Fisher*, at the time of the defendant's arrest for carrying a loaded and concealed gun in his vehicle, "he was on his way to McDonald's and was running personal errands." *Id.*, pars. 1, 39. He first stopped at the Department of Natural Resources to contest a citation he received a week-and-a-half earlier for transporting loaded firearms that were stolen along with his vehicle after he left his vehicle running unattended. *Id.*, par. 38. "[H]e kept the gun in his vehicle even at times when he was not transporting cash." *Id.*, par. 36. He was not in his home or place of business. It was in the context of these facts and our earlier precedent that the court held that Wisconsin's Carrying Concealed Weapon statute, sec. 941.23, established by the legislature, was constitutional as applied to the defendant. *Id.*, par. 5. In reaching this decision, the court followed our earlier precedent consistent with stare decisis. As to any fact situation not decided by the court, it would be inappropriate for me to comment how any such case should be decided.

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2. **In a 2005 speech, you said that who judges are and everything they have experienced is valuable when they decide cases. In remarks just about a year ago, you talked about interpreting and applying law as a desire, but you did not say it is an obligation. Instead, you said that "personal beliefs and policy decisions" will influence how judges decide cases. Do you believe that judges from different backgrounds would decide the same case differently and, if so, do you believe this is acceptable? When judges take an oath to be impartial, do they have a duty to set aside factors such as their personal views or the influences of their personal background?**

   a. **Do you believe that judges from different backgrounds would decide the same case differently and, if so, do you believe this is acceptable?**

   Response: As a former member of the Wisconsin Supreme Court, I have been involved with many unanimous decisions, as well as with many split decisions, so I am aware that different judges can, and do, decide the same case differently. Similar patterns (unanimous as well as split decisions) exist at the United States Supreme Court, the United States Court of Appeals, and other state appellate courts. If different judicial opinions were not acceptable, there would be no need for multi-judge courts.

   b. **When judges take an oath to be impartial, do they have a duty to set aside factors such as their personal views or the influences of their personal background?**

   Response: I have not, and will not make decisions based on my personal views. I have publicly made statements referencing my approach to judicial decision-making and impartiality in the past. For example, at a speech in June 2007, I stated as follows:

> Judicial decision-making should be based on the evidence and the law, however we interpret that to be, and not outside influence and improper consideration.
>
> Every judge is duty bound to make decisions with the following framework in mind: In applying the law to the facts in any given case, we look first to the Constitution of the United States, the Supreme Law of the land. Then we look to the state constitution, our state statutes, our common law, and our precedents. It is within that framework that we make our decisions.

At another speech in July 2007, I stated as follows:

The goal of any judge is to not side with one party or another. We do not dance to the tune of special interest groups. We do not reach a result, and then figure out how to get there. We do what we can to make sure that our legal system is fair, neutral, detached and impartial. We base our decisions on the facts and the law. Our judges put on their so-called striped shirts, you call them robes, and play the role of referee every single day in order to make sure that our rules are employed in an appropriate manner.

If I am confirmed as a United States District Court Judge, I will decide cases within the above framework, basing my decisions on the United States Constitution, federal legislation, and controlling precedent from the United States Supreme Court and the United States Court of Appeals for the Seventh Circuit.

3. **Justice Butler, courts have an important role to play, but they play that role as part of a system of government. That system includes the legislature. They are not free simply to second-guess legislators. It appears to me that in the *Ferdon* medical malpractice case, the Wisconsin Supreme Court stepped out of those bounds. You were in the majority in that case, and the court struck down the cap on noneconomic damages that the legislature had passed. Just a year earlier, the court had upheld the damages in wrongful death cases but in *Ferdon* the court struck it down in a personal injury case. The court said there was not even a rational basis for the damages cap. Ordinarily, that is a very deferential standard, which gives room for the legislature to make policy decisions and solve problems. But here it seems the court turned that standard into something else. It looks like your court created a standard that, while you still called it rational basis, actually set a higher bar for the legislature. Especially since the American Medical Association later found that Wisconsin was one of only a few states that did not have a medical malpractice crisis, it nonetheless appears that the damages cap accomplished precisely what the legislature intended. Why did the court substitute its policy judgment for the legislature's judgment?**

Response: I did not write the opinion in *Ferdon*, so my answer will be based on the opinion written for the court by the Chief Justice. I respectfully disagree that the court substituted its policy judgment for the legislature's judgment. Our court applied the Wisconsin Constitution to a comprehensive Wisconsin scheme governing medical malpractice. Our court accepted the fact that the legislation in question was presumed constitutional, and that the plaintiff must establish that the statute was unconstitutional beyond a reasonable doubt. *Ferdon v. Wisconsin Patients Comp. Fund,* 2005 WI 125, 284 Wis.2d 573, 701 N.W.2d 440, par. 68. The court then applied the rational basis test under the Wisconsin Constitution for the equal protection claim that was pursued by the plaintiff by "focusing on means without second-guessing legislative ends." *Id.*, par. 79. The court ultimately concluded, for

reasons stated in the majority opinion, that the malpractice cap adopted by the legislature was unreasonable and arbitrary because it was not rationally related to legislative objectives. *Id.*, pars. 113, 129, 175-76, 187. The opinion states several reasons why Wisconsin did not have a medical malpractice crisis, and those reasons were not related to the cap imposed. The Court noted that "[c]ourts across the country are divided about whether caps on noneconomic damages are constitutional," *Id.*, par. 17, and our court's decision was based on the Wisconsin Constitution. If confirmed as a United States District Court Judge, my decisions will be controlled by the decisions of the United States Supreme Court and the United States Court of Appeals for the Seventh Circuit.

Senator Tom Coburn, M.D.
Questions to Victoria Espinel
Nominee, Intellectual Property Enforcement Coordinator
Senate Judiciary Committee
November 16, 2009

Question #1:

Are you familiar with the work of the 2004 Department of Justice Task Force on Intellectual Property ("Task Force")?

a. **If yes, would you be supportive of re-establishing such a Task Force in order to ensure the DOJ is actively making improvements in its intellectual property enforcement efforts? Why or why not?**

If confirmed, I would use the development of the Joint Strategic Plan to support steps to ensure that the Department of Justice (DOJ) and all relevant agencies and offices of the U.S. government are actively reviewing their intellectual property enforcement efforts and making improvements where necessary to do so. If confirmed, I would welcome your views in the process of developing the Plan.

b. **If yes, do you believe the DOJ has effectively implemented the recommendations of the Task Force? Why or why not?**

My understanding, based primarily on reports and materials from DOJ, is that the 2004 recommendations were implemented. However, it is possible that there are areas where additional steps could be taken to make further improvements, particularly as methods and tactics of intellectual property criminals shift to avoid enforcement. If confirmed, I would use the development of the Joint Strategic Plan as an opportunity to identify any areas where improvements could be made and to devise a strategy to address those areas.

Question #2:

The position for which you have been nominated is located in the White House, within the Executive Office of the President. At the time the PRO-IP Act passed, such a location was touted as necessary for a proper vantage point for viewing efforts underway at each agency, and to ensure that the IPEC does not have institutional loyalties and obligations to any particular agency or department.

I realize you served in several positions at the Office of the U.S. Trade Representative (USTR) from 2001-2004. Do you feel you will be able to put aside any "institutional loyalties and obligations" to USTR in order to fulfill your duties if confirmed as the IPEC?

Yes; if confirmed, I would adhere to the role laid out in the statute to coordinate and facilitate exchanges among all the relevant agencies and offices of the U.S. government.

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Senator Tom Coburn, M.D.
Questions to Victoria Espinel
Nominee, Intellectual Property Enforcement Coordinator
Senate Judiciary Committee
November 16, 2009

Question #3:

One of the duties of the IPEC is to "coordinate the development of the Joint Strategic Plan against counterfeiting and infringement by the advisory committee," and "assist…in the implementation of the Joint Strategic Plan."

a. What ideas do you have for developing this Joint Strategic Plan?

In developing the Joint Strategic Plan, I believe it is critical to have an open and transparent process for collecting information and ideas. There are a large number of US government agencies and offices that are involved in intellectual property and enforcement. In addition to coordinating agencies' and offices' work on intellectual property protection and enforcement, it is important for agencies and offices to have a voice in the process and to have the opportunity to contribute their valuable expertise. I also believe it is important to actively reach out to and gather information and concerns from Congress, from stakeholders and from the general public to use in development of the Joint Strategic Plan. If confirmed, I will then use that information to develop the specific components of the Plan in coordination with the relevant agencies and offices.

b. In what areas do you believe there are currently structural weaknesses and/or systemic flaws that inhibit the effective enforcement of IP laws?

I recognize that there may be areas of deficiency or areas where improvements could be made. If confirmed, I would use the development of the Joint Strategic Plan to identify, in coordination with the relevant agencies and offices, any weaknesses or other deficiencies that inhibit the effective enforcement of intellectual property laws and make recommendations in the Joint Strategic Plan to address those.

c. Given your nomination occurred late this year, and the Joint Strategic Plan was due October 13th (12 months after the enactment of the PRO-IP Act), if confirmed, how do you plan to prioritize your resources in order to submit an accurate and complete Plan to this Committee as soon as possible? If confirmed, when do you anticipate that such a Plan will be available to this Committee?

If I am confirmed, developing and submitting the Joint Strategic Plan will be a primary focus immediately upon starting and I am committed to ensuring that it is submitted as quickly as is feasible.

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Senator Tom Coburn, M.D.
Questions to Victoria Espinel
Nominee, Intellectual Property Enforcement Coordinator
Senate Judiciary Committee
November 16, 2009

Question #4:

While cooperation among all of the agencies involved in intellectual property enforcement is necessary for effective prevention of IP theft, do you view any particular agency as more crucial than others in actually enforcing IP laws and deterring future infringement? Why or why not?

Each of the agencies and offices involved in intellectual property enforcement has different expertise and responsibilities determined by statute and therefore the level of involvement of a specific agency will vary depending on their role. If confirmed, I would work to enhance the effectiveness of agencies and offices in fulfilling their specific responsibilities.

Question #5:

According to the Bureau of Justice Statistics (BJS), both criminal and civil IP enforcement cases increased between 1994 and 2002. In fact, the number of suspects referred to U.S. attorneys for criminal prosecution with an IP theft-related lead charge increased 26%, and the number of cases in which plaintiffs sought civil remedies increased 20%. The number of suspects prosecuted for criminal IP theft increased 41%.

a. **In your opinion, what is the key to reducing IP theft?**

There are a number of issues that need to be addressed, including:

- The priority that governments place on enforcing intellectual property (which may vary depending on a number of underlying issues, including, among others, capacity, resources, competing policy goals, inexperience, industrial strategy, corruption and local protectionism);
- Public awareness of the harm that results from criminal activity;
- Cooperation among governments as illegal products move through global distribution chains;
- Legal or procedural barriers to enforcement (including legislative and regulatory deficiencies); and
- The experience and resources of law enforcement officials and other relevant government officials.

These are some of the key issues that need to be addressed to reduce intellectual property theft and, if confirmed, I look forward to coordinating with the relevant agencies and offices that are responsible for addressing these issues.

b. **Do you believe the U.S. Sentencing Commission's guidelines are effective in punishing convicted defendants and/or deterring future conduct?**

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Senator Tom Coburn, M.D.
Questions to Victoria Espinel
Nominee, Intellectual Property Enforcement Coordinator
Senate Judiciary Committee
November 16, 2009

I believe it is important to have penalties that are deterrent. If I am confirmed, I would look forward to working with the relevant agencies and offices to evaluate the effectiveness of the existing penalties.

Question #6:

In March 2004, the Attorney General announced the creation of the Department of Justice's Task Force on Intellectual Property ("Task Force"). According to a recent report required under the PRO-IP Act, the recommendations of the Task Force were allegedly implemented. Last year, the Task Force completed its work.

a. Do you agree with the recommendations of the Task Force?

I believe that many of the Task Force recommendations were valuable, including the recommendations to assign additional law enforcement personnel in key markets; to examine the need to increase resources; to aggressively prosecute intellectual property crimes that endanger the public health and safety; to take steps to increase cross-border enforcement; and to educate the public and increase public awareness.

b. If so, how do you plan to monitor continued implementation of the recommendations by the Justice Department?

If confirmed, I will have the opportunity to follow the activities of the Department of Justice in a number of ways, including in the interagency committee that I will chair.

c. Do you believe another similar Task Force is necessary for the Justice Department or any other agency to ensure effective IP enforcement occurs?

If confirmed, I will develop a Joint Strategic Plan in coordination with the relevant U.S. government agencies and offices, including the Department of Justice. This will allow my office to have the opportunity to assess, in coordination with DOJ, whether a similar Task Force is necessary.

d. If not, will your office conduct similar, ongoing reviews of each individual agency and department involved with IP enforcement?

If confirmed, I will have the opportunity to follow the activities of the agencies and offices involved with intellectual property enforcement in a number of ways, including in the interagency committee that I will chair.

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Senator Tom Coburn, M.D.
Questions to Victoria Espinel
Nominee, Intellectual Property Enforcement Coordinator
Senate Judiciary Committee
November 16, 2009

Question #7:

While helpful, the annual report recently submitted by the Justice Department and required under the PRO-IP Act, did not highlight many (if any) areas within the Justice Department that need improvement to ensure U.S. IP rights are enforced.

a. **What specific areas related to IP enforcement, if any, within the Justice Department, or any other agency, do you believe need improvement and why?**

b. **If confirmed as the IPEC, how do you plan to make changes in these areas?**

With respect to questions a. and b., I plan to use the development of the Joint Strategic Plan and the submission of an annual report to Congress as an opportunity to identify areas that need improvement and report on plans to make any necessary changes or modifications.

Question #8:

The position of IPEC replaces the National Intellectual Property Law Enforcement Coordination Council (NIPLECC). Do you believe that the IPEC position should operate differently than NIPLECC? Why or why not?

The IPEC position is intended to facilitate coordination among the agencies and offices of the U.S. government with respect to intellectual property and enforcement.

This new position has been placed inside the Executive Office of the President in the Office of Management and Budget (OMB). OMB plays a critical role in developing and coordinating Administration policy in a number of areas. If confirmed, I would play a similar role with respect to intellectual property and enforcement and would have the advantage of looking across all the relevant agencies and offices instead of acting from within one of them.

Question #9:

The PRO-IP Act, which established the IPEC position for which you have been nominated, also requires annual reporting by the Justice Department and Federal Bureau of Investigation (FBI). Will you commit to ensuring that, where appropriate, these agencies submit reports that are timely and responsive to the requirements of the PRO-IP Act?

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Senator Tom Coburn, M.D.
Questions to Victoria Espinel
Nominee, Intellectual Property Enforcement Coordinator
Senate Judiciary Committee
November 16, 2009

I am committed to using my role as coordinater and my office's constant contact with the relevant agencies and offices to ensure that intellectual property is a priority and that the requirements of the PRO-IP Act, including timely reporting, are met.

a. Will you commit to responding to questions from this Committee promptly and efficiently?

This role was created and is defined by legislation and, if confirmed, I will be fully accountable to Congress.

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Senator Chuck Grassley
Questions to Victoria Espinel
Nominee, Intellectual Property Enforcement Coordinator
Senate Judiciary Committee
November 16, 2009

Question #1:

If you are confirmed, how will you enhance and raise the profile of U.S. government efforts to combat intellectual property crime?

I believe that Congress's creation of this position was an important first step in enhancing and raising the profile of US government efforts to combat intellectual property crime.

If confirmed, I will be developing the Joint Strategic Plan mandated by statute, in coordination with the relevant agencies and offices. As part of that plan, we will develop a strategy to enhance existing U.S. government efforts to combat intellectual property crimes. In addition, by serving as the public face of the Administration's intellectual property enforcement efforts, this position can both support and raise the profile of the government's work to stop criminal infringement.

Question #2:

If you are confirmed, how do you intend to utilize existing intellectual property enforcement resources so you do not duplicate efforts to go after intellectual property crimes and protect intellectual property rights?

It is important to avoid duplication of efforts and inefficient use of resources. If confirmed, I will work with the relevant agencies and offices to create a better understanding of existing efforts. I will also work with the relevant agencies and offices, including through the development of the Joint Strategic Plan, to ensure that the work of each is supported and to avoid wasteful duplication of efforts.

Question #3:

If you are confirmed, how do you intend to work with the various existing agencies that investigate and prosecute intellectual property crimes? What do you see your role to be?

This position was created by statute to coordinate the protection and enforcement of intellectual property rights, including enforcement against intellectual property crimes, but does not have a role in the operational duties of enforcement agencies. If confirmed, I will work to enhance coordination among the relevant agencies and offices responsible for investigation and prosecution of intellectual property crimes, through the interagency committee that I would chair and through the development of the Joint Strategic Plan.

Senator Chuck Grassley
Questions to Victoria Espinel
Nominee, Intellectual Property Enforcement Coordinator
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Question #4:

How familiar are you with the National Intellectual Property Rights Coordination Center (IPR Center)? Have you ever worked with the IPR Center before?

I am aware of the National Intellectual Property Rights Coordination Center (IPR Center). I have not worked directly with the IPR Center but, if confirmed, look forward to doing so on its important role in protecting and enforcing intellectual property rights by investigating threats and collecting and analyzing information to prosecute intellectual property crimes.

Question #5:

If you are confirmed, how do you intend to work with the IPR Center and its current task force model?

If confirmed, I will work with the IPR Center – including through the work of the interagency committee that I will chair and through the development of the Joint Strategic Plan – to ensure its efforts are part of a coordinated Administration strategy to protect and enforce intellectual property rights.

Question #6:

If you are confirmed, do you plan on keeping the IPR Center as the U.S. government's clearinghouse for intellectual property crime?

If confirmed, I will work to develop the Joint Strategic Plan in cooperation with the relevant agencies and offices of the US government. The IPR Center plays an important role in deterring and investigating the movement of illegal goods into and out of the United States and in collecting, analyzing, and disseminating intelligence involving intellectual property crimes. If confirmed, in the course of developing the Joint Strategic Plan I will seek a strategy that existing capabilities and efforts of the US government agencies and offices.

Question #7:

The IPR Center has several initiatives aimed at combating counterfeiting by protecting the public's health and safety, economic stability and competitiveness in the United States. What is your opinion with these programs? If you are confirmed, do you intend to work with the IPR Center on these initiatives? How?

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Questions to Victoria Espinel
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I am aware of the work of the IPR Center but not yet sufficiently familiar with the details of their initiatives to comment on the specifics. However, I strongly believe that it is important to address health and safety concerns of intellectual property infringement as well as the impact of infringement on the economic stability and competitiveness of the United States. If confirmed, I will work with the IPR Center to ensure its efforts are part of a coordinated Administration strategy to protect and enforce intellectual property rights.

Question #8:

How do you plan to work with the Justice Department and the Federal Bureau of Investigation to improve investigative and forensic efforts to enforce intellectual property crime laws?

The Department of Justice and the Federal Bureau of Investigation play a critical role in the protection and enforcement of intellectual property rights.

If confirmed, I will engage the Department of Justice and the Federal Bureau of Investigation - including through development of the Joint Strategic Plan - to ensure their efforts are part of a coordinated Administration strategy to protect and enforce intellectual property rights.

Question #9:

What is your plan for conducting outreach to the public sector about combating intellectual property crime?

I believe it is critical for the American public to understand the importance of intellectual property to our economy, our consumers and to American jobs.

If confirmed, I will work with the relevant agencies and offices already engaged in public outreach efforts to develop a plan for public outreach and to ensure those efforts are coordinated.

In addition, I believe creating this position was an important step in raising public awareness. Making clear that protection of intellectual property is a priority sends a clear signal to the public of the importance that Congress and the Administration places on intellectual property.

Question #10:

Senator Chuck Grassley
Questions to Victoria Espinel
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What is your plan for improving international outreach on intellectual property crime matters?

If confirmed, I will work with the relevant agencies and offices to develop a plan for international outreach on intellectual property crime matters.

While the specifics of any future action will be developed with the relevant agencies and offices, including in the course of developing the Joint Strategic Plan, I am interested in working to ensure that U.S. government training overseas is coordinated and effective.

Question #11:

How will you further the U.S. government's efforts to shut down foreign manufacturers of counterfeit products?

Foreign manufacture of counterfeit products is a critical issue both because of the negative impact on our economy and the serious health and safety concerns. If confirmed, I will work with the relevant agencies and offices to develop a strategy that addresses foreign manufacture of counterfeit products.

Question #12:

You are undoubtedly aware of our pending trade agreements with Panama, Colombia and South Korea. How would the implementation of those agreements help protect U.S. intellectual property rights in those countries?

The pending trade agreements with Panama, Colombia and South Korea have comprehensive intellectual property chapters that would protect United States' intellectual property rights, including copyright, trademarks and patents. In addition, the agreements contain provisions on the enforcement of intellectual property, including rules related to civil enforcement, criminal enforcement and customs enforcement.

Question #13:

How do you plan to work with U.S. Customs and Border Protection to improve efforts to protect intellectual property rights at our borders?

U.S. Customs and Border Protection plays a critical role in the protection and enforcement of intellectual property rights.

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If confirmed, I will work with U.S. Customs and Border Protection - including through development of the Joint Strategic Plan - to ensure its efforts are part of a coordinated Administration strategy to protect and enforce intellectual property rights.

Senator Orrin G. Hatch
Questions to Victoria Espinel
Nominee, Intellectual Property Enforcement Coordinator
Senate Judiciary Committee
November 16, 2009

Question #1:

If confirmed, as Intellectual Property Enforcement Coordinator, one of your first orders of business will be drafting a Joint Strategic Plan with several government departments and agencies involved in intellectual property enforcement. To say the least, this is not going to be an easy undertaking.

How do you plan to create this strategic plan with so many interested stakeholders?

There are a large number of government departments, agencies and offices that play critical roles in protecting and enforcing intellectual property rights.

In developing the Joint Strategic Plan, I believe we need an open and transparent process for collecting information and ideas. In addition to coordinating agencies' and offices' work on intellectual property protection and enforcement, I believe it is important for agencies and offices to have a voice in the process and to have the opportunity to contribute their valuable expertise.

OMB develops and coordinates Administration policy in a number of areas and has processes in place to create a consensus in developing Administration policies. I hope to build on that expertise in developing the Joint Strategic Plan.

Question #2:

As you are aware, Canada has become a *safe haven* for Internet pirates and an attractive location for illicit websites.

Canada's enforcement record falls short of what should be expected of our neighbor and largest trading partner – primarily due to ineffective border controls, inadequate enforcement resources and policies, and a seeming unwillingness to impose deterrent penalties on copyright pirates.

Canadian parliamentary leaders and government officials have acknowledged many of these deficiencies, but have done little to address them.

If confirmed, how will you work with government agencies, Congress, stakeholders and the public to address the very serious IP-related issues in Canada?

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Senator Orrin G. Hatch
Questions to Victoria Espinel
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With respect to the agencies, I will work to ensure all agencies and offices that could have an impact on Canadian legislation, practices and policies, including the Office of the US Trade Representative, the Department of Commerce, the Department of State and our U.S. embassy, the Department of Justice, the Department of Homeland Security, are working together in a coordinated and effective manner.

With respect to Congress, if confirmed, I look forward to being in close communication, both to learn more about the concerns of members of Congress and to ensure that Congress has timely information on U.S. government activities. I look forward to an active and cooperative working relationship with members of Congress and will look to Congress to work in concert with the Administration in the international arena.

With respect to stakeholders and the general public, I would work to gather information about the level and specific concerns to ensure that stakeholders and the public are informed about the activities of the U.S. government.

Question #3:

I know one of your stated goals as IP Enforcement Coordinator will be to highlight the importance of intellectual property to our nation's economy.

How do you intend to do this?

I believe it is critical for the American public to understand the importance of intellectual property. A range of critical areas to our economy are highly dependent on intellectual property: exports, U.S. jobs from the sciences to publishing, green technology. At same time jobs in these areas are being lost unfairly due to criminal activity.

Making clear that protection of intellectual property is a priority by creating this position sends a clear signal to the public of the importance that Congress places on intellectual property.

If confirmed, I will work to develop a consensus with the relevant agencies and offices, through the development of the Joint Strategic Plan required by statute A few of the areas I would like to discuss further with the U.S. government agencies and offices and with the stakeholders, including Congress, are:

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- Enhancing coordination and effectiveness of various public awareness efforts on the importance of intellectual property rights (and the harmful effects of infringement), and working with private sector partners to support this message.
- Highlighting areas which may require additional research or analysis to inform policy decisions.
- Creating reliable metrics that evaluate the economic impact of IP protection and enforcement.

Question #4:

When we were crafting the PRO-IP Act of 2008, most of us did not envision that the IP Coordinator position would be placed in the Office of Management and Budget (OMB).

What are your thoughts on having the position organized under the OMB?

OMB plays a key role in coordinating an interagency consensus on Administration policy in a number of areas. If I am confirmed, I would play a similar role with respect to intellectual property.

In addition, over the last few weeks, I have met with OMB staff and have found them uniformly to be highly impressive, knowledgeable, helpful and interested and enthusiastic about this new position.

Question #5:

Ms. Espinel, if confirmed, you will be the country's first Intellectual Property Enforcement Coordinator. No doubt, your efforts will be closely watched by government officials around the world.

Will you reach out to foreign governments to encourage them to create similar IP coordinator positions?

It is important for governments to be internally coordinated to protect and enforce intellectual property rights. There may be a variety of ways this can be done. If confirmed, I will seek to encourage coordination within the governments of our trading partners.

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Senator Jeff Sessions
Questions to Victoria Espinel
Nominee, Intellectual Property Enforcement Coordinator
Senate Judiciary Committee
November 16, 2009

Question #1:

If confirmed, you will be the first Intellectual Property Enforcement Coordinator. This position was created by the Prioritizing Resources and Organization for Intellectual Property Act, which is aimed at coordinating the anti-piracy efforts of various agencies such as the Department of Justice, the Patent and Trademark Office and the U.S. Trade Representative.

a. **How do you plan to facilitate coordination and encourage cooperation among these agencies in order to form a cohesive plan with regard to intellectual property rights enforcement and anti-piracy efforts?**

As a starting point, in developing the Joint Strategic Plan, I believe it is critical to have an open and transparent process for collecting information and ideas. It is important for relevant agencies and offices to have a voice in the process and to have the opportunity to contribute their valuable expertise.

b. **Part of your responsibilities will be to guide the development of a "Joint Strategic Plan" to combat counterfeiting and infringement. What are some of the initial steps you plan to take in order to help coordinate this plan?**

The Office of the Management and Budget (OMB) develops and coordinates Administration policy in a number of areas and has processes in place to create a consensus in developing Administration policies. I hope to build on that expertise in developing the Joint Strategic Plan.

In addition to working with the relevant agencies and offices as described above, I also believe it is important to gather information and concerns from Congress, from stakeholders and from the general public to use in development of the Joint Strategic Plan. If confirmed, I will then use that information to develop the specific components of the Plan in coordination with the relevant agencies and offices.

c. **What steps do you plan to take to combat piracy and counterfeiting?**

If confirmed, I will work to develop a consensus on a strategy to combat piracy and counterfeiting with the relevant agencies and offices through the development of the Joint Strategic Plan required by statute. In coordinating with the relevant agencies and offices that are responsible for implementation, I would like to examine the following areas in development of the Plan: addressing issues that contribute to counterfeiting and piracy, including capacity and resource constraints; legal or procedural barriers to enforcement; increasing public awareness of intellectual property; enhancing the effectiveness of agencies and

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offices in fulfilling their specific responsibilities; and ensuring that the work of the relevant agencies and offices is supported and reduces any wasteful duplication of efforts.

Question #2:

Although ostensibly a coordinating position, your responsibilities could easily include advising the President.

a. **What factors will you take into consideration in advising the President on intellectual property policy matters?**

b. **Given that there are competing interests amongst domestic industries with regard to intellectual property rights generally, what factors will you consider in deciding the best approach?**

With respect to questions a) and b), my role will be limited to that of coordination and the duties laid out in the PRO-IP Act. In addition, I intend to pay particular attention to the impact on U.S. jobs and economic growth; health and safety concerns; and whether actions promote or impede the development of creativity and innovation.

Question #3:

How will you balance those competing interests among U.S. industries?

I will seek out and listen to input from stakeholders with a range of interests. I believe it is important that different interests have an opportunity to voice their concerns in a transparent manner. Ultimately, I will endeavor to make decisions that benefit the United States as a whole.

Question #4:

Technology has significantly impacted consumers' access to artistic works, such as songs and movies. What do you think is the proper balance between the interests of the recording and film industries and individual users (such as radio stations, websites, individuals) in order to define the scope of the distribution, performance, and display rights of copyright owners?

I believe it is important to reward and to promote the creation of artistic works while not unduly hindering legal and appropriate use of those works. This

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Senator Jeff Sessions
Questions to Victoria Espinel
Nominee, Intellectual Property Enforcement Coordinator
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balance is reflected in the legal framework provided to us by Congress in our copyright and enforcement laws. If I am confirmed, my role will be to coordinate with the relevant agencies and offices to enhance efforts to enforce the legal framework.

Question #5:

Please describe with particularity the process by which these questions were answered.

Although I have consulted with OMB for advice and to ensure the factual accuracy of my statements, the answers here set out my views and I take sole responsibility for them.

Question #6:

Do these answers reflect your true and personal views?

Yes.

Responses of Abdul K. Kallon
Nominee to the U.S. District Court for the Northern District of Alabama
to the Written Questions of Senator Jeff Sessions

1. **Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit.**

   a. **Are you committed to following the precedents of higher courts, to faithfully give them full force and effect, even if you personally disagree with such precedents?**

      Response: Yes.

   b. **How would you rule if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision?**

      Response: If I am confirmed as a District Judge, my personal views about binding case law are irrelevant. If the decision is directly on point and is controlling law, I will follow it.

2. **You indicated in your response to the committee's questionnaire that 100% of your practice has been in civil litigation. A large part of the federal district court's docket is made up of criminal cases, and federal judges must be proficient with the Federal Sentencing Guidelines. I believe the guidelines are good rules that lead to more fair and predictable sentences. If confirmed, will you commit to familiarizing yourself with and understanding the guidelines?**

   Response: Yes.

3. **Under the Supreme Court's decision in *United States v. Booker*, the federal sentencing guidelines are advisory, rather than mandatory. Under the current system, it appears to me that as long as the sentencing judge (1) correctly calculates the guidelines, and (2) appropriately considers factors set forth therein, the judge may impose any sentence ranging from probation to the statutory maximum. Following the Supreme Court's decision in *Gall v. United States*, appellate courts must apply the highly deferential "abuse of discretion" standard when reviewing these sentencing decisions. As a result, district court judges may impose virtually any sentence, and as long as the decision is procedurally sound, there is virtually no substantive review on appeal.**

   a. **Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw? Please explain your answer.**

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Response: Yes. Sentences should be based on the crime in question, the applicable sentence for that crime under the guidelines, and factors the Supreme Court and the controlling court of appeals have held a sentencing judge must consider in rendering a sentence.

b. Under what circumstances do you believe it appropriate for a district court judge to depart downward from the sentencing guidelines?

Response: Downward departures should be rare and consistent with the standards set forth by the Supreme Court, the Eleventh Circuit, and the sentencing guidelines. At a minimum, as the guidelines require, the district judge must show the existence of an aggravating or mitigating circumstance that was not adequately taken into consideration by the Sentencing Commission and, consistent with *Gall,* the court must provide a full explanation of the sentence to allow for adequate appellate review.

4. As you may know, President Obama has described the types of judges that he will nominate to the federal bench as follows:

"We need somebody who's got the heart, the empathy, to recognize what it's like to be a young teenage mom. The empathy to understand what it's like to be poor, or African-American, or gay, or disabled, or old. And that's the criteria by which I'm going to be selecting my judges."

a. Without commenting on what President Obama may or may not have meant by this statement, what is your opinion with respect to President Obama's criteria for federal judges, as described in his quote?

Response: I do not view the President's criteria as suggesting that judges should decide cases based on empathy. Instead, I see it simply as an articulation of the sentiment that our society is best served when the judiciary reflects the nation's diversity and is comprised of individuals of different socioeconomic, religious, ethnic, gender, and racial backgrounds. This lends credence to the notion that our legal system is unbiased and that all citizens are indeed treated equally under the law. Significantly, that the judiciary is comprised of qualified individuals from varying backgrounds does not in any way diminish the quality of judging or suggest that a particular judge's interpretation of the law hinges on that judge's personal background. Judges must and should decide cases by applying the law to the facts of the cases pending before them.

b. In your opinion, do you fit President Obama's criteria for federal judges, as described in the quote?

Response: Although I do not know the exact criteria the President utilized to nominate me, as an immigrant from humble beginnings and as an African

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American, I believe I fit some of the President's criteria for federal judges. I believe that I can be empathetic to all litigants – plaintiff or defendant, individual or corporation, prosecution or the accused – and, if confirmed by the Senate, I will be fair and impartial and will apply the law to the facts before me without regard to the litigant's background.

c. During her confirmation hearings, Justice Sotomayor rejected President Obama's so-called "empathy standard" stating, "We apply the law to facts. We don't apply feelings to facts." Do you agree with Justice Sotomayor?

Response: Yes.

d. What role do you believe that empathy should play in a judge's consideration of a case?

Response: As it relates to deciding the outcome of a case, none. The decision must rest always on the facts and the applicable law.

e. Do you think that it's ever proper for judges to indulge their own subjective sense of empathy in determining what the law means?

Response: No.

i. If so, under what circumstances?

Response:

5. What in your view is the role of a judge?

Response: In my view, the role of a judge should be that of a fair and impartial arbiter who applies the facts in a given case to the relevant controlling law and renders a decision that is consistent with legal precedent.

6. How would you define "judicial activism?"

Response: This is not a term I use. However, as used by others, I understand it to mean a judge who ignores clearly established legal precedent that is directly on point in order to attain a desired result, even when the facts of the case and the relevant law dictate a contrary result. To me, a district judge should refrain from engaging in such conduct and should apply instead the settled legal precedent to the facts of the case pending before him or her, even if the judge disagrees with it.

7. Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?

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Response: Although courts are called on to determine how the Constitution applies to situations that were not in existence at the time it was drafted, I do not subscribe to the view that it is a "living document that is constantly evolving as society interprets it." The Constitution is the supreme law of the land and any interpretation of it must start with the original language and the controlling case law interpreting it.

8. Please describe with particularity the process by which these questions were answered.

Response: After the Department of Justice (DOJ) forwarded the questions to me, I reviewed them, undertook some research, and drafted my responses. I discussed the answers with representatives of the DOJ and then finalized my responses.

9. Do these answers reflect your true and personal views?

Response: Yes.

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Responses of Christina Reiss
Nominee to the U.S. District Court for the District of Vermont
to the Written Questions of Senator Jeff Sessions

1. **Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit.**

   a. **Are you committed to following the precedents of higher courts, to faithfully give them full force and effect, even if you personally disagree with such precedents?**

   Response: Yes.

   b. **How would you rule if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision?**

   Response: I would follow controlling precedent even if I personally felt it was in error.

2. **In an article in the *Arizona Law Review*, you concluded that the Supreme Court's opinion in *Colorado v. Spring*, 479 U.S. 564 (1987), undermined the Court's intention in *Miranda v. Arizona*, 384 U.S. 436 (1966), to "indulge every presumption against waiver" and signaled "approval of interrogation techniques that straddle the border between acceptable police investigative tactics and constitutionally impermissible deception and trickery." At your confirmation hearing, you recognized that, if confirmed, you will have to deal with cases involving issues related to *Miranda*. If confirmed, how will you reconcile your personal beliefs, as reflected in your law review article, and current precedent governing confessions and waivers?**

   Response: As a member of the law review, I was encouraged to select a recent United States Supreme Court decision and analyze what I believed were the strengths and weaknesses of the decision. My law review article focused on what I felt was a departure from prior United States Supreme Court precedent governing waivers.

   In my five years as a state court judge, I have had numerous occasions to address *Miranda* issues and I have followed controlling precedent governing confessions and waivers in doing so. If confirmed as a United States District Court Judge, I would continue to follow controlling precedent.

3. **In *State of Vermont v. Michele Bottiggilonge*, 917 A.2d 500 (Vt. 2007), the Vermont Supreme Court overruled your holding, in an unpublished opinion, that tapping on a car windshield by a police officer amounts to a seizure under the Fourth Amendment.**

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a. Please explain the underlying facts and circumstance of the case and your reasoning that led to your decision that a seizure occurred.

Response:

In *State of Vermont v. Bottiggilonge,* a police officer noticed a woman operating a motor vehicle slowly and weaving within her lane. He further observed that she was talking on her cell phone (Vermont does not prohibit cell phone use while driving) and suspected she was lost. He ran her plates and determined that she lived in an adjoining county. He had no intention to stop her for a motor vehicle violation. He followed her vehicle in his police cruiser until the woman parked her vehicle in a diagonal parking spot. The law enforcement officer then parked his cruiser next to the woman's vehicle. The officer stepped out of his cruiser and approached the woman's vehicle. When the woman continued to talk on her cell phone, the officer tapped on her vehicle window until she lowered it. He then smelled the odor of intoxicants and began processing her for driving under the influence.

In determining whether a seizure had occurred, I followed Vermont Supreme Court precedent. Under Vermont law, "[a] 'stop' is a shorthand way of referring to a seizure that is more limited in scope and duration than an arrest," and thus "police need not force or signal a vehicle to the side of the road to effect a stop of persons in the vehicle." *State v. Jestice,* 2004 VT 65, ¶ 5 (mem.) (quoting *State v. Burgess,* 163 Vt. 259, 261 (1995)). The "mere approaching and questioning of a person seated in a parked vehicle does not constitute a seizure...." *Burgess,* 163 Vt. at 261 (citation omitted). However, "'activity which inhibits a person's freedom of movement does.'" *Jestice,* 2004 VT 65, ¶ 5 (quoting *Burgess,* 163 Vt. at 261).

The Vermont Supreme Court has observed that, "[c]ourts have long held that a show of authority tending to inhibit a suspect's departure from the scene is sufficient to constitute a stop, even though the vehicle is already stopped at the time of an approach by police." *Burgess,* 163 Vt. at 261. "Normally a seizure occurs when, under the totality of the circumstances, a reasonable person would not believe he was at liberty to leave or to decline to answer the officer's questions." *State v. Pierce,* 173 Vt. 151, 153 (2001).

In *Burgess,* the Vermont Supreme Court cited with approval *Adams v. Williams,* 407 U.S. 143, 145-48 (1971) as "treating officer's approach of voluntarily parked vehicle and tap on window as forcible stop" and cited *Wibben v. North Dakota State Highway Comm'r,* 413 N.W.2d 329, 330, 331 (N.D. 1987) for the proposition that "approaching parked car and tapping on window with flashlight was seizure under Fourth Amendment." *Burgess,* 163 Vt. at 261.

Applying Vermont Supreme Court's precedent to the totality of the facts and circumstances in the case before me, I concluded "that a reasonable person would not feel that he or she could simply drive away with a police officer knocking on the car window, but instead would feel compelled to, at least, remain parked and roll down

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the car window in response." *State v. Bottiggilonge,* Addison District Court, Docket Nos. 319-6-05 & 43-6-05 Ancr at 3.

b. How does your holding comport with the standard set by the U.S. Supreme Court in *Florida v. Bostick*, 501 U.S. 429 (1991), which is whether or not a reasonable "person would feel free to disregard police and go about his business?"

Response: Vermont's standard that a "seizure" occurs when, "under the totality of the circumstances, a reasonable person would not believe he was at liberty to leave or to decline to answer the officer's questions," *State v. Pierce,* 173 Vt. 151, 153 (2001), is analogous to the standard set forth in *Florida v. Bostick,* 501 U.S. 429 (1991). I believe my decision in *Bottiggilonge* comports with the standard in *Florida v. Bostick,* however, I acknowledge that the *Bottiggilonge* facts present a close question and that my conclusion was found to be in error.

4. What in your view is the role of a judge?

Response: A judge is an adjudicator of legal and, if such jurisdiction is conferred upon the judge, equitable disputes. A judge has a sworn obligation to uphold the Constitution and the laws of the jurisdiction. He or she must preside fairly, impartially, and diligently in all matters that come before the judge. As a public servant, a judge must be a role model both inside and outside the courtroom and faithfully adhere to the rule of law and applicable ethical codes.

5. How would you define "judicial activism?"

Response: I do not believe the term "judicial activism" has a generally accepted definition. When it is used to criticize a judge's decision-making process, I believe it refers to judges who render advisory opinions regarding issues and facts not before the court in an effort to create policy or to disseminate the judge's personal views. I believe this form of "judicial activism" is improper.

6. Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?

Response: I have never referred to the Constitution as a "living" document. I believe its terms are fixed unless amended.

7. As you may know, President Obama has described the types of judges that he will nominate to the federal bench as follows:

> **"We need somebody who's got the heart, the empathy, to recognize what it's like to be a young teenage mom. The empathy to understand what it's**

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like to be poor, or African-American, or gay, or disabled, or old. And that's the criteria by which I'm going to be selecting my judges."

a. Without commenting on what President Obama may or may not have meant by this statement, what is your opinion with respect to President Obama's criteria for federal judges, as described in his quote?

Response: A judge must never forget that it is not cases, pleadings, papers, and matters that come before the judge but real people with real rights and interests at stake. The standard of "empathy" whereby a judge understands that he or she is making rulings that impact the lives of real people is one that I share as it ensures that a judge will be prompt, thorough, and careful in his or her decision-making. In making those rulings, however, the rule of law and not the judge's personal feelings towards the litigants and their backgrounds determines the outcome.

b. In your opinion, do you fit President Obama's criteria for federal judges, as described in the quote?

Response: I take my role as a judge very seriously. I strive to treat the individuals before me and their claims with all the fairness, impartiality and thoughtfulness that I would desire and expect with regard to my own rights and interests. I believe I show "empathy" as described by President Obama by recognizing that the cases that come before me are not a series of intellectual questions but are individuals and entities seeking an adjudication of their disputes.

c. During her confirmation hearings, Justice Sotomayor rejected President Obama's so-called "empathy standard" stating, "We apply the law to facts. We don't apply feelings to facts." Do you agree with Justice Sotomayor?

Response: Yes.

d. What role do you believe that empathy should play in a judge's consideration of a case?

Response: Judicial decisions must be devoid of the judge's personal feelings, biases, and opinions.

e. Do you think that it's ever proper for judges to indulge their own subjective sense of empathy in determining what the law means?

Response: A judge should never make a judicial decision based upon his or her personal feelings regarding a litigant, an issue, a law, or a fact pattern.

i. If so, under what circumstances?

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Response: See above.

ii. Please identify any cases in which you've done so.

Response: I do not believe I have ever done this.

iii. If not, please discuss an example of a case where you have had to set aside your own subjective sense of empathy and rule based solely on the law.

Response: In presiding over juvenile protection cases, I have been called upon to remove children from parents who genuinely love their children but who are unable to adequately care for them at even a minimal standard of care, or to protect them from physical, sexual, or emotional abuse from a third party. I understand that my rulings in these very difficult cases are likely to cause both parent and child real suffering and grief. I have nonetheless followed Vermont's juvenile code in making these determinations.

8. Please describe with particularity the process by which these questions were answered.

Response: On November 12, 2009, I received these questions from the Justice Department and drafted my answers. I then briefly discussed the questions with the Justice Department and finalized my responses. On November 16, 2009, I forwarded my final responses to the Justice Department for transmission to the Committee.

9. Do these answers reflect your true and personal views?

Response: Yes

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Responses of Thomas I. Vanaskie
Nominee to the U.S. Court of Appeals for the Third Circuit
to the Written Questions of Senator Tom Coburn, M.D.

1. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

   Response: I do not agree with this perspective of constitutional interpretation. The words, purposes, and structure of the Constitution are fixed. The Constitution is to be interpreted as a document intended to be enduring, and that objective is met by paying careful attention to its text, purposes, structure, history, and Supreme Court interpretations of its provisions. If confirmed, I will continue to defend, obey, and bear true faith and allegiance to the Constitution, as I have endeavored to do as a District Judge, by adhering to controlling precedent and applying the Constitution's provisions to new contexts by careful attention to its text, structure, purpose, history, and analogous precedents of the Supreme Court.

2. **In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the "evolving standards of decency" to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy's analysis?**

   Response: Because the opinion of Justice Kennedy was joined in by a majority of the Court, I will be obligated to follow it. Whether I agree with the analysis articulated by Justice Kennedy will not affect my duty to adhere to it.

   a. **How would you determine what the evolving standards of decency are?**

      Response: Both the majority opinion and Justice O'Connor's dissenting opinion in Roper explained that the constitutional prohibition against "cruel and unusual punishments" must be assessed in the context of "'the evolving standards of decency that mark the progress of a maturing society.'" 543 U.S. at 561. The majority stated that "essential instruction" in ascertaining "evolving standards of decency" comes from "enactments of legislatures that have addressed the question." Id. at 564. Justice O'Connor's dissenting opinion also stated that to discern the "evolving standards of decency," the court is to "look to 'objective factors to the maximum possible extent,'" and that "laws enacted by the Nation's legislatures provide the 'clearest and most reliable objective evidence of contemporary values.'" Id. at 589. If confirmed, I would be bound to follow the approach for ascertaining "evolving standards of decency" prescribed by the Supreme Court.

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3. Does the oft-quoted phrase "wall of separation of church and state" appear anywhere in the Constitution?

Response: The phrase does not appear anywhere in the Constitution.

a. To what extent does this phrase, authored by Thomas Jefferson in his letter to the Danbury Baptists, reflect your view of the proper understanding of the Constitution's Establishment Clause?

Response: If confirmed, I will be obligated to follow the Supreme Court's precedents applying the Constitution's Establishment Clause. The First Amendment provides that "Congress shall make no law respecting an establishment of religion." In Lemon v. Kurtzman, 403 U.S. 602, 612 (1971), the Court held that "[a] given law might not establish a state religion but nevertheless be one 'respecting' that end in the sense of being a step that could lead to such establishment and hence offend the First Amendment." It stated that to determine whether a law offends the Establishment Clause a court must assure that the law has "a secular legislative purpose," that its "primary effect must be one that neither advances nor inhibits religion," and that it does "not foster 'an excessive government entanglement with religion.'" Id. at 612-13. The test prescribed by the Supreme Court, as explicated by more recent Supreme Court cases interpreting it, would govern my decision making.

b. Is the First Amendment right to freedom of religion a fundamental right?

Response: The Supreme Court has held that the freedom of religion expressed in the First Amendment is a fundamental right, holding that the First Amendment is made applicable to the states through the Fourteenth Amendment. The Court has stated that "[t]he fundamental concept of liberty embodied in that Amendment embraces the liberties guaranteed by the First Amendment." Cantwell v. Connecticut, 310 U.S. 296, 303 (1940).

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Responses of Thomas I. Vanaskie
Nominee to the U.S. Court of Appeals for the Third Circuit
to the Written Questions of Senator Orrin G. Hatch

1. **In a March 2009 speech, you advocated a judicial approach that, "by reason, attention to accumulated wisdom, and a sense of justice, the judiciary evolves the rules best suited to human needs and aspirations." This description is more suited to common law judges than federal judges. Each of the elements in that approach invite a judge to use his personal values, preferences, or opinions rather than the law. And the very notion that the judiciary evolves legal rules appears inconsistent with the role judges should play in our system of government. I understand that you made similar comments in other speeches dating back about a decade.**

   a. **Does this describe your judicial approach?**

   Response: I do not subscribe to an approach in which a judge uses personal values, preferences or opinions to decide cases. I stated in the March 2009 remarks, and on other occasions as well, that the proper approach to case adjudication is "intended . . . to assure that decisions are not based upon personal values or preferences, but are instead made according to law." My judicial approach was expressed during these remarks as one of "judicial restraint that recognizes that the Executive and Legislative Branches are in the best position to make policy judgments, provided [these co-equal branches of government] act within the constraints established by the Constitution." As I also stated in my March 2009 remarks to a local chapter of the Junior Statesmen Club of America, it is the responsibility of the judge to decide cases "according to law." I expressed my firmly held opinion that if judges decided cases "in accordance with individual value preferences, the rule of law is threatened." Consistent with my view of judicial accountability, I observed that judges have an obligation "to decide [cases] in accordance with a continuing body of principles found in accepted sources of law."

   b. **Please explain how these subjective elements are consistent with the judicial oath of impartiality and the duty to follow the law.**

   Response: I am of the belief that personal values, preferences and opinions play no role in judicial decision making, and that it is inconsistent with the judicial oath of impartiality and the duty to follow the law to allow personal predilections to influence judicial decision making.

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2. In your pair of decisions in the Khouzam v. Hogan case, you appear to endorse the notion that judges may consider decisions of foreign courts or practices in foreign countries in making decisions. You said that such factors are not binding but are relevant.

a. Please explain the ways in which those foreign decisions or practices can be relevant to American judges deciding cases under American law.

Response: As I indicated in the second of my opinions in the Khouzam case, courts in the United States may consider foreign decisions or practices as aids in interpreting a treaty ratified by the United States. In support of this proposition, I followed the Supreme Court's decision in Zicherman v. Korean Air Lines Co., 516 U.S. 217, 226 (1996), in which Justice Scalia, writing for the unanimous Court, observed:

> Because a treaty ratified by the United States is not only the law of the land, see U.S. Const., Art. II, § 2, but also an agreement among sovereign powers, we have traditionally considered as aids to its interpretation the negotiating and drafting history (*travaux préparatoires*) and postratification understanding of the contracting parties.

In Khouzam, I found that the postratification understanding of parties to the Convention Against Torture (which has been ratified by the United States) was helpful in determining that diplomatic assurances may be sufficient to enable a contracting State to return an alien to a country despite a recent record of human rights abuses.

I also observed in Khouzam that although opinions of international tribunals and foreign courts may be relevant in considering whether certain actions violate fundamental interests, they are never controlling. Consideration of such sources is extremely rare. To the best of my recollection, Khouzam is the only case in which I considered such sources in more than fifteen years on the federal bench. In Khouzam, the fundamental interest in not being tortured was at stake, and there was no precedent in the United States addressing the right to a hearing on the reliability of diplomatic assurances. It was in this unique context that I believed it appropriate to consider foreign precedents for the limited purpose of confirming my conclusion that the law of the United States made the "'inalienable human right' to be free from torture . . . worthy of protection under the Due Process Clause." It should be noted that Judges Marjorie O. Rendell, D. Brooks Smith, and D. Michael Fisher of the Court of Appeals for the Third Circuit agreed unanimously with this conclusion.

b. Do you believe that judges may use such foreign sources to determine the meaning of statutory or constitutional provisions?

Response: I do not believe that judges may use foreign sources to determine the meaning of statutory or constitutional provisions. In the exceptional case where the Supreme Court has referenced non-U.S. law in a majority opinion, it has done so only to confirm conclusions reached under American law or to refute assertions made by a party, and those were the limited purposes for which I made reference to foreign law in Khouzam. Judges should follow the Supreme Court's restraint on this issue.

Responses of Thomas I. Vanaskie
Nominee to the U.S. Court of Appeals for the Third Circuit
to the Written Questions of Senator Jeff Sessions

1. **At your hearing, I asked you about remarks you made in 2007 regarding the use of foreign law. You stated that your remarks were "from an academic perspective and was just suggesting a type of argument that may be made."**

In *Khouzam v. Hogan*, 529 F. Supp. 2d 543 (M.D. Pa. 2008), the Secretary of State had received diplomatic assurances from the Egyptian government that an Egyptian man who had fled to the U.S. would not be tortured if returned. In your analysis of whether he had a due process right to challenge the assurances, you stated:

> **"[a]lthough the opinions of international tribunals and courts of other countries have no binding effect in the United States, they are nonetheless often viewed as relevant in determining whether certain actions in the United States violate fundamental interests."**

You then cited *Lawrence* and *Roper* as examples of this practice.

a. **Can you explain how the opinions of foreign courts were "relevant in determining whether certain actions in the United States violate fundamental interests" in this case?**

Response: I believed that the opinions of foreign courts were relevant to the question of whether an opportunity to be heard on the reliability of diplomatic assurances would impair the foreign relations prerogative of the executive, and whether meaningful standards could be developed to assess such assurances. I considered the decisions of tribunals of other nations who, like the United States, had ratified the Convention Against Torture. Earlier in my opinion, I found that the postratification understanding of parties to the Convention Against Torture was helpful in determining that diplomatic assurances may be sufficient to enable a contracting State to return an alien to a country despite a recent record of human rights abuses. In support of the proposition that citation to such authority was appropriate, I followed the Supreme Court's decision in Zicherman v. Korean Air Lines Co., 516 U.S. 217, 226 (1996), in which Justice Scalia, writing for the unanimous Court, observed:

> Because a treaty ratified by the United States is not only the law of the land, see U.S. Const., Art. II, § 2, but also an agreement among sovereign powers, we have traditionally considered as aids to its interpretation the negotiating and drafting history (*travaux*

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préparatoires) and postratification understanding of the contracting parties.

I also observed in Khouzam that although opinions of international tribunals and foreign courts may be relevant in considering whether certain actions violate fundamental interests, they are never controlling. Consideration of such sources is extremely rare. To the best of my recollection, Khouzam is the only case in which I considered such sources in more than fifteen years on the federal bench. In Khouzam, the fundamental interest in not being tortured was at stake, and there was no precedent in the United States addressing the right to a hearing on the reliability of diplomatic assurances. It was in this unique context that I believed it appropriate to consider foreign precedents for the limited purpose of confirming my conclusion that the law of the United States made the "'inalienable human right' to be free from torture . . . worthy of protection under the Due Process Clause." It should be noted that Judges Marjorie O. Rendell, D. Brooks Smith, and D. Michael Fisher of the Court of Appeals for the Third Circuit agreed unanimously with this conclusion.

b. In your speech, you stated that the Court reached its decision in *Roper* "*because of* the overwhelming international consensus prohibiting this practice." Did you reach your decision in this case "*because of* the overwhelming international consensus" that persons subject to transfer have a right to challenge the diplomatic assurances?

Response: I did not reach my decision in Khouzam because of any international consensus that persons subject to removal and who have shown that they are likely to be tortured are entitled to an opportunity to challenge the reliability and sufficiency of diplomatic assurances that torture will not occur. My decision was firmly rooted in the law of the United States, as confirmed by the unanimous ruling of the Court of Appeals that the Due Process Clause did require that the alien be accorded such an opportunity. Having reviewed anew the Roper decision, my notes for my lecture were plainly in error in stating that the Court reached its decision in Roper *because of* overwhelming international consensus. It is my understanding that the Supreme Court has cited foreign sources for the purpose of confirming a conclusion reached under the law of the United States, which was the purpose for which I cited foreign sources in Khouzam.

c. In a speech delivered this year, you stated: "I also propose that the rule of law is best preserved by a model of judicial restraint that the executive and legislative branches are in the best position to make policy judgments." Do you believe your opinions in *Khouzam* embodied judicial restraint?

Response: I do believe that the opinions were faithful to this model of judicial restraint. I concluded that Congress had intended to afford impartial review of

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claims for relief under the Convention Against Torture, and that executive branch agencies could not override the congressional determination. I based my decision on a careful review of the applicable legislation and judicial precedents. With respect to the due process determination, I noted that ultimately it is the responsibility of the courts to decide whether the interests at stake are worthy of some opportunity to be heard. I cited an 1852 decision, in which the Supreme Court stated:

> Public opinion ha[s] settled down to a firm resolve ... that so dangerous an engine of oppression as secret proceedings before the executive, and the issuing of secret warrants of arrest founded on them, ... and then, an extradition without an unbiased hearing before an independent judiciary, were highly dangerous to liberty and ought never to be allowed in this country.

In re Kaine, 55 U.S. 103, 113, 14 How. 103, 14 L.Ed. 345 (1852). I did not prescribe any particular process that was due, but left that matter for the executive branch agencies to decide.

2. **During your hearing, you testified: "I do think however that when it comes to treaty obligations, a common source of treaty obligations can be how other member nations have applied certain provisions." You then cited your decision in *Khouzam* as an example.**

   a. **Do you believe there is a distinction between your utilization of international law in *Khouzam* and the Supreme Court's reliance on foreign law in *Lawrence* and *Roper* and, in your words, the "overwhelming international consensus" prohibiting a particular practice? If so, please explain the distinction.**

   Response: I believe there is a distinction between my utilization of international law in Khouzam and the Supreme Court's use of foreign law in Lawrence and Roper. In Khouzam, I cited international law to assist in interpreting and applying the Convention Against Torture. In particular, I considered the practice of other nations that had ratified the Convention Against Torture in determining that diplomatic assurances could be relied upon to return an alien to a country despite that country's recent record of human rights abuses. I also considered the practice of other nations in determining that giving an alien, who had demonstrated a probability of torture, a right to challenge the reliability and sufficiency of diplomatic assurances before an impartial adjudicator was consistent with the Convention Against Torture. Neither Roper nor Lawrence involved the obligations of the United States under an international treaty ratified by the United States.

   b. **During your hearing, I asked you whether a U.S. Federal judge was free to survey world opinion and foreign law as it examines domestic statutes.**

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You answered: "no, I don't think that if I feel a law is unjust that I could look around to see how that particular matter has been handled by other foreign nations." Do you believe the Supreme Court considered foreign law in *Lawrence* and *Roper*?

Response: I believe the Court in Lawrence and Roper considered the view of foreign nations as expressed in their laws and judicial decisions.

c. If so, do you believe the Supreme Court's consideration of foreign law in *Lawrence* and *Roper* was appropriate?

Response: I believe that foreign law is not controlling on any issue arising under the law of the United States. My understanding is that the Supreme Court did not give such effect to foreign laws in Lawrence or Roper.

3. As you may know, President Obama has described the types of judges that he will nominate to the federal bench as follows:

"We need somebody who's got the heart, the empathy, to recognize what it's like to be a young teenage mom. The empathy to understand what it's like to be poor, or African-American, or gay, or disabled, or old. And that's the criteria by which I'm going to be selecting my judges."

a. Without commenting on what President Obama may or may not have meant by this statement, what is your opinion with respect to President Obama's criteria for federal judges, as described in his quote?

Response: I believe that it is important to appoint impartial, competent, and fair judges, and that qualified nominees should be drawn from all cultural and socio-economic backgrounds.

b. In your opinion, do you fit President Obama's criteria for federal judges, as described in the quote?

Response: Neither of my parents completed high school. My father was a bricklayer, and my mother was a factory worker. They raised seven children under tough economic circumstances. I do not know whether those circumstances played any role in my selection.

c. During her confirmation hearings, Justice Sotomayor rejected President Obama's so-called "empathy standard" stating, "We apply the law to facts. We don't apply feelings to facts." Do you agree with Justice Sotomayor?

Response: Yes.

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d. What role do you believe that empathy should play in a judge's consideration of a case?

Response: I believe that empathy should not play a role in judicial decisions.

e. Do you think that it's ever proper for judges to indulge their own subjective sense of empathy in determining what the law means?

Response: No.

i. If so, under what circumstances?

Response:

ii. Please identify any cases in which you've done so.

Response:

iii. If not, please discuss an example of a case where you have had to set aside your own subjective sense of empathy and rule based solely on the law.

Response: I sentenced a defendant to a mandatory minimum prison term after he refused to provide information that would have directly implicated his brother, even though he had provided substantial assistance that resulted in the prosecution of others, who were able to implicate his brother directly. I was bound to impose the mandatory prison term because the government did not file a motion for a departure under the appropriate statute.

4. What in your view is the role of a judge?

Response: The role of a judge is to be an impartial adjudicator who provides a full and fair opportunity for the litigants to be heard, and then decides the case based on the facts and the law with a clearly reasoned explanation of the decision rooted in the text of the law, logic, and precedent.

5. Do you think it is ever proper for judges to indulge their own values in determining what the law means?

Response: No.

a. If so, under what circumstances?

Response:

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b. Please identify any cases in which you have done so.

Response:

c. If not, please discuss an example of a case where you have had to set aside your own values and rule based solely on the law.

Response: I cannot cite such a case because personal values are not part of my decision making process.

6. Do you think it is ever proper for judges to indulge their own policy preferences in determining what the law means?

Response: No.

a. If so, under what circumstances?

Response:

b. Please identify any cases in which you have done so.

Response:

c. If not, please discuss an example of a case where you have had to set aside your own policy preferences and rule based solely on the law.

Response: Prior to Booker and Kimbrough, I routinely sentenced defendants charged with crack cocaine offenses within the guidelines imprisonment range determined on the basis of a ratio of 1 gram of crack cocaine to 100 grams of powder cocaine, even though my policy preference would have been to abandon that particular ratio as recommended by the United States Sentencing Commission in several studies.

7. How would you define "judicial activism?"

Response: I believe that a decision is a product of judicial activism when it does not give proper deference to the policy decisions of Congress and the Executive Branch, and is not made in accord with the discipline of judicial decision making, paying close attention to the language of the document under consideration, the evident purposes of the instrument, its structure and history, as well as relevant judicial precedents.

8. Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?

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Response: I do not agree with this perspective of constitutional interpretation. The words, purposes, and structure of the Constitution are fixed. The Constitution is to be interpreted as a document intended to be enduring, and that objective is met by paying careful attention to its text, purpose, structure, history, and Supreme Court interpretations of its provisions. If confirmed, I will continue to defend, obey, and bear true faith and allegiance to the Constitution, as I have endeavored to do as a District Judge, by adhering to controlling precedent and applying the Constitution's provisions to new contexts by careful attention to its text, structure, purpose, history, and analogous precedents of the Supreme Court.

9. Please describe with particularity the process by which these questions were answered.

Response: I pursued the same process I followed in preparation for the confirmation hearing. I reviewed my remarks and the opinions that are the subjects of questions. I undertook some research. I drafted the responses, and forwarded them to the Department of Justice. I discussed the draft responses with representatives of the Department of Justice. I then finalized my responses.

10. Do these answers reflect your true and personal views?

Response: Yes

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SUBMISSIONS FOR THE RECORD

Office of the President
Thomas F. Lee

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AFM
AMERICAN FEDERATION OF MUSICIANS
UNITED STATES • CANADA
AFL-CIO/CLC Affiliated

November 13, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

The American Federation of Musicians, representing more than 90,000 workers in the music industry, strongly supports the nomination of Victoria Espinel for the position of U.S. Intellectual Property Enforcement Coordinator (USIPEC), and urges the Committee to report her nomination without delay.

Last year, under your leadership and with strong union support, Congress enacted the PRO-IP Act: bipartisan legislation to better protect jobs and wages in a host of sectors under attack by the growing wave of counterfeiting and piracy. The PRO-IP Act recognized that more effective IP enforcement requires a well-coordinated approach across federal government agencies, and created the position of USIPEC to spearhead the development of a cross-government strategic plan to address this critical issue.

President Obama's choice of Victoria Espinel to serve as the nation's first USIPEC marks an important step towards fulfilling the promise of the PRO-IP Act. We ask this Committee to report her nomination promptly so she can begin the important work she has before her.

Sincerely,

Thomas F. Lee
President
AFM

TFL:tn
cc: The Members of the Committee on the Judiciary

AIPLA
AMERICAN INTELLECTUAL PROPERTY LAW ASSOCIATION

November 2, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Room 224 Dirksen Senate Office Building
Washington, DC 20510-6275

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Room 335 Russell Senate Office Building
Washington, DC 20510

Re: Nomination of Victoria A. Espinel for
United States Intellectual Property Enforcement Coordinator

Dear Chairman Leahy and Ranking Member Sessions:

The American Intellectual Property Law Association ("AIPLA") is pleased to submit this letter supporting President Obama's nomination of Victoria A. Espinel to be this nation's first United States Intellectual Property Enforcement Coordinator. AIPLA urges that the Judiciary Committee give this nomination expedited consideration in view of the many pressing international issues concerning intellectual property enforcement that are currently pending.

The American Intellectual Property Law Association is a national bar association of approximately 16,000 members engaged in private and corporate practice, in government service, and in academia. AIPLA represents a wide and diverse spectrum of individuals, companies, and institutions involved directly or indirectly in the practice of various fields of law affecting intellectual property. Our members represent both owners and users of intellectual property, and they have a keen interest in a strong and efficient intellectual property system.

Victoria Espinel has an impressive and substantive background in the area of intellectual property, which will serve her well in this new position. She was the first ever Assistant United States Trade Representative for Intellectual Property and Innovation, a position which gave her significant experience with various domestic and international governmental bodies as the chief trade negotiator on intellectual property issues. She also served as Deputy Assistant USTR for Intellectual Property and Associate General Counsel for that office. In addition, her experience includes law firm work representing private clients and advising several Congressional Committees on intellectual property issues. Clearly, this impressive skill set will serve her well in satisfying the demanding requirements of this Office.

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Phone: 703.415.0780 · Fax: 703.415.0786 · www.aipla.org · aipla@aipla.org

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In addition, we feel it is imperative that this Office's work begins as soon as possible. The Pro-IP Act, which created this position, was enacted over a year ago, and critical time has been lost in the challenge of taking a more comprehensive approach to IP enforcement issues.

We believe Ms. Espinel is well suited to serve as United States Intellectual Property Enforcement Coordinator, and we urge you to give her nomination prompt consideration.

We thank you in advance for your consideration of these views.

Best regards,

Alan J. Kasper
President

[redacted]



Robert W. Holleyman, II
President and Chief Executive Officer

1150 18th Street, NW
Suite 700
Washington, DC 20036

p 202.872.5500
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November 4, 2009

The Honorable Patrick J. Leahy
Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Bldg
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Bldg
Washington, DC 20510

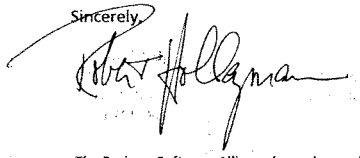
Dear Chairman Leahy and Ranking Member Sessions:

On behalf of the members of the Business Software Alliance, I wish to express our strong support for the President's nomination of Ms. Victoria Espinel to be the first Intellectual Property Enforcement Coordinator.

Ms. Espinel has a distinguished track record both inside and outside government. In her various roles at USTR, culminating in her tenure as Assistant United States Trade Representative for Intellectual Property and Innovation, Ms. Espinel ably represented US interests in numerous negotiations with our trading partners. She has a profound understanding of IPR issues, both from an academic and a practical perspective. And she is well-equipped, by experience and temperament, to improve communication and coordination among the various federal agencies tasked with protecting intellectual property rights.

I urge the Committee to report her nomination favorably to the full Senate at the earliest opportunity.

Sincerely,



The Business Software Alliance (www.bsa.org) is the foremost organization dedicated to promoting a safe and legal digital world. BSA is the voice of the world's commercial software industry and its hardware partners before governments and in the international marketplace. Its members represent one of the fastest growing industries in the world. BSA programs foster technology innovation through education and policy initiatives that promote copyright protection, cyber security, trade and e-commerce. BSA members include Adobe, Apple, Autodesk, AVG, Bentley Systems, CA, Cadence, Cisco Systems, Corel, CyberLink, Dassault Systèmes SolidWorks Corporation, Dell, Embarcadero, HP, IBM, Intel, Intuit, McAfee, Microsoft, Minitab, Quark, Quest Software, Rosetta Stone, SAP, Siemens, Sybase, Symantec, Synopsys, and The MathWorks.

WWW.BSA.ORG

[redacted]

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Business Software Alliance

CBS Corporation

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Professional School Photographers Association

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Reed Elsevier

SESAC

Software & Information Industry Association

Sony Pictures Entertainment

Universal Music Group

Vin Di Bona Productions

The Walt Disney Company

Writers Guild of America, West

copyright alliance

November 3, 2009

Chairman Patrick Leahy
433 Russell Senate Office Building
Washington, DC 20510

Dear Chairman Leahy:

The forty-plus unions, corporations, trade associations and artists' alliances of the Copyright Alliance welcome the Senate Judiciary Committee's November 4th nomination hearing for Victoria Espinel as the first Intellectual Property Enforcement Coordinator (IPEC). We strongly urge the committee to endorse her nomination and the full Senate to move just as rapidly to vote to confirm. Given the state of the U.S. economy, there should be no further delay in her mission to better protect U.S. intellectual property, which makes significant contributions to our nation's economic recovery.

The Copyright Alliance strongly endorsed the choice of Ms. Espinel by President Barack Obama. With her wealth of experience advising Congress and the Administration on intellectual property matters, we felt she was a perfect choice for the important post created last year in the PRO-IP Act, which became law thanks to the leadership of the House and Senate Judiciary Committees. We welcomed the Obama Administration taking this important step toward improving the coordination of the federal government's resources for intellectual property promotion and enforcement, as envisioned in the PRO-IP Act.

We urge the rapid confirmation of Ms. Espinel, and hope that after she begins her historic assignment, all government officials with a stake in intellectual property enforcement will cooperate fully with her in better protecting and promoting such a critical element of our nation's economic growth and job creation

Best regards,

Patrick Ross
Executive Director
Copyright Alliance

1224 M St. NW Suite 301• Washington, DC 20005 • Tel: 202.540.2243 • Fax: 202-628-7773

Statement of Senator Cornyn for the Hearing on Justice Louis Butler's Nomination to the District Court for the Western District of Wisconsin

- I regret that I am unable to attend today's hearing on the nomination of Justice Louis Butler.

- Having reviewed his writings and statements, I have serious reservations about his nomination to the federal district court.

- In numerous opinions written during his tenure on the Wisconsin Supreme Court, Justice Butler displayed a lack of impartiality, a disregard for precedent, and a willingness to legislate from the bench.

- Voting to strike down Wisconsin's popularly enacted punitive damages cap, Justice Butler ruled that it was not rationally related to the goal of making malpractice insurance "available and affordable."

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- In placing this vote, Justice Butler:
  - Abandoned prior Wisconsin Supreme Court precedent upholding the cap;
  - Dismissed the clear findings of the Wisconsin legislature; and
  - Ignored evidence from Wisconsin and states like Texas showing that damage caps reduce frivolous litigation and insurance premiums.

- Justice Butler also has written an opinion making Wisconsin the only state to adopt a "collective liability" theory in product liability cases.

  - According to the *Wall Street Journal*, this "infamous" opinion "created a guilty-until-proven-innocent approach to product liability."

  - The Wisconsin justices dissenting from the opinion contended that it allowed manufacturers to "be held liable for a product they may or may not have produced, which may or may not have caused [a] plaintiff's injuries, based on conduct that may have

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occurred over 100 years ago . . . ." *Thomas v. Mallet*, 701 N.W.2d 523 (Wis. 2005) (Wilcox, J. dissenting).

- Furthermore, Donald Gifford, the former dean of the University of Maryland Law School, remarked that Justice Butler's opinion was "the single most radical departure from the principles of tort law in recent decades . . . put[ting] Wisconsin dramatically out of line with the law of any other state in the country."

- Justice Butler additionally has disregarded the rulings of superior courts:

  - After the United States Supreme Court reversed a Fifth Amendment ruling of the Wisconsin Supreme Court, Justice Butler joined an opinion interpreting identical language in the Wisconsin Constitution to reinstate the Wisconsin Supreme Court's initial determination. *See State v. Knapp*, 700 N.W.2d 899 (Wis. 2005).

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- This opinion abandoned Wisconsin's longstanding practice of interpreting its constitution in "lock step" with the United States Constitution, and it excluded essential evidence from a murder trial.

- Judge Diane Sykes of the Seventh Circuit declared the opinion to be "pure unvarnished result-orientation."

- I regret to say that, taken together, these and many other rulings of Justice Butler place him outside of the judicial mainstream and raise concerns about his ability to apply the rule of law fairly and impartially.

- I plan to submit written questions to Justice Butler and look forward to his responses. But based on his current record, I am deeply troubled by his nomination.

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Statement of Introduction for Abdul Kallon
From US Representative Artur Davis (AL-7)

I am pleased to recommend Abdul Kallon's confirmation to the United States District Court in the Northern District of Alabama. In December, 2008, as the senior Democrat in Alabama's congressional delegation, I assembled a Judicial Nominations Advisory Committee that consisted of the deans of the state's two law schools, a former United States Attorney, two former federal magistrate judges, a former United States district judge, and two former Alabama Supreme Court judges. They participated in what was unmistakably the most transparent process for recommending judicial nominees in memory. After interviews of twenty-two candidates, this committee unanimously ranked Kallon as the top candidate to succeed U.W. Clemon on the federal bench.

Mr. Kallon, a graduate of Dartmouth College and the University of Pennsylvania Law School, is listed in The Best Lawyers in America and Chambers USA America's Leading Lawyers for Business. He is a partner in the law firm of Bradley Arant Boult Cummings, LLP, where he has worked for fifteen years. With an extensive background in employment litigation, Mr. Kallon also counsels employers on immigration compliance and employment policy and implementation. Since August 1993, when he came to work as a law clerk for Judge Clemon, Mr. Kallon has been an active member of Birmingham's civic community. Mr. Kallon is the current President of the Board of Directors of Children's Village, and serves on the Board of Directors of Girls Inc., the Alabama Center for Law and Civic Education, and the Bethel Baptist Historic Community Restoration Fund. He is the past president of the Legal Aid Society of Birmingham Board of Trustees, a former mentor in Big Brothers Big Sisters, and a member of the Alabama, Birmingham and Magic City Bar Associations.

I can attest to Mr. Kallon's reputation for excellence. I have heard Judge Clemon, who served on the advisory committee, describe Kallon as his most gifted law clerk in his 30 year experience on the bench. More importantly, he has praised Kallon as a compassionate lawyer who has brought a deep sense of integrity to the often hardnosed practice of civil defense. This is a common refrain that I have heard about Abdul Kallon from the plaintiff's bar in Alabama—while he has been on the opposite side of them at the deposition table and in the courtroom, they universally praise his intellect and his fair minded handling of his cases. I also have the benefit of knowing Mr. Kallon for eleven years as a peer. As he assumes the bench at the ripe old age of 40, he will serve as a glittering role model for young lawyers. As the years advance, I have no doubt that he will gain the reputation of being one of the outstanding federal district judges in the nation. In fact, I make a prediction--that this committee which reviews appellate and Supreme Court nominations will see Abdul Kallon seated at this table again.

I end by praising the man whose shoes Kallon will fill—U.W. Clemon. Judge Clemon made history with his ascension to the bench, but he made a more important commodity—justice—while he served. His sense of fairness leveled the playing field for litigants; he reshaped the jury

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selection process to make it representative of the whole community; and he used the law to correct institutional and corporate wrongs against some of the most vulnerable members of our society. My state is a more noble place due to Judge Clemon's service.

I wish Abdul Kallon well as he embarks on this well deserved path.

International Trademark Association
Representing Trademark Owners Since 1878

Alan C. Drewsen
Executive Director

October 28, 2009

The Honorable Patrick J. Leahy
Chairman
The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

The International Trademark Association (INTA) is a not-for-profit membership association of more than 5,600 trademark owners and professional firms from more than 190 countries dedicated to the support and advancement of trademarks and related intellectual property as elements of fair and effective national and international commerce. INTA would like to strongly support the nomination of Victoria Espinel for the position of U.S. Intellectual Property Enforcement Coordinator (IPEC) and urge the committee to report her nomination favorably without delay.

A year ago, the U.S. Congress enacted the PRO-IP Act which was bipartisan legislation to bolster intellectual property protection and increase anticounterfeiting enforcement. One key component of this Act was the creation of the IPEC position to lead the coordination of U.S. agencies in the protection of consumers and brand owners affected by the significant increase in counterfeiting, including the surge in online sales of counterfeit goods. INTA believes that Victoria Espinel is an ideal candidate for this important position due to her experience at the United States Trade Representative's Office and through her work in the private sector.

Ms. Espinel is extremely knowledgeable in all aspects of intellectual property. Her experience in the federal government provides her with the understanding of the roles of the relevant government agencies, while her proven administrative skills will be crucial for coordinating government enforcement agencies to achieve a common goal. Ms. Espinel has had significant private practice experience as well working with major U.S. corporations, and thus will bring both a public and private sector perspective to this position.

We endorse President Obama's choice of Ms. Espinel for the Intellectual Property Enforcement Coordinator position, and we look forward to working with her on the activities authorized in the PRO-IP ACT.

Sincerely,

Alan C. Drewsen

655 Third Avenue, 10th Floor, New York, NY 10017-5617, USA | t: +1-212-642-1714 | f: +1-212-768-9883 | www.inta.org | [redacted]

Headquarters – New York, New York, USA | Shanghai, China | Brussels, Belgium

Statement of Victoria Espinel
Nominee to Serve As
Intellectual Property Enforcement Coordinator

Committee on the Judiciary
United States Senate
November 4, 2009

Thank you, Chairman Leahy and members of the Committee. I am honored to be here and appreciate your consideration today. I am greatly humbled by this opportunity and hope that, if I am confirmed, I uphold the vision for this important new position, the United States Intellectual Property Enforcement Coordinator, created by the Congress to promote and protect the essence of American creativity and innovation.

It is difficult to overstate the importance of intellectual property to the United States today. A generation ago, more than two-thirds of the assets of U.S. publicly traded companies were comprised of tangible assets – factories, equipment, land. Today, more than two-thirds of the assets of U.S. publicly traded companies are intangible – these are the networks, the trade secrets, the management teams and the intellectual property that position American firms at the top of the global supply chain.

According to the U.S. Patent and Trademark Office, intellectual property in this country is worth more than $5 trillion. Every year in the United States, more jobs, more exports and more incomes depend on intellectual property. We are successfully building the knowledge economy in America – and, if confirmed, I look forward to working with Congress to ensure that we protect it.

Intellectual property rights will foster and protect the ingenuity of our artistic and creative communities. The creative industries of the United States entertain and inspire our citizens and those around the world.

Intellectual property rights will spur and protect U.S. investments in technologies to disseminate information, to address climate change and diversify our energy resources, to secure food for growing populations, to develop medicines for life-threatening diseases and to provide productive tools for individuals to lift themselves out of poverty.

Americans across the country will lead the world in the global effort to resolve the greatest challenges we face today. Critical to this effort is a system that encourages and protects American creativity and innovation – our greatest comparative advantage – at home and abroad.

If I am confirmed as the United States Intellectual Property Enforcement Coordinator, I will work side by side with agencies, Congress, stakeholders and the public to ensure that jobs that depend on intellectual property are not compromised by others' unwillingness to respect and enforce the rule of law.

By improving coordination among the federal agencies, the United States Intellectual Property Enforcement Coordinator can help ensure that resources are being used in the most effective and efficient manner possible. The United States Intellectual Property Enforcement Coordinator can facilitate sharing information among the agencies and ensure that each agency's efforts to protect and enforce intellectual property rights are actively supported by and aligned with the work other agencies are doing to protect and enforce intellectual property rights.

In the words of Chairman Leahy, this position can help "protect American jobs, American innovation, and American investments."

Our intellectual property is America's greatest comparative advantage. Better and smarter protection and enforcement of intellectual property rights will create more jobs; it will allow our industries to be more creative, ingenious and productive; it will reduce illegal profits pocketed by infringers; and it will ensure that American workers continue to lead the world.

Thank you for your time today and I look forward to your questions.

MOTION PICTURE ASSOCIATION
OF AMERICA, INC.
1600 EYE STREET, NORTHWEST
WASHINGTON, D.C. 20006
(202) 293-1966
FAX: (202) 452-9823

DAN GLICKMAN
CHAIRMAN
AND
CHIEF EXECUTIVE OFFICER

October 26, 2009

Senator Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Senator Jeff Sesssions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senators Leahy and Sessions:

I am writing to express the support of the Motion Picture Association of America, and my personal support, for the nomination of Victoria Espinel to be this nation's first U.S. Intellectual Property Enforcement Coordinator. Ms. Espinel is eminently qualified and will be an effective and much needed advocate on behalf of the millions of Americans whose livelihoods are dependent upon this nation's intellectual property industries.

As you know, the position of Intellectual Property Enforcement Coordinator was created as part of the bi-partisan PRO-IP Act, which with your leadership was signed into law last fall. The adoption of the PRO-IP Act, and the creation of this important position, recognizes the importance of intellectual property in this nation's economic future. In these difficult economic times, the intellectual property community is part of the solution to the challenges we face.

For example, the American motion picture and television industry is responsible for over 2.5 million American jobs; paying over $41 billion in wages annually. In addition, our industry makes $38 billion in additional payments to over 115,000 vendors, suppliers, small businesses and entrepreneurs all across the United States each year. Of those 115,000 businesses, over 80 percent employ 10 people or fewer. These figures, which only account for the contribution of the motion picture and television production industry, make it clear that protecting American creativity and innovation is vital to our nation's economic strength and vitality.

In nominating Victoria Espinel, the Obama Administration has made an excellent choice for this important office. When she was at USTR, I had the opportunity to work directly with her and from that experience I know she will be do an exemplary job as Intellectual Property Enforcement Coordinator. Accordingly, we ask that the committee report her nomination without delay. We thank you for your continued commitment to protecting American creativity and we look forward to working with you and the Committee on this important nomination.

Sincerely,

Dan Glickman

ROMÁN D. HERNÁNDEZ
NATIONAL PRESIDENT

November 4, 2009

Via Electronic Mail and First-Class Mail

The Honorable Patrick Leahy
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

The Honorable Jeff Sessions
United States Senate
335 Russell Senate Office Building
Washington, DC 20510

Re: HNBA Encourages the Confirmation of Victoria A. Espinal for the Position of U.S. Intellectual Property Enforcement Coordinator

Dear Senators Leahy and Sessions:

On behalf of the Hispanic National Bar Association (HNBA), I write to recommend the speedy confirmation of Ms. Victoria A. Espinal as U.S Intellectual Property Enforcement Coordinator in the Office of Management and Budget. The HNBA is a non-profit, non-partisan membership organization that presents the interests of the more than 100,000 Hispanic attorneys, judges, law professors, law students, and paralegals in the United States.

As required by its *Policies and Procedures Governing Executive Endorsements*, the HNBA has conducted appropriate due diligence. We have considered Ms. Espinal's background and qualifications in the context of the requirements for the position for which President Barack H. Obama has nominated her. Based on our review, she possesses both the experience and qualifications required to distinguish herself as the U.S. Intellectual Property Enforcement Coordinator.

Ms. Espinal is uniquely qualified to serve as the U.S. Intellectual Property Enforcement Coordinator due to her extensive legal experience in the area of intellectual property as a corporate litigator, Assistant U.S. Trade Representative, and Professor of Law. After receiving her Juris Doctor from the Georgetown University Law Center and her Masters of Law from the London School of Economics and Political Science, she joined the law firm of Covington & Burling. In her capacity as an associate, she managed intellectual property enforcement litigation in Europe, the Middle East, and

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Africa. Thereafter, Ms. Espinal joined the Office of the United States Trade Representative (USTR) in several capacities, starting as Associate General Counsel, then Deputy Assistant USTR for Intellectual Property, and Assistant USTR for Intellectual Property and Innovation. In her multiple posts, she established the Intellectual Property and Innovation Office as its first head and served as the chief U.S. trade negotiator.

Since early 2008, she has been an Assistant Professor at the George Mason University School of Law. As a Professor of Law and researcher, she focuses on U.S. trademark law, international intellectual property law and international trade law. Ms. Espinal has become a leading expert in the field of intellectual property and we are confident that she would serve with distinction as the U.S. Intellectual Property Enforcement Coordinator. After reviewing her credentials as part of our due diligence process, we recommend her speedy confirmation. We stand ready to assist in your deliberations should there be any questions. Please feel free to contact me through our national office at [redacted] or directly at [redacted].

Sincerely,

Román D. Hernández
National President

cc: Ms. Victoria A. Espinal
HNBA Executive Committee
Ms. Diana Sen, HNBA President-Elect
Ms. Ramona E. Romero, HNBA White House Liaison
Mr. Bettina T. Guevara, HNBA Region V President
Ms. Zuraya Tapia-Alfaro, HNBA Executive Director

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

1615 H STREET, N.W.
WASHINGTON, D.C. 20062-2000
202/463-5310

October 21, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

The U.S. Chamber of Commerce, the world's largest business federation representing more than three million businesses and organizations of every size, sector, and region, strongly supports the nomination of Victoria Espinel for the position of U.S. Intellectual Property (IP) Enforcement Coordinator, and urges the committee to report her nomination without delay.

Last year, Congress enacted the PRO-IP Act, bipartisan legislation to better protect the IP rights of inventors and creators while ensuring the products consumers use are authentic, safe and effective. The PRO-IP Act recognized that more effective IP enforcement requires additional resources, better laws, and high-level leadership to implement a strategic and well-coordinated approach across federal government agencies.

President Obama's choice of Victoria Espinel to serve as the nation's first IP Enforcement Coordinator marks an important step towards fulfilling the promise of the PRO-IP Act. The Chamber believes Ms. Espinel is a highly qualified nominee who will be a strong advocate for intellectual property rights.

Sincerely,

R. Bruce Josten

Cc: The Members of the Committee on the Judiciary

LiUNA!

November 6, 2009

TERENCE M. O'SULLIVAN
General President

ARMAND E. SABITONI
General Secretary-Treasurer

Vice Presidents:
VERE O. HAYNES
MIKE QUEVEDO, JR.
TERRENCE M. HEALY
RAYMOND M. POCINO
JOSEPH S. MANCINELLI
ROCCO DAVIS
Special Assistant to the General President
VINCENT R. MASINO
DENNIS L. MARTIRE
MANO FREY
ROBERT E. RICHARDSON
JOSE A. MORENO
RALPH E. COLE
JOHN F. PENN
JOHN F. HEGARTY

MICHAEL S. BEARSE
General Counsel

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy:

The Laborers' International Union of North America (LIUNA) strongly supports the nomination of Victoria Espinel for the position of U.S. Intellectual Property Enforcement Coordinator (USIPEC), and urges the Committee to report her nomination without delay.

Last year, under your leadership and with strong union support, Congress enacted the PRO-IP Act: bipartisan legislation to better protect jobs and wages in a number of sectors under attack by the growing wave of counterfeiting and piracy. The PRO-IP Act recognized that more effective IP enforcement requires a well-coordinated approach across federal government agencies, and created the position of USIPEC to spearhead the development of a cross-government strategic plan to address this critical issue.

President Obama's choice of Victoria Espinel to serve as the nation's first USIPEC marks an important step toward fulfilling the promise of the PRO-IP Act. We ask this Committee to report her nomination promptly so she can begin the important work she has before her.

With kind regards, I am

Sincerely yours,

Terence M. O'Sullivan

TERENCE M. O'SULLIVAN
General President

ce

cc: The Members of the Committee on the Judiciary

HEADQUARTERS:
905 16th Street, NW
Washington, D.C.
20006-1765
202-737-8320
Fax: 202-737-2754
www.liuna.org

Feel the Power

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
November 4, 2009

Statement of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On Executive And Judicial Nominations
November 4, 2009

Today, we will hear from five of President Obama's well-qualified nominees, four for lifetime appointments on the Federal bench, and one for an important position in the executive branch.

I am especially pleased to welcome to the Judiciary Committee today Judge Christina Reiss from Essex Junction, Vermont. Judge Reiss was nominated by President Obama to a seat on the District Court in Vermont and, when confirmed, will be the first woman to serve on that Court. I was honored to recommend Judge Reiss to the President, and I look forward to introducing her to the Committee.

I also welcome to the Committee Victoria Espinel, who is nominated to be the first Intellectual Property Enforcement Coordinator in the Executive Office of the President. She will bring an incredible breadth of experience to this important new Senate-confirmed position created by legislation I shepherded through the last Congress to better enforce intellectual property protections. The notion of a coordinator was strongly pressed by Senators Bayh and Voinovich. I look forward to introducing Ms. Espinel to the Committee.

All of the judicial nominees appearing before the Committee today are from the home states of Members of this Committee. We welcome Abdul Kallon, who has been nominated to serve in the Northern District of Alabama, the home state of the Committee's Ranking Member, Senator Sessions. His nomination also has the support of Senator Shelby. We welcome Justice Louis Butler, who was the first African American to serve on the Wisconsin Supreme Court, and, if confirmed, will be the first African American to serve in the Western District of Wisconsin. Justice Butler will be introduced by two Members of this Committee, his home state Senators, Senator Kohl and Senator Feingold. Judge ThomasVanaskie, from Senator Specter's home state of Pennsylvania, has been nominated to a seat on the Third Circuit, having served for more than 15 years in the Middle District of Pennsylvania. Senator Casey is also here to introduce Judge Vanaskie to the Committee.

I trust that each of these nominees will be treated well by the Committee, and will receive the prompt consideration their nominations deserve. With the cooperation of Senator Sessions, this

Committee has considered nominations in regular order. I wish I could say the same for the Senate's consideration of nominations reported by this Committee.

Senate Republicans began this year threatening to filibuster every judicial nominee of the new President. They have followed through with that threat by obstructing and stalling the process, delaying for months the confirmation of well-qualified, consensus nominees. Last week, the Senate was finally allowed to consider the nomination of Judge Irene Berger, who has now been confirmed as the first African American Federal judge in the history of West Virginia. The Republican minority delayed consideration of her nomination for more than three weeks after it was reported unanimously by the Judiciary Committee. When her nomination finally came to a vote, it was approved by an overwhelming vote of 97-0.
There has been no answer to the question of why Senate Republicans subjected this qualified nominee to weeks of unnecessary delay. Why did it take three weeks and two hours of debate for the Senate to consider the nomination of Roberto Lange to the District of South Dakota after his nomination was reported unanimously? After these delays, his nomination was confirmed 100-0. Why has the Senate confirmed only a single circuit court nomination when there are five stalled by Republican objections on the Senate Executive Calendar, including two that have been pending since June?

It is November 4. By this date in President George W. Bush's first year in office, the Senate had confirmed a total of 12 lower court judges, including four circuit court judges. I know because in the summer of that year I began serving as the chair of this Committee. We achieved those results with a controversial and confrontational Republican President after a mid-year change to a Democratic majority in the Senate; in spite of the attacks of September 11; despite the anthrax-laced letters sent to the Senate that closed our offices; and while working virtually around the clock on the PATRIOT Act for six weeks. By comparison, this year, the Republican minority has allowed action on only four judicial nominations to the Federal circuit and district courts. Only one circuit court judge has been confirmed all year.

We reduced judicial vacancies to as low as 34 last year, even though it was the last year of President Bush's second term and a presidential election year. But such vacancies have already more than doubled since then. There are 96 vacancies on our Federal circuit and district courts, and 23 more have already been announced. This is approaching record levels. I know we can do better. The American people deserve better. Justice should not be delayed or denied to any American because of overburdened courts.

We will now have held hearings for 19 of President Obama's nominations to fill district and circuit court vacancies. We have reported 14 of these nominations favorably. With the cooperation of Senator Sessions we can continue the progress we are making on this Committee. We should not be delayed for months before the Majority Leader can schedule consideration of the President's highly-qualified nominees.

I welcome all of the nominees and their families to the Committee today.

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Founded By Mexican American Women

November 17, 2009

The Honorable Patrick Leahy, Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy:

MANA, A National Latina Organization (MANA), with headquarters in Washington, DC, twenty-seven Chapters nationwide and seven affiliates across the nation proudly and whole heartedly expresses support for Ms. Victoria A. Espinel to be confirmed as the first ever Intellectual Property Enforcement Coordinator in the Office of Management and Budget. MANA is a nonprofit advocacy organization founded in 1974 whose mission is to empower Latinas through leadership development, community service, and advocacy.

Ms. Espinel has had a very distinguished career, having held the position of Assistant United States Trade Representative for Intellectual Property and Innovation at the Office of the U.S. Trade Representative (USTR). As the first person to hold this position, Ms. Espinel was the chief U.S. trade negotiator for intellectual property and innovation, leading negotiations at the World Trade Organization, in U.S. free trade agreements and in bilateral discussions worldwide on a wide variety of intellectual property and innovation issues.

Prior to becoming Assistant USTR for Intellectual Property and Innovation, Ms. Espinel served as Deputy Assistant USTR for Intellectual Property and as Associate General Counsel at USTR. Before joining USTR, Ms. Espinel was with the law firms of Covington & Burling in London and Washington, D.C., and Sidley, Austin, Brown & Wood in New York.

Ms. Espinel is the author of several published articles on international copyright issues. She holds an LLM from the London School of Economics, a Juris Doctorate from Georgetown University Law School, and a Bachelor of Science in Foreign Service from Georgetown University's School of Foreign Service. She has also been a Visiting Assistant Professor at the George Mason School of Law where she has taught International Trade and a seminar in Multinational Intellectual Property & Policy.

Ms. Espinel is superbly qualified to serve and committed to addressing the intellectual property enforcement issues that affect the nation in a way that is relevant to the best interest of the nation. On behalf of MANA we respectfully request that you consider Ms. Espinel as the first ever Intellectual Property Enforcement Coordinator in the Office of Management and Budget.

Sincerely,

Alma Morales Riojas

Alma Morales Riojas
President and CEO

1146 19th Street N.W., Suite 700, Washington, D.C. 20036 · 202-833-0060 · Fax 202-496-0588 · www.hermana.org

NMPA
National
Music Publishers'
Association

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Suite 705 East
Washington, DC 20001
Tel: 202-742-4321

601 West 26th Street
5th Floor
New York, NY 10001
Tel: 212-370-5330

David M. Israelite
President & CEO

November 2, 2009

Honorable Patrick Leahy
Chairman of the Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Honorable Jeff Sessions
Ranking Member of the Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, DC 20510

The National Music Publishers' Association (NMPA) supports the President's nomination of Victoria Espinel as the U.S. Intellectual Property Enforcement Coordinator. Ms. Espinel will bring policy expertise and political savvy to this role, which requires working with agencies across the government to improve efficiency and effectiveness.

This is an important position that should be filled, and we respectfully urge you to confirm Ms. Espinel quickly.

The music publishing and songwriting industry looks forward to working with Ms. Espinel in her new capacity and values the Administration's and the Committee's commitment to bringing to fruition the goals of the PRO-IP Act.

Sincerely,

David M. Israelite
President & CEO

cc: Members of the Senate Committee on the Judiciary

NOMINATIONS OF DENNY CHIN, NOMINEE TO BE UNITED STATES CIRCUIT JUDGE FOR THE SECOND CIRCUIT; ROSANNA MALOUF PETERSON, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF WASHINGTON; WILLIAM M. CONLEY, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WISCONSIN; SUSAN B. CARBON, NOMINEE TO BE DIRECTOR OF THE VIOLENCE AGAINST WOMEN OFFICE, DEPARTMENT OF JUSTICE; AND, JOHN H. LAUB, NOMINEE TO BE DIRECTOR OF THE NATIONAL INSTITUTE OF JUSTICE

WEDNESDAY, NOVEMBER 18, 2009

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, Pursuant to notice, at 2:30 p.m., Room 226, Dirksen Senate Office Building, Hon. Charles E. Schumer, Chairman of the Committee, presiding.

Present: Senators Schumer, Kohl, Feingold, Klobuchar, Franken, and Sessions.

Senator Schumer.

The hearing will come to order. I apologize to everyone for being late. Since I was late, I will do my opening statement last.

So I will first call on my colleague and friend on the Judiciary Committee, Senator Kohl, for the introduction of Mr. William Conley for the Western District of Wisconsin. I believe Senator Feingold is going to come at some point later to do the same.

Senator.

PRESENTATION OF WILLIAM M. CONLEY, NOMINEE TO BE U.S. DISTRICT COURT JUDGE FOR THE WESTERN DISTRICT OF WISCONSIN BY HON. HERB KOHL, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator KOHL. Thank you very much, Mr. Chairman. It is my pleasure today to introduce William "Bill" Conley to the Judiciary

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Committee. We also welcome Mr. Conley's many family members who have traveled here to be with us.

Bill Conley was born and raised in Rice Lake, a town in northwest Wisconsin. He received a BA with distinction from the University of Wisconsin at Madison and graduated cum laude and Order of the Coif from the law school at that place.

Following law school, he clerked for Judge Fairchild in the Seventh Circuit Court of Appeals. Bill Conley has practiced law for 25 years at Foley & Lardner and has earned a reputation as a well regarded and topnotch litigator.

He has represented an array of national and international companies before state and Federal courts and has served as a mediator and arbitrator to resolve disputes for parties outside of court.

During his many years in private practice, Bill Conley has also used his legal talent to give back to the community. He has devoted hundreds of hours to pro bono legal work, representing refugees, indigent defendants and others who would otherwise not be able to afford legal representation.

He has also been active at the Remington Center for Criminal Justice at the University of Wisconsin and the Wisconsin Equal Justice Fund. Bill Conley possesses all of the best qualities that we look for in a judge—legal acumen, diligence, humility and integrity.

Having spent much of his career representing clients before the court to which he has been nominated, he has a key understanding of the fairness and impartiality that the administration of justice demands.

Bill Conley is a fine man. We can all be proud of him and I am confident that he will serve the people of Madison and all of Wisconsin well.

Bill Conley's nomination proves once again that the process that we use in Wisconsin to choose Federal judges and U.S. attorneys ensures excellence.

The Wisconsin Federal Nominating Commission has been used to select Federal judges and U.S. attorneys in Wisconsin for 30 years, through Republican and Democratic administrations and a tenure of Senators from both parties.

Through a great deal of cooperation and careful consideration and by keeping politics to a minimum, we always seem to find highly qualified candidates.

Again, we are pleased to have you with us today and we look forward to your testimony.

Thank you, Mr. Chairman.

Senator SCHUMER. Senator Franken, do you wish to give any statement?

Senator FRANKEN. I am fine.

Senator SCHUMER. So I will delay mine for Judge Chin from New York so we can call on our colleagues, who I know have busy schedules. So we, first, are joined by both Senators from the State of Washington in support of Professor Peterson for the Eastern District of Washington, Senator Murray and then Senator Cantwell.

PRESENTATION OF ROSANNA MALOUF PETERSON, NOMINEE TO BE U.S. DISTRICT COURT JUDGE FOR THE EASTERN DISTRICT OF WASHINGTON BY HON. PATTY MURRAY, A U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator Murray. Mr. Chairman, thank you very much, and to all of our members who are here today.

Along with my colleague, Senator Cantwell, it is my pleasure to introduce Rosanna Malouf Peterson. Rosanna is a distinguished law professor and attorney who has been nominated to serve as the next Federal Judge for the Eastern District of Washington.

I want to welcome Professor Peterson and her husband, Fred, who is here, as well as her daughter, who has joined us, Miranda, and Professor Peterson's brother-in-law and sister-in-law, Don and Sherry Shipley, who are all joining us here today.

Mr. Chairman, I think it kind of speaks to the type of nominee she is that so many of Professor Peterson's friends and current and former students are also here to support her.

Mr. Chairman, I am honored to recommend that the Senate confirm Rosanna Malouf Peterson as the District Court Judge for the Eastern District of my home state. She has strong bipartisan support, and with good reason. She has devoted her career to serving the interests of justice and to instilling those values in a future generation of leaders.

Professor Peterson is a graduate of the University of North Dakota, where she earned her bachelor's, master's and law degrees. After law school, she started her legal career in the chambers of Judge Fred Van Sickle in Spokane, the very same seat that she has now been nominated to fill.

During her distinguished career, Professor Peterson has worked as an attorney in Spokane area law firms, for corporate and individual clients; she has worked in private practice, often representing teachers; and, she has worked as a court-appointed representative for criminal defendants in state and Federal court.

Since 1999, Professor Peterson has been a law professor at the Gonzaga Law School in Spokane, where she is an assistant professor oF law and director of the law school's externship program. At the same time, Professor Peterson has maintained her private practice, where she has continued to work with Federal defendants on a pro bono or reduced fee basis.

Professor Peterson has also played a leadership role in the Washington legal community, including president of the Federal Bar Association of Eastern Washington, president of the Washington Women Lawyers Bar Association, and on the Judicial Selection Committee that helped recommend a magistrate judge in 2003.

In recognition of her service, in 2006, she was awarded the Smithmoore Myers Professionalism Award, the Spokane County Bar Association's highest honor. Professor Peterson's accomplishments stand for themselves, but I have also received numerous letters and emails testifying to Professor Peterson's toughness, work ethic, understanding of the law, and advocacy on behalf of her clients. I've also received many letters from her former students and people she has mentored, taught and befriended over the years, letters that all say she has made a difference in the lives of so many in my state.

She clearly meets the standards of fairness, evenhandedness, and adherence to the law that we expect of our Federal judges. Outside of her many professional credentials, I have been able to speak with her and I have been impressed by her professionalism and decency.

I know I speak on behalf of a large number in the Washington State legal community in supporting the nomination of Rosanna Peterson to be the next district judge for the Eastern District of Washington.

Mr. Chairman, I think it is also important to note for the Committee that Professor Peterson's nomination was the product of a bipartisan selection commission that we use in my home state.

This commission was formed and did much of its work under the previous administration and has proven that it works even as we move from one administration to the next.

I am very proud to have created that selection commission and believe it is something that has really served our state and our Federal judiciary well.

Therefore, it is my pleasure today to introduce a great lawyer, a teacher and a mentor, who I believe will make an exceptional Federal judge and I urge this Committee to approve her nomination. I hope we can confirm Professor Peterson before the full Senate quickly.

Senator SCHUMER. Who knows, maybe 1 day President Peterson.

Senator Murray. Who knows? Thank you, Mr. Chairman.

Senator SCHUMER. Thank you. I know that the commission that you and Senator Cantwell have worked on is well known for creating excellent nominations in a bipartisan way and I think it is a good model for everybody else.

Senator Cantwell.

PRESENTATION OF ROSANNA MALOUF PETERSON, NOMINEE TO BE U.S. DISTRICT COURT JUDGE FOR THE EASTERN DISTRICT OF WASHINGTON BY HON. MARIA CANTWELL, A U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator Cantwell. Thank you, Chairman Schumer and distinguished members of the Committee. It is great to be here with my colleague, Senator Murray, and, also, with our colleague, Senator Shaheen. We thank the Committee for this opportunity to introduce a Washingtonian to the Committee for this United States District Judge for the Eastern District of Washington.

I think if this is a commitment of voting this nominee out of the Committee and onto the floor and into this position, it will be the first time this position has been filled by a woman. So we are very excited about that.

Let me say to all the nominees that are before the Committee, I congratulate them on their nominations and look forward to working with them in the future. But we are especially proud to introduce Rosanna Peterson to support her nomination for this position.

I have no doubt that she will be an outstanding representative for our country and I am, too, glad to have her family here and congratulate them in their support of Rosanna.

She, as my colleague, Senator Murray, said, serves as the assistant professor of law at Gonzaga University, and I know that there are many Bulldogs watching via the Internet today and are very proud of their professor.

Before making her way to Washington State, she received her JD from the University of North Dakota School of Law, where she was the editor-in-chief of the North Dakota Law Review, something we are going to point out to our colleagues from North Dakota, and a member of the Order of Barristers and voted outstanding graduate by her law school faculty.

Following her graduation, she moved to Spokane, where she clerked for Judge Fred Van Sickle, whose ascendency to senior status created this very vacancy. So after 2 years with Judge Van Sickle, she entered private practice, until her appointment at the Gonzaga faculty.

Professor Peterson brings, I think, an impressive breadth of experience to the bench, because in private practice, she has represented more than 250 clients in both civil and criminal matters at both the state and Federal levels and has litigated numerous trials.

In her current position at Gonzaga University School of Law, Professor Peterson teaches evidence, Federal jurisdiction and trial advocacy, while directing the school's internship program.

I have no doubt she will be an exceptional jurist for the Eastern District of Washington. She has long been recognized by her peers for her keen intellect, boundless passion for the law, and dedication to equal justice.

So I offer this Committee my strongest recommendation to act quickly and in a positive way to put this nomination before the full Senate. I thank the Chairman and my colleagues for their consideration. I thank all the nominees for their willingness to serve and for the President's nomination of Rosanna Peterson before this Committee.

Senator SCHUMER. Well, after these two introductions, maybe we should nominate her for president.

We next have Senator Shaheen, who will introduce Professor Laub for Director of the National Institute of Justice.

Sorry. Senator Mikulski will have a statement for the record introducing John Laub for the Director of the National Institute of Justice, and Senator Shaheen will be introducing Susan Carbon for the Director of the Office of Violence Against Women.

I am particularly interested in that, being the House author of the Violence Against Women Act. So thank you for being here, Senator Shaheen.

PRESENTATION OF SUSAN B. CARBON, NOMINEE TO BE DIRECTOR OF THE VIOLENCE AGAINST WOMEN OFFICE, DEPARTMENT OF JUSTICE, BY HON. JEANNE SHAHEEN, A U.S. SENATOR FROM THE STATE OF NEW HAMPSHIRE

Senator Shaheen. Thank you, Mr. Chairman. I thought you might be interested in this. Senator Kohl, Senator Franken, I am pleased to be here this afternoon.

After what we've heard, I want to endorse all of the nominees, but, of course, I'm here to introduce Susan Carbon, who, as you

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point out, has been nominated to be the Director of the Office of Violence Against Women in the Department of Justice.

I have known Susan for over—well, for about 20 years and I have been an admirer of her exemplary commitment to public service. Susan was appointed as a part-time New Hampshire District Court judge in 1991 by then Governor and now Senator Judd Gregg. So I am sure she will have bipartisan support in the Senate.

When I became Governor of New Hampshire, I recognized Susan's impressive service on the bench and nominated her to serve as a full-time district court judge. Because of her commitment to domestic violence and other family issues, Judge Carbon was named the supervisory judge on the Judicial Branch Family Division in New Hampshire.

Throughout her career, Susan has been a leader in the New Hampshire legal community, including serving as president of the New Hampshire Bar Association from 1993 to 1994.

Now, Mr. Chairman, as you point out, you have been a leader in the senate on strengthening the Violence Against Women Act and care greatly about this issue. Well, I can assure you that Susan Carbon is exceptionally qualified to serve as the director of the Office of Violence Against Women.

Judge Carbon is the leading voice in New Hampshire on domestic violence and family law and has been the driving force behind many of New Hampshire's efforts to strengthen legal protections for victims of domestic violence.

Judge Carbon has also become a national leader on domestic violence. She frequently serves as faculty for the National Judicial Institute on Domestic Violence and she chaired the project which produced the multidisciplinary *Effective Issuance and Enforcement of Orders of Protection in Domestic Violence* Cases, which many people also know as the Burgundy Book.

The Burgundy Book guides professionals in their work around civil protection orders not only throughout this country, but the U.S. territories.

Mr. Chairman, I have no doubt that Judge Carbon will work tirelessly to advance the goals of the Violence Against Women Act and I urge the Committee to give her confirmation speedy recommendation and I give her my strongest recommendation for her confirmation.

Thank you very much. If there is anything more that I can do to help Judge Carbon with this appointment, please let me know.

Senator SCHUMER. Thank you, Senator Shaheen. Again, a great introduction for somebody who looks to be a great nominee.

You're right about the bipartisan nature. Senator Gregg has submitted a statement on behalf of Judge Carbon and, without objection, I will enter that into the record.

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

Senator SCHUMER. We also have Senator Mikulski and I would ask unanimous consent that her statement on behalf of John Laub as Director for the National Institute of Justice be added to the record.

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

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PRESENTATION OF DENNY CHIN, NOMINEE TO THE U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT BY HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. Now, I will read my statement introducing, from my home State of New York, Judge Denny Chin, who is a nominee for the Second Circuit Court of Appeals, what we would like to think is one of the most important circuit court of appeals in the country, along with the others. I do not want to offend my colleagues.

[Laughter.]

Senator SCHUMER. Judge Chin is also, not incidentally, a classic product of New York upbringing. I am so proud to introduce him here.

His family brought their own culture from Hong Kong to America and earned their own advantages through sweat and hard work. Within one generation, his family raised a child who rose to the top of his profession.

Judge Chin was born in Kowloon, Hong Kong, came to the United States when he was 2 years old. His father worked as a cook. His mother worked as a garment factory seamstress in Chinatown.

Judge Chin grew up in a cramped tenement in Hell's Kitchen with is four siblings, but his parents clearly did something right. Denny Chin graduated from the renowned Stuyvesant High School. We just had before the Judiciary Committee Judge Holder, another graduate. I don't know if you graduated at the same time.

My daughter went to Stuyvesant and my favorite thing about them, they are very bright people, it is hard to get in, their teams are not that good and they know it, because the mascot of the team is the pegleg. They are called the Peglegs after Peter Stuyvesant. Anyway, it is good to have a pegleg here with us.

Judge Chin went on to earn his BA magna cum laude on a full scholarship from Princeton University and he received his law degree from the Fordham University School of Law. After school, he clerked on the District Court for the Southern District of New York and went on to work as an associate at Davis Polk & Wardwell.

He heeded the call of public service, became an assistant U.S. attorney in the southern district for 4 years, then struck out and founded his own firm.

Throughout my term in the Senate, I try to give advice and consent to the President on judicial nominees by applying three criteria—excellence, moderation and diversity.

Excellence, they should be legally excellent. If you look at Judge Chin's record as a district court judge, he clearly is excellent. The *Almanac of the Federal Judiciary* describes him as a judge's judge, conscientious, extremely hardworking, very bright and an excellent judge.

My second criteria is moderation. I do not like to choose judges too far right, obviously, but, also, too far left, because I think judges at the extremes try to make the law rather than interpret the law. Again, Judge Chin is known as a tough, but fair sentencing judge.

He is best known for sentencing the Ponzi scheme operator, Bernard Madoff, in a case that could have been a complete circus, because there were hundreds of victims who had lost everything. Judge Chin ran the proceedings with dignity and efficiency and when he sentenced Judge Madoff, he said, "The message must be sent that Mr. Madoff's crimes were extraordinarily evil and that this kind of irresponsible manipulation of the system is not merely a bloodless financial crime that takes place on paper, but that it is one that takes a staggering human toll."

He is not afraid of unpopular views. He ruled that the New York Black Panthers could not be denied the right to march based on, quote, "disapproval of anticipated content," and he has the support of former Attorney General Michael Mukasey and Republican-appointed U.S. Attorney John Martin, who hired him 30 years ago and has practiced before Jude Chin.

On the issue of diversity, I think I have given advice and consent to the President on 10 or 11 judges. There is only one white male, because I think we should have more women and minorities on the bench. Judge Chin already has the distinction of being the only Asian-American to serve on the Federal District Court outside the Ninth Circuit and, with his confirmation, he will be the only currently active Asian-American appellate judge on the Federal bench.

He explained the importance of diversity in clear terms when he wrote, "If there were more minority judges and lawyers in the profession, lawyers might not question a minority judge's fairness because of his or her race; lawyers might not presume that a minority judge is biased because of some sort of absurd notion that the judge might feel beholden to someone of the same racial or ethnic group who supposedly was in a position of power." These are great words and they say it better than I could.

So it is my honor to introduce Judge Chin for nomination to the Second Circuit Court of Appeals.

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

Senator SCHUMER. With that, let me ask all of the nominees to come forward. We have Judge Chin, we have Professor Peterson, we have Judge Carbon, we have John Laub, and Judge Conley for the Western District of Wisconsin.

They tell me I am supposed to have Judge Chin come first; not because he is from New York, but because you are on the Second Circuit. So you come forward first.

So, please, raise your right hand.

[Whereupon, the witness was duly sworn.]

Senator SCHUMER. Please be seated. You may both introduce your family and make an opening statement.

Judge CHIN. Thank you, Senator. And thank you, Senator Kohl and Senator Franken, for being here.

Let me start by introducing my family. With me is my wife, Kathy Chin. We have been married 31 years. My oldest son, Paul, is here. He teaches sixth grade math in Newark. He also was a Pegleg. He was in your daughter's class and, indeed, he was on the football team. And you are right, the teams weren't very good.

Senator SCHUMER. When I played at Madison High School, where Senator Coleman attended, Senator Franken's predecessor, our team's motto at Madison was "We may be small, but we're slow."

[Laughter.]

Senator SCHUMER. Which I would not say of the Milwaukee Bucks, since Senator Kohl has some interest in them.

Judge CHIN. Also here is our 15-year-old, Daniel, who will be the star on his basketball team this year. With us also is Paul's friend, Melinda, also from Princeton. And my brother, Daley, is here with his daughter, Alisha.

My deputy clerk, David Tam, who has been my deputy at the court for 15 years, is here, as well. And I've got a whole bunch of law clerks and friends sitting in the back. I want to thank——

Senator SCHUMER. Could all of those who were introduced just please—it is always nice to see the families and friends. So just stand for a second. We are not going to ask you to say anything. Thank you all for being here.

Judge CHIN. Senator Sessions, good afternoon.

I do not have an opening statement, other than to say I thank the President for this honor and I would be pleased to answer any questions.

Senator SCHUMER. Well, before we do that, since Senator Sessions just came in—would you like to make any opening statement, Senator Sessions.

Senator SESSIONS. No. I would just take a moment to say we appreciate this process. It is an important step. Even though members, most of our Committee, are not here today, they have incredible demands upon them. Four of our Republican members are on the Finance Committee and I hear we may have a health care bill in a few hours. I know they are working on that.

But we take it seriously. We look forward to supporting most of the President's nominees and I look forward to this hearing. Thank you, Mr. Chairman.

Senator SCHUMER. Thank you. We will do some brief questions. These are the same questions I asked to Judge Lynch when he was elevated from the District Court to the Second Circuit, and I know he is a colleague of yours.

Judge CHIN. Yes.

Senator SCHUMER. Who was your model of an appellate judge? In your 1994 questionnaire for this Committee, you said "On the proper role of judges, my view is that judges ought not to legislate. That is not their function. Judges interpret and apply the law, keeping in mind the purposes of the law. District judges, in particular, should focus on ensuring that, one, the parties have standing; two, there is an actual case or controversy ripe for judicial review; three, that the law is applied fairly; and, four, that precedents are followed."

Is that still your definition of judicial restraint? Please explain. So those are my two questions for you.

Judge CHIN. As to the second question, yes. After 15 years of judging, that is still very much my philosophy. I believe in the rule of law and I believe in giving the parties a full and fair opportunity to be heard.

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As to the model of an appellate judge, I have great respect for John Newman of our court. He is extremely smart. He's thoughtful. He asks hard questions at oral argument and he's always been a gentleman.

Senator SCHUMER. Thank you. I have no further questions.

Senator Sessions.

Senator SESSIONS. Judge Chin, in 2007, in the *New York Law Journal*, you made a statement that I guess can be defended, but, also, is a statement that raises some concern.

You said this, quote, "If justice is blind, why does the race of a judge matter? Well race does matter. A black plaintiff or a white defendant or an Asian-American litigant who appears before me should not believe that I will rule any differently because of race or ethnicity or cultural background. I won't. But what I will do is bring my diverse background with me. A broader mix of judges at bench which more fairly reflects the rich diversity of our society will improve the overall quality of justice."

So I think there is a little bit of a solid statement in there and a little bit of a statement that makes me a bit uneasy. Would you expound a bit on what you meant in those words?

Judge CHIN. Yes, Senator. In a perfect world, race would be completely irrelevant and, hopefully, someday we will get there. I don't think we're there yet and I think that the quality of justice is not as good if the bench is dominated by one group of the same background or persuasion.

I think with a more diverse group on the bench, the judges will learn from each other. I do not suggest for a moment that an Asian-American judge is more likely to reach a wise result than a white judge, but I think the two together can learn from each other and perhaps come up with a better answer.

Senator SESSIONS. Well, I think the ideal of American justice, would you not agree, and it is the strength of our system, that a judge puts on a robe and that when they do and they take that oath to be impartial, do equal justice to all the parties, that that suggests that they will not let their personal feelings or biases or prejudices, politics or other things interfere with being fair to each party before them; would you agree?

Judge CHIN. I agree, absolutely, with that. Everyone should be treated equally and as I said in that speech, an Asian-American litigant should not be expected to be treated less harshly or more harshly in front of me. But I do think there is something to be gained if the bench reflects the richness of our society.

Senator SESSIONS. Well, I certainly believe that every judgeship should be equally achievable by a person, no matter what their background is, and that they should not be favored, selected groups or races or ethnic groups or religious groups that get favoritism.

You enjoined, on one occasion, Judge Chin, the enforcement of provisions of New York's Megan's Law. In the first of the decision, you held that the notification portion of the statute violated the ex post facto clause of the U.S. Constitution and enjoined it from being applied to inmates who were convicted before the statute was enacted.

The Second Circuit unanimously reversed this decision. On remand, you held that the statute violated the due process clause in its procedures for assigning defendants into risk categories.

Two years after the state and plaintiff reached a settlement, the State of New York amended its Megan's Law. You, again, enjoined the enforcement of the statute. A divided Second Circuit, again, reversed your opinion.

Would you discuss how you approached that case and how you came to be in disagreement with the court on which you would seek to sit and what was it you, on several occasions, overturned the duly passed law of the people of New York?

Judge CHIN. Yes, Senator. There are three aspects to the case and I will take each one at a time. The first was the ex post facto clause. I was not opining on whether Megan's Law was good or bad. I was not looking at the statute as a whole.

I was looking at the narrow question of whether it could be applied retroactively, that is, to people who committed their crimes long before the statute was passed.

It was a thorny issue. I took a good hard look at the precedents and I held that it was punishment that was the technical issue. The Second Circuit, indeed, reversed and Judge Newman wrote the opinion and Judge Newman wrote that it was a question that was not free from doubt, and the court went that way. I accept the court's decision, of course.

The due process part, I did have due process concerns and, in fact, the parties settled the case and the New York State legislature amended the statute and incorporated measures to address a lot of the concerns that I raised, and, in fact, that was not appealed.

The third part was a narrow contractual position that had to do with whether a new amendment in the law should be applied to those people who were part of the class that was settled originally. And I felt that a contract was a contract and the state should be bound.

The Second Circuit reversed. It was a 2–1 decision. There was a dissent by one of the judges. And the court held that the legislature, in essence, was free to rewrite the contract because it was the state legislature.

Senator SESSIONS. Thank you. Unlike some of the statements some of our colleagues make, I do not think that the U.S. Senate and, I suspect, the New York legislature have always thoroughly studied the constitutionality of what they pass when they pass it and I do not think it is activism that a judge would find a statute that is unconstitutional unconstitutional and if it is unconstitutional, it should not be enforced.

So I will look at your answers, appreciate your answers, and evaluate that. But we have had instances in which judges, for some reason, did not like a law and have gone outside, I think, the normal bounds to see if they can undermine it.

Thank you.

Judge CHIN. Thank you, Senator.

Senator SCHUMER. Thank you, Senator Sessions. Senator Kohl, do you have any questions?

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Senator KOHL. Judge Chin, you are moving from the trial court to the appeals court. How do you see the difference between those assignments?

Judge CHIN. Well, first of all, I've loved my 15 years as a trial judge. I love the drama of the courtroom, the hustle and bustle of the day-to-day proceedings. I've been fortunate and I've had a lot of exciting high profile cases.

So it's with some reservation that I would move on, if I am confirmed. On the other hand, after 15 years, I think it is time for a change. If I am confirmed, I look forward to being able to write more, to decide issues a little bit more deliberately, and perhaps to have a broader impact.

Senator KOHL. As you know, you sit on a three-judge panel as differentiated from how you observed and ruled as a trial court judge. In that situation, you need to be in accord with at least one other judge on your panel in order to form an opinion and it requires some degree of ability to convince at least one of the others to support how you think. Is that a challenge that you would embrace?

Judge CHIN. It is a challenge that I would embrace, for sure. In fact, I've sat by designation many times now. Roughly, every 2 years, I've sat on the Second Circuit. In fact, I've issued 10 majority opinions.

And so I understand it's a very different process, because it is—you have to build some consensus. The back-and-forth in terms of the opinions is something I am not used to, because of the independence that we have as trial judges.

Senator KOHL. Thank you. Thank you, Mr. Chairman.

Senator SCHUMER. Now, Senator Feingold has an opening statement first, I guess, and then he may ask questions of this witness, whatever you prefer.

Senator FEINGOLD. I will pass on the questions.

Senator SCHUMER. So Senator Feingold for Mr. William Conley for the Western District of Wisconsin.

PRESENTATION OF WILLIAM M. CONLEY, NOMINEE TO BE U.S. DISTRICT COURT JUDGE FOR THE WESTERN DISTRICT OF WISCONSIN BY HON. RUSSELL D. FEINGOLD, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator FEINGOLD. I apologize for being unable to be here at the beginning of the hearing and thank you, Mr. Chairman, for recognizing me now.

It is a great pleasure to introduce to the Committee William M. Conley, who the President has nominated to serve as U.S. District Court Judge in the Western District of Wisconsin.

Bill Conley attended the University of Wisconsin-Madison for both his undergraduate and legal education, receiving honors from both. He graduated cum laude from the law school, where he was also a member of the Order of the Coif and served as articles editor on the Wisconsin Law Review.

After graduation, Mr. Conley clerked for Judge Thomas E. Fairchild, who was a legendary Wisconsin judge on the United States Court of Appeals for the Seventh Circuit. He then began work in

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1984 at the law firm of Foley & Lardner, where he continues to work today as a commercial litigation partner.

I suppose full disclosure would be appropriate here. I first met Bill Conley in 1982 when he was a summer associate at Foley & Lardner and I was a young associate at the firm, and I think I gave him something to do that I did not want to do.

I left private practice to run for office, but Bill made it his career and is now widely known as one of the top lawyers in the state. He has written chapters for practice guides in the appellate process, antitrust issues, product distribution and Federal civil procedure. After his nomination, he received a unanimous well qualified rating from the American Bar Association.

Mr. Conley's litigation background has provided him with diverse experience and great insight into the judicial process. Over the last 20 years while he has been at private practice, he has also participated in the justice system as a mediator, an arbitrator, and an early neutral evaluator, which is a volunteer position that helps litigants reach cost-effective resolutions outside of the court.

Mr. Conley recognizes that as a successful lawyer, he has an obligation to serve the disadvantaged. He has devoted a significant amount of time throughout his career to representing criminal and civil pro bono clients.

One of the things, frankly, that makes me most proud of this nomination is Bill Conley's deep Wisconsin roots. He grew up in the beautiful community of Rice Lake, a town of about 8,500 residents, in the northwestern part of the state. He has lived virtually his entire life in the Western District.

He was educated in Wisconsin and now, with the Senate's approval, he will serve the people of the Western District as a Federal Judge. He has described the prospect of serving in this position as, quote, "a way to give back to the community that shaped my life."

He is a tremendous example for hardworking young people in the small towns of our state and across the country, and I, obviously, strongly support his nomination.

Thank you, Mr. Chairman.

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

Senator SCHUMER. Thank you, Senator Feingold, for that excellent statement. Now, we will go to Senator Franken for questions of Judge Chin.

Senator FRANKEN. Thank you, Mr. Chairman.

Judge Chin, you are currently presiding over the controversial Google Book search settlement, the possible resolution of which might be one of the important copyright issues or decisions to come before the court in years.

As someone who has presumably thought a lot about intellectual property law and access to information, I would like to ask you about net neutrality. What role do you think courts should play in ensuring both an Internet free from censorship and the prevention of piracy?

Judge CHIN. Thank you, Senator. I would not want to opine generally on what the role of the courts are in this respect.

Our role is to decide cases and if those cases are presented and if those cases are presented to me, and I've had some of them in

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the past, and if they are presented to me in the future, then I would apply the law.

I would certainly consider the statutes carefully, the text of the statutes, the cases that have interpreted them, the legislative history, and make a decision based on the law.

Senator FRANKEN. All right. Fair enough, then. I suppose you are not going to tell us how you are going to decide in the Google case.

[Laughter.]

Judge CHIN. That is correct, Senator.

Senator FRANKEN. Those are all the questions I have, Mr. Chairman.

Senator SCHUMER. Well, thank you, Senator Franken. We look forward to your further questions of other witnesses.

Well, thank you, Judge Chin. Congratulations.

Senator Sessions.

Senator SESSIONS. Just briefly. You have mentioned that it is difficult sometimes to sentence. Congress has spoken on sentences. The courts have maneuvered around the guidelines. Even Justice Scalia can make a mistake, I think.

But how would you discuss your philosophy of following the guidelines as a trial judge, where you have to apply them, and what approach has there been—where do you see your role as an appellate judge in that process?

Judge CHIN. Well, in terms of what my role has been, I've done a lot of sentences in 15 years and it is clearly one of the most difficult things, if not the most difficult thing that a trial judge does. And what I have been doing, certainly, since *Booker* is to follow the law in that sense.

The guidelines are a starting point. They are an important starting point. They should be given fair and respectful consideration. And I've found it helpful to have the guidelines as a framework.

It's comforting to know what the judges throughout the country, in their collective wisdom, have decided is a heartland range. But I've also felt it was appropriate to have discretion to go above or below the guideline range in the limited circumstances where that is warranted.

As an appellate judge, I will have to get used to not making that initial decision. It will be a reviewing decision and under *Gall*, the standard is abuse of discretion and that's the standard that I would apply.

I would hope that—yes, sir.

Senator SESSIONS. That is a pretty low standard for a judge. How would you evaluate your philosophy in actual sentencings compared to your fellow judges being within the guidelines as opposed to without them?

Judge CHIN. Well, in part, it's the process. Did they follow the right process? Did they do a guideline——

Senator SESSIONS. But in the District Court bench where you practiced, do you consider yourself more likely to follow the guidelines than your colleagues or less likely to follow them?

Judge CHIN. I believe there were some statistics done and I was right in the middle of—I was exactly at the average for the court, precisely at the average.

Senator SESSIONS. I cannot complain about that.

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Judge CHIN. So a few tenths of a percentage point off. Our court has been criticized as going below guidelines quite a bit, but we have lots of cases with cooperation. And so it's hard to draw any generalizations.

Senator SESSIONS. Well, the matter is a serious one.

Judge CHIN. I agree.

Senator SESSIONS. And I do not think justice will be well served if we abandon a rather strong presumption that sentencing should be within the guidelines.

Thank you, Mr. Chairman.

Senator SCHUMER. Thank you, Senator Sessions. Thank you, Judge Chin. Now, we will call up the second panel.

Judge CHIN. Thank you, Mr. Chairman.

Senator SCHUMER. We will need Mr. William Conley, Professor Peterson, Judge Carbon and Mr. Laub to all come forward.

[Whereupon, the witnesses were duly sworn.]

Senator SCHUMER. I am going to call on, before I ask any questions, since Senators Kohl and Feingold are here from Wisconsin and so are you, Mr. Conley, I am going to let them ask the first two questions, and then Senator Sessions and I—the first two rounds of questions and then Senator Sessions and I will resume.

Senator Kohl.

Senator KOHL. Thank you so much. Mr. Conley, Senator Feingold and I will have the opportunity to question you first, but before we do, we would like you to introduce to us those who are with you today on this important moment in your life.

Mr. CONLEY. Thank you very much, Senator. With me—and should I have them stand as I introduce them—is my lovely wife, Suzie, who is now sitting here, and our above average children, Patrick and Meredith—Meredith may have to jump up to be seen—age 11 and 8, respectively.

Also with me are my brothers, Dan and John, who both practice law in Milwaukee, Wisconsin. And my nieces, Kate, Alana and Kara, and nephew, Will.

And if you'll indulge me, just to say representing dozens and dozens of cousins around the world is my cousin, Mary Frankenberry.

Also listening on Webcast back in Milwaukee is my own sainted mother, Miriam Conley, and the best in-laws one could ever hope to have, Bob and Sally Birmingham. And looking down on these proceedings are my late father, Edward M. Conley, and brother, Tim.

Senator KOHL. Great. Thank you all for being here. Mr. Conley, although you are bound by the precedent of your circuit and the precedent of the U.S. Supreme Court, as a Federal Judge, you will be called upon to decide cases where there is no precedent or where the precedent does not clearly determine the outcome.

How do you intend to approach these kinds of cases?

Mr. CONLEY. Thank you, Senator. I think at the end of the day, the best you can do is look at the law, to understand the facts to the best of your ability, and to reflect that in your decisionmaking to the parties so they appreciate that you have understood both, and then to reach a decision that you think is consistent with the best interpretation of the law and precedent to that point.

Senator KOHL. Why are you seeking to be a Federal Judge, Mr. Conley.

Mr. CONLEY. Well, Senator Feingold alluded to a very big part of it and that is that I am at a point in my career where I had always assumed I would be doing something in public service and this was an exceptional opportunity.

The judge I clerked for, Judge Fairchild, said that becoming a judge is something that happens to you along the way, and it feels, and it felt, and I have seriously considered in applying, that this was the time and the place for me to do this work, and I'm honored to have the opportunity.

Senator KOHL. Mr. Conley, I think——

Mr. CONLEY. The Senate agreeing.

Senator KOHL. Of course. I and I think most of us believe that life experiences do influence the decisions that people make inevitably, but judges, more than anyone else, have a duty to ensure that they do not cross a line, to allow their background to inappropriately influence the outcome of cases.

So we ask you, where do we draw the line and at what point does personal experience improperly impact judging? How have you and how will you ensure that your personal experiences do not improperly influence your judicial decisions?

Mr. CONLEY. I think it's the obligation of every judge to try to leave their own prejudices at the doorstep and that certainly will be my No. 1 goal to bring fairness to the proceedings for the parties and for the larger community. And beyond that, I think you can only do your best.

Senator KOHL. Thank you. Thank you very much, Mr. Chairman.

Senator SCHUMER. Senator Feingold.

Senator FEINGOLD. Thank you, Mr. Chairman. Mr. Conley, can you tell us more about the Western District's neutral evaluator program that you participated in and based on that experience, as well as your experience as a litigator, what other programs do you intend to institute as a judge to help parties reach amicable resolutions?

Mr. CONLEY. Well, the early neutral evaluation program was something that was instituted many years ago by the Western District of Wisconsin and it's an effort, where both parties have an interest in addressing the possibility of resolution at an early stage, to bring in an experienced litigator to talk through the issues, to take written submissions, and to try to work through what might be a result, including giving an indication to the parties where you think the result may come out if they decide not to proceed.

It's been, I think, a generally successful program, although not used as often as one might hope. But it's one I very much enjoyed being a part of. And I certainly agree that as the cost of litigation has skyrocketed, that those kinds of alternative dispute resolutions are something the courts have to look at carefully.

As a Federal Judge, if I were lucky enough to be confirmed, the general practice in the Western District is not to have the presiding judge participate in those things. I think it's a very difficult thing for the presiding judge to do.

And I would certainly encourage parties to pursue those avenues and there are some through the magistrate and the clerk of the

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court to do that, but I would expect that as a sitting judge, my role would be limited in terms of that, only because of the ethics of being perceived to push parties toward a resolution that they may not otherwise want to reach.

Senator FEINGOLD. Thank you, Mr. Conley.

Justice Carbon, thanks to the Violence Against Women Act, many improvements were made to the justice system in response to violence against women. However, especially in these economic times, the reality is that many women feel unable to escape abusive situations; not because there are not laws to protect them, but because they are financially dependent on abusers.

The Transitional Housing Assistance Program grant is one example of how the Office on Violence Against Women helps meet the economic needs of victims. Are there any other ways you would plan to address the grave economic difficulties that these victims face?

Judge CARBON. Thank you, Senator. May I have your permission in thanking the President before I respond to your question?

Senator FEINGOLD. Fine with me.

Judge CARBON. Thank you. I am deeply honored to be here this afternoon and would like to take this opportunity to thank Senator Schumer and others on the Committee for your taking the time to conduct the hearing here this afternoon.

I am deeply honored to be nominated by President Obama for the position of Director of the Office on Violence Against Women and, if I am so lucky as to be confirmed, to have the privilege of serving in this position.

I would also like to thank the Vice President and the Attorney General for their confidence in supporting me in this nomination. I know that the issue of violence against women is extremely important to this administration, and so I am particularly humbled to have the nomination and hope that I will secure your confidence, as well.

And if I may have your indulgence, I would love to be able to introduce my guests who are here this afternoon.

Senator SCHUMER. I was trying to change the order a little bit——

Judge CARBON. I'm so sorry.

Senator SCHUMER [continuing]. To give our Wisconsin colleagues a chance to ask questions for Wisconsin, but Senator Feingold had asked you a question. So maybe we will have—if this is all right with the panel—each of the witnesses make a brief statement and introduce their families. So continue. I think you are right to do that, Judge Carbon.

Judge CARBON. My apologies, Senator Feingold. I'm so sorry.

I would love to introduce my husband of nearly 32 years, Larry Berkson, who is here. Also present with me this afternoon is my brother-in-law from Madison, Wisconsin, Dr. Michael Corradini.

I also have a colleague who I hope has been able to join this afternoon, the chief judge from the D.C. Superior Court, Lee Satterfield. Also, a colleague of mine from Portland, Oregon, Hon. Dale Koch, who has joined this afternoon. The Executive Director of the National Network to End Domestic Violence, attorney Roberta Valente, is here.

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The co-Executive Director of the Legal Resource Center on Violence Against Women, attorney Darren Mitchell. And a very dear friend of mine from the Office on Violence Against Women, attorney Nadine Neufville, who has joined this afternoon. And there are many others who are here for whom I'm very grateful.

So with that indulgence, I thank you very much, Senator.

Senator SCHUMER. Thank you very much, Judge Carbon.

Professor Peterson, would you like to make a brief opening statement and introduce your family?

Ms. PETERSON. Thank you. I very much would like to thank the President, also, for the nomination. And to Senator Murray and Senator Cantwell, I'm most grateful for those generous introductions.

With me today is my husband, Frederick Peterson, my husband of nearly 39 years; our daughter, Miranda Darby; and, her daughter, Aurora, newborn, who is home with her husband, Tom Darby, and they're watching via Webcast, as is my son, Alex, who is watching in Hong Kong, where he's studying law.

With us also today is my sister-in-law, Sherry Shipley, and her husband, Don Shipley; longtime friends, Karen Jones Walcott and John Winthrop Walcott, Tom Krzyminski, Christine Nickerson, and some former students who are becoming colleagues, April Hare, L.D. Quintanilla, Brandon Roche, and a current student, Shawna C. Murphy.

Thank you, Senator.

Senator SCHUMER. Thank you, Professor Peterson.

Since Senator Mikulski could not be here, as you know, she is recovering from that little fall she had, I will do a brief introduction of Professor Laub.

President Obama nominated Professor John Laub to be the Director of the National Institute of Justice. He is currently the distinguished university professor in the Department of Criminology and Criminal Justice at the University of Maryland.

Professor Laub's academic career in the field of criminology and criminal justice has spanned almost 30 years and he has published two award-winning books, a wide variety of articles about crime, juvenile justice, criminal victimization, and the history of criminology.

He received his BA from the University of Illinois and received one of the most outstanding MAs and PhDs that one can receive in this field from the State University of New York's Albany School of Criminal Justice.

Professor Laub, if you would like to make a brief opening statement and introduce your family, that would be great.

Mr. LAUB. Thank you very much, Senator Schumer. And thank you to the other Senators.

First, I would like to thank the President and the Attorney General for having the confidence in my abilities and for nominating me for this position.

I also would like to take this opportunity to introduce my family. My wife is here, Joanne DeSiato; my daughter, Calies Menard-Katcher, and her husband, Paul Menard-Katcher. And I want to particularly thank Calies and Paul, who are both doctors in Phila-

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delphia and were able to rearrange their schedules to be here with me today, and I appreciate that.

I also know that there are numerous colleagues and students from the University of Maryland and I'd like to thank them for their support.

Again, thank you for having me here today and I look forward to answering your questions.

Senator SCHUMER. Thank you, Professor Laub. Senator Feingold, did you finish your questions?

Senator FEINGOLD. I had asked a question.

Judge CARBON. Senator, you do not need to repeat it. I'm happy at this time to answer the question. Thank you.

The issue of the tough economy on victims of domestic violence is extremely important. We all know that a bad economy does not cause domestic violence, but it can certainly contribute to problems which victims face and, in particular, it is difficult when potentially neither adult has a job. So they are dealing with difficult financial circumstances and especially the issue of transitional housing and the need to potentially relocate if there is a protective order or another safety measure which is taken so that the victim may be safe.

That's an issue about which we are all concerned and I am especially pleased that the Senate has addressed this issue and that you have been in support of transitional housing.

With regard to what else can be done, I am pleased that the Violence Against Women Act is undergoing study for its reauthorization and would hope that additional funds for transitional housing will be considered, amongst other issues, such as legal assistance for victims when they are in court, whether it is with regard to a protective order hearing or some other type of matter.

These are extremely important programs and, if I am so lucky as to be confirmed, I would very much welcome the opportunity to work with you on other ideas that we could do to assist in assisting victims.

Senator FEINGOLD. Thank you.

Senator SCHUMER. Senator Sessions. I am going a little out of order here, but I am trying to alternate.

Senator SESSIONS. Well, I would be delighted, if some of our colleagues want to go first and excuse themselves, because I am going to be here to the end now.

Senator SCHUMER. Senator Franken.

Senator FRANKEN. Great. Justice Carbon, you have written that courts are a safety net for social ills. How do you feel about mandatory arbitration in employment contracts which could deny workers access to courts, even in circumstances of sexual assault or harassment?

Judge CARBON. Thank you, Senator Franken. As a judge, I believe that any victim ought to have a full panoply of legal remedies available to him or her. And so I would have some concern if we were to bar a victim from the opportunity to have his or her day in court.

So I would have concern about that and would want to study the issue further to determine whether that would be a viable remedy. But I think that it is a grave concern if we foreclose the opportunity for a victim to have their day in court to be fully heard.

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Thank you.

Senator FRANKEN. Thank you. Mr. Conley, you have served as a mediator and arbitrator in a variety of cases, including cases involving Title VII sexual discrimination claims and Americans with Disabilities Act claims.

How do you feel about employment contracts that require mandatory binding arbitration of Title VII or other civil rights claims?

Mr. CONLEY. Senator, I can't say, although I've had some experience with labor law and that I've looked at those issues or have litigated them, with a few limited exceptions. I understand that the Federal courts are moving towards greater recognition of the right of arbitration and, obviously, the Senate and Congress as a whole will have something to say about whether or not those rights will be imposed.

But I haven't looked at the issue enough to give you an answer beyond that.

Senator FRANKEN. I am talking about mandatory binding arbitration.

Mr. CONLEY. I understand, Senator, and I'm not, at this moment, aware of whether mandatory binding contractual obligations, whether through a collective bargaining agreement or through some other contractual means, are overridden by those acts. I suspect, as I think about, that they are and I don't know what the current state of the law is.

So I really can't answer beyond the fact that I would look closely at what the law said, were I lucky enough to be confirmed.

Senator FRANKEN. I am going to return to a question I asked the attorney general this morning. Professor Laub, last week, the National Institute of Justice, the institute you hope to run, released a remarkable report.

That report found that there is forensic evidence from tens of thousands of unsolved murders and rapes that have never been sent to crime laboratories and that is sitting untested in police departments around the country. Forty percent of those pieces of evidence actually had DNA in them.

As Director of the National Institute of Justice, what would you do to ensure that the NIJ continues to produce such hard-hitting reports and that the Department of Justice pays such reports the attention that they deserve, and, specifically, this one?

Mr. LAUB. Thank you, Senator Franken, for that question. This is an important issue and, clearly, it's an important issue with respect to the National Institute of Justice study and what Attorney General Holder said earlier today in a hearing.

And it seems to me that what one needs to do is to begin to investigate what is the reason for the backlog; is it a management issue; how does that vary by types of crime; what do we know about the size of the police agencies with respect to where that evidence is backlogged.

Assuming I'm, hopefully, lucky enough to be confirmed for this position, it's something that's quite important to the National Institute of Justice, because the backlog means that there's a delay in justice for victims of crime and it's a delay in holding offenders accountable from the crimes that they may have committed.

Senator FRANKEN. Thank you. Thank you, Mr. Chairman.

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Senator SCHUMER. Senator Sessions.

Senator SESSIONS. Thank you. Ms. Carbon, it is good to have you with us. I know my friend cares about the arbitration question, but make no mistake, all of us believe that if somebody sexually assaults a person, that is not subject to arbitration.

We did have a dispute over whether, if the individual sued the company that hired the man, whether or not that matter should be arbitrated or actually go to litigation, and the court held, with Mr. Franken's view, eventually, that they would have that right, at least in the instance that was involved there.

I will just briefly ask a few questions. Let me just say to each of you and to the people that are here how the system works. Each one of these nominees has undergone a background check. ABA has reviewed your qualifications. Lawyers in the state and others have opined as to your fitness for office. And out of all that, the President, after probably having the Department of Justice and others review the situation, has seen fit to nominate you.

Once all that occurs, you have this hearing, in which questions can be asked openly and then it would be set for a markup, we call it, at Chairman Leahy's discretion and then any Senator can ask that that be held over one week without making any aspersions on anybody's character.

Usually, I believe 1 week is probably healthy, because maybe there is somebody somewhere that just read about you and has got a complaint that they would like to float and it gives a chance to deal with that.

Then the second week, it comes up for a vote in the Committee and then it goes to the floor and then the majority leader will call you up for a vote when he sees fit and he can do that by a request of unanimous consent, and most judges move forward on that unanimous consent, probably 75–80-plus percent.

Some that have problems that individual Senators object to or have other concerns about could find it more difficult. That is kind of where we are. I hear good things about most of you—all of you as nominees, and will ask a few questions.

Professor Peterson, you talked about one of your more significant cases is dealing with an illegal alien case who had been deported on a prior drug conviction and then reentered the country and you said the defendant faced an 8-year minimum sentence and another deportation, had come in and with no likely opportunity to return lawfully to the United States.

The reason this case was significant to me was I gained a new level of understanding of the issues that illegal aliens face trying to return to the United States after deportation.

Would you, as a judge, be willing to enforce the law that says that if you are convicted of a drug offense and are deported, you are not entitled to come back in the country?

Ms. PETERSON. Absolutely, Senator.

Senator SESSIONS. I do not think there is anything unfair about that. We cannot have everybody in the world come to America and if, while they are in an illegal status, they are convicted of a serious crime, they ought not to be able to expect to stay in the country, I think.

Mr. Conley, you had an interesting case when you represented the bar about utilizing lawyers' mandatory fees and political contributions. You were a good lawyer for the Bar Association.

And then later, I guess—I do not know how that case came out in Wisconsin, but you filed a brief in support of, I believe, California.

Mr. CONLEY. Yes.

Senator SESSIONS. *Keller* v. *State Bar of California*, raising that same issue. I guess the complainants were saying "It is not right to take my money that I have to pay to be a lawyer and then turn around and give it to some skunk politician that I do not agree with."

The Supreme Court agreed with that view; did they not? Is that what they held? I just see my notes here.

Mr. CONLEY. I don't recall the Supreme Court using the term "skunk." But I understand, in *Keller* v. *State Bar of California*, that there was a ruling in terms of narrowing those areas in which a mandatory bar could engage in what was referred to as speech or political speech activities.

I don't think there was ever any question of a mandatory bar making contributions to individual politicians, skunk or not.

Senator SESSIONS. What kind of contributions were they talking about?

Mr. CONLEY. Yes. But, rather, the activities, the speech activities of a mandatory bar, which may be as innocuous as arguing for a procedural change in how one brings a particular law or enforces a law to what are sometimes considered more controversial issues among members of the bar themselves.

The question is whether or not, in a mandatory bar setting, they can take those positions and use funds of mandatory nature to take those positions, and, ultimately, the determination in *Keller* was that there would have to be segregated fees, unless the political activity was directly related to the important functions of the bar, which were the administration of justice.

And I believe there was one other, which I have to go back and look at the decision. Administration of justice was the primary one that would justify use of even mandatory fees. Otherwise, you would have to segregate and be refunded.

I should say, too, that this was a position that I took on behalf of the state bar as part of our firm's accepting of a pro bono representation. So where that should come out——

Senator SESSIONS. Well, it is an interesting question. I have no complaint about you taking that view as, I guess, a retained attorney.

Mr. CONLEY. As a pro bono. We didn't get paid for it, but I was certainly an advocate.

Senator SESSIONS. Well, I usually do not volunteer to take positions I do not agree with.

Mr. CONLEY. Senator, in fairness, it was our firm who made the decision, not I.

Senator SESSIONS. All right. Very good. Mr. Laub, you wrote an article, Let the Water be Wet, Let the Rocks be Hard, Anarchism as a Sociology of Quality of Life, and you stated that "Freedom is an active participation in a society in which all the relations of its

members are based not on power, but on the principle of mutual aid." You define mutual aid as, quote, "leaving behind the world of power, resisting institutions and relationships that govern."

Well, one thing I would say to you, it shows we read what you do and the fact that you may not get many other questions indicates maybe we did not—people did not find anything you have said wrong. So that is something you should take some pleasure in.

But what did you mean by that, Mr. Laub.

Mr. LAUB. Well, Senator, I thank you for that question. It was an article that I wrote when I was a doctoral student in 1978. And knowing that you or your staff would find that article, I thought it would be best to bring it forward.

And I reread the article 30 years out and, frankly, didn't understand much of it. But I think that, in all honesty, one of the issues that I've been quite concerned about is quality of life.

In fact, one of the first articles I wrote was fear of crime as an issue respecting quality of life. And I think what that article emphasized was the importance of thinking about how people are not only personally responsible, but socially responsible with respect to mutual aid.

I have to say that if you look at my academic career since that article was written, most of what's in that article has been repudiated. So I think the evidence is clear where my feelings are today.

Senator SCHUMER. I think I let Senator Sessions go on for sort of two rounds, trying to be informal here. I am going to call Senator Klobuchar and then Senator Feingold for 5 minutes each.

Senator KLOBUCHAR. Thank you very much. Thank you, Chairman Schumer. Thank you to all of you. Congratulations.

I am going to focus my questions with Judge Carbon, because of the fact that I was a prosecutor for 8 years and, actually, Hennepin County in Minnesota, Minneapolis, is very well known for the work that we have done with domestic violence, in particular, the Domestic Violence Service Center, which was one of the first one-stop shops for victims of domestic violence, where there is a place for their kids to play. Shelters are represented there, as well prosecutors and police.

We have found it to be incredibly helpful for those people who just cannot quite handle running through the government center, which I think is hard for any lawyer to figure out their way through the red tape, much less a victim of domestic violence.

I wanted to talk with you, first of all, about how your judicial expertise could help you in this job in a different way maybe than other people who have held the job before, from what you have seen with domestic violence cases.

Judge CARBON. Thank you very much, Senator. In my work as a judge, and I have been a judge now for about 18 or 19 years, much of that time has been focused on issues of domestic violence. I have done work within the state and, also, across the country, national leadership work with the National Council on Juvenile and Family Court Judges, training my colleagues, and, as well, across the world in working with judges and others on issues of domestic violence.

I think the background that I would bring to this position relates to the importance of the judicial community within the Violence

Against Women Act. One of the first responsibilities is that the director be the link to the judicial community.

There has not been a judge in this position before and I think that my experience as a judge, working with many different multidisciplinary groups on many different issues, all within the umbrella of domestic violence, would enable me to work well, I would hope, if I am so lucky to be confirmed, with the many different groups on expanding that role and engaging my colleagues across the country in these issues.

Senator KLOBUCHAR. In fact, do you think there could be more work done on a cross-jurisdictional basis? I know they stopped funding for services, training officers and prosecutors. There is a current relationship there of cross-jurisdictional work.

Do you think we could do more? Let me just give you an example. In our county, we actually started something like they would do in a hospital when something goes wrong with the surgery, where the people come together and review domestic violence cases, if there has been a long history of domestic violence that sadly ended in a murder, to see what went wrong in the system. It was a very good way to come out with some policy recommendations.

Could you give some ideas there with the multi-jurisdictional work?

Judge CARBON. Absolutely. And first, let me commend the State of Minnesota, the work that has been done in Minnesota is extraordinary. And you continue to be a national leader in work that has just recently been released on safety audits and managing the overall breadth of walking through the system as a victim and the many different intersection points for victims, so that we can help improve the process.

One project that I've done that relates to the issue you're raising here is to chair New Hampshire's Domestic Violence Fatality Review Committee. And as you may or may not know, that is a quintessential way, under the Violence Against Women Act, to bring communities together to address domestic violence.

In its worst, a domestic homicide is as bad as it gets. And so when we bring all of the professions together to study domestic violence homicides, we can try to understand where breakdowns in the system occurred so that, ideally, we can prevent future homicides from happening.

We don't limit our work to domestic homicides. We also look at how the entire system works together, how judges work with law enforcement and prosecutors and advocates and so forth, so that we can make the overall system of domestic violence improved for safety and accountability.

Senator KLOBUCHAR. The other thing we have done in our state is there is actually an outside group, a nonprofit group, called Watch, and they have these red clipboards and they go in and watch all of the domestic violence cases, evaluate the judges, put out a newsletter. I thought that was helpful.

But my last focus just would be on when kids are present when there is domestic violence. We used to have a poster in our office that said—with a picture of a mother with a band-aid on her nose, holding a baby, and it said "Beat your wife and it's your kid who

will go to jail," to show the cycle of violence that occurs when children are in the home where there is domestic violence.

Do you want to talk about any ideas you would have there with child protection or things you think need to be done in coordination on children's issues when there is domestic violence?

Judge CARBON. Absolutely. One of my own priorities, if I'm lucky enough to be confirmed for this position, is to focus the energy to the Office on Prevention Work and particularly around children who are exposed to violence.

There is a tremendous cycle of abuse and if we do not institute enough prevention programs, we will see children growing into the criminal justice system, both as potentially other perpetrators or further victims.

I'd also like to see the energy of the office focused around teen dating violence, because so often, people are in very unhealthy relationships not knowing that there is a better way.

So I think that the work that we do around custody in domestic violence, around prevention programs for children who are exposed to violence, and around teen dating violence will be extremely important for the office.

Senator KLOBUCHAR. Thank you very much. I also wanted to point out that I had a very pleasant trip to your state this summer, visiting Senator Shaheen. My other committee, I chair the Tourism Subcommittee, and we did an event in front of—now, let me say this right—Lake Winnipesaukee. Is that right?

Judge CARBON. You got it.

Senator KLOBUCHAR. I was always mortified I was going to embarrass Senator Shaheen and say it wrong. So that did not happen.

Judge CARBON. We would welcome you back anytime.

Senator KLOBUCHAR. Thank you very much. Thank you, Mr. Chairman.

Senator SCHUMER. I thank all the nominees, and that concludes the hearing.

[Recess.]

Senator SCHUMER. We are going to resume the hearing just for a minute. I was out of the room on a call about health care.

I just want to, in the resumed hearing, ask unanimous consent to put Senator Leahy's statement in the record, to put letters of support for Judge Chin into the record, and acknowledge that the record will stay open for one week for other statements.

And for the second time, the hearing is adjourned.

. I've been here longer—in the Senate longer than any member of this Committee. We've had several long—ones but I've never known a time, whether somebody was for or again, that needed more than 3 weeks to get the answers to my questions.

We'll stand in recess. I congratulate you all, and I thank you all for being willing to answer your Nation's call in this way. Each one of you have answered the—call before and I appreciate you doing it again.

[Whereupon, at 4 p.m., the hearing was adjourned.]

[The biographical information follows and then questions and answers and prepared statement appears as a submission for the record.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   Susan Berkson Carbon (1977 forward)
   Susan Jane Carbon (birth name)

2. **Position:** State the position for which you have been nominated.

   Director, Office on Violence Against Women, United States Department of Justice

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:
   Concord District Courthouse
   32 Clinton Street
   Concord, NH 03301

   Residence: [redacted]

4. **Birthplace:** State date and place of birth.

   1953; Richland, WA

5. **Education:** List in reverse chronological order 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.

   Law Schools:
   De Paul University College of Law, Chicago, 1977-79, JD awarded 1980
   Illinois Institute of Technology, Chicago-Kent College of Law, Summer 1979
   University of Florida, Gainesville, Summer 1976
   University of Wisconsin, Madison, Fall 1975

   Undergraduate Universities:
   University of Wisconsin, Madison, BA (with honors), 1972-74
   University of Florida, Gainesville, Summer 1974
   University of Colorado, Boulder, 1971-72

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6. **Employment Record:** List in reverse chronological order 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, 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 description.

Employers

(a) State of New Hampshire Judicial Branch, Family Division, February 1996 to present, Supervisory Judge. [During this time I have continued to serve as a District Court judge at the Concord District Court. The Family Division and District Court are located in the same building.] My office was at 26 Green Street, Plymouth, NH 03264 until September 2007 when I returned on a permanent basis to Merrimack County where the Concord Family Division and District Court are located: 32 Clinton Street, Concord, NH 03301. The Administrative Office of the Courts is located at 2 Charles Doe Drive, Concord, NH 03301.

(b) Associate Justice, Concord District Court, 1995 to present. [Note: This was part-time until February 1996.]

(c) State of New Hampshire, Pittsfield District Court, Special Justice, 1991-95. [The Pittsfield District Court merged with Concord District Court in 1995, and thus my title became as noted in (b) above.] The address was: Main Street, Pittsfield, NH 03263. [Note: This was a part-time position.]

(d) Attorney/Partner, Wescott, Millham & Dyer, Bowman Street School, 28 Bowman Street, Laconia, NH 03246, 1982 to 1996.

(e) Private consultant with the American Judicature Society, Chicago, IL, 1981-82.

(f) American Judicature Society, Research Assistant, 1976 to 1977 full time, thereafter on part-time basis during law school and until 1980. Offices were in Chicago, IL at the time. Offices currently are in Des Moines, IA.

(g) Division of Plant Industries, Department of Agriculture, State of Florida, Gainesville, January to August, 1975.

(h) Associated Physicians, Regent Street, Madison, WI, part-time during 1974 prior to graduation from the University of Wisconsin.

Other

- National Center on Full Faith and Credit, Advisory Board, 2003 to present.
- *Justice System Journal,* Editorial Board, 2005-present.
- Southern Poverty Law Center's School to Prison Reform Project, Board Member, 2007 to present.

- National Council of Juvenile and Family Court Judges (NCJFCJ): Board Member 1999-2009; President, 2007-2008.
- Capital Region Community Prevention Coalition, Board Member, 2007-present.
- National CASA [Court Appointed Special Advocates], Board Member, 2007-2008.
- National Center for Juvenile Justice, Board of Fellows, 2006-2009.
- Project Harmony, Board Member, 2003-2005.
- National Domestic Violence Fatality Review Initiative, Advisory Board Member, 2001-2005.
- New Hampshire Commission for National and Community Service, Board Member, 1997-99.
- New Hampshire Charitable Foundation, Board Member, 1993-96.
- New Hampshire Bar Association: Member, Board of Governors, 1991-1995; President, 1993-94.
- New Hampshire Bar Foundation, Board Member, 1990-2000.
- American Judicature Society: Member, Board of Directors, 1994-96.
- Pittsfield Zoning Board of Adjustment, Chair of Zoning Board, 1988.
- Pittsfield School Board, Member, 1987-1990.
- Lakes Region YMCA, 1983-87 (Board Member, Secretary of Board, and Treasurer of Board of Directors).

7. **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, and whether you have registered for selective service.

   None. I am not required to register for the selective service.

8. **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.

   - New Hampshire Women's Bar Association, Leadership Award (May 2008)
   - Plymouth State College, Granite State Award for Outstanding Public Service (May 2003)
   - New Hampshire Bar Association Pro Bono Domestic Violence Emergency (DOVE) Project, Longtime Champion Award (April 2003)

- New Hampshire Women's Bar Association, Marilla Ricker Award for Judicial Excellence (October 2000)
- New Hampshire Bar Foundation, Frank Rowe Kenison Award for Contributions to the Administration of Justice (June 2000)
- Business NH Magazine, New Hampshire Leader for the 21st Century (January 2000)
- New Hampshire Delegate, Presidents' Summit for America's Future (April 1997)
- American Bar Association, Partnership Award for Public Service (1995) (for New Hampshire's First Statewide Conference on Family Violence)
- New Hampshire Bar Association, President's Award for Distinguished Service to the Legal Profession (1989) (for chairing the Task Force on Women in the Bar and authoring its report)
- American Bar Foundation, Life Fellow, 1993
- New Hampshire Bar Foundation, Fellow
- Law Review, De Paul University College of Law (1977-78)

9. **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.

- American Bar Association:
  - State Membership Co-Chair, 1993-99
  - Judicial Administration Division (JAD) Lawyers Conference Committee on Judicial Qualification and Selection, 1989-90
  - National Conference of Bar Presidents Program Committee, 1995-96
  - Standing Committee on Gavel Awards, 1995-97
  - Conference of Special Court Judges, Domestic Violence Committee
- American Judicature Society:
  - Board of Directors, 1994-96
- Association of Family and Conciliation Courts, 2005 to present
- International Association of Chiefs of Police, Consultant
- *Justice System Journal*, Editorial Board, 2005 to present
- National Association of Women Judges, member during 1990s, then again 2007 to 2009
- National CASA [Court Appointed Special Advocates], Board Member, 2007-08
- National Center for Juvenile Justice, Board of Fellows, 2006-09

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- National Center on Full Faith and Credit, Advisory Board, 2003 to present

- National Council of Juvenile and Family Court Judges (NCJFCJ):
  - President, 2007-2008
  - Member, Board of Trustees, 1999-2009
  - Audit Committee, 2006 to present
  - Conference Planning Committee, 2007-2008
  - Finance Committee, 2005-2007
  - Family Violence Department Advisory Committee, Co-Chair, approximately 2003 to 2006.
  - Full Faith and Credit: Moving Forward Project, Chair of the Committee that prepared *Effective Issuance and Enforcement of Protection Orders (The Burgundy Book)*, 2001 to present.
  - National Juvenile Court Services Association Liaison Committee, 2007-08
  - Permanency Planning Committee, 2006-07
  - Publications Committee, 2005-07

- NCJFCJ/Family Violence Prevention Fund/United States Department of Justice, Office on Violence Against Women:
  - Judicial Center Advisory Committee Member, 2003-2008

- National Domestic Violence Fatality Review Initiative,
  - Advisory Committee Member, December 2001 to June 2005

- New Hampshire Bar Association:
  - President, 1993-94
  - Member, Board of Governors, 1991-1995

- New Hampshire Bar Association Committee Memberships:
  - Children's Task Force, 1993-94
  - Committee on Cooperation with the Courts, approx. 1994-96
  - Committee for Gender Equality, 1988-93
  - Delivery of Legal Services, approx. 1992-93
  - Family Violence Conference (Chair, 1993-94)
  - Finance, 1992-96
  - Heart Association Road Race, 1992-93
  - Judicial Selection Standards, 1989
  - Legislation, 1984-87
  - *Meet Your Judges*, 1992-1994
  - Professional Conduct Rules Revisions, approx. 1995
  - Task Force on Professionalism, 1990
  - Task Force on Women in the Bar, Chair, 1987-88

- New Hampshire Bar Foundation, Board Member, 1990-2000

- New Hampshire Charitable Foundation, Board Member, 1993-96

- New Hampshire Commission for National and Community Service, Board Member, 1997-99

- New Hampshire District Court:

- Court Improvement Program, Member of Advisory Board to federally-funded CIP, Chair of Permanency Planning Committee, 2002-05
- Domestic Violence Protocol Advisory Committee (and Forms Committee), 1993-95 for original committee, then revisions committees and forms committees at various times since, continuing to present
- Drug Court Project, 2001 to present
- Judges Association (Board of Directors), 1993-98
- Juvenile Task Force (Chair, CHINS Committee), 1996-98
- Chair of Statewide Multi-Disciplinary Conference on Juvenile Justice.
- Policy Committee, 1993 to present
- Teen Court, approximately 1996-2007

- New Hampshire Domestic Violence Fatality Review Committee:
  - Member, 1999 to present
  - Chair, 1999-2008

- New Hampshire (Judicial Branch) Family Division:
  - Lead Judge, Model Court (NCJFCJ Child Protection Project), 2008 to present
  - Drug Court Lead Judge, 2007 to present
  - Policy Committee, 2004 to present
  - Teen Court, 2007 to present.

- New Hampshire Governor's Commission on Domestic and Sexual Violence:
  - Executive Committee Member, 1994-2008
  - Member, 1994-present
  - Chair, Public Education Committee, 1994-97

- New Hampshire *Greenbook* Project:
  - Chair, 2001-2006

- New Hampshire Judicial Council:
  - Member, 1992-96
  - Legislative/Judicial Council Study Committee on Family Courts, 1993-96

- New Hampshire Supreme Court Committee Memberships:
  - Long Range Planning Task Force, 1988-90
  - Mandatory Continuing Legal Education, 1992-93
  - Professional Conduct Committee, 1993-94
  - Committee on Justice System Needs and Priorities and Chair, Public Service and Responsiveness Subcommittee, 2005-06

- New Hampshire Technical Institute:
  - Criminal Justice College Advisory Committee Member, 2002-04

- Southern Poverty Law Center's School to Prison Reform Project, Board Member, 2007 to present

10. **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.

- New Hampshire Bar Association. I was admitted in May 1980, and have been active ever since. Admission to the Bar constitutes admission to all courts in the state.
- Illinois State Bar, 1980. My membership lapsed upon our move to NH in 1982; I remain inactive.

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.

- New Hampshire, All state courts and the United States District Court, May 1980. I have remained active ever since.
- Illinois Supreme Court and United States District Court, Northern District, IL, 1980. My membership lapsed upon our move to New Hampshire in 1982, and I have remained inactive ever since.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, 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.

- New Hampshire Children's Alliance: KIDS COUNT, approximately 2001-2005
- Pittsfield Historical Society, 1985-present
- Pittsfield School Board, Board Member, 1987-1990
- Pittsfield Zoning Board of Adjustment, Chair of Zoning Board, 1988
- YMCA (Lakes Region), 1983-87 (Board member, secretary, treasurer)

b. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin 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.

To the best of my knowledge, none discriminates now, nor did at any time of my involvement.

12. **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. Supply four (4) copies of all published material to the Committee.

BOOKS:

The U.S. Circuit Judge Nominating Commission: Its Members, Procedures and Candidates (Chicago: American Judicature Society, 1980) (with Larry Berkson).

Court Unification: Its History, Politics and Implementation (Washington: Government Printing Office, 1978) (with Larry Berkson).

Managing the State Courts: Text and Readings (St. Paul: West Publishing Co., 1977), (with Larry Berkson and Steven Hays).

MONOGRAPHS:

A Day in the Life of New Hampshire Victims of Family Violence, February 14, 1994, Valentine's Day
(Prepared by the State-Wide Conference on Family Violence Planning Committee, Co-Chair with Judge Edwin W. Kelly) (See also accompanying article in the New Hampshire Bar News covering the Conference.)

Report of the New Hampshire Bar Association Task Force on Women in the Bar
(New Hampshire Bar Journal, Volume 29, No. 4, Summer 1988).

Judicial Retention Elections in the United States (Chicago: American Judicature Society, 1980) (with Larry Berkson).

A Study of the U.S. Circuit Judge Nominating Commission: Executive Summary
(Chicago: American Judicature Society, 1979) (with Larry Berkson and Alan Neff).

Literature on Court Unification: An Annotated Bibliography
(Washington, D.C.: Government Printing Office, 1978) (with Larry Berkson).

ARTICLES:

"Six Tips for Working Well with Judges," The Connection (Summer, 2009), pp. 21-22 (Magazine of the National Court Appointed Special Advocates [CASA]).

"High Conflict Divorce, Violence and Abuse: Implications for Custody and Visitation Decisions," Juvenile and Family Court Journal (Fall, 2003), Vol. 54, No. 4, pp. 11-33 (with Clare Dalton, LL.M. and Nancy Olesen, Ph.D.).

"Firearms and Domestic Violence: A Primer for Judges," Court Review (The Journal of the American Judges Association) (Summer 2002—released March 2003), Vol. 39, Issue 2, pp. 32-43 (with Darren Mitchell, J.D.).

"Enforcing Domestic Violence Protection Orders Throughout the Country: New Frontiers of Protection for Victims of Domestic Violence," Juvenile and Family Court Journal (Spring, 1999), Volume 50, No. 2, pp. 39-54 (with Judge Peter Macdonald and Seema Zeya, J.D.).

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"Firearms and Domestic Violence: Implications for Full Faith and Credit," in Johnson and Websdale (eds.), Full Faith and Credit: A Passport to Safety (National Council of Juvenile and Family Court Judges, Sept. 1998, 2d edition), Chapter 6, pp. 93-102.

"The Role of Judges in Enforcing Full Faith and Credit," in Johnson and Websdale (eds.), Full Faith and Credit: A Passport to Safety (National Council of Juvenile and Family Court Judges, Oct. 1997), Chapter 6, pp. 88-105 (with Peter Macdonald, Michael Town and Mary T. Wynne) (and reprinted Sept. 1998, Chapter 7, pp. 103-122).

"A Double Scourge: Domestic Violence and Substance Abuse," Bar Leader (May 1996), pp. 23-26.

Special Issue editor, "Women in the Judiciary," Judicature, 65 (December-January, 1982), No. 6.

"Women on the State Bench: Their Characteristics and Attitudes About Judicial Selection," Judicature, 65 (December-January, 1982), 294-305 (with Pauline Houlden and Larry Berkson).

"Compensation and Benefits of Trial Court Judges-1980," State Court Journal, 5 (Spring, 1981), 11-17 (with Larry Berkson).

"Judicial Retention Elections: Are They Serving Their Intended Purpose?," Judicature, 64 (November, 1980), 210-33.

"A Study of the U.S. Circuit Judge Nominating Commission: Findings, Conclusions and Recommendations," Judicature, 63 (September, 1979), 104-29 (with Larry Berkson and Alan Neff).

"The U.S. Circuit Judge Nominating Commission: A Comparison of Two of Its Panels," Judicature, 62 (November, 1978), 233-45.

"Organizing the State Courts: Is Structural Consolidation Justified?," Brooklyn Law Review, 45 (Fall, 1978), 1-28 (with Larry Berkson and Judy Rosenbaum).

"Court Reform in the 20th Century: A Critique of the Court Unification Controversy," Emory Law Journal, 27 (Summer, 1978), 559-607 (with Larry Berkson and Judy Rosenbaum).

"Implementing Court Unification: A Map for Reform," Duquesne Law Review, 17 (1978-79), 419-71 (with Judy Rosenbaum and Larry Berkson).

"Records and Space Management: Obscure Components Requisite to Efficient Court Administration," in Berkson, Hays and Carbon (eds.), Managing the State Courts: Text and Readings (St. Paul: West Publishing Co., 1977), pp. 325-34.

"Video-Taping: Improving Efficiency in the Judicial Process?," in Berkson, Hays and Carbon (eds.), Managing the State Courts: Text and Readings (St. Paul: West Publishing Co., 1977), pp. 296-305.

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PRESIDENT'S MESSAGES (National Council of Juvenile and Family Court Judges)

Today Magazine, Fall, 2007, Winter, Spring and Summer 2008.

PRESIDENT'S MESSAGE (New Hampshire Bar Association)

New Hampshire Bar Journal, Vol. 35, No. 2, June, 1994, pp. 6-7.

NEWSPAPER ARTICLES

NH Bar News, "4th Statewide Conference on Domestic and Sexual Violence Planned," June 3, 1998. [Copy not available.]

NH Bar News, "New Legislation Streamlines Divorce Process," June 3, 1998 (with Judge John Korbey). [Copy not available.]

NH Bar News, "Family Division Pilot Project," April 17, 1996 (with Craig Briggs and Judge John Korbey). [Copy not available.]

b. 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, 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 prepared three such reports. One was on behalf of the New Hampshire Bar Association, the *Report of the Task Force on Women in the Bar,* published by the New Hampshire Bar Association in the New Hampshire Bar Journal Vol. 429, No. 4, Summer 1998. This was a committee I chaired, and then was principal author of the final report. [Included with monographs.]

The second was the First Report of the Public Education Committee of the Governor's Commission on Domestic Violence, printed in June 1995, following a series of public hearings throughout the State. I was chair of the Public Education Committee at the time.

The third is a publication of the National Council of Juvenile and Family Court Judges, *A Guide for Effective Issuance & Enforcement of Protection Orders* (aka *The Burgundy Book*) issued in 2005 (and currently undergoing revision). In conjunction with the *Burgundy Book*, I also chaired the committee that created *A Passport to Safety: A Judge's Bench Card on Full Faith and Credit.* It was originally published in 1998, was updated in 2002 and is also undergoing revision. The writing of these documents is a joint effort with the Committee.

As Chair of the NH Domestic Violence Fatality Review Committee, I was also responsible for preparing the Annual Reports for the first six reports (2001-06). The writing of these reports, and the development of recommendations, results from the Committee's work.

c. 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.

- National Council of Juvenile and Family Court Judges (NCJFCJ), Legislative Days on the Hill, Presentations to House and Senate Members, February 25-26, 2009, Washington, DC. [Copy not available.]

- National Alliance on Mental Illness in New Hampshire (and other sponsors), *Juvenile Justice and Mental Health, Panel Discussion,* October 7, 2008, Concord, NH. [Copy not available.]

- NCJFCJ, 2008 Legislative Days on the Hill, Presentations to House and Senate Members, February 27-28, 2008, Washington, DC. [Copy not available.]

- "Town Hall on Unified Family Courts," Panel Discussion at the ABA and University of Baltimore Center for Families, Children and the Courts, American Bar Association *Summit on Unified Family Courts: Serving Children and Families Efficiently, Effectively and Responsibly,"* Baltimore, MD, May 3, 2007 (with Judges Judith Kreeger, Howard Lipsey, William Missouri and Gail Tusan). [Copy not available.]

- US Congressional Briefing, VAWA II, May 4, 1999, Washington, DC. [Copy not available.]

- NH Legislature, Testimony on HB 707 (Expansion of the Family Division Pilot Program), March 24, 1999, Concord, NH.

- NH Legislature, Presentation on Family Division Pilot Program, May 22, 1998, Concord, NH (with Judge John Korbey).

- League of Women Voters, Presentation on NH Family Division Pilot Program and Juvenile Justice Cases, September 18, 1997, Concord, NH.

- Community Alliance of Human Services, Presentation on Juvenile Justice Issues, May 27, 1997, Newport, NH (with panel including Senator Judd Gregg). [Copy not available.]

- NH Judicial Council, Administration of Justice in New Hampshire Conference, "Juvenile Justice: A Look at the Issues," January 31, 1997, Concord, NH (with Judges Edwin Kelly and John Korbey).

- American Bar Association, Commission on Domestic Violence, Testimony at Public Hearings on Domestic Violence, August 5, 1995, Chicago, IL.

- NH Legislature, Testimony on HB 657-FN [Expansion of the Family Division], March 29, 1995, Concord, NH.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. 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 recording of your remarks, 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, furnish a copy of any outline or notes from which you spoke.

Professional Papers and Presentations (pre-1982)

- "Women on the State Bench: Their Characteristics and Attitudes About Judicial Selection," National Center for State Courts, Women in the Judiciary: A Symposium for Women Judges, Wingspread Conference Center, Racine, WI, April 16, 1982. [I would have presented information from the Judicature Special Issue, but do not have a copy of any remarks.]

- "Structural Unification of State Court Systems: Appropriate Reform or Misguided Remedy?," Southern Political Science Association Meetings, November 5, 1977 (with Larry Berkson and Judy Rosenbaum). [We would have addressed material from the Court Unification Study undertaken at the American Judicature Society, but I do not have a copy of any remarks.]

- "Obstacles to Court Reform," a Workshop of the National Conference of State Legislatures Meetings, May 6, 1977, Lincoln, NE. [This would have derived from the research at the American Judicature Society, but I have no specific recollection, nor any copies of materials presented.]

Guest Lectures (pre-1982)

- Lectures on Penology and Corrections, Department of Criminal Justice, University of Illinois at Chicago Circle, March 1979.

- Lectures on State Court Unification, Department of Criminal Justice, U-Illinois, Chicago Circle, November 1978.

- Lectures on the History and Structure of the Federal Judiciary, Department of Political Science, University of Florida, Gainesville, January 1976.

[I do not have copies of any materials from these lectures, nor any way to retrieve them. My husband was on faculty at these institutions, and allowed me the opportunity to guest-teach.]

See the attached List of Presentations for Post-Law School Presentations.

e. 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.

- Newspaper interview with Ray Duckler *(Concord Monitor)* regarding the Pittsfield Youth Baseball Park Renovation Project, July 6, 2009.

- Interview for The Center for Families, Children and the Courts (at University of Baltimore School of Law) on Judicial Objectivity in Family Courts, quoted in Unified Family Court Connection, Winter 2008.

- Participation in video of Professor Garland Waller, *Small Justice: Little Justice in America's Family Courts*, 2002. [Only one copy provided.]

- Interview with Lois Shea, "Homicide figures show need to address family violence," New Hampshire Weekly, October 24, 1999, pp. 1, 8.

- Interview with Suzanne M. Klunk, "Standing Up to Domestic Violence,... Fatality Review Panel Created," New Hampshire Bar News, Vol. 10, No. 5, August 4, 1999, pp. 1, 8-9.

- Interview with Manchester *Union Leader* regarding the nomination of Zoe Baird for US Attorney General, January 22, 1993.

- Interviews with various newspapers in 1993 about the publication of the New Hampshire Bar Association *Report of the Task Force on Women in the Bar*. The only one of which I have a copy is: Michael Bettencourt, "Less than Equal Under the Law," New Hampshire Profiles, Vol. 38, No. 2, February 1989, pp. 26-27, 70-71.

- Radio interview with New Hampshire Public Radio regarding changes to the court structure in New Hampshire (Family Division Pilot Program), approx. 1995 or 1996. [No copy available.]

- Interview with *Laconia Evening Citizen* regarding being a new female attorney, approximately 1995. [No copy available.]

- Interview with James Podgers and Henry J. Reske, "Facing the 'New Realities'," American Bar Association Journal, June 1994, pp. 77-78.

13. **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.

- Pittsfield (NH) School Board, 1987-90. Appointed by remaining School Board members to fill an unexpired term. I believe Arthur Morse was the initial contact. I resigned near the end of the term to assume the judgeship.

- Pittsfield (NH) Zoning Board of Adjustment, 1988. Appointed by Town Moderator, Henry Stapleton.

- New Hampshire Governor's Commission on Domestic and Sexual Violence, appointed by Governor Stephen Merrill in 1994 and subsequently continued by Governors Craig Benson, Jeanne Shaheen and John Lynch (no official letters of appointment were made under successive governors).

I have never had any unsuccessful candidacies for public office.

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, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

- In 1974, I was a volunteer Co-Manager of Students for the Re-Election of Democratic State Representative Marjorie ("Midge") Miller in Madison, WI. I do not recall any specific details of the work. I had no formal responsibilities with the campaign.

14. **Legal Career:** 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;

No.

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

No.

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.

- Wescott, Millham & Dyer, private law firm in Laconia, NH. October 1982 to February 1996. Hired as associate, became partner after four years. Address: Bowman Street School, 28 Bowman Street, Laconia, NH 03246.

- State of New Hampshire, Pittsfield District Court, Special Justice, 1991-95. In 1995 the Pittsfield District Court merged with Concord District Court and thus I became an Associate Judge of the Concord District Court in 1995, and have continued as such to the present. The court address is: Concord District Court, 32 Clinton Street, Concord, NH 03301.

- State of New Hampshire Judicial Branch, Family Division, Supervisory Judge, 1996 to present. [During this time I have continued to serve as a District Court judge at the Concord District Court. The District Court and Family Division are located in the same building.] My office was at 26 Green Street, Plymouth, NH 03264 until September 2007; since then it has been: 32 Clinton Street, Concord, NH 03301. The

Administrative Office of the Courts is located at 2 Charles Doe Drive, Concord, NH 03301.

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or arbitrator.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

My practice was principally (at least 95%) in the area of land use. It was transactional, involving title work, land use before planning and zoning boards, state agencies including the Wetlands Board, and some federal work including the Army Corps of Engineers. I worked with surveyors and engineers on primarily residential, but some commercial, work. My practice also involved obtaining state approvals from the New Hampshire Department of Justice for condominium projects.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

My clients were primarily sellers and buyers of real estate, and real estate developers. My specialization in land use remained constant throughout my legal career.

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 rarely appeared in state trial court (fewer than a dozen times over 14 years). I handled only two cases before the State Supreme Court, but neither involved setting any important precedent. One involved the distinction between an employee and independent contractor for a local area agency that served individuals with developmental disabilities, and the other was a zoning appeal. I prevailed in both. I never appeared in federal court.

I did, however, appear before planning and zoning boards throughout the Lakes Region area and further north on a fairly regular basis, from one to four times per week, particularly during times of significant growth in the real estate market in New Hampshire.

i. Indicate the percentage of your practice in:
   1. federal courts;
   2. state courts of record;
   3. other courts;
   4. administrative agencies

To the extent I practiced before these bodies, it would be 99% before administrative agencies, and the other 1% in state courts of record.

ii. Indicate the percentage of your practice in:
1. civil proceedings; 100%.
2. criminal proceedings. 0%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

i. What percentage of these trials were:
1. jury; 0%
2. non-jury. 100%

I rarely appeared in state trial court (fewer than a dozen times over 14 years). I handled only two cases before the State Supreme Court, but neither involved setting any important precedent. One involved the distinction between an employee and independent contractor for a local area agency that served individuals with developmental disabilities, and the other was a zoning appeal. I was sole counsel in both Supreme Court cases. I prevailed in both. I never appeared in federal court. I did not otherwise participate in civil or criminal trials. I handled a few hearings, but nothing of significance that I can recall.

I did, however, appear before planning and zoning boards throughout the Lakes Region area and further north on a fairly regular basis, from one to four times per week, particularly during times of significant growth in the real estate market in New Hampshire.

e. Describe your practice, if any, before the Supreme Court of the United States. 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.

15. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. 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.

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I handled only two cases before the State Supreme Court, but neither involved setting any important precedent.

One involved the distinction between an employee and independent contractor for a local Area Agency that served individuals with developmental disabilities. I represented the appellant, Lakes Region Community Services Council in an appeal from a decision of the State of New Hampshire Department of Employment Security which had ruled that my client was an employer rather than an independent contractor. It was reported as *Appeal of Lakes Region Community Services Council,* 127 N.H. 386 (1985). The attorney representing the State was Daniel J. Mullen of the State Department of Justice. That office address is: Office of the Attorney General, 33 Capitol Street, Concord NH 03301; (603) 271-2110. The reported New Hampshire Supreme Court opinion does not identify the DES hearing officer, and I have no personal recollection.

The other was a zoning appeal which I filed on behalf of my client, a landowner in the Town of Barnstead, Margot Georges, Trustee of the Silva Real Estate Trust. Ms. Georges had been granted a variance by the Town of Barnstead Zoning Board of Adjustment to construct a home. An abutter (Mark Husnander) appealed to the New Hampshire (Belknap County) Superior Court, and then appealed to the New Hampshire Supreme Court. The Supreme Court unanimously upheld the trial court's decision, affirming the Zoning Board of Adjustment's grant of the variance. The reported opinion was *Husnander v. Town of Barnstead,* 139 N.H. 476 (1995). Attorney Timothy Bates represented Mr. Husnander [23 Beacon Street East, Laconia NH 03246, 603-524-3885] and Attorney Daniel Crean represented the Town [46 Donovan St., Concord NH 03301, 603-225-2841]. The trial court judge was Kenneth R. McHugh.

I was sole counsel in both Supreme Court cases and prevailed in both.

16. **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. 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.)

I was engaged in the practice of law for eight years full time, and then was also a part-time judge for five years before leaving the practice to work full time with the Court. The most significant legal work in which I was engaged was not as a practicing attorney, but as a volunteer with the New Hampshire Bar Association. The work of which I am most proud are the *Report of the Task Force on Women in the Bar* and serving as President of the New Hampshire Bar Association. I believe that these efforts helped expose and address gender bias within the profession, and also engaged the Bar in addressing domestic violence on many fronts. As President, I chaired the first Statewide Conference on Family Violence, an effort which has spawned annual conferences ever since.

As a judge, my work for the past 13 years has focused on helping families through a new Family Division of the Judicial Branch. I participated on the legislative committee that led to this enactment. The adoption of a Family Division has, in my view, been the most significant, positive change in the court system in over a decade. Although I handle domestic violence, child abuse, delinquency, guardianship, termination, marital and adoption cases as a regular part of my docket, I believe the most significant contributions

I have made as a judge have been within the ambit of systems-reform. While it is critical to handle every case competently, with patience and dignity, and in a timely manner, it is also important that globally, the court system work well for the public we serve. In this manner, I have initiated and undertaken a number of projects that impact the system, beyond individual cases.

I am most proud to have served as President of the National Council of Juvenile and Family Court Judges. My involvement with the Council has enabled me to contribute in myriad ways to improve the field of domestic violence, educating judges and others, and improving courtrooms around the country.

Examples of the projects I have undertaken from funding through conference completion include the following:

(1) Family Violence Conference (Chair, 1993-94)

I wrote and received grants from the State Justice Institute and many other sources totaling $115,000 to produce New Hampshire's First Multi-Disciplinary Conference on Family Violence in May 1994. The conference brought approximately 450 professionals together for two days of training and development of Domestic Violence Coordinating Councils throughout New Hampshire. The domestic violence conferences are now an annual event. This program received the 1995 American Bar Association Partnership Award for Public Service.

(2) *Meet Your Judges*:

I wrote and received a grant from the State Justice Institute to establish a "Meet Your Judges" program in New Hampshire, while serving as President of the New Hampshire Bar Association. The first panel was convened in Concord in 1993. Representatives from each court addressed a public audience at Representatives Hall about the work of their court and their role as judges. (1992-1994)

(3) Chair of Statewide Multi-Disciplinary Conference on Juvenile Justice.

I wrote and received a grant from the State Justice Institute to produce a two-day inter-disciplinary conference on juvenile justice, held in March 1998, for 450 participants. I also chaired the related Community Youth Profile project, a series of public hearings/day-long conferences in each of the state's ten counties on juvenile and family related issues in conjunction with the University of New Hampshire Cooperative Extension. I received a grant from the Office of Juvenile Justice and Delinquency Prevention (through the State Advisory Group) to fund the Community Youth Profiles. Implementation of these initiatives continued through 1999. (1997-1999)

(4) Domestic Violence Fatality Review Committee

I wrote and received a grant from the State Justice Institute for a Technical Assistance project to establish a multi-disciplinary Fatality Review Committee for domestic violence homicides and to improve the role of the courts in coordinating the judicial system's response to domestic violence. The TA award lasted four years, from 1999 to 2003. The Committee was officially established by Executive Order of Governor Jeanne Shaheen in July 1999 and continues to this day.

(5) NH (Grafton County) Greenbook Project

This was a federal partnership between the US Department of Justice and the US Department of Health and Human Services to promote improved practices and collaboration between courts, child protection agencies and domestic violence advocates in families experiencing both domestic violence and child abuse/neglect. New Hampshire was one of six sites selected nationally for a five-year demonstration and implementation project. I assisted in writing and securing the five-year, $1.5M grant for Grafton County, and chaired the project. (2001-06)

The only organization I have lobbied for is the National Council of Juvenile and Family Court Judges. I have written letters to the New Hampshire Congressional Delegation on an annual basis for several years seeking continued funding to support judicial education, technical assistance and training for judges. Over the past few years, I have also made at least one trip to Washington, DC to talk with members of Congress about the importance of judicial education and adequate funding for court improvement projects.

17. **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, provide four (4) copies to the committee.

    I have not served in an official "teaching" capacity, such as a professor or adjunct professor at any educational institution. I have taught at many national judicial institutes, and have conducted trainings on a fairly regular basis within the State of New Hampshire and around the country, as well as internationally. The programs are listed in the attached List of Presentations as an addendum to Question 12(d).

18. **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. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

    If confirmed by the Senate, I will be required to resign my judgeship to assume the position of Director of the Office on Violence Against Women. At that time I may withdraw all sums which I have contributed, or I may leave them in indefinitely. However, I will not have vested and thus will be entitled to only the return of the contributions I have made.

19. **Outside Commitments During Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service? If so, explain.

    No.

20. **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, licensing fees, 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 refer to the SF 278 for all information.

21. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    Please see the attached Net Worth Statement.

22. **Potential Conflicts of Interest**:

    a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

       In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest including family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that might present conflicts of interest. Any potential conflicts will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts 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.

       In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

23. **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. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

    I have not been a practicing attorney for 13 years, but always participated in Pro Bono activities for the New Hampshire Bar Association.

    I have always believed it important to volunteer time and effort to improve the legal and judicial systems, and to make our communities safer and better places in which to live. I have routinely devoted in excess of 20 hours each week to some volunteer effort. As a member of the New Hampshire Bar, I participated on scores of committees, and chaired several. As a New Hampshire attorney and judge, I have written grants to bring funds to our state that otherwise would not have been possible, to spearhead and implement a number of changes to our courts. Over the past decade, I have worked on many projects

for the National Council of Juvenile and Family Court Judges, serving as a Board Member, Officer, and the President. I have participated on committees, taught courses at Institutes and national conferences, participated in the development of new initiatives, and chaired projects to improve court systems and judicial performance. I have travelled around the country, donating my time to do so. I have also travelled abroad for Project Harmony and NCJFCJ, teaching and mentoring in other communities.

I have been privileged in my life to have extraordinary opportunities and have always felt it to be my duty in return to give of myself in ways that are both meaningful and productive.

Addendum to Question 12(d)

LIST OF PRESENTATIONS

2009 Presentations

Massachusetts Probate and Family Court Judges Fall Conference, "Differentiating Domestic Violence in Cases involving Child Custody," September 25, 2009, Boston, MA.

Advanced Victim Assistance Conference, 9th Annual Tri-State (NH, VT, ME) Conference, "Judicial Notification: Domestic Violence Offenders and Possession of Weapons," September 22, 2009, Montpelier, VT.

National Council of Juvenile and Family Court Judges Annual Conference, "Decision-Making Tools: Best Interest of the Child in Custody Cases," July 13, 2009, Chicago, IL (with Marshall Murray).

Association of Family and Conciliation Courts [AFCC] Annual Conference, Pre-Conference Institute "Differentiating Uses of Violence in Families: Toward Improving Family Court Custody Determinations," May 27, 2009, New Orleans, LA (with Attorney Loretta Frederick, Dr. Claire Crooks, and Dr. Janet Johnston).

2008 Presentations

NH Public Defender's Office, Training on New Permanency Legislation, December 10, 2008, Concord, NH (with Attorney Kristin Lamont).

NH Department of Health and Human Services, *Celebration of New Hampshire's Adoptive Families [Adoption Day]*, "Adoption and the Courts," November 24, 2008, Concord, NH.

UNH Cooperative Extension, Child and Family Services, NH First Annual Grandparents & Relatives as Parents Conference, Panelist, October 16, 2008, Manchester, NH. [No copy available.]

National Alliance on Mental Illness in New Hampshire (and other sponsors), *Juvenile Justice and Mental Health, Panel Discussion,* October 7, 2008, Concord, NH.

NH Division for Juvenile Justice Services, Training on New Permanency Legislation, September 15, 2008, Concord, NH (with Attorney Kristin Lamont). [No copy available.]

American Judges Association, "Differentiating Domestic Violence Cases from the Bench," Maui, Hawaii, September 9, 2008 (with Judge Dale Koch, Dr. Nancy Oleson, and Attorney Jennifer Rose).

NCJFCJ Annual Conference, "Judicial Notification Regarding Federal Firearm Prohibitions Under the Violence Against Women Act of 2005," July 28, 2008, Norfolk, VA (with Attorney Rob Valente).

NH Task Force on Women and Recovery, *Systems Panel Discussion,* June 17, 2008, Manchester, NH.

Association of Family and Conciliation Courts Annual Conference [AFCC], Vancouver, BC:

(1) Judicial Officers Institute, May 28, 2008 (with Dr. Nicholas Bala, Judge George Czutrin and Mindy Mitnick) [no copy available]; and

(2) "Beyond Wingspread: Domestic Violence and Differentiation, Part I," May 30, 2008 (with Attorney Billie Lee Dunford-Jackson, Attorney Loretta Frederick, Dr. Peter Jaffe, and Dr. Janet Johnston).

New Hampshire Bar Association, "Permanency Law & Protocols Relative to Abuse and Neglect Cases," April 18, 2008, Concord, NH (with Kristy Lamont and Sarah Fox).

Department of Juvenile Justice Services Training Conference, "New Tools for Improving Juvenile Justice Outcomes: Response to Recent Changes to RSA 169-B and 169-D Court Orders and Permanency Hearings," April 4, 2008, Meredith, NH (with Attorney Kristy Lamont).

NH District Court Conference, "New Criminal Protective Orders and Revised Bail Protocol, Compliance with VAWA 2005," February 1, 2008, Portsmouth, NH (with Judge Gerald Boyle and Attorney Elizabeth Paine).

2007 Presentations

Alabama Juvenile Probation Officers and Juvenile Judges Annual Conference, "National Council of Juvenile and Family Court Judges," presentation on NCJFCJ and Juvenile Justice Initiatives, November 14, 2007, Perdido Beach, AL (with Mary Mentaberry). [No copy available.]

National Judicial Institute on Domestic Violence, *Continuing Judicial Skills in Domestic Violence Cases,* Rural Courts Assignment, October 21-23, 2007, Brooklyn, NY. [NJIDV curriculum; copy not provided]

NCJFCJ Annual Conference, "70 Years Back to the Future: Who We Are, Where We've Been & Where We're Headed," Installation Speech (as President), July 19, 2007, San Francisco, CA.

AFCC Annual Conference, "Differential Assessment and Intervention in Domestic Violence Cases," May 31, 2007, Washington, DC (with Attorney Billie Lee Dunford-Jackson, Judge William Jones, and Professor Nancy Ver Steegh). [No copy available.]

"Town Hall on Unified Family Courts," Panel Discussion at the ABA and University of Baltimore Center for Families, Children and the Courts, American Bar Association *Summit on Unified Family Courts: Serving Children and Families Efficiently, Effectively and Responsibly,"* Baltimore, MD, May 3, 2007 (with Judges Judith Kreeger, Howard Lipsey, William Missouri and Gail Tusan). [No copy available.]

2006 Presentations

Pittsfield Elementary School, Presentation for Parents and Students on Mentors, October 10, 2006, Pittsfield, NH. [No copy available.]

National Judicial College, Managing Challenging Family Law Cases, "Domestic Violence vs. High Conflict: Why Understanding the Difference Can Help You Make Better Decisions," September 28, 2006, Reno, NV.

National Council of Juvenile and Family Court Judges, National Center on Full Faith and Credit, and the Battered Women's Justice Project, in partnership with the US Department of Justice Office on Violence Against Women, *Domestic Violence and Firearms: A National Summit for Community Safety:*

(1) Conference Chair
(2) "Domestic Violence and Firearms: The Law," with Attorneys Margaret Groban and Darren Mitchell;
(3) "Full Faith and Credit When Firearms are Present," with Judge Ramona Gonzalez; and
(4) "What is the Future?,"

September 25-27, 2006, Los Angeles, CA.

New Hampshire Greenbook Conference, "*Greenbook* Court Presentation," August 31, 2006, Waterville Valley, NH (with Judge Lucinda Sadler).

Pemi-Baker Academy Commencement Exercises, Introductory Address, June 12, 2006, Plymouth, NH.

Association of Family and Conciliation Courts, Annual Conference, *Opening Plenary Panel Presentation: In Whose Best Interests? Juggling the Rights, Needs and Interests of Children, Parents and Families,"* June 1, 2006, Tampa, FL (with Attorney David Hoffman, Dr. Isolina Ricci, and Professor Nancy Ver Steegh).

National Judicial Institute on Domestic Violence, Training for Georgia Judiciary on *Compliance Review Hearings and Domestic Violence: A Training for Judges,* May 4-5, 2006, Stone Mountain, GA.

2005 Presentations

National Domestic Violence Fatality Review Initiative, *Working to Save Lives Through Teamwork,* Trainings at the Fatality Review National Conference, August 15, 2005, Phoenix, AZ.

NCJFCJ Annual Conference, "Full Faith and Credit: Issuing Effective and Enforceable Protection Orders," July 18, 2005, Pittsburgh, PA.

NH Bar Association, Domestic Violence Emergency Project [DOVE] Training, June 27, 2005, Concord, NH. [No copy available.]

National Judicial Institute on Domestic Violence, Faculty for Enhancing Judicial Skills, San Francisco, CA, April 10-13, 2005. [NJIDV curriculum; copy not provided]

Greenbook Training for Ohio Cross-System Community, February 24-25, 2005.

NH District Court and Family Division Training, "Judicial Training, Domestic Violence Protocol and Forms," February 17, 2005 (with Attorney Elizabeth Paine).

2004 Presentations

NH Women's Bar Association, "Developments in the Law," December 2, 2004, Concord, NH. [No copy available.]

US Department of Justice, Office on Violence Against Women, 10th Anniversary Symposium:
(1) "Making a Difference for Battered Women and Their Children: Lessons from the Greenbook Demonstrations;" and
(2) "Fatality Review: How Reviewing Domestic Violence Fatalities May Help Prevent Them in the Future,"
Washington, DC, September 14, 2004.

NCJFCJ, Annual Meetings, Portland, Oregon, July 2004, "Achieving Safety, Autonomy and Economic Justice: Are Protection Orders Enough?," July 19, 2004 (with Judge Peter Macdonald).

U.S. Department of Defense, *Role of the Courts in Domestic Violence Fatality Review,* sponsored by the National Domestic Violence Fatality Review Initiative, July 13, 2004, Washington, DC.

National Council of Juvenile and Family Court Judges, *Full Faith and Credit: Moving Forward Summit,"* May 27-28, 2004, Santa Ana Pueblo, NM, Conference Chair. [No copy available.]

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New Hampshire Division for Children, Youth & Families, "The Role of the Court, Permanency and AFSA," Nashua, May 13, 2004 (with Attorney Kristy Lamont and Maggie Bishop, Director, DCYF).

Dare Graduation Ceremony, Holderness Central School, April 21, 2004, Holderness, NH. [No copy available.]

National Judicial Institute on Domestic Violence: Faculty for Enhancing Judicial Skills, April 25-28, 2004, Chicago, IL. [NJIDV curriculum; copy not provided]

Hawaii Judiciary (First Judicial Circuit), *Domestic Violence Fatality Review Conference*, "Creating a Community Culture," March 3, 2004, Honolulu, Hawaii.

NH Division for Children, Youth and Families, Training on Juvenile Justice, January 20, 2004, Nashua, NH. [No copy available.]

2003 Presentations

Plymouth State University, "Juvenile Justice: Prevention, Intervention and Treatment," December 3, 2003, Plymouth, NH.

NH Attorney General's Conference on Child Abuse and Neglect, "Greenbook Presentation," November 6, 2003, NH.

Guam Family Violence Conference, Keynote Address: "Firearms and Family Violence," October 27, 2003, Hagatna, Guam.

American Judges Association Annual Meeting: "Firearms and Domestic Violence: Judicial Approaches to Safeguarding Survivors and the Community," September 15, 2003, Montreal, Canada (with Attorney Darren Mitchell).

National Council of Juvenile & Family Court Judges, Annual Conference: "Everything You Thought You Knew About Firearms and Domestic Violence...Is It Enough?," July 21, 2003, San Antonio, Texas (with Judge Peter Macdonald).

National Judicial Institute on Domestic Violence: Faculty for the Continuing Judicial Skills Program, June 29-July 2, 2003, San Francisco, CA. [NJIDV curriculum; copy not provided]

NH Bar Association, DOVE Training, Manchester, NH, May 2, 2003.

New Hampshire District Court Judges Conference:

(1) "Discussion of District Court - Court Improvement Project Protocols"; and

(2) "Return of Firearms in Domestic Violence and Criminal Domestic Violence Cases," April 3 and 4, 2003, Nashua, NH. [No copy available.]

New Hampshire District Court Judges: Annual Conference, Presentations on Permanency Planning in Child Abuse Cases, and Firearms Returns Process, April, 2003, Nashua, NH. [No copy available.]

2002 Presentations

National Judicial Institute on Domestic Violence, Enhancing Judicial Skills Program, December 8-11, 2002, Santa Fe, NM. [NJIDV curriculum; copy not provided]

Taiwan Women Judges Association: Presentations to TWJA, Prosecutors, Law Students and others on Domestic Violence, Use of Civil Protection Orders and Expert Testimony, November 2002, Taipei, Taiwan.

National Domestic Violence Fatality Review Initiative National Conference:

(1) Plenary Session on How to Create a Fatality Review Team, with Dr. Thomas Andrew and Robin Hassler Thompson; and

(2) "Reporting and Implementing Findings," with Margaret Hobart and Lauren Lazarus,

August 19-20, 2002, Phoenix, AZ. [Copy of #1 is available, but #2 is not.]

National Council of Juvenile and Family Court Judges Annual Conference:

(1) "The Role of the Courts in Community Initiatives: The Greenbook Project," with Judge Richard Fitzgerald; and

(2) "Firearms and Domestic Violence: Important Considerations for Judges," with Judge Peter Macdonald;

July 15 and 16, (respectively) 2002, Boston, MA. [Copy of #2 is available, but not #1.]

NCJFCJ Permanency Planning for Children Department, "Domestic Violence/Child Protective Services – Greenbook Project," July 14, 2002, Boston, MA (with Merry Hofford).

New Hampshire 8th Statewide Conference on Domestic and Sexual Violence: "NH Fatality Review Committee," May 30, 2002.

National Center for State Courts: "Firearms Issues for Judges in Domestic Violence Cases," Tarrytown, NY, May 17, 2002 (with Judge Peter Macdonald and Attorney Fanny Haslebacher).

National Council of Juvenile and Family Court Judges, *Firearms and Domestic Violence: A Focus Group for Judges,* Chair, January 17, 2002, Sedona, AZ. [No copy available.]

2001 Presentations

New Hampshire Attorney General's Conference on Child Abuse and Neglect: "The Greenbook Project," November 1, 2001. [No copy available.]

National College of District Attorneys: "Full Faith and Credit," October 29, 2001, Reno, NV (with Maureen Sheeran and Wanda Lucibello).

Third National Roundtable: Implementing the Adoption of the Safe Families Act, "Working with Victims of Domestic Violence and their Children under ASFA," Baltimore, MD, August 3, 2001.

NCJFCJ Annual Conference, Monterey, CA:

(1) "Violence Against Women Act II: What Judges Need to Know," July 16, 2001, with Nadine M. Neufville, JD; and

(2) "Parental Strife: Is it Always Abuse, Power and Control?," July 18, 2001, with Dr. Steven Doyne.

[Copy of #1 is available, but not #2.]

Centre for Children & Families in the Justice System of the London Family Court Clinic, An International Conference on Children Exposed to Domestic Violence, "Improving Outcomes for Families Experiencing Both Domestic Violence and Child Maltreatment: A U.S. Initiative," June 8, 2001, London, Ontario (with Pauline Grant and Kimberly Washington). [Copy not available.]

NH Foster Parent Conference, *Court Improvement Project Overview,* March 30, 2001, Portsmouth, NH (with Attorney Kristin Lamont). [Copy not available.]

Battered Women's Justice Project Conference, *Holding Our Systems Accountable: Safety Audits, Court Watches and Fatality Reviews,*: "Domestic Violence Fatality Review: New Hampshire's Experience," March 2001, Santa Fe, New Mexico. [Copy not available.]

National Center for State Courts: *Crossing Borders, Northwest Regional Meeting on Implementing Full Faith & Credit,*" February 21-23, 2001, Seattle, WA. [Copy not available.]

Project Harmony, Domestic Violence Training Lecture Services, Odesa, Ukraine (under US Department of State grant), February, 2001. [Copy not available.]

California Judicial Council, Juvenile Delinquency and the Courts Conference: Keynote presentation on New Hampshire's Juvenile Justice/Community and the Courts Project, January 25, 2001, San Diego, CA.

2000 Presentations

STOP Violence Against Women Grants, *Promising Practices Workshop, Conducting Domestic Violence Fatality Reviews,* Moderator and Chair, NH Domestic Violence Fatality Review Committee, November 15-17, 2000, Nashua, NH. [Copy not available.]

NH Attorney General's Task Force on Child Abuse and Neglect, Attorney General's 8th Annual Conference on Child Abuse: October 19, 2000, "The New Hampshire Court Improvement Project," Waterville Valley, NH (with Attorney Kristin Lamont). [Copy not available.]

Pennsylvania Coalition Against Domestic Violence - STOP Conference: Advocating for Justice, Prosecuting for Safety:

(1) Keynote: Domestic Violence Fatality Review;

(2) Workshop on Fatality Review Committees; and

(3) Workshop on Bringing Judges into the Loop,
October 16, 2000, Lancaster, PA. [Copy of keynote presentation is available; others are not.]

New Hampshire Bar Association: "Advanced Domestic Violence," September 2000. [Copy not available.]

New Hampshire Court Improvement Conference, *A Permanent Home: What Every Child Deserves,* "Permanency Planning in Child Protection Cases," September 8, 2000, Nashua, NH.

New Hampshire Governor's Commission on Domestic and Sexual Violence, 6th Annual Conference on Domestic Violence, "Supervised Visitation Centers: Helping Children and Their Families," June 2, 2000, Waterville Valley, NH (with Scott Hampton). [Copy not available.]

New Hampshire Division for Children, Youth and Families 8th Annual Conference: "NH CIP Project," May 4, 2000, Nashua, NH (with Attorneys Kristy Lamont and Lauren Thorn). [Copy not available.]

Petrozavodsk, Russia Municipal Police Academy: Dynamics of Domestic Violence, March 2000 (for Project Harmony, under US Department of State grant). [Copy not available.]

Littleton Area Family Violence Council, Remarks on Courts and Advocates Working Together, February 24, 2000, Littleton, NH. [Copy not available.]

Annual DOVE Training for New Hampshire Bar Association: Spring 2000. [Copy not available.]

1999 Presentations

New Hampshire's Fifth Annual Conference on Family Violence: "Full Faith and Credit and Firearms," June 1999. [Copy not available.]

NH District and Municipal Court, Statewide Judicial Conference, *Permanency for Children: Q & A Session,* May 20, 1999 (with panel of judges), Waterville Valley, NH. [Copy not available.]

7th Annual DCYF Conference, "Court Improvement Project and AFSA," May 13, 1999, Nashua, NH (with Attorneys Kristy Lamont and Lauren Thorn). [Copy not available.]

US Congressional Briefing, VAWA II, May 4, 1999, Washington, DC. [Copy not available.]

International Supervised Visitation Center Conference: "The Court's Role in Supervised Visitation Centers" Portsmouth, NH, April 1999 (with Dr. Scott Hampton). [Copy not available.]

NH Crime Victims' Rights Day, Keynote Address, April 27, 1999, Concord, NH.

Concord Police Department: Department-wide training on domestic violence,
Spring 1999. [Copy not available.]

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NH Legislature, Testimony on HB 707 (Expansion of the Family Division Pilot Program), March 24, 1999, Concord, NH.

Administrative Office of the Courts, Court Security Officer Presentation on Domestic Violence, February 23, 1999, Concord, NH. [Copy not available.]

Annual DOVE Training for New Hampshire Bar Association: Spring 1999. [Copy not available.]

1998 Presentations

Wisconsin Family Law Conference, Family Law Seminar, "Guns, Full Faith & Credit, and Interstate Domestic Violence Laws," December 3, 1998 (with Judge Mark Butterfield).

NH District Court Conference, "Guns, Full Faith & Credit and Federal Domestic Violence Laws," November 19, 1998, Portsmouth, NH (with Attorney Jean Weld and Sgt. Kelly McClare). [Copy not available.]

NH Attorney General's Task Force on Child Abuse and Neglect, 6th Annual Conference, "NH Court Improvement Project and the Adoption and Safe Families Act (ASFA)," Waterville Valley, NH, October 22, 1998. [Copy not available.]

Concord District Court Coordinating Council, *Keeping Children Safe: The Effects of Family Violence,* Moderator and Panel Facilitator, Concord, NH, October 15, 1998.

New England Salem Children's Trust, Training on Juvenile Justice Issues, October 14, 1998, Plymouth, NH.

Wyoming Coalition Against Domestic Violence: Second Annual Conference on Domestic Violence, Keynote Address, "Domestic Violence Coordinating Councils: The Pursuit of a Seamless System," August 19, 1998.

NH Court Appointed Special Advocates [CASA], Training on Child Protection Laws and Practice, April 21, 1998, Plymouth, NH. [Copy not available.]

New Hampshire Statewide Conference on Full Faith and Credit, *Full Faith and Credit under Violence Against Women Act,* (training for judges, law enforcement officers, victim advocates and prosecutors), April 1998, Manchester, NH (with Judge Peter Macdonald and Attorney Victoria Lutz). [Copy not available.]

Rivier College, Presentation on Family Division Pilot Program, March 26, 1998, Nashua, NH.

NH District Court (and several other sponsors), *Statewide Conference on Juvenile Justice,* Chair, March 19-20, 1998, Nashua, NH. [Copy not available.]

Dare Graduation Ceremony, Canterbury Elementary School, February 4, 1998, Canterbury, NH. [Copy not available.]

Annual DOVE Training for New Hampshire Bar Association: Spring 1998. [Copy not available.]

1997 Presentations

National Council of Juvenile and Family Court Judges, Department of Justice and State Justice Institute, *Full Faith and Credit under the Violence Against Women Act: National Conference,* October 1997, Albuquerque, NM. [Copy not available.]

DOVE Training for New Hampshire Bar Association, Presentation on the Laws and Practices for Handling Domestic Violence Civil Protection Order Hearings, October 16, 1997, Concord, NH.

League of Women Voters, Presentation on NH Family Division Pilot Program and Juvenile Justice Cases, September 18, 1997, Concord, NH.

Community Alliance of Human Services, Presentation on Juvenile Justice Issues, May 27, 1997, Newport, NH (with panel including Senator Judd Gregg). [Copy not available.]

New Hampshire Police Standards and Training Council, Juvenile Justice Institute, Presentation on NH Family Division, May 22, 1997, Concord, NH. [Copy not available.]

Dare Graduation Ceremony, Pittsfield Elementary School, May 1, 1997, Pittsfield, NH. [Copy not available.]

NH Administrative Office of the Courts, Court Security Officer Presentation on Domestic Violence, April 2, 1997, Concord, NH. [Copy not available.]

NH Technical Institute Workshop, Panel on *Domestic and Dating Violence: A Frequent Tragedy in New Hampshire Society,* January 28, 1997 and March 18, 1997, Concord, NH (with Chief William Halacy, Dr. Scott Hampton, and others). [Copy not available.]

NH Judicial Council, Administration of Justice in New Hampshire Conference, "Juvenile Justice: A Look at the Issues," January 31, 1997, Concord, NH (with Judges Edwin Kelly and John Korbey).

New Hampshire Bar Association, Presentation on NH Family Division Pilot Program, January 16, 1997, Bedford, NH. [Copy not available.]

1996 Presentations

NH Municipal Association, Annual Conference, Presentation on Domestic Violence, November 22, 1996, Manchester, NH. [Copy not available.]

NH Chapter, National Association of Counsel for Children, Training on Guardians ad Litem in the Court System, October 17, 1996, Concord, NH. [Copy not available.]

New Hampshire Bar Association, CLE Seminar, Developments in the Law, *Juvenile Justice Issues,* October 10, 1996, Bedford, NH. [Copy not available.]

NH Administrative Office of the Courts, Court Security Officer Presentation on Domestic Violence, October 15, 1996, Concord, NH. [Copy not available.]

NH Court Appointed Special Advocates [CASA], Training on Child Protection Laws and Practice, October 8, 1996, Manchester, NH. [Copy not available.]

NH Administrative Office of the Courts, NH Guardian ad Litem Statewide Training "Representing the Child in Domestic Violence Cases/District Court Domestic Violence Protocol," September 24, 1996, Bedford, NH. [Copy not available.]

NH AmeriCorps, Team Meeting Panel Presentation, "The Power of One," July 23, 1996, Plymouth, NH. [Copy not available.]

Dare Graduation Ceremony, Pittsfield Elementary School, June 13, 1996, Pittsfield, NH. [Copy not available.]

NH Medical Society, Panel Program on Family Violence, June 2, 1996, Bretton Woods, NH (with Dr. Robert McAfee, Rep. Donna Sytek and Judge Michael Sullivan). [Copy not available.]

Pittsfield Elementary School, Keynote Presentation, *Peer Mediation,* May 21, 1996, Pittsfield, NH. [Copy not available.]

NH Coalition Against Domestic and Sexual Violence, *Keynote Presentation for Domestic Violence, Sexual Assault and the Legal System*, May 4, 1996, Concord, NH. [Copy not available.]

University of Vermont Division of Continuing Education, "The Role of Domestic Violence Coordinating Councils in Courts and Communities," at *Growing Up Terrified: The Damaging Effects of Domestic Violence on Children Conference*, March 22, 1996, Needham, MA. [Copy not available.]

Annual DOVE Training for New Hampshire Bar Association: Spring 1996. [Copy not available.]

1995 Presentations

NH Administrative Office of the Courts, NH Guardian ad Litem Statewide Training "Representing the Child in Domestic Violence Cases/District Court Domestic Violence Protocol," September 22, 1995, Bedford, NH.

American Bar Association, Commission on Domestic Violence, Testimony at Public Hearings on Domestic Violence, August 5, 1995, Chicago, IL.

National Conference of Bar Presidents, "Fighting Domestic Violence: Action, Not Rhetoric," Chicago, IL, August 5, 1995. [Copy not available.]

NH Legislature, Testimony on HB 657-FN [Expansion of the Family Division], March 29, 1995, Concord, NH.

Annual DOVE Training for New Hampshire Bar Association: Spring 1995. [Copy not available.]

1994 Presentations

Annual DOVE Training for New Hampshire Bar Association: Spring 1994. [Copy not available.]

Pittsfield Rotary, *Family Violence in New Hampshire,* February 16, 1994, Pittsfield, NH. [Copy not available.]

Clergy Workshop on Domestic Violence, *Family Violence in New Hampshire: Views from the Legal Community,* January 11, 2004, Concord, NH.

1993 Presentations

Spaulding Youth Center – Annual Address, *Family Violence in New Hampshire,* October 25, 1993, Tilton, NH.

Laconia Vocational Technical Institute, *Sexual Harassment and Domestic Violence*, October 13, 1993 (with Attorney Martha Copithorne). [Copy not available.]

New Hampshire Bar Association, *Presidential Installation Address*, June 26, 1993, The Balsams, Dixville Notch, NH, reported in New Hampshire Bar News, Vol. 4, No. 4, July 21, 1993, pp. 1, 6-7.

Cheshire County Bar Association, *Women in the Law,* June 17, 1993, Keene, NH.

Pittsfield Rotary, *The New Hampshire Bar Association,* March 4, 1993, Pittsfield, NH.

Annual DOVE Training for New Hampshire Bar Association: Spring 1993. [Copy not available.]

AFFIDAVIT

I, Susan Berkson Carbon, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

October 30, 2009
(DATE)

S Carbon
(NAME)

(NOTARY) LoriAnne Dionne
Justice of the Peace
Comm. Exp. 10/10/11

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   Denny Chin

   I was given a Chinese name at birth, Check Kong Chin, which I stopped using in approximately 1960; for some years, I used Denny Check Chin.

2. **Position**: State the position for which you have been nominated.

   United States Circuit Judge for the Second 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.

   United States District Court, Southern District of New York
   Daniel Patrick Moynihan United States Courthouse
   500 Pearl Street
   New York, New York 10007

4. **Birthplace**: State year and place of birth.

   1954; Hong Kong

5. **Education**: List in reverse chronological order 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.

   August 1975 to May 1978, Fordham University School of Law; J.D., May 1978

   September 1971 to June 1975, Princeton University; B.A. *magna cum laude,* June 1975

6. **Employment Record**: List in reverse chronological order 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 description.

1994 to Present
United States District Court, Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, New York, NY 10007
United States District Judge

August 1986 to May 2009
Fordham University School of Law
140 West 62nd Street, New York, NY 10023
Adjunct Professor

1990 – 1994
Vladeck, Waldman, Elias & Engelhard, P.C.
1501 Broadway, New York, NY 10036
Partner, August 1991 to August 1994
Counsel, October 1990 to August 1991 (part-time)

1990 – 1991
Denny Chin
1501 Broadway, New York, NY 10036
Self-employed in part-time solo practice, September 1990 to August 1991

1986 – 1990
Campbell, Patrick & Chin
61 Broadway, New York, NY 10006
Partner

1982 – 1986
United States Attorney's Office, Southern District of New York
1 St. Andrew's Plaza, New York, NY 10007
Assistant United States Attorney

1980 – 1982
Davis, Polk & Wardwell
450 Lexington Avenue, New York, NY 10017
Associate

1976 – 1980
Hon. Henry F. Werker, U.S.D.J., S.D.N.Y.
U.S. Courthouse, Foley Square, New York, NY 10007
Law Clerk, September 1978 to August 1980; Intern, May 1976 to August 1976

1977 – 1978
Estroff, Frankel & Waldman
12 East 41st Street, New York, NY
Law Clerk (part-time), October 1977 to June 1978

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1977
White & Case
1155 Avenue of Americas, New York, NY 10036
Summer Associate

1974 – 1976
McGraw-Hill Publishing Co.
1221 Avenue of Americas, New York, NY 10036
Research Assistant, market analysis, Summer 1974 and June 1975 to February 1976

7. **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, and whether you have registered for selective service.

I did not serve in the U.S. Military.
I registered for selective service in 1972 and was classified 1-H.

8. **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.

Professor of the year, Fordham Law School Public Interest Resource Center (2009)
Commencement Speaker, University of Miami Law School (2009)
Judicial Friends, Lifetime Achievement Award (2007)
Abely Award for Leading Women and Children to Safety, Sanctuary for Families (2006)
Medal of Achievement, Fordham Law School Alumni Association (2006)
Distinguished Service Award, Asian American Justice Center (2005)
Lifetime Achievement Award, NYS Division of Human Rights (2005)
Commencement Speaker, Fordham University School of Law (1999)
Trailblazer Award, National Asian Pacific American Bar Association (1998)
Keynote Speaker, NAPABA National Convention (1996)
J. Edward Lumbard Award, U.S. Attorney's Office, SDNY (1996)
Honorary Doctor of Laws, CUNY Law School (1995)
National Football Foundation Scholar-Athlete Award (1971)

9. **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.

New York City Bar Association
Member of Executive Committee, 2006 to date

New York County Lawyers Association

Federal Bar Council

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Federal Bar Council Inn of Court
President-Elect, 2007-2008; President, 2008-2009

Federal Bar Council Public Service Committee

National Asian Pacific American Bar Association

National Asian Pacific American Bar Association Judicial Council
Treasurer, appx. 1997 to date

Asian American Bar Association of New York
President, 1992-1993; Member, Board of Directors, 1992-1994

Asian American Legal Defense and Education Fund

National Employment Lawyers Association, New York Chapter
Member of Board in mid-1980s

Immigration Study Group (headed by Judge Robert Katzmann)

Fordham Law School Alumni Association
Member of Board of Directors, appx. 1996 to date

Fordham Law School Law Review Association
Member of Board of Directors, appx. 1996 to date

Fordham Law School Minority Mentorship Program
Co-Chair, 2005 to date

Fordham Law School Feerick School of Social Justice
Member of Board of Advisers, appx. 2007 to date

American Law Institute

American Bar Association

10. **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.

New York, February 1979

There have been no lapses in membership, although I technically retired from the practice of law once I became a judge in 1994.

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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.

New York, 2/79
United States District Court for the Southern District of New York, 4/19/79
United States District Court for the Eastern District of New York, 4/79
United States Court of Appeals for the Second Circuit, 7/8/82
Supreme Court of the United States, 1/22/91

There have been no lapses in membership

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, 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 belong or have belonged to a number of cultural organizations, which are listed here; I do not recall the dates of membership:

Brooklyn Museum
Museum of Natural History
Museum of Modern Art
Metropolitan Museum of Art
New York Zoological Society
Hudson River Park Association
Smithsonian Institute
Public Broadcasting Station
New York Roadrunners Club

I am also a member of the Heights Casino, a squash and tennis club in Brooklyn Heights, NY. I have been a member since approximately 1990.

I also belonged to the following organizations and served on their boards in the 1980s through the early 1990s; I don't recall the dates; I resigned from all of them prior to assuming the bench:

Brooklyn Center for Urban Environment, Brooklyn, NY
Care for the Homeless, New York, NY
Hartley House, New York, NY
St. Margaret's House, New York, NY

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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, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin 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 never belonged to any organization that discriminates on the basis of race, sex, religion, or national origin, nor would I belong to such an organization.

12. **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. Supply four (4) copies of all published material to the Committee.

"Why Race Matters," New York Law Journal, December 17, 2007

"Access to the Legal Profession for Minorities: Introductory Remarks," 2 J. Inst. Study of Legal Ethics 49 (1999)

"Moving Beyond McDonnell Douglas: A Simplified Method for Assessing Evidence in Discrimination Cases," 64 Brooklyn L. Rev. 659 (1998) (co-authored with Jodi Golinsky)

Lawyers Cooperative Practice Guide: Handling Employment Disputes in New York (1996) (co-authored with Sharon P. Stiller and Mindy Novick)

"The Americans with Disabilities Act: The EEOC Regulations," Proceedings of NYU Annual National Conference on Labor, Chapter 17 (1991)

"Discrimination Against the Handicapped: The Duty of Reasonable Accommodation," Proceedings of NYU 42nd Annual National Conference on Labor, Chapter 14 (1989)

"Aliens' Right To Work: State and Federal Discrimination," 45 Fordham L. Rev. 835 (1977)

"The Newspaper" – I wrote various articles during 1986 – 1987 for this neighborhood publication. I do not have copies of these publications.

b. 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,

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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, 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. 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.

July 9, 2009. United States Sentencing Commission, Public Hearing on Sentencing Guidelines.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. 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 recording of your remarks, 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, furnish a copy of any outline or notes from which you spoke.

I frequently speak before different bar groups, law student and alumni organizations, law firms and governmental agencies. I have also participated in many legal education panels. I have not maintained a list of all my speaking engagements, but I have searched my files and personal calendars to create the list below. For some, I have no copies of my comments or any recollection, and my calendars only go back to 1999. I have provided copies of whatever speeches I have been able to find.

2009

September 10, 2009. U.S. District Court, Eastern District of New York. I spoke to law clerks, interns, and judges about my career path and the Madoff case.

July 15, 2009. Legal Outreach, New York, NY. Audience of Ninth Graders participating in summer program on the law. I gave informal comments on my work as a judge, my background, and being a lawyer, and I gave advice to help the students prepare for their mock trials.

July 8, 2009. New York County Lawyers Association, New York, NY. Audience of lawyers, summer associates, and summer interns. I spoke on a panel of three judges about appropriate courtroom behavior.

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June 30, 2009. Federal Bar Council Public Service Committee, New York, NY. Audience of attorneys and pro bono coordinators. I participated in a panel discussion of pro bono immigration cases and gave informal comments encouraging participation. projects.

June 25, 2009. Davis Polk & Wardwell, New York, NY. Audience of attorneys and summer associates. Presentation organized by the firm's Asian American Affinity Group. I spoke mostly about the importance of diversity.

June 22, 2009. Stuyvesant H.S. Alumni Association, New York, NY. Audience of alumni of Stuyvesant High School. I gave informal comments reminiscing about Stuyvesant.

June 16, 2009. Practicing Law Institute, New York, NY. Audience of lawyers interested in employment law. I spoke on a panel, "A View from the Bench," about employment law.

June 4, 2009. Federal Bar Council Inn of Court, New York, NY. Audience of lawyers and judges, members of the Inn of Court. I gave informal remarks on the completion of my term as president.

May 20, 2009. General Services Administration, New York, NY. Audience of GSA employees. For GSA's celebration of Asian/Pacific Islander Heritage month, I spoke about being a judge, my family history, and the importance of diversity.

May 17, 2009. University of Miami Law School, Miami, FL. Audience of graduating law students and their parents and guests. I gave the commencement address.

May 14, 2009. Federal Executive Board, New York, NY. Audience of federal executive employees and federal agency employees being recognized for their accomplishments. I spoke about public service and my family history at annual event honoring federal employees held on Ellis Island.

May 13, 2009. New York Immigration Coalition, Albany, NY. Audience of immigration service providers. I gave the lunchtime address during the New York Immigration Coalition's 2009 Citizenship Summit. I spoke about my background as an immigrant and the importance of the work of immigration service providers.

April 25, 2009. National Asian Pacific American Bar Association, Northeast Regional Conference, Philadelphia, PA. I participated in a presentation by the Asian American Bar Association on the trials arising from the murder of Vincent Chin in Detroit in the early 1980s.

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April 25, 2009. National Asian Pacific American Bar Association, Northeast Regional Conference, Philadelphia, PA. I participated on a panel of four judges giving advice on how to become a judge.

April 8, 2009. Fordham APALSA, New York, NY. Audience of law students and alumni. I was the keynote speaker at the annual event.

March 30, 2009. Fordham Law School, Public Interest Center, New York, NY. Audience of law students and faculty. I received the Center's professor of the year award and I gave informal comments.

March 21, 2009. February 25, 2006. Asian American Bar Association of New York, Brooklyn, NY. I spoke to law students about oral advocacy.

March 19, 2009. NYU Labor Institute, New York, NY. Audience of federal judges. I spoke on a panel on class and collective actions at a workshop on employment law for federal judges.

March 11, 2009. Fordham University School of Law, New York, NY. Colloquium convened by Judge Katzmann's Immigration Study Group and the Fordham Law Review. I spoke about the study group and my family history.

March 10, 2009. NYU Law School, New York, NY. Audience of lawyers, law students, and members of the public. I participated in a program presented by the Asian American Bar Association of New York on the Trial of Minoru Yasui.

2008

December 3, 2008. Richards Kibbe & Orbe, LLP, New York, NY. Audience of lawyers. I spoke about life as a judge and gave litigation tips.

November 20, 2008. National Pacific American Bar Association, National Convention, Seattle, WA. Audience of lawyers, judges, and law students. I spoke on a panel on sanctions for discovery abuse.

November 21, 2008. National Pacific American Bar Association, National Convention, Seattle, WA. Audience of lawyers, judges, and law students. I participated in a presentation by the Asian American Bar Association on the trials arising from the murder of Vincent Chin in Detroit in the early 1980s.

November 21, 2008. National Pacific American Bar Association, National Convention, Seattle, WA. Audience of lawyers, judges, and law students. I participated in a panel, "A Conversation with the Federal Judges," with Judges A. Wallace Tashima and Amul Thapar, about our backgrounds, our paths to the bench, litigation advice, and the importance of diversity.

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October 24, 2008. Naturalization Ceremony, New York, NY. I gave similar remarks each time I sat as the Part I Judge.

October 21, 2008. Attorney Admissions, New York, NY. I gave similar remarks each time I sat as the Part I Judge.

October 20, 2008. Federal Bar Council First Decade Committee, New York, NY. Audience of lawyers in their first ten years of practice. I gave litigation advice.

October 2, 2008. Fordham Law School, New York, NY. Audience of law students. I spoke on a panel about judicial clerkships and gave advice on applying for clerkships.

October 1, 2008. Fordham Law School, New York, NY. Audience of law students. I spoke at the year-opening reception for the Minority Mentoring Program.

September 11, 2008. General Electric Company, Rye Brook, NY. Audience of GE employees and outside service providers. I spoke on a panel of three federal judges about the importance of diversity.

July 9, 2008. Skadden, Arps, Slate, Meagher & Flom, New York, NY. Audience of lawyers and summer associates. I spoke at the law firm's annual event celebrating its commitment to diversity.

July 2, 2008. New York City Bar Association, New York, NY. I spoke at a meeting of the City Bar's Young Attorneys Committee and gave informal remarks about judging and litigating.

June 25, 2008. New York County Lawyers Association, New York, NY. Audience of lawyers, summer associates, and interns. I spoke on a panel of judges about cross-examination.

June 16, 2008. Practicing Law Institute, New York, NY. Audience of lawyers. I spoke on a continuing legal education program on employment law.

June 16, 2008. Princeton University Fellowship Program, New York, NY. I spoke to a group of Princeton college students who were doing public service internships in NYC.

May 19, 2008. New York City Bar Association, New York, NY. I gave informal remarks to the City Bar's Litigation Committee.

May 14, 2008. Federal Bureau of Investigation, New York, NY. I spoke at the FBI's celebration of Asian/Pacific Islander Heritage month.

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May 3, 2008. National Asian Pacific American Bar Association Northeast Regional Conference, Norwalk, CT. Audience of lawyers and law students. I participated in a program presented by the Asian American Bar Association of New York on the Trial of Minoru Yasui.

March 18, 2008. New York University School of Law, New York, NY. I spoke about class and collective actions at a workshop on employment law for federal judges.

January 30, 2008. New York State Bar Association, New York, NY. I spoke at the Commercial & Litigation Section on the ethics of witness preparation.

January 28, 2008. Columbia Law School, New York, NY. I spoke on a panel of three judges on judicial clerkships and the application process.

2007

December 6, 2007. Judicial Friends, New York, NY. Audience of judges and lawyers. I received a lifetime achievement award from the Judicial Friends, and I spoke about the importance of diversity on the bench.

November 16, 2007. National Asian Pacific American Bar Association National Convention, Las Vegas, NV. I participated in a program presented by the Asian American Bar Association of New York on the Trial of Minoru Yasui.

November 5, 2007. New York University Law School, New York, NY. I spoke to Professor Stephen Gillers's legal ethics class.

October 13, 2007. Columbia University School of Law, New York, NY. Audience of Columbia Law School alumni and faculty. I presented the Distinguished Achievement Award to Margaret Fung.

October 6, 2007. New York County Lawyers' Association, New York, NY. Audience of experienced state court practitioners who wanted to join the federal Criminal Justice Act panel. I spoke on a panel about the federal sentencing guidelines.

October 3, 2007. Fordham University School of Law, New York, NY. I spoke at the year's opening reception for Fordham's Minority Mentorship Program.

June 13, 2007. Federal Bar Council, New York, NY. I spoke about trying prisoners' rights cases for a pro bono lawyers' training program.

June 6, 2007. United States Attorney's Office, Newark, New Jersey. I spoke at the U.S. Attorney's Office's celebration of Asian Pacific American Heritage Month.

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May 24, 2007. Administrative Office of the U.S. Courts, Washington, D.C. I spoke at AO's celebration of Asian Pacific American Heritage Month.

May 9, 2007. New York City Bar Association, New York, NY. Audience of practicing lawyers. I spoke on a continuing legal education panel about employment law.

May 1, 2007. New York State Trial Lawyers Association, New York, NY. I spoke about sexual harassment.

April 28, 2007. National Asian Pacific American Bar Association, Southeast Regional Conference, Miami, Florida. Audience of lawyers and law students. I spoke about my path to the bench and the importance of diversity.

March 26, 2007. Fordham University School of Law, New York, NY. I spoke on a panel at the year-end reception for the Law School's Minority Mentorship Program.

March 15, 2007. New York City Bar Association, New York, NY. Audience was practicing attorneys. I moderated a panel on sentencing post-Booker.

March 15, 2007. New York State Bar Association, New York, NY. I spoke on transitions for lawyers.

March 12, 2007. New York University School of Law, New York, NY. I participated in an employment law workshop for federal judges and spoke on a panel on class and collective actions.

March 7, 2007. Federal Bar Council, New York, NY. I moderated a panel on the role of magistrate judges. I introduced the members of the panel and coordinated the discussion.

March 3, 2007. Harvard Law School, Boston, MA. I spoke at a conference for Asian American law students.

January 27, 2007. University of Pennsylvania School of Law, Philadelphia, PA. I spoke about diversity in the law. The theme of the convention was Rethinking the Role of the Asian-American Lawyer.

January 23, 2007. Wilkie Farr & Gallagher, New York, NY. The topic of my talk was how to be successful in oral argument.

January 18, 2007. New York, NY. I spoke at Karen Lin's induction as a judge of the Housing Part of the Civil Court of the City of New York.

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2006

November 28, 2006. New York City Lawyers' Association, New York, NY. I spoke to the Association's Federal Courts Committee.

October 23, 2006. Fordham Law School Film Forum, New York, NY. I provided commentary following a screening of the film "A Civil Action."

October 10, 2006. Fordham Law School, New York, NY. I spoke on a clerkship panel and spoke about judicial clerkships and the application process.

October 4, 2006. Fordham Law School, New York, NY. I gave informal remarks to law students and alumni at the opening reception for the year's Minority Mentorship Program.

September 25, 2006. Davis Polk & Wardwell, New York, NY. The non-profit organization Sanctuary for Families honored me with its Abely Award, and I gave brief remarks talking about my decision in Blondin v. DuBois.

June 28, 2006. Hughes, Hubbard & Reed, New York, NY. I spoke to lawyers and summer associates about good lawyering.

June 21, 2006. New York County Lawyers Association, New York, NY. I spoke to lawyers and summer associates and interns on appropriate courtroom behavior.

May 24, 2006. U.S. Attorney's Office, S.D.N.Y., New York, NY. I spoke to Assistant United States Attorneys and summer interns about judging and federal litigation.

March 4, 2006. Fordham University School of Law Alumni Association, New York, NY. I received the Association's lifetime achievement award and I gave brief remarks.

February 28, 2006. New York City Bar Association, New York, NY. I spoke on the Hague Convention, focusing on child abduction cases.

February 25, 2006. Asian American Bar Association of New York, Brooklyn, NY. I spoke to law students about oral advocacy.

February 8, 2006. Reed Smith LLP, New York, NY. I spoke to lawyers at the firm about pro bono work and public service.

January 25, 2006. New York State Bar Association, New York, NY. I spoke on a panel about legal ethics.

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2005

November 30, 2005. Columbia Law School, New York, NY. I spoke to Judge Sotomayor's Columbia Law School class, together with Judge Edward Korman, about judging and litigating.

November 16, 2005. Cadwalader, Wickersham & Taft LLP, New York, NY. I spoke about the importance of diversity.

November 10, 2005. NYC Law Department, New York, NY. I spoke at the Law Department's Diversity Reception.

November 9, 2005. New York Law School, New York, NY. I spoke to the Law School's law review students regarding the importance of legal scholarship.

November 3, 2005. Columbia Law School, New York, NY. I spoke on a panel on judicial clerkships and the application process.

October 27, 2005. New York State Division of Human Rights, New York, NY. I gave brief comments upon receiving the State Division's Lifetime Achievement Award.

October 21, 2005. National Asian Pacific American Bar Association National Convention, Chicago, IL. I participated on a panel on cross-examination.

October 6, 2005. Asian American Justice Center, Washington, D.C. I gave brief remarks upon receiving the Justice Center's Distinguished Service Award.

October 5, 2005. Fordham Law School, New York, NY. I gave informal remarks at the year-opening reception for the Law School's Minority Mentorship Program.

September 24, 2005. Minority Law Student Leadership Summit, New York. I spoke to minority law students about the importance of diversity.

September 23, 2005. New York State Bar Association, New York, NY. I spoke on evidence.

August 25, 2005. Fordham Law School, New York, NY. I spoke to an L.L.M. class about federal power and federal jurisdiction.

July 12, 2005. United States Attorney's Office, S.D.N.Y., New York, NY. I spoke on a panel of three judges to Assistant United States Attorneys and summer interns.

June 22, 2005. New York County Lawyers Association, New York, NY. I spoke to lawyers and summer associates and interns about cross-examination.

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June 15, 2005. New York County Lawyers Association, New York, NY. The topic of my speech was: How to Handle an Employment Discrimination Case.

May 27, 2005. Princeton University, Princeton, NJ. I spoke on a panel for Princeton Asian-American alumni at reunions.

April 23, 2005. National Asian Pacific Bar Association, Northeast Regional Conference, Boston, MA. I was the lunchtime keynote speaker and I spoke about my cases and the importance of diversity.

April 6, 2005. Fordham Law School, New York, NY. I spoke about the Fordham Minority Membership Program.

March 31, 2005. Fordham University School of Law, New York, NY. This was a conference on intellectual property, and I spoke on a panel about intellectual property litigation.

March 17, 2005. New York University, New York, NY. I spoke at a workshop for federal judges on employment law on evidence.

February 26, 2005. Asian American Bar Association of New York, Brooklyn, NY. I spoke to law students about oral advocacy.

2004

November 12, 2004. National Asian Pacific American Bar Association National Convention, Dallas, TX. I participated on a panel giving advice to judges.

November 6, 2004. Federal Bar Council, CT. I participated in a presentation on the trial of Lizzie Borden at the Federal Bar Council Fall Retreat.

October 2004. New York State Bar Association, New York, NY. I spoke about expert witnesses.

October 16, 2004. New York County Lawyers Association, New York, NY. I spoke on a panel on the federal sentencing guidelines.

August 26, 2004. Fordham Law School, New York, NY. I spoke to an L.L.M. class about federal power and federal jurisdiction.

July 14, 2004. United States Attorney's Office, S.D.N.Y., New York, NY. I spoke on a panel of three judges to Assistant United States Attorneys and summer interns.

June 18, 2004. Corporation Counsel's Office, New York, NY. I spoke to summer interns about career paths and public service.

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June 8, 2004. Brooklyn, NY. I spoke at the Honorable Kiyo Matsumoto's swearing-in ceremony.

May 28, 2004. Princeton University, Princeton, NJ. I spoke on a panel with Senators Sarbanes and Frist about statesmanship and public service.

May 7, 2004. National Employment Lawyers Association, New York, NY. I spoke about litigating employment cases.

April 26, 2004. New York City Bar Association, New York, NY. I spoke on a panel about Prof. Thane Rosenbaum's book, "The Myth of Moral Justice."

April 15, 2004. University of Virginia Law School, Charlottesville, VA. I participated in a trial advocacy program.

April 7, 2004. Dewey Ballantine, New York, NY. I spoke about how to be successful at oral argument.

March 11, 2004. New York University, New York, NY. I spoke at a workshop for federal judges on employment law on evidence.

February 28, 2004. Asian American Bar Association of New York, Brooklyn, NY. I spoke to law students about oral advocacy.

2003

August 21, 2003. Fordham University School of Law, New York, NY. I spoke to a class of LLM students about federal court jurisdiction.

July 15, 2003. Fragomen, Del Rey & Bernsen, New York, NY. The topic of my speech was immigration.

July 8, 2003. United States Attorney's Office, S.D.N.Y., New York, NY. I spoke on a panel of three judges to Assistant United States Attorneys and summer interns.

July 1, 2003. Weil, Gotshal & Manges, New York, NY. I spoke about litigating employment cases.

June 25, 2003. New York County Lawyers Association, New York, NY. I spoke to lawyers and summer associates and interns about courtroom behavior.

June 17, 2003. Shearman & Sterling LLP, New York, NY. I spoke to summer associates.

May 8, 2003. American Law Institute, Boston, MA. I spoke at an ALI conference on employment law.

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May 3, 2003. Public School 51, New York, NY. I spoke at my old elementary school.

April 1-2, 2003. University of Virginia Law School, Charlottesville, VA. I participated in a trial advocacy program.

March 26, 2003. New York Law School, New York, NY.

March 3, 2003. New York University, New York, NY. I spoke at a workshop for federal judges on employment law on evidence.

March 1, 2003. Fordham University School of Law Alumni Luncheon, New York, NY. I spoke about life on the bench and how things have changed at the law school and in the profession.

March 1, 2003. Harvard Law School, Cambridge, MA. Conference on Law and Public Policy. I spoke about activism in the Asian-American community.

February 20, 2003. Hughes Hubbard & Reed, New York, NY. The topic of my speech was: Litigating Tough Cases.

February 10, 2003. Association of the Bar of the City of New York, New York, NY. I spoke on a panel on the First Amendment and commercial speech.

January 24, 2003. Columbia University School of Law, New York, NY. I presented the Medal of Excellence to Judith P. Vladeck.

2002

November 15, 2002. Equal Employment Opportunity Commission. The subject of my speech was: Corporate and Commercial Speech.

October 23, 2002. Norman Thomas High School, New York, NY. I spoke to two high school classes about the bill of rights, the constitution, and the law.

October 22, 2002. Federal Bar Council, New York, NY. I spoke mostly about the importance of public service.

September 26, 2002. Rutgers Law School, Newark, NJ. I spoke about diversity and Asian Americans in the law.

August 23, 2002. CUNY School of Law, New York, NY. I spoke to first-year students visiting the Southern District of New York.

August 22, 2002. Fordham Law School, New York, NY. I was the guest-lecturer for an LLM class. I spoke about federal jurisdiction.

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August 16, 2002. Connecticut Asian Pacific American Bar Association, CT. I spoke about Asian Americans in the law and on the bench.

June 25, 2002. New York County Lawyers Association, New York, NY. I spoke at the Association's "Lunch with a Judge" program.

May 26-28, 2002. Federal Judicial Center National Workshop for District Judges, New Orleans, LA. I spoke on a panel.

May 23, 2002. Seyfarth Shaw LLP, New York, NY. I spoke about employment law.

April 16, 2002. Columbia Law School, New York, NY.

April 5, 2002. Vladeck, Waldman, Elias & Engelhard, New York, NY. I spoke to lawyers about litigation.

March 14, 2002. New York University Law School, New York, NY. I spoke on employment law at a workshop for federal judges.

February 25, 2002. Asian American Legal Defense and Education Fund, New York, NY. At AALDEF's annual dinner, I introduced Fred Korematsu.

2001

November 27, 2001. Gibson, Dunn & Crutcher, New York, NY. I spoke about litigating tough cases.

August 29, 2001. Equal Employment Opportunity Commission, Atlantic City, NJ. I spoke about practicing employment law in the private sector and federal sector litigation.

August 25, 2001. Fordham Law School, New York, NY. I spoke to an LLM class about federal court jurisdiction.

June 20, 2001. New York County Lawyers Association, New York, NY. I spoke to summer associates and interns about appropriate courtroom behavior.

May 31, 2001. Metropolitan Correction Center, New York, NY. I spoke at an event celebrating Asian Pacific American Heritage Month.

May 24, 2001. New York Supreme Court, New York, NY. I spoke at an event sponsored by the Anti-Bias Committee of the New York County Supreme Court in celebration of Asian Pacific American Heritage Month.

April 23, 2001. Weil Gotshal & Manges, New York, NY. I spoke to the firm's attorneys as part of its Pro Bono Awards event.

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April 5, 2001. St. John's University School of Law, Queens, NY. I spoke at an event organized by the Black, Asian, and Latino Law Students Alumni Association.

April 3, 2001. New York City Technical Institute, Brooklyn, NY. I spoke to community college students studying to be paralegals.

March 31, 2001. Asian American Bar Association, Brooklyn, NY. I spoke to law students about oral advocacy.

March 19, 2001. New York University Law School, New York, NY. I spoke to federal judges about employment law at a workshop for federal judges.

March 1, 2001. Fordham Law School, New York, NY. I spoke at a conference on derivatives.

February 15-18, 2001. American Bar Association, Orlando, FL. I participated in a conference for the Corporate Counsel Committee meeting of the ABA's litigation section.

January 26, 2001. Pace Law School, White Plains, NY. I spoke to an audience of law students for a program organized by Asian-American law students.

2000

December 20, 2000. Chinese Bankers' Association, New York, NY. I spoke to an audience of bankers about politics, the media, and the courts.

November 15, 2000. AFL-CIO, Lawyers Coordinating Committee, New York, NY. I spoke on discovery and sanctions.

September 21, 2000. Patent Conference, New York, NY. I spoke at a conference for patent lawyers.

July 18, 2000. United States Attorney's Office, S.D.N.Y., New York, NY. I gave advice on courtroom behavior.

July 10, 2000. American Bar Association, New York, NY. I spoke on a panel on expert witnesses for the Litigation Section.

June 21, 2000. Proskauer Rose, New York, NY. I gave litigation tips.

June 8, 2000. National Employment Lawyers Association, New York, NY. I spoke at a reception held by NELA at the Courthouse.

June 7, 2000. New York County Lawyers Association, New York, NY. I spoke at the Association's lunch with a judge program.

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May 23, 2000. Hartley House, New York, NY. I spoke at an awards function.

April 5, 2000. Indo-American Lawyers Association. I spoke at the Association's dinner.

March 24, 2000. Temple Law School, Philadelphia, PA. I spoke to law students from various Northeast law schools about my path to the bench.

March 15, 2000. New York City Bar Association, New York, NY. I spoke on a panel on employment law.

February 12, 2000. Massachusetts Institute of Technology, New York, NY. I spoke at an alumni dinner in New York.

1999

December 9, 1999. Glasser Legal Works, New York, NY. I spoke at a conference on class actions.

November 17, 1999. Columbia Law School, New York, NY. I spoke on criminal law and access to the courts.

October 6, 1999. Legal Aid Society, New York, NY.

September 8, 1999. New York County Lawyers Association, New York, NY. I spoke on an ethics panel.

June 30, 1999. New York County Lawyers Association, New York, NY. I spoke at the Association's "Lunch with a Judge" Program.

June 23, 1999. American Bar Association, New York, NY. I spoke on a panel.

June 1999. Metropolitan Detention Center, New York, NY. I spoke about Asian Pacific American Heritage Month.

May 23, 1999. Fordham University School of Law, New York, NY. I gave the commencement address.

April 14-16, 1999. Attorney General's Civil Trial Advocacy Program, Columbia, SC. I participated in DOJ's civil trial advocacy program.

April 5, 1999. New York University School of Law, New York, NY. I spoke on a panel.

March 22, 1999. Network for Women's Services, New York, NY.

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March 13, 1999. National Employment Lawyers Association, Atlanta, GA. I spoke on gender discrimination issues at NELA's national convention.

March 3, 1999. United Jewish Association, New York, NY. I spoke about the administration of justice.

February 4, 1999. New York County Lawyers Association, New York, NY.

February 22-26, 1999. Federal Bar Council, Hawaii, HI. I attended the Federal Bar Council's winter bench and bar retreat and participated on a panel.

January 30, 1999. New York Management Attorneys Conference, New York, NY. I spoke to management-side employment attorneys and human resources personnel about litigating employment cases.

1998

May 7-10, 1998. New York State Bar Association, Charleston, SC. I spoke at a conference on employment law for the trial lawyers section.

April 5, 1998. Hofstra University School of Law, NY. The topic of my talk was "Legal Ethics: Access to Justice."

1997

November 1997. National Pacific American Bar Association National Convention, Los Angeles, CA. I spoke on a panel.

September 1997. Asian American Bar Association of Virginia, Vienna, VA. I spoke at a Bar Association dinner.

April 18, 1997. Brooklyn Law School, Brooklyn, NY. I spoke to a group of law students.

March 1997. American Bar Association, Orlando, FL. I spoke on employment law at a labor and employment section conference.

March 1997. New York State Bar Association, New York, NY. I spoke to the Federal Courts Committee.

1996

December 6, 1996. National Employment Lawyer's Association, New York, NY. I spoke about employment law.

November 16, 1996. National Asian Pacific American Bar Association Convention, Denver, CO. I gave the keynote address at the NAPABA annual national convention.

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October 1996. New York City Lawyers Association, New York, NY. I spoke to the Federal Courts Committee.

September 10, 1996. Institute of Business Law, New York, NY. I spoke mainly about employment law.

May 9, 1996. Department of Justice, Washington, DC. I spoke as part of celebration of Asian Pacific American Heritage Month.

1995

November 29, 1995. Hughes, Hubbard & Reed, New York, NY. I spoke to the firm's attorneys about effective advocacy.

October 27, 1995. Equal Employment Opportunity Commission, New York, NY. I spoke to EEOC attorneys about employment cases and the importance of civil rights.

September 11, 1995. Practicing Law Institute, New York, NY. I spoke to an audience of lawyers about effective advocacy.

May 11, 1995. Coalition of Korean-American Voters, New York, NY. I spoke about diversity.

e. 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 gave an interview to the Public Radio International program Studio 360 about my activities with the Federal Bar Council presenting reenactments of historical trials, particularly our reenactment of the Julius and Ethel Rosenberg trial. The piece was broadcast June 19, 2009; it can be heard at http://www.studio360.org/episodes/2009/06/1.9.

I was interviewed for a documentary, "The First Amendment Project: Fox v. Franken," which aired on Court TV in 2004. The film was about the case brought by the Fox News Network against Al Franken for using the phrase "Fair and Balanced" in the title of his book, "The Lies and the Lying Liars Who Tell Them: A Fair and Balanced Look at the Right.". The film is publicly available on DVD.

Articles:

Deborah Pines, "U.S. Judge Chin Claims Roots in Southern District," New York Law Journal (1995).

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Molly Gordy, "Pain of Racist 'Toons Wall St. Broker Files Bias Suit," Newsday (1994).

Molly Gordy, "Fed Nominee Denny Chin New Guy on the Bench," Newsday (1994).

Diana Jean Schemo, "Refugees Blocked From Getting Legal Help," N.Y. Times (1993).

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

On August 10, 1994, after Senate confirmation, I was appointed by President Clinton to be United States District Judge for the Southern District of New York. This court is a Federal trial court with jurisdiction over both criminal and civil matters.

a. Approximately how many cases have you presided over that have gone to verdict or judgment?

To date, I have presided over approximately 190 trials. All together I have presided over 4700 civil cases and 665 criminal cases.

i. Of these, approximately what percent were:

jury trials? 90%; bench trials 10% [total 100%]

civil proceedings? 67% (of trials); criminal proceedings? 33% (of trials) [total 100%]

b. Provide citations for all opinions you have written, including concurrences and dissents.

As a District Court judge, I have issued approximately 1,553 opinions (as of October 23, 2009).

I have also authored an additional nine opinions while sitting by designation on the Second Circuit

See the attached listing for all opinions I have written.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

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I have selected five criminal cases and five civil cases. Within each group, they are listed in approximately reverse chronological order.

Criminal

1. United States v. Bernard L. Madoff

In December 2008, Madoff was arrested for securities fraud and related crimes. The case drew world-wide attention, as it involved what many described as the largest Ponzi scheme in history, with losses estimated as high as $50 billion. On March 12, 2009, Madoff pled guilty to all eleven counts of the information. I denied his motion to continue bail pending sentencing and remanded him. Madoff appealed the bail decision, and the Second Circuit affirmed on March 20, 2009. See United States v. Madoff, 316 Fed. Appx. 58 (2d Cir. 2009). On June 29, 2009, I sentenced Madoff to 150 years in prison. He has not appealed.

I issued one opinion, United States v. Madoff, 626 F. Supp. 2d 420 (S.D.N.Y. 2009).

For the Government:	AUSA Lisa Baroni, (212) 637-2405, and AUSA Marc Litt, (212) 637-2295.
For Madoff:	Ira Lee Sorkin, Dickstein Shapiro LLP, (212) 277-6576.

2. United States v. Bashir Noorzai

Noorzai, an Afghan warlord who was the head of a million-person tribe in Afghanistan, was charged with conspiring to import heroin into the United States and distributing and possessing with the intent to distribute heroin. The evidence showed that Noorzai worked with and provided support to the Taliban. I presided over the two-week trial in September 2008, at the conclusion of which the jury returned a guilty verdict on both counts. On April 30, 2009, I sentenced Noorzai to life in prison. He has appealed.

For the Government:	AUSA Anirudh Bansal, (212) 637-2516.
For Noorzai:	Ivan Stephan Fisher, (212) 517-5000.

3. United States v. David Chalmers et al.

In April 2005, the defendants were charged with engaging in a scheme to defraud the United Nations Oil-for-Food Program and the people of Iraq by paying secret and illegal surcharges to the Government of Iraq for the right to participate in the Oil-for-Food Program, thereby obtaining the

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ability to purchase oil from Iraq when they otherwise would have been prohibited by law from doing so. Four indictments were filed in the case, charging six individual defendants and several corporate defendants.

I presided over two trials: defendant Tong Sun Park (a Korean businessman) in June and July 2006 and defendant Oscar S. Wyatt (a prominent Texas oil man) in September and October 2007. Park was convicted by the jury. I sentenced him initially to 60 months in prison, but later reduced the sentence, following his post-sentencing cooperation, to 37 months. In a separate trial, Wyatt pled guilty as the Government was about to complete the presentation of its evidence. I sentenced Wyatt to 1 year and 1 day in prison.

Numerous other defendants in the case pled guilty and were sentenced.

I issued the following opinions in the case: United States v. Tongsun Park, 2009 U.S. Dist. LEXIS 50059 (S.D.N.Y. June 1, 2009); United States v. Chalmers, 2007 U.S. Dist. LEXIS 13640 (S.D.N.Y. Feb. 27, 2007); United States v. Chalmers, 2007 U.S. Dist. LEXIS 13232 (S.D.N.Y. Feb. 26, 2007); United States v. Chalmers, 2007 U.S. Dist. LEXIS 14318 (S.D.N.Y. Feb. 23, 2007); United States v. Chalmers, 474 F. Supp. 2d 555 (S.D.N.Y. 2007); United States v. Chalmers, 2006 U.S. Dist. LEXIS 22107 (S.D.N.Y. Apr. 18, 2006); and United States v. Chalmers, 410 F. Supp. 2d 278 (S.D.N.Y. 2006).

For the Government:	AUSA Edward O'Callaghan (now at Nixon Peabody), (212) 940-3754, AUSA Stephen Miller, and AUSA Michael Farbiarz, (212) 637-1587.
For Wyatt:	Gerald Lawrence Shargel, Law Offices of Gerald L. Shargel, (212) 446-2323.
For Park:	Michael Kim, Kobre & Kim, (212) 488-1200
For Chalmers:	Andrew Weissmann, Jenner & Block LLP, (212)-891-1650; Stephen Ascher, Jenner & Block LLP, (212) 891-1670; Paul Shechtman, Stillman, Friedman & Shechtman, P.C., (212) 223-0200; and Michael J. Gilbert, Dechert, LLP, (212) 698-3886.
For Vincent:	Robert S. Litt, Arnold & Porter, LLP, (202) 942-6380.

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For Irving:	Lawrence S. Lustberg, Gibbons, P.C., (973) 596-4731.
For Dionissiev:	David M. Howard, Dechert, LLP, (212)-698-3500.

4. United States v. Maisonet et al.

This case charged twenty-three defendants -- including the organization's attorney -- with operating a significant heroin enterprise in the Bronx. The charges included murder, racketeering, gun violations, and narcotics trafficking.

Nineteen defendants pled guilty, including Francisco Maisonet (sentenced to 45 years), Jose Maisonet (40 years), Angel Flores (30 years), Alberto Aviles (25 years), Darcel Nelson (20 Years), Guillermo Negron, Jr. (20 years), and Pat Stiso (the attorney who pled guilty to money laundering, sentenced to 87 months).

I conducted three trials in the case, of four defendants. All four were convicted: (1) Miguel Rodriguez, Jr., and Guillermo Negron, Sr. were sentenced to life imprisonment; (2) Kerry Clark was sentenced to 360 months; and (3) Edwin Rivera, who slashed one of the cooperating witnesses, was sentenced to 188 months.

I issued the following decisions in the case: United States v. Clark, 2008 U.S. Dist. LEXIS 47591 (S.D.N.Y. June 12, 2008); United States v. Fernandez, 2006 U.S. Dist. LEXIS 22958 (S.D.N.Y. Apr. 14, 2006); United States v. Maisonet, 2005 U.S. Dist. LEXIS 35638 (S.D.N.Y. Dec. 22, 2005); Negron v. United States, 2005 U.S. Dist. LEXIS 9134 (S.D.N.Y. May 13, 2005); Munoz v. United States, 2003 U.S. Dist. LEXIS 19354 (S.D.N.Y. Oct. 28, 2003); Maisonet v. United States, 2003 U.S. Dist. LEXIS 18704 (S.D.N.Y. Oct. 20, 2003); United States v. Maisonet, 2003 U.S. Dist. LEXIS 11781 (S.D.N.Y. July 9, 2003); Negron v. United States, 2002 U.S. Dist. LEXIS 16591 (S.D.N.Y. Sept. 3, 2002); Fernandez v. United States, 2002 U.S. Dist. LEXIS 15540 (S.D.N.Y. Aug. 20, 2002); Negron v. United States, 2002 U.S. Dist. LEXIS 6921 (S.D.N.Y. Apr. 17, 2002); Nelson v. United States, 2001 U.S. Dist. LEXIS 20518 (S.D.N.Y. Dec. 11, 2001); Ferrer v. United States, 2001 U.S. Dist. LEXIS 15644 (S.D.N.Y. Oct. 2, 2001); Nelson v. United States, 2001 U.S. Dist. LEXIS 9760 (S.D.N.Y. July 12, 2001); Stiso v. U.S., 2001 U.S. Dist. LEXIS 6937 (S.D.N.Y. May 29, 2001); Nelson v. United States, 2001 U.S. Dist. LEXIS 6280 (S.D.N.Y. May 14, 2001); Negron v. United States, 2001 U.S. Dist. LEXIS 4885 (S.D.N.Y. Apr. 19, 2001); Fernandez v. United States, 2001 U.S. Dist. LEXIS 3260 (S.D.N.Y. Mar. 26, 2001); Negron v. United

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States, 2001 U.S. Dist. LEXIS 3261 (S.D.N.Y. Mar. 26, 2001); United States v. Nelson, 1999 U.S. Dist. LEXIS 4444 (S.D.N.Y. Apr. 6, 1999); United States v. Maisonet, 1998 U.S. Dist. LEXIS 9696 (S.D.N.Y. June 30, 1998); and United States v. Stiso, 1998 U.S. Dist. LEXIS 7642 (S.D.N.Y. May 21, 1998).

Where the defendants appealed, the Second Circuit affirmed. United States v. Maisonet, 45 Fed. Appx. 74 (2d Cir. 2002); United States v. Rodriguez, 2000 U.S. App. LEXIS 11015 (2d Cir. May 17, 2000); and United States v. Rodriguez, 213 F.3d 627 (2d Cir. 2000).

For the Government:	AUSA (now S.D.N.Y. Judge) Richard Sullivan, (212) 805-0491 and AUSA John Hillebrecht, (212) 637-2262.
For Miguel Rodriguez:	Alan S. Futerfas, (212) 684-8400
For Darcel Nelson:	Ruth Marjorie Liebesman, (212) 804-5740.
For Stiso:	Benjamin Brafman, (212) 750-7800.
For Clark:	Manuel A. Sanchez, Jr., (718) 892-4471.
For Guillermo Negron, Sr.:	Lawrence D. Gerzog, (212) 486-3003.
For Guillermo Negron, Jr.:	Daniel Nobel, (212) 219-2870.
For Rivera:	John H. Jacobs (contact information unavailable).

5. United States v. Banks et al.

This case involved the Reyes heroin organization, a criminal enterprise that operated in the Bronx. The indictment charged seven defendants with, among other things, conspiracy to commit burglary, conspiracy to commit murder-for-hire, and murder-for-hire. Four defendants pled guilty. I sentenced Robert Banks to 372 months imprisonment and Diego Mojica to 210 months imprisonment. I presided over two trials in this case. The first was a three-week trial, at the end of which a jury convicted defendants Jaime Gomez and Thomas Marmolejas of eight counts of murder, conspiracy, and drug-related offenses. I sentenced Gomez to life plus 10 years imprisonment and Marmolejos to life plus 120 years imprisonment. I also presided over a six-day trial, at the end of which defendant Johnny Martinez was convicted of murder. I sentenced him to a term of imprisonment of life plus 120 months.

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I issued the following opinions in the case: United States v. Gomez, 2009 WL 2330734 (S.D.N.Y. July 30, 2009); United States v. Banks, 2006 U.S. Dist. LEXIS 74914 (S.D.N.Y. Oct. 13, 2006); Marmolejas v. United States, 2006 U.S. Dist. LEXIS 66999 (S.D.N.Y. Sept. 15, 2006); United States v. Gomez, 210 F. Supp. 2d 465 (S.D.N.Y. 2002); and United States v. Banks, 150 F. Supp. 2d 548 (S.D.N.Y. 2001).

At Gomez's trial, I held that Gomez was bound by the terms of his proffer agreement. In an opinion I wrote, 210 F. Supp 2d 465, I explained my reasoning for holding that if Gomez took a position at trial that was inconsistent with statements he had made during proffer sessions, he would open the door, permitting the Government to offer the inconsistent prior proffer statements. Gomez argued that proffer statements could be used only to impeach him if he took the stand and testified contrary to his proffer, relying on United States v. Duffy, 133 F.Supp.2d 213 (E.D.N.Y. 2001). The Second Circuit subsequently reversed Duffy, explicitly citing and relying on my reasoning in the Gomez decision. See United States v. Velez, 354 F.3d 190, 195 (2d Cir. 2004).

The convictions of Gomez and Marmolejas were affirmed by the Second Circuit. United States v. Marmolejas, 112 Fed. Appx. 779 (2d Cir. 2004), cert. denied, 546 U.S. 868 (2005).

Martinez's conviction was also affirmed by the Second Circuit. United States v. Banks, 464 F.3d 184 (2d Cir. 2006), cert. denied, 128 S. Ct. 332 (2007).

For the Government:	AUSA (now S.D.N.Y. Judge) Richard Sullivan, (212) 805-0491 and AUSA (now Bracewell & Guiliani partner) Marc L. Mukasey, (212) 508-6134.
For Gomez:	Lynne F. Stewart (contact information unavailable), Sabrina P. Shroff, Federal Defenders of New York, (212) 417-8700.
For Marmolejas:	Valerie S. Amsterdam (contact information unavailable)
For Martinez:	Bobbi C. Sternheim, (212) 697-4090.

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Civil

1. In re Bank of America Corporation Securities, Derivative & ERISA Litigation

These are thirty-two pending class actions relating to the 2008 merger of Bank of America Corporation with Merrill Lynch & Co., Inc. and public disclosures made in connection with the transaction. Plaintiffs allege violations of the Securities Exchange Act of 1934, breach of fiduciary duty, and violations of ERISA, and allege improprieties based on, among other things, the failure of Bank of America officers to disclose Merrill Lynch's true financial condition prior to the vote on the merger and the payment of purportedly excessive bonuses to certain Merrill Lynch employees.

The cases have been designated as Multi-District Litigation cases and I have been assigned to be the MDL judge.

I consolidated the securities, derivative, and ERISA actions for pre-trial purposes and appointed lead plaintiff and lead counsel for each group. In re Bank of America Corp. Sec., Derivative & ERISA Litigation, --- F.Supp.2d ----, 2009 WL 1875764 (S.D.N.Y. June 30, 2009).

For the plaintiffs: Sean M. Handler, Barroway Topaz Kessler Meltzer & Check LLP, (610) 667-7706; Donald R. Hall, Jr., Frederic Scott Fox, Robert N. Kaplan, Kaplan Fox & Kilsheimer LLP, (212) 687-1980,; Gerald H. Silk, Salvatore J. Graziano, Noam Mandel, Bernstein, Litowitz, Berger & Grossman LLP, (212) 554-1400; Jonathan K. Levine, Girard Gibbs, (212) 867-1721; Jay W. Eisenhofer, Grant & Eisenhofer, P.A., (646) 722-8500; Lewis Kahn, Albert M. Myers, Kevin Oufnac, Michael Swick, Kahn Swick & Foti LLC, (504) 455-1400; Maya Saxena, Saxena White P.A., (561) 394-3399; Robert I. Harwood, Harwood Feffer LLP, (212) 935-7400; Lee Squitieri, Squitieri & Fearon LLP, (212) 421-6492; and Steve W. Berman, Hagens Berman Stobol Shapiro LLP, (206) 623-7292.

For the defendants: Peter C. Hein, Eric M. Roth, Andrew Houston, Jonathan E. Goldin, Keola Robert Whittaker, Wachtell, Lipton, Rosen & Katz,

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(212) 403-1000; Lawrence Portnoy, Charles S. Duggan, Douglas K. Yatter, Davis Polk & Wardwell, (212) 450-4000; Adam S. Hakki, Shearman & Stearling, (212) 848-4000.

2. Wright v. Stern

This was a class action case brought by employees of the New York City Department of Parks and Recreation who claimed that the Parks Department discriminated against them on the basis of race, color, and national origin, and then retaliated against any employees who attempted to oppose the discriminatory practices. The United States also brought suit against the City based on the same alleged acts of discrimination and retaliation. The United States sought only injunctive relief, and its case was settled based on a consent decree. The plaintiffs sought additional injunctive relief as well as damages. I granted a motion for class certification and certified a class consisting of some 3,500 employees or former employees. See Wright v. Stern, 2003 U.S. Dist. LEXIS 11589 (S.D.N.Y. July 9, 2003). I later denied in part and granted in part defendants' motion for summary judgment, concluding that there was abundant evidence in the record – including statistical evidence – from which a reasonable jury could find that the Parks Department had discriminated against its employees. See Wright v. Stern, 450 F. Supp. 2d 335 (S.D.N.Y. 2006). I conducted a number of settlement conferences which resulted in the parties' reaching a settlement that included substantial equitable relief as well as $12 million in compensation to class members and $9 million in attorneys' fees and costs.

For the plaintiffs:	Cynthia Rollings, Beldock, Levine & Hoffman, L.L.P., (212) 490-0400; Jody Lynn Yetzer, Beldock, Levine & Hoffman, L.L.P., (212) 490-0400; Matthew Colangelo, NAACP Legal Defense & Educational Fund, Inc., (212) 965-2268; Steven F. Goldman, Goldman & Goldman (contact information unavailable); Lewis M. Steel, (212) 245-1000.
For the City Defendants:	Barbara Butler (contact information unavailable); Kathleen Marie Comfrey (212) 788-7970.
For the United States:	AUSA Lisa Zornberg, (212) 637-2800, and Ramon Reyes (now Magistrate Judge, EDNY), (718) 613-2120.

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3. Ingles et al. v. City of New York et al.

This was a prisoners' civil rights case in which inmates in the New York City correctional system alleged that they were subjected to a pattern and practice of excessive force by uniformed employees of the New York City Department of Correction ("DOC") in violation of the Eighth and Fourteenth Amendments to the United States Constitution and the laws and Constitution of the State of New York. The prisoners alleged that DOC's officials at twelve New York City correctional institutions violated prisoners' constitutional rights as a matter of course. I certified a class in the case. See Ingles v. City of New York, 2003 U.S. Dist. LEXIS 2453 (S.D.N.Y. Feb. 18, 2003). In an effort to settle case, I conducted eighteen settlement conferences between June 2005 and February 2006. The final settlement agreement, which I approved, not only provided for millions of dollars in monetary relief and attorneys' fees and costs for the plaintiffs but also extensive and far-reaching equitable relief and reforms, including requiring DOC to place hundreds of cameras in certain locations in different facilities.

In addition to this opinion, I issued the following opinions in the case: Ingles v. Toro, 438 F. Supp. 2d 203 (S.D.N.Y. 2006); Ingles v. City of New York, 2005 U.S. Dist. LEXIS 11100 (S.D.N.Y. June 3, 2005); and Ingles v. City of New York, 2004 U.S. Dist. LEXIS 21783 (S.D.N.Y. Oct. 7, 2004).

For the plaintiffs:	John Boston, Jonathan Chasan, Mary Lynne Werlwas, and Madeline DeLone, The Legal Aid Society, Prisoners' Rights Project, (212) 577-3300; Penny Shane, Sullivan & Cromwell, (212) 558-4000; Jonathan Abady, Emery Celli Brinckerhoff & Abady, (212) 763-5000
For the DOC:	Arthur Larkin, New York City Law Department, (212) 788-1599

4. Million Youth March v. Safir et al.

I granted a preliminary injunction sought by the plaintiff, Million Youth March, Inc., ordering the City of New York to grant it a permit for a march and rally in Harlem. The City had declined to grant the permit primarily because of offensive statements the principal of the plaintiff had made at a previous rally. I concluded that the City could not, consistent with the First Amendment, withhold a permit. See Million Youth March, Inc. v. Safir, 63 F. Supp. 2d 381 (S.D.N.Y. 1999). On appeal, the Second Circuit affirmed by summary order. The case received extensive media

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coverage. An excerpt from my opinion was selected by the New York Times as its quote of the day. See N.Y. Times, Sept. 1, 1999, at A1 ("At least as frightening as the rhetoric of Mr. Muhammad is the possibility of a society where the right to speak publicly can be denied on the basis of administrative whim, personal dislike, or disapproval of anticipated content.").

For Million Youth March, Inc.: Jomo Sanga Thomas (contact information unavailable); Malik Z. Shabazz (contact information unavailable); and Roger Spencer Wareham ((contact information unavailable).

For the Government: Robin Binder, New York City Law Department, (212) 788-0818.

5. Doe v. Pataki

The plaintiffs in this case challenged the constitutionality of New York's "Megan's Law" as applied to individuals who committed crimes before the law took effect. I held that the registration provisions of the law did not violate the Constitution but that the notification provisions constituted punishment after-the-fact, in violation of the Ex Post Facto Clause of the Constitution. See Doe v. Pataki, 940 F. Supp. 603 (S.D.N.Y. 1996). The Second Circuit affirmed in part and reversed in part, concluding that the provisions did not constitute punishment. 120 F.3d 1263 (2d Cir. 1997). In later proceedings, plaintiffs also brought a Due Process challenge, and I held that certain aspects of the statute violated the Due Process Clause of the Constitution. See Doe v. Pataki, 3 F. Supp. 2d 456 (S.D.N.Y. 1998). The State did not appeal, and the case eventually settled as the statute was amended to address the Due Process concerns. Subsequent litigation ensued over the interpretation of the consent decree.

In addition to the opinion cited above, I issued the following opinions in the case: Doe v. Pataki, 439 F. Supp. 2d 324 (S.D.N.Y. 2006), and Doe v. Pataki, 427 F. Supp. 2d 398 (S.D.N.Y. 2006), vacated, 120 F.3d 1263 (2d Cir. 1997 (2-1 decision); and Doe v. Pataki, 919 F. Supp. 691 (S.D.N.Y. 1996).

For plaintiffs: Thomas M. O'Brien, The Legal Aid Society, (212) 577-3551.

For the Government: Christine E. Morrison, New York Attorney General's Office, (212) 416-8660.

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d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

I include here two opinions I wrote sitting by designation in the Second Circuit and eight opinions I filed in the District Court. Within each group, they are listed in reverse chronological order. I have not included here decisions issued in the cases listed in response to Question 13(c).

Second Circuit

1. Capobianco v. City of New York, 422 F.3d 47 (2d Cir. 2005) (holding that night blindness was a disability for purposes of Americans with Disabilities Act).

   For plaintiff-appellant: Daniel F. De Vita, (516) 622-7575.

   For defendants-appellees: Peter Rahbar, now of Hearst Corporation, (212) 649-2015; Kristin M. Helmers, NYC Law Department, (212) 788-0303 (on the brief).

2. Stratton v. Dep't for the Aging for City of New York, 132 F.3d 869 (2d Cir. 1997) (affirming judgment in favor of plaintiff in age discrimination case).

   For plaintiff-appellee: Jeffrey C. Slade; Andrew D. Herz; Mark J. Stratton, contact information not available.

   For defendants-appellants: Jane L. Gordon, Barry P. Schwartz, NYC Law Department, (212) 788-0303.

District Court

3. United States v. Levy, 594 F. Supp. 2d 427 (S.D.N.Y. 2009) (following conviction of defendant by jury for production and distribution of child pornography, denying motion for judgment of acquittal and discussing evidentiary issues in child pornography cases; defendant thereafter sentenced to 30 years imprisonment).

   For the Government: AUSA Harry Chernoff, (212) 637-2481, AUSA Adam Hickey, (212) 637-1039.

   For defendant: Ira London, (212) 683-8000.

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4. Conradt v. NBC Universal, Inc., 536 F. Supp. 2d 380 (S.D.N.Y. 2008) (denying in part and granting in part motion to dismiss claims brought by estate of prosecutor who committed suicide as he was about to be arrested for soliciting a minor in connection with filming for NBC television show "To Catch A Predator"; case thereafter settled).

For plaintiff:	Bruce Baron, Baron Associates P.C., (718) 934-6501.
For defendant:	Lee Levine, Amanda M. Leith, Levine Sullivan Koch & Schulz LLP, (212) 850-6100; Hilary Lane, Susan Weiner, NBC Universal, Inc., (212) 664-2806.

5. United States v. Finnerty, 474 F. Supp. 2d 530 (S.D.N.Y. 2007) (setting aside jury verdict and granting judgment of acquittal in criminal cases against New York Stock Exchange trader), aff'd, 533 F.3d 143 (2d Cir. 2008).

For the Government:	AUSA Lauren Goldberg, (212) 637-1040, AUSA Anirudh Bansal, (212) 637-2516.
For defendant:	Frederick P. Hafetz, Tracy E. Sivitz, Hafetz & Necheles, (212) 997-7595.

6. Lippe v. Bairnco Corp., 288 B.R. 678 (S.D.N.Y. 2003) (granting Daubert motion in complex fraudulent conveyances case), aff'd, 99 Fed. Appx. 274 (2d Cir. 2004).

For plaintiffs:	Stanley J. Levy, Levy Phillips & Konigsberg, LLP, (212) 605-6200; Brian T. FitzPatrick, current contact information not available; David R. Gross, Geoffrey Gaulkin, James H. Gianninoto, Saiber Schlesinger Satz & Goldstein, LLC, (212) 461-2323; Kathleen Marchetti, City of Newark Law Department, (973) 733-3880.
For defendants:	John H. Hall, Steven Klugman, Jeremy Feigelson, Jennifer R. Cowan, Debevoise & Plimpton, (212) 909-6000; Jeffrey I. Lang, Quinn Emanuel, (212) 849-7000; Caroline H. Luckenbach, current contact information not available; Irwin J. Sugarman, current contact information not available, Michael S. Chernis, current contact information not

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available, Charles F. Rysavy, K&L Gates LLP, (973) 848-4053; Alissa Pyrich, McCarter & English, LLP, (212) 609-6800.

7. Morales v. Portuondo, 154 F. Supp. 2d 706 (S.D.N.Y. 2001) (granting habeas petition and ordering release of defendant who had been incarcerated for some twelve years after priest came forward to disclose confession by real murderer, who had since died, who absolved defendant).

For petitioner: Randa D. Maher, (516) 487-7460; Jeffrey Pittell, (516) 829-2299.

For respondent: Joseph N. Ferdenzi, Cheryl D. Harris, Allen P.W. Karen, Bronx County District Attorney's Office, (718) 590-2000.

8. In re Grand Jury Subpoenas dated March 9, 2001, 179 F. Supp. 2d 270 (S.D.N.Y. 2001) (in connection with grand jury investigation into President Clinton's granting of pardon to fugitive Marc Rich, holding that lawyers acted as lobbyists and not as attorneys and therefore their communications were not protected by attorney-client privilege or work-product doctrine).

For the Government: AUSA Evan T. Barr, now of Steptoe & Johnson LLP, (212) 506-3900; AUSA Jonathan N. Halpern, now of Bracewell & Giuliani LLP, (212) 508-6100.

For Marc Rich: Laurence A. Urgenson, Kirkland & Ellis, (202) 879-5000.

For Respondents: Audrey Strauss, Fried Frank Harris Shriver & Jacobson, (212) 859-8000; John S. Siffert, Lankler Siffert & Wohl LLP, (212) 921-8399; Peter Chavkin, now of Mintz Levin Cohn Ferris Glovsky & Popeo PC, (212) 935-3000; Frederick P. Hafetz, Hafetz & Necheles, (212) 997-7595; David Ellenhorn, current contact information not available; Jonathan Lupkin, now of Flemming Zulack Williamson Zauderer LLP, (212) 412-9500.

9. Application of Blondin v. Dubois, 78 F. Supp. 2d 283 (S.D.N.Y. 2000) (denying petition under the Hague Convention for the return of two children to France, applying "grave risk" of psychological or physical

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harm exception; this decision essentially set the standard for invoking the grave risk exception and has been followed in other cases), aff'd, 238 F.3d 153 (2d Cir. 2001).

For petitioner:	Valerie S. Wolfman, (212) 752-3380; Sanford Hausler, Cox Padmore Skolnik & Shakarchy LLP, (866) 716-3813.
For respondent:	Leonard F. Joy, now of Federal Defenders of New York, (212) 417-8700.
For the Government:	AUSA Wendy H. Schwartz, now of Reed Smith, (212) 521-5400.

10. Macdraw, Inc. v. CIT Group Equipment Financing, Inc., 994 F. Supp. 447 (S.D.N.Y. 1997) (imposing sanctions on two attorneys for questioning my impartiality based on my race), aff'd, 138 F.3d 33 (2d Cir. 1998), cert. denied, In re Klayman, 525 U.S. 874 (1998).

For respondents:	Ramsey Clark, Lawrence W. Schilling, (212) 475-3232.
For plaintiff:	Larry Klayman, now of Klayman Law Firm, (305) 579-3455; Paul J. Orfanedes, now of Judicial Watch, (202) 646-5172.
For defendants:	Susan G. Rosenthal, current contact information not available; Jeffrey H. Weinberger, current contact information not available.

e. Provide a list of all cases in which certiorari was requested or granted.

I have presided over two cases that have been reviewed by the Supreme Court.

The first was Wal-Mart Stores, Inc. v. Samara Bros., Inc., 529 U.S. 205 (2000), reversing 165 F.3d 120 (2d Cir. 1998), affirming in part and reversing in part 969 F. Supp. 895 (S.D.N.Y. 1997).

In the second case, the Supreme Court granted certiorari in Bank of China, New York Branch v. NBM LLC, 545 U.S. 1138 (2005), then dismissed the writ in 546 U.S. 1026 (2005), as the case was rendered moot when I tried the case a second time and the second jury returned a verdict substantially similar to the first verdict. The case was on appeal from two decisions of the Second Circuit: 359 F.3d 171 (2d Cir. 2004), vacating and remanding 2002 WL 31027551 (S.D.N.Y.

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Sept. 11, 2002), and 89 Fed. Appx. 751 (2d Cir. 2004). On remand, I issued 2004 WL 1907308 (Aug. 26, 2004), affirmed 243 Fed. Appx. 652 (2d Cir. 2007).

To my knowledge, certiorari has not been directly sought from one of my decisions. I have not kept a comprehensive list of cases in which certiorari was requested from a decision of the Second Circuit reviewing my cases or decisions. Certiorari has undoubtedly been sought in criminal cases over which I presided, but, to my knowledge, it has never been granted. I am aware that the Supreme Court has denied certiorari in, inter alia:

Twentieth Century Fox Film Corp. v. Cablevision Sys. Corp., 478 F. Supp. 2d 607 (S.D.N.Y. 2007), reversed in part and vacated in part Cartoon Network LP, LLLP v. CSC Holdings, Inc., 536 F.3d 121 (2d Cir. 2008), certiorari denied Cable News Network, Inc. v. CSC Holdings, Inc., -- S. Ct. -- 2009 WL 1835220 (June 29, 2009);

Korsinsky v. U.S. Environmental Protection Agency, 2005 WL 1423345 (S.D.N.Y. Jun 16, 2005), affirmed 192 Fed.Appx. 42 (2d Cir. 2006), certiorari denied 549 U.S. 1181 (2007);

In re Sunbeam Corp., 2004 WL 136941 (S.D.N.Y. Jan. 27, 2004), affirmed 178 Fed. Appx. 73 (2d Cir. 2006), certiorari denied Robinson v. Sunbeam Corp., 549 U.S. 946 (2006);

In re Merchants & Mfrs, Inc., 1999 WL 4929 (S.D.N.Y. Jan. 5, 1999), affirmed 198 F.3d 235 (2d Cir.), certiorari denied Feldman v. Skadden, Arps, Slate, Meagher & Flom, 530 U.S. 1214 (2000);

Macdraw, Inc. v. CIT Group Equipment Financing, Inc., 994 F. Supp. 447 (S.D.N.Y. 1997), affirmed 138 F.3d 33 (2d Cir. 1998), certiorari denied In re Klayman, 525 U.S. 874 (1998);

Rocanova v. United States, 955 F. Supp. 27 (S.D.N.Y. 1996), affirmed 109 F.3d 127 (2d Cir. 1997), certiorari denied 522 U.S. 821 (1997);

United States v. Regan, 897 F. Supp. 748 (S.D.N.Y. 1995), affirmed 103 F.3d 1072 (2d Cir. 1997), certiorari denied 521 U.S. 1106 (1997).

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

I have been reversed in whole or in part approximately 41 times:

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1. Hevner v. Vill. E. Towers, Inc., 293 Fed. Appx. 56 (2d Cir. 2008), vacating my dismissal of a pro se plaintiff's case for failure to prosecute under Federal Rule of Civil Procedure 41(b).

2. Cartoon Network LP, LLLP v. CSC Holdings, Inc., 536 F.3d 121 (2d Cir. 2008), reversing and vacating 478 F. Supp. 2d 607 (S.D.N.Y. 2007). I granted summary judgment to plaintiffs in a complex copyright case involving digital video recorders, and the Second Circuit reversed. The Supreme Court recently denied cert.

3. L-3 Communs. Corp. v. OSI Sys., 283 Fed. Appx. 830 (2d Cir. 2008), reversing 2005 U.S. Dist. LEXIS 4935 (S.D.N.Y. March 28, 2005). I granted partial summary judgment to the defendant, concluding as a matter of law that the plaintiff owed the defendant a fiduciary duty. The case was thereafter reassigned to another judge, who tried the case. On appeal following a verdict in favor of defendant, the Second Circuit reversed, holding that I had erred in concluding as a matter of law that plaintiff owed a fiduciary duty to defendant.

4. In re M/V DG Harmony, 518 F.3d 106 (2d Cir. 2008), affirming in part, reversing in part, and vacating in part, 394 F. Supp. 2d 649 (S.D.N.Y. 2005). The Second Circuit substantially affirmed my decision in this highly complex, non-jury admiralty case, but remanded for consideration of one issue.

5. Grace v. Corbis-Sygma, 487 F.3d 113 (2d Cir. 2007), vacating and remanding 403 F. Supp. 2d 337 (S.D.N.Y. 2005). The Second Circuit remanded for me to recalculate the damages I had awarded to the plaintiff following a bench trial.

6. Doe v. Pataki, 481 F.3d 69 (2d Cir. 2007), vacating, 2-1, 439 F. Supp. 2d 324 (S.D.N.Y. 2006) and 427 F. Supp. 2d 398 (S.D.N.Y. 2006). The Second Circuit disagreed with my interpretation of a stipulation of settlement regarding New York's Sex Offender Registration Act.

7. Williams v. New York City Hous. Auth., Local 237, 211 Fed. Appx. 22 (2d Cir. 2006), reversing 2006 U.S. Dist. LEXIS 3580 (S.D.N.Y. Jan. 31, 2006). The Second Circuit held that I misapplied the res judicata effect of an earlier ruling.

8. Paese v. Hartford Life & Accident Ins. Co., 449 F.3d 435 (2d Cir. 2006), affirming in part and vacating in part 2004 U.S. Dist. LEXIS 6040 (S.D.N.Y. Apr. 8, 2004). The Second Circuit affirmed my award to the plaintiff after a bench trial, but vacated the amount of damages.

9. United States v. Temple, 447 F.3d 130 (2d Cir. 2006), reversing 342 F. Supp. 2d 233 (S.D.N.Y. 2004). Following the defendant's conviction by a jury, I granted her motion for a judgment of acquittal as to one of the counts, but denied it and her motion for a new trial as to the other count. The Second Circuit reversed both decisions.

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10. Consol. Edison Co. of N.Y., Inc. v. UGI Utils., Inc., 423 F.3d 90 (2d Cir. 2005), reversing 310 F. Supp. 2d 592 (S.D.N.Y. 2004). I granted summary judgment to the defendant in this case brought under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. The Second Circuit reversed.

11. Wiggins v. United States, 138 Fed. Appx. 369 (2d Cir. 2005). The Second Circuit vacated my denial of the plaintiff's motion for early termination of supervised release, and remanded for me to consider more thoroughly the statutory factors.

12. Rubens v. Mason, 387 F.3d 183 (2d Cir. 2004), affirming in part, vacating in part, and remanding in part 2003 U.S. Dist. LEXIS 17200 (S.D.N.Y. Sept. 30, 2003). The Second Circuit reversed on the ground that I should not have considered a certain affidavit on summary judgment as it was, in the Second Circuit's view, inadmissible.

13. McMahon v. Hodges, 382 F.3d 284 (2d Cir. 2004), reversing 225 F. Supp. 2d 357, 359 (S.D.N.Y. 2002). I had granted the petitioner's writ of habeas corpus, and the Second Circuit reversed.

14. PenneCom B.V. v. Merrill Lynch & Co., 372 F.3d 488 (2d Cir. 2004), reversing 2003 U.S. Dist. LEXIS 11229 (S.D.N.Y. June 30, 2003). I had granted the defendants' motion to dismiss on the basis of collateral estoppel. The Second Circuit reversed, holding that the dismissal was premature.

15. United States v. Leung, 360 F.3d 62 (2d Cir. 2004). The Second Circuit substantially affirmed but vacated the sentence and remanded for me to consider whether the defendant was entitled to a reduction for acceptance of responsibility, and whether a grouping analysis was warranted.

16. Bank of China v. NBM LLC, 359 F.3d 171 (2d Cir. 2004), vacating and remanding 2002 U.S. Dist. LEXIS 16979 (S.D.N.Y. Sept. 10, 2002). The Second Circuit reversed because it concluded that an instruction I had given the jury in this civil RICO case was erroneous. The Supreme Court granted certiorari to consider the Second Circuit's decision, but while the cert petition was pending, I re-tried the case. The second jury returned a substantially similar verdict and the cert petition was thus withdrawn as moot.

17. United States v. Rizzo, 349 F.3d 94 (2d Cir. 2003). The Second Circuit remanded for me to resentence the defendant without a sentencing enhancement I had applied on the ground that the enhancement was not sufficiently supported by the evidence.

18. Storey v. Cello Holdings, L.L.C., 347 F.3d 370 (2d Cir. 2003), vacating and remanding 182 F. Supp. 2d 355 (S.D.N.Y. 2002). I granted plaintiffs' motion for

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summary judgment and sanctions in this trademark case, and the Second Circuit vacated and remanded.

19. ACE Capital Re Overseas Ltd. v. Cent. United Life Ins. Co., 307 F.3d 24 (2d Cir. 2002), vacating and remanding 2001 U.S. Dist. LEXIS 18447 (S.D.N.Y. Nov. 9, 2001). I had granted the plaintiff's motion to stay arbitration. The Second Circuit vacated and remanded with instructions to compel arbitration.

20. Harris Trust & Sav. Bank v. John Hancock Mut. Life Ins. Co., 302 F.3d 18 (2d Cir. 2002), affirming in part, reversing in part, vacating in part, and remanding 122 F. Supp. 2d 444 (S.D.N.Y. 2000). After a bench trial, I awarded plaintiff $84.88 million in this ERISA case. The Second Circuit vacated most of my findings and conclusions.

21. Excimer Assocs. v. LCA Vision, Inc., 292 F.3d 134 (2d Cir. 2002), vacating and remanding 197 F.R.D. 90 (S.D.N.Y. 2000). The Second Circuit vacated my conclusion that one of the parties lacked standing to assert a claim.

22. Phifer v. City of New York, 289 F.3d 49 (2d Cir. 2002), affirming in part, reversing in part, and remanding 1999 U.S. Dist. LEXIS 14436 (S.D.N.Y. Sept. 16, 1999) and 2001 U.S. Dist. LEXIS 11 (S.D.N.Y. Jan. 3, 2001). I had dismissed the plaintiff's civil rights case for lack of subject matter jurisdiction. The Second Circuit affirmed part of my decision, but reversed other parts, concluding that I had subject matter jurisdiction over some of the conduct underlying the plaintiff's complaint.

23. Revson v. Cinque & Cinque, P.C., 221 F.3d 59 (2d Cir. 2000) and 221 F.3d 71 (2d Cir. 2000), affirming in part and reversing in part 70 F. Supp. 2d 415 (S.D.N.Y. 1999). After a jury trial, I dismissed the plaintiff's claims for a declaratory judgment and monetary relief against the defendant law firm, and ordered the plaintiff to pay the law firm $732,370 for the value of the legal services rendered. The Second Circuit affirmed in part, vacated in part, and remanded for a new trial. The Second Circuit also reversed my imposition of sanctions on plaintiff's counsel.

24. Celle v. Filipino Reporter Enters., 209 F.3d 163 (2d Cir. 2000), affirming in part and reversing in part the jury's verdict in this libel case.

25. Flamm v. Am. Ass'n of Univ. Women, 201 F.3d 144, 147 (2d Cir. 2000), reversing and remanding 28 F. Supp. 2d 185 (S.D.N.Y. 1998). In this libel case, I had granted the defendants' motion to dismiss the plaintiff's libel case on the ground that the challenged statement could not reasonably be construed as a statement of fact, and the Second Circuit reversed.

26. Levinson v. Cello Music & Film Sys., 1999 U.S. App. LEXIS 26871 (2d Cir. Oct. 22, 1999). The Second Circuit vacated a preliminary injunction I had

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granted, on the ground that the plaintiff had failed to demonstrate irreparable harm.

27. Schlaifer Nance & Co. v. Estate of Warhol, 194 F.3d 323 (2d Cir. 1999), reversing 7 F. Supp. 2d 364 (S.D.N.Y. 1998). I granted the defendant's motion for sanctions against the plaintiffs, and the Second Circuit reversed.

28. Blondin v. Dubois, 189 F.3d 240 (2d Cir. 1999), vacating and remanding 19 F. Supp. 2d 123 (S.D.N.Y. 1998). The case involved the Hague Convention on the Civil Aspects of International Child Abduction. I was later affirmed on my post-remand decision. 238 F.3d 153 (2d Cir. 2001)

29. United States v. Morales, 185 F.3d 74 (2d Cir. 1999), affirming in part, reversing in part, vacating in part, and remanding 974 F. Supp. 315 (S.D.N.Y. 1997). The Second Circuit vacated in part the defendants' convictions, following a jury trial, on the ground that the convictions for racketeering were not supported by the evidence.

30. Selletti v. Carey, 173 F.3d 104 (2d Cir. 1999), affirming in part, vacating in part, and remanding 173 F.R.D. 96 (S.D.N.Y. 1997), 174 F.R.D. 311 (S.D.N.Y. 1997), and 177 F.R.D. 189 (S.D.N.Y. 1998). The Second Circuit vacated my decision to dismiss the plaintiff's case on the ground that he would be unable to comply with an order of sanctions I had imposed.

31. United States v. Avila-Ramirez, 170 F.3d 277 (2d Cir. 1999), vacating a sentence I had imposed on the ground that it violated the ex post facto clause.

32. United States v. Castillo, 1999 U.S. App. LEXIS 2646 (2d Cir. Feb. 19, 1999), vacating and remanding a sentence due to a clerical error in the amount of the special assessment.

33. Samara Bros. v. Wal-Mart Stores, 165 F.3d 120 (2d Cir. 1998), 2-1, affirming in part, reversing in part, and remanding 969 F. Supp. 895 (S.D.N.Y. 1997). I had denied the defendant's motion for judgment as a matter of law following a jury trial in this intellectual property case. The Second Circuit reversed, 2-1. The Supreme Court subsequently reversed the Second Circuit. 529 U.S. 205 (2000).

34. Mount Vernon Fire Ins. Co. v. Congregation Kehilath Yakov, 1998 U.S. App. LEXIS 12946 (2d Cir. May 29, 1998), vacating and remanding my grant of summary judgment to plaintiff in this insurance case.

35. Marfia v. T.C. Ziraat Bankasi, 147 F.3d 83 (2d Cir. 1998), affirming in part, vacating in part, and remanding 968 F. Supp. 152 (S.D.N.Y. 1997). The Second Circuit only vacated that portion of my decision relating to prejudgment interest.
36. Beaman v. Coombe, 1998 U.S. App. LEXIS 12610 (2d Cir. May 13, 1998), affirming in part, vacating in part, and remanding 1997 U.S. Dist. LEXIS 13079

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(S.D.N.Y. Aug. 27, 1997). I granted the defendant's motion to dismiss the complaint, and the Second Circuit substantially affirmed but reversed as to one of the claims.

37. Moore v. National Pension Fund, 1997 U.S. App. LEXIS 26305 (2d Cir. Sept. 22, 1997), affirming in part and reversing in part 1997 U.S. Dist. LEXIS 4291 (S.D.N.Y. April 7, 1997). I granted the defendants' motion to dismiss in this ERISA case. The Second Circuit substantially affirmed but vacated and remanded as to one of the claims.

38. LoPresti v. Terwilliger, 126 F.3d 34 (2d Cir. 1997). The Second Circuit affirmed in part and reversed in part my judgment following a bench trial in this ERISA case.

39. Doe v. Pataki, 120 F.3d 1263 (2d Cir. 1997), affirming in part, reversing in part, and remanding 940 F. Supp. 603 (S.D.N.Y. 1996). This case involved the interpretation of New York's Sex Offender Registration Act. I held that enforcement of one of its provisions violated the ex post facto clause of the Constitution, and the Second Circuit

40. O'Brien v. Alexander, 101 F.3d 1479 (2d Cir. 1996), affirming in part, reversing in part, and remanding 898 F. Supp. 162 (S.D.N.Y. 1995). I had dismissed plaintiff's complaint and imposed sanctions. The Second Circuit affirmed my dismissal of the complaint but reversed in part on the imposition of sanctions.

41. United States ex rel. Evergreen Pipeline Constr. Co. v. Merritt Meridian Constr. Corp., 95 F.3d 153 (2d Cir. 1996), affirming in part, reversing in part, and remanding 890 F. Supp. 1213 (S.D.N.Y. 1995). Following a jury trial in this construction case, I denied the defendant's motion for judgment as a matter of law. I had also dismissed two of the plaintiff's claims. The Second Circuit reversed parts of those decisions.

I cannot recall any instance in which the Second Circuit affirmed a decision of mine with significant criticism of my rulings.

g. Provide 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.

Nearly all of my decisions that address a significant issue and/or resolve a dispositive motion are decided by issuance of a memorandum decision or a published opinion. All memorandum decisions and opinions are published electronically on Westlaw and Lexis. A very small number of substantive decisions are decided by brief order or via oral opinions issued from the bench. My decisions on scheduling, deadlines, discovery disputes, and other matters are

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generally resolved by unpublished order. These orders, however, are docketed and publicly accessible through the court's Electronic Case Filing system.

h. Provide 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, provide copies of the opinions.

Henry v. Ashcroft, 175 F.Supp.2d 688 (S.D.N.Y. 2001).

Morales v. Portuondo, 154 F.Supp.2d 706 (S.D.N.Y. 2001).

World Wrestling Federation Entertainment, Inc. v. Bozell, 142 F.Supp.2d 514 (S.D.N.Y. 2001).

Million Youth March, Inc. v. Safir, 63 F. Supp. 2d 381 (S.D.N.Y. 1999), affirmed by summary order.

Doe v. Pataki, 3 F. Supp. 2d 456 (S.D.N.Y. 1998).

Doe v. Pataki, 940 F. Supp. 603 (S.D.N.Y. 1996), aff'd in part and rev'd in part, 120 F.3d 1263 (2d Cir. 1997).

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have sat by designation in the Second Circuit many times, including in the following cases:

U.S. v. Carreto, 2009 WL 3200754 (2d Cir. October 8, 2009)
In re Halpin, 566 F.3d 286 (2d Cir. 2009)
U.S. v. Kopp, 562 F.3d 141 (2d Cir. 2009)
U.S. v. Minaya, 2009 WL 909663 (2d Cir. April 1, 2009)
Rubin Squared, Inc. v. Cambrex Corp., 2009 WL 765008 (2d Cir. March 25, 2009)
Bikman v. Fisher, 316 Fed.Appx. 13 (2d Cir. 2009)
Napolitano v. Saltzman, 315 Fed.Appx. 351 (2d Cir. 2009)
Olson v. New York, 315 Fed.Appx. 361 (2d Cir. 2009)
U.S. v. Martinez, 313 Fed.Appx. 412 (2d Cir. 2009)
Consolie v. Wal-Mart Stores, Inc., 2009 WL 579422 (2d Cir. March 4, 2009)
Frankel v. Cole, 313 Fed.Appx. 418 (2d Cir. 2009)
Orix Financial Services v. Kielbasa, 2009 WL 579468 (2d Cir. March 4, 2009)
Fernicola v. Toyota Motor Corp., 313 Fed.Appx. 408 (2d Cir. 2009)
Industrial Risk Insurers v. Port Authority of New York and New Jersey, 296 Fed.Appx. 169 (2d Cir. 2008)

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Pinkney v. EMI Music Pub., Inc., 296 Fed.Appx. 186 (2d Cir. 2008)
Hattem v. Schwarzenegger, 449 F.3d 423 (2d Cir. 2006)
Alliance Bernstein Inv. Research and Management, Inc. v. Schaffran, 445 F.3d 121 (2d Cir. 2006)
Davis v. Herbert, 170 Fed.Appx. 763 (2d Cir. 2006)
Joseph v. Worldwide Flight Services, Inc., 170 Fed.Appx. 771 (2d Cir. 2006)
Vermont Country Foods, Inc. v. So-Pak-Co., Inc., 170 Fed.Appx. 756 (2d Cir. 2006)
U.S. v. Edouard, 170 Fed.Appx. 769 (2d Cir. 2006)
Dong v. Bureau of Citizenship and Immigration Services, 171 Fed.Appx. 373 (2d Cir. 2006)
U.S. v. Knauss, 170 Fed.Appx. 772 (2d Cir. 2006)
G. Simons & Co. S.A. v. United Transport Associates, Ltd., 170 Fed.Appx. 770 (2d Cir. 2006)
Lake v. Greiner, 169 Fed.Appx. 606 (2d Cir. 2006)
Maron v. County of Albany, 166 Fed.Appx. 540 (2d Cir. 2006)
Jian Ren Huang v. Gonzales, 166 Fed.Appx. 576 (2d Cir. 2006)
Capobianco v. City of New York, 422 F.3d 47 (2d Cir. 2005)
U.S. v. Lake, 419 F.3d 111 (2d Cir. 2005)
Dhoumo v. Board of Immigration Appeals, 416 F.3d 172 (2d Cir. 2005)
Sheng v. U.S. Dept. of Justice, 139 Fed.Appx. 353 (2d Cir. 2005)
Wiggins v. U.S., 138 Fed.Appx. 369 (2d Cir. 2005)
U.S. v. Barresi, 138 Fed.Appx. 378 (2d Cir. 2005)
Hossain v. Gonzales, 137 Fed.Appx. 421 (2d Cir. 2005)
Gao v. U.S. Dept. of Justice, 136 Fed.Appx. 445 (2d Cir. 2005)
Hassan v. U.S. Dept. of Veterans Affairs, 137 Fed.Appx. 418 (2d Cir. 2005)
Singh v. Board of Immigration Appeals, 136 Fed.Appx. 440 (2d Cir. 2005)
Luna v. Pico, 356 F.3d 481 (2d Cir. 2004)
Silvels v. New York, 81 Fed.Appx. 361 (2d Cir. 2003)
U.S. v. Baez, 349 F.3d 90 (2d Cir. 2003)
U.S. v. Porges, 80 Fed.Appx. 130 (2d Cir. 2003)
Partsinevelos v. Tropical Machines, Inc., 78 Fed.Appx. 782 (2d Cir. 2003)
Fernandez v. Artuz, 82 Fed.Appx. 48 (2d Cir. 2003)
Norton-Griffiths v. Charter One Bank, 20 Fed.Appx. 64 (2d Cir. 2001)
U.S. v. Chavez, 267 F.3d 76 (2d Cir. 2001)
U.S. v. Learner, 20 Fed.Appx. 18 (2d Cir. 2001)
Hizbullahankhamon v. Walker, 255 F.3d 65 (2d Cir. 2001)
Gorman-Bakos v. Cornell Co-op Extension of Schenectady County, 252 F.3d 545 (2d Cir. 2001)
In re Ishihara Chemical Co., 251 F.3d 120 (2d Cir. 2001)
U.S. v. Gregory, 245 F.3d 160 (2d Cir. 2001)
Rodriguez v. Greenfield, 7 Fed.Appx. 42 (2d Cir. 2001)
Turnage v. Tarzia, 7 Fed.Appx. 27 (2d Cir. 2001)
U.S. v. Miller, 7 Fed.Appx. 59 (2d. Cir. 2001)
Woodford v. Community Action Agency of Greene County, Inc., 239 F.3d 517 (2d Cir. 2001)

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U.S. v. Morales, 239 F.3d 113 (2d Cir. 2000)
Lawson v. City of Ansonia, 234 F.3d 1262 (2d Cir. 2000)
Librera v. Librera, 234 F.3d 1262 (2d Cir. 2000)
Adjustrite Systems, Inc. v. GAB Business Services, Inc., 145 F.3d 543 (2d Cir. 1998)
Muller on Behalf of Muller v. Committee on Special Educ. of East Islip Union Free School Dist., 145 F.3d 95 (2d Cir. 1998)
LeBlanc-Sternberg v. Fletcher, 143 F.3d 748 (2d Cir. 1998)
LeBlanc-Sternberg v. Fletcher, 143 F.3d 765 (2d Cir. 1998)
U.S. v. Paredes-Batista, 140 F.3d 367 (2d Cir. 1998)
L.B. Foster Co. v. America Piles, Inc., 138 F.3d 81 (2d Cir. 1998)
U.S. v. Avellino, 136 F.3d 249 (2d Cir. 1998)
Bavaro v. Pataki, 130 F.3d 46 (2d Cir. 1997)
U.S. v. Keith, 133 F.3d 908 (2d Cir. 1997)
Oblin Homes, Inc. v. Village of Dobbs Ferry, 133 F.3d 907 (2d Cir. 1997)
Stratton v. Department for the Aging for City of New York, 132 F.3d 869 (2d Cir. 1997)
Glendora v. Tele-Communications, Inc., 129 F.3d 113 (2d Cir. 1997)
Glendora v. Marshall, 129 F.3d 113 (2d Cir. 1997)
Brown v. Metro-North Commuter R.R., 129 F.3d 113 (2d Cir. 1997)
Computer Associates Intern., Inc. v. Altai, Inc., 126 F.3d 365 (2d Cir. 1997)
Ching Sheng Fishery Co., Ltd. v. U.S., 124 F.3d 152 (2d Cir. 1997)
Beller & Keller v. Tyler, 120 F.3d 21 (2d Cir. 1997)
U.S. v. Grisanti, 116 F.3d 984 (2d Cir. 1997)
Shumway v. United Parcel Service, Inc., 118 F.3d 60 (2d Cir. 1997)
Hynes v. Drake, 111 F.3d 283 (2d Cir. 1997)
Coggins v. 297 Lenox Realty Co., 108 F.3d 1369 (2d Cir. 1997)
U.S. v. Ko, 108 F.3d 1370 (2d Cir. 1997)
U.S. v. Ige, 108 F.3d 1370 (2d Cir. 1997)
Gordon v. Board of Educ. for City of New York, 108 F.3d 1369 (2d Cir. 1997)
Phillips v. Kidder Peabody & Co., Inc., 108 F.3d 1370 (2d Cir. 1997)

I have written nine opinions (all majority opinions) when sitting by designation in the Second Circuit:

U.S. v. Carreto, 2009 WL 3200754 (2d Cir. October 8, 2009)
Alliance Bernstein Inv. Research & Mgt., Inc. v. Schaffran, 445 F.3d 121 (2d Cir. 2006)
Capobianco v. City of New York, 422 F.3d 47 (2d Cir. 2005)
Luna v. Pico, 356 F.3d 481 (2d. Cir. 2004)
In re Ishihara Chemical Co., 251 F.3d 120 (2d Cir. 2001)
U.S. v. Gregory, 245 F.3d 160 (2d Cir. 2001)
Adjustrite Systems, Inc. v. GAB Business Services, Inc., 145 F.3d 543 (2d Cir. 1998)
Muller on Behalf of Muller v. Committee on Special Educ. of East Islip Union Free School Dist., 145 F.3d 95 (2d Cir. 1998)

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Stratton v. Department for the Aging for City of New York, 132 F.3d 869 (2d. Cir. 1997)

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (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.) 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 in which you have recused yourself sua sponte. 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 routinely recused myself from cases where my wife's law firm, Cadwalader, Wickersham & Taft, has appeared. I have not kept a list of these cases.

    For my first ten years on the bench, I recused myself from cases involving my former law firm, Vladeck, Waldman, Elias & Engelhard. In the last five years, I would disclose my former relationship and recuse myself if there was any objection to my hearing the case. In only one case was recusal requested on this basis, and I recused myself. I do not recall the name of the case.

    In Macdraw v. CIT, discussed above, counsel for the losing party questioned my fairness based on my race. I imposed sanctions and the Second Circuit affirmed. The Supreme Court denied a petition for certiorari.

    In another case, the name of which I do not recall, a lawyer moved for my recusal on the basis that I was "too hard" on him after I criticized him after he admitted that he had failed to research a legal proposition that he had gotten wrong. I denied the motion, ruling from the bench. The case settled, and there was no appeal.

    In McNamara v. Tourneau, a pro se plaintiff in an employment discrimination case moved for my recusal twice on the grounds that I was biased against him. I denied the motions. See McNamara v. Tourneau, Inc., 496 F. Supp. 2d 366, 374

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(S.D.N.Y. 2007); McNamara v. Tourneau, Inc., 464 F. Supp. 2d 232, 235 n.4 (S.D.N.Y. 2006). My decisions were affirmed. 2009 WL 1674408 (2d Cir. June 16, 2009).

In Bank of China v. NBM LLC, 89 Fed. Appx. 751 (2d Cir. 2004), on appeal from a judgment of some $106 million entered against them following a jury trial, defendants-appellants argued that I should have recused myself because I had once met one of the defendants at a function. The Second Circuit rejected the argument because no motion had been made for my recusal before me and because there was no basis for recusal. The case was remanded on other grounds, and on remand the defendants moved for my recusal on the same basis. I denied the motion. The Second Circuit affirmed. Bank of China, New York Branch v. Bank of China, Hong Kong Branch, 243 Fed. Appx. 652 (2d Cir. 2007).

15. **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.

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, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

My only role in any political campaign is as follows: In mid-1989, I participated in organizing a fundraiser in Chinatown in New York City for Rudolph Giuliani, the Republican-Liberal candidate for Mayor. I had served under Mr. Giuliani in the U.S. Attorney's office. I had no title, and my participation was limited to serving on the banquet committee and introducing the candidate at the banquet.

16. **Legal Career:** 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;

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I served as a law clerk to U.S. District Judge Henry F. Werker in the Southern District of New York from September 1978 to August 1980.

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

From September 1990 until August 1991, I had an arrangement with Vladeck, Waldman, Elias & Engelhard whereby I worked for the firm approximately twenty hours a week, for which I was paid a salary and provided with an office and administrative support. At the same time, I maintained my own independent practice as well; in August 1991, I joined the firm full-time as a partner and merged my practice into the firm's practice.

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.

1980 – 1982
Davis, Polk & Wardwell
450 Lexington Avenue, New York, NY 10017
Associate

1982 – 1986
United States Attorney's Office, Southern District of New York
1 St. Andrew's Plaza, New York, NY 10007
Assistant United States Attorney

1986 – 1990
Campbell, Patrick & Chin
61 Broadway, New York, NY 10006
Partner

1990 – 1994
Vladeck, Waldman, Elias & Engelhard, P.C.
1501 Broadway, New York, NY 10036
Partner, August 1991 to August 1994
Counsel, October 1990 to August 1991 (part-time)

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as an arbitrator or mediator.

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b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

I have not had a law practice since 1994, when I took the bench; from April 1986 until August 1994, at Campbell, Patrick & Chin, in my own practice, and at Vladeck Waldman, I had a general litigation practice, specializing for much of that time in employment law and commercial litigation; prior to April 1986, I served as an Assistant United States Attorney in the Civil Division in the Southern District of New York, representing the United States, federal agencies, and federal employees; at Davis Polk from 1980 to 1982, I was a young associate engaged in the work of a typical third and fourth-year associate at a large corporate law firm.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

At Vladeck Waldman I specialized in labor and employment law and represented unions and employees.

At Campbell, Patrick & Chin, I specialized in employment law and commercial litigation and typically represented individuals and small companies.

At the U.S. Attorney's Office, I represented the United States, numerous federal agencies, and, on occasion, an individual federal employee (in Bivens cases).

At Davis Polk, I did not have my own clients, but assisted in the firm's representation of large corporations and some individuals.

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.

From November 1982 on, my practice was 98% litigation and I appeared in court frequently.

i. Indicate the percentage of your practice in:
   1. federal courts: 95%
   2. state courts of record: 4%
   3. other courts: 1% arbitral forums
   4. administrative agencies:

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ii. Indicate the percentage of your practice in:
1. civil proceedings: 99%
2. criminal proceedings: 1%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Approximately 19; in 80% I was chief counsel; in 5% I was sole counsel; in 15% I was associate counsel.

i. What percentage of these trials were:
1. jury: 10%
2. non-jury: 90%

e. Describe your practice, if any, before the Supreme Court of the United States. 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.

In 1993, I assisted in the writing of an amicus brief for a consortium of civil rights groups, including the Asian American Legal Defense and Education Fund, in Landgraf v. USI Film Products, 511 U.S. 244 (1994).

I never argued in the Supreme Court of the United States.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. 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 ten matters are listed in reverse chronological order:

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1. Criado v. ITT Corp., 8 I.E.R. 1267 (S.D.N.Y. 1993)

Dates of representation: from approximately mid-1992 to end of 1993

This was a whistleblower case brought by a former pilot of ITT Corp. who was fired after he raised certain safety and ethics concerns. After a five-day trial, the jury returned a verdict of $250,000 in Criado's favor, finding that ITT had expressly limited its otherwise at-will right to discharge Criado. I was lead counsel; at trial, I presented the direct testimony of the plaintiff; examined several other witnesses; and presented the summation to the jury. The case was significant because the employment at will doctrine in New York State has been extremely strong, and this was one of the first employee handbook cases in New York resulting in a verdict for the employee. The case was tried in May 1993, in the United States District Court for the Southern District of New York, before Hon. Louis J. Freeh. Judge Freeh's decision denying ITT's motion to set aside the verdict is reported at 8 I.E.R. 1267 (S.D.N.Y. 1993). Thereafter the case was settled.

Co-counsel:	John A. Beranbaum, Esq. presently at Beranbaum Menken Ben-Asher & Bierman LLP 80 Pine Street, 32nd Floor, New York, NY 10005, (212) 509-1616.
Opposing Counsel:	Thomas G. Rohback, Esq., presently at Axinn, Veltrop & Harkrider LLP, 90 State House Square, 9th Floor, Hartford, CT 06103-3704, (860) 275-8100.

2. In Re Maxwell Newspapers, Inc. d/b/a/ Daily News, 146 B.R. 920 (Bankr. Ct. S.D.N.Y.), rev'd, 149 B.R. (S.D.N.Y.), rev'd, 981 F.2d 85 (2d Cir. 1992).

Dates of representation: fall of 1992 to early 1993.

In this bankruptcy case, we represented New York Typographical Union No. 6, whose members had lifetime employment guarantees that the purchaser of the Daily News refused to honor. The debtor moved to reject the lifetime guarantees under Section 1113 of the Bankruptcy Code. A three-day trial on the motion was held in the United States Bankruptcy Court for the Southern District Court of New York (Hon. Tina L. Brozman), and I presented the direct and re-direct examinations of our main witness, the president of the union. The Bankruptcy Court granted the debtor's motion and rejected the lifetime guarantees. 146 B.R. 920 (Bankr. Ct. S.D.N.Y. 1992). On appeal, the United States District Court for the Southern District of New York (Hon. Thomas McKenna) reversed. 149 B.R. (S.D.N.Y. 1992). The debtor then appealed to the United States Court of Appeals for the Second Circuit, which reversed the District Court and affirmed the Bankruptcy Court, although it required the debtor to keep open the last offer that it had made during negotiations. 981 F. 2d 85 (2d Cir. 1992). Thereafter, the

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matter was settled. While I played a substantial role in writing the appeals briefs, I did not argue the appeals. The case was significant because it was a high-profile case involving the Daily News and important issues of law under Section 1113 of the Bankruptcy Code.

Co-counsel:	Daniel Engelstein, Esq., presently at Levy, Ratner & Behroozi, P.C., 80 8th Avenue, 8th Floor, New York, NY 10011.
	James Wasserman, Esq., Vladeck, Waldman, Elias & Engelhard, P.C., 1501 Broadway, New York, NY 10036, (212) 403-7300.
Opposing counsel:	Willis J. Goldsmith, Esq., Jones, Day, Reavis & Pogue, 599 Lexington Avenue, New York, NY 10022, (212) 326-3939.
	Howard Seife, Esq., presently at Chadbourne & Parke LLP, 30 Rockefeller Plaza, New York, NY 10112, (212) 408-5361.

3. Malarkey v. Texaco Inc., 794 F. Supp. 1237 (S.D.N.Y. 1992), aff'd, 983 F. 2d 1204 (2d Cir. 1993).

Dates of representation: summer 1990 to early 1993.

This was an eight-day jury trial in an age discrimination and retaliation case in the United States District Court for the Southern District of New York. We represented the plaintiff, Catherine Malarkey, a secretary/administrative assistant at Texaco who had been denied promotions. I presented the direct examination of the plaintiff, cross-examined approximately eight witnesses, and did the summation. The jury returned a verdict in plaintiff's favor on her retaliation claims of $65,000, which was doubled because of the jury's finding of willfulness to $130,000. The District Court (Mukasey, J.) awarded substantial equitable relief to plaintiff, and awarded attorney's fees and costs to my firm of $267,607. The case was significant because plaintiff was able to prevail after some ten years of difficult and hard-fought litigation (she was represented by other lawyers in eight of those years), in a case that was, in the District Court's words, "defended by Texaco to the last ditch and occasionally beyond." 794 F. Supp. 1237, 1247 (S.D.N.Y. 1992), aff'd, 983 F. 2d 1204 (2d Cir. 1993). See also 794 F. Supp. 1248, 1251 (S.D.N.Y. 1992) (referring to Texaco's "dilatory, 'scorched earth' tactics" and Texaco's "disproportionate tenacity... aimed less at this plaintiff than at others who might be tempted to pursue a similar course," i.e., redress for illegal discrimination).

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Co-counsel:	Ellen Harnick, Esq., presently at Center for Responsible Lending, 302 West Main Street, Durham, NC 27701, (919) 313-8500.
Opposing counsel:	Paul M. Brown, Esq., formerly at Whitman & Ransom; current address and telephone number unknown.

4. Ezold v. Wolf, Block Schorr & Solis-Cohen, 758 F. Supp. 303 (E.D. Pa. 1991), rev'd on other grounds, 983 F. 2d 509 (3d Cir. 1992), cert. denied, 114 S. Ct. 88 (1993).

Dates of representation: I was involved in Vladeck, Waldman's representation of plaintiff from late 1990 to 1992.

This was a highly-publicized Title VII case brought by a woman who was passed over for partnership at a major Philadelphia law firm. I participated in the case on the issue of relief after the plaintiff had prevailed at trial. The United States District Court for the Eastern District of Pennsylvania (Kelly, J.) held that the plaintiff was entitled to post-resignation relief even though she was not constructively discharged. The ruling was important because the majority of courts had held that, in the absence of a constructive discharge, an employee who voluntarily leaves a job is not entitled to post-resignation relief. I did the first draft of the brief on the relief issues. I also participated, to a limited extent, in the writing of the appeals briefs. On appeal, the United States Court of Appeals for the Third Circuit reversed on the merits, therefore not reaching the issue of relief. The Supreme Court denied certiorari.

Co-counsel:	Debra L. Raskin, Esq., Vladeck, Waldman, Elias & Engelhard, P.C., 1501 Broadway, Suite 800, New York, NY 10036 (212) 403-7300.
Opposing counsel:	Marc Dichter, Esq., Morgan, Lewis & Bockius, 2000 One Logan Square, Philadelphia, PA 19103, (215) 963-5291.

5. Ramseur v. Chase Manhattan Bank, N.A., 865 F. 2d 460 (2d Cir. 1989).

Dates of representation: 1989 to 1990.

In this case, I represented on appeal the plaintiff-appellant, a black woman who had been harassed in her job as an accountant at Chase Manhattan Bank. Eventually, she was fired. Represented by another attorney, she brought an employment discrimination case in the United State District Court for the Southern District of New York. The District Court (Keenan, J.) granted summary judgment dismissing the complaint. With her prior attorney, she appealed.

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Approximately a month before oral argument, her prior attorney was suspended from practice by the Disciplinary Committee of the Appellate Division of the Supreme Court of the State of New York. I took over the appeal, wrote a reply brief, and argued the appeal. The United States Court of Appeals for the Second Circuit reversed, holding that summary judgment should not have been granted. The Court's opinion (by Kearse, J.) discussing the use of summary judgment in employment discrimination cases had been cited many times in other decisions. 865 F. 2d 460 (2d Cir. 1989). Shortly after the reversal, the case was settled.

Opposing counsel: Jeanne C. Miller, Esq., presently at The Resolution Experts, 620 Eighth Avenue, 34th Floor, New York, NY 10018, (212) 751-2700.

6. Dixon v. Heckler, 785 F. 2d 1102 (2d Cir. 1986), vacated, Bowen v. Dixon, 482 U.S. 922 (1987).

Dates of representation: I was involved in the case from approximately 1985 to 1986.

This was an appeal by the United States from the granting of a preliminary injunction by the United States District Court for the Southern District of New York (Lasker, J.) to the plaintiffs in a class action involving Social Security benefits. I had primary responsibility for writing the briefs for the Government, and I argued the appeal. The United States Court of Appeals for the Second Circuit affirmed. 785 F. 2d 1102 (2d Cir. 1986), vacated, Bowen v. Dixon, 482 U.S. 922 (1987). The case was significant because it was a class action involving important issues of public concern.

Co-counsel: Jane Booth, Esq., presently General Counsel of Columbia University, (212) 854-0286.

Opposing counsel: Nancy Morawetz, Esq., presently Professor of Clinical Law, New York University School of Law 245 Sullivan Street, 619, New York, NY 10012, (212) 998-6451.

7. Manufacturing Hanover Trust Co. v. United States, 775 F. 2d 459 (2d. Cir. 1985).

Dates of representation: approximately 1984 through 1985.

This was a tax case involving the constitutionality of the use of male-female (as opposed to uni-sex) mortality tables for purposes of computing estate taxes. The United States District Court for the Southern District of New York (Steward, J.) held that the use of the tables was unconstitutional. I took over the case for the United States for the appeal. I wrote the briefs and presented oral argument. The United States Court of Appeals for the Second Circuit reversed, holding that the

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use of the gender-based mortality tables did not violate the Constitution. 775 F. 2d 459 (2d Cir. 1985). The case was significant because it raised important issues regarding gender-based classifications.

Opposing counsel: Robert E. Crotty, Esq., Kelley, Drye & Warren 101 Park Avenue, New York, NY 1017, (212) 808-7847.

8. Alan Guttmacher Institute v. McPherson, 616 F. Supp. 195 (S.D.N.Y. 1985), modified, 805 F. 2d 1088 (2d Cir. 1986). See also 597 F. Supp. 1530 (S.D.N.Y. 1984).

Dates of representation: approximately 1983 to 1986.

This was a sensitive case brought by the American Civil Liberties Union on behalf of the Alan Guttmacher Institute, a population planning group that had lost a federal grant from the Agency for International Development because the Institute published two articles that Agency personnel believed were pro-abortion. I represented the Government throughout the proceedings in the District Court (Haight, J.). Initially, we were able to get some of the claims dismissed. Eventually, the Agency agreed to reconsider its funding decision, but the Institute wanted to litigate. The Agency made an unconditional offer to reconsider the grant application, and we moved to dismiss on grounds of mootness, arguing that the Institute could do no better than what we had unconditionally offered even if it went to trial and prevailed. The District Court agreed, entered judgment requiring the Agency to reconsider the application, and otherwise dismissed for mootness. The Second Circuit essentially affirmed, with certain modifications of the judgment. (I was not involved in the appeal because, by that time, I had left the Government to return to private practice). 616 F. Supp. 195 (S.D.N.Y. 1985), modified, 805 F. 2d 1088 (2d. Cir. 1986). See also 597 F. Supp. 1530 (S.D.N.Y. 1984)

Opposing counsel: Suzanne M. Lynn, Esq., formerly of the ACLU; current address and telephone number unknown.

9. United States v. Gangel (S.D.N.Y.)

Dates of representation: approximately 1984 to 1985.

This was a tax-shelter case filed in 1985 in the United States District Court for the Southern District of New York in which I represented the United States in a civil suit against two individuals and three companies arising from abusive tax shelters. The case was settled almost immediately after the complaint was filed. The defendants agreed to a consent degree that provided for, among other things, $420,000 in civil penalties. At the time, this was the second largest amount of fines imposed in any case under the tax shelter statute.

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Opposing counsel: Peter W. Schmidt, Esq., contact information unavailable.

10. Mastic Development Corp. v. United States Postal Service 82 Civ. 2659 (S.D.N.Y.) (Gagliardi, J.)

Dates of representation: approximately 1982 through 1984.

This was a real estate contract case arising out of an agreement by the Postal Service to sell a New York City block to Mastic Development Corp., which was owned by the Milstein Family. There was a four-day bench trial in June 1983 in the United States District Court for the Southern District of New York in which I examined witnesses and presented the summation. Another Assistant United States Attorney and I represented the Postal Service. The District Court ruled in favor of the Postal Service. Mastic Development appealed to the United States Court of Appeals for the Second Circuit, and I wrote the brief and presented oral argument on behalf of the Government in late 1983. The Second Circuit affirmed by memorandum order. The case was significant because it involved a valuable New York City block in midtown Manhattan.

Opposing counsel: Charles G. Moerdler, Esq., Bryan Cogan, Esq. Stroock & Stroock & Lavan 7 Hanover Square, New York, NY 10004, (212) 806-5400.

18. **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. 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.)

During my years in practice, I engaged in a wide range of legal activities, including settling numerous cases and participating in certain investigations while at the U.S. Attorney's Office. I have not engaged in lobbying activities although I was active in certain bar associations, including the Asian American Bar Association of New York

19. **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, provide four (4) copies to the committee.

I taught Legal Writing and Research at Fordham Law School from 1986 to 2009, taking only one year off (1994-1995). This was the introductory legal writing course for first-year students. One year I taught advanced legal writing to third-year students.

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20. **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. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

    None.

21. **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 commitments or agreements, but I am likely to teach again at Fordham Law School. I will not be teaching in the 2009-2010 academic year.

22. **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, licensing fees, 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.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

    a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

        My wife Kathy Hirata Chin is a partner at the law firm Cadwalader, Wickersham & Taft, New York, NY. I will recuse myself from any case in which the firm appears. No other family members or other persons, parties, categories of litigation, or financial arrangements are likely to present conflicts.

    b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

        If any circumstance is brought to my attention that presents a potential conflict of interest, I will determine whether I should recuse myself and I will if I should. In all cases, I will follow the Code of Conduct for United States Judges.

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25. **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.

While in practice, I spent extensive time on pro bono work. At Davis Polk, I defended not-for-profits in two cases where they had been sued and I brought four housing discrimination cases, working with the Open Housing Center, Thereafter, when in private practice, I did extensive pro bono work for the Asian American Legal Defense and Education Fund, from conducting an investigation in a housing discrimination case to writing an amicus brief in a Title VII case to writing an amicus brief on the right of defendants in criminal cases to translations from English into their native languages.

26. **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. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

I did not solicit the nomination. At various points, both before and after the presidential election, I was asked by different groups if I would object to their presenting my name to the Administration for a Circuit Court position. I said I would not object. These groups included the National Asian Pacific American Bar Association, the Asian American Justice Center, the AFL-CIO, and the National Employment Lawyers Association. I did not have any communications with the White House or the Department of Justice until I received a telephone call from the Office of Legal Policy of the Department of Justice on July 14, 2009 advising me that the White House had submitted my name for vetting. I had subsequent communications with staff from the Department of Justice regarding the nomination paperwork. I was interviewed by representatives of the Department of Justice and White House Counsel's Office on September 1, 2009. My nomination was submitted to the United States Senate on October 6, 2009.

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, explain fully.

No.

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AFFIDAVIT

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

Oct. 21, 2009
(DATE)

(NAME)

(NOTARY)

DAVID TAM
Notary Public, State of New York
No. 24-4949737
Qualified in Kings County
Commission Expires April 17, 2011

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   William Martin Conley

2. **Position**: State the position for which you have been nominated.

   United States District Judge for the Western District of Wisconsin

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.

   150 East Gilman Street
   Madison, WI 53703

4. **Birthplace**: State year and place of birth.

   1956; Rice Lake, Wisconsin

5. **Education**: List in reverse chronological order 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.

   1979 to 1982 – University of Wisconsin Law School; Juris Doctor, May 1982

   1975 to 1978 – University of Wisconsin; Bachelor of Arts (double major in Economics & Political Science), May 1978

   1974 to 1975 – University of Wisconsin – Center Barron County; no degree

6. **Employment Record**: List in reverse chronological order 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 description.

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1984 – present
Foley & Lardner LLP
150 East Gilman Street
Madison, WI 53703
Partner (1992 to present)
Associate (1984 to 1992)

1982 – 1984
Chambers of the Honorable Thomas E. Fairchild
United States Court of Appeals for the Seventh Circuit
219 South Dearborn Street
Chicago, IL 60604
Law Clerk

Summer 1982
Foley & Lardner LLP
150 East Gilman Street
Madison, WI 53703
Law Clerk

Summer 1981
Hughes, Hubbard & Reed
350 South Grand Avenue, 36th Floor
Los Angeles, California 90071-3442
Law Clerk

Summer 1980
Legal Assistant to Institutional Persons Program
University of Wisconsin Law School
975 Bascom Mall
Madison, WI 53706
Law Clerk

Summers 1979 & 1978
City of Rice Lake
30 E. Eau Claire Street
Rice Lake, WI 54868
Life Guard

Fall 1978
Rice Lake School District
700 Augusta Street
Rice Lake, WI 54868
Swimming Instructor

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7. **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, and whether you have registered for selective service.

   I did not serve in the military. I registered for selective service upon turning 18 years of age in 1974.

8. **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.

   Selected for Inclusion in *Best Lawyers in America* (2010 ed.) Bet-the-Company and Commercial Litigation

   Selected for Inclusion in *Wisconsin Super Lawyers* (2008 ed.)

   State Bar of Wisconsin, President's Award (1989)

   National Institute Trial Advocacy, Diploma – Trial Advocacy Skills (1990)

   University of Wisconsin Law School law degree, cum laude and Order of the Coif (1982)

   University of Wisconsin undergraduate degree, with honors (1978)

9. **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 Wisconsin, 1982 to present. I am a member of the following sections: Litigation (1982 to present), Appellate (1999 to present), and Business (approximately 1992 to present).

   American Bar Association, 1984 to present. I am a member of the following sections: Litigation (1984 to present), Franchise (approximately 1990 to present), Antitrust (approximately 1995 to present).

   Seventh Circuit Bar Association, 1982 to present. I served as Editor of *Circuit Rider* (approximately 1986 to 1990); as a Board member (1992 to 1996); and as Western District of Wisconsin "liaison" (1998 to 2005).

   Western District of Wisconsin Bar Association, 1992 to present.

   James Doyle American Inn Of Court , creation to approximately 2000. I was a member of the Inn's board (approximately 1996 to 2000) and Counselor to the Inn (1998 to 2000).

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Friends of Remington Center, University of Wisconsin Law School, 2000 to present. I serve on the board of directors (2000 to present).

American Judicature Society, 1984 to present.

Southern Poverty Law Institute, approximately 1986 to present.

Wisconsin Equal Justice Fund, creation to present. I am a member of the board of directors (1998 to present) and served as its President (2006 to 2007).

10. **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.

The State Bar of Wisconsin, admitted June of 1982. There have been no lapses in membership.

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.

Supreme Court of the United States, admitted 1991.

Wisconsin Supreme Court, admitted 1982.

United States Court of Appeals for the Seventh Circuit, admitted 1982.

United States District Court for the Western District of Wisconsin, admitted 1982.

United States District Court for the Eastern District of Wisconsin, admitted 1994.

United States District Court for the Northern District of Illinois, admitted 2001.

There have been no lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, 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.

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Nakoma Golf Club, Madison, WI, approximately 1998 to present.

Seminole Pool & Tennis Association, 1999 to present.

Seminole Neighborhood Association, 1999 to present. I served on the board (approximately 2001 to 2004).

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, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin 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 been a member of any organization that currently discriminates or recently discriminated on the basis of race, sex, or religion, or national origin. I believe that neither of the Seminole organizations listed above ever have had such a policy. With respect to the Nakoma Golf Club, I am unaware of any such past policy; however, it is possible the Club once had such a policy given its existence for most of the last century and the fact that such policies were sadly part of some Madison private clubs into the 1960s.

12. **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. Supply four (4) copies of all published material to the Committee.

William M. Conley and Bree Grossi Wilde, *Expedited Appeals, Emergency Appeals, and Temporary Relief Pending Appeal* in 1 Stephen E. Arthur, et al., *The Attorney's Guide to the Seventh Circuit Court of Appeals* ch. 3 (4th ed. 2009)

William M. Conley, *Antitrust Issues* in *Product Distribution Law Guide*, ch. 9 (2d ed. 2009)

William M. Conley, John S. Skilton and Nancy Y.T. Hanewicz, *Burden of Proof, Admissibility and Objections* in Gene E. Brooks, Nathan A. Fishbach, Danny E. Glass and Howard A. Pollack, *Federal Civil Procedure and Evidence During Trial – 7th Circuit* ch. 9 (1997)

William M. Conley, *Restricting the Admission of Psychiatric Testimony on a Defendant's Mental State: Wisconsin's Steel Curtain*, 1981 Wis. L. Rev. 733

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b. 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, 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. 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.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. 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 recording of your remarks, 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, furnish a copy of any outline or notes from which you spoke.

I have spoken at a variety of bar and law firm sponsored seminars on a variety of legal topics, as well as other client-focused events.

Warranty Obligations and Emerging Trends in Dealer Reimbursement Requirements, The 16th Annual Law of Product Distribution and Franchise Seminar, 2007

Antitrust Pitfalls of Joint Purchasing Agreements and Other Competitor Collaboration, The 15th Annual Law of Product Distribution and Franchise Seminar, 2006

What To Do When You Are Asked To Assure Antitrust Compliance: Necessary and Cost-Effective Program, The 13th Annual Law of Product Distribution and Franchise Seminar, 2004

Dealership Renewals, The Law of Product Distribution and Franchising, 2002

Termination II: The Termination from Hell, The Law of Product Distribution and Franchising, 2001

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State Regulation on Distribution Relationship or, Fools Rush In . . ., The Law of Product Distribution and Franchising, 1999

Changing the Distribution Relationship: Pitfalls and Opportunities, The Law of Product Distribution, 1998

Opportunities and Pitfalls in Consolidating Distribution Lines: Looking Before you Leap, The Law of Product Distribution, 1997

The Current Legislative Landscape In Distribution Regulation, The Law of Product Distribution, 1996

e. 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.

None.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not served as a judge.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____

i. Of these, approximately what percent were:

jury trials? ___%; bench trials ___% [total 100%]

civil proceedings? ___%; criminal proceedings? ___% [total 100%]

b. Provide citations for all opinions you have written, including concurrences and dissents.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

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e. Provide a list of all cases in which certiorari was requested or granted.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

g. Provide 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.

h. Provide 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, provide copies of the opinions.

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (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.) 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 in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not served as a judge.

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.

15. **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

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you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held public office. I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office

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, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Abrahamson for Wisconsin Supreme Court, legal researcher, 1999 & 2009

Feingold for United States Senate, Member of Initial Steering Committee, approximately 1991 to 1992

16. **Legal Career:** 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;

From 1982 to 1984, I served as a law clerk to the Honorable Thomas E. Fairchild, Senior Circuit Judge of the United States Court of Appeals for the Seventh Circuit.

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

I have not practiced law 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.

1984 – present
Foley & Lardner LLP
150 East Gilman Street
Madison, WI 53703
Partner (1992 to present)
Associate (1984 to 1992)

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iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have served as a mediator, early neutral evaluator and arbitrator in a variety of disputed matters over the years. My most significant such work has been as early neutral evaluator, a volunteer position created by the United States District Court for the Western District of Wisconsin. In that capacity I have offered third-party neutral facilitation and non-binding mediation, as well as an early evaluation of the case, to assist participating litigants in reaching a cost-effective resolution of their dispute outside of court. I also have acted as a mediator for various contractual, commercial, consumer and personal injury matters, and on at least one occasion have been retained to act as an arbitrator in private commercial dispute as part of a three-judge arbitration panel. Some significant, representative matters in which I was involved in these capacities were:

1. Sexual discrimination claim against a public school district under Title VII of the Civil Rights Act of 1964, as amended, and the Civil Rights Act of 1991.

2. Claim against a Wisconsin state agency for failure to provide adequate accommodation in the workplace under the Americans with Disability Act.

3. Commercial contract dispute under Wisconsin common law.

4. Insurance coverage arbitration.

5. Dispute over award of statutory attorneys' fees.

While I believe the above list is representative of my work in these capacities, having acted as a mediator periodically for the last 20 years and as an early neutral evaluator periodically for the last 15 years. I am unable to recall additional specific examples meriting mention as significant.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

Except for two years clerking at the United States Court of Appeals for the Seventh Circuit for Senior Circuit Judge Thomas E. Fairchild, my entire legal career has been spent at Foley & Lardner LLP, principally working out of the firm's Madison office. From my arrival in 1984 until I was

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made a partner in 1992, I acted as a commercial litigation associate primarily responsible for supporting lead counsel in a variety of litigation matters ranging from general commercial, labor law, constitutional law, regulatory law, distribution and antitrust law. I also regularly accepted pro bono representations in state and federal courts on behalf of various indigent or not-for-profit clients referred to me by the University of Wisconsin Law School, the United States District Court for Western District of Wisconsin, and the United States Court of Appeals for the Seventh Circuit. The first ten years of my time as a partner at Foley & Lardner LLP (approximately 1992 to 2002), I practiced as a commercial litigation partner with an emphasis in representing private parties in contract, distribution, antitrust, regulatory and constitutional law matters, principally as lead counsel. I also continued to accept pro bono representations, most often dealing with post-conviction or collateral criminal challenges and conditions of confinement cases. The last seven to eight years of my practice have continued to involve this same variety of work, but also an increasing role as counselor to established regional, national and international companies on antitrust, distribution, regulatory and constitutional law matters.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

Consistent with the above, I have represented national and international industrial, dairy, chemical, commercial and retail companies on a wide variety of legal matters, most often involving antitrust, distribution, contract, constitutional and regulatory law matters. I also have represented local manufacturers, distributors, retailers, other businesses and individuals in the same areas of law, as well as in criminal grand jury proceedings. Finally, throughout my legal career, I have continued to accept criminal and civil pro bono clients referred by the University of Wisconsin, the Western District of Wisconsin, and the United States Court of Appeals for the Seventh Circuit Court, referred by state and local bar associations, and through individual referrals. This work has involved federal appellate representations, civil tort and fraud claims, more sophisticated claims under the Wisconsin and United States Constitutions, state and federal securities laws, and consumer protection laws.

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.

While I have become involved in more counseling to my continuing clients in the antitrust and distribution fields in recent years, the vast majority of my work since joining Foley & Lardner LLP has been in litigation, particularly antitrust, contract, distribution, constitutional and regulatory law. All of this has required

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me to appear in courts across the country, and particularly in the federal district courts of Wisconsin and the United States Court of Appeals for the Seventh Circuit.

i. Indicate the percentage of your practice in:

1.	federal courts;	65%
2.	state courts of record;	20%
3.	other courts;	10%
4.	administrative agencies	5%

ii. Indicate the percentage of your practice in:

1.	civil proceedings;	90%
2.	criminal proceedings.	10%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have been involved in a large number of matters which have been resolved favorably for my clients on dispositive motions, negotiations leading up to trial and various appellate proceedings. The nature of my commercial law practice is such that few of these disputes end up being tried to verdict. I have tried 11 matters to verdict, judgment or final decision involving the live presentation of witnesses to a judge or jury. In four of those matters I acted as associate counsel, assisting lead counsel from our firm, and in the remaining seven as the lead counsel in the matter.

i. What percentage of these trials were:

1.	jury	36%
2.	non-jury	74%

e. Describe your practice, if any, before the Supreme Court of the United States. 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 represented parties seeking and opposing certiorari review and submitted briefs on behalf of amicus on the merits in the following cases:

Levine v. Heffernan, 493 U.S. 873 (1989)

Keller v. State Bar of California, 496 U.S. 1 (1990)

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Gibson v. Florida Bar, 502 U.S. 104 (1991)

1-800-Flowers.com, Inc. v. Jahn, 537 U.S. 882 (2002)

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. 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. Foskett v. Great Wolf Resorts, Inc., 518 F. 3d 518 (7th Cir. 2008).

Dates of representation: June 2007 to November 2008. I represented third-party defendants, the previous owners of a resort and water park. The defendant in the suit was the current owner of the resort, who sought indemnification for personal injury claims asserted by a visitor to the resort. Before my involvement, the United States District Court for the Western District of Wisconsin had already granted the current owner's motion, and denied the prior owners' cross-motion, for summary judgment on the issue of indemnification. I took over the case as lead counsel on appeal, briefing and arguing the matter to the United States Court of Appeals for the Seventh Circuit. The Seventh Circuit reversed, holding that a provision of the asset purchase agreement for sale of the resort and water park required buyer to indemnify sellers. I also represented the sellers as lead counsel on remand where the Court ordered full reimbursement to our clients of all attorneys' fees and costs pursuant to the indemnification agreement. Plaintiff counsel was Jan Ohlander, Reno & Zahm, 2902 McFarland Road, Rockford, IL 61107, telephone 815-987-4050. Defendant counsel was Mary C. Turke, Michael Best & Friedrich LLP, One South Pinckney Street, Madison, WI 53703, telephone 608-283-0113. Judge Shabaz was the initial district court judge; Chief Judge Easterbrook wrote the opinion for the Court of Appeals in which and Judges Cudahy and Ripple joined; Judge Crabb handled matters on remand.

2. Johnson v. Burmaster, 744 N.W. 2d 900 (Wis. Ct. App. 2008).

Dates of representation: October 2006 to June 2008. Individual citizens and the Wisconsin Education Association Council ("WEAC") filed suit against the Northern Ozaukee school district, its officials and school board, along with State Superintendent of Public Instruction, alleging violations of Wisconsin enrollment, charter school, and

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teacher licensing statutes. The Ozaukee County Circuit Court granted summary judgment to the school district on all claims. The plaintiffs appealed and the Superintendent joined in part as a defendant-co-appellant. On appeal, I represented two amicus parties, the Wisconsin Cooperative Educational Service Agency No. 9 and the Wisconsin Virtual School, filing a brief in the Wisconsin Court of Appeals in support of plaintiffs and the Superintendent. The Court of Appeals held that: (1) school district's virtual charter school was in violation of a state statute prohibiting a contract for the establishment of a charter school located outside the school district; (2) the charter school was not in compliance with the full-time, open-enrollment statute; and (3) the charter school was not in compliance with statutory teacher licensure requirement. Plaintiff counsel was Lucy Brown, Wisconsin Education Association Council, 33 Nob Hill Drive, Madison, WI 53708, telephone 608-276-7711. Defendant counsel was Assistant Attorney General Paul Barnett, Wisconsin Department of Justice, 17 West Main Street, Madison, WI 53707, telephone 608-266-5366. Judge McCormack was the circuit court judge; Chief Judge Brown wrote the opinion for the Court of Appeals.

3. Go America LLC v. Kwik Trip, Inc., 715 N.W. 2d 746 (Wis. Ct. App. 2006).

Dates of representation: June 2003 to May 2006. Competitors brought a state action against our client, Kwik Trip, Inc., and another seller of motor vehicle fuel, alleging that defendants violated the Unfair Sales Act by selling gasoline below cost. I acted as Kwik Trip's lead counsel throughout. The Dane County Circuit Court granted defendant's motion for summary judgment, and one competitor appealed as to Kwik Trip. The Wisconsin Court of Appeals affirmed, holding that: (1) a gas station in Iowa was a competitor of Kwik Trip for purposes of Unfair Sales Act "meeting competition" exception; (2) Kwik Trip lowered its prices below cost in good faith to meet the existing price of a competitor on days it filed notices of meeting competition with the Wisconsin Department of Agriculture, Trade, and Consumer Protection; and (3) Kwik Trip was not required to raise its price of gasoline in response to a competitor's act in raising its price. Plaintiff counsel was Brian McGraw, 106 N. Wisconsin Ave., Muscoda, WI 53573, telephone 608-739-4234. Judge O'Brien was the circuit court judge; Judge Vergeront wrote the opinion for the Court of Appeals.

4. Jahn v. 1-800-FLOWERS.com, Inc., 284 F. 3d 807 (7th Cir. 2002).

Dates of representation: July 2000 to February 2003. I was lead counsel for defendants in the United States District Court for the Western District of Wisconsin and the United States Court of Appeals for the Seventh Circuit. Plaintiffs had sold a toll-free telephone number that spelled 800-FLOWERS to a company engaged in telephone floral sales, and brought suit for breach of agreement calling for royalty payments arising from use of number. The United States District Court for the Western District of Wisconsin dismissed the action. Plaintiffs appealed. The United States Court of Appeals for the Seventh Circuit reversed and remanded, holding that: (1) Federal Communications Commission regulation forbidding the sale of telephone numbers does not proscribe sales that occurred prior to adoption of regulation in 1997, and (2) deferred payments made after adoption of regulation in connection with lawful pre-adoption sale did not themselves violate

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regulation. I continued to represent defendants as lead counsel on remand, ultimately settling matters to the clients' satisfaction. Plaintiff counsel was Earl Munson, Boardman LLP (formerly Boardman, Suhr, Curry & Field, LLP), One South Pinckney Street, Madison, WI 53703, telephone 608-283-1796. Judge Crabb was the district court judge; Chief Judge Flaum wrote the opinion for the Court of Appeals in which Judges Bauer and Easterbrook joined.

5. Dean Foods Co. v. Brancel, 187 F. 3d 609 (7th Cir. 1999).

Dates of representation: October 1996 to August 1999. My client, Dean Foods, sought declaratory and injunctive relief preventing the Wisconsin Secretary of Department of Agriculture, Trade, and Consumer Protection from applying Wisconsin administrative rules regulating purchases of Wisconsin-produced milk at clients' Illinois processing plants. I took over lead counsel role after the district court entered summary judgment against Dean Foods. After United States District Court for the Western District of Wisconsin granted our motion to reconsider, we successfully tried the matter on an abbreviated schedule. The District Court granted plaintiff's motion for injunctive relief, 22 F. Supp.2d 931, (W.D. Wis. 1998), and the Secretary appealed. The United States Court of Appeals for the Seventh Circuit affirmed, holding that: (1) action was not barred by Eleventh Amendment; (2) due to extraterritoriality concerns, Wisconsin would not enforce challenged rules in connection with sales occurring wholly outside of Wisconsin; and (3) Wisconsin farmers' sales to processor occurred wholly outside of Wisconsin. Defense counsel was the Wisconsin Attorney General (now Governor) James E. Doyle and (believed now retired) Assistant Attorney General Susan K. Ulman, Wisconsin Department of Justice, 17 West Main St., Madison, WI 53703, telephone 608-266-5366. Judge Crabb was the district court judge; Chief Judge Flaum wrote the appellate opinion in which Judges Kanne and Rovner joined.

6. Noah's Ark Family Park v. Bd. of Review, 573 N.W. 2d 387 (Wis. 1998).

Dates of representation: November 1995 to March 1999. My client, Noah's Ark, petitioned for review by certiorari of decision by village board of review affirming real property assessment of taxpayer's water theme park. The Sauk County Circuit Court affirmed and we appealed. The Wisconsin Court of Appeals, 565 N.W.2d 230 (Wis. Ct. App. 1997), reversed. After granting the board's petition for review, the Wisconsin Supreme Court held that: (1) the constitutional requirement that taxation be uniform did not necessitate a showing by a taxpayer that its property was undervalued in relation to comparable property, and (2) the board's singling out of one commercial property and reassessing it based on a recent sale price, while ignoring recent sales of other commercial properties, violated constitutional uniformity requirement. I acted as lead counsel for Noah's Ark through out the proceedings before the Sauk County Circuit Court, Wisconsin Court of Appeals, Wisconsin Supreme Court, and for another full year on remand and assessment challenge the following year. Defense counsel was Richard W. Cross, Cross, Jenks, Mercer & Maffei, 221 3rd Avenue, Baraboo, WI 53913, telephone 608-356-3981. Judge Taggart was the circuit court judge; Chief Justice Abrahamson authored the opinion for the Wisconsin Supreme Court.

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7. Carlson & Erickson Builders, Inc. v. Lampert Yards, Inc., 529 N.W. 2d 905 (Wis. 1995).

Dates of representation May 1990 to October 1996. I was trial counsel with my (now retired) partner Robert Binder and handled direct and cross-examination of witnesses, as well as all briefing and oral argument for a general contractor, who brought an antitrust action against a lumberyard and a competitor alleging that they violated antitrust statute by engaging in secret payments of unearned discounts and by engaging in price discrimination. After the jury found in favor of our client and awarded damages of $177,100, before trebling and attorneys' fees, the Door County Circuit Court ordered remittitur. The defendants appealed and we cross-appealed the remittitur order. The Wisconsin Court of Appeals, 183 Wis. 2d 220, 515 N.W.2d 305 (Ct. App. 1994), affirmed in part and reversed in part and remanded. After granting our petition for review, the Wisconsin Supreme Court held that: (1) the burden of proof standard in private, civil antitrust actions brought under state statute is the ordinary civil burden of proof, and (2) the circuit court erred in ordering remittitur. The Supreme Court, therefore, reversed the Court of Appeals and remanded with directions to enter judgment, including treble damages and actual attorneys' fees and costs. Lead counsel at trial for the plaintiff was Robert Binder, Retired Partner, Foley & Lardner LLP, 777 East Wisconsin Avenue, Milwaukee, WI 53202-5306, telephone 414-271-2400; I acted as lead counsel on all appeals. Defense counsel was Thomas Rusboldt, Weld, Riley, Prenn & Ricci SC, 3624 Oakwood Hills Parkway., Eau Claire, WI 54701, telephone 715-839-7786. Judge Koehn was the circuit court judge; Chief Justice Abrahamson authored the opinion for the Wisconsin Supreme Court.

8. Crosetto v. State Bar of Wis., 12 F.3d 1396 (7th Cir. 1993).

Dates of representation 1990 to 1994. Bar members sued our client, the State Bar of Wisconsin, alleging that compulsory membership and dues aspects of integrated bar violated their free speech and due process rights. The United States District Court for the Western District of Wisconsin, 810 F. Supp. 966 (N.D. Ill. 1992), granted summary judgment for the Bar and its executive director. Plaintiffs appealed. The United States Court of Appeals for the Seventh Circuit held that: (1) additional factual development was necessary to determine whether district court should have dismissed claims against bar for lack of subject matter jurisdiction; (2) members' claim against justices of Wisconsin Supreme Court did not present a justiciable controversy; (3) the Bar's executive director was entitled to qualified immunity; and (4) mandatory bar dues did not violate the First Amendment. I acted as co-counsel for Defendants throughout this litigation with John Skilton, then with Foley and now with Perkins Coie, LLP, One East Main Street, Suite 201, Madison, WI 53703-5118. telephone 608-663-7474. Plaintiff counsel was Amedeo Greco, (resigned from the bar) 6240 South Highlands Avenue, Madison, WI 53705, telephone 608-233-9796. Senior District Judge, Roszknowski, sitting by designation was the district court judge; Judge Flaum wrote the opinion for the Court of Appeals, with Judges Easterbrook and Kanne joining.

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9. Datapoint Corp. v. M&I Bank, 665 F. Supp. 722 (W.D. Wis. 1987).

Dates of representation 1986 to 1988. My client, the plaintiff and beneficiary of a letter of credit, sued the issuing bank for breach of contract by refusing to honor drafts drawn on the letter. The United States District Court for the Western District of Wisconsin granted our motion for summary judgment, holding that: (1) the bank was precluded from claiming that draft varied from the terms of a letter of credit where it failed to notify beneficiary of dishonor by telecommunication or other expeditious means; (2) the requirement that draft include a reference to the letter was not a "notation credit"; and (3) Wisconsin statute providing for 12% interest from date of unaccepted the settlement offer was applicable where judgment is equal to or greater than the offer. I was lead counsel for the plaintiff. Defense counsel was H. Robert Kilkelly, Lee, Kilkelly, Paulson & Younger SC, One West Main Street, Seventh Floor, Madison, WI 53703, telephone 608-256-9046. Judge Crabb was the district court judge.

10. Levine v. Heffernan, 864 F. 2d 457 (7th Cir. 1988).

Dates of representation 1988 to 1990. I represented defendant justices of the Wisconsin Supreme Court and the State Bar of Wisconsin as associate counsel to John Skilton and Edward Marion. Plaintiff raised a First Amendment challenge to Wisconsin's integrated bar, which requires attorneys to join the State Bar Association as a precondition to practicing law in the state. The United States District Court for the Western District of Wisconsin held that the integrated bar was unconstitutional. The United States Court of Appeals for the Seventh Circuit reversed, holding that: (1) the Supreme Court's earlier decision upholding the integrated bar has not been implicitly overruled, and (2) Wisconsin's integrated bar does not violate First Amendment rights of association and speech. Plaintiff pro se was Steven Levine, Public Service Commission, 610 North Whitney Way, Madison, WI 53707, telephone 608-267-2890. Defense co-counsel were John Skilton, then with Foley and now with Perkins Coie, LLP, One East Main Street, Suite 201, Madison, WI 53703-5118. telephone 608-663-7474, and Edward Marion, then with the Wisconsin Department of Justice, and now with the Offices of Edward S. Marion Attorney-at-Law LLC, 716 Ottawa Trail, Madison, WI 53711, telephone 608-334-9741. Chief Judge Crabb was the district court judge; Judge Flaum authored the decision for the Seventh Circuit.

18. **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. 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.)

In addition to the litigation matters described above, I have had the pleasure of handling a variety of high stakes contract disputes between private corporations, security laws claims on behalf of plaintiffs and defendants, significant constitutional law litigation for

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and against public bodies and officials, and a variety of interesting regulatory matters before the Wisconsin Department of Agriculture, Trade and Consumer Protection, the Wisconsin Department of Regulation and Licensing, and the Wisconsin Department of Revenue. In addition, I have been fortunate to provide meaningful, ongoing counseling to companies engaged in the manufacture, distribution and retailing of a variety of industrial and consumer products with regard to developing, changing or terminating various programs.

I formed the Wisconsin Diesel Engine Manufacturer & Distributors Association and lobbied on its behalf in opposition to efforts by Wisconsin Automobile & Truck Dealers Association to include engines as part of the Wisconsin Motor Vehicle Dealer Law, Wis. Ch. 218. While I have engaged in no other formal lobbying, I have assisted in educating various lobbyists on behalf of firm clients' efforts to pass or oppose new legislation and/or regulations.

19. **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, provide four (4) copies to the committee.

    I have not taught any formal courses.

20. **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. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

    If I leave the firm before age 55, all deferred income would be derived from my 401(k) plan account, and defined contribution plan account, and frozen defined benefit plan.

21. **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.

22. **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, licensing fees, 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.

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23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached net worth statement.

24. **Potential Conflicts of Interest**:

a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I will follow 28 U.S.C. § 455, the Code of Conduct for United States Judges, and any other applicable rules, guidance and/or practice. If confirmed, I anticipate recusing myself from any litigation involving Foley & Lardner LLP pending at the time of my departure from the firm and in any future litigation involving Foley & Lardner LLP in which I played some role in the past; litigation filed on behalf of or against a former client with whom I have had a long-standing relationship or may have gained potentially relevant information during the course of a more limited representation; and litigation matters filed on behalf of clients of my brother Daniel E. Conley (Quarles & Brady). Of course, I would also take care to consider and disclose any other relationship with counsel or litigant in a particular matter, and recuse myself where appropriate.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

First, determine whether I believe there is any possibility of my impartiality being compromised as a result of the potential conflict; second, disclose all potential conflicts and provide the parties an opportunity to comment upon those and any other potential conflicts they perceive; third, assess whether there is any reasonable argument for the appearance of partiality; and fourth, refer to the applicable rules of judicial ethics and case law. If any one of those seem to raise legitimate concerns, I anticipate recusing myself, barring substantial mitigating circumstances.

25. **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.

I have taken seriously the obligation of every lawyer to serve the disadvantaged. Among a wide variety of pro bono representations, I have: provided representation of incarcerated Mariel boat refugees (200 – 300 hours); provided legal representation to individuals referred by Legal Action (25 – 50 hours); provided legal representation to individuals on direct and

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indirect appeals to United States Court of Appeals for the Seventh Circuit from criminal conviction (350 – 500 hours); and handled an inadequate medical treatment challenge pursuant to a 28 U.S.C. § 1983 by an inmate held at the Waupun State Prison (50 – 100 hours).

26. **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. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On March 2, 2009, I submitted a detailed application for a judgeship on the United States District Court for the Western District of Wisconsin application to the Federal Nominating Commission appointed by U.S. Senators Feingold and Kohl. I was contacted later in March by an employee of the State Bar of Wisconsin charged with assisting the Nominating Commission. He arranged the time for a formal, in-person interview by the entire Commission, which took place on Sunday morning, March 29th. My name was forwarded by the Commission to Senators Feingold and Kohl, along with three others, in early April. Senator Kohl interviewed me in his Milwaukee office on April 14; Senator Feingold interviewed me in his Middleton office on April 15. The Senators subsequently forwarded my name (among others) to the White House for consideration for nomination by the President. Since then I have been in communications with pre-nomination officials at the Department of Justice for guidance on preparation of paperwork and for an initial telephone interview. On September 10, 2009 I was interviewed in Washington by United States Associate Attorney General Thomas Perrelli and staff of the Department of Justice and the Office of White House Counsel. My nomination was submitted to the Senate on October 29, 2009.

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, explain fully.

No one has discussed a currently pending or specific case, legal issue or question in a manner that sought, or could reasonably be interpreted as seeking, any express or implied assurances concerning my position on any such case, issue, or question.

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AFFIDAVIT

I, William M. Conley, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

November 4, 2009
(DATE)

(NAME)

(NOTARY)

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   John Henry Laub

2. **Position**: State the position for which you have been nominated.

   Director, National Institute of Justice

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.

   Department of Criminology
   and Criminal Justice
   2220 LeFrak Hall
   University of Maryland
   College Park, MD 20742-8235

4. **Birthplace**: State date and place of birth.

   1953, Chicago, IL

5. **Education**: List in reverse chronological order 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.

   Graduate School: School of Criminal Justice, State University of New York at Albany, 1976-1980, Ph.D., 1980

   Graduate School: School of Criminal Justice, State University of New York at Albany, 1975-1976, M.A., 1976

   College: University of Illinois at Chicago Circle, 1971-1975, B.A., 1975

6. **Employment Record**: List in reverse chronological order 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 description.

   Employment:

   Distinguished University Professor, 1/2008 to the present
   University of Maryland, Department of Criminology and Criminal Justice

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2220 LeFrak Hall, University of Maryland, College Park, MD 20742-8235

Professor, 8/1998 to 12/2007
University of Maryland, Department of Criminology and Criminal Justice

Professor, 7/1991 to 6/1998
Northeastern University, College of Criminal Justice, 360 Huntington Avenue, Boston, Massachusetts 02115

Associate Professor, 7/1984 to 6/1991
Northeastern University, College of Criminal Justice, (Tenure granted: 7/1985)

Assistant Professor, 1/1981 to 6/1984
Northeastern University, College of Criminal Justice

Project Coordinator, 7/1979 to 12/1980
The Use of Victimization Data to Assess the Nature, Extent, and Correlates of Serious Delinquent Behavior, Office of Juvenile Justice and Delinquency Prevention Grant
Criminal Justice Research Center, One Alton Road, Albany, NY

Research Analyst, 12/1978 to 6/1979
The Use of Victimization Data to Assess the Nature, Extent, and Correlates of Serious Delinquent Behavior, Office of Juvenile Justice and Delinquency Prevention Grant
Criminal Justice Research Center, One Alton Road, Albany, NY

Research Assistant, 5/1978 to 12/1978
The Use of Victimization Data to Assess the Nature, Extent, and Correlates of Serious Delinquent Behavior, Office of Juvenile Justice and Delinquency Prevention Grant
Criminal Justice Research Center, One Alton Road, Albany, NY

Teaching Fellowship, 8/1977 to 5/1978
School of Criminal Justice, State University of New York at Albany

Research Assistant, 1/1977 to 8/1977
Self-Reported Delinquency: Methods and Substance, National Institute of Mental Health Grant. Criminal Justice Research Center, One Alton Road, Albany, NY

Workshop Resource Person/Curriculum Review, 7/1976 to 1/1977
Quantitative Training for Public Policy Analysts, Law Enforcement Assistance Administration Grant. School of Criminal Justice, State University of New York at Albany

Research Assistant/Para-Legal Advocate, 6/1975 to 8/1975
Law Enforcement Assistance Administration, Summer Internship, Prisoner's Legal Assistance, 343 South Jackson Avenue, Chicago, Illinois 60607

Research Grants:

Co-Principal Investigator, 10/2008 to present

Pathways to Desistance: Special Projects, funded by the Office of Juvenile Justice and Delinquency. The University of Maryland received a subcontract for this grant from the University of Pittsburgh.

Co-Principal Investigator, 7/2001 to 12/2003
The Aftermath of Incarceration in the Lives of Disadvantaged Men: A 50-Year Follow-Up Study, funded by the Russell Sage Foundation.

Co-Principal Investigator, 1/1995 to 12/1996
The Natural History of Crime and Violence: A 60 Year Perspective, funded by The Harry Frank Guggenheim Foundation.

Co-Principal Investigator, 9/1991 to 2/1994
Exits From Poverty Over the Life Course: A Comparative Longitudinal Study, funded by the Russell Sage Foundation.

Co-Principal Investigator, 1/1992 to 12/1993
Structural Variations in Juvenile Justice Processing: A Comparative Macrolevel Study, 1985-1990, funded by the National Science Foundation.

Co-Principal Investigator, 1/1990 to 12/1991
Criminal Careers and Crime Control: A Matched-Sample Longitudinal Research Design, Phase II, Crime Control Theory and Policy, National Institute of Justice Grant.

Co-Principal Investigator, 1/1988 to 12/1989
Criminal Careers and Crime Control: A Matched-Sample Longitudinal Research Design, Phase I, Crime Control Theory and Policy, National Institute of Justice Grant.

Project Director, 8/1984 to 3/1986
Analysis of Juvenile Offending and Victimization Using the National Crime Survey Data: Phase III, Office of Juvenile Justice and Delinquency Prevention Grant.

Project Director, 4/1982 to 6/1983
The Use of Victimization Data to Assess the Nature, Extent, and Correlates of Serious Delinquent Behavior: Phase II, Office of Juvenile Justice and Delinquency Prevention Grant.

Consultant Work:

Consultant, 11/2008 to present
Drug Abuse and Crime Across the Life Course in an African American Population, Bloomberg School of Public Health, The Johns Hopkins University.

Consultant, 1/2008 to present
Marriage and Family Strengthening Grants for Incarcerated and Reentering Fathers and Their Partners, Research Triangle Institute.

Advisory Committee Member, 4/2000 to 4/2007
Pathways to Desistance Project, MacArthur Foundation Network on Adolescent Development and Juvenile Justice.

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Advisory Committee Member, 3/2002
Life Course Continuity and Change in Antisocial Behavior, The Rochester Youth Development Project, The University at Albany.

The Beto Chair Lecturer, February 7-10, 1999
Criminal Justice Center, Sam Houston State University, Huntsville, Texas.

Research Fellow, 7/1996 to 9/1997
The Study of Adult Development under the direction of Dr. George E. Vaillant, Department of Psychiatry, Brigham and Women's Hospital, Harvard Medical School, Boston, MA.

Consultant, 4/1996 and 2/1997
The John D. and Catherine T. MacArthur Foundation Research Program on Adolescent Development and Juvenile Justice.

Consultant, 5/1989 to 12/1990
The Victimization of Juveniles and Young Adults: A Longitudinal and Repeated Cross-Section Study. University of Illinois, Champaign-Urbana, IL.

Consultant, 8/1985 and 3/1987
Office of Juvenile Justice and Delinquency Prevention, Panel on the Design of the National Incidence Study of Missing Children.

Consultant, 6/1983 to 12/1984
Comparative Trends in Criminal Victimization in School and the Community, 1973-1981. Project Director: Jackson Toby, Rutgers University.

Consultant, 5/1983 to 9/1983
Victimization in the Boston Public Schools. Project Director: James A. Fox, Northeastern University, Boston, MA.

Research Consultant, 1/1981 to 2/1981
The Use of Victimization Data to Assess the Nature, Extent, and Correlates of Serious Delinquent Behavior. Project Director: Michael J. Hindelang, The Criminal Justice Research Center, Albany, NY.

Boards:

President, American Society of Criminology, 2002-2003; President-Elect, 2001-2002

Vice President, American Society of Criminology, November 1995-1996; Vice President-Elect, 1994-1995

Other Unpaid Work:

Visiting Scholar, 9/2005 to present
The Institute for Quantitative Social Science, Harvard University, Cambridge, MA.

Proposal Reviewer for the Nullfield Foundation, 2008, 2009.

American Society of Criminology Michael J. Hindelang Book Award Committee, 2008-2009.

American Society of Criminology Ruth Shonle Cavan Young Scholar Award Committee, 2007-2008.

Albert J. Reiss, Jr. Book Award Committee, Crime, Law, and Deviance, American Sociological Association, 2006-2007.

Chair, James Short Award Committee, Crime, Law, and Deviance, American Sociological Association, 2005-2006.

Faculty Associate, 8/2001 to 8/2006
Maryland Population Research Center, University of Maryland, College Park, MD.

Affiliated Scholar, 7/2000 to 6/2005
The Henry A. Murray Center, The Radcliffe Institute for Advanced Study, Harvard University, Cambridge, MA.

Proposal Reviewer for the Russell Sage Foundation, 2001.

Proposal Reviewer for the Harry Frank Guggenheim Foundation, 2001.

Proposal Reviewer for the John D. and Catherine T. MacArthur Foundation, 2001

Fellow, 7/1999 to 6/2000
The Henry A. Murray Center, The Radcliffe Institute for Advanced Study, Harvard University, Cambridge, MA.

American Society of Criminology Ruth Shonle Cavan Young Scholar Award Committee, 1999-2000.

Visiting Scholar, 1/1988 to 6/1999
The Henry A. Murray Center, Radcliffe College, Cambridge, MA.

Participant in the Office of Juvenile Justice and Delinquency Prevention Study Group on Serious, Violent Juvenile Offenders, 1995 to 1997.

Proposal Reviewer for the National Institute of Justice, 1993, 1994.

Proposal Reviewer for the National Science Foundation, Sociology and Law, 1991, 1992, 1993, 1998, 2000, 2001, 2002, 2009.

American Society of Criminology Membership Committee, 1991-1994.

Nominations Committee of the Crime, Law, and Deviance Section, American Sociological Association, 1993-1994.

Chair, Nominations Committee of the Crime, Law, and Deviance Section, American Sociological Association, 1992-1993.

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Workshop Faculty, "Recycling Existing Data: The Power of Archival Data for Longitudinal Research." A workshop sponsored by The Henry A. Murray Research Center of Radcliffe College, Cambridge, MA, May 8-10, 1992.

American Society of Criminology Awards Committee, 1991-1992.

Workshop Faculty, "Working with Longitudinal Data: New Questions for Old Data." A workshop sponsored by The Henry A. Murray Research Center of Radcliffe College, Cambridge, MA, May 31-June 2, 1991.

American Society of Criminology Ethics Committee, 1989-1990.

American Society of Criminology Student Affairs Committee, 1988-1989.

American Society of Criminology 1987 Program Committee.

American Society of Criminology 1986 Program Committee.

Peer Reviewer, Office of Juvenile Justice and Delinquency Prevention, 3/1987, 1/1990, 8/1992.

Visiting Fellow, 9/1984 to 6/1987
Center for Criminal Justice, Harvard Law School, Cambridge, MA.

Faculty Associate, 7/1982 to 6/1983
Center for Applied Social Research, Northeastern University, Boston, MA.

7. **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, and whether you have registered for selective service.

   No military service, registered for selective service on May 19, 1971.

8. **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.

   Distinguished University Professor, 1/2008 to the present, University of Maryland, Department of Criminology and Criminal Justice.

   Distinguished Scholar-Teacher, 2006-2007, University of Maryland, College Park.

   Edwin H. Sutherland Award, American Society of Criminology, November, 2005.

   John H. Laub and Robert J. Sampson. Shared Beginnings, Divergent Lives: Delinquent Boys to Age 70. Harvard University Press, 2003, recipient of the Albert J. Reiss, Jr. Award for Distinguished Book from the American Sociological Association's Crime, Law, and Deviance Section, August 2005.

2005 Excellence in Arts and Letters Award, The University at Albany Alumni Association, June 3, 2005.

Invited keynote address, "Shared Beginnings, Divergent Lives: Delinquent Boys to Age 70," Second International Conference on Crime and Its Control, Taipei, Taiwan, April 22, 2005.

2005 Criminal Justice Graduate Student Association Distinguished Speaker, "Shared Beginnings, Divergent Lives: Delinquent Boys to Age 70." Indiana University, Department of Criminal Justice, April 1, 2005.

John H. Laub and Robert J. Sampson. Shared Beginnings, Divergent Lives: Delinquent Boys to Age 70. Harvard University Press, 2003, recipient of the Outstanding Book Award from the Academy of Criminal Justice Sciences, March, 2005.

John H. Laub and Robert J. Sampson. Shared Beginnings, Divergent Lives: Delinquent Boys to Age 70. Harvard University Press, 2003, 2005 Choice Magazine Outstanding Academic Title.

John H. Laub and Robert J. Sampson. Shared Beginnings, Divergent Lives: Delinquent Boys to Age 70. Harvard University Press, 2003, recipient of the Michael J. Hindelang Book Award from the American Society of Criminology, November, 2004.

The Annual Lecture of the One Plus One Foundation at the Royal Institution, London, England, "Turning Lives Around: Boys in Trouble and How They Age," January 15, 2004.

President, American Society of Criminology, November, 2002-2003; President-Elect, 2001-2002.

The Second Jerry Lee Lecture on Crime and the Life Course, Department of Criminology and Criminal Justice, University of Maryland, "Juvenile Delinquents Grown Up: Studying Crime in a 60-year Perspective," October 8, 1999.

The Beto Chair Lecturer, Criminal Justice Center, Sam Houston State University, Huntsville, Texas, February 7-10, 1999.

The Distinguished Wilson Abernethy Lecture, Institute for Human Development, Life Course, and Aging, University of Toronto, "Crime and the Later Life Course: A 50 Year Follow-up of 500 Juvenile Offenders," December 10, 1998.

Honorary Member, Alpha Phi Sigma, National Criminal Justice Honor Society, Omega Epilson – Northeastern University, May, 1998.

Distinguished Alumni Award, 1997-1998, School of Criminal Justice, State University of New York at Albany, Albany, New York, November, 1997.

Fellow of the American Society of Criminology, November, 1996.

Vice President, American Society of Criminology, November, 1995-1996; Vice President-Elect, 1994-1995.

Robert J. Sampson and John H. Laub. Crime in the Making: Pathways and Turning Points Through Life, Harvard University Press, 1993, recipient of the Albert J. Reiss, Jr. Distinguished Book Award from the American Sociological Association's Crime, Law, and Deviance Section, August, 1995.

Robert J. Sampson and John H. Laub. Crime in the Making: Pathways and Turning Points Through Life, Harvard University Press, 1993, recipient of the Outstanding Book Award from the Academy of Criminal Justice Sciences, March, 1995.

Robert J. Sampson and John H. Laub. Crime in the Making: Pathways and Turning Points Through Life, Harvard University Press, 1993, recipient of the Michael J. Hindelang Book Award from the American Society of Criminology, November, 1994.

Robert D. Klein University Lecture, Northeastern University, "Crime in the Making: Pathways and Turning Points Through Life," March 17, 1994.

Northeastern University, Graduate School of Criminal Justice, Professor of the Year, 1992-93.

9. **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.

Not applicable; I am not a lawyer.

10. **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.

Not applicable; I am not a lawyer.

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.

Not applicable; I am not a lawyer.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, 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.

Professional Organizations:

Academy of Criminal Justice Sciences – On and off member since the early 1980s
American Society of Criminology – Member since 1981 (estimated)
_____President, 2002-2003, President-Elect, 2001-2002.
_____Vice President, 1995-1996, Vice President-Elect, 1994-1995.
American Sociological Association – Member since 1985 (estimated)
Society for the Study of Human Development – Member since 1999

Advisory and Editorial Boards:

Associate Editor, Criminology, 4/2003 to present.

Editorial Board, The Compact Criminology Series, Sage Publications, United Kingdom, 12/2006 to the present.

Editorial Board, Advances in Criminological Theory, 11/2002 to present.

Founding Member of the International Advisory Board, European Journal of Criminology, 6/2002 to present.

Editorial Board, Youth Violence and Juvenile Justice: An Interdisciplinary Journal, 5/2002 to present.

Editorial Board, Journal of Research in Crime and Delinquency, 10/1992 to present.

Editorial Board, Journal of Criminal Law and Criminology, 7/1996 to present.

Member, Committee on Law and Justice, National Research Council, 8/2002 to 12/2008.

Advisory Committee Member, Returning Home: Understanding the Challenges of Prisoner Reentry, The Urban Institute, 5/2002.

Advisory Committee Member, The Henry A. Murray Research Center at the Radcliffe Institute for Advanced Study, Harvard University, 11/2001 to 6/2004.

Advisory Committee Member, The Henry A. Murray Research Center at the Radcliffe Institute for Advanced Study, Harvard University, Designing Training in Longitudinal Methods, 11/2/2001.

Consulting Editor, American Journal of Sociology, 9/1998 to 9/2000.

Editorial Board, Criminology, 6/1999 to 4/2003, 4/1997 to 5/1998.

Co-Chair of the Advisory Committee to the Oral History of Criminology and Criminal Justice Project jointly sponsored by the American Society of Criminology and the Academy of Criminal Justice Sciences, 1995-1998.

Editor, Journal of Quantitative Criminology, 7/1991 to 9/1996.

Associate Editor, Journal of Quantitative Criminology, 9/1996 to 12/1997.

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Advisory Committee Member, National Institute of Justice Data Resources Program, 12/1989 to 3/1996.

Advisory Committee Member, Juvenile Justice Statistics and Systems Development Program, Office of Juvenile Justice and Delinquency Prevention, 3/1991 to 3/1995.

Associate Editor, Journal of Quantitative Criminology, 1/1986 to 6/1991.

Editorial Consultant, Criminal Justice Behavior, 3/1983 to 6/1986.

Consulting Editor, Northeastern University Press, 7/1981 to 6/1986.

Advisor, Victim Witness Service Bureau, Middlesex County, Massachusetts, 4/1984.

Advisory Committee Member, National Organization for Victim Assistance for a research project developing a series of evaluation packages for victim/witness programs, 3/1984.

Advisory Committee Member, National Institute for Juvenile Justice and Delinquency Prevention, for a research project entitled, "Minority Involvement in Violent Crime," Center for Behavioral Research, Santa Monica, California, 9/1983.

Governor Michael Dukakis's Task Force on Crime Victims, Responsibilities included the writing of "A Proposal to Modify the Massachusetts Crime Victim Compensation Law," 1/1982.

Assistant Editor, Journal of Research in Crime and Delinquency, 4/1978 to 12/1980.

b. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin 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.

To the best of my knowledge, none of these organizations currently discriminate or formerly discriminated on the basis of race, sex, religion, or national origin.

12. **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. Supply four (4) copies of all published material to the Committee.

Please see the attached document for a complete listing of my published writings. I have supplied four (4) copies of journal articles, book chapters/published lectures, and book reviews/review essays. I have provided a single copy of all of my books, edited books, and research monographs. I have provided a single copy of each of the research reports that I have in my possession.

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b. 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, 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. 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.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. 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 recording of your remarks, 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, furnish a copy of any outline or notes from which you spoke.

Please see the attached document for a complete listing of my presentations and talks. With regard to my presentations and talks, the vast majority of these were subsequently developed into published journal articles and/or book chapters and copies of these publications are provided to the committee. In addition, a large number of these presentations were drawn from my two award winning books (Crime in the Making: Pathways and Turning Points Through Life, Harvard University Press, 1993 and Shared Beginnings, Divergent Lives: Delinquent Boys to Age 70, Harvard University Press, 2003) and copies of these books are provided to committee. Overall, 75 to 80 percent of these presentations were used in subsequent publications or were drawn from work that was already published. I do not have readily accessible copies of any of the presentations and talks that were not published or drawn from previously published works.

e. 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 searched publicly available electronic database and my personal files and I found the following items:

Radio Programs:

"Juvenile Offending and Long Term Criminals." BBC News Hour. January 14, 2004.

"Juvenile Offending and Long Term Criminals." Host Laurie Taylor. Thinking Allowed. BBC Radio 4. January 14, 2004.

Newspaper Articles:

"The Bonds of Youths to Community." Editorial, The Boston Sunday Globe June 12, 1994: 78.

"The Crime-Fighting Family." Editorial, The Boston Globe June 15, 1994: 18.

"Neighborhood crime botch." The Boston Globe June 4, 1995: 86.

Anand, Geeta. "Residents' fears can put police at risk." The Boston Globe January 1, 1995: 1.

Frean, Alexandra. "Marriage saves men from a life of crime." The Times (London) January 14, 2004: 8.

Goleman, Daniel. "75 Years Later, Study Still Tracking Geniuses." The New York Times March 7, 1995: C1.

Kong, Dolores. "Study shows cohesiveness curbs neighborhood violence." The Boston Globe August 15, 1997: A9.

Lakshmanan, Indira A.R. "Blacks, whites arrested at same rate in S. Boston." The Boston Globe October 30, 1994: 1.

Roberts, Yvonne. "Crime is not predetermined by background." The Independent (London) January 15, 2004: 19.

Sieghart, Mary Ann. "Make Marriage Not Crime." The Times (London) T2 Magazine January 14, 2004: 3.

Thompson, Anne. "Criminologists Get Some Overdue Respect." The Chicago Tribune February 24, 1994: 13. Note: this article was from the Associated Press "Juvenile Study Back in Favour" in Boston, MA and was picked up by more than 50 newspapers around the country.

United Press International. "Study: Marriage is a Crime Deterrent." The Washington Times, January 15, 2004.

I have supplied four (4) copies of the newspaper articles listed above.

13. **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.

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, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

None.

14. **Legal Career:** 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;

Not applicable; I am not a lawyer.

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

Not applicable; I am not a lawyer.

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.

Although I am not a lawyer, my professional career has been involved with activities related to law, crime, and criminal justice.

Distinguished University Professor, 1/2008 to the present
University of Maryland, Department of Criminology and Criminal Justice
2220 LeFrak Hall, University of Maryland, College Park, MD 20742-8235

Professor, 8/1998 to 12/2007
University of Maryland, Department of Criminology and Criminal Justice

Professor, 7/1991 to 6/1998
Northeastern University, College of Criminal Justice, 360 Huntington Avenue, Boston, Massachusetts 02115

Associate Professor, 7/1984 to 6/1991
Northeastern University, College of Criminal Justice, (Tenure granted: 7/1985)

Assistant Professor, 1/1981 to 6/1984
Northeastern University, College of Criminal Justice

Project Coordinator, 7/1979 to 12/1980
The Use of Victimization Data to Assess the Nature, Extent, and Correlates of Serious Delinquent Behavior, Office of Juvenile Justice and Delinquency Prevention Grant

Criminal Justice Research Center, One Alton Road, Albany, NY

Research Analyst, 12/1978 to 6/1979
The Use of Victimization Data to Assess the Nature, Extent, and Correlates of Serious Delinquent Behavior, Office of Juvenile Justice and Delinquency Prevention Grant
Criminal Justice Research Center, One Alton Road, Albany, NY

Research Assistant, 5/1978 to 12/1978
The Use of Victimization Data to Assess the Nature, Extent, and Correlates of Serious Delinquent Behavior, Office of Juvenile Justice and Delinquency Prevention Grant
Criminal Justice Research Center, One Alton Road, Albany, NY

Teaching Fellowship, 8/1977 to 5/1978
School of Criminal Justice, State University of New York at Albany

Research Assistant, 1/1977 to 8/1977
Self-Reported Delinquency: Methods and Substance, National Institute of Mental Health Grant. Criminal Justice Research Center, One Alton Road, Albany, NY

Workshop Resource Person/Curriculum Review, 7/1976 to 1/1977
Quantitative Training for Public Policy Analysts, Law Enforcement Assistance Administration Grant. School of Criminal Justice, State University of New York at Albany

Research Assistant/Para-Legal Advocate, 6/1975 to 8/1975
Law Enforcement Assistance Administration, Summer Internship, Prisoner's Legal Assistance, 343 South Jackson Avenue, Chicago, Illinois 60607.

Research Grants:

Co-Principal Investigator, 10/2008 to present
Pathways to Desistance: Special Projects, funded by the Office of Juvenile Justice and Delinquency. The University of Maryland received a subcontract for this grant from the University of Pittsburgh.

Co-Principal Investigator, 7/2001 to 12/2003
The Aftermath of Incarceration in the Lives of Disadvantaged Men: A 50-Year Follow-Up Study, funded by the Russell Sage Foundation.

Co-Principal Investigator, 1/1995 to 12/1996
The Natural History of Crime and Violence: A 60 Year Perspective, funded by The Harry Frank Guggenheim Foundation.

Co-Principal Investigator, 9/1991 to 2/1994
Exits From Poverty Over the Life Course: A Comparative Longitudinal Study, funded by the Russell Sage Foundation.

Co-Principal Investigator, 1/1992 to 12/1993
Structural Variations in Juvenile Justice Processing: A Comparative Macrolevel Study, 1985-1990, funded by the National Science Foundation.

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Co-Principal Investigator, 1/1990 to 12/1991
Criminal Careers and Crime Control: A Matched-Sample Longitudinal Research Design, Phase II, Crime Control Theory and Policy, National Institute of Justice Grant.

Co-Principal Investigator, 1/1988 to 12/1989
Criminal Careers and Crime Control: A Matched-Sample Longitudinal Research Design, Phase I, Crime Control Theory and Policy, National Institute of Justice Grant.

Project Director, 8/1984 to 3/1986
Analysis of Juvenile Offending and Victimization Using the National Crime Survey Data: Phase III, Office of Juvenile Justice and Delinquency Prevention Grant.

Project Director, 4/1982 to 6/1983
The Use of Victimization Data to Assess the Nature, Extent, and Correlates of Serious Delinquent Behavior: Phase II, Office of Juvenile Justice and Delinquency Prevention Grant.

Consultant Work:

Consultant, 11/2008 to present
Drug Abuse and Crime Across the Life Course in an African American Population, Bloomberg School of Public Health, The Johns Hopkins University.

Consultant, 1/2008 to present
Marriage and Family Strengthening Grants for Incarcerated and Reentering Fathers and Their Partners, Research Triangle Institute.

Advisory Committee Member, 4/2000 to 4/2007
Pathways to Desistance Project, MacArthur Foundation Network on Adolescent Development and Juvenile Justice.

Advisory Committee Member, 3/2002
Life Course Continuity and Change in Antisocial Behavior, The Rochester Youth Development Project, The University at Albany.

The Beto Chair Lecturer, February 7-10, 1999
Criminal Justice Center, Sam Houston State University, Huntsville, Texas.

Research Fellow, 7/1996 to 9/1997
The Study of Adult Development under the direction of Dr. George E. Vaillant, Department of Psychiatry, Brigham and Women's Hospital, Harvard Medical School, Boston, MA.

Consultant, 4/1996 and 2/1997
The John D. and Catherine T. MacArthur Foundation Research Program on Adolescent Development and Juvenile Justice.

Consultant, 5/1989 to 12/1990
The Victimization of Juveniles and Young Adults: A Longitudinal and Repeated Cross-Section Study. University of Illinois, Champaign-Urbana, IL.

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Consultant, 8/1985 and 3/1987
Office of Juvenile Justice and Delinquency Prevention, Panel on the Design of the National Incidence Study of Missing Children.

Consultant, 6/1983 to 12/1984
Comparative Trends in Criminal Victimization in School and the Community, 1973-1981. Project Director: Jackson Toby, Rutgers University.

Consultant, 5/1983 to 9/1983
Victimization in the Boston Public Schools. Project Director: James A. Fox, Northeastern University, Boston, MA.

Research Consultant, 1/1981 to 2/1981
The Use of Victimization Data to Assess the Nature, Extent, and Correlates of Serious Delinquent Behavior. Project Director: Michael J. Hindelang, The Criminal Justice Research Center, Albany, NY.

Boards:

President, American Society of Criminology, November, 2002-2003; President-Elect, 2001-2002

Vice President, American Society of Criminology, November, 1995-1996; Vice President-Elect, 1994-1995

Other Unpaid Work:

Visiting Scholar, 9/2005 to present
The Institute for Quantitative Social Science, Harvard University, Cambridge, MA.

Proposal Reviewer for the Nullfield Foundation, 2008, 2009.

American Society of Criminology Michael J. Hindelang Book Award Committee, 2008-2009.

American Society of Criminology Ruth Shonle Cavan Young Scholar Award Committee, 2007-2008.

Albert J. Reiss, Jr. Book Award Committee, Crime, Law, and Deviance, American Sociological Association, 2006-2007.

Chair, James Short Award Committee, Crime, Law, and Deviance, American Sociological Association, 2005-2006.

Faculty Associate, 8/2001 to 8/2006
Maryland Population Research Center, University of Maryland, College Park, MD.

Affiliated Scholar, 7/2000 to 6/2005
The Henry A. Murray Center, The Radcliffe Institute for Advanced Study, Harvard University, Cambridge, MA.

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Proposal Reviewer for the Russell Sage Foundation, 2001.

Proposal Reviewer for the Harry Frank Guggenheim Foundation, 2001.

Proposal Reviewer for the John D. and Catherine T. MacArthur Foundation, 2001

Fellow, 7/1999 to 6/2000
The Henry A. Murray Center, The Radcliffe Institute for Advanced Study, Harvard University, Cambridge, MA.

American Society of Criminology Ruth Shonle Cavan Young Scholar Award Committee, 1999-2000.

Visiting Scholar, 1/1988 to 6/1999
The Henry A. Murray Center, Radcliffe College, Cambridge, MA.

Participant in the Office of Juvenile Justice and Delinquency Prevention Study Group on Serious, Violent Juvenile Offenders, 1995 to 1997.

Proposal Reviewer for the National Institute of Justice, 1993, 1994.

Proposal Reviewer for the National Science Foundation, Sociology and Law, 1991, 1992, 1993, 1998, 2000, 2001, 2002, 2009.

American Society of Criminology Membership Committee, 1991-1994.

Nominations Committee of the Crime, Law, and Deviance Section, American Sociological Association, 1993-1994.

Chair, Nominations Committee of the Crime, Law, and Deviance Section, American Sociological Association, 1992-1993.

Workshop Faculty, "Recycling Existing Data: The Power of Archival Data for Longitudinal Research." A workshop sponsored by The Henry A. Murray Research Center of Radcliffe College, Cambridge, MA, May 8-10, 1992.

American Society of Criminology Awards Committee, 1991-1992.

Workshop Faculty, "Working with Longitudinal Data: New Questions for Old Data." A workshop sponsored by The Henry A. Murray Research Center of Radcliffe College, Cambridge, MA, May 31-June 2, 1991.

American Society of Criminology Ethics Committee, 1989-1990.

American Society of Criminology Student Affairs Committee, 1988-1989.

American Society of Criminology 1987 Program Committee.

American Society of Criminology 1986 Program Committee.

Peer Reviewer, Office of Juvenile Justice and Delinquency Prevention, 3/1987, 1/1990, 8/1992.

Visiting Fellow, 9/1984 to 6/1987
Center for Criminal Justice, Harvard Law School, Cambridge, MA.

Faculty Associate, 7/1982 to 6/1983
Center for Applied Social Research, Northeastern University, Boston, MA.

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

Not applicable; I am not a lawyer.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

Not applicable; I am not a lawyer.

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. Indicate the percentage of your practice in:
1. federal courts;
2. state courts of record;
3. other courts;
4. administrative agencies

Not applicable; I am not a lawyer.

ii. Indicate the percentage of your practice in:
1. civil proceedings;
2. criminal proceedings.

Not applicable; I am not a lawyer.

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

i. What percentage of these trials were:

1. jury;
2. non-jury.

Not applicable; I am not a lawyer.

e. Describe your practice, if any, before the Supreme Court of the United States. 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.

Not applicable; I am not a lawyer.

15. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. 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.

Even though I am not a lawyer, the following are people with whom I have worked who know me and my qualifications:

Robert J. Sampson
Chair, Department of Sociology &
Henry Ford II Professor of the Social Sciences
Harvard University
William James Hall
33 Kirkland Street
Cambridge, MA 02138
Phone: (617) 496-9716

Felton Earls
Professor of Human Behavior and Development
Harvard University
Cambridge, MA 02138
Phone: (617) 495-5381

Sally S. Simpson
Professor and Chair
Department of Criminology and Criminal Justice
2220 LeFrak Hall
University of Maryland
College Park, MD. 20742

Phone: (301) 405-4726

Professor Alfred Blumstein
Heinz College
Carnegie Mellon University
5000 Forbes Avenue
Pittsburgh, PA 15213
Phone: (412) 268-8269

Joan Petersilia
Professor of Law
C-Director, Stanford Criminal Justice Center
559 Nathan Abbott Way
Stanford Law School
Stanford, CA 94305-8610
Phone: (650) 723- 4740

Michael R. Gottfredson
Executive Vice Chancellor and Provost
Professor of Criminology, Law, and Society
University of California, Irvine
509 Administration
Irvine, California 92697-1000
Phone: (949) 824-6296

Philip J. Cook
Senior Associate Dean for Faculty
ITT/Sanford Professor of Public Policy
Sanford School of Public Policy
Duke University
Durham, NC 27708
Phone: (919) 613-7360

Lawrence W. Sherman
Director, Jerry Lee Center of Criminology
Department of Criminology
School of Arts & Sciences
University of Pennsylvania
Philadelphia, PA 19104
Phone: (215) 898-9216

Jeremy Travis
President of John Jay College of Criminal Justice
899 Tenth Avenue
New York, NY 10019
Phone: (212) 237-8600

Honorable Roderick L. Ireland
Senior Associate Justice of the Massachusetts Supreme Judicial Court
John Adams Courthouse
One Pemberton Square, Suite 2500

Boston, MA 02108
Phone: (617) 557-1000 or the clerk's office; Susan Mellen (617) 557-1020

John J. Larivee
Chief Executive Officer
Community Resources for Justice
355 Boylston Street
Boston, MA 02116
Phone: (617) 482-2520 x112

Scott Harshbarger
Senior Counsel,
Proskauer Rose LLP
One International Place
Boston, MA 02110-7360
Phone: (617) 526-9632

Ronald P. Corbett, Jr.
Executive Director
Supreme Judicial Court
John Adams Courthouse
1 Pemberton Sq., Suite 2300
Boston, MA. 02108-1741
Phone: (617) 557-1194

Janet E. Fine
Executive Director
Massachusetts Office for Victims Assistance
1 Ashburton Pl., Suite 1101
Boston, MA 02108
Phone: (617) 727-9746

Edward E. Rhine
Deputy Director
Office of Policy and Offender Reentry
Ohio Department of Rehabilitation and Correction
770 West Broad St.
Columbus, OH 43222
Phone: (614) 752-0627

16. **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. 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.)

Since earning my Ph.D. in criminal justice from the School of Criminal Justice at the State University of New York at Albany in 1980, I have had extensive experience teaching and doing research on crime and criminal justice. During my career, I have

amassed a record of achievement. I have written or edited 11 books/monographs; published 55 journal articles; published 30 book chapters/lectures; published 11 book reviews/review essays; wrote 16 research reports; and made 138 presentations to various audiences around the world. I have had an academic career in the field of criminology and criminal justice spanning almost 30 years and I have received several awards and honors for my contributions to research, scholarly work, and teaching, including the Edwin H. Sutherland Award (established in 1960) by the American Society of Criminology. This award is the highest honor designated by the ASC and is given in recognition of one's outstanding contributions to "theory or research in criminology on the etiology of criminal and deviant behavior, the criminal justice system, corrections, law, or justice."

I have conducted extensive research examining crime, human development, and the life course. Since 1987, I have been involved in a long-term research project examining continuity and change in criminal behavior over the life course. With my colleague, Robert Sampson, Department of Sociology at Harvard University, I have been working with the archival data from Sheldon and Eleanor Glueck's classic study, Unraveling Juvenile Delinquency (1950), and subsequent follow-ups that we conducted of these subjects up to age 70. This study represents the longest longitudinal study of crime in the world. To date, this project has produced two award winning books, Crime in the Making: Pathways and Turning Points Through Life (Harvard University Press, 1993) and Shared Beginnings, Divergent Lives: Delinquent Boys to Age 70 (Harvard University Press, 2003), 28 journal articles, 18 book chapters, and more than 90 presentations. Our research has spurred the development of what Sampson and I call "life-course criminology" -- the study of both continuity and change in criminal behavior over the life course. My contribution to criminology of which I am most proud has come from developing (with co-author Robert Sampson) an age-graded theory of informal social control to account for stability and change in criminality over the life course. This life-course perspective has helped reshape the discipline of criminology and criminal justice.

* * * *

I have not undertaken any lobbying activities.

17. **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, provide four (4) copies to the committee.

I began my teaching career in August of 1977 when I was a graduate student at the School of Criminal Justice at the State University of New York at Albany. I taught for one academic year (1977-1978) an undergraduate course entitled, "Juvenile Delinquency and Juvenile Justice." After receiving my Ph.D. in May 1980, I joined the faculty in the College of Criminal Justice at Northeastern University in January 1981. There I taught a wide range of undergraduate and graduate courses including criminology, juvenile delinquency, juvenile justice, victimology, and critical issues in criminology and criminal justice. I taught at Northeastern from January 1980 to June 1998. In August 1998, I joined the faculty in the Department of Criminology and Criminal Justice at the University of Maryland where I teach now. At the University of Maryland, I teach a range of undergraduate and graduate courses including crime and the life course, criminology, juvenile delinquency, and a university honors seminar that I developed on

the idea of crime. I have provided four (4) copies of the syllabus for each of the courses I taught at the University of Maryland since my arrival in August 1998. I do not have the syllabi from the courses I taught at Northeastern University and the State University of New York at Albany.

18. **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. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

    If confirmed, I will take an unpaid leave of absence from my position as a tenured faculty member at the University of Maryland. I will retain my interest in the University of Maryland Retirement Plan, a defined contribution plan, with no further contributions made by myself or the University of Maryland during my unpaid leave of absence. I will receive royalties from Harvard University Press for previous published works.

19. **Outside Commitments During Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service? If so, explain.

    None.

20. **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, licensing fees, 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 required by the Ethics in Government Act of 1978 is attached.

21. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    See attached document, Laub Income Net Worth.

22. **Potential Conflicts of Interest**:

    a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

    In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official. See also the attached Ethics Agreement.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official. See also the attached Ethics Agreement.

23. **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. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

I am not an attorney; therefore, I do not provide pro bono legal services. However, on an annual basis, I make contributions to several charitable organizations in the District of Columbia and Boston, Massachusetts that provide food banks, assistance to victims of domestic violence, and shelter and assistance to the homeless.

In the early 1980s, when I was an assistant professor in the College of Criminal Justice at Northeastern University, I developed new courses on victims of crime at both the undergraduate and graduate levels and I assisted the Victim Witness Service Bureau in Middlesex County, Massachusetts in expanding services to victims of crime by developing opportunities for students to work as interns in the various victim witness bureaus in the District Courts. I also volunteered to work on Governor Michael Dukakis's Task Force on Crime Victims and the Massachusetts Victim Rights Week Conference.

United States Senate Committee on the Judiciary
John H. Laub Response to Questionnaire

Question 12 Published Writings and Public Statements:

12A:

A. Books/Edited Books/Monographs:

John H. Laub, Committee Member, National Research Council, Community Supervision and Desistance From Crime, 2008. Parole, Desistance from Crime, and Community Integration. Washington, DC: The National Academies Press.

Robert J. Sampson and John H. Laub, special issue editors. Developmental Criminology and Its Discontents: Trajectories of Crime from Childhood to Old Age. The Annals of the American Academy of Political and Social Science, Volume 602, November, 2005.

John H. Laub and Robert J. Sampson. Shared Beginnings, Divergent Lives: Delinquent Boys to Age 70. Cambridge, MA: Harvard University Press, 2003. Paperback Edition, 2006. (Chapter 10 reprinted in Criminological Theory, edited by Francis Cullen and Robert Agnew, Roxbury Publishing, 2006.)

John H. Laub. The Craft of Criminology: Papers by Travis Hirschi. Selected, edited, and with an introduction by John H. Laub. New Brunswick, NJ: Transaction Books, 2002.

Joan McCord and John H. Laub, editors. Contemporary Masters in Criminology. New York: Plenum Publishing Company, 1995.

Robert J. Sampson and John H. Laub. Crime in the Making: Pathways and Turning Points Through Life. Cambridge, MA: Harvard University Press, 1993. Paperback Edition, 1995. (Reprinted in Chinese and published by the Peking University Press, 2005; Chapter 1 reprinted in Crime, Readings, Third Edition, edited by Robert D. Crutchfield, Charis E. Kubrin, George S. Bridges, and Joseph G. Weis, Sage Publications, 2008; Chapter 10 reprinted in Criminological Theory, edited by Francis Cullen and Robert Agnew, Roxbury Publishing, 1999, 2003, 2006.)

John H. Laub and David De Lorenzo. Pioneers in Criminology and Criminal Justice: Sheldon and Eleanor Touroff Glueck. A Catalog prepared for the Retrospective Exhibition Honoring Professor Sheldon Glueck and Dr. Eleanor Touroff Glueck for their Remarkable Achievements. Cambridge, MA: President and Fellows of Harvard College, 1992.

John H. Laub. Criminology in the Making: An Oral History. Boston, MA: Northeastern University Press, 1983.

Robert J. Sampson, Thomas Castellano, and John H. Laub. Juvenile Criminal Behavior and Its Relation to Neighborhood Characteristics. Washington, D.C.:Government Printing Office, 1981.

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Kenneth R. Danser and John H. Laub. Juvenile Criminal Behavior and Its Relation to Economic Conditions. Washington, D.C.: Government Printing Office, 1980.

John H. Laub and Michael J. Hindelang. Juvenile Criminal Behavior in Urban, Suburban, and Rural Areas. Washington, D.C.: Government Printing Office, 1980.

B. Journal Articles:

Bianca E. Bersani, Paul Nieuwbeerta, and John H. Laub. "Predicting Trajectories of Offending over the Life Course: Findings from a Dutch Conviction Cohort." Journal of Research in Crime and Delinquency, Vol., No. 2, 2009, pp. 468-494.

Robert J. Sampson and John H. Laub. "A Life-Course Theory and Long-Term Project on Trajectories of Crime." Special Issue on "Developmental and Life-Course Criminology" in The Journal of Criminology and Penal Reform (Monatsschrift), Vol. 2/3, 2009, pp. 226-239.

Bianca E. Bersani, John H. Laub, and Paul Nieuwbeerta. "Marriage and Desistance from Crime in the Netherlands: Do Gender and Socio-Historical Context Matter?" Journal of Quantitative Criminology, Vol. 25, No. 1, 2009, pp. 3-24.

John H. Laub and Robert J. Sampson. "Glen Elder's Influence on Life-Course Criminology: Serendipity and Cross-Disciplinary Fertilization." Special issue of Research in Human Development, Vol. 5, No. 4, 2008, pp. 199-215.

Robert J. Sampson, John H. Laub, and Christopher Wimer. "Does Marriage Reduce Crime? A Counterfactual Approach to Within-individual Causal Effects." Criminology, Vol. 44, No. 3, 2006, pp. 465-508. (Reprinted in Crime, Readings, Third Edition, edited by Robert D. Crutchfield, Charis E. Kubrin, George S. Bridges, and Joseph G. Weis, Sage Publications, 2008)

John H. Laub. "Edwin H. Sutherland and the Michael-Adler Report: Searching for the Soul of Criminology Seventy Years Later. The American Society of Criminology 2005 Sutherland Address." Criminology, Vol. 44, No. 2, 2006, pp. 235-258.

John H. Laub, Robert J. Sampson, and Gary A. Sweeten. "Assessing Sampson and Laub's Life-Course Theory of Crime." Taking Stock: The Status of Criminological Theory, Advances in Criminological Theory (Volume 15), edited by Francis T. Cullen, John Paul Wright, and Kristie R. Blevins. New Brunswick, NJ: Transaction Publishers, 2006, pp. 313-333.

Robert J. Sampson and John H. Laub. "Seductions of Method: Rejoinder to Nagin and Tremblay's 'Developmental Trajectory Groups: Fact or Fiction?'" Criminology, Vol. 43, No. 4, 2005, pp. 905-913.

Robert J. Sampson and John H. Laub. "When Prediction Fails: From Crime-Prone Boys to Heterogeneity in Adulthood." Annals of the American Academy of Political and Social Science, Vol. 602, 2005, pp. 73-79.

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Robert J. Sampson and John H. Laub. "A Life-Course View of The Development of Crime." Annals of the American Academy of Political and Social Science, Vol. 602, 2005, pp. 12-45. (Reprinted in Introduction to Criminology: A Text/Reader, Anthony Walsh and Craig Hemmens, Sage Publications, 2008)

Robert J. Sampson and John H. Laub. "A General Age-Graded Theory of Crime: Lessons Learned and the Future of Life-Course Criminology." Integrated Developmental and Life-Course Theories of Offending, Advances in Criminological Theory (Volume 14), edited by David P. Farrington. New Brunswick, NJ: Transaction Publishers, 2005, pp.165-181.

Robert J. Sampson, John H. Laub, and Elaine P. Eggleston. "On the Robustness and Validity of Groups." Journal of Quantitative Criminology, Vol. 20, No. 1, 2004, pp. 37-42.

Elaine P. Eggleston, John H. Laub, and Robert J. Sampson. "Methodological Sensitivities to Latent Class Analysis of Long-Term Criminal Trajectories." Journal of Quantitative Criminology, Vol. 20, No. 1, 2004, pp. 1-26.

John H. Laub. "The Life Course of Criminology in the United States -- The American Society of Criminology 2003 Presidential Address." Criminology, Vol. 42, No. 1, 2004, pp. 1-26.

John H. Laub and Robert J. Sampson. "Strategies for Bridging the Quantitative and Qualitative Divide: Studying Crime Over the Life Course." Research in Human Development, Vol. 1, Nos. 1&2, 2004, pp. 81-99.

Robert J. Sampson and John H. Laub. "Life-Course Desisters? Trajectories of Crime Among Delinquent Boys Followed to Age 70." Criminology, Vol. 41, No. 3, 2003, pp. 555-592.

Elaine P. Eggleston and John H. Laub. "The Onset of Adult Offending: A Neglected Dimension of the Criminal Career." Journal of Criminal Justice, Vol. 30, 2002, pp. 603-622.

Philip J. Cook and John H. Laub. "After the Epidemic: Recent Trends in Youth Violence in the United States." Crime and Justice: A Review of Research, Volume 29, edited by Michael Tonry. Chicago: University of Chicago Press, 2002, pp. 1-37.

John H. Laub and Robert J. Sampson. "Understanding Desistance From Crime." Crime and Justice: A Review of Research, Volume 28, edited by Michael Tonry. Chicago: University of Chicago Press, 2001, pp. 1-69.

John H. Laub. "Turning Points That Lead Away From Delinquency." National Institute of Justice Journal, October 2000, pp. 30-31.

John H. Laub. "Crime Over the Life Course." Poverty Research News, Vol. 4, No. 3, May-June 2000, pp. 4-7.

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John H. Laub, "Neuroscience and the Boundaries of Criminology," University of Pennsylvania, Criminology Day, "Neuroscience and Crime: New Frontiers, Philadelphia, PA, April 4, 2008.

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John H. Laub. "Shared Beginnings, Divergent Lives: Delinquent Boys to Age 70." Departments of Psychology and Sociology/Anthropology, Millersville University, Millersville, PA, November 2, 2005.

John H. Laub and Robert J. Sampson. "Author Meets Critics – Shared Beginnings, Divergent Lives: Delinquent Boys to Age 70." Annual Meeting of the American Sociological Association, Philadelphia, PA, August 13, 2005.

John H. Laub. "Explaining Transitions in and out of Crime: Studying Delinquent Boys from Age 7 to 70." Plenary Address at the 14th World Congress of Criminology, Philadelphia, PA, August 11, 2005.

John H. Laub and Robert J. Sampson. "Human Agency in the Criminal Careers of 500 Boston Men, circa 1925-1995." A paper prepared for the workshop on "Agency and Human Development under Conditions of Social Change," Jena, Germany, June 4-6, 2005.

Robert J. Sampson and John H. Laub. "A Life Course View of the Development of Crime." Prepared for the Albany Symposium on Crime and Justice, "Developmental Criminology and Its Discontents: Offender Typologies and Trajectories of Crime." School of Criminal Justice, University of Albany, Albany, NY, April 28-29th, 2005.

John H. Laub. "The Life Course of Criminology in the United States." A presentation at the Graduate School of Criminology, National Taipei University, Taipei, Taiwan, April 21, 2005.

John H. Laub. "The Life Course of Criminology in the United States." A presentation at the Department of Crime Prevention and Corrections, Central Police University, Taoyuan, Taiwan, April 20, 2005.

John H. Laub. Discussant, Book Forum – Rethinking Rehabilitation: Why Can't We Reform Our Criminals by David Farabee. American Enterprise Institute for Public Policy Research, Washington, DC, March 4, 2005.

John H. Laub and Robert J. Sampson. "Author Meets Critics – Shared Beginnings, Divergent Lives: Delinquent Boys to Age 70." Annual Meeting of the American Society of Criminology, Nashville, TN, November 19, 2004.

John H. Laub, Robert J. Sampson, and Elaine P. Eggleston. "Social Control and Adolescent Development: A Life-Course Criminological Perspective." A paper presented at the 2004 Jena Center for Applied Developmental Science Conference "Positive Development: Linking Individual, Communities, and Social Policies," Weimar, Germany, October 10, 2004.

John H. Laub. "Shared Beginnings, Divergent Lives: Delinquent Boys to Age 70." A presentation at the Open Society Institute-Baltimore, Baltimore, MD, September 29, 2004.

John H. Laub. "Long-Term Success After a Very Bad Start: Lessons from a 50-year Follow-up Study." Presentation prepared for the Institute of Medicine Board Meeting, "Resilience and

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Recovery: Refocusing Research and Services on the Restoration of Health," Washington, DC, June 9, 2004.

John H. Laub. "Discussant of papers by Marc LeBlanc, Rolf Loeber, and Avshalom Capsi." First Annual ScoPiC Conference, The Social Contexts of Pathways in Crime: Development, Context, and Mechanisms, Cambridge, England, June 3, 2004.

John H. Laub. "Shared Beginnings, Divergent Lives: Delinquent Boys to Age 70." A presentation at the Law and Society Workshop, American Bar Foundation and Northwestern University, Chicago, IL, May 7, 2004.

John H. Laub. "Shared Beginnings, Divergent Lives: Delinquent Boys to Age 70." A presentation at the Maryland Population Research Center, University of Maryland, February 20, 2004.

John H. Laub. "Bridging the Quantitative/Qualitative Divide: Strategies for Studies Over the Life Course." Nuffield Foundation, London, England, January 16, 2004.

John H. Laub. "Studying Delinquent Boys to Age 70." A presentation at the 2003 Annual IRB Conference, "Reclaiming the Belmont Principles for Human Research Protections: Looking Back to Move Forward," Washington, DC, December 7, 2003.

John H. Laub. "The Life Course of Criminology in the United States: The American Society of Criminology 2003 Presidential Address." A paper delivered at the annual meeting of the American Society of Criminology, Denver, CO, November 21, 2003.

John H. Laub. "Shared Beginnings, Divergent Lives: Delinquent Boys to Age 70." A presentation at the Fels Institute of Government, University of Pennsylvania, Philadelphia, PA, October 30, 2003.

John H. Laub and Robert J. Sampson. "Coming of Age in Wartime: How World War II and the Korean War Changed Lives." A paper presented at the Penn State Conference on the Historical Influences on Lives and Aging, State College, PA, October 14, 2003.

John H. Laub and Robert J. Sampson. "Shared Beginnings, Divergent Lives: Lessons from Life Course Criminology." A paper presented at the annual meeting of the American Sociological Association, Atlanta, GA, August 18, 2003.

John H. Laub. "Juvenile Delinquents Grown Up: A 50-year Follow-up Study of 500 Adolescent Offenders." Keynote speaker at the Annual Conference on Criminal Justice Research and Evaluation: Enhancing Policy and Practice sponsored by the National Institute of Justice, Washington, DC, July 29, 2003.

John H. Laub and Robert J. Sampson. "Incarceration and the Life Course of Disadvantaged Men, Ages 7-70." Conference on the Impacts of Incarceration on Prisoner Reentry into Labor

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Markets, Families, and Communities, Russell Sage Foundation, New York City, December 12-13, 2002.

John H. Laub. Discussant, "School and Community Effects on School Crime." Annual Meeting of the American Society of Criminology, Chicago, IL, November 13, 2002.

John H. Laub. "Juvenile Delinquents Grown Up: A 50-Year Follow-up of 500 Adolescent Offenders." A presentation at the Carolina Consortium on Human Development, University of North Carolina, Chapel Hill, October 28, 2002.

John H. Laub. "Lessons Learned from a 50 Year Plus Longitudinal Study." A presentation at the meeting of the Society for Life History Research in Psychopathology, New York City, NY, September 28, 2002.

John H. Laub. "Age and Crime, 7 to 70." A presentation at the Demography of Inequality 2001-2002 Seminar Series, University of Maryland, May 3, 2002.

John H. Laub. "Juvenile Delinquents Grown Up: A 50 Year Follow-up Study" A presentation at the Department of Sociology and Criminal Justice, University of Delaware, March 14, 2002.

John H. Laub. Discussant, "Evaluation of the Impact of Laws Restricting Access to Firearms by Domestic Offenders" by Elizabeth Richardson Vigdor and James A. Mercy. Conference on Gun Violence and Gun Policy, The Brookings Institution, Washington, DC, January 24-25, 2002.

John H. Laub. Presented three lectures at a "Think Tank on Serious and Violent Juvenile Offenders" sponsored by the Midwest Symposium for Leadership in Behavior Disorders, Excelsior Springs, MO, January 10-12, 2002

John H. Laub. "Understanding Long-Term Trajectories of Offending." A presentation at the Department of Sociology, Northwestern University, December 5, 2001.

John H. Laub, Robert J. Sampson, and Elaine P. Eggleston. "Examining Long-Term Trajectories of Criminal Offending: The Glueck Delinquents from Age 7 to 70." A paper presented at the annual meeting of the American Society of Criminology, Atlanta, Georgia, November 9, 2001.

Leana C. Allen and John H. Laub. "A Life Course Analysis of the Relationship Between Military Service and Criminal Behavior." A paper presented at the annual meeting of the American Society of Criminology, Atlanta, Georgia, November 7, 2001.

Philip J. Cook and John H. Laub. "The Unprecedented Epidemic of Youth Violence: Are We Back Where We Started?" A paper presented at the annual meeting of the Association for Public Policy, Analysis and Management, Washington, DC, November 1, 2001.

John H. Laub. "Understanding Long-term Trajectories of Criminal Offending." A presentation at a seminar on "Developmental Pathways – Perspectives on Delinquency and Criminal

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Careers" sponsored by the Economic and Social Research Council of the United Kingdom, London, England, October 12, 2001.

John H. Laub. "Minority Overrepresentation in the Juvenile Justice System." A presentation at the Montgomery County Commission on Juvenile Justice, September 19, 2001.

John H. Laub. Discussant, "The Community Ecology of Family Influence on Delinquency and Violence" by Deborah Gorman-Smith. Joint Center for Poverty Research Seminar, Northwestern University and the University of Chicago, February 19, 2001.

John H. Laub. Discussant, "Intimate Partners and Desistance From Crime." Annual Meeting of the American Society of Criminology, San Francisco, CA, November 17, 2000.

John H. Laub and Robert J. Sampson. "Incarcerated Youth Grown Up: Prison and Its Aftermath." A paper presented at the annual meeting of the American Sociological Association, Washington, DC, August 15, 2000.

John H. Laub. "The Transition to Adulthood: A Criminological Perspective." A presentation for the National Institute of Child Health and Development Family and Child Well-Being Research Network, Washington, DC, June 22, 2000.

John H. Laub. "Criminal Careers and Offender Reentry." A presentation at the National Institute of Justice, Washington, DC, March 10, 2000.

John H. Laub. Presenter, Congressional Research Briefing on "Juvenile Crime: Causes and Consequences," co-sponsored by Senators Joseph R. Biden and Arlen Specter and the Joint Center for Poverty Research, Washington, DC, January 19, 2000.

John H. Laub and Robert J. Sampson. "Explaining Desistance From Crime." A paper presented at the Presidential Plenary on Developmental Criminology, the Annual Meeting of American Society of Criminology, Toronto, Canada, November 17, 1999.

John H. Laub. "Strategies and Prospects for Bridging the Quantitative and Qualitative Divide: Illustrations from the Glueck Data Archive." A paper presented at a conference on Lives in Context: The Study of Human Development, The Henry A. Murray Research Center, Harvard University, Cambridge, MA, November 13, 1999.

Robert J. Sampson and John H. Laub. "Trajectories of Crime in 60-Year Perspective: General Processes of Desistance?" A paper presented at the Life History Research Society, Kauai, Hawaii, September 24, 1999.

John H. Laub, Commentator, Workshop on Early Precursors of Antisocial Behavior, National Academy of Sciences, Washington, DC, May 24, 1999.

John H. Laub and Robert J. Sampson. "Glueck and Glueck's Crime Causation Study: The Lives of 1,000 Men in the 20th Century." A paper presented at a Conference on Life Course Studies:

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Landmark Studies of the Twentieth Century, The Henry A. Murray Research Center, Radcliffe College, Cambridge, MA, April 23, 1999.

John H. Laub and Robert J. Sampson. "The Influence of Glen Elder's Children of the Great Depression on Life Course Criminology." A paper presented at the Biennial Meeting of the Society for Research in Child Development, Albuquerque, New Mexico, April 17, 1999.

John H. Laub. "Crime in the Later Life Course: A 50-Year Follow-up of 500 Juvenile Offenders," Social Psychology Research Brownbags, Department of Sociology, University of Maryland, College Park, April 12, 1999.

John H. Laub. "Crime in the Life Course: Tracing the Intellectual Roots of Crime in the Making," Centre of Criminology, University of Toronto, December 10, 1998.

John H. Laub, Presenter, Sociocultural Processes in Later Life Development, National Institute of Mental Health, October 15 and 16, 1998.

Robert J. Sampson and John H. Laub. "Juvenile Delinquents Grown Up: Seven Decades in the Lives of 500 Men." A paper presented at the Annual Meeting of the American Sociological Association, San Francisco, CA, August 22, 1998.

John H. Laub and Robert J. Sampson. "The Natural History of Criminal Careers." A paper presented at the Life History Research Society, Seattle, WA, May 8, 1998.

John H. Laub. Participant on a panel on "Age and Crime: What Have Learned and Where Are We Going?" Remarks presented at the Annual Meeting of the American Society of Criminology, San Diego, CA, November 20, 1997.

John H. Laub. "Comments on Joachim Savelsberg's paper, "Distortion of Academic Knowledge: Theory and the Case of Criminology and Politics." A paper presented at the Annual Meeting of the American Society of Criminology, San Diego, CA, November 19, 1997.

John H. Laub. "The Natural History of Criminal Careers." Brown Bag Luncheon, School of Criminal Justice, State University of New York at Albany, Albany, New York, November 8, 1997.

John H. Laub. "Alterations in the Opportunity Structure: A Criminological Perspective." A presentation at the Pennsylvania State University symposium, "Transitions to Adulthood in a Changing Economy: No Work, No Family, No Future?" October 30, 1997.

John H. Laub. "Unpacking Crime Policy in Boston: What Works and What More Can Be Done." A presentation at the America's Prosecutors Annual Conference, Norfolk, VA, July 16, 1997.

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John H. Laub. "Crime in the Making: The Natural History of Criminal Careers." Research Colloquium, Department of Psychiatry, Center for Psychosocial and Forensic Services Research, University of Massachusetts Medical Center, Worcester, MA, March 10, 1997.

John H. Laub. "The Natural History of Criminal Careers." Brown Bag Luncheon, Department of Criminology and Criminal Justice, University of Maryland, March 3, 1997.

John H. Laub, organizer and co-moderator of a "Town Meeting on the Future of ASC," Annual Meeting of the American Society of Criminology, Chicago, IL, November 22, 1996.

Daniel Nagin, John H. Laub, and Robert J. Sampson. "Social Control and Trajectories of Change in Criminal Offending." A paper presented at the Annual Meeting of the American Society of Criminology, Chicago, IL, November 22, 1996.

John H. Laub and Robert J. Sampson. "Juvenile Delinquents Grown Up: A 65 Year Perspective." A paper presented at the Annual Meeting of the American Society of Criminology, Chicago, IL, November 21, 1996.

John H. Laub. "Crime in the Making: The Natural History of Crime." A presentation at the Department of Psychiatry, Brigham and Women's Hospital, Boston, MA, October 10, 1996.

John H. Laub. "The Natural History of Criminal Careers." A presentation at the Life Course Center, Department of Sociology, University of Minnesota, Minneapolis, MN, May 21, 1996.

Robert J. Sampson and John H. Laub. "Unraveling the Social Context of Physique and Delinquency: A New Long-Term Look at the Gluecks' Classic Study." A paper presented at the conference on Biosocial Bases of Violence: Theory and Research, Internal NATO Advanced Study Institute, Rhodes, Greece, May 10-21, 1996.

John H. Laub. "Assessing Criminological Theory and Research, 1970-1995." A presentation at the Annual Probation Conference for the Massachusetts Office of the Commissioner of Probation, Randolph, MA, May 2, 1996.

John H. Laub and Robert J. Sampson. "The Long-Term Reach of Adolescent Competence: Socioeconomic Achievement in the Lives of Disadvantaged Men." A paper presented at the Biennial Meeting of the Society for Research on Adolescence, Boston, MA, March 9, 1996.

John H. Laub. "Roundtable: Beyond Town and Gown: Improving Academic-Practitioner Relationships." Annual Meeting of the American Society of Criminology, Boston, MA, November 17, 1995.

John H. Laub, organizer and presider of the plenary session, "Ten Year Anniversary of the Journal of Quantitative Criminology." Annual Meeting of the American Society of Criminology, Boston, MA, November 15, 1995.

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John H. Laub. Panelist,"The Jack Roller: On Life-History and Narrative Approaches to the Study of Crime." Clifford Shaw Centennial Celebration sponsored by the Chicago Area Project and the University of Chicago, October 6, 1995.

John H. Laub and Robert J. Sampson. "Crime, Conformity, and Death in Later Life: A 60 Year Perspective." A paper presented at the Annual Meeting of the American Sociological Association, Washington, DC, August 21, 1995.

John H. Laub. "Crime and Death in Later Life: A 60 Year Perspective." A presentation at the Brown Bag Lunch Series, The Henry A. Murray Research Center, Radcliffe College, Cambridge, MA, April 25, 1995.

John H. Laub and Robert J. Sampson. "The Long-Term Reach of Adolescent Competence: Socioeconomic Achievement in the Lives of Disadvantaged Men." A paper presented at the Character and Competence Research Program Meeting, Cambridge, MA, April 7-9, 1995.

John H. Laub. "Roundtable: Beyond Town and Gown: Improving Academic-Practitioner Relationships." Annual Meeting of the Academy of Criminal Justice Sciences, Boston, MA, March 11, 1995.

John H. Laub. Panelist, "Teens, Police, and the Courts: Working With Youth." Struggling for a Future: Youth Violence, Youth Justice. A conference sponsored by Boston College Law School and Criminal Justice Institute, Harvard Law School, December 3, 1994.

John H. Laub. Chair and Presenter, "Meet the Journal Editors." Annual Meeting of the American Society of Criminology, Miami, FL, November 11, 1994.

Robert J. Sampson and John H. Laub. "Author Meet Critics -- Crime in the Making: Pathways and Turning Points Through Life." Annual Meeting of the American Society of Criminology, Miami, FL, November 10, 1994.

John H. Laub. Discussant, "Social Learning Theory: Oregon Models for Early and Late Onset of Delinquency." Annual Meeting of the American Society of Criminology, Miami, FL, November 10, 1994.

John H. Laub and Robert J. Sampson. "The Natural History of Crime and Death in Later Life: A 60 Year Perspective." A paper presented at the 13th Biennial Meetings of the International Society for the Study of Behavioral Development, Amsterdam, The Netherlands, June 28, 1994.

Robert J. Sampson and John H. Laub. "Turning Points in the Adult Life Course: Attachment to Marriage and Work." A paper presented at the 13th Biennial Meetings of the International Society for the Study of Behavioral Development, Amsterdam, The Netherlands, June 28, 1994.

John H. Laub. "Crime in the Making." Colloquium, Department of Criminology and Criminal Justice, University of Missouri, St. Louis, April 15, 1994.

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John H. Laub and Robert J. Sampson. "The Structural Context of Juvenile Court Processing." A paper presented at the Annual Meeting of the American Society of Criminology, Phoenix, AZ, October 27, 1993.

John H. Laub and Robert J. Sampson, "Combining Analysis of Quantitative and Qualitative Data: A Life Course Study of 1,000 Disadvantaged Men." A paper presented at the Annual Meeting of the American Sociological Association, Miami, FL, August, 13, 1993.

Robert J. Sampson and John H. Laub. "Inequality and the Structural Context of Juvenile Court Processing." A paper presented at the Annual Meeting of the Law and Society Association, Chicago, IL, May 27, 1993.

John H. Laub. "The Consequences of Delinquency for Life Chances." A presentation at the Brown Bag Lunch Series, The Henry A. Murray Research Center, Radcliffe College, Cambridge, MA, May 4, 1993.

Robert J. Sampson and John H. Laub. "Social Bonding over the Life Course: Old Data, New Understanding." A paper presented at the Annual Meeting of the American Society of Criminology, New Orleans, LA, November 6, 1992.

John H. Laub and Robert J. Sampson. "The Long-Term Effect of Punitive Discipline." A paper presented at the Society for Life History Research, Philadelphia, PA, May 1, 1992.

John H. Laub. "Remarks" made at the Opening Reception of "Pioneers in Criminology and Criminal Justice: Sheldon and Eleanor Touroff Glueck." A Retrospective Exhibition Honoring Professor Sheldon Glueck and Dr. Eleanor Touroff Glueck for their Remarkable Achievements, Harvard Law School Library, Cambridge, MA, April 10, 1992.

John H. Laub. "Toward a Developmental Model of Crime and Social Control." A presentation at the Brown Bag Lunch Series, The Henry A. Murray Research Center, Radcliffe College, Cambridge, MA, December 10, 1991.

John H. Laub, organizer and presider of "50th Year Celebration: A Presidential Rumble." A session at the Annual Meeting of the American Society of Criminology, San Francisco, CA, November 22, 1991.

John H. Laub. Panelist at the Making Massachusetts Work Forum on "Criminal Justice: Easy Solutions That Won't Work and Difficult Ones That Will." Northeastern University, Boston, MA, November 18, 1991.

John H. Laub. "Examining Criminal Careers With the Gluecks' Data." A presentation at the Research Unit on Children's Psycho-Social Maladjustment, University of Montreal, Montreal, Quebec, February 18, 1991.

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John H. Laub and Robert J. Sampson. "The Long-Term Consequences of Childhood Misbehavior: Implications for Theories of Crime." A paper presented at the Annual Meeting of the American Society of Criminology, Baltimore, MD, November 8, 1990.

Kenna Davis, John H. Laub, and Robert J. Sampson. "The Effect of Nonsociological Factors on Long-Term Patterns of Criminality." A paper presented at the Annual Meeting of the American Society of Criminology, Baltimore, MD, November 9, 1990.

John H. Laub. "Early Intervention With High Risk Youth: An Optimistic Assessment." A presentation at the Annual Probation Conference for the Massachusetts Office of the Commissioner of Probation, Auburn, MA, October 17, 1990.

John H. Laub and Robert J. Sampson. "Reconstructing Criminal and Deviant Life Histories: A Life Course Analysis." A paper presented at the Annual Meeting of the American Sociological Association, Washington, DC, August 11, 1990.

Robert J. Sampson and John H. Laub. "Examining Criminal Careers With the Gluecks' Data." National Institute of Justice Crime Control Conference, Rutgers University, Newark, NJ, July 26, 1990.

John H. Laub. "Crime and Deviance in the Life Course: A Reanalysis of the Gluecks' Unraveling Juvenile Delinquency Data," Brown Bag Lunch Series, The Henry A. Murray Research Center, Radcliffe College, Cambridge, MA, February 20, 1990.

Kenna Kiger, Robert J. Sampson, and John H. Laub. "Patterns in the Careers of the Gluecks' Delinquents." A paper presented at the Annual Meeting of the American Society of Criminology, Reno, Nevada, November 12, 1989.

John H. Laub. "Reanalyzing the Glueck Data." Talk at McLean's Hospital, Waltham, MA, September 14, 1989.

John H. Laub and Robert J. Sampson. "Crime and Delinquency in the Life Course." A paper presented at the Annual Meeting of the American Sociological Association, San Francisco, CA, August 11, 1989.

John H. Laub and Robert J. Sampson. "Criminal Careers and Crime Control." National Institute of Justice Crime Control Conference, The Rand Corporation, Santa Monica, CA, July 20, 1989.

John H. Laub. "Understanding Families and Delinquency: A New Analysis of the Gluecks' Unraveling Juvenile Delinquency." Scholars Day Talk, Northeastern University, Boston, MA, March, 1989.

John H. Laub and Robert J. Sampson. "A Comparison of Official, Semi-Official, and Self-Report Measures of Delinquency in the Gluecks' Unraveling Data." A paper presented at the Annual Meeting of the American Society of Criminology, Chicago, IL, November 12, 1988.

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63004.688

John H. Laub. "Examining Criminal Careers: Reanalyzing the Gluecks' Unraveling Juvenile Delinquency Data," Brown Bag Lunch Series, The Henry A. Murray Research Center, Radcliffe College, Cambridge, MA, October 18, 1988.

John H. Laub. "Crime, Criminal Careers and Crime Control: Reanalyzing the Gluecks' Unraveling Juvenile Delinquency Study," Colloquium, School of Criminal Justice, Rutgers University, Newark, NJ, September 19, 1988.

John H. Laub and Robert Sampson. "Crime, Criminal Careers, and Crime Control Policy: Reanalyzing the Gluecks' Unraveling Juvenile Delinquency Study," National Institute of Justice Crime Control Conference, New Orleans, LA, July 18, 1988.

John H. Laub. "Crime, Criminal Careers, and Crime Control: Reanalyzing the Gluecks' Unraveling Juvenile Delinquency Study," Colloquium, Department of Criminal Justice, Indiana University, Bloomington, IN, April 18, 1988.

John H. Laub and Robert J. Sampson. "Reanalyzing the Glueck Data: A New Look at Unraveling Juvenile Delinquency." A paper presented at the Annual Meeting of the American Society of Criminology, Montreal, Quebec, November 13, 1987.

John H. Laub. Roundtable participant, "Large Scale Sample Surveys and Routine Activity Measures," Annual meeting of the American Society of Criminology in Montreal, Quebec, November 13, 1987.

John H. Laub. "Assessment of National Juvenile Justice Data Collection Efforts: Children/Youth As Victims of Personal Crimes and Other Offenses By Peers/Others." OJJDP-BJS Conference Assessment of National Data Collection Efforts Regarding Children as Victims and Offenders, Washington, D.C., May 13-14, 1986.

John H. Laub. "Surveying Criminology Through Oral History." A paper presented at the Annual Meeting of the American Society of Criminology, San Diego, California, November 16, 1985.

John H. Laub. Panelist at the Massachusetts Victim Rights Week Conference, April 19, 1985. Panel Topic: Assessment of Victim Rights: Major Issues in Implementation.

M. Joan McDermott and John H. Laub. "Adolescence and Juvenile Justice Policy." A paper presented at the Annual Meeting of the American Society of Criminology, Cincinnati, Ohio, November 11, 1984.

John H. Laub and M. Joan McDermott. "Criminal Victimization by Black Female Delinquents." A paper presented at the Annual Meeting of the American Society of Criminology, Denver, Colorado, November 12, 1983.

John H. Laub. "Applications of the Oral History Technique in Criminology and Criminal Justice." A paper presented at the Annual Meeting of the Academy of Criminal Justice Sciences, Louisville, Kentucky, March 25, 1982.

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John H. Laub. Panel Participant at the Annual Statewide Massachusetts Conference for Justices and Probation Officers. Panel Topic: Restitution by Specialized Programs. Boston, MA, December 9, 1981.

John H. Laub, Panel Participant at the National Institute of Justice - Hoover Institution Workshop on Economic Opportunity and Crime. Panel Topic: Juvenile Criminal Behavior and Its Relation to Economic Conditions. Washington, DC: October, 1981.

David J. Van Alstyne and John H. Laub. "The Validity of Self-Reported Delinquency: A Review." A paper presented at the Annual Meeting of the American Society of Criminology, Atlanta, Georgia, November 18, 1977.

Dennis Sullivan, Larry Tifft, Georgia Gray, John H. Laub, and Michael Buckman. "Let the Water Be Wet and the Rocks Be Hard: Anarchy as Criminology." A paper presented at the Annual Meeting of the Society for the Study of Social Problems, Chicago, Illinois, September, 1977.

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UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   Rosanna Malouf Peterson
   maiden name: Rosanna Malouf

2. **Position:** State the position for which you have been nominated.

   United States District Judge for the Eastern District of Washington

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.

   Gonzaga University School of Law
   721 North Cincinnati Street
   Spokane WA 99220-3528

4. **Birthplace:** State year and place of birth.

   1951; Salt Lake City, Utah

5. **Education**: List in reverse chronological order 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.

   1988 – 1991, University of North Dakota School of Law; Juris Doctor, May 1991

   1978 – 1983, University of North Dakota; M.A., 1983

   1976 – 1977, University of North Dakota; B.A. cum laude, 1977

   1969 – 1970, 1971 – 1972, University of Utah; no degree

6. **Employment Record**: List in reverse chronological order 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 description.

63004.691

2003 – Present
Rosanna M. Peterson, Attorney At Law
P.O. Box 30742
Spokane, WA 99223-3041
Sole Practitioner

1999 – Present
Gonzaga University School of Law
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Spokane, WA 99220
Assistant Professor of Law and Director of the Externship Program (2007 – Present)
Visiting Professor of Law and Director of Externship Program (2005 – 2007)
Adjunct Professor of Law and Director of Externship Program (2002 – 2005)
Adjunct Professor of Law (1999 – 2002)

1998 – 2002
Rodgers & Peterson, L.L.P.
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Spokane, WA 99201
Partner

1995 – 1997
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Associate Attorney

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Spokane, WA 99201
Sole Practitioner

1993 – 1994
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Spokane, WA 99201
Associate Attorney

1991 – 1993
The Honorable Fred Van Sickle
United States District Court for the Eastern District of Washington
920 West Riverside
Spokane, WA 99201
Staff Attorney

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1990 – 1991
North Dakota Law Review
University of North Dakota School of Law
P.O. Box 9003
Grand Forks, ND 58202-9003
Editor-In-Chief

1990
The Honorable Kent Conrad
102 North 4th Street, Suite #104
Grand Forks, ND 58203
Legal Extern

1989
The Honorable Bruce Bohlman
North Dakota Northeast Central Judicial District Court
124 South 4th Street
P.O. Box 6347
Grand Forks, ND 58206-6347
Judicial Extern

1984 – 1988
University of North Dakota Department of English
P.O. Box 8237
Grand Forks, ND 58202-8237
Lecturer

1983 – 1984
University of Utah
201 South 1460 East
Salt Lake City, UT 84112
Part-time Tuition Teller

1979 – 1983
University of North Dakota Department of English
P.O. Box 8237
Grand Forks, ND 58202-8237
Graduate Teaching Assistant

1975 – 1978
Grand Forks Park District
1210 7th Avenue South
Grand Forks, ND 58206
Instructor

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Other Affiliations:

1999 – Present
Eastern District of Washington Historical Society
Thomas Foley Federal Courthouse
920 West Riverside
Spokane, WA 99201
Member of the Board of Directors

2001 – Present
Washington Women Lawyers Bar Association Foundation
P.O. Box 4275
Seattle, WA 98194-4275
Vice-President of the Board of Directors (2003 – Present)
Member of the Board of Directors (2001 – 2003)

1998 – 2000
Center for Justice
35 West Main, #300
Spokane, WA 99201-0119
Secretary of the Board of Directors

1981 – 1982
Riverside Neighborhood Association
Grand Forks, ND 58201
President of the Board of Directors

7. **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, and whether you have registered for selective service.

   I did not serve in the military or register for selective service.

8. **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.

   In 2008, I was nominated and recognized by the Washington State Bar Association in the Random Acts of Professionalism program.

   In 2006, I received the Smithmoore Myers Professionalism Award, which is the highest professionalism honor granted by the Spokane County Bar Association.

   In 2001, I received the Washington Women Lawyers Bar Association's President's Award for my contributions to the organization.

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In 2000, I received the Washington Women Lawyers Bar Association's Board Member of the Year award.

In 1993, I was awarded a scholarship by the Federal Defenders of Eastern Washington to attend the National Criminal Defense College.

In 1991, I was honored for exceptional achievement by the dean and faculty of the University of North Dakota School of Law with the creation of the Rosanna M. Peterson Endowment.

In 1991, I graduated from the University of North Dakota School of Law with distinction.

In 1991, I was inducted into the national Order of the Barristers.

In 1991, I was selected as the Outstanding Graduate by the faculty of the University of North Dakota School of Law.

In 1990, I was selected by the North Dakota Law Review members to serve as Editor-In-Chief of the editorial board.

In 1990, I was awarded Best Petitioner Oralist for both the spring and fall moot court competitions at the University of North Dakota School of Law.

In the 1989-1990 academic year, I was named the Burtness Scholar in Human Rights at the University of North Dakota School of Law, for merit.

In the 1989-1990 academic year, I received the Charles Dahl Scholarship at the University of North Dakota School of Law, for merit.

In the 1989-1990 academic year, I received the Swenson Law Scholarship at the University of North Dakota School of Law, for merit.

9. **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.

Washington State Bar Association:
2001 – 2002 Chair of the Bar Leaders Conference Planning Committee
2000 – 2001 Member of the Bar Leaders Conference Planning Committee

Federal Bar Association of Eastern Washington:
2003 – 2004 President of the Board of Directors
2002 – 2003 Vice-President of the Board of Directors
1999 – 2002 Member of the Board of Directors

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Criminal Justice Act Panel Attorneys:
2003 – 2006: Representative for the Eastern District of Washington to the National Conference of Criminal Justice Act Panel Attorneys

Merit Selection Committee for Federal Magistrate Judge for the Eastern District of Washington: 2003: Member of the Committee

Lawyer Representatives to the Ninth Circuit Judicial Conference:
2001 – 2002: Chair of the Lawyer Representatives to the Ninth Circuit Judicial Conference
1999 – 2001: Lawyer Representative to the Ninth Circuit Judicial Conference

Spokane County Bar Association:
2005 – 2007: Trustee of the Spokane County Bar Association
2003, 2004, 2007 – 2009: Member of the Professionalism Award Selection Committee
2006 – 2008: Member of the Volunteer Lawyers Program Auction Committee
2007: Member of the Spokane County Bar Association's Community Safety Task Force
2006: Member of the Volunteer Lawyers Bylaws Drafting Committee

American Bar Association:
2005 – 2009: Member

Washington Women Lawyers Bar Association:
2000 – 2001: State President of the Board of Directors
1999 – 2000: State President-elect of the Board of Directors
1998 – 1999: President of the Spokane Chapter
1997 – 1999: Member of the Board of Directors for the Spokane Chapter

Washington Women Lawyers Foundation:
2003 – 2009: Vice-President of the Board of Directors
2001 – 2003: Member of the Board of Directors

Color of Justice:
2006, 2009: Program Chair for High School Student Programs

Eastern District of Washington Historical Society:
1999 – 2009: Member of the Board of Directors

Center for Justice:
1998 – 2000: Secretary of the Board of Directors

10. **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.

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Washington State Bar Association, admitted 1991.

There have been no lapses in membership.

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.

Washington State Supreme Court, admitted in 1991.

United States District Court for the Eastern District of Washington, admitted in 1993.

United States Court of Appeals for the Ninth Circuit, admitted in 1996.

Supreme Court of the United States, admitted in 1996.

There have been no lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, 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 Association of American Law Schools Externship Executive Committee from 2007 to the present.

In 2008, I was the co-chair of "Externships 4—A Bridge To Practice," which was the fourth national conference for externship directors. The conference was held in Seattle, WA.

I was a member of the National Association of Criminal Defense Lawyers Association from 1994 until 1996, approximately.

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, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical

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implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

I have never been a member of any organization that formerly discriminated or currently discriminates on the basis of race, gender, religion, or national origin.

12. **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. Supply four (4) copies of all published material to the Committee.

Case Comment, "Colleges and Universities—Constitutional Law: Professor's Assignment of Grades to Students Is Symbolic Communication Protected by the First Amendment." 66 N.D.L. Rev. 297 (1990). Four copies are supplied.

b. 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, 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. 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

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. 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 recording of your remarks, 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, furnish a copy of any outline or notes from which you spoke.

I have done my best to identify all of the items requested in this question, including reviewing my personal files and publicly available electronic databases. I have located the following:

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Washington Women Lawyers Bar Association Annual Event: "WWL's Legacy," October 2, 2009, Madison Renaissance Hotel, Seattle, WA. I was asked to briefly address WWL's legacy.

Law Day Keynote Address: "Lincoln's Legacy," May 1, 2009, the Masonic Temple, Spokane, WA, for newly naturalized citizens and their guests. I spoke about President Lincoln's leadership both during the Civil War and in implementing the Homestead Act, which enabled all men to have equal opportunities.

Homeland Security Naturalization Day Address: "Women's Civil Rights in America," March 10, 2009, at the U.S. District Court for the Eastern District of Washington, Spokane, WA, for newly naturalized citizens and their guests. I was asked to give a brief overview of women's civil rights in America.

Gonzaga Law School's Women's Law Caucus Panel: "Women Professors Law Panel," October 27, 2008, Gonzaga University School of Law, Spokane, WA, for Gonzaga law students. I participated on a panel and discussed special challenges facing women attorneys and strategies for facing those challenges. I have no transcript or notes available.

Judicial Institute for High School Teachers: "Women's Civil Rights," October 23-24, 2008, Spokane, WA, sponsored by the U.S. District Court for the Eastern District of Washington for high school teachers in Eastern Washington. I presented a brief history of women's civil rights in the United States and was a panelist along with Judge Tallman, Judge Whaley, and Judge Imbrogno, among others, to answer questions from the teachers.

The Washington State Trial Lawyers Association Annual Conference, "Jury Selection and Race," August 10, 2008, Vancouver, BC, for members of the Washington State Trial Lawyers Association. I presented an overview of the law relating to discrimination during the selection process of juries.

Twentieth Annual Consortium on Racial and Ethnic Fairness in the Courts, "Current Diversity Challenges for Law Schools," May 2, 2008, Seattle, WA, for state court judges from around the nation. I was asked to participate on a panel with the deans of the University of Washington Law School and Seattle University School of Law to discuss the challenges that law schools face in admitting and maintaining a diversified student body. I have no transcript or notes available.

Gonzaga Law School's Myra Bradwell Award Program, "Honoring Justice Debra Stephens," April 18, 2008, Gonzaga University School of Law, Spokane, WA, for law students and members of the legal profession and the Spokane community. I spoke about Justice Stephens' qualities and about the courage that it takes to undertake a new venture and the courage that was required for Myra Bradwell to

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have pursued her place in the legal profession. I have no transcript or notes available.

Externship 4—A Bridge to Practice, an Association of American Law Schools conference, "Using Externships to Improve Diversity in Legal Communities," February 16, 2008, Seattle, WA, for externship directors from around the nation. I discussed strategies for using law school externships to create mentoring and networking opportunities for law students in order to increase diversity in the legal profession. I have no transcript or notes available.

Externships 4—A Bridge to Practice, an Association of American Law Schools conference, "Externship Issues and the ABA Accreditation Process," February 16, 2008, Seattle, WA, for externship directors from around the nation. I was the panel organizer who made opening remarks and served as the moderator of the panel of externship directors discussing strategies for fulfilling ABA requirements with externship programs. I have no transcript or notes available.

Washington State Bar Association CLE for New Members, "The Real Story About Client Relationships," November 7, 2007, Spokane, WA, for attorneys who recently had been sworn into the Washington State Bar Association. I discussed strategies for effective representation and communication with clients. I have no transcript or notes available.

Washington State Bar Association CLE on Diversity, "Women in the Legal Profession," October 18, 2007, Spokane, WA, for attorneys. I was asked to discuss some of the demographics and research about women in the legal profession.

Washington State Bar Association's Access To Justice Conference, "Using Externs to Provide Rural Legal Services," June 2, 2007, Wenatchee, WA, for social workers and attorneys interested in providing legal services for rural citizens. I was asked to participate on a panel to discuss strategies of having law students serve as externs in rural areas to assist in providing legal services. I have no transcript or notes available.

Gonzaga University School of Law's Thomas More CLE, "Aristotle in the Courtroom," January 19, 2007, Spokane, WA, for attorneys. I discussed effective advocacy skills and effective communication skills. I have no transcript or notes available.

Spokane County Bar Association "RPCs Primer, A Refresher--Liability and Ethical Considerations for Using Interns," December 8, 2006, Spokane, WA, for attorneys. I presented cases and discussed the Washington State Rules of Professional Conduct as the rules relate to the employment of law students. I have no transcript or notes available.

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Washington Women Lawyers' Bar Association Leadership Symposium: "Leadership and Women in the Law: The Changing Profile of the 21st Century Attorney--Tools and Insights to Maximize Your Practice At Every Stage of Your Career," November 17, 2006, Seattle, WA, for attorneys. I was asked to participate on a panel to discuss the best methods for enhancing a legal career, including transitioning to law school teaching. I have no transcript or notes available.

Washington State Bar Association CLE, "Ethics for the Practicing Lawyer," October 3, 2006, Spokane, WA, for attorneys. I served on a panel of attorneys, including Washington State Bar Association's ethics expert, to discuss rules of professional conduct and to analyze various vignettes that were presented. I have no transcript or notes available.

Spokane County Bar Association's "Trial Skills For Every Attorney CLE--Improving Your Speaking Skills," January 27, 2006, Spokane, WA, for attorneys. I discussed effective oral advocacy skills. I have no transcript or notes available.

Spokane Chapter of Washington Women Lawyers Bar Association CLE, "Presentation on Trial Work," April 13, 2005, Spokane, WA, for attorneys. I discussed effective litigation skills. I have no transcript or notes available.

Spokane Chapter of Washington Women Lawyers Bar Association CLE, "Ten Trial Tips In Ten Minutes," January 12, 2005, Spokane, WA, for attorneys. I discussed effective oral advocacy skills.

Federal Bar Association for the Eastern District of Washington Annual Conference CLE: "Extreme Jury Makeover," May 14, 2004, Spokane, WA, for attorneys. I served as organizer and emcee for the program and made welcoming remarks. I have no transcript or notes available.

Washington State Municipal and District Court Judges Conference, "Appellate Law Update," June 4, 2003, Spokane, WA, for Washington State Court Judges. I presented recent case law addressing county district court jurisdiction. I have no transcript or notes available.

Washington State Gender and Justice Commission CLE, "Minding the Business of Your Practice," April 11, 2003, Spokane, WA, for attorneys and students. As one of the organizers and the emcee, I made general welcoming remarks. I have no transcript or notes available.

Columbia Legal Services Training Seminar, "Direct and Cross Examinations," October 10, 2001, Spokane, WA, for Columbia Legal Services attorneys. I worked with another attorney to provide simulations on direct and cross examinations. I have no transcript or notes available.

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Washington State Bar Association Bar Leaders Conference, "Connecting Up," June 9, 2001, Wenatchee, WA, for attorneys. As chair and emcee of the conference, I made general welcoming remarks. I have no transcript or notes available.

Washington Self-Insurers Association, "ADA," January 27, 2000, Spokane, WA, for attorneys, human resource personnel, and employers. I presented a general overview on the Americans With Disabilities Act. I have no transcript or notes available.

Women in Workers' Compensation, "ADA Updates," June 15, 1999, Spokane, WA, for attorneys, human resource personnel, and employers. I presented a general overview on the Americans With Disabilities Act. I have no transcript or notes available.

Council on Education in Management, "How to Conduct an Internal Investigation of Sexual Harassment," June 2, 1999, Spokane, WA, for human resource personnel and employers. I presented a general overview of sexual harassment law and effective management techniques for investigating allegations of sexual harassment. I have no transcript or notes available.

Northwest Medical Case Management Conference, "ADA: Recent Court Decisions Affecting ADA," April 16, 1999, Coeur d'Alene, ID, for human resource personnel and employers. I presented recent cases on the Americans With Disabilities Act. I have no transcript or notes available.

Council on Education in Management, "FMLA Update," February 24, 1999, Spokane, WA, for human resource personnel and employers. I presented recent cases on the Family Medical Leave Act. I have no transcript or notes available.

Council on Education in Management, "How to Conduct an Internal Investigation," January 19, 1999, Spokane, WA, for human resource personnel and employers. I presented a general overview of discrimination and harassment law and effective management techniques for investigating allegations of discrimination and harassment. I have no transcript or notes available.

Council on Education in Management, "Keeping Disputes Out of Court and Raising Employee Morale: Strategic Use of Peer Review Panels, Mediation, and Arbitration," September 23, 1998, Spokane, WA, for human resource personnel and employers. I presented alternative dispute resolution models for resolving personnel problems. I have no transcript or notes available.

Council on Education in Management, "How to Conduct an Internal Investigation," May 21, 1998, Spokane, WA, for human resource personnel and employers. I presented a general overview of discrimination and harassment law

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and effective management techniques for investigating allegations of discrimination and harassment. I have no transcript or notes available.

Washington State Department of Vocational Rehabilitation, "Update on Disability Law," May 15, 1998, Spokane, WA, for Washington State employees dealing with labor and industry claims. I presented recent cases of Washington State disability claims. I have no transcript or notes available.

Washington State Self-Insurers Association, "Hostile Work Environment—Sexual Harassment," January 16, 1998, Spokane, WA, for human resource personnel and employers. I presented recent cases of sexual harassment. I have no transcript or notes available.

e. 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 done my best to identify all of the items requested in this question, including reviewing my personal files and publicly available electronic databases. I have located the following:

"At Issue: Sexual Harassment," Spokane Public Television, KSPS, Channel 7, televised panel discussion, broadcast live on February 12, 1998, Spokane, WA. I discussed sexual harassment claims, both from the perspective of the alleged victim and from the perspective of the alleged perpetrator. I have no transcript or notes available.

"Public Interest Law—Building a Solid Foundation," *The Lawyer* (Winter 2009), Gonzaga University School of Law, at 4-5. I was interviewed as one of several faculty members about the importance of introducing law students to the practice of public interest law.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held a judicial office.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____

i. Of these, approximately what percent were:

jury trials? ___%; bench trials ___% [total 100%]

civil proceedings? ___%; criminal proceedings? ___% [total 100%]

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b. Provide citations for all opinions you have written, including concurrences and dissents.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

e. Provide a list of all cases in which certiorari was requested or granted.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

g. Provide 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.

h. Provide 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, provide copies of the opinions.

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (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.) 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 in which you have recused yourself sua sponte. 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;

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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.

15. **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.

I was appointed by Washington State Governor Gary Locke to serve from 2004 to 2006 as a member of the board of directors for the Spokane Intercollegiate Research and Technology Institute.

I was unsuccessful in seeking an appointment to the Spokane County Superior Court in 2002.

I have never filed for an elected office.

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, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Between 1978 and 2008, I volunteered as a fundraiser in support of various candidates, first in North Dakota, and later in Washington. I volunteered for successful campaigns for Senator Byron Dorgan in the 1970s and Justice Mary Fairhurst of the Washington State Supreme Court in 2008. I volunteered on the unsuccessful campaigns of Mark Mays in 2008, Peter Goldmark in 2006, and Don Barbieri in 2004, all candidates for the United States House of Representatives. I was chair of John Rodgers' unsuccessful campaign for Spokane County District Court Judge in 2002. I paid membership dues to Emily's List from approximately 2003 to 2006. I have never held a paid position with any campaign or political entity.

16. **Legal Career:** Answer each part separately.

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

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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;

June 1991 – September 1993:
I was a law clerk for the Honorable Fred Van Sickle in the United States District Court for the Eastern District of Washington.

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

I was a sole practitioner from January 1995 until approximately June 1995. During that time, I was in an office sharing relationship with John Rodgers at 901 West Riverside, Suite 300, Spokane, WA 99201.

I returned to my sole practice and office sharing relationship with John Rodgers from approximately December 1997 until we formed the partnership, Rodgers & Peterson, L.L.P., in 1999. In 1998, we moved our offices from 901 West Riverside, Suite 300, Spokane, WA 99201 to 921 North Adams, Suite B, Spokane, WA 99201.

We dissolved Rodgers & Peterson, L.L.P. in December 2002. Since that time, I have maintained a sole practice on a part-time basis, using a post office box address of P.O. Box 30742, Spokane, WA 99223-3041.

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.

1999 – Present:
Gonzaga University School of Law
721 North Cincinnati Street
Spokane WA 99220
I began teaching at Gonzaga University School of Law as an adjunct professor. In 2002, I was asked to increase my role at the school and assume the duties of Director of the Externship Program in addition to teaching. In 2005, I accepted a full-time Visiting Professorship and in 2007 I was hired as a full-time Assistant Professor and Director of the Externship Program. In 2009, I was offered a long-term contract to begin fall, 2010.

1999 – 2002:
Rodgers & Peterson, L.L.P.
921 North Adams, Suite B
Spokane, WA 99201
I was a founding partner in this firm.

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1995 – 1997:
Powell & Morris, P.S.
220 West Main
Spokane, WA 99201
I was an associate in this firm.

1994:
Grove & Morgan, P.S.
808 West Riverside, Suite 300
Spokane, WA 99201
I was an associate in this firm.

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

After my federal clerkship ended in the fall of 1993, I began working with a general practice firm, Grove & Morgan, P.S., and I worked on a variety of different types of cases with an emphasis on civil litigation. The firm had a contract with the Y.W.C.A. to represent petitioners seeking anti-harassment protective orders, and I often was assigned to handle the temporary restraining order dockets for those petitioners. In addition, I worked as an associate on plaintiff employment cases, including discrimination and harassment cases. Based on my work as a federal law clerk, the court qualified me to serve as a Criminal Justice Act Panel member representing indigent defendants on criminal charges in federal court. In addition, I represented criminal defendants in state court cases.

I also attracted some corporate clients who remained with me when I set up my own office in 1995 and remained with me when I joined Powell & Morris, P.S. later that year. Those cases included protecting trade secrets, general contract issues, and defending employment claims. At Powell & Morris, I worked primarily with the senior partner who specialized in plaintiff employment cases, including wrongful termination, discrimination, and harassment. Powell & Morris had a contract with the Washington Education Association, and I regularly represented teachers in disciplinary proceedings or in union related actions. In addition to working on those cases with the senior partner, I handled ancillary employment issues, such as unemployment claims, or licensing

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revocations, or general contract issues.

Throughout my tenure with Powell & Morris, I continued to build my federal criminal defense practice and regularly represented indigent federal defendants through the Criminal Justice Act appointments. By the time that I left Powell & Morris in late 1997, I continued to represent a few corporate clients in insurance, employment or contract issues, but my practice focused primarily on plaintiff employment cases and criminal defense cases, both at the state and federal courts. I continued that mix of cases until the dissolution of Rodgers & Peterson, L.L.P. in late 2002.

Beginning in 2002, I expanded my role at Gonzaga University School of Law to include additional teaching and administration. As a result, I limited my sole practice to a few civil clients and continued to represent some indigent criminal defendants as a Criminal Justice Act Panel attorney. Since January 2008, I have not accepted representation of new clients.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

I have represented a broad range of clients, from corporate clients to indigent criminal defendants. At the beginning of my practice in 1993, I represented low to middle income individuals, usually with employment or harassment issues, as well as indigent federal defendants and a few corporate clients.

From 1995 through 1997, my practice shifted to representing professionals with licensing and employment issues, as well as corporate clients with commercial matters. I expanded my criminal defense representation to include state defendants, and, as an associate, I worked on numerous other types of cases, including representing clients in estate matters and a few family law matters.

In 1997, I expanded my practice to include representation of both state and federal indigent criminal defendants. I continued some commercial litigation for small corporate clients. By 2003, I focused my practice on representing indigent federal criminal defendants.

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.

Approximately 90% of my practice has been in litigation. When I was practicing full time, I appeared in court on a frequent basis, but in the last seven years, I have appeared in court only occasionally and primarily in federal court.

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i. Indicate the percentage of your practice in:
   1. federal courts: 14%
   2. state courts of record: 76%
   3. other courts: 7%
   4. administrative agencies: 3%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 48%
   2. criminal proceedings: 52%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

As sole counsel, I have tried eleven cases to verdict, judgment or final decision. This does not include cases that I litigated that concluded with summary judgments or a subsequent appeal. I have not included cases in which I served as associate counsel solely for briefing purposes.

i. What percentage of these trials were:
   1. jury: 27%
   2. non-jury: 73%

e. Describe your practice, if any, before the Supreme Court of the United States. 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 not practiced before the Supreme Court of the United States.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. 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.

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1. *French v. Sabey,* 134 Wn. 2d 547, 951 P.2d 260 (1998). Along with William Powell, I represented Alfred French, who sued Sabey Corporation for termination of an employment contract. I argued this case at the Washington State Court of Appeals Division III with Judges Shultheis, Brown, and Sweeney presiding. I argued again at the Washington State Supreme Court with Judges Richard Sanders, Barbara Durham, Barbara Madsen, Charles W. Johnson, Richard Guy, James Dolliver, Charles Smith, Gerry Alexander, and Philip Talmadge presiding. This case was significant because it addressed the role of the Statute of Frauds in an oral employment contract. The trial court granted summary judgment, which was affirmed both by the Court of Appeals and the Washington State Supreme Court. Opposing counsel was Michael Hines of Lukins & Annis, 717 W. Sprague, Suite 1600, Spokane, WA 99204 (509) 623-2037.

2. *U.S. v. Torres-Sanchez,* CR 07-091-RHW. I was sole counsel representing Ms. Irene Torres-Sanchez in 2007-2008 in the U.S. District Court for the Eastern District of Washington with Judge Robert Whaley presiding. Ms. Torres-Sanchez was charged with being an illegal alien in the United States after deportation and conviction of a prior drug conviction. Ms. Torres-Sanchez faced an eight year minimum sentence for her status and another deportation with no likely opportunity of returning lawfully to the United States. The reason that this case was significant to me was that I gained a new level of understanding of the issues that illegal aliens face in trying to return to the United States after a prior deportation, even though they have lived their entire lives in the United States. Opposing counsel were Assistant U.S. Attorneys Pam Byerly and Thomas Hopkins, Thomas Foley Courthouse, 920 W. Riverside, Suite 300, Spokane, WA 99201 (509) 353-2767.

3. *Thompson v. Holy Family Hospital,* 121 F.3d 537 (9th Cir. 1997). I, along with William Powell, represented Ms. Cynthia Thompson in U.S. District Court for the Eastern District of Washington, Judge Wm. Fremming Nielsen presiding. Judges Wright, Nelson, and Kozinski presided at the appellate court. Although I was an associate attorney at the time, I was the counsel who briefed and argued Ms. Thompson's claim of disability discrimination under the Americans With Disability Act, both at the district court and the appellate courts. This was one of the first cases decided by the Ninth Circuit Court of Appeals on the issue of what qualifies as a disability under the ADA. The Ninth Circuit Court of Appeals affirmed the district court's order of summary judgment against the plaintiff. Opposing counsel were Michael Love and James Kalamon then of Chase, Hayes, & Kalamon and now at Paine Hamblen, 717 W. Sprague, Suite 1200, Spokane, WA 99201 (509) 455-6000.

4. *U.S. v. Emily Ostrander,* CR- 01-186-FVS and CR-02-163-JLQ. Ms. Ostrander was charged under two indictments with embezzlement from her employer, which was a bank. On one indictment, she pleaded guilty. I tried the second case to a jury in 2003 in the U.S. District Court for the Eastern District of Washington with Judge Justin Quackenbush presiding. Although this case did not result in any new

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law, it was significant because of the evidentiary issues that were presented and argued. I was sole counsel on this case. After the jury was hung, with eleven members to acquit, the prosecution moved to dismiss the case, which the court granted. Opposing counsel was Assistant United States Attorney Joseph Harrington, 920 W. Riverside, Suite 300, Spokane, WA 99201 (509) 353-2767.

5. *Bennett v. Wellpinit School District,* #96-2-00507-8. I tried this case in Stevens County Superior Court in 1997 with Judge Rebecca Baker presiding. Mr. William Powell was co-counsel on the case, but I was sole counsel at trial. I represented Mr. Thomas Bennett, a school teacher, who allegedly was wrongfully terminated without appropriate due process. This case was significant because of the procedural due process rights that arose under the WAC. The judge found in favor of the school district, but the case settled prior to an appeal. Opposing counsel was Linda Tompkins, then at Lukins & Annis, now Judge Linda Tompkins, Spokane County Superior Court, 1100 W. Broadway, Spokane, WA 99201 (509) 477-5792.

6. *U.S. v. Monica Forrest,* 168 F.3d 502 (9th Cir 1999)(unpublished), docket # CR-97-00026-RHW. 1998, I represented Ms. Forrest in an appeal before the Ninth Circuit Court of Appeals challenging her ten-year mandatory minimum sentence. Judges Canby, Graber, and George presiding. This case was one of the first to explore the definition of violence as a restriction on allowing a first time offender the benefit of the safety valve provision of the United States Sentencing Guidelines. I was sole counsel on this case. The Ninth Circuit affirmed the district court's denial of the safety valve. Opposing counsel was Assistant United States Attorney Earl Hicks, Thomas Foley Courthouse, 920 W. Riverside, Suite 300, Spokane, WA 99201 (509) 353-2767.

7. *State v. Juanita Wolff,* Pierce County Superior Court Case #99-1-024-74-7. In 2002, I represented Ms. Wolff in a successful action in Pierce County Superior Court, with Judge Sergio Armijo presiding, for her conditional release from Eastern State Hospital. Prior to my representation, Ms. Wolff had been found not guilty by reason of insanity to the charge of second-degree assault with a firearm. I was sole counsel on this case. Ms. Wolff was granted a conditional release. Opposing counsel was Deputy Prosecutor Carolyn Williamson of the Pierce County Prosecutor's Office, 955 Tacoma Avenue South, Suite 301, Tacoma, WA 98402 (509) 798-5713.

8. *State v. Bost,* Spokane County Superior Court #00-1-02803. I tried this case in 2001 in Spokane County Superior Court with Judge Paul Bastine presiding. Ms. Bost was charged with possession and manufacture of a controlled substance. The jury found Ms. Bost guilty of possession and not guilty of manufacture. This case was significant to me, because it introduced me to the challenges of controlling methamphetamine production in a community. I was sole counsel on this case. Opposing counsel was Deputy Prosecutor Mary Ann Brady, Spokane County Prosecutor's Office, 1100 W. Mallon, Spokane, WA 99260 (509) 477-3662.

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9. *U.S. v. Uriel Silva-Rivas,* CR 03-030-WFN. In 2003, I was sole counsel in U.S. District Court with Judge Wm. Fremming Nielsen presiding, representing Mr. Silva-Rivas on charges on conspiracy to distribute controlled substances. Mr. Silva-Rivas was indicted along with most of his family members, including his wife and his son. The case resulted in a plea agreement. The case was important to me because it demonstrated the impact of criminal charges on an entire family. Opposing counsel was Assistant U.S. Attorney Thomas Hopkins, Thomas Foley Courthouse, 920 W. Riverside, Suite 300, Spokane, WA 99201 (509) 353-2767.

10. *U.S. v. Penny Kirk,* CR-99-058-WFN. In 1999, and for several years after that date, I represented Ms. Penny Kirk in charges of conspiracy to distribute controlled substances. The initial case, and the subsequent violations of supervised release, was heard by Judge Wm. Fremming Nielsen in the U.S. district Court for the Eastern District of Washington. At the time of the initial proceedings, Ms. Kirk was pregnant and addicted to drugs. All of the parties and the court worked together to provide an environment and assistance to protect Ms. Kirk's unborn child. A plea agreement was reached and Ms. Kirk entered a treatment facility to begin her term of incarceration. Opposing counsel was Assistant U.S. Attorney Thomas Hopkins, Thomas Foley Courthouse, 920 W. Riverside, Suite 300, Spokane, WA 99201 (509) 353-2767.

18. **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. 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.)

I consider my legal activities with the Criminal Justice Act Panel to be the most significant in my legal practice. As a Criminal Justice Act attorney, I am appointed by the court to represent indigent criminal defendants in federal court. Often, these clients are nonnative English speakers and have little understanding of the court system. In addition, most of these defendants are confronting significant prison terms if convicted of the charges. I consider my direct representation of indigent defendants as both a service to the clients and a service to the courts so that justice can be administered in a fair manner.

In addition, I served for three years as the Criminal Justice Act Panel representative from Eastern Washington to national conferences of Criminal Justice Act Panel attorneys. In that role, I represented all of the attorneys in Eastern Washington who defend federal indigent criminal defendants, and I worked toward creating an equitable system of representing indigent defendants as well as facilitating training opportunities and resources for the panel attorneys.

I have performed no lobbying activities on behalf of any client or organization.

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19. **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, provide four (4) copies to the committee.

Gonzaga University School of Law:

I taught Federal Jurisdiction during the spring semesters of 2005, 2006, 2007, and 2008. I currently am teaching Federal Jurisdiction this semester. The course is a study of separation of powers, covering the creation of federal courts and the limits on federal court power. I have supplied copies of syllabi.

I taught Evidence during the spring semesters of 2004 and 2005, the fall semesters of 2005, 2006, 2007, and 2008, and the summer semester of 2008. This course covers the federal rules of evidence and their application. I have supplied copies of previous syllabi.

I taught Trial Advocacy in every fall and spring semester from 1999 through fall semester of 2004. I taught Trial Advocacy again in spring and summer semesters of 2009. This is a laboratory course teaching both theory and practice of oral advocacy in the trial setting. I have provided copies of syllabi.

I have taught an Externship Seminar every semester fall, spring, and summer from 2002 to the present. This is a clinical course that provides students with opportunities to work in field placements while still attending externship seminars focused upon current legal problems and ethics. I have supplied copies of syllabi.

University of North Dakota:

I taught Freshman Composition and Business and Technical Writing courses in fall and spring semesters beginning spring semester 1979 through spring semester 1983. I resumed teaching those courses in fall and spring semesters from fall 1984 through spring semester 1988. These were introductory writing courses for which I no longer have any syllabi.

20. **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. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have no deferred income or future benefit arrangements from prior business relationships.

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21. **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.

    Depending on when court service would commence, I may be committed to completing that semester's teaching schedule. I have no other plans, commitments or agreements to pursue outside employment, with or without compensation, during my service with the court.

22. **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, licensing fees, 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.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

    a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

       I would recuse myself in any cases involving Gonzaga University School of Law because of my previous employment with that institution. I also would recuse myself in any cases involving Washington State University because of my spouse's employment with that institution.

       I have been a sole practitioner since 2003, and I have no financial interest with my former law partner or in any of the law firms with which I was formerly associated. I have limited my practice since 2003 to focus on representation of indigent federal criminal defendants. Therefore, I do not anticipate that I will encounter many conflicts of interest based on my previous practice of law. However, I would recuse myself in any case in which one of my former clients filed a habeas corpus petition.

       I would handle any actual or potential conflict of interest through careful analysis of the facts and application of the Code of Conduct for United States Judges, as well as any other relevant statutory Canons and provisions.

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b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I will establish a conflicts check system with the clerk's office to identify any potential conflicts of interest. In addition, I will screen every case personally to determine whether any potential conflict exists. Finally, in the event that I need to recuse myself from a case, I will ask the clerk's office to reassign the case to one of the other judges in the district.

25. **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.

A majority of my litigation has been representing indigent defendants in federal court and in state court. Although this work is not pro bono, the compensation by the courts is at a level substantially below the rate that a private client would pay. In addition, I have participated in raising funds for pro bono services through the Spokane County Bar Association's Volunteer Lawyers' Program Auctions.

Also, I regularly have performed legal services at no charge for financially disadvantaged clients. These services have included providing legal advice on contract and employment issues and undertaking negotiations and communications on the clients' behalf to resolve basic problems such as licensing.

26. **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. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In response to a notice about the application process for the federal district court vacancy, I contacted Mr. Michael Ormsby, the co-chair of the bi-partisan merit selection committee, to obtain a copy of the application. I submitted my completed application to Mr. Michael Ormsby and to the committee co-chair, Mr. John Schultz, prior to the deadline on November 14, 2008.

At that same time, I requested a judicial evaluation for the district court judgeship by all of the Washington state minority bar associations that evaluate judicial

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candidates. I was interviewed and evaluated by the Joint Asian Bar Association, the Latina/o Bar Association, the Q Law Bar Association, and the Washington Women Lawyers Bar Association. I was rated "well qualified" by the Joint Asian Bar Association and "exceptionally well qualified" by all of the other bar associations. I received an "exceptionally well qualified" from the Loren Miller Bar Association.

I was invited by Mr. Schultz to attend an interview on December 6, 2008, in Moses Lake, Washington, with all of the members of the merit selection committee. I understand that at least eight other individuals were interviewed that day. I received no notice as to whether the merit selection committee recommended my nomination.

On January 12, 2009, I was notified by Senator Murray's office that I was one of three finalists for the position. I was contacted in mid-March to arrange for an interview with Senator Murray. I had video conference interviews with Senator Murray and her aides one day and Senator Cantwell and her aide another day. Each of the other two finalists also was interviewed in the same manner and on the same days as I was interviewed.

I received notice on June 12, 2009, from the Department of Justice regarding the nomination paperwork and process. I have had subsequent conversations with Department of Justice staff regarding that paperwork and the process.

On September 4, I met with Associate Attorney General Thomas Perrelli and staff from the Office of White House Counsel and Department of Justice in Washington D.C. I had an additional conversation with some of the interviewers by telephone on September 30.

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, explain fully.

No such communications have occurred.

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AFFIDAVIT

I, Rosanna Malouf Peterson, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

October 12, 2009
(DATE)

Rosanna Malouf Peterson
(NAME)

Pamela K. Pschirrer
(NOTARY)

Notary Public
State of Washington
PAMELA K. PSCHIRRER
MY COMMISSION EXPIRES
October 15, 2012

QUESTIONS AND ANSWERS

Responses of Susan B. Carbon
November 30, 2009
To:

Written Questions of Senator Tom Coburn, M.D.
Susan B. Carbon to be Director of the Violence Against Women Office, Department of Justice
Senate Committee on the Judiciary
November 25, 2009

1. In 2005, the bipartisan Violence Against Women and Department of Justice Reauthorization Act ("VAWA Reauthorization Act") passed with an important provision intended to protect women who have already been victimized once by sexual assault from being assaulted again by either AIDS or the legal system which may deny them potentially life-saving information. This provision encouraged states and local governments to implement laws that provide victims of sexual assault and rape the ability to know if the person indicted for the attack is infected with HIV. It required the Attorney General to withhold 5% of the funding under the Grants to Encourage Arrest Policies and Enforcement of Protection Orders to a state or local government grantee that does not implement such laws. Such laws must require the defendant to undergo testing no later than 48 hours after the date on which the information or indictment is presented, and as soon thereafter as is practicable, the results of the test must be made available to the victim.

    a. There has been recent legislation that would attempt to alter the HIV testing provision that was included in the VAWA Reauthorization Act such that, in order to receive 100% of funding under the aforementioned grant, states merely have to ensure they have a law that either requires HIV testing of the victim at the request of the victim or testing of the offender at the request of the victim. What are your views regarding HIV testing in cases of sexual assault?

Response: It is important for everyone, victims and offenders, to be tested as early as possible. This allows earlier treatment if needed. Waiting until the time of information or indictment for testing may not only cause unnecessary anxiety for a victim of assault, but also compromise the efficacy of treatment. Earlier testing may also help prevent the spread of the disease.

2. The American Medical Association (AMA) supports HIV testing of offenders because "early knowledge that a defendant is HIV infected would allow the victim to gain access to the ever growing arsenal of new HIV treatment options. In addition, knowing that the defendant was HIV infected would help the victim avoid contact which might put others at risk of infection."

    a. Do you agree with the AMA's statement that it is valuable to provide the HIV status of an offender to a victim of sexual assault, especially with regard to prompt treatment? Why or why not?

Response: Yes. Earlier intervention may increase the likelihood of a successful treatment regimen.

3. When President Obama took office, he promised to usher in a new era of transparency and accountability in our government. In fact, in a January 21, 2009 Presidential Memo, the President stated, "[m]y Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency,

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public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government."[1]

a. In my estimation, the federal grant-making process, which awards billions of dollars in taxpayer money each year, has the greatest need for transparency and deserves the highest level of scrutiny. If confirmed, will you commit to upholding the same level of openness that President Obama has advocated? If so, how will you promote transparency at the Office of Violence Against Women?

Response: Yes. If confirmed, I will work with the Office to ensure that the application and award processes are open and transparent. Information will be made available to all applicants.

b. If confirmed, will you be forthcoming with this Committee when you see grant programs or practices that aren't working the way Congress intended?

Response: Yes.

c. If confirmed, will you also commit to promptly providing this Committee and other Senators with any requests for information related to programs falling under your jurisdiction?

Response: I will work to respond to any and all requests from Members of Congress to the fullest extent possible.

4. Since 2000, the Office of the Inspector General has continuously ranked grant management as one of the DOJ's top management challenges every year. Last week, the OIG released the 2009 challenges, which once again included grant management. In fact, at Attorney General Holder's confirmation hearing, he recognized that this must be treated as a "consistent priority" to prevent problems.

a. What specific steps do you plan to take to improve grant management at the Office of Violence Against Women?

Response: Using taxpayer funds wisely and appropriately is extremely important. If confirmed, I will follow Attorney General Holder's lead in prioritizing grant management at the Office on Violence Against Women. I will review the reports and work with staff to identify areas of needed improvement.

b. Are there any particular grants administered by the Office of Violence Against Women that you believe deserve particular attention and review?

Response: Since I am not currently serving at the Office on Violence Against Women, I do not have access to such information at this time. If confirmed, I plan to review the Office's grants and work with staff to identify any areas needing improvements.

5. With our federal debt at $11.8 trillion and skyrocketing by the day, coupled with Congress' inability to control and reduce federal spending on lower priorities, grantees should be very concerned about availability of future federal funding. No doubt grantees want future funding to be consistent. Requiring grantees to match federal grant funds will ensure more fiscal stability for them in the future by relying less on the federal government so they can stand on their own. In addition, as a grantee invests additional funds into its services, it is more likely to remain truly committed to developing new and innovative strategies to help those who benefit from these grant programs. Do you agree? Why or

[1] *Transparency and Open Government*, Presidential Memorandum, January 21, 2009.

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why not?

Response: Requiring matching funds has the advantage of expanding the reach of federal programs. However, the size of the required match may impact the ability of grantees to apply. Match requirements may be more appropriate for states and units of local government, which have independent sources of revenue, than for nonprofit, nongovernmental victim services providers.

6. What is your view of earmarks? Do you believe that funds earmarked in accounts you manage at the Office of Violence Against Women can and should receive the same scrutiny as funds that are competitively bid? Or are your hands tied by Congress, such that you are obligated to award them, regardless of their merit?

Response: Earmarks should be subject to the same monitoring and performance standards as any other grant. I am advised that the Department is bound by Executive Order #13457 with respect to earmarks.

   a. Will you commit to thoroughly vetting earmarked requests and reporting to Congress when your assessment shows they should not be awarded?

Response: If confirmed, I would be happy to respond to congressional requests to review individual earmarked requests.

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Responses of Denny Chin
Nominee to the U.S. Court of Appeals for the Second Circuit
to the Written Questions of Senator Tom Coburn, M.D.

1. **Between 1996 and 2006, you three times invalidated portions of the state's "Megan's Law." I am concerned that you may have an extreme view of the law that places greater weight in favor of the perpetrators of sexual assault rather than their victims and the communities in which they may live.**

   a. **Are you uncomfortable with the idea of a Megan's Law?**

   Response: No.

   b. **Are you worried that such a law may violate the rights of a convicted sex offender?**

   Response: No.

   c. **Are you uncomfortable with the idea of requiring convicted sex offenders to register with the police?**

   Response: No.

   d. **Do you accept the Second Circuit's reversals?**

   Response: Yes.

   e. **Do you regret any of your opinions in the Megan's Law cases?**

   Response: No. These were difficult issues, and although it reversed me, the Second Circuit commented that I had written a "thoughtful decision," *Doe v. Pataki*, 120 F.3d 1263, 1271 (2d Cir. 1997), and that the issue of whether notification constituted "punishment" was "not free from doubt." 120 F.3d at 1265.

2. **Another case that concerns me is the so-called "Candyman" case, *U.S. v. Perez*, in which you suppressed evidence seized from an individual's home as part of a child pornography investigation. As a result of the investigation into the web-based group, the FBI searched several homes across the country for images of child pornography. The *New York Times* noted that as a result of this nationwide operation, more than 1,800 people were investigated, more than 100 were arrested, and 60 were convicted, many as a result of guilty pleas.**

   Although you noted that "a first-time visitor to the site certainly would have had some idea that the site provided access to child pornography," you nevertheless suppressed the evidence and held that the FBI acted with "reckless disregard for the truth" in its warrant application. You also held that, even if the affidavit was corrected to remove the incorrect information: "a magistrate judge could not

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reasonably conclude . . . that the Candyman organization was engaged in criminal activity to such an extent that it could be considered 'wholly illegitimate' in the criminal sense."

a. If you believe that a first-time visitor "certainly" would have some idea that the site provided access to child pornography, then why do you believe a magistrate judge would not?

Response: The defendant in *Perez* was suspected of unlawfully receiving or possessing child pornography transmitted in interstate commerce. The affidavit used to obtain the search warrant represented that all members of the egroup received all emails sent by members of the group; this was critical to the probable cause question because the emails transmitted child pornography. In fact, as the government later conceded, the representation was false, as the vast majority of members -- including Perez -- elected not to receive emails and thus did not receive any child pornography from the website. The fact that a visitor to the site would have had some idea that child pornography was accessible did not mean that they actually accessed child pornography, and indeed visitors to the site could engage in activities that were not illegal.

One of your fellow district judges in the Eastern District of New York reached a different conclusion than you, saying: "While it is technically possible that a person would register with Candyman and not proceed to receive child pornography from it, this hardly seems likely, as that was clearly the primary reason for the [egroup's] existence." How do you respond to this opinion?

Response: In fact, most people who registered on the website did not receive child pornography because most of them elected the "no email" option. Moreover, several other judges ruled the same way that I did. Although the Eastern District of New York decision was affirmed, four out of six judges on the Second Circuit who considered the issue agreed with me. In *U.S. v. Martin*, 426 F.3d 68 (2d Cir. Aug. 4, 2005), in a two-to-one decision, a panel of the Second Circuit affirmed the Eastern District decision. The dissent agreed with my decision in *Perez*. In a subsequent unanimous decision, *U.S. v. Coreas*, 419 F.3d 151 (2d Cir. Aug. 18, 2005), the panel explicitly agreed with my decision in *Perez*, but held that it was bound by the panel's decision in *Martin*. Hence, four out of the six Second Circuit judges -- the dissenter in *Martin* and all three judges in *Coreas* -- agreed that the result I reached was the correct result. Nonetheless, I accept that the *Martin* decision is binding law in the Second Circuit.

3. In a January 9, 1994, profile published in *Newsday* that discussed your nomination to your district court position, you described your substantial legal

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career and then said: "So I offer the traditional progression of the white male, plus something more."

a. What is the "traditional progression of the white male"?

Response: When I answered the question in 1994, I was referring to what I believed to be the traditional progression followed by many quality lawyers: a selective college; a selective law school; law review; editor of law review; federal clerkship; large law firm; and U.S. Attorney's office.

b. What is the "something more" that you offer?

Response: There was limited diversity in these settings. By "something more," I meant a non-traditional background: I was born in Hong Kong and immigrated to this country with my family. I had gone through the New York City public school system. My father was a cook in Chinese restaurants and my mother was a seamstress in Chinatown garment factories. I went to college and law school on scholarships. At the time, there were very few Asian-Americans in the law firms, in the U.S. Attorneys' offices; and on the bench.

b. Have you ever identified anything else as "white" or otherwise racial?

Response: In a speech I gave in Miami in 2007, I referred to "white males." In discussing the importance of diversity in the justice system, I described a Chinatown extortion case I had tried involving a commuter van service. The four defendants, the victims, and all the non-law enforcement witnesses were Chinese. All were poor and uneducated, and none spoke English. Several had been smuggled into this country. I noted that the four defense lawyers, two prosecutors, and three law enforcement agents on the case were all "white males." I said that I was not suggesting at all that a Chinese defendant should only be represented by a Chinese lawyer or a white defendant only by a white lawyer, but I felt it was problematic when so many important elements of our criminal justice system did not reflect, even remotely, the make-up of our population. I noted that at one point during the trial, for example, one of the driver witnesses -- testifying in Chinese -- identified one of the defendants, pointing to him and saying his name. One of the defense lawyers stood up to concede the identification, but he was mistaken -- it was not his client who had been identified but one of the other defendants. The difficulties in language, dialects, names, and culture presented challenges to the orderly administration of justice.

4. In describing the things you enjoy about serving as a judge, you have frequently stated: "I particularly enjoy having the freedom to do what I believe is right and

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just." Although you have said in other remarks that you enjoy having the freedom to do what is "right and just, under the law," I am concerned whether you will put your personal views ahead of the law.

a. When deciding what is "right and just," what authorities do you consider?

Response: By "right and just," I mean under the law -- the applicable statutes and case law. I have not, and will not, put my personal views ahead of the law. I made the quoted statement in the context of comparing what I do as a judge to what I did as an advocate. I was making the point that a lawyer represents a client, and must take positions accordingly, ethics permitting, regardless of what the "right" answer is. A judge is not limited by the interests of the client and does not merely advocate a position; rather, a judge has the freedom -- and the responsibility -- to determine the right and just answer. But he or she must do so under the law and not based on personal views.

b. When deciding what is "right and "just," do you take into account your personal views or preferences? If so, how?

Response: I do not.

c. Have you ever ruled in a case based on your personal view of what is "right" or "just"?

Response: I have not. I have determined what is "right" and "just" based on the applicable law.

5. As you know, the Second Amendment right to bear arms is one that is very important to all Americans, but particularly to those in my home state of Oklahoma. Do you believe that the Second Amendment is an individual right or a collective right? Please explain your answer.

Response: The Supreme Court has held that this is an individual right. I am bound by and, if presented with this issue, would apply Supreme Court law.

a. Do you believe an individual Second Amendment right exists outside the context of military service or hunting? If so, please explain.

Response: The Supreme Court has so held. I will apply Supreme Court law.

b. Do you believe the right to bear arms is a fundamental right?

Response: The Supreme Court has not yet ruled on that issue, but may do so shortly. I am bound by and would apply Supreme Court law.

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c. What constitutional analysis would you employ to determine whether it is a fundamental right?

Response: I would follow the constitutional analysis applied by the Supreme Court.

d. Do you believe the right to self defense is a fundamental right?

Response: The Supreme Court has not yet ruled on this issue. When it does so, and if I am presented with the issue, I would apply Supreme Court and other binding Second Circuit law.

6. Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?

Response: I do not believe that the Constitution constantly evolves as society sees fit. Absent a constitutional amendment, the words of the Constitution do not change. The words of the Constitution should be given their plain meaning, and where there is ambiguity, the intent of the framers should be given great weight. The framers, however, did not envision all the issues that confront us today, particularly, for example, issues presented by developments in technology. In these situations, I believe a judge should apply the words of the Constitution and constitutional principles, as construed by applicable Supreme Court case law.

7. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the "evolving standards of decency" to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy's analysis?

Response: I am bound by the Supreme Court's rulings and I would apply Supreme Court law.

a. How would you determine what the evolving standards of decency are?

Response: I would follow Supreme Court law and apply the analysis that the Supreme Court has held should be applied.

8. In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution?

Response: The meaning of the Constitution should be determined based on U.S. law, as interpreted by the United States Supreme Court. There may be limited occasions when it may be useful, for purposes of comparison, to see how other countries handle certain issues. For

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example, the Supreme Court has looked to foreign law, on occasion, to a limited extent, for purposes of comparison, after it has first relied on American law.

a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: I would not interpret the Constitution based on foreign law. There may be limited occasions when it may be useful, for purposes of comparison, to see how other countries handle certain issues. For example, the Supreme Court has looked to foreign law, on occasion, to a limited extent, for purposes of comparison, after it has first relied on American law.

b. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: I would not interpret the Constitution based on foreign law. There may be limited occasions when it may be useful, for purposes of comparison, to see how other countries handle certain issues. For example, the Supreme Court has looked to foreign law, on occasion, to a limited extent, for purposes of comparison, after it has first relied on American law.

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Responses of Denny Chin
Nominee to the U.S. Court of Appeals for the Second Circuit
to the Written Questions of Senator Jeff Sessions

1. **At your hearing, I asked you to expound upon your comments in the December 17, 2007 issue of the *New York Law Journal*. You answered:**

   "I think that the quality of justice is not as good if the bench is dominated by one group of the same background or persuasion. I think with a more diverse group on the bench, the judges will learn from each other. I do not suggest for a moment that an Asian-American judge is more likely to reach a wise result than a white judge, but I think the two together can learn from each other and perhaps come up with a better answer."

   a. **Please explain what you mean by (i) "the quality of justice" and (ii) how it "is not as good if the bench is dominated by one group of the same background or persuasion."**

      Response: By "quality of justice," I mean not the substantive law but the process of administering justice. A more diverse judiciary would help provide role models for lawyers and students; it would help dispel stereotypes and notions that certain groups are not capable of being judges; it would help send a message of inclusion to historically underrepresented groups; it would help improve access to justice; and it would enable individuals from different walks of life to learn from each other. As I said in that same speech, I will not rule differently because of race or ethnicity or cultural background. I do not believe that race or ethnicity or gender or cultural background should affect a judge's interpretation of the law. Sometimes, however, race and ethnicity have an improper impact. For example, the Second Circuit has vacated sentences where there was at least an appearance that a defendant's race or ethnicity played an adverse role in the sentencing decision. See, e.g., U.S. v. Kaba, 480 F.3d 152 (2d Cir. 2007) (holding that district court's stated intent to send a message to defendant's ethnic community or native country was improper); U.S. v. Leung, 40 F.3d 577 (2d Cir. 1994) (same). Increased diversity on the bench would help make judges more sensitive to these kinds of issues, so that a defendant's race and ethnicity would not subject him to a different sentence.

   b. **Do you think that a court that "is dominated by one group of the same background or persuasion" is somehow less legitimate than one "with a more diverse group on the bench"? Please explain your answer.**

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Response: I do not believe a court that is dominated by one group of the same background or persuasion is "less legitimate" than one that is more diverse. But for the reasons stated I believe it is important to have a more diverse bench.

c. In my opinion, a judge's role is to adhere to the rule of law, which consists of applying a predetermined set of rules to the specific facts of a case. Given that definition of the rule of law, I am unclear what you are implying when you stated that "a more diverse group on the bench . . . can learn from each other and perhaps come up with a better answer." Please explain what you meant by this statement and how it comports with a judge's role to adhere to the rule of law.

Response: I agree that a judge's role is to adhere to the rule of law, and a judge's race, ethnicity, or gender should not affect his or her interpretation of the law. I do believe that we can learn from each other. Just as there is value to having diversity in the work place, in our universities, and in the military, for example, as the Supreme Court and other institutions have recognized, there is value in having diversity on the bench.

2. At your hearing, I asked you about your decisions invalidating portions of New York's Megan's Law statute. The Second Circuit never upheld your rulings and twice reversed. You found three different reasons to invalidate portions of the Megan's Law – an *ex post facto* rationale, a due process rationale, and a novel rationale that forbade the legislature from even passing amendments to its Megan's Law statute. I am concerned that you may have an extreme view of the law that places greater weight in favor of the perpetrators of sexual assault rather than their victims and the communities in which they may live.

a. Do you believe that Megan's Laws violate the Constitutional rights of sex offenders? Please explain your answer.

Response: No, to the extent this question has been answered by the Supreme Court and the Second Circuit. To the extent there are issues that have not yet been ruled upon, it would be inappropriate for me to opine now, as those issues could arise in the future. As for my past rulings, I did not rule on Megan's Law as a whole and I did not opine on whether it was a good or bad idea or whether it was sound or unsound as a matter of policy. I addressed specific issues raised by the litigants before me. I held that the New York statute violated the ex post facto clause with respect to sex offenders convicted before the statute's enactment because community notification constituted punishment. The Second Circuit and Supreme Court held otherwise and I accept their decisions. I held that certain aspects of the New York Megan's Law did not comport with the requirements of the Due Process Clause.

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The State did not appeal my decision and the New York State legislature in fact amended the statute to address these Due Process concerns. The amended statute does not violate the Due Process Clause. I held that other amendments to Megan's Laws passed after the parties had entered into a consent decree could not be applied to sex offenders covered by the consent decree because the State was in essence unilaterally re-writing the consent decree. The Second Circuit reversed, in a two-to-one decision, and I accept its decision.

b. In 2003, the United States Supreme Court twice upheld one state's Megan's Law against Constitutional challenges. Does the fact that the Supreme Court has upheld a Megan's Law cause you to regret any of your opinions in these cases? Please explain your answer.

Response: I do not regret my decisions. The Supreme Court and Second Circuit have ruled, and I accept their decisions. These were difficult issues, and although it reversed me, the Second Circuit commented that I had written a "thoughtful decision," *Doe v. Pataki*, 120 F.3d 1263, 1271 (2d Cir. 1997), and that the issue of whether notification constituted "punishment" was "not free from doubt." 120 F.3d at 1265.

c. I am particularly concerned with your third ruling in these cases, in which you held that the New York legislature could not amend the Megan's Law statute because a settlement arising out of the second Megan's Law suit referenced the old law.

i. Do you recognize and respect the authority and prerogative of the legislature and executive to pass laws regarding issues such as Megan's Laws?

Response: I recognize and respect the authority of the legislature and executive to pass laws. Indeed, I did not hold that the New York legislature could not amend the Megan's Law statute. I held only that the amendment could not be applied to the sex offenders covered by the consent decree that the State of New York had entered into, because the consent decree was a binding contract and the State could not unilaterally re-write the consent decree. I held that a contract was a contract, even when the State was involved. The Second Circuit reversed. I accept the Second Circuit's decision.

ii. Do you believe that a settlement can prevent a future legislature and executive from passing valid legislation?

Response: No.

3. In *U.S. v. Perez*, you suppressed evidence seized from an individual's home as part of a child pornography investigation. In remarks before the University

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of Virginia School of Law, you referred to this case, saying, "it may be disgusting, but it's protected activity."

a. What did you believe was protected activity?

Response: I held that the website offered the following "protected and legal activities": text-based messaging; answering survey questions; posting links to other sites; and chatting (engaging in real-time conversations), as long as these activities did not involve the transmitting or receiving of child pornography.

b. Do you believe that chatting online about exploiting children is protected activity? Please explain your answer.

Response: As long as the individuals are merely chatting and not, for example, entering into a conspiracy to engage in criminal conduct, they are not breaking the law. As the Second Circuit explicitly held in another *Candyman* case, "Many of the activities Candyman facilitated, such as members' chatting with each other, are protected by the First Amendment." *U.S. v. Coreas*, 419 F.3d 151, 156-57 (2d Cir. 2005).

4. In a 2003 speech at the Conference on Law and Public Policy at Harvard Law School, you discussed the idea of "judicial activism," stating:

> **"And so, yes, I am a judicial activist. Not in my opinions or in my decisions, but in my effort to get out there, to be seen and heard, to speak in a manner that is appropriate for a sitting judge, and to try and provide some guidance for students and others."**

a. How do you define the term "judicial activism"?

Response: In the speech in question, I specifically stated that I was not a judicial activist in terms of my judging or decision-making. By that I meant I was not a "judicial activist" in the sense of a judge who is trying to make or write law. To the contrary, I believe in judicial restraint. The legislature writes the law. In the speech I did say I was a "judicial activist" in the narrow sense of someone who was active in speaking to students and others to try to provide guidance and encouragement.

b. Do you think it is ever proper for judges to indulge their own policy preferences in determining what the law means?

Response: No.

i. If so, under what circumstances?

Response: I do not.

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ii. Please identify any cases in which you have done so.

Response: None.

iii. If not, please discuss an example of a case where you have had to set aside your own policy preferences and rule based solely on the law.

Response: As a judge, I have not considered my own policy preferences in determining what the law means, and I do not recall any such case.

c. Do you think it is ever proper for judges to indulge their own values in determining what the law means?

Response: No.

i. If so, under what circumstances?

Response: I do not.

ii. Please identify any cases in which you have done so.

Response: None.

iii. If not, please discuss an example of a case where you have had to set aside your own values and rule based solely on the law.

Response: As a judge, I have not considered my own values in determining what the law means, and I do not recall any such case.

d. Have you ever ruled in a case based on your desire to obtain a certain outcome? If so, please describe that case or those cases.

Response: No.

e. Have you ever ruled in a case based on anything other than the law before you and applicable precedents? If so, please describe that case or those cases.

Response: No.

5. Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation? Please explain your answer.

Response: I do not believe that the Constitution constantly evolves as society sees fit. Absent a constitutional amendment, the words of the

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Constitution do not change. The words of the Constitution should be given their plain meaning, and where there is ambiguity, the intent of the framers should be given great weight. The framers, however, did not envision all the issues that confront us today, particularly, for example, issues presented by developments in technology. In these situations, I believe a judge should apply the words of the Constitution and constitutional principles, as construed by applicable Supreme Court case law.

6. As you may know, President Obama has described the types of judges that he will nominate to the federal bench as follows:

"We need somebody who's got the heart, the empathy, to recognize what it's like to be a young teenage mom. The empathy to understand what it's like to be poor, or African-American, or gay, or disabled, or old. And that's the criteria by which I'm going to be selecting my judges."

a. Without commenting on what President Obama may or may not have meant by this statement, what is your opinion with respect to President Obama's criteria for federal judges, as described in his quote?

Response: My opinion is that it is the President's perogative to nominate federal judges of his choosing, subject to the advice and consent of the Senate, and to employ the criteria he deems appropriate.

b. In your opinion, do you fit President Obama's criteria for federal judges, as described in the quote?

Response: I have not experienced all of the situations covered by the President in the quotation, but I have had a broad range of experiences and I believe I have the ability to understand and empathize with different people.

c. During her confirmation hearings, Justice Sotomayor rejected President Obama's so-called "empathy standard" stating, "We apply the law to facts. We don't apply feelings to facts." Do you agree with Justice Sotomayor?

Response: I agree with Justice Sotomayor's statement.

d. What role do you believe that empathy should play in a judge's consideration of a case?

Response: Empathy should play no role in a judge's determination of what the law is. There is, however, a role for empathy, as empathy will help a judge treat all litigants and witnesses with dignity and respect.

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e. Do you think that it's ever proper for judges to indulge their own subjective sense of empathy in determining what the law means?

Response: No.

i. If so, under what circumstances?

Response: I do not believe so.

ii. Please identify any cases in which you've done so.

Response: None.

iii. If not, please discuss an example of a case where you have had to set aside your own subjective sense of empathy and rule based solely on the law.

Response: As a judge, I have not considered my own subjective sense of empathy in determining what the law means, and I do not recall any such case.

7. Please describe with particularity the process by which these questions were answered.

Response: I drafted the answers. They were reviewed by the Department of Justice, which provided some feedback. The answers are mine.

8. Do these answers reflect your true and personal views?

Response: Yes.

Responses of William M. Conley
Nominee to the U.S. District Court for the Western District of Wisconsin
to the Written Questions of Senator Jeff Sessions

1. **In your questionnaire submitted to the Committee, you indicated that you have been a member of the Southern Poverty Law Institute since 1986 and are still a member of that organization today. That organization, headquartered in Alabama, has taken a great many controversial positions on a number of issues. For example, in a 2007 report entitled "Close to Slavery," the Southern Poverty Law Center quoted a statement from Representative Charlie Rangle regarding our nation's H-2 non-immigrant worker visa program, saying "this guest-worker program's the closest thing I've ever seen to slavery." The Southern Poverty Law Center added that "Congressman Rangle's conclusion is not mere hyperbole." The report went on to say that "the H-2 guest-worker system also can be viewed as a modern-day system of indentured servitude." As a federal district judge, you may be asked to preside over cases that involve the H-2 visa program. Do you agree with the Southern Poverty Law Center's view on this program? Please explain your answer.**

   Response: As you note, I may be asked to preside over cases that involve the H-2 visa program and, for that reason, believe it inappropriate for me to comment on that program specifically. Generally, I realize that the H-2A and H-2B programs attempt to address difficult issues arising out of temporary labor shortages in the United States. Moreover, my own views often do not comport with the rhetoric, and occasionally do not comport with positions, of the SPLC.

   Were I fortunate enough to be confirmed, I would enforce the H-2 visa program as required by law and anticipate withdrawing from membership in the SPLC in recognition that it regularly takes positions on legal issues and subject matter that may come before me.

2. **Under the Supreme Court's decision in *United States v. Booker*, the federal sentencing guidelines are advisory, rather than mandatory. Under the current system, it appears to me that as long as the sentencing judge (1) correctly calculates the guidelines, and (2) appropriately considers factors set forth therein, the judge may impose any sentence ranging from probation to the statutory maximum. Following the Supreme Court's decision in *Gall v. United States*, appellate courts must apply the highly deferential "abuse of discretion" standard when reviewing these sentencing decisions. As a result, district court judges may impose virtually any sentence, and as long as the decision is procedurally sound, there is virtually no substantive review on appeal.**

   a. Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw?

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Response: I agree that the same defendant should receive the same sentence for the same crime without regard to what judge that defendant happens to draw.

b. Under what circumstances do you believe it appropriate for a district court judge to depart downward from the sentencing guidelines?

Response: My understanding of the current state of the law is that any departure from the Sentencing Guidelines is justified only when a full consideration of all the applicable facts and factors in 18 USCS 3553 would support it and the reasons are fully explained for meaningful appellate review.

3. What in your view is the role of a judge?

Response: Ultimately, the responsibility and role of a federal judge is to uphold the United States Constitution, federal statutes and regulations, and as applicable state counterparts, as informed by judicial precedent, legislative history and the facts of each case. In doing so, a judge needs to be cognizant of the position he or she holds in the larger justice system, whether it be the directives of the United States Supreme Court and the courts of appeal, appropriate deference to the Executive and Legislative branches of the federal government or respect for the important role of comity to state government.

At least as important for a federal judge is realizing his or her role within the state and federal judicial system in dispensing both perceived and real justice. This begins by ensuring, to the extent possible, that the parties before the judge have a sense of basic fairness of the process and decision making, even if it is not favorable to them. It continues with careful, thorough review of the record and law, and a well- reasoned, cogent decision whether oral or written. A judge also needs to keep well in mind that justice delayed is more often than not justice denied. Finally, and most importantly, is the quality of justice, reflected in thoughtful deliberation, reasoned outcomes and, to the extent humanly possible, the correct result.

4. Do you think it is ever proper for judges to indulge their own values in determining what the law means? If so, under what circumstances? Please explain your answer.

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Response: No.

5. **Do you think it is ever proper for judges to indulge their own policy preferences in determining what the law means? If so, under what circumstances? Please explain your answer.**

Response: No.

6. **How would you define "judicial activism?"**

Response: I have no personal definition, but have heard this phrase used in a variety of settings to at least suggest, if not accuse, a judge of departing -- generally based on personal bias or political views, whether on the right or left -- from their responsibility to uphold the United States Constitution, federal statutes and regulations, and as applicable state counterparts, as informed by judicial precedent, legislative history and the facts of each case. To the extent this is the intended meaning of this phrase, then I agree it represents behavior outside the proper role of a judge.

7. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

Response: No.

8. **As you may know, President Obama has described the types of judges that he will nominate to the federal bench as follows:**

"We need somebody who's got the heart, the empathy, to recognize what it's like to be a young teenage mom. The empathy to understand what it's like to be poor, or African-American, or gay, or disabled, or old. And that's the criteria by which I'm going to be selecting my judges."

a. **Without commenting on what President Obama may or may not have meant by this statement, what is your opinion with respect to President Obama's criteria for federal judges, as described in his quote?**

Response: To the extent that the President's "criteria" seek judges who have the ability to truly understand the positions of all who come before them, whether white or black, rich or poor, Christian or Muslim, I think it an ideal

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worth striving toward. Other criteria are equally important (e.g., intelligence, fairness, common sense, honesty, and integrity).

b. In your opinion, do you fit President Obama's criteria for federal judges, as described in the quote?

Response: I will certainly do my best to understand the positions of all who come before me. Beyond that, I cannot say.

c. During her confirmation hearings, Justice Sotomayor rejected President Obama's so-called "empathy standard" stating, "We apply the law to facts. We don't apply feelings to facts." Do you agree with Justice Sotomayor?

Response: I agree that the obligation of the judge is to apply the law to the facts to the best of his or her ability, without regard to personal feelings, biases or political views.

d. What role do you believe that empathy should play in a judge's consideration of a case?

Response: The obligation of a judge is to understand the positions of the parties to the best of their ability and then to apply the law to the facts dispassionately.

e. Do you think that it's ever proper for judges to indulge their own subjective sense of empathy in determining what the law means? If so, under what circumstances?

Response: No.

9. Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit.

a. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: Yes.

b. How would you rule if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision?

Response: I would follow binding precedent.

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10. Please describe with particularity the process by which these questions were answered.

Response: I drafted my own responses. I then finalized them myself, after discussing my draft with representatives of the US DOJ.

11. Do these answers reflect your true and personal views?

Response: Yes.

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Responses to Written Questions of Senator Tom Coburn, M.D.
John Laub, Nominee to be Director of the National Institute of Justice
United States Senate Committee on the Judiciary
November 30, 2009

1. **I noticed on the National Institute of Justice's (NIJ) website that the last annual report submitted to Congress was for fiscal year 2007. In addition, beginning with the 2006 report, the last two reports have taken 2 years to submit. It is important for Congress to be informed of the activities of all government agencies and their components to ensure efficient use of taxpayer funds. Will you commit to submitting timely annual reports to Congress and responding promptly to inquiry from this Committee?**

   In my view, it is essential that the National Institute of Justice be a good steward of taxpayer funds. If I am confirmed as the Director of the National Institute of Justice, I will be committed to transparency and accountability. Prompt reporting to Congress on the activities of the National Institute of Justice will be a priority for me—whether I report in person about specific activities or via an annual report that summarizes NIJ's main activities.

2. **Where in the NIJ's budget do you believe there is most need for streamlining and elimination of waste, fraud and abuse? Why?**

   If confirmed, one of my first priorities will be to learn about all of NIJ's operations, including how budget decisions are made and how dollars are allocated. Once I have been fully briefed on NIJ's budget, I will determine if there is waste, fraud, or abuse and if so, I will put processes in place to eliminate it.

3. **Last year, NIJ awarded more than 470 awards totaling approximately $230 million. Similar numbers were reported for awards in prior fiscal years.**

   a. **Does NIJ have procedures in place that monitor grantees for waste, fraud and abuse via grantee reporting or other mechanisms? If not, why not?**

      Because I have not worked at NIJ, I am not familiar with the procedures that are in place at NIJ to monitor grantees for waste, fraud, and abuse. However, if confirmed as the Director of the National Institute of Justice, I will be committed to taking all the steps necessary to guard against waste, fraud, and abuse in order to ensure the integrity of the grant process and to protect taxpayer dollars.

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b. [If he doesn't know] Do you believe there should be some type of reporting system in place so NIJ knows whether funds are being spent according to grant rules and conditions? Why or why not?

Yes, I believe that there should be a reporting system in place to monitor grants. If confirmed, transparency, oversight, and accountability will be among my highest priorities for NIJ. NIJ must ensure that funds are spent according to grant rules and conditions.

c. Do you believe grantees who misuse taxpayer funds via grant awards should be restricted from future grant awards? Why or why not?

I believe that grants should be monitored closely to ensure that funds are being spent for their intended purposes. If I am confirmed and it appears that a grantee may be misusing Federal grant dollars, I will make certain that the proper entities are notified so that a comprehensive investigation can take place. If it is determined that funds have indeed been misused, I will work with the proper OJP entities to determine the appropriate action to be taken, including that the grantee may be restricted from receiving future awards.

4. Each year, several NIJ grant awards are congressionally directed or earmarked. In fact, in FY 2008, 17 of the 470 awards were earmarked, which accounted for $17.16 million of the $230 million in grants or 7.5% of the total awards made.

a. What is your view of earmarks?

One of the goals of the National Institute of Justice is to target funds based on the best available scientific research for policy and practice. Morcover, funds should be targeted based on the needs of the research and practitioner community. It is my understanding that earmarks can limit a Federal agency's ability to make grant awards based on need. However, it is up to Congress whether or not to earmark funds. If confirmed, I will ensure that earmarks at NIJ are monitored the same way all other research grants are monitored, holding them to the same standard.

b. Do you believe that funds earmarked in accounts you manage at NIJ can and should receive the same scrutiny as funds that are competitively bid? Or are your hands tied by Congress, such that you are obligated to award them, regardless of their merit?

It is up to Congress to determine whether or not to earmark funds. If confirmed, I will ensure that all earmarked funds are monitored and held to the same standard as other NIJ research grants.

c. Will you commit to thoroughly vetting earmarked requests and reporting to

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Congress when your assessment shows they should not be awarded?

If confirmed, I would be happy to respond to congressional requests to review individual earmarked requests.

5. When President Obama took office, he promised to usher in a new era of transparency and accountability in our government. In fact, in a January 21, 2009 Presidential Memo, the President stated, "[m]y Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government."[1]

a. In my estimation, the federal grant-making process, which awards billions of dollars in taxpayer money each year, has the greatest need for transparency and deserves the highest level of scrutiny. If confirmed, will you commit to upholding the same level of openness that President Obama has advocated? If so, how will you promote transparency at NIJ?

Yes, if confirmed, I will commit to the same level of openness that President Obama has advocated. One way of promoting transparency at NIJ is to ensure that the research activities that are supported by taxpayer dollars are objective, independent, and of the highest quality. If confirmed, I commit to an open and transparent federal grant-making process, as this is one of the priorities of this Administration. In order to promote transparency, I will ensure that data is regularly published concerning NIJ's activities, including information about the awards NIJ makes and the audits and assessments conducted by the Government Accountability Office and the Office of the Inspector General.

b. If confirmed, will you be forthcoming with this Committee when you see grant programs or practices that aren't working the way Congress intended?

If confirmed, I will be forthcoming with the Senate Judiciary Committee when it is determined that a grant program or practice is not working as Congress intended.

c. If confirmed, will you also commit to promptly providing this Committee and other Senators with any requests for information related to programs falling under your jurisdiction?

I will work to respond to any and all requests from Members of Congress to the fullest extent possible.

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[1] *Transparency and Open Government*, Presidential Memorandum, January 21, 2009.

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6. **A large majority of NIJ grants are used for forensic science research and development, with many focused on DNA.**

   a. **Do you believe it is appropriate to concentrate so many grants on forensic science?**

While I have not worked at NIJ, I am aware that Congress has appropriated millions of dollars to reduce DNA backlogs and enhance crime lab case processing capacity in all the forensic disciplines. In general, I believe it is an appropriate use of funds to provide grants to enhance the Nation's understanding of DNA, other forensic sciences, and build the capacity of state and local crime labs to ensure their ability to help solve crimes through forensic analysis.

   b. **Do you believe special or greater emphasis should be placed on awarding grants for DNA versus other types of forensic science? Why or why not?**

There is a need for more research on non-DNA forensic sciences to determine their accuracy, validity, and reliability when used as evidence in court. On the other hand, significant advances have been made in the area of DNA because of the generous amount of funding that has been designated for its study over the past several years. The use of DNA technology has been demonstrated to produce essentially definitive scientific results that are necessary to solve crimes. However, we must also address the needs of the other forensic science disciplines, such as latent prints and firearms identification, so that this type of evidence can be presented in court with assurance of its scientific validity.

7. **You have significant experience in the area of juvenile justice, including authoring several articles on this topic. This Committee has and will in the future examine policies related to juvenile justice. According to the Congressional Research Service, however, "*administering justice to juvenile offenders has largely been the domain of the states….there is no federal juvenile justice system.*"[2] (emphasis added) In fact, the first major federal legislation for juveniles in 1938 left the STATE "juvenile justice systems as the preferred method for juveniles arrested for violating federal laws."[3]**

   a. **Do you agree that juvenile justice systems are the domain of the states? Why or why not?**

Yes, I agree that juvenile justice systems are the domain of the states.

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[2] Nunez-Neto, Blas, Congressional Research Service, "Juvenile Justice: Legislative History and Current Legislative Issues," December 18, 2007, p. 1.
[3] *Id.* at 5.

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b. What is the role of NIJ in the area of juvenile justice?

Juvenile justice is a very broad area and to my knowledge NIJ has funded many studies (both research and evaluation) that fall under this broad category, most notably in the area of gang research. However, it is my understanding that OJP's Office of Juvenile Justice and Delinquency Prevention is the primary agency tasked with conducting research on juvenile justice. If I am confirmed, I commit to working closely with OJJDP to share research findings, collaborate on issues of interest to both our agencies, and offer NIJ's assistance however it may be needed.

8. You have an extensive background in academic writing and research and are considered an expert in the field of criminology. If confirmed as the Director of the National Institute of Justice, you will be required to undertake significant management responsibilities. What skills do you possess that will help you effectively manage the National Institute of Justice?

In the course of my career, I have successfully managed several research grants funded by the federal government (e.g., the National Institute of Justice and the Office of Juvenile Delinquency and Delinquency Prevention) and private foundations (e.g., the Harry Frank Guggenheim Foundation and the Russell Sage Foundation). In addition, I served as editor of the *Journal of Quantitative Criminology*, one of the top ranked journals in criminology, and I served as President of the American Society of Criminology, an international organization whose members pursue scholarly, scientific, and professional knowledge concerning crime and criminal justice issues.

These experiences have helped me to develop the necessary skills in managing people and processes and will greatly contribute to my ability to effectively manage NIJ.

9. According to your research, strong ties to the community and family have effects on juvenile delinquency and recidivism. Your theory of juvenile justice focuses mainly on preventative measures and rehabilitation rather than retribution. Will your view of the U.S. juvenile justice system affect the grant issuance and research directives of the National Institute of Justice?

a. If so how?

The research priorities of the National Institute of Justice are established by the Administration, Congress, and especially by researchers and practitioners in the field. The mission of NIJ is to advance scientific research, development, and evaluation in order to enhance the administration of justice and public safety. If confirmed, my priority will be to improve and enhance crime policy and practice by using the best scientific research that is available.

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10. In your 1980 article, *Let the Water be Wet Let the Rocks be Hard: Anarchism as a Sociology of Quality of Life*, you state that:

"freedom is an active participation in a society in which all the relations of its members are based not on power but on the principle of mutual aid."

a. You define "mutual aid" as "leav[ing] behind the world of power and...resist[ing] institutions and relationships that govern."

b. Can you explain what you meant by this statement?

This paper was written when I was a graduate student at the State University of New York at Albany. Re-reading the paper now, over 30 years later, there is much in the paper that I disagree with. In fact, the thesis of this paper is contrary to virtually my whole academic career. I believe social science can be brought to bear on a variety of social problems, including understanding, preventing, and controlling criminal behavior. In my view, scientific data must be used to gain understanding of the problem at hand and to foster effective and efficient polices without ideology or rancor.

c. What is your view on the role of government?

The role of the federal government in criminology and criminal justice, in the broadest sense, is to support research and data collection, analysis, and dissemination in order to play a key role in designing, testing, and evaluating crime prevention and crime control strategies.

11. You state that long-term imprisonment adversely affects potential employment and employment opportunities upon release, which, in turn, increases the likelihood of recidivism. You suggest policy alternatives such as (1) parenting programs; (2) job training for disadvantaged youth; (3) job training and education in prison; and (4) community-based sentences.

a. Would you advocate for these policy alternatives in your position as Director of the National Institute of Justice?

The National Institute of Justice funds objective, independent research on issues relating to crime, the administration of justice, and public safety. If I am confirmed as Director of the National Institute of Justice, I do not see the role of the Director as an advocate for specific policy goals. As the leader of a research organization, the Director's goal should be for the National Institute of Justice to be the leader in generating the best scientific research on crime, the administration of justice, and public safety. Moreover, this research must be useful to practitioners at the local, state, and federal levels of government.

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b. If so, how would you address the critical concern of funding as well as privacy concerns, in particular, the fundamental right of childrearing?

As noted in my answer to question11a, above, I do not see the role of the Director as an advocate for specific policy goals. Instead, the Director's goal should be for the National Institute of Justice to be the leader in generating the best scientific research on crime, the administration of justice, and public safety.

12. In the book *Contemporary Masters in Criminology*, which you edited, William Chambliss advocates the necessity to investigate and research state-organized crime to determine which types of state agencies are more prone to engaging in criminality than others. As Director of the National Institute of Justice, is this the type of research you would fund and support?

The book, *Contemporary Masters in Criminology*, is a collection of addresses and essays by the past presidents of the American Society of Criminology (ASC) that were collected and published to celebrate the 50 year anniversary of the ASC. As editors, we did not solicit or endorse any of the positions taken by the former presidents of the ASC.

The research priorities for the National Institute of Justice are established by the Administration, Congress, and especially by researchers and practitioners in the field. NIJ's mission is to advance scientific research, development, and evaluation to enhance the administration of justice and public safety. NIJ funds and supports research that provides objective, independent, evidence-based knowledge and/or tools to meet the challenges of crime and justice, particularly at the state and local levels.

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Responses of Rosanna Malouf Peterson
Nominee to the U.S. District Court for the Eastern District of Washington
to the Written Questions of Senator Tom Coburn, M.D.

1. **President Obama has described the types of judges that he will nominate to the federal bench as those who have "empathy," as "someone who's got the heart, the empathy, to recognize what it's like to be a young teenage mom. The empathy to understand what it's like to be poor, or African-American, or gay, or disabled, or old." While the ability to empathize is an admirable human trait, there is serious concern about a judge who empathizes with one litigant over another based on their circumstances. This is why the judicial oath requires judges to do equal justice to the rich and the poor.**

   In *U.S. v. Torres-Sanchez*, you represented an illegal alien in deportation proceedings. The defendant not only was previously deported, but also had been convicted of a prior drug offense. Notwithstanding, in your questionnaire, you stated that this case was significant to you because you:

   > **"gained a new level of understanding of the issues illegal aliens face in trying to return to the United States after a prior deportation even though they have lived their entire lives in the United States."**

   a. **That sounds a lot like empathy towards a defendant even though that defendant had repeatedly broken the law. Can you explain why your statement should not be concerning when the Senate is trying to determine whether you will be a neutral arbiter in a lifetime appointment?**

      Response: I assisted Ms. Torres-Sanchez as her attorney, and therefore her advocate, in entering a plea of guilty to the charge of being in the U.S. after a prior deportation. My statement of understanding that you cite was based on the facts of her case, which included her attempts to seek approval to re-enter the U.S. legally prior to her re-entry into the U.S. illegally. If I am confirmed to serve as a district court judge, I would become a neutral arbiter and not an advocate, which I fully comprehend are very different roles. If I were confirmed, I would be committed as a neutral arbiter to apply the established law to the facts in any case and arrive at the conclusion dictated by that law with those facts.

   b. **Do you think that it is ever proper for judges to indulge their own values in determining what the law means? If so, under what circumstances?**

      Response: No.

   c. **If confirmed, what assurances can you provide that you will enforce immigration laws as they pertain to persons illegally present in the United States?**

      Response: If confirmed, I would take the oath of office to uphold the Constitution and the laws of the United States, including all immigration law. My background and character provide assurance that I do not violate my oaths.

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d. Do you think it is ever proper for judges to indulge their own policy preferences in determining what the law means? If so, under what circumstances? Please explain your answer.

Response: No.

2. The case of *U.S. v. Uriel Silva Rivas* raises a similar concern. In that case, you represented a defendant who, along with most of his family, was indicted for conspiracy to distribute controlled substances. You stated that the case was important to you because

"it demonstrated the impact of criminal charges on the entire family."

a. Doesn't that statement indicate empathy towards multiple defendants who were charged with breaking the law?

Response: I intended that statement to indicate an understanding of how criminal activity by some family members destroys the entire family, including those who have not participated in any criminal activity.

b. Again, why should we not be concerned about that statement?

Response: My ability to comprehend the destruction that occurs as a result of criminal activity applies to victims' families as well as defendants' families and would not undermine my commitment to applying the established law to the facts in any case and arriving at the conclusion dictated by that law with those facts.

c. If confirmed, would you take into consideration the impact on a defendant's family in sentencing a defendant?

Response: If confirmed, I would follow the relevant statutes, sentencing guidelines, and established law. I would only take into consideration the impact of a sentence on a defendant's family if the established law, including the sentencing guidelines, called for such consideration.

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Responses of Rosanna Malouf Peterson
Nominee to the U.S. District Court for the Eastern District of Washington
to the Written Questions of Senator Jeff Sessions

1. **Under the Supreme Court's decision in *United States v. Booker*, the federal sentencing guidelines are advisory, rather than mandatory. Under the current system, it appears to me that as long as the sentencing judge (1) correctly calculates the guidelines, and (2) appropriately considers factors set forth therein, the judge may impose any sentence ranging from probation to the statutory maximum. Following the Supreme Court's decision in *Gall v. United States*, appellate courts must apply the highly deferential "abuse of discretion" standard when reviewing these sentencing decisions. As a result, district court judges may impose virtually any sentence, and as long as the decision is procedurally sound, there is virtually no substantive review on appeal.**

   a. **Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw?**

      Response: Yes.

   b. **Under what circumstances do you believe it appropriate for a district court judge to depart downward from the sentencing guidelines?**

      Response: I believe that it may be appropriate for a district court judge to depart downward from the sentencing guidelines when the prosecution and the defense make a joint recommendation that the judge do so. Often joint recommendations are pursuant to plea agreements in cases in which the defendant has provided substantial assistance to the government, which could justify the recommendation for a downward departure from the sentencing guidelines.

2. **What in your view is the role of a judge?**

   Response: I view a judge as an unbiased decision maker who applies the established law to the facts of a case and arrives at the conclusion dictated by that law and those facts.

3. **How would you define "judicial activism?"**

   Response: I define "judicial activism" as when a judge creates law rather than interpreting and applying established law.

4. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation? Please explain your answer.**

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Response: No. I do not agree that the Constitution is constantly "evolving." The Constitution is unchanging in its establishment of rights and responsibilities and allocation of power among the branches of government.

5. **As you may know, President Obama has described the types of judges that he will nominate to the federal bench as follows:**

"We need somebody who's got the heart, the empathy, to recognize what it's like to be a young teenage mom. The empathy to understand what it's like to be poor, or African-American, or gay, or disabled, or old. And that's the criteria by which I'm going to be selecting my judges."

a. **Without commenting on what President Obama may or may not have meant by this statement, what is your opinion with respect to President Obama's criteria for federal judges, as described in his quote?**

Response: I think that President Obama is correct in selecting judges who have a broad range of life experiences and a breadth of understanding of the human experience.

b. **In your opinion, do you fit President Obama's criteria for federal judges, as described in the quote?**

Response: Yes. I have a wide range of life experiences that would allow me to comprehend all types of arguments and communicate with all types of parties who may appear before me, if I am confirmed.

c. **During her confirmation hearings, Justice Sotomayor rejected President Obama's so-called "empathy standard" stating, "We apply the law to facts. We don't apply feelings to facts." Do you agree with Justice Sotomayor?**

Response: Yes, I agree with Justice Sotomayor's statement.

d. **What role do you believe that empathy should play in a judge's consideration of a case?**

Response: I believe that a judge's breadth of understanding of the human experience would allow the judge to comprehend and communicate with diverse parties who appear before the judge, which could assist a judge in determining credibility of witnesses.

e. **Do you think that it's ever proper for judges to indulge their own subjective sense of empathy in determining what the law means? If so, under what circumstances?**

Response: No.

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6. Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit.

a. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: Yes.

b. How would you rule if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision?

Response: I would follow Supreme Court and Ninth Circuit precedent in making my decision regardless of my personal beliefs.

7. Please describe with particularity the process by which these questions were answered.

Response: I read the questions, considered the issues, and drafted responses. I submitted my draft responses to representatives from the Department of Justice and discussed those draft responses with them before finalizing and submitting my responses.

8. Do these answers reflect your true and personal views?

Response: Yes.

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SUBMISSIONS FOR THE RECORD

ASIAN AMERICAN JUSTICE CENTER

ADVANCING EQUALITY

November 10, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510

Re: Federal Judicial Nomination of The Honorable Denny Chin to be Circuit Judge for the United States Court of Appeals for the Second Circuit

Dear Chairman Leahy and Ranking Member Sessions:

The Asian American Justice Center (AAJC) is dedicated to the advancement of human and civil rights for Asian Americans through advocacy, public policy, public education, and litigation. AAJC is a national leader on issues of particular importance to the Asian American community including: affirmative action, anti-Asian violence prevention and race relations, census, immigrant rights, immigration, language access, and voting rights. AAJC was founded in 1991 by regional legal defense fund organizations rooted in local communities. AAJC carries out its mission by working closely with its three affiliates: the Asian Pacific American Legal Consortium (APALC) in Los Angeles, the Asian Law Caucus (ALC) in San Francisco, and the Asian American Institute (AAI) in Chicago. In total, AAJC has a network of nearly 100 community-based organizations in 25 states and the District of Columbia. As a critical part of its mission, AAJC encourages greater participation by Asian Americans in the federal judiciary. An Asian American has never served on a federal appellate court outside the Ninth and Federal Circuits. Of the approximately 175 active federal appellate court judges, none are Asian American. Addressing the lack of Asian American perspectives in our federal appellate courts is vital to building a justice system that inspires public confidence and is capable of dealing with today's complex challenges.

AAJC urges the prompt confirmation of The Honorable Denny Chin to serve as Circuit Judge on the United States Court of Appeals for the Second Circuit. Judge Chin is an esteemed member of the Asian American community and has demonstrated a thorough understanding of the challenges facing Asian Americans. He is currently the longest serving active Asian American Article III judge. Judge Chin has also been a consistent supporter of diversity in the legal community throughout his career. He has been particularly active in serving as a mentor to new Asian American attorneys and judges at the federal and state level. In short, Judge Chin is an inspiring example of what can be accomplished in a life devoted to

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AFFILIATES: Asian Pacific American Legal Center in Los Angeles • Asian Law Caucus in San Francisco • Asian American Institute in Chicago

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professional excellence and public service. His confirmation would add an important Asian American voice to a federal appellate court system that has gone over 5 years without one.

Judge Chin possesses exemplary professional qualifications and has the experience, temperament, and judgment to serve as an outstanding Circuit Judge. He has over 15 years of experience serving as a United States District Judge for the Southern District of New York. His thoughtful and careful judicial approach is reflected in his record. Judge Chin presided over approximately 4,700 civil cases and 650 criminal cases during his tenure and issued over 1,500 opinions. He has presided over several high profile cases and his thoughtful, even-handed approach on the bench elevated public confidence in our courts each time. In particular, his thoughtful handling of the Bernie Madoff case received broad praise across the country. In addition to his fine record as a district judge, Judge Chin already has substantial experience at the appellate level. He sat by designation on U.S. Court of Appeals for the Second Circuit where he heard over 80 cases and wrote 8 published opinions, all majority opinions. This experience as an appellate judge will serve him well if confirmed.

Judge Chin benefitted from a wide range of legal work experiences prior to serving on the district court and his achievements have been recognized across the nation. He served as a law clerk for the Honorable Henry F. Werker, District Judge for the Southern District of New York, and later worked in private practice. Judge Chin also served as an Assistant United States Attorney in the Southern District of New York. For the past 22 years, he taught legal research and writing to first-year law students at the Fordham University Law School, his alma mater. Judge Chin's devotion to improving the legal profession through education is a common thread across his career. Among the awards and recognitions that he has received are the Abely Award for Leading Women and Children to Safety (2006) from Sanctuary for Families, the Medal of Achievement (2006) from the Fordham Law School Alumni Association, the Distinguished Service Award (2005) from AAJC, the Lifetime Achievement Award (2005) from the New York State Division of Human Rights, the Trailblazer Award (1998) from the National Asian Pacific American Bar Association (NAPABA), the J. Edward Lumbard Award (1996) from the United States Attorney's Office, and an Honorary Doctor of Laws (1995) from the CUNY Law School.

Judge Chin is an active leader in his community and works tirelessly to improve it. Some of his leadership positions in legal organizations have included: Executive Committee, New York City Bar Association; President, Federal Bar Council Inn of Court; Treasurer - Judicial Council, National Asian Pacific American Bar Association; President, Asian American Bar Association of New York; and the Board of Directors, Fordham Law School Alumni Association. The many communities that Judge Chin touched throughout his career will warmly welcome his elevation to the United States Court of Appeals.

Judge Chin's inspiring life story is uniquely American. He was born in Hong Kong, and moved to the United States when he was two years old. His parents fled from China to Hong Kong to escape the Communists and they were able to move to the United States under the Refugee Relief Act of 1953. He grew up in New York City in Hell's Kitchen. His father worked as a cook in Chinese restaurants, while his mother worked as a seamstress in the garment industry. Through hard work and family sacrifices, he was able to attend the prestigious Stuyvesant High School in New York. He later graduated *magna cum laude* from Princeton University and served as the Managing Editor of the Fordham University Law Review. Many come to this country seeking a better life, and Judge Chin has certainly accomplished that. However, it is his unyielding desire to strengthen this country, particularly its justice system, that so fully expresses the potential of the American dream and the beauty of diversity.

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1762 Kirby Road
McLean, Virginia 22101

December 8, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Senator Sessions:

I write to support Judge Denny Chin's nomination to be a judge of the Second Circuit Court of Appeals. I came to know Judge Chin very well when I was the United States Attorney for the Southern District of New York and he was a district court judge there. In a district with many fine trial judges, he was a star – smart, fair, honest, careful, firm, apolitical, and a brilliant writer. And he has never forgotten the dangers of black-robe disease. That is, while always in control of the proceedings, he never lost the sense of humility that allowed him to listen to an argument with an ear toward being convinced and to give all a fair hearing.

In short, Judge Chin will be a great addition to the Second Circuit and I hope he is confirmed.

Sincerely yours,

Jim Comey

James B. Comey

CAPAC
CONGRESSIONAL
ASIAN
PACIFIC
AMERICAN
CAUCUS

Congressman Michael M. Honda • 1713 Longworth HOB • Washington, D.C. 20515
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November 16, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

The Congressional Asian Pacific American Caucus (CAPAC) is committed to the full civic participation of Asian Americans and Pacific Islanders and underserved populations throughout our government and society. To that end, CAPAC has been working with the Obama Administration to recommend diverse and talented individuals for Administration positions. As such, we are writing to urge the confirmation of the Honorable Denny Chin to serve as a Circuit Judge on the United States Court of Appeals for the Second Circuit.

CAPAC has a keen interest in ensuring that Asian Americans and Pacific Islanders (AAPI) are represented in their government, including in the judicial branch. Of the approximately 175 active federal appellate court judges nationwide, there are currently no AAPI judges. Judge Chin is a well-respected jurist for his fairness and thoughtfulness in decision-making. President Obama has a distinct opportunity to continue to build much-needed AAPI representation on the federal circuit courts, and to do so with an individual who would be uniformly received with praise and respect.

Although only 54 years old, Judge Chin is currently the longest serving active AAPI judge, and for many years, served as one of only eight active AAPI Article III judges nationwide. He was nominated by President Clinton and confirmed in 1994 as a United States District Judge for the United States District Court for the Southern District of New York. He was the first AAPI federal district court judge to sit outside of the Ninth Circuit.

During his almost fifteen years on the bench, Judge Chin has established a reputation as a fair-minded, intelligent, and hard-working judge. He has an exceedingly low reversal rate, even though he has presided over some of the most difficult and controversial cases nationwide. He has sat by designation on the Second Circuit numerous times, and would be poised to contribute immediately to that court's heavy workload. Lawyers who have appeared before him, even those against whom he has ruled, have commended him for his fairness and judicial temperament.

Many of the traits that make Judge Chin an excellent jurist can be traced to his own background. Judge Chin was born in Hong Kong, and moved to the United States at age two. His father worked as a cook in Chinese restaurants, while his mother worked as a seamstress in the garment industry. His upbringing epitomizes the all-American story of families seeking to create a better life in the United States. To this day, one of Judge Chin's favorite duties is swearing in new citizens of the United States.

Judge Chin's many honors and achievements, however, extend beyond professional accomplishments. He devotes much of his time to mentoring young lawyers and law students and serves as a mentor to several of the most recently confirmed AAPI judges, both at the federal and state level. Quite simply, he has been a tremendous asset to our community and would even better serve the country as a Second Circuit judge.

As Members of CAPAC, we believe that Judge Denny Chin has the character and qualifications to be a jurist of the highest caliber. His nomination and confirmation to the United States Court of Appeals for the Second Circuit would be an important milestone not only for AAPIs nationwide, but would provide President Obama a legacy by starting to change the face of the judiciary to more accurately reflect the wonderful diversity of the United States.

Sincerely,

Michael Mtonda

Michael M. Honda
Member of Congress
Chair, Congressional Asian Pacific American Caucus

cc: The Honorable Charles E. Schumer

Criminology & Criminal Justice Policy Coalition





The Honorable Patrick Leahy
433 Russell Senate Office Building
United States Senate
Washington, DC 20510

The Honorable Jeff Sessions
335 Russell Senate Office Building
United States Senate
Washington, DC 20510

October 20, 2009

Dear Senators Leahy and Sessions:

On behalf of the Criminology and Criminal Justice Policy Coalition, a partnership between the Academy of Criminal Justice Sciences and the American Society of Criminology, we write to urge your support for the nomination of Dr. John Laub as the Director of the National Institute of Justice at the Department of Justice.

Dr. Laub is a distinguished criminologist and researcher, currently serving as a Professor in the Department of Criminology and Criminal Justice at the University of Maryland, College Park, and a Visiting Scholar at the Institute for Quantitative Social Science at Harvard University. Dr. Laub's research expertise on the affects of crime and deviance over the life course, juvenile delinquency and juvenile justice, and the history of criminology, make him an exceptionally well qualified candidate to serve as the Director of NIJ.

The National Institute of Justice, located within the Office of Justice Programs, is the research, development and evaluation agency of the U.S. Department of Justice, and is dedicated to researching crime control and justice issues. As the nation's primary funding source for strategic studies of crime and justice policy and practice, NIJ's research products help the field determine their priorities and agenda around issues including the nature and causes of crime, and the effectiveness of justice responses. The manner in which NIJ establishes research priorities, evaluates proposals to carry out research, and disseminates knowledge about crime and justice plays a crucial role in advancing the knowledge base for public safety.

NIJ's mission is to provide objective, independent, evidence-based knowledge and tools to assist researchers and practitioners to meet the challenges of crime and justice at the federal, state, and

local levels. As researchers, our members are deeply committed to supporting the independence and objectivity of the research performed by NIJ. To accomplish its mission, NIJ requires a director with the necessary credentials to successfully lead the nation's preeminent social science research agency, and to ensure the scientific insight and integrity of the research performed there. Dr. Laub brings a lifetime of research, experience, and commitment to public service that prepares him to succeed in this role. From 1981-1998, Dr. Laub was a professor of criminal justice at Northeastern University in Boston, Massachusetts. He has served as the President of the American Society of Criminology, is a six year member of the Committee on Law and Justice of the National Academies of Science, served for five years as an Editor of the *Journal of Quantitative Criminology*, and is currently an Associate Editor of *Criminology*. In addition to publishing numerous research articles in the areas of crime and the life course and criminology, he has published two award winning books.

Our organizations, the American Society of Criminology and the Academy of Criminal Justice Sciences, represent criminologists, researchers, and practitioners in the fields of criminology, prevention and treatment of crime and delinquency, and criminal justice. We believe that it is critically important to the development of the criminology and criminal justice fields – and to the effectiveness of our nation's criminal justice policy – that a proven leader with a strong research background serve as the next Director of NIJ. We believe Dr. Laub, a respected leader in our field, has the qualifications and credentials to lead NIJ. He is an excellent choice to serve as the next Director of that National Institute of Justice and we urge you to support his confirmation.

Sincerely yours,

Todd R. Clear
President, 2008-2009
American Society of Criminology
Distinguished Professor
John Jay College of Criminal Justice
The City University of New York

Janice Joseph
President, 2009-2010
Academy of Criminal Justice Sciences
Richard Stockton College of New Jersey
Criminal Justice Program

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November 11, 2009

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of Dr. John Laub for Director of the National Institute of Justice

Dear Senator Leahy and Senator Sessions:

It is an honor to write this letter of recommendation for John Laub for the position of Director of the National Institute of Justice. I have spent over 26 years of my professional career in crime victim services and criminal justice in various capacities for the Commonwealth of Massachusetts, currently serving as Executive Director of the Massachusetts Office for Victim Assistance. I have a deep understanding and great respect for the role of NIJ and, as such, have the utmost confidence in Dr. Laub's ability to both lead the agency and to take it to an even greater level of excellence.

The first 18 years of my career was spent working directly in the criminal justice system developing and implementing prosecutor-based victim services. I credit much of the direction of my career, and the contributions I have been privileged to make over the years, to the extraordinary academic training and mentoring I received from my Northeastern University graduate school professor, John Laub. Professor Laub was, by far, the finest and most challenging and stimulating teacher in my academic career. His academic standards and intellectual rigor were of the highest quality and integrity and they set the standards to which I continue to hold myself and all those whom I have supervised and taught over the years. In addition to studying under his exceptional tutelage, I was fortunate to work with him in the years since during my tenure with the Middlesex District Attorney's Office in MA and as I assumed an adjunct teaching position at Northeastern University. I have followed his career since he moved to Maryland and have continued to be awed by the scholarly achievements he has amassed.

While I am a practitioner in my career, not a researcher, I highly value the knowledge, expertise and caliber which exemplify John Laub's work over the years. He stands out in his field because he recognizes that research, policy and

Attorney General Martha Coakley, Chair • Janet E. Fine, Executive Director
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practice are inextricably linked and he has a remarkable ability to communicate effectively across professional disciplines and sectors. For all of these reasons, I have the utmost confidence in John Laub's ability to assume the leadership role at NIJ; there is no finer person and professional in the field of criminal justice, and his ability to lead and innovate are second to none.

I applaud President Obama's nomination of Dr. John Laub to be the Director of NIJ and urge the Senate to swiftly and resoundingly confirm his nomination.

Please feel free to contact me if I can be of further assistance.

Respectfully,

Janet E. Fine

Janet E. Fine
Executive Director

UNIVERSITY OF MINNESOTA

Twin Cities Campus

Centennial Professor of Law
Law School

340 Walter F. Mondale Hall
229–19th Avenue South
Minneapolis, MN 55455

[redacted]

November 24, 2009

Senator Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Leahy,

I write in enthusiastic support of the nomination of Dr. John Laub to be Director of the National Institute of Justice and I urge his prompt confirmation.

The primary mission of the National Institute of Justice (NIJ) is to advance the scientific foundations for criminal justice policy and practice. For the credibility of NIJ, the Director must have extraordinary professional credentials and the respect of the research community. I have known Dr. Laub for more than two decades and can attest to his intellect, scholarship, and personal and professional integrity.

Dr. Laub is one of the premier scholars of the causes and consequences of crime and delinquency in the world. He is former President of the American Society of Criminology – the leading scholarly organization in the field. He has received every professional reward that the organization can give. Two of his path-breaking books on crime over the life course – *Crime in the Making: Pathways and Turning Points Through Life* (Harvard University Press 1993) and *Shared Beginnings, Divergent Lives: Delinquent Boys to Age 70* (Harvard University Press 2003) – have received multiple outstanding book awards and spurred development of "life-course criminology" which examines continuity and change in crime over the life-course. His scholarship is required reading in criminology and justice programs around the world.

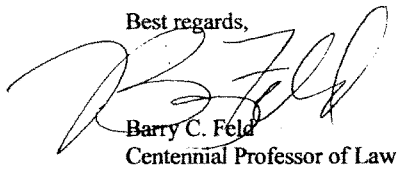
Dr. Laub has broad experience and understanding of many facets of crime and criminal justice – from juvenile delinquency to prison and parole release. He understands criminal justice policy and the inter-relationship among different components of the systems. He is non-ideological and brings tremendous professional integrity to his research and writing.

Crime policy debates have become heavily politicized over the past several decades. Dr. Laub appreciates the complexity of crime policy and can understand many sides to the issues. He also understands that policy makers need reliable facts on which to base changes in law enforcement and justice administration. He will bring the highest scientific standards to the NIJ research program and he will provide the most complete and reliable information to Congress and the Executive as it grapples with criminal and juvenile justice policy questions.

When I learned of Dr. Laub's nomination to be Director of NIJ, my immediate reaction was "science is back." For the contentious issues of criminal justice policy, we need the most reliable facts and evidence generated by solid science. Dr. Laub is superbly qualified to lead that endeavor and to present the evidence dispassionately. He has the professional credentials, the intellectual ability, the professional integrity, and the inter-personal skills to be an outstanding Director of NIJ.

If I can provide you or your staff with any additional information, please feel free to contact me.

Best regards,



Barry C. Feld
Centennial Professor of Law

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United States Senate

WASHINGTON, DC 20510-3205

November 24, 2009

The Honorable Patrick Leahy
Chairman, Senate Committee
On the Judiciary
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member, Senate Committee
On the Judiciary
Washington, DC 20510

Dear Chairman Leahy, Ranking Member Sessions and Distinguished Members of the Committee,

I am pleased to write to you in strong support of the nomination of fellow New Yorker, Judge Denny Chin, to be a Judge on the United States Court of Appeals for the Second Circuit. Judge Chin has a distinguished legal career, having dedicated the majority of his life to public service and education. His experience in the court room spans more than a decade as a litigator, and over fifteen years as a federal judge.

Born in Hong Kong, Judge Chin's parents moved to the United States when he was two years old and raised him in New York City. He attended Stuyvesant High School before attending Princeton University, where he received the Athlete Award from the National Football Scholarship Foundation and graduated magna cum laude. He then went on to Fordham School of Law, eventually becoming managing editor of the Fordham Law Review.

After graduating from law school, Judge Chin gained invaluable experience clerking for United States District Judge Henry Werker in the Southern District of New York for two years. He then spent another two years at Davis Polk & Wardwell before resuming his commitment to public service at the United States Attorney's Office for the Southern District of New York. There, he continued to hone his litigation skills by arguing cases in the United States District Court and the U.S. Court of Appeals for the Second Circuit. Following his time at the United States Attorney's Office, Judge Chin went back into private practice, working as a litigator and a partner at several law firms in New York, and also as a solo practitioner, becoming a specialist in employment and commercial law.

In 1994, Judge Chin was the first Asian American appointed to federal District Court outside the Ninth Circuit, and in his fifteen years on the bench he has presided over more than 4,700 civil and 650 criminal cases, issuing more than 1,500 opinions. He has served as designated judge on the Second Circuit Court of Appeals on 84 appellate cases, of which nine decisions are his written opinions. Most recently, Judge Chin presided over the trial of Bernard Madoff, whom Judge Chin ultimately sentenced to 150 years in prison.

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Beyond the court room, Judge Chin's has served as a professor of law for more than twenty-three years at his alma mater, Fordham University's School of Law. In that time, he has published seven law review articles and is frequent speaker at bar associations, law schools, law firms, corporations, and non-profit organizations. In 2009, he received the Professor of the year award from the Fordham Law School Public Interest Resource Center, and previously was awarded the Fordham Law School Alumni Association's Medal of Achievement in 2006. He currently Co-Chairs the Fordham Law School Minority Mentor Program.

Judge Chin has been, and remains, actively involved within the local community and in legal associations. He is an active member of the Second Circuit's bar association, the Federal Bar Council, formerly serving as the President, and currently serving on the Public Service Committee. Prior to assuming the bench, he also served on numerous community boards, including the Brooklyn Center for Urban Environment, Care for the Homeless, Hartley House, and St. Margaret's House. Upon assuming the bench, Judge Chin remained involved in his local community by becoming a member of numerous cultural organizations in New York. The outstanding dedication he demonstrated throughout his career and years of community involvement has led to numerous awards and honors – such as the J. Edward Lumbard Award for Public Service from the United States Attorney's Office for the Southern District of New York, and the Lifetime Achievement Award from the New York State Division of Human Rights.

The American Bar Association gave Judge Chin its highest rating, as he is an exceptional and highly competent judge. He has always followed a thoughtful, reasoned approach to each case, strictly adhering to the application of facts and legal precedent.

Judge Denny Chin possesses the judicial temperament and breadth of legal knowledge necessary for this appointment. He is well qualified, and I am confident that he would make a superb judge on the United States Court of Appeals for the Second Circuit. I hope that you will give his nomination every consideration.

Sincerely,

Kirsten E. Gillibrand

Kirsten E. Gillibrand
United States Senator

RUDOLPH W. GIULIANI

December 9, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senators Leahy and Sessions:

I am writing to urge the Senate Judiciary Committee to approve United States District Judge Denny Chin's elevation to the Second Circuit Court of Appeals.

I have known Judge Chin for quite some time. He was an Assistant United States Attorney working with me when I had the honor of serving as the United States Attorney for the Southern District of New York. He was bright, enthusiastic, hardworking and astute, and always dependable. He eventually left the United States Attorney's Office to enter private practice and soon thereafter was appointed to the federal bench.

As a federal judge, Judge Chin has a reputation as one who is thoughtful, intelligent and even-handed, a diligent jurist who is highly respected. There is no case, no matter how complex or contentious, that he cannot handle. Indeed, I am confident Judge Chin would bring his many talents to the appellate court and similarly devote himself with legal and personal maturity, as well as a keen sensitivity, to the high level responsibilities he would face.

I hope these thoughts help as you consider Judge Chin's nomination.

Respectfully yours,

Rudolph W. Giuliani

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Irvine, CA 92697-1000
[redacted]

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

October 27, 2009

Regarding: Nomination of Dr. John Laub for Director of the National Institute of Justice

Dear Senator Leahy:

I am writing with considerable enthusiasm to endorse the nomination of John Laub for the position of Director of the National Institute of Justice. As you know, the Director is a critical position within the Justice Department, responsible for research programs and information dissemination about the causes of crime and the effectiveness and fairness of our justice system. As such it is vital that the person selected to lead this agency be a person of the highest ethical standards and a person held in the highest regard by the research community. It is critical as well that the Director have a strong vision for the role of research in helping to move our criminal justice system to ever greater effectiveness in the control of crime and to ever stronger reputation for fairness and justice. Important as well is a person capable of leading a large organization toward enhanced quality of performance. Having known and worked with Dr. Laub for thirty years, I can say with complete confidence that he posses all of these attributes and that the country will be extraordinarily well served by his confirmation and subsequent service.

John is one of the country's most highly regarded researchers in the field of the causes and consequences of crime and delinquency. As you know, he has won virtually every award the scholarly community has to offer for scholarship. He has served as the President of the major scholarly organization in the field—The American Society of Criminology. His publications are required reading in every program around the world.

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Dr. Laub's service as Director of the National Institute of Justice will bring credibility, confidence and quality to the reputation of the agency. He will bring scientific standards and judgment to its research programs and to the information provided by the agency. He will provide congress and the executive with advice of the highest order, advice that will be given on the basis of knowledge, research and the strongest standards of evidence. And, those who are fortunate enough to work with him will appreciate the experience enormously.

If I can provide any information to your or your staff, please do not hesitate to call on me.

Sincerely,

Michael R. Gottfredson
Executive Vice Chancellor & Provost

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JAPANESE AMERICAN CITIZENS LEAGUE / JACL

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November 12, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510

Re: Federal Judicial Nomination of the Honorable Denny Chin to be U.S. Circuit Judge for the Second Circuit Court of Appeals

Dear Chairman Leahy and Ranking Member Sessions:

On behalf of the Japanese American Citizens League (JACL), the oldest and largest Asian American civil and human rights organization in the nation, I would like to convey my strongest support for Honorable Denny Chin to be confirmed as U.S. Circuit Judge for the Second Circuit Court of Appeals. The JACL monitors and responds to issues that enhance or threaten the civil and human rights of all Americans and implements strategies to effect positive social change, particularly in the Asian Pacific American community. Through our extensive member network and relationships with various civil rights organizations, we strive to promote a world that honors diversity by respecting the values of fairness, equality and social justice. Consistent with our mission, we endorse the nomination of the Honorable Denny Chin and we urge his prompt confirmation. Judge Chin is superbly qualified by his record on the bench and his many contributions to the community. If confirmed, Judge Chin would become the only active Asian American on the federal courts of appeals. He would serve as a revered Asian American voice in a justice system that has gone without one for over 5 years. We encourage you to join us in strong support of his nomination.

Judge Chin possesses outstanding qualifications and has the experience, temperament, and judgment to serve as a fine U.S. Circuit Judge. He has over 15 years of experience serving as a U.S. District Judge for the Southern District of New York. His even-handed judicial approach is reflected in his extensive record. Judge Chin presided over approximately 4,700 civil cases and 650 criminal cases during his tenure and issued over 1,500 opinions. He has handled several high-profile cases and was consistently lauded for his professionalism. Most recently, the Bernie Madoff case highlighted Judge Chin's strong stance on crime and his ability to understand the human toll associated with it. In addition to his fine record as a district judge, Judge Chin already possesses considerable experience at the federal appellate level. He sat by designation on U.S. Court of Appeals for the Second Circuit where he heard over 80

cases and authored 8 published opinions, all majority opinions. Judge Chin's experience as an appellate judge will serve him well if confirmed.

After reviewing Judge Chin's professional accomplishments, qualifications, and character, it is with great pleasure that the JACL endorse his nomination as federal circuit court judge. Judge Chin's confirmation would elevate a highly qualified jurist to the federal appellate court. He would add ideas, views, and experiences that are inadequately represented at the appellate level of our federal justice system. Accordingly, the Japanese American Citizens League proudly endorses the Honorable Denny Chin to be U.S. Circuit Judge for the Second Circuit Court of Appeals. Thank you for your consideration.

Sincerely,

S. Floyd Mori
National Executive Director / JACL

The Japanese American Citizens League (JACL) is the nation's oldest and largest Asian American civil and human rights organization. Established in 1929, the JACL works to ensure the civil liberties of Japanese Americans and others. For more information on the JACL or to join, please visit the website at www.jacl.org

COMMUNITY RESOURCES for JUSTICE

October 30, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Leahy and Senator Sessions:

It is a privilege for me to add my endorsement of President Barak Obama's nomination of John Laub for Director of the National Institute of Justice. In 1981, when John first arrived in Boston, we were brought together by a mutual friend from graduate school. We share an alma mater, the School of Criminal Justice at the State University of Albany; John achieved a doctorate and I left with a masters.

Our professional worlds are also related but different. John's career has been one of serious academics and research in criminal justice; mine has been in criminal justice operations and administration. It is from that perspective that I most appreciate his contributions to the administration of justice and welcome his leadership of the National Institute of Justice.

Since we first met some 27 years ago, I know John to undertake serious and scholarly research of key issues that benefit the administration of justice. For example, his work examining delinquents spurred the development of "life course criminology" and influences juvenile justice. His work has been recognized by his colleagues in the research community who have placed him in positions of professional leadership, such as President of the American Society of Criminology, and who have celebrated his work including presenting him the Edwin H. Sutherland Award. And his colleagues at the University of Maryland have awarded him the highest rank of Distinguished University Professor.

Beyond his professional achievements and reputation, John is a wonderful person, gracious, accessible and pragmatic. He is respected for his integrity and independence, for his openness and creativity, and for his passion for his chosen profession. He is admired for using his intellect and knowledge to listen, probe and illuminate. With your confirmation, these are the talents and skills that John will bring to the National Institute of Justice as he leads that agency and its contributions to the effective administration of justice.

In closing, I urge your confirmation of John Laub as Director of the National Institute of Justice. I welcome any opportunity to be of further assistance to your deliberations.

Sincerely,

John J. Larivee
Chief Executive Officer

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- Community Initiatives
- Professional Assistance
- Public Policy

Scott Harshbarger
President

John J. Larivee
Chief Executive Officer

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October 30, 2009

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Jeff Sessions
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senators Leahy and Sessions:

I am writing to offer my highest support for the nomination of John H. Laub for the position of Director of the National Institute of Justice in the Office of Justice Programs, U.S. Department of Justice. As the key research, development, and evaluation agency for crime and justice issues for the Nation, it is imperative that this agency be led by someone with the highest integrity and a deep understanding of crime and justice issues. Dr. Laub epitomizes these qualities, having established himself as both a distinguished researcher and as a well-respected leader in the study of crime and justice. He will bring great skills and dedication to this important position.

As is evident from his record, Dr. Laub's scholarly contributions have been acknowledged by the top awards from the American Society of Criminology and from other professional organizations. His service on the Committee on Law and Justice for the National Academy of Sciences is a testament to his sharp intellect and his concern that sound science be used to inform policies about preventing and responding to crime. He has also served in positions of elected leadership, demonstrating that he has the utmost respect of his colleagues across a variety of professional venues. These include positions such as President and Vice-President of the American Society of Criminology, and Editor and Editorial Board Member of the most prestigious journals in the field. Such positions require difficult and unbiased decision-making, and only someone of the highest integrity can serve in such positions and maintain the respect of their colleagues. I have known Dr. Laub for many years and can attest to his impeccable record of judgment. He will bring sound viewpoints to the National Institute of Justice and thus provide government and the public with the best evidence possible for making decisions about crime and justice policy.

I believe that the Nation would be fortunate to have Dr. Laub serve as Director of the National Institute of Justice and I very strongly urge the Senate to confirm his nomination.

Respectfully,

Janet L. Lauritsen
Professor

an equal opportunity institution

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
November 18, 2009

Statement of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On Executive And Judicial Nominations
November 18, 2009

Today, we will hear from five of President Obama's well-qualified nominees, three for lifetime appointments to the Federal bench and two for important positions in the executive branch.

The first nominee we will hear from today is Judge Denny Chin, a well-respected judge on the Southern District of New York whom President Obama has nominated for elevation to the Second Circuit Court of Appeals. Like so many of this President's impressive circuit court nominees, including Judge David Hamilton, Judge Andre Davis, Judge Gerard Lynch, Judge Joseph Greenaway, Judge Beverly Martin, Judge Thomas Vanaskie, and Judge James A Wynn, Jr. , Judge Chin has had a long career as a Federal judge and is highly qualified to take this next step. Judge Chin also has years of experience as lawyer in private practice and as a Federal prosecutor.

Judge Chin was the first Asian Pacific American appointed as a Federal district court judge outside the Ninth Circuit. If confirmed to the Second Circuit, he will be the only active Asian Pacific American judge to serve on a Federal appellate court. It is unbelievable that of the approximately 175 active appellate court judges in our country, none are Asian Pacific American. More than 14 years have passed since an Asian Pacific American was nominated to a Federal appellate court. The progress we make today is long overdue.

I am glad that President Obama is following through on his commitment to nominate men and women to the Federal bench who reflect the diversity of America. Diversity on the bench helps ensure that the words "equal justice under law," inscribed in Vermont marble over the entrance to the Supreme Court, are a reality, and that justice is rendered fairly and impartially. With the President's nomination of Judge Chin, we are moving closer to that crucial goal. Today is an important milestone not only for the Asian Pacific American community, but for all Americans.

Given Judge Chin's qualifications, it is no surprise the Committee has received so many letters of support. Judge Michael Mukasey, who served as Attorney General under President George W. Bush, and who, before that, spent 18 years as a judge on the United States District Court for the Southern District of New York, had high praise for Judge Chin, who was his colleague on that

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court. Judge Mukasey wrote, "I believe him to be an intelligent and highly qualified nominee, who brings to the job not only experience but also demonstrated good judgment and skill." He continued:

"He has handled complicated and contentious cases in a way that shows him to be a sound judge with both technical competence and common sense, and a temperament that has shown him to be both firm and fair. He will bring to the appellate bench a keen appreciation of the setting in which the cases he reviews are handled, as well as a good grasp of the law in the many and varied cases, civil and criminal, that come before him."

Judge John S. Martin, Jr., another judge who was Judge Chin's colleague in the Southern District of New York, echoed this praise. Judge Martin wrote: "Denny is a wonderful person and has been an excellent judge." Judge Martin also wrote:

"As his impressive resume reveals, he is an exceptionally able lawyer who has enjoyed great professional success. What his resume does not reveal is what a decent and thoughtful individual he is. As an Assistant United States Attorney, Denny was hard-working and well-liked by his colleagues. As a United States District Judge, he has handled a number of high-profile cases with distinction. Judge Chin is a thoughtful jurist who has earned the respect of those who have appeared before him. In short, Denny Chin has been an outstanding District Judge and I have no doubt that, if confirmed, he will serve with distinction on the Second Circuit."

The National Asian Pacific American Bar Association wrote to the Committee and emphasized the historical significance of Judge Chin's nomination, noting that when confirmed, "Judge Chin would become only the fifth Asian Pacific American federal appellate court judge in the history of the United States, and the first Asian Pacific American federal appellate court judge confirmed outside of the Ninth Circuit." The Association also wrote: "Regardless of his ethnicity, Judge Chin would be a federal appellate court judge of the highest caliber. He has served as a federal district court judge for the Southern District of New York for over 15 years, during which time he has presided over more than 5,300 cases and issued over 1,500 opinions. He has been reversed in less than 1 percent of his cases."

The Judiciary Committee has also received letters of strong support from the Asian American Justice Center, the Congressional Asian Pacific American Caucus, the Organization of Chinese Americans, and the Japanese American Citizens League. These letters will be included in the record.

I trust that each of the nominees here today will be treated well by the Committee and will receive prompt consideration. They should also receive prompt and fair consideration by the Senate, a long tradition followed by Democrats and Republicans that Republican Senators seem intent to abandon.

The Senate yesterday had to overcome a filibuster to consider the long-delayed nomination of Judge David Hamilton of Indiana to the Seventh Circuit. Judge Hamilton was President Obama's first judicial nomination, sent to the Senate in March, and has been stalled on the Executive Calendar since June 4, despite the strong support of his home state Senators, Senator Bayh, a moderate, and Senator Lugar, the longest-serving Republican in the Senate.

The Republican Senators who have attempted to filibuster the Hamilton nomination took cues from far right-wing special interest groups to vilify a good judge and good man. They relied on unfair distortions of his mainstream record, cherry-picking and twisting a handful of the more than 8000 cases he handled on the bench to create an unfair caricature. Their distortions of his views and of the record before the Senate were soundly refuted earlier this week by the Senator Lugar. Despite Senator Lugar's forthright statement, Senate Republicans still persisted with their filibuster of that well-qualified nominee.

Yesterday, 70 Senators -- Democrats, Independents and Republicans -- joined together to overcome the leadership-led Republican filibuster of the Hamilton nomination. This has been a record year for filibusters by the Republican minority: filibusters of needed legislation, filibusters of executive nominations and filibusters of judicial nominations, which just a few years ago they proclaimed were "unconstitutional". Although their filibuster failed, what they achieved was months of obstruction and delay. Judge Hamilton's critics are wrong and have been wrong all along. I hope they do not follow this same path to distort the record of Judge Chin.

Today is November 18. By this date in President George W. Bush's first year in office, the Senate had confirmed a total of 18 lower court judges, including five circuit court judges. I know because in the summer of that year I began serving as the chair of this Committee. We achieved those results with a controversial and confrontational Republican President after a mid-year change to a Democratic majority in the Senate; in spite of the attacks of September 11; despite the anthrax-laced letters sent to the Senate that closed our offices; and while working virtually around the clock on the PATRIOT Act for six weeks. By comparison, this year, the Republican minority has allowed action on only about one-third as many judicial nominations to the Federal circuit and district courts as were confirmed in 2001. That is disgraceful.

We reduced judicial vacancies to as low as 34 last year, even though it was the last year of President Bush's second term, and a presidential election year. But such vacancies have already more than doubled since then. There are 99 vacancies on our Federal circuit and district courts, and 22 more have already been announced. This is approaching record levels. I know we can do better. The American people deserve better. Justice should not be delayed or denied to any American because of overburdened courts.

We will now have held hearings for 22 of President Obama's nominations to fill district and circuit court vacancies. We have reported 14 of these nominations favorably. Eight judicial nominees, including Judge Hamilton, have been reported by the Judicial Committee and are on the Senate Executive Calendar. Had those nominations been considered in the normal course, we would be on the pace Senate Democrats set in 2001 when fairly considering the nominations of our last Republican President. We have another five judicial nominations on the Committee's agenda this week that could be reported by the Committee. All of these nominations deserve prompt and fair consideration.

In addition to Judge Chin, at our hearing today we will hear from Professor Rosanna Malouf Peterson, who the President has nominated to serve as a Federal judge in the Eastern District of Washington. She is a professor at Gonzaga University School of Law, and she also has a law practice. Previously, Professor Peterson practiced employment and education law, as well as general litigation and criminal defense, at several private law firms in Spokane. Professor Peterson earned her B.A. and her M.A. from the University of North Dakota and her J.D., with

distinction, from the University of North Dakota School of Law, where she served as editor-in-chief of the law review and was chosen by her professors as the "Outstanding Graduate." After graduation, Professor Peterson clerked for Judge Fred Van Sickle, whom she would now replace on the district court.

President Obama nominated William Conley to serve as a district judge in the Western District of Wisconsin. Mr. Conley is a partner in the Madison, Wisconsin, office of Foley and Lardner, where he is widely recognized as a top antitrust and appellate lawyer. He has represented clients before the U.S. Supreme Court, the Wisconsin Supreme Court, and the Seventh Circuit, among others. Mr. Conley attended the University of Wisconsin, where he earned his B.A. and J.D with honors. Mr. Conley also served as a law clerk for Judge Thomas Fairchild on the Seventh Circuit.

Justice Susan Carbon is nominated to be the Director of the Office on Violence Against Women at the Department of Justice. She currently serves on a New Hampshire state court as both a special justice on the district court and a supervisory judge in family court, having previously spent 14 years in private practice. Justice Carbon is a member of the Governor's Commission on Domestic and Sexual Violence and, until recently, she chaired New Hampshire's Domestic Violence Fatality Review Committee. She has led efforts to combat domestic violence at both the State and the national level. Justice Carbon received her B.A. with honors from the University of Wisconsin and her J.D. from the DePaul University College of Law.

President Obama nominated Professor John Laub to be the Director of the National Institute of Justice. Currently the Distinguished University Professor in the Department of Criminology and Criminal Justice at the University of Maryland, Professor Laub's academic career in the field of criminology and criminal justice has spanned almost 30 years. He has published two award-winning books and a wide variety of articles about crime, juvenile justice, criminal victimization, and the history of criminology. Professor Laub received his B.A. from the University of Illinois, and he earned his M.A. and his Ph.D. from the State University of New York at Albany's School of Criminal Justice.

I welcome all of the nominees and their families to the Committee today.

# # # # #

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November 16, 2009

Senator Patrick J. Leahy
Committee Chairman
Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

Re: Hon. Denny Chin

Dear Senator Leahy:

I understand that the Senate Judiciary Committee is considering the nomination of my friend and former colleague, Denny Chin, for the United States Court of Appeals for the Second Circuit. I have known Judge Chin since 1980 when, as the United States Attorney for the Southern District of New York, I hired him to be an Assistant United States Attorney. I also had the pleasure of being his colleague when I served as a United States District Judge.

Denny is a wonderful person and has been an excellent judge. As his impressive resume reveals, he is an exceptionally able lawyer who has enjoyed great professional success. What his resume does not reveal is what a decent and thoughtful individual he is. As an Assistant United States Attorney, Denny was hard-working and well-liked by his colleagues. As a United States District Judge, he has handled a number of high-profile cases with distinction. Judge Chin is a thoughtful jurist who has earned the respect of those who have appeared before him.

In short, Denny Chin has been an outstanding District Judge and I have no doubt that, if confirmed, he will serve with distinction on the Second Circuit.

MARTIN & OBERMAIER, LLC

Senator Patrick J. Leahy
Senate Judiciary Committee
Re: Hon. Denny Chin
November 16, 2009
Page Two

I would be happy to respond to any questions your Committee may have.

Very truly yours,

John S. Martin, Jr.

JSM/ek

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November 16, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Sessions:

I have been asked by the National Asian Pacific Bar Association to express my view of the nomination of Judge Chin, now of the Southern District of New York, to the Court of Appeals for the Second Circuit. I am happy to do so.

Judge Chin appeared before me as a trial lawyer when I served as a District Judge, and then I came to know him as a colleague when he became a District Judge. Based on that experience, I believe him to be an intelligent and highly qualified nominee, who brings to the job not only experience but also demonstrated good judgment and skill. He has handled complicated and contentious cases in a way that shows him to be a sound judge with both technical competence and common sense, and a temperament that has shown him to be both firm and fair. He will bring to the appellate bench a keen appreciation of the setting in which the cases he reviews are handled, as well as a good grasp of the law in the many and varied cases, civil and criminal, that come before him. In sum, I have every confidence that he will be an excellent appellate judge.

If there is any further information I can provide, please do not hesitate to contact me.

Respectfully yours,

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NATIONAL ASIAN PACIFIC AMERICAN BAR ASSOCIATION

November 13, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510

Re: Letter of Support for Denny Chin, Nominee for the United States Court of Appeals for the Second Circuit

Dear Chairman Leahy and Ranking Member Sessions:

On behalf of the National Asian Pacific American Bar Association ("NAPABA"), we strongly endorse and urge the prompt confirmation of Judge Denny Chin for the United States Court of Appeals for the Second Circuit. Judge Chin has the experience, intellectual capacity, integrity, and judicial temperament to be an excellent United States Circuit Court Judge. Judge Chin has been an active member of NAPABA for over fifteen years, and we know his qualities and skills as a jurist. Quite simply, they are outstanding. Judge Chin is precisely the type of judge that the entire nation would applaud for his fairness and adherence to the rule of law.

NAPABA is a national bar association representing the interests of Asian Pacific American attorneys, judges, law professors, and law students. Now in its 21st year, NAPABA represents the interests of 60 affiliate organizations and over 40,000 Asian Pacific American attorneys. NAPABA is deeply committed to supporting the

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appointment of qualified Asian Pacific Americans to the federal bench, where Asian Pacific Americans are woefully underrepresented.

The historical significance of Judge Chin's nomination cannot be overlooked. Out of the approximately 175 active federal appellate court judges, there are currently *none* who are Asian Pacific American. In fact, it has been over 5 years since there has been an active Asian Pacific American federal appellate court judge. It has been over 14 years since an Asian Pacific American has been nominated to the federal appellate court. If confirmed, Judge Chin would become only the fifth Asian Pacific American federal appellate court judge in the history of the United States, and the first Asian Pacific American federal appellate court judge confirmed outside of the Ninth Circuit. These statistics demonstrate why the Asian Pacific American community cares so deeply about this nomination.

Regardless of his ethnicity, Judge Chin would be a federal appellate court judge of the highest caliber. He has served as a federal district court judge for the Southern District of New York for over 15 years, during which time he has presided over more than 5,300 cases and issued over 1,500 opinions. He has been reversed in less than 1 percent of his cases.

He is extremely well-regarded by all segments of the legal community. The *Almanac of the Federal Judiciary* – which compiles evaluations of judges from practitioners – describes Judge Chin as "a judge's judge," "conscientious," "extremely hard-working," "very bright," and "an excellent judge." He is overwhelmingly described as fair and professional, with one attorney stating that "[h]e is a decent human being but he doesn't let that influence his sentencing." Other profiles on him have described him as "self-effacing," "low-key," "unflappable," and someone with a "peerless reputation." One attorney stated that Judge Chin "is just extremely smart, very diligent, a dry wit, [and] never takes himself too seriously." Even an attorney who was fined by Judge Chin for "Rambo" litigation tactics in court has high praise for Judge Chin, stating that "I can't think of anyone in that courthouse who is more fundamentally fair than Denny Chin." Unsurprisingly, the ABA unanimously rated Judge Chin as "Well Qualified."

Given that the court docket of the Southern District of New York has some of the highest profile and most complex cases throughout the country, it is unsurprising that Judge Chin has handled several cases that have attracted media attention. Such cases have included two criminal cases involving the United Nations Oil-for-Food Program, the perjury case against the handwriting expert in the Martha Stewart case, a criminal case with national security implications involving an Afghan warlord charged with conspiring to import heroin into the United States, an election law case brought by Reverend Al Sharpton, and a permit case for the Million Youth March. Most recently, Judge Chin presided over the Bernie Madoff case, where he received

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widespread acclaim for his careful and thoughtful handling of the sentencing proceedings.

Notwithstanding the high level of scrutiny that Judge Chin has received because of his docket, Judge Chin has received praise from government prosecutors, criminal defense lawyers, civil defense lawyers, and plaintiffs' lawyers alike. All agree that Judge Chin is even-handed, and applies the law fairly and consistently to all parties. Former Mayor Rudy Giuliani – Judge Chin's supervisor for four years at the United States Attorney's Office – noted that Judge Chin "is not a softie, he's a very balanced man." Former Deputy Mayor under Mr. Giuliani Randy Mastro – who also worked with Judge Chin at the U.S. Attorney's Office – stated that Judge Chin's "soft-spoken, calm demeanor shouldn't be underestimated. He will do the right thing. He is not a person who shies away from deciding a tough case or controversy." City Corporation Counsel Michael Cardozo, who was appointed by Mayor Michael Bloomberg, stated that Judge Chin is "very smart, capable, works very quickly but weighs the issues carefully – and he's extremely fair." Another former Assistant U.S. Attorney stated that "if you spin the wheel and land on Judge Chin, you're elated, not because he's pro-government, necessarily, but because he's a gentleman, and he's smart and capable." This proven record of applying the law consistently, regardless of litigant or publicity, will serve Judge Chin well on the Second Circuit.

Moreover, Judge Chin would be able to contribute immediately on the Second Circuit. Judge Chin has sat by designation on the Second Circuit Court in over 80 cases, and he has written 8 published opinions – all for the majority. Given the number of vacancies and the current workload of the Second Circuit, his swift confirmation would be important for all litigants with cases before that Court.

Many of the traits that make Judge Chin an excellent jurist can be traced to his diverse legal background. Judge Chin started his career as a law clerk for The Honorable Henry Werker, a District Judge for the Southern District of New York. He also served for several years as an Assistant United States Attorney for that District, where he worked for U.S. Attorney (and later federal district court judge) John S. Martin, Jr. and then for Rudy Giuliani. He has practiced law at the nationally prestigious law firm of Davis Polk & Wardwell, but also had his own small law firm and was a partner at a mid-sized law firm. For 22 years, Judge Chin has taught legal research and writing to first-year law students at his alma mater, Fordham University Law School. Although many sitting judges teach upper level courses on trial advocacy or federal courts, Judge Chin has chosen to continue teaching this course because of his strong desire to make sure that future lawyers have the proper fundamentals in writing and analysis.

NAPABA's strong support for Judge Chin extends beyond his excellent credentials and demonstrated record of distinction. It is no exaggeration to say that

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Judge Chin is beloved by the Asian Pacific American community nationally. He has served as a role model for countless individuals. Because Judge Chin is the most senior active Asian Pacific American federal judge, Judge Chin is bombarded with requests to speak at events, and often asked to address the relevance of diversity. Judge Chin recognizes that he must serve as a role model. Thus, he has been a tireless speaker at events for the community, where he often encourages law students and young lawyers to work hard, believe in themselves, and strive for excellence in whatever they do. Indeed, many of NAPABA's leaders have been touched by Judge Chin's advice or generosity at some point in their careers. Judge Chin also serves as a mentor to several of the most recently confirmed Asian Pacific American judges, both at the federal and state level. Quite simply, he has been a tremendous asset and can serve America even better as a Second Circuit judge.

For all of these accomplishments, NAPABA in 1998 awarded Judge Chin its Trailblazer Award, which is NAPABA's highest award and bestowed upon lawyers whose professional achievements have paved the way for other Asian Pacific American lawyers. In addition, Judge Chin has been recognized by a wide variety of organizations nationwide. These awards have included: Abely Award for Leading Women and Children to Safety, Sanctuary for Families (2006); Medal of Achievement, Fordham Law School Alumni Association (2006); Distinguished Service Award, Asian American Justice Center (2005); Lifetime Achievement Award, New York State Division of Human Rights (2005); J. Edward Lumbard Award, United States Attorney's Office, Southern District of New York (1996); Honorary Doctor of Laws, College University of New York Law School (1995).

Finally, although it has been reported in the media, Judge Chin's life story is worth re-telling. Judge Chin was born in Hong Kong, where his parents had fled to escape the Communists in the late 1940s. Judge Chin was able to move to the United States when he was two years old because of the Refugee Relief Act of 1953. He grew up in Hell's Kitchen in New York City, where he became a Yankees fan. His father worked as a cook in Chinese restaurants, while his mother worked as a seamstress in the garment industry. Through hard work and family sacrifices, he was able to attend the prestigious Stuyvesant High School in New York. He proceeded to graduate *magna cum laude* from Princeton University and then received his law degree from Fordham University Law School, where he served as the Managing Editor on its Law Review. His upbringing epitomizes the all-American story of families seeking to create a better life in the United States. To this day, one of Judge Chin's favorite "duties" is to swear in new citizens of the United States. He proudly shows a picture of his grandfather and his grandfather's naturalization certificate, and tells them how his family came to the United States. By doing so, he is encouraging other new citizens to pursue the opportunities that exist only in America.

Based on his qualifications, intellect, integrity, and commitment to justice,

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NAPABA extends its strongest endorsement to The Honorable Denny Chin to serve as a Circuit Judge for the United States Court of Appeals for the Second Circuit. From NAPABA's perspective, there is no question that Judge Chin would be able to make an immediate positive contribution to the Second Circuit. Especially given the lack of *any* active Asian Pacific American federal appellate court judge, NAPABA urges that the Senate act quickly to confirm Judge Chin. America's justice system will be better for it.

Sincerely,

Andrew T. Hahn, Sr.
President

Tina R. Matsuoka
Executive Director

John C. Yang
Co-Chair, Judiciary Committee

Wendy Wen Yun Chang
Co-Chair, Judiciary Committee

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National District Attorneys Association
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October 26, 2009

The Honorable Patrick Leahy
Chairman
The Honorable Jeff Sessions
Ranking Member
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

On behalf of the National District Attorneys Association, the oldest and largest organization representing over 39,000 of America's state and local prosecutors, we would like to offer our full support for the nomination of Judge Susan B. Carbon to become the Director of the Office on Violence Against Women within the United States Department of Justice.

Judge Carbon's past work experience has allowed her to develop and maintain strong relationships with the state and local criminal justice professionals who work closely with DOJ, including outstanding working relationships with state and local prosecutors. Judge Carbon, first appointed to the bench in 1991, has been a Supervisory Judge of the New Hampshire Judicial Branch Family Division since 1996. Judge Carbon has served as President of the National Council of Juvenile and Family Court Judges (NCJFCJ), where she still frequently serves as a faculty member. She also serves as faculty for the National Judicial Institute on Domestic Violence - a partnership of the U.S. Department of Justice's Office on Violence Against Women, the Family Violence Prevention Fund, and the NCJFCJ.

Judge Carbon is a member of the Governor's Commission on Domestic and Sexual Violence, and chairs New Hampshire's Domestic Violence Fatality Review Committee. She previously chaired the Grafton County Greenbook Project, a federally funded initiative to improve how courts, child protection agencies and domestic violence organizations work with families that experience both child abuse and neglect and domestic violence. Judge Carbon has trained judges and other professionals across the country and internationally on topics related to family violence, firearms, child custody, and child protection, and has been published extensively on these and other topics, including on judicial selection and retention and judicial administration.

The National District Attorneys Association believes that Judge Carbon would be an outstanding addition to Attorney General Holder's staff within the Department of Justice. We are happy to offer our full support for Judge Carbon's nomination to serve as Director of the Office on Violence Against Women and encourage her swift nomination by the Senate.

Sincerely,

Christopher D. Chiles

Christopher D. Chiles
President

To Be the Voice of America's Prosecutors and to Support Their Efforts to Protect the Rights and Safety of the People

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October 20, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Leahy and Senator Sessions,

I write to express my strong support for the nomination of John Laub, Ph.D. to the position of Director of the National Institute of Justice, and urge you to act quickly in confirming his nomination.

The National Institute of Justice (NIJ) serves several critical functions for the Department of Justice, but at the core its mission is to advance the scientific foundations for criminal justice policy and practice. As such, its Director must hold the highest professional credentials and respect. Having known Dr. Laub for many years, I know him not only to be a distinguished criminological researcher and professor but also a thoughtful person who consistently exercises sound judgment. His background makes him uniquely qualified to identify the key criminological issues needing further study and investments. He is able to design and consider complex research studies, and assure that the funded research will be discussed and disseminated. These characteristics make him an immensely qualified candidate for this position.

Dr. Laub currently serves as a Distinguished University Professor, the highest rank in the University of Maryland system. He is also a former president of the American Society of Criminology, the premier professional association for the study of crime and the criminal justice system. Dr. Laub has an impeccable record of integrity and is well respected throughout our profession.

Dr. Laub's recent research has focused on one of the most critical issues in criminology: crime over the life course. To date, his research along these lines have produced two award-winning books, *Crime in the Making: Pathways and Turning Points Through Life* (Harvard University Press, 1993) and *Shared Beginnings, Divergent Lives: Delinquent Boys to Age 70* (Harvard University Press, 2003), twenty-eight journal articles, eighteen book chapters, and more than ninety presentations. His research has spurred the development of what he calls "life-course criminology" -- the study of both continuity and change in criminal behavior over the life course. A generation of criminologists has

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been influenced by life-course criminology, and its scientific findings continue to influence policy and practice throughout the U.S. and abroad.

Dr. Laub also possesses a breadth of knowledge and understanding of crime and criminal justice that are unique and admirable, spanning from juvenile delinquency to prison and parole release. He has become very familiar with the "what works" in criminal justice literature and, as such, will be able to make strategic investments in future criminal justice research that have large policy payoffs. He is also known for being able to take a "systemwide" approach to justice issues. He is not ideological in his approach, and is committed to prevention as well as enforcement strategies. As you know, crime issues are often contentious, and Dr. Laub is capable of seeing all sides of the most difficult problems and finding common ground. These are essential qualities if we are to control crime and improve the nation's justice system.

President Obamba has emphasized the importance of building an administration that incorporates facts and solid science. It is hard to imagine a more qualified candidate to serve as Director of the NIJ than Dr. Laub. He has the credentials, the intellectual ability, the commitment, and the professional integrity to be a director of the highest caliber.

I urge the Senate to move swiftly to confirm his nomination.

Yours sincerely,

Joan Petersilia

Joan Petersilia
Adelbert H. Sweet Professor of Law
Co-Director, Stanford Criminal Justice Center

Ohio Department of Rehabilitation and Correction

770 West Broad Street
Columbus, OH 43222
614-752-1164

Ted Strickland, Governor | www.drc.ohio.gov | Terry Collins, Director

November 10, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Senator Sessions:

It gives me great pleasure to submit a letter on behalf of John H. Laub supporting his nomination to become Director of the National Institute of Justice. I have had the opportunity to work in correctional systems in New Jersey, Georgia, and now my home state, Ohio. I completed my graduate work in Sociology at Rutgers University in 1981, and shortly thereafter, began a career path that has since given me the opportunity to work in administrative positions in adult and juvenile corrections, probation, and parole. I serve presently as the Deputy Director of the Office of Policy and Offender Reentry for the Ohio Department of Rehabilitation and Correction. I also teach part-time in the Sociology Department at Ohio State University. Regardless of the setting (academic or applied), I have drawn from the rich substance of Dr. Laub's seminal and ever-expanding contributions to the literature for over two decades. As his career superbly demonstrates, John brings a unique capacity to work with the research community, and policymakers alike.

John's academic and research credentials are sterling. He has always displayed a renaissance-like command of the substantive and policy issues that are implicated in the administration of the juvenile and criminal justice systems. He has written and continues to publish in a wide variety of forums. His work has always been at the cutting edge of scholarship in the field contributing rich and lasting insights into desistance theory, life-course criminology, and the myriad factors associated with continuity and change in criminal behavior across time. Among his many impressive works, I consider two of his monographs enduring classics in the field of criminology: *Crime in the Making: Pathways and Turning Points Through Life;* and *Shared Beginnings, Divergent Lives: Delinquent Boys to Age 70.*

John is one of the nation's preeminent criminologists. He values deeply the importance of research, and the need for science to inform policy on criminal justice, crime and punishment. The breadth and analytic rigor of his writings are universally well-regarded. He has always demonstrated an impressive capacity to understand and convey depth and the "big-picture" in his work, whether clearly interpreting findings, or discussing the public policy implications of the results. I have been in several forums with John, and have observed his marvelous ability to invite new ideas, as well as to bridge and respond to opposing points of view.

John has been an active and influential presence at the national level for many years both as a catalyst for change, and in holding leadership positions in numerous professional associations. He was one of the co-authors of a path-breaking report issued by the National Research Council entitled *Parole, Desistance from Crime, and Community Integration.* He is a past president and vice-president of the American Society of Criminology, a fellow of the Society, and a recipient of its prestigious Edwin H. Sutherland Award. The two publications mentioned earlier have been widely acclaimed and honored by the Society, as well as by the American Sociological Association, and the Academy of Criminal Justice Sciences.

The reach of Dr. Laub's scholarship is vast and inspiring. His willingness to translate research knowledge so that it benefits policymakers and practitioners across the many components and agencies of corrections has been truly remarkable. Even more, he has displayed steadfast support for the conduct of social science research and its relevance to justice system reforms that contribute to public safety and the quality of life in communities across the land.

The comments above affirm John's outstanding professional and research credentials as a recognized leader within academia, and across the policy arena of criminal justice. On a personal note, I know John as a colleague and friend, and thus want to close by sharing several remarks about his character. John is a compassionate and personable individual. His ethical integrity is beyond reproach. He brings an attractive blend of humility, warmth, and a caring attitude in his interactions with others. He has always viewed his work as a "calling," and a commitment that allows him to give back to his profession and community. John possesses a rare and energizing combination of intelligence, purpose, and generosity in all that he does.

It is my distinct honor to support the nomination of Dr. John Laub to become the next Director of the National Institute of Justice. I can think of no one more qualified for this position.

Sincerely,

Edward Rhine

Edward Rhine, Ph.D.
Deputy Director

HARVARD UNIVERSITY

DEPARTMENT OF SOCIOLOGY

Phone: [redacted]
FAX: [redacted]
Email: [redacted]

William James Hall
33 Kirkland Street
Cambridge, MA 02138

9 November, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

RE: Nomination of **John H. Laub** for Director, National Institute of Justice

Dear Senators Leahy and Sessions:

I write in strong support of the nomination of Dr. John H. Laub to be Director of the National Institute of Justice (NIJ) and would urge a swift confirmation. The choice of Laub is a brilliant move and his appointment will almost instantaneously increase the respect with which the institute is held. Indeed, after some troubled times at NIJ what is most needed is a visionary leader who knows the field in a deep way, commands respect, and will bring a new level of intellectual seriousness to the justice department. That Laub can do this is born out by his record. He has had a distinguished research career in the field of criminology and criminal justice spanning almost 30 years and has received numerous awards and honors for his contributions to research, scholarly work, and teaching, including the Edwin H. Sutherland Award (established in 1960) by the American Society of Criminology. He is a former president of that society and a Fellow. He is currently Distinguished University Professor, the highest rank in the University of Maryland system.

I should disclose that I have written extensively with Dr. Laub. As such it is not my place to comment on this part of his scholarship. I can, however, attest personally to his rigorous standards, unimpeachable integrity, commitment to science, and passion for promoting sound policy. Quite simply, I can think of no one better qualified to serve as the Director of the National Institute of Justice. Please let me know if there is anything more I can do to help with your deliberations.

Sincerely,

Robert J. Sampson, Chairman &
Henry Ford II Professor of the Social Sciences

Statement of Senator Jeanne Shaheen
Confirmation Hearing for Susan B. Carbon to be
Director of the Violence Against Women Office, Department of Justice
Senate Judiciary Committee
November 18, 2009

Mr. Chairman, Ranking Member Session, members of the Committee, I am delighted to be here this afternoon to introduce Susan Carbon, whom the President has nominated to be the Director of the Violence Against Women Office in the Department of Justice.

I have known Susan Carbon for nearly twenty years and have long admired her exemplary career in public service. Susan was appointed as a part-time New Hampshire District Court Judge in 1991 by then-Governor and now Senator Judd Gregg. When I became Governor of New Hampshire, I recognized Susan's impressive service on the bench and nominated her to serve as a full-time District Court judge. Because of her commitment to domestic violence and other family issues, Judge Carbon was named the Supervisory Judge on the Judicial Branch Family Division.

Throughout her career, Susan Carbon has been a leader in the New Hampshire legal community, including serving as president of the New Hampshire Bar Association from 1993 to 1994.

Mr. Chairman, I know you have been a leader in the Senate on strengthening the Violence Against Women Act and care greatly about this issue. I can assure you Susan Carbon is exceptionally qualified to serve as the Director of the Office of Violence Against Women. Judge Carbon is the leading voice in New Hampshire on domestic violence and family law and has been the driving force behind much of New Hampshire's efforts to strengthen legal protections for victims of domestic violence.

Judge Carbon also has become a national leader on domestic violence. She frequently serves as faculty for the National Judicial Institute on Domestic Violence and she chaired the project which produced the multidisciplinary *Effective Issuance and Enforcement of Orders of Protection in Domestic Violence Cases* also known as *The Burgundy Book*, which guides professionals in their work around civil protection orders throughout the country and U.S. territories.

Mr. Chairman, I have no doubt that Judge Carbon will work tirelessly to advance the goals of the Violence Against Women Act and I offer my strongest recommendation for her confirmation.

Thank you.

JAMES Q. WILSON
[redacted]

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Senator Patrick J. Leahy
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

Senator Jeff Sessions
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senators:

I write in support of the nomination of John Laub to be director of the National Institute of Justice (NIJ).

Laub is a distinguished criminologist who has won many awards and occupies the highest university professorship at the University of Maryland. His publications cover many fields, but especially the history of criminal careers.

The NIJ is an agency that has been at times both a leader and a laggard in helping the nation understand crime. Laub has the ability and experience to revitalize it and make it once again a powerful voice for understanding what works in criminal justice policy.

The study of criminology, like many social sciences, often involves conflict between liberal and conservative scholars. Laub, however, has spanned that gap and is admired by scholars and practitoners on both the Left and the Right. This is not because he equivocates but because his work is of such high quality that no one can deny either its value or its importance.

I was the chairman of the Committee on Law and Justice of the National Academy/National Research Council when Laub was a member. He worked very well with people of all backgrounds and perspectives and steadfastly looked for

ways whereby research could benefit practitoners in the field.

Today crime rates are lower than they were during the 1960s and 1970s. But if we are to help them stay low we must learn more about how the community, the police, prosecutors, judges, and correctional agencies should function. This is the central task of the NIJ and Laub is the best person to help it do that.

Sincerely,

James Q. Wilson
Emeritus professor, UCLA



OCA | EMBRACING THE HOPES AND ASPIRATIONS OF ASIAN PACIFIC AMERICANS

November 17, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510

Re: Federal Judicial Nomination of the Honorable Denny Chin to be U.S. Circuit Judge for the Second Circuit Court of Appeals

Dear Chairman Leahy and Ranking Member Sessions:

OCA is a national organization dedicated to advancing the social, political, and economic well being of Asian Pacific Americans. OCA maintains over 80 chapters and college affiliates across the nation to promote both leadership development and community involvement. At the national level, OCA monitors legislation and policy issues affecting Asian Pacific Americans. OCA strongly supports the increased civic participation of Asian Pacific Americans. We are particularly concerned that Asian Pacific Americans account for only eight out of approximately 875 Article III judges in our nation. It is astounding that not a single Asian Pacific American actively serves on the federal courts of appeals. The underrepresentation of Asian Pacific Americans in the federal judiciary presents an opportunity to strengthen the courts through the inclusion of vital, diverse perspectives and viewpoints. Accordingly, we endorse the nomination of the Honorable Denny Chin and urge his prompt confirmation. Judge Chin is superbly qualified for elevation to the U.S. federal court of appeals. He would serve as an important Asian American voice in an appellate judicial system that has gone without one for more than five years.

Judge Chin's record reveals the experience, temperament, and judgment to serve as an outstanding U.S. Circuit Judge. He has over 15 years of experience serving as a U.S. District Judge for the Southern District of New York. His neutral judicial approach is reflected in his extensive record. He presided over approximately 4,700 civil cases and 650 criminal cases during his tenure and issued over 1,500 opinions. Judge Chin has handled several high-profile cases and was consistently lauded for his professionalism. Most recently, the Bernie Madoff case highlighted his tough position on crime and a thoughtful understanding of the harm it does to its victims.

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In addition to his long record as a district judge, Judge Chin already possesses considerable experience at the federal appellate level. He sat by designation on the U.S. Court of Appeals for the Second Circuit where he heard over 80 cases and authored 8 published opinions, all majority opinions. Judge Chin's experience on the court of appeals will help him contribute immediately to the court if confirmed.

It is with great pleasure that we endorse Judge Chin's nomination as U.S. Circuit Judge. Judge Chin's confirmation would elevate a highly qualified jurist to the federal appellate court. He would add a perspective from the Asian Pacific American community which is inadequately represented at the appellate level of our judiciary. Accordingly, OCA proudly endorses the Honorable Denny Chin to be U.S. Circuit Judge for the Second Circuit Court of Appeals and we applaud him as a leader of the community. Thank you for considering this letter of support.

Sincerely,

George C. Wu
OCA Executive Director

NOMINATION OF O. ROGERIEE THOMPSON, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE FIRST CIRCUIT

TUESDAY, DECEMBER 1, 2009

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, Pursuant to notice, at 10:01 a.m., Room 226, Dirksen Senate Office Building, Hon. Sheldon Whitehouse presiding.

Present: Senator Franken.

PRESENTATION OF O. ROGERIEE THOMPSON, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE FIRST CIRCUIT BY HON. SHELDON WHITEHOUSE, A U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator WHITEHOUSE. The hearing will come to order.

Today we will consider President Obama's nomination of O. Rogeriee Thompson to the United States Court of Appeals for the First Circuit. I am very grateful to the Chairman of the Senate Judiciary Committee, Chairman Leahy, for the opportunity to chair this particular hearing, and I do so with great pleasure since the nominee is a distinguished Rhode Island judge, and a friend of many years' duration. I welcome Justice Thompson and her family and friends to the Judiciary Committee and to the U.S. Senate.

In particular, I want to welcome her husband Bill who is here, and her daughters Reza and Sarah. Their son is away in Spain but is here in spirit. And also, her brother-in-law, Ed Clifton, who is another distinguished jurist, along with her husband Bill. It's quite a judicial family in Rhode Island. Ed Clifton. It's wonderful to have you here, Your Honor.

Clifford Monteiro is here, who is a distinguished leader in the NAACP and had a very long and distinguished career in law enforcement in Rhode Island. I also want to welcome and have the record reflect the presence of Congresswoman Christensen, who has come from the House of Representatives to be here for her friend and this family today. I am very pleased, Congresswoman, that you could be here.

I particularly welcome to the Committee the senior Senator from Rhode Island, Jack Reed, who will introduce Justice Thompson at the conclusion of my brief opening statement.

It has been a great honor to serve with Senator Reed in the Senate, and it has been a pleasure. He showed great courtesy in allow-

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ing me to assist him in identifying the best possible nominee to serve on the First Circuit, which serves our home State of Rhode Island. I was proud to join him in recommending Justice Thompson to President Obama, and I thank the President for recognizing her expertise and good judgment.

Justice Thompson comes before the Committee with an exceptional record of achievement that speaks both to her remarkable talents and her lifetime of hard work. Born in segregated South Carolina, Justice Thompson pursued the opportunity to finish high school in Scarsdale, New York, even though it meant moving away from her family at an early age.

After excelling there, Justice Thompson went on to graduate from Rhode Island's Brown University and to receive a law degree from Boston University. With those academic credentials, one might have expected Justice Thompson to pursue a lucrative career in the corporate realm, but she instead chose to employ her talents in under-served communities in Providence. I am very glad that she did.

A successful career in legal practice led to Justice Thompson's appointment as an Associate Judge on the Rhode Island District Court, and subsequently as an Associate Justice on the Rhode Island Superior Court. Justice Thompson now has 21 years of judicial experience and a record of respect from all corners of Rhode Island's bench and bar. Her courtroom, deservedly, has come to be known as a place in which every party can expect a fair hearing.

Justice Thompson's extensive experience on the Rhode Island bench prepares her well for the work of the First Circuit. Not only has it allowed her to consider the customary range of Federal issues that State courts regularly face, but it has allowed Justice Thompson to demonstrate the proper role of a judge: to respect the role of the legislature; to decide cases based on the law and the facts; to not prejudge any case, but listen to every party that comes before them; to respect precedent; and to limit themselves to the issues that the court must decide.

But Justice Thompson not only is an exceptionally qualified nominee, she also is an historic nominee, as she would be the first African-American, and only the second woman, ever to serve on the First Circuit Court of Appeals. Indeed, Justice Thompson has a habit of breaking barriers, as she was the first African-American woman appointed to Rhode Island's District Court and to Rhode Island's Superior Court. It is fitting that she should be the one to make another piece of long-overdue history. She is a worthy nominee for this historic occasion.

I look forward to working with Chairman Leahy and my colleagues as this nomination proceeds through the Committee, and ultimately to confirmation.

I see that Senator Franken has joined us. I would customarily yield to the Ranking Member, but there is no Ranking Member present. Should a member of the Minority party come, I will be delighted to accept their opening statement. If no one does, the record of this proceeding stays open for a week so that statements and questions for the record might be included.

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But before we turn to Senator Reed, let me ask my distinguished colleague from Minnesota if he wishes to make an opening statement at this juncture.

Senator FRANKEN.

Senator FRANKEN. No, not at this juncture. But I'd love to hear from the senior Senator from your State, and what he has to say about our nominee.

Senator WHITEHOUSE. And without further ado, Senator Reed, the floor is yours.

PRESENTATION OF O. ROGERIEE THOMPSON, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE FIRST CIRCUIT BY HON. JACK REED, A U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator REED. Thank you very much, Mr. Chairman. Thank you, Senator Franken. Mr. Chairman, thank you for your kind words, but also for your advice in this collaborative effort to identify for the President worthy and suitable nominees for our courts in Rhode Island. I am pleased and proud today to be here to introduce Associate Justice Rogeriee Thompson, the nominee for Rhode Island's traditional seat on the United States Court of Appeals for the First Circuit.

We are joined, as you've indicated, Mr. Chairman, by a very strong family contingent: Judge Thompson's husband Bill, their daughters Reza and Sarah. As you indicated, their son Will is in Madrid, studying. We're also honored to have Ed Clifton and Audrey Clifton. This is a dynamic group of lawyers, attorneys, and public services in the State of Rhode Island. It's a remarkable family, and I'm so pleased they're here.

We're also joined by Chief Judge Eric Washington of the DC Court of Appeals. Thank you, Judge, for coming.

I also want to recognize Cliff Monteiro, who has been an advocate and someone whose advice and assistance we both treasure immensely.

We are here today because we have identified a woman with the integrity, the professionalism, and the experience necessary to serve our country as an appellate judge with great distinction. Serving as an appellate judge is a unique opportunity, and this lifetime appointment should be for those who have demonstrated they have the intellectual gifts, the experience, the judgment, maturity, and temperament to take on this special role. Judge Thompson has all of these attributes.

Senator Whitehouse and I did not reach our conclusion without great thought and review; indeed, we encouraged all interested and qualified attorneys in our State to apply. We interviewed 30 candidates for our State's judicial vacancies. We reviewed their education, analyzed their professional experience. We examined what motivated their choices in life and their views about the role of the law. We thought long and hard about their involvement in our community and what we personally knew of each applicant. After these deliberations, we came to the conclusion that Judge Thompson was uniquely qualified to serve on the First Circuit.

In an era when some judges have little experience in courtrooms, Judge Thompson has over 20 years of service on the bench. She has convicted criminals, mediated contractual disputes, overseen com-

plex commercial cases, and dealt fairly and firmly with those in her courtroom—and I must emphasize "fairly", which is one of the hallmarks of a good judge.

Justice Thompson's reputation for impartiality and character in our State is obvious and uncontroverted. She has been nominated by two Republican Governors, first to serve on the District Court in 1988, and then to serve on our Superior Court in 1997. In both instances, those nominations were overwhelmingly confirmed by our General Assembly.

Justice Thompson's background embodies the classic American success story of intelligence and hard work and faith. Indeed, Justice Thompson was born in South Carolina when segregation still ruled. She went from those humble beginnings to attend Brown University, and then to Boston University Law School, where she excelled. She then chose public service as a staff attorney for our legal aid system. Later, Justice Thompson was an Assistant City Solicitor in Providence, was in private practice, and developed an expertise in Native American law that took her across the country.

Yet what really makes Justice Thompson unique is her decency and deep involvement in our community. She has aided numerous charities and supported countless nonprofit organizations. She has supported higher education by serving as a trustee of Brown University and Bryant University. She has answered the call of a Federal/State jurist as Rhode Island's courts grappled with the issue of non-English speaking litigants. She was critical in helping to resolve that very critical issue.

And I have come to know her and respect her through our shared support and involvement in Dorcas' Place, an adult literacy program, and also her involvement in our largest environmental organization, Save the Bay, and her involvement in Rhode Island's College Crusade, an initiative that encourages talented young people to stay in school and graduate from college, regardless of their circumstances. She has done all of this with integrity and humility.

At the same time, she and her husband Bill, who is a District judge in Rhode Island, have raised a wonderful family in my hometown of Cranston. Indeed, their daughters, Reza and Sarah, are here today, as indicated, and as I said previously, Will is here in spirit, urging his mother on.

Justice Thompson's confirmation to the First Circuit is important to me. She is someone I know and respect. She has earned the trust of Rhode Island's legal community through her demeanor, through her thoughtfulness, and through her respect and regard not only for the law, but for those who come before her court.

Last, she has the real-world experience in the State courts which will aid in her deliberations on the First Circuit. I urge you to ask her questions. She will respond with the preparation and intellectual skills she has demonstrated throughout her career. At the conclusion, I would respectfully ask that you send her nomination to the full Senate for confirmation.

Thank you, Mr. Chairman.

Senator WHITEHOUSE. Thank you, Senator Reed. I am very grateful that you took the trouble to be here today. As we know in this body, the health care debate began in earnest yesterday after years—some would say decades—of waiting. As a member of the

important Health, Education, Labor and Pensions Committee, I know you have many important responsibilities, both in that debate and in your busy office.

So I appreciate very much that you've taken the time to be here, and I would now call forward the nominee to be sworn and to take her seat.

[Whereupon, the nominee was duly sworn.]

Senator WHITEHOUSE. Thank you. Please be seated.

Welcome. I understand that you do not have a prepared opening statement?

STATEMENT OF O. ROGERIEE THOMPSON, NOMINEE TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIRST CIRCUIT

Justice THOMPSON. Senator, I do not have a prepared opening statement, but I would like to take an opportunity to, first of all, thank President Obama for nominating me, and to also thank you and Senator Reed for forwarding my name to the President for consideration.

I have been honored today to have a lot of my family present to support me and to show me their love, and I would just like to once again acknowledge them personally.

My sister is very enthusiastic about today, so I have lots of relatives who are here who live in the DC area, and I really appreciate them being here to support me. First, I would like to thank my husband, William Clifton, who is an Associate Judge of the Rhode Island District Court, for putting up with me all of these years.

I would like to thank my daughter, Reza Clifton, for being here, my daughter Sarah Clifton, who is sacrificing her own swearing in today. She just recently passed the California bar exam, and today was her swearing in date, but she's here to support her mother and I'm most grateful for her presence.

Senator WHITEHOUSE. Well, we congratulate her.

Justice THOMPSON. Son Will, who is watching it by the webcast. So, hello, William. Have fun.

My sister, LaVonne Thompson, who is an Assistant U.S. Attorney General in the Virgin Islands, and she's flown here from the Virgin Islands to be with me. My brother-in-law, Edward Clifton, who is my colleague on the Superior Court bench, and his wonderful wife Audrey. My cousin, Eric Washington, who is the Chief Judge of the DC Court of Appeals, and his wife Cheryl. I think my niece has gotten here, Camille Clifton, whose father is retired State Department. She is the ambassador, because he is now living in Germany, and their daughter, Sophey Howery.

My cousin, David Bedenbaugh and his son Daniel are also here with me today. Daniel attends the Excel Academy in Riverdale, Maryland. His class has made my nomination a class project in Civics, so I hope they are getting a lot out of the proceedings.

Also present here today: my cousin Jannine Henderson, Janell Jordan, Daniel Womack, Jr., Judy Rogers, Kurt Bedenbaugh, Renee Brown, Tony Graham, Valery Gladney, and I want to thank my dear friend, Cliff Monteiro, for flying down today to be here with me. Another old friend just tapped me on the shoulder, Tom

Baker, who is in the DC area. Attorney Baker is a former U.S. Ambassador to Zimbabwe. So, thank all of you for being here today.

Senator WHITEHOUSE. Well, we are very grateful to have such a distinguished and illustrious group of friends and family whose service to the State and Federal bench, to the U.S. Department of Justice, to the U.S. Department of State, and in other places, I think, does great credit to the nominee.

The question that I would ask—and I think it will help fill out the record—is: Justice Thompson, you have spent your career in the State courts of Rhode Island. You are going to go onto an appellate court in the Federal system. Can you explain the circumstances in which, during the course of your career, you have had to review questions of Federal law or U.S. constitutional law in your role as a State court judge, and how that has prepared a foundation for you to deal with the Federal law and U.S. constitutional law questions that the First Circuit will consider?

Justice THOMPSON. Well, Senator, as you are aware, the Rhode Island State courts have concurrent jurisdiction over Federal issues, and as such if Federal issues are presented to our courts, we don't have the luxury of saying, no, I don't want to hear that because I'm not a Federal court judge. Those issues routinely come before the court, particularly in areas of criminal proceedings where we are called upon to rule upon criminal procedure issues and substantive criminal issues involving search and seizure, confrontation, rights of defendants, right to counsel, selection of jury issues, and many other issues which routinely come up in criminal law cases.

In addition to that, there are Federal issues that come before the court on the civil side of the calendar. In addition to that, Senator, as you know, when State law is unclear about a particular area, we are directed to look to the Federal courts for guidance when they have laws that are similar to our State statutes. And so in the context of my 21-year career, I have been called upon to review Federal issues and to make decisions on those issues.

Senator WHITEHOUSE. You are confident that Federal law would not be unfamiliar territory to you as a judge of the United States Court of Appeals for the First Circuit?

Justice THOMPSON. Federal law would not be foreign to me, Senator. But in addition to that, let me just say generally it is not unusual for new issues—new legal issues, new legal State issues—to come before the courts, the State courts on a daily basis. Once again, we don't have the luxury of saying, "I never sat on a case like that before, so go away". Indeed, the proper methodology for attacking new cases and new areas of law is to delve into the research to get a firm appreciation and understanding of that new and different law and to study the cases, study the precedent, and make a judgment as to how to apply that new law to the facts.

Senator WHITEHOUSE. Well, I thank you.

As I reflected on this question before the hearing, I recalled my 6 years in the Rhode Island Department of Attorney General as a staff attorney in the State Attorney General's Office. My recollection is that when I was involved in civil matters in the Superior Court, it was actually almost unusual for there to be a State law claim that I was involved in because the Federal law and the

issues that I was addressing, particularly in civil matters, tended to be the cause of action that plaintiffs were pursuing against the State. So at least in my experience, I can concur with you that, as a State official, one is deeply, deeply imbued in the Federal law, and appreciate your comments in that regard.

I will turn, now, to my distinguished colleague from Minnesota, Senator Al Franken.

Senator FRANKEN. Thank you, Mr. Chairman.

Welcome, Justice Thompson. Congratulations on your nomination.

Justice THOMPSON. Thank you, Senator.

Senator FRANKEN. I was interested to see that you were tribal counsel to the Narragansett Indian tribe. I am on the Indian Affairs Committee here in the Senate, and I was interested that you described that position as "the most challenging and stimulating legal work" you have done as a practicing attorney. Can you tell us more about that work and how it's shaped your work as a judge?

Justice THOMPSON. Senator, when I was asked by the Narragansett Indian tribe to be their tribal counsel, I bravely said yes, but said yes at a point when I had very little information, knowledge, or background about tribal law. As a result of saying yes, I spent a full 2 weeks delving into Indian law, reading every single thing I could find, until I had a firm grasp of the myriad of issues that tribal governments deal with in our country.

I represented the Narragansetts on every aspect of their sovereignty issues. I represented them in negotiations with BIA, with negotiations with the State over land issues, with negotiations with the State involving Indian artifacts. Issues also arose involving the Indian Child Welfare Act. I was the first person to give information to our family court that there was such a thing as the Indian Child Welfare Act and gave them instruction as to how that act impacted the proceedings of the State family court. That is just a few of the areas in which I represented them.

My experience with the tribe gave me a rich appreciation of the history of the Native people of this country, and I have continued to enjoy a friendship with the members of the tribe and have a great deal of respect for the work that they try to do on behalf of their people.

Senator FRANKEN. Thank you.

Normally we do have members of the Minority party here, and actually they're very good about showing up for these things, especially the Ranking Member. Normally—I was given this in sort of my briefing about this hearing, was that Justice Thompson is likely to be questioned about comments she made on the importance of diversity.

Since the Minority party isn't here, if they were, they would ask you about that. That would be upsetting to them. Not terribly, but they would be concerned that when you put on your robes, that you will just be a judge. So I just want to give you a chance to answer the question that they would have asked. I think diversity on the court is a great idea. But would it be fair to say that when you put on your robes, that you'll judge based on the law?

Justice THOMPSON. Senator Franken, thank you for the question. It would certainly be incumbent upon me as a Federal judge, just

as it is incumbent on me as a State court judge, to view every single person who comes before the court with the utmost respect and afford them the utmost dignity. My job is to make sure that I don't have preconceived notions about persons or to come to any kind of proceeding with any kind of bias or prejudice toward any person. My job is to make sure that I examine the facts of a particular case without bias or prejudice, apply the law to those facts, and try to afford the litigants the justice which they deserve.

Senator FRANKEN. Well, I think it's a great answer to a very good question, which I wanted to have represented here, because it wasn't when it normally would be.

Thank you very much. Once again, congratulations to you and your entire family.

Justice THOMPSON. Thank you.

Senator WHITEHOUSE. Well, without further ado, I think we can conclude these proceedings. I take it as a positive sign that our colleagues are sufficiently satisfied with your reputation and qualifications that they have not felt the need to come here and explore any areas of concern that they might have had. I hope that the smooth sailing and passage that you've had through this hearing continues on the floor, and that we are able to move expeditiously on your nomination on the Senate floor.

I note that Chairman Leahy has taken a keen interest in this particular nomination. He has a statement in support that he has filed that, without objection, I will add to the record of these proceedings.

[The prepared statement of Chairman Leahy appears as a submission for the record.]

Senator WHITEHOUSE. I am sure, at the first opportunity that he finds, he will try to obtain either unanimous consent for your nomination to proceed, or a vote on it if that turns out to be necessary. It may seem a bit disappointing that there is not more action here today.

Justice THOMPSON. No.

Senator WHITEHOUSE. But trust me, it is a good thing.

Justice THOMPSON. I am not disappointed, Senator.

[Laughter.]

Senator WHITEHOUSE. I will close the hearing by relating that the record of the hearing will stay open for an additional week for any statements or questions for the record that my colleagues seek to add into the record, or frankly, any other materials that they seek to add into the record.

Justice Thompson.

Justice THOMPSON. One other person I forgot—I didn't know she was coming, but she is here—is my cousin, Whitney Washington, who also just passed the California bar exam. So, she's probably missing her swearing in also.

[Laughter.]

Senator WHITEHOUSE. Well, as I said, it's a very impressive group and I'm glad you made sure that everybody was mentioned. I am proud of you.

Justice THOMPSON. Thank you, Senator.

Senator WHITEHOUSE. I am delighted for you. Senator Reed and I both look forward to working hard to make sure that your nomi-

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nation proceeds forward, and we are delighted at the way things have turned out so far.

So without further ado, the hearing is adjourned.

[Whereupon, at 10:31 a.m. the Committee was adjourned.]

[The biographical information follows.]

[Submissions for the record follow.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   Ojetta Rogeriee Thompson

   Other names used:
   O. Rogeriee Thompson
   Ojetta Rogeriee Clifton (husband's surname)
   Ojetta Rogeriee Spearman (prior marriage)

2. **Position**: State the position for which you have been nominated.

   United States Circuit Judge for the First 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.

   Office: Rhode Island Superior Court
   250 Benefit Street
   Providence, Rhode Island 02903

   Residence: [redacted]

4. **Birthplace**: State year and place of birth.

   1951; Anderson, South Carolina

5. **Education**: List in reverse chronological order 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.

   1973 – 1976, Boston University School of Law, Juris Doctorate Degree; June, 1976

   1969 – 1973, Brown University, AB Degree, June, 1973

6. **Employment Record**: List in reverse chronological order 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

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from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

Employment:
1997 - Present
Rhode Island Superior Court
250 Benefit Street
Providence, Rhode Island 02903
Associate Justice

1988 - 1997
Rhode Island District Court
1 Dorrance Plaza
Providence, Rhode Island 02903
Associate Judge

1984 – 1988
Thompson and Thompson
Attorneys at Law
94 Gallatin Street
Providence, Rhode Island 02906
Senior Partner

1980 – 1984
O. Rogeriee Thompson, Solo Practitioner
94 Gallatin Street
Providence, Rhode Island 02906

1980 – 1982
Assistant City Solicitor
City of Providence
25 Dorrance Street
Providence, Rhode Island 02903

1979 – 1980
McKinnon and Fortunato
1168 Newport Avenue
Pawtucket, Rhode Island 02861
Associate

1976 – 1979
Rhode Island Legal Services, Inc.
56 Pine Street, 4th floor,
Providence, Rhode Island 02903
Senior Staff Attorney and Family Law Manager
Legal intern (1974)

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1975
Harvard Legal Aid Bureau
23 Everett Street
Cambridge, MA 02138
law clerk

1973
Providence Civic Center
(now Dunkin Donuts Center)
One LaSalle Square
Providence, Rhode Island 02903
cashier

Other Affiliations:

Director, Nellie Mae Education Foundation, Inc.
1250 Hancock Street, Suite 205 N
Quincy, Massachusetts 02169-4331

Director, The College Crusade of Rhode Island, Inc.
(Formerly known as the Rhode Island Children's Crusade)
134 Thurbers Avenue, Suite #111
Providence, Rhode Island 02905

Trustee, YMCA of Greater Providence, Inc.
222 Richmond Street, Suite 302
Providence, Rhode Island 02903

Trustee, Brown University
Box 1822, Brown University
Providence, Rhode Island 02912

Director, Shipwatch Horizontal Property Regime
7600 Palmetto Drive
Isle of Palms, South Carolina 29451

President's Leadership Council,
Rhode Island Save The Bay, Inc.
100 Save The Bay Drive
Providence, Rhode Island 02905

Public Advisory Board, Dorcas Place, Inc.
220 Elmwood Avenue
Providence, Rhode Island 02907

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Member, Butler Hospital Corporation
345 Blackstone Blvd.
Providence, Rhode Island 02906

Director and Vice-Chair, Women's Fund of Rhode Island
One Union Station
Providence, Rhode Island 02903

Trustee, World Learning Inc.
Kipling Road, PO Box 676
Brattleboro, Vermont 05302

President, Roger Williams University American Inns of Court
Roger Williams University
Ten Metacom Avenue
Bristol, Rhode Island 02809

Visiting Committee, The Kennedy School of Government
79 John F. Kennedy Street
Cambridge, Massachusetts 02138

Director, YMCA of Greater Providence, Inc.
222 Richmond Street, Suite 302
Providence, Rhode Island 02903

Trustee, Save The Bay, Inc.
100 Save the Bay Drive
Providence, Rhode Island 02905

Trustee, Bryant College
(now Bryant University)
1150 Douglas Pike
Smithfield, Rhode Island 02917

Director, Hospice Care of Rhode Island, Inc.
(now Home and Hospice Care of Rhode Island, Inc.)
169 George Street
Pawtucket, Rhode Island 02860

Director, Rhode Island Legal Service, Inc.
56 Pine Street, 4th floor
Providence, Rhode Island 02903

Distribution Committee
Citizen's Community Foundation
c/o Citizen's Bank of Rhode Island

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870 Westminster Street
Providence, Rhode Island 02903

Public Director
Delta Dental of Rhode Island
10 Charles Street
Providence, Rhode Island 02904

Trustee, Rhode Historical Society
110 Benevolent Street
Providence, Rhode Island 02906

Director, Rhode Island Women's Center
P O Box 60330
Providence, Rhode Island 02906

Director, John Hope Settlement House, Inc.
7 Thomas Whitten Way
Providence, Rhode Island 02903

Director, Urban League of Rhode Island
246 Prarie Avenue
Providence, Rhode Island 02905

Director, Elmwood Neighborhood Housing Association
(now The Elmwood Foundation)
693 Broad Street
Providence, Rhode Island 02903

Director, Justice Resource Corporation
943 Park Avenue
Cranston, Rhode Island 02910

Rhode Island Anti-Drug Coalition
(I believe RI's is now defunct but Boston chapter address follows)
715 Albany Street, 580 3rd Floor
Boston, Massachusetts 02118

7. **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, and whether you have registered for selective service.

I have not served in the military.

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8. **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.

Rhode Island Women's Bar Association, Ada Sawyer award
Honorary Degree Recipient, Doctor of Humane Letters, Bryant College, 2000
Honorary Degree Recipient, University of Rhode Island, 1992
Rhode Island Alpha Chapter of Phi Beta Kappa
Reginald Heber Smith Community Lawyer Fellowship Program
Magical Circle Honoree, Big Sisters of Rhode Island
Samuel H. Johnson, SSSP Foundation Education Award
Rhode Island Association for Justice, Judicial Merit Award
Dorcas Place, Deborah Thompson Sustaining Spirit Award
Women's Center of Rhode Island, Women of Excellence Award
Scarsdale High School Distinguished Alumni Award
Honorary Inductee, Alpha Phi Sigma, National Criminal Justice Honor Society
Urban League of Rhode Island, Marguerite Beaubien Community Service Award
Kent County Bar Association, Lifetime Award
Honorary Inductee, Women in Education
Rhode Island Black Heritage Society, William A. Heathman Award for Law and Justice
National Association for the Advancement of Colored People, Providence Chapter, Thurgood Marshall Award for Contributions to Legal Profession
National Association for the Advancement of Colored People, Providence Chapter, Recognition of Achievement in the Area of Judication (sic)
Mora E. Brown Hammonds Scholarship Fund Award, Exemplary Model for the Youth of RI Community
Civilian Service Award, RI Minority Police Officer's Association
Rhode Island Coalition for Affirmative Action, Women Who Make a Difference
Brown University's 100 Most Distinguished Alumni of the Century
The Rhode Island Historical Society's History Makers Salute
Featured Rhode Islander, NBC 10 Biographies
John Hope Settlement House Community Service Award
Certificate of Appreciation, Cranston Public Schools, Volunteer Contributions to the School System
WLNE-TV "Freedom Torch Award"
Proclamation from Hon. Bruce Sundlun, former Rhode Island Governor, in recognition of my efforts to protect ethnic and cultural tolerance in RI
National Association for the Advancement of Colored People, Judicial Achievement Award
Narragansett Indian Tribe, Inducted as Honorary Tribal Member
Rhode Island Federation of Business and Professional Women, "Woman of the Year" Award
Rhode Island Medical Society, Leadership Contribution to Medical Internship Program
Rhode Island Working Women, "Woman of the Year"
Johnson and Wales Graduate School in recognition of outstanding services and contributions to the Graduate School

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Epsilon Tau Omega Chapter Alpha Kapa Sorority, Sorror of the Year
Rhode Island Black Heritage Society Achievement Award
Rhode Island Black Heritage Society Salute to Inspiration
Commanders of the Rite 33 degrees, PHA Orient of Rhode Island , Recognition for Outstanding Achievement in the Rhode Island Community
Proclamation from Hon. Joseph R. Paolino, Jr., Providence Rhode Island Mayor naming April 26, 1988 O. Rogeriee Thompson Day in recognition of achievements
Federation of Business and Professional Women, Woman of the Year
Rhode Island Minority Police Officer's Association, Civilian Service Award
Recipient of the "Key To The City" from Greenville, South Carolina
Certificate of Commendation from RI Bar Association for participation in the Volunteer Lawyer Program
Certificate of Appreciation from Little Rhode Boys' State Program in recognition of my participation
Women's Political Caucus, honoree for Contributions and Commitment to Women
Certificate of Appreciation, Hon. Kathleen S. Connell, Rhode Island Secretary of State, contributions to the Legal Profession
Proclamation from Hon. Richard A. Licht, Rhode Island Lieutenant Governor, recognition of contributions and commitment to Women in the Field of Law
Foster Parents Plan of Rhode Island, Certification of Appreciation for contributions to Program
Rhode Island Legal Education Partnership, Appreciation for work as Attorney Advisor and Mock Trial Judge

9. **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.

Chair, Rhode Island Supreme Court Ad Hoc Task Force for the Study of Limited English Speaking Litigants—1993 to date
Rhode Island Supreme Court Future of the Courts Committee
Rhode Island Supreme Court Permanent Committee on Women and Minorities
Rhode Island Supreme Court Committee on Women and the Courts
Rhode Island Trial Judges Association
State of Rhode Island Judicial Council
National Bar Association
American Bar Association
Member, Rhode Island Bar Association
Rhode Island Legal Services Statewide Planning Committee for Civil Legal Services in Rhode Island
Rhode Island Bar Association House of Delegates
Rhode Island Bar Association Superior Court Bench/Bar Committee
Rhode Island Bar Association District Court Bench/Bar Committee
Rhode Island Bar Association Committee on Minority Participation
Rhode Island Thurgood Marshall Law Society of Rhode Island
Rhode Island Women's Bar Association

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Rhode Island Coalition of Women Attorneys
Rhode Island Black Lawyers Association, Secretary 1995
Attorney General's Task Force on Domestic Violence
President, Roger Williams University American Inns of Court, 2006
St. Thomas Moore Society of Rhode Island
National Association of Women Judges

10. **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.

Rhode Island Bar, admitted 1976

There has been no lapse in membership.

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.

Rhode Island courts, 1976
United States District Court for the District of Rhode Island, 1976
United States Court of Appeals for the First Circuit, 1979
Supreme Court of the United States, 1987

There have been no lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, 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.

Rhode Island Urban Education Task Force, 2008 to date
Brown University, Trustee Emerita, 2007 to date
Brown University, Commission to Commemorate the History of Slavery in Rhode Island, 2007 to date
Brown University, Fund for the Children of Providence, 2008 to date
Appalachian Mountain Club, 2000 to date
ACLU, Rhode Island Chapter, 1995 to date
Boston University Alumni Association, 1976 to date

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University of Connecticut Parent Foundation, 2000 to date
Sierra Club, 2005 to date
Rhode Island School of Design Museum, 1990 to date
National Coalition of 100 Black Women, Inc. Rhode Island Chapter, 2005 to 2008
Bryant College Trustee Emerita, 1997 to date
Bryant College, Ad Hoc Committee to Study Campus Environment, 1998 to 2000
Chair, Bryant College Sexual Harassment Task Force, 1994
Theta Psi Omega Chapter of Alpha Kappa Alpha
National Association for the Advancement of Colored People—lifetime membership
Member, Advisory Committee for the Establishment of URI Center for Feminist Studies, 1994 to 1999
World Affairs Council, Volunteer, 1995 to 1998
National Association for Female Executives, 1981 to 1987

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, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin 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.

None of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

12. **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. Supply four (4) copies of all published material to the Committee.

Wrote CLE training manual for the Rhode Island Bar Association, Civil Practice in the Rhode Island District Court, in conjunction with CLE Presentation, 1996.

Co-Author of 'The Defense Lawyers Training Manual for Child Welfare Litigation.' Part of training module for defense counsel in Child Welfare Litigation. The module contained a workbook, practice manual and video taped court procedure to be used in conjunction with manual. 1987

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Authored a series of articles entitled "You and The Law" published in the community newspaper, 'The Ebenezer Grapevine.' 1980 – 1983.

Not all of these materials are currently available to provide to the Committee.

b. 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, 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. 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.

I twice testified before a Rhode Island General Assembly Legislative Committee, many years ago in support of reforms to the Residential Landlord /Tenant Statute and more recently, in opposition to a bill which would change Rhode Island's judicial tenure law from lifetime appointment to election of judges. No transcripts were made.

I gave public comment while proceeding through the state judicial nominating, confirmation and swearing in proceedings for the Rhode Island District Court in 1987 and 1988 and for the Rhode Island Superior Court in 1997. I gave the Judicial Nominating Commission and Senate Judiciary Committee information about my education, legal experience and background and general qualifications for serving on the State Judiciary. At my swearing in ceremonies I gave thanks to family and friends and spoke about my fervent desire to serve the state with honor and distinction.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. 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 recording of your remarks, 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, furnish a copy of any outline or notes from which you spoke.

I have given many speeches and presentations to many groups since leaving law school, have served on numerous panels and discussion groups, and have given

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many lectures. I never prepare formal speeches when addressing an audience but rely only on broad outlines of ideas I intend to cover. The following represents my best effort to answer in good faith.

Starting with legal presentations :

June 13, 2008-- Rhode Island Bar Association Annual Meeting—Presenter--Pre-trail Motion Practice—RI Convention Center

May 22, 2008-- Washington County Bar Association—Presenter—View From the Washington County Bench—Spain Restaurant, Narragansett

November 2, 2007-- National Business Institute (NBI)—Presenter—What Civil Court Judges Want You to Know—Radisson Hotel, Warwick

February 17, 2007—Roger Williams University Inn of Courts—Presenter—Police Prosecution in the Courts—Courtyard by Marriot, Providence

January 8, 2007-- Rhode Island Trial Lawyers Association—Presenter—View from the Bench—Civil Practice in Rhode Island—Rhode Island Marriott, Providence

September 13, 2006-- Kent County Bar Association—Presenter—From the Judges—What You Should Know—E. Greenwich

January 25, 2005— Rhode Island Trial Lawyers Association—Presenter—View from the Bench—Rhode Island Marriott, Providence

August 30, 2004--Kent County Bar Association—Presenter—Best and Worse Trial Practices—West Warwick

June 11, 2004-- Rhode Island Bar Association Annual Meeting—Presenter—Civil Law: Civil Law Update—Rhode Island Convention Center

March 25, 2004—Roger Williams University Inn of Courts—Presenter—Racial Issues in the Justice System—RWU campus

June 13, 2003-- Rhode Island Bar Association Annual Meeting—New Lawyer Training Diversity Symposium—Rhode Island Convention Center

February 26, 2003—Rhode Island Bar Association and Supreme Court Committee on Women and Minorities, New Lawyer Training—Practice with a Diverse Clientele—Westin Hotel

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February 3, 2003—Rhode Island Bar Association and Supreme Court Committee on Women and Minorities, New Lawyer Training—Ethical Obligations of Practicing Attorneys—Radisson

September 13, 2002—Rhode Island Trial Lawyers Association—Presenter—View From The Bench—Westin Hotel

June 14, 2002-- Rhode Island Bar Association Annual Meeting—New Lawyer Training Diversity Symposium—Rhode Island Convention Center

June 13, 2002—Rhode Island Bar Association Annual Meeting—Media, Ethics & the Law—Rhode Island Convention Center

February 28, 2002—Roger Williams University Inn of Courts—Presenter—Dealing With the Pro-se Adversary—Brown University Faculty Club

January 11, 2002—Rhode Island Bar Association and Supreme Court Committee on Women and Minorities—Presenter—Diversity Symposium—Radisson Airport Hotel

September 21, 2001—Rhode Island Judiciary Fall Judicial Conference—Group Facilitator—Looking Outside: Increasing Public Confidence in the Courts—Hotel Viking

April 2, 2001--Newport Bar Association—Criminal Procedure in the Superior Court—Newport County Court House

July 9—27, 2001—National Judicial College—Group Facilitator, General Jurisdiction Course—Reno, Nevada

January 25, 2001— Rhode Island Bar Association and Supreme Court Committee on Women and Minorities—Presenter—Diversity Symposium—Radisson Airport Hotel

June 8, 2000-- Rhode Island Bar Association Annual Meeting—Presenter—Bias in the Courts—Rhode Island Convention Center

February 28, 2000--Newport Bar Association—Sexual Offender Registration In Rhode Island—Newport County Court House

February 8, 2000—Rhode Island Trial Lawyers Association—View From the Bench—Marriot

February 2, 1999— Rhode Island Trial Lawyers Association—Presenter—View from the Bench—Rhode Island Marriott, Providence

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December 10, 1998-- Rhode Island Bar Association Annual Meeting—Presenter—Civil Law Practice in Rhode Island—A Practical Skills Seminar—Bar Association Headquarters

June 18, 1998-- Rhode Island Bar Association Annual Meeting—Presenter—Bias in the Courtroom

January 28, 1998—Rhode Island Trial Lawyers Association—Presenter—View from the Bench—Providence Biltmore

June 20, 1997— Rhode Island Bar Association Annual Meeting—Presenter—Computers for Increased Productivity

December 5, 1996— Rhode Island Bar Association—Presenter—Civil Law Practice in the Rhode Island District Court

November 19, 1996—Roger Williams University Inn of Courts—Presenter—Use and Abuse of Demonstrative Evidence—RWU Law School

June 20, 1996-- Rhode Island Bar Association Annual Meeting—Presenter—What You Should Know and When You Should Know It—Rhode Island Convention Center

June 15, 1995—Rhode Island Bar Association Annual Meeting—Presenter—Computer Internet Skills—Rhode Island Convention Center

June 17, 1994— Rhode Island Bar Association and The Advisory Committee on Women in the Courts—Presenter—Furthering Awareness of Gender Bias and Immigration Consequences of Criminal Convictions—RI Convention Center

March 10, 1994-- Rhode Island Bar Association —Presenter—Civil Law Practice—Johnson & Wales Airport Hotel, Warwick

June 10, 1993—Rhode Island Bar Association Annual Meeting—Presenter—The Secret of Your Success: The Best and The Worst Trial Tactics As Seen From the Bench—Convention Center

December 5, 1992—Rhode Island Supreme Court As Hoc Task Force on Limited English Speaking Litigants—Presenter--An Overview of the Criminal Justice System—RI College

June 7, 1990-- Rhode Island Bar Association Annual Meeting—Presenter—Domestic Relations Training Seminar

September 19, 1987-- Rhode Island Bar Association—Presenter--Family Law Updates—Marriot

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March 27—March 30, 1984—American Bar Association, National Institute of Trial Advocacy, and Legal Services Corporation—Faculty—The Art and Skills of Trial Advocacy

I have participated in CLE presentations teaching Trial advocacy Skills and Basic Lawyering Skills for National Legal Services, Inc., Rhode Island Legal Services, Inc., and National Institute of Trial Advocacy, however I have discarded those calendars and can no longer produce the specifics. These trainings took place in Albuquerque, New Mexico, Portland Oregon, Seattle Washington, Cleveland Ohio, Des Moines Iowa, and Philadelphia, Pennsylvania and Providence, Rhode Island.

I have addressed many different civic, professional and other associations. Each address was unique and tailored to the organizations referenced below and the occasion. Topics have included education issues from K throughout graduate school, domestic violence and its prevention, self improvement and getting ahead, issues related to minority and women's rights, topics relevant to children and families, balancing career and personal choices, celebration of national and local holidays and historical events, youth empowerment, overcoming personal challenges, African American leadership, voter registration, legal education and court procedures, poverty related issues, etc. I have no prepared texts or existing notes. Such presentations include the following:

The American Baptist Women's Ministries for the State of Rhode Island
Ameri-Corps Partners in Learning
Association of Internship Educators
Bank of America
Bedenbaugh Family Reunion Celebration
Black Worker for Justice
The Black Women's Alliance
Boy Scout Troop #22, Davisville, RI
Boy Scout Troop #99, St. Paul's Church, Cranston
Boys and Girls Club
Cape Verdean American Reunion
Caritas House, Inc.
Casey Family Services, Inc.
Cathedral of St. John
City Girls, City Guys, Inc.
The College Board's New England
Commanders of the Rite Free Masons
Commanders of the Rite 33°, P.H.A Orient of Rhode Island
Dorcas Place
The Elks, New England Conference
Epsilon Tau Omega Chapter of Alpha Kappa Alpha Sorority
Family Court of Rhode Island Explorer Program

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Friends of the Jamestown Library
Girl Scout, Cranston Troop
Harvard/Pilgrim Health Care of New England (HPHC)
The International Institute
John Hope Settlement House
Justice Assistance Program
Juvenile Justice Advisory committee
Law Enforcement Advocacy Program (LEAP)
Leadership Rhode Island
Little Rhode Boys State Program
Mora E. Brown Hammonds Scholarship Fund Committee
Metropolitan Insurance Company
NAACP (National Association for the Advancement of Colored People), Providence Branch
National Bar Association
National Coalition of 100 Black Women, Rhode Island Chapter
National Education Association
National Education Consortium for Careers in Law
National Organization for Women, RI Chapter,
Nellie Mae Education Foundation
New England Board of Higher Education (NEBHE)
National Society for Internships and Experiential Education
Newport's Martin Luther King Center
Phoenix House New England
Providence City Hall
RI Affirmative Action Professionals
RI Amyotrophic Lateral Sclerosis Association (ALS)
RI Association of Colored Women's Club, Inc.
RI Community Food Bank
RI Fraud Investigators Association
Rhode Island Federation of Business and Professional Women
Rhode Island Association of IRS Workers
Rhode Island Association for Women in Education
Rhode Island Black and Brown Fund
Rhode Island Black Heritage Society
Rhode Island Business and Professional Women, Inc.
Rhode Island Children's Crusade
Rhode Island Coalition of Affirmative Action Professionals
Rhode Island Coalition Against Domestic Violence
Rhode Island Commission for Human Rights.
Rhode Island Department of Corrections
Rhode Island Legal Education Partnership
Rhode Island Family Court
Rhode Island Fund for Community Progress
Rhode Island Historical Society
Rhode Island Ministerial Alliance

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Rhode Island Minority Police Association
Rhode Island Select Commission on Race & Police-Community Relations
Rhode Island Service Alliance
Rhode Island State House
Rhode Island Supreme Court
Rhode Island Women's First Organization
Rhode Island Women in Higher Education
Rhode Island Women's Network
Rhode Island Women's Political Caucus
Rhode Island Working Women, Inc.
State of Rhode Island Justice Commission
Saint James Baptist Church
Scarsdale High School Alumni Association
Sexual Assault and Trauma Center
South County Coalition Against Racism
Theta Psi Omega Chapter of Alpha Kappa Alpha
Trinity Youth Group
Union Baptist Church
United Way of Southeastern New England
Urban League of Rhode Island
URICCE Brown Bag Lunch Series
Volunteers in Providence Schools
Women's Center of Rhode Island
Women's Health Collective
Women in Transition, Inc.
World Learning, Inc.
YMCA
YWCA of Northern RI
Youth In Action, Inc.

I am regularly invited to give speeches and because of my belief that the judiciary has an obligation to educate the public about the judicial system and present a positive public image of the court in general, I accept these invitations as time permits. In that spirit I have addressed students at many public and private colleges in and outside the state of Rhode Island including but not limited to following.

Boston University Law School
765 Commonwealth Avenue
Boston, MA

- December 1, 1997--Mentoring Reception remarks to new law students--at 62 Bay State Road, #1, Boston, MA
- November, 1996—Stone Moot Court Competition—Presiding Judge--campus

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Brown University
Box 1887
Providence, RI 02912

- May 1, 2005—Remembering Brown vs. Board of Education—Panelist of Lawyers and Judges—campus
- May 31, 2004--Brown University Center for the Study of Race and Ethnicity in America—Commencement Address—"Celebrating Diversity"—CAMPUS
- May 26, 2003—Department of Ethnic Studies—post graduation ceremony remarks
- April 25, 2003—African American Student Association—career talk
- February 25, 2003—Pembroke Center—Speaker—International Women's Forum
- October 23, 2002—Guess Lecturer--Attributes of Leadership Class--campus May 26, 2002—Phi Beta Kappa speech January 24, 2002--Futures Project—panelist—New York City
- February 13, 2002—Pembroke Center—panelist—Professional Women's Career Presentation—campus
- October 10, 2001—Guest Lecturer—Attributes of Leadership Class
- August 9, 2001-Lecturer—Summer Studies Course on Legal Education
- March 23, 2001—Informal discussion with Women of Color
- February 3, 2001—African American Career Forum—Panelist
- November 14, 2000—Color of Justice Forum—Panelist--campus
- November 8, 2000—Guest Lecturer—Journalism Class
- August 23, 2000 and August 19, 2001--Brown University Summer Studies Course on Legal Education--"The Practice of Law in the U.S."—my courtroom
- August 3, 2000—Brown Mock Trial—Presiding Justice
- July 3, 2000—Summer Studies Course on Legal Education—Presided over Mock Trial
- February 12, 2000—The Meaning of Race and Blackness in the Americas Contemporary Perspectives—"Race Rights and the Law in the United States and Brazil"-campus
- November 29, 1999—Guest Lecturer—Political Science Class
- September 27, 1999--Brown Public Forum "Justice for All: Affirmative Action and the American Ideal and the Meaning of Race and Blackness in the Americas Perspectives" with Judges Bruce Selya and Joseph Tauro)--campus
- July 26, 1999—Guest Lecturer—Journalism Course
- March 18, 1999--Brown University Center for the Study of Race and Ethnicity in America—"Historical Perspective and Contemporary Trends in the Criminal Justice System: Questions About Race and Race Relations"—held on campus

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- March 15, 1999—Phi Beta Kappa—Induction Ceremony, key note—"Personal Reflections on Otherness"--campus
- August 8, 1998—Summer Studies Course on Legal Education—Presided over Mock Trial—my courtroom
- July 28, 1998—Summer Studies Course on Legal Education—Guest Speaker—my court room
- August 18, 1997 Brown University Journalism Course
- July 29, 1997 Brown University Leadership Course "The Essentials of Leadership"
- March 12, 1997—Celebration of Women's History Month, Women, The Law and The Women's Movement—Panelist—Crystal Room
- May 27, 1995—Brown Graduation Forum—Blacks in Government--Panelist
- March 6, 1995—Brown Forum—Panelist—Career Forum
- October 11, 1991—Women's Career Forum
- May 27, 1991—Brown Graduation Reunion Forum—15 Years Later
- March 10, 1991—Brown Forum—"Birth of a Nation in hindsight"--Panelist

Bryant University
1150 Douglas Pike
Smithfield, RI 02907

- March 26, 2003--College Committee on Sexual Assault—"Third Mock Trial," Presiding Judge and commentator
- April 31, 2001—Women in Law Forum
- March 27, 2001—Career Forum with Students of Color
- October 27, 1998— College Committee on Sexual Assault—"Second Mock Trial," Presiding Judge and commentator
- October 17, 1997—Annual Conference RI Academic Support Network for African American, Hispanic, Asian and Native American High School and College Students—Public Service—Panelist
- September 15, 1997--Bryant College Women's Summit Monday before "Mission Possible or Impossible: Integrating Work and Family"
- February 15, 1995—Forum, The Glass Ceiling: Fact or Fiction —Panelist
- February 15, 1994-- College Committee on Sexual Assault—"Mock Trial," Presiding Judge and commentator

Community College of Rhode Island

- October 15, 2005—College Fair Career Forum
- November 29, 2001—The Carlotti Colloquium—Panelist--The Indomitable Spirit, the creative process as it relates to law
- February 5, 1997—Career Forum—Opportunities in the Law
- April 1, 1992—Career Forum--Providence Campus

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Johnson and Wales University
8 Abbott Park Place
Providence, RI 02903

- November 6, 2001--Legal Studies Department, The Johnson and Wales University Distinguished Lecture Series—"Recent RI Events in Criminal Law"--campus
- November 14, 1999—Diversity and the Future "2000" Initiative—"The Spirit Warrior's Dream"—campus
- November 29, 1995—Celebrations, An African Odyssey--Panelist
- February 13, 1992—Guest Lecturer—Careers in Law
- February 16, 1990—Guest Speaker, Distinguished Lecture Series—Women in the Law

Providence College
549 River Avenue
Providence, RI 02918

- October 23, 2004—Minority Student Legal Career Forum
- March 20, 2001—RI Bar Association Committee on Minorities in the Bar—Career Forum
- November 18, 2003—Guest Lecturer—"Women, Crime & Justice" class--campus
- May 1, 1998--Program in Black Studies at Providence College First Annual Commencement Banquet –keynote "Recognizing the Many Accomplishments of Scholars of Color"—event held on campus
- October 2, 1997—RICH Public Forum—Whose Life Is It Anyway?: The Right to Choose to Live—or Die—Panelist—campus
- October 18, 1996—Panelist–Substantive Due Process and the Jury System
- April 10, 1996—Guest Lecturer—Political Science Class
- December 12, 1990—Luncheon Guest Speaker—Rhode Island Legal System

Rhode Island College
600 Mount Pleasant Avenue
Providence, Rhode Island

- April 16, 1998—Guest Speaker—Minorities in the Law
- February 11, 1993—Guest Speaker--George Wiley Memorial Lecture—"The Family: A Black and White Issue?"

Roger Williams University (Undergraduate School)
10 Metacom Avenue
Bristol, RI 02809

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- October 15, 2004—Career Forum with Minority Students--Roger Williams University Minority Mentoring Program
- May 7, 2002--RWU Bridge to success Program and RWU Multicultural Affairs Center
- May 1, 2001—Bridges to Success Law Day Program—MLK Center
- February 24, 1993 Guest—RWU Tea at Three Program—"The Life of a Young, Black Woman in America"

Roger Williams Law School
10 Metacom Avenue
Bristol, RI 02809

- April 22, 2009--Trial Advocacy Class—Mock Trial
- February 17, 2009—Guest Lecturer--Trial Advocacy Class
- February 27, 2007—Comments to Law School Accreditation Team
- November 18, 2005—Career Day
- April 14, 2004--Thurgood Marshall Memorial Lecture—Panelist--"The Legacy of Brown v. Board of Education"—campus event
- November 2, 2003, Brown University/RWU Mock Trial Invitational—Licht Judicial Complex
- October 20, 2003—Informal discussion with Minority Law Students
- March 14, 2003—Guest Lecturer—Trial Skills Course campus
- June 13, 2002--Law Alumni Association—"Media, Ethics and the Law"—campus event
- June 4, 2002—Guest Lecturer—Criminal Defense Advocacy Skills class
- April 1, 2000--Future of the Judicial System Forum—Panelist
- March 23, 2000--Women's Law Student Association—Informal Discussion of Women in the Law—campus
- February 29, 2000—RWU's National Minority Law Student Recruitment Month—"Preparing for a Career in Law" and Q&A—campus
- November 19, 1999—Trial Advocacy Class—Mock Trial
- November 21, 1996—Guest Lecturer—Trial Advocacy Course—"Mock Trial Competition"
- March 9, 1994—Guest Lecturer—Trial Advocacy course

Salve Regina University
100 Ochre Point Avenue
Newport, RI 02840

- March 24, 2009—Women's History Month—"Women Making History Today—campus event
- April 29, 2005—Administration of Justice Department, History of Law Day—"Equal Justice For All"—campus event
- May 25, 2000—Domestic Violence Forum—Panelist
- March 13, 1989—Women's Resource Center—Career Discussion
- February 27, 1988—Career Forum

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Stonehill College
320 Washington Street
Easton, Massachusetts

- November 9, 1999—Fear No People Month—"Is There Inequity In Our Judicial System?"--campus

University of Rhode Island
Kingston, RI 02881

- April 11, 2003—Women of Color Conference—Women of Color in Politics and the Media
- March 4, 2003--URI Women's Center
- February 19, 2003—The Center for Nonviolence and Peace Studies—"Then and Now: Reflections of Local Civil Rights Activists"—campus
- June 21, 2002--URI Coastal Resources Summer Institute--Graduation Dinner-- International Coastal Leaders in Month Long Seminar—Watch Hill Inn
- February 7, 2001—RI Bar Association Committee on Minorities--Career Forum Minority Students
- October 18, 1997--Rhode Island Academic Support Network,—"Managing Career Choices, Goals and Expectations" held at Bryant University
- April 9, 1997—URI Women of Color Conference "How to be Successful in the Legal Profession"—event held on campus
- October 26, 1996--Rhode Island Partnership for research on Women and Gender—A Campus-Community Collaborative 'The Impact of Violence on the Community and Violence in Intimate Relationships
- March 26, 1995-- College of Continuing Education—Panelist--educational backgrounds, career achievements and strategies for success for Women
- February 1, 1994—Sexual Assault Date Rape Mock Trial
- November 26, 1991—Seminar on Domestic Violence
- December 13, 1988—Law Related Education Conference

University of Massachusetts at Dartmouth
285 Old Westport Road
North Dartmouth, Massachusetts

- April 28, 2005-- The Spotlight Program—Juvenile Law—campus event
- April 1, 2004-- The Spotlight Program—Juvenile Law—campus event
- March 21, 2002--The Spotlight Program—Juvenile Law—campus event
- October 9, 1997--The Spotlight Program—Juvenile Law—campus event
- November 14, 1996-- The Spotlight Program—Juvenile Law—campus event
- March 18, 1993--The Spotlight Program—Juvenile Law—campus event
- December 9, 1993--The Spotlight Program—Juvenile Law—campus event

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In addition, I have spoken to numerous classes, assemblies, or student organizations for Law Day and other events at many High Schools, Middle schools and Elementary schools. Such talks have included commencement speeches, discussions of the judicial process, role of courts, career day presentations, women in public service, talks to government classes, and presentations on particular legal topics related to or of interest to youth.

e. 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.

February 15, 2009; I appeared with two others on a local access television show, "Capital Colors" hosted by State Representative Anastasia Williams and by Peter Wells, owner and editor of local Rhode Island Community newspaper, "The Providence American." The panel discussed current public affairs in general.

October 16, 2006; I appeared on local Fox News, show hosted by Steve Aveson and Former Rhode Island Chief Justice Frank Williams. Show pertained to the opening of the new Kent County Court House where I then worked.

2005, *Portrait of O. Rogeriee Thompson;* Biography Program, WJAR-TV, Cranston, RI

February 1, 2005; I appeared on local television show "Amazing Women" hosted by Deborah Ruggiero. The title of the show was "Amazing Women in the Judiciary--Rendering Justice and Compelling Cases."

March 15, 2001; I appeared on WJAR--Channel 10, Panelist, Public Image and Perception of the Judiciary

February 2, 2000; I appeared on WJAR--Channel 10, Biographies—Brief discussion of my life and career

April 28, 1999--ABC-TV Channel 6—The Truman Taylor Show Roundtable with Truman Taylor and Bob Whitcomb of the Providence Journal editorial pages 10 Orms Street, Providence, Rhode Island, Public Image and Perception of the Judiciary

November 16, 1998, appeared on WJAR--Channel 10, No recollection of the subject matter.

November 19, 1997-- The Truman Taylor Show-- No recollection of the subject matter.

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March 27 through April 4, 1997--The Rhode Island Soapbox Cable TV, c/o Mr. and Mrs. Barry Schiller, 76 Sunset Ave., North Providence, RI 02911 Program aired for--International Women's Day Program-- What is the History of this Important Day for Women? How far have we come and how far do we still have to travel on the road to empowerment?
February 22, 1994—Channel 36, Public TV-- No recollection of the subject matter.

May 20, 1993-- Channel 36, Public TV-- No recollection of the subject matter.

August 22, 1980--Channel 12 TV— No recollection of the subject matter.

Newspaper interviews:

February 14, 2008 - Providence Journal

April 9, 2006 - Providence Journal

March 23, 2006 - rezaritesri.com and The Providence American

January 4, 2005 - The Providence Phoenix

November 23, 2004 - Providence Journal

2004, She Shines Magazine

May 18, 2004 - Providence Journal

May 15, 2004 - Providence Journal

April 12, 2004 - Providence Journal

April 4, 2004 - Providence Journal

February 22, 2004 - Providence Journal

February/March 2004 - Destiny Magazine

July 10, 2003 - Providence Journal

February 18, 2003 - Providence Journal

December 5, 2002 - Providence Journal

May 20, 2001- Providence Journal

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October 22, 1999 - Newport Daily News

November 16, 1997 - Providence Journal

November 4, 1997 - The Greenville News
October 19, 1997 - The Providence Sunday Journal

October 14, 1997 - Providence Journal Bulletin

March 1997 - The Rhode Island Monthly Magazine

February 9, 1997 - Providence Journal

February 15, 1996 - Providence Journal

May 16, 1995 - Providence Journal

February 21, 1994 - Providence Journal

February 19, 1992 - Providence Journal

November 4, 1989 - Providence Journal

October 30, 1989 - Providence Journal

July 26, 1991 - National Center on Women & Family Law, Inc.

March 17, 1991 - Providence Journal

August 12, 1990 - Providence Journal

January 21, 1990 - Providence Journal

February 1, 1990 - Providence Journal

April 1, 1990 - Providence Journal

November 4, 1989 - Providence Journal

October 30, 1989 - Providence Journal

May 23 - June 5, 1988 - Ocean State Business Magazine

December, 1987 - Providence Journal

October 11, 1987 - Providence Journal

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January 3, 1986 - Providence Journal

July 17, 1983 - Providence Journal

March 3, 1982 - Providence Evening Bulletin

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

1997 – Present
I was appointed Associate Justice, Rhode Island Superior Court by Governor Lincoln Almond.
Superior Court is a court of general jurisdiction and is Rhode Island's highest level trial court. Justices preside over criminal felony proceedings, civil cases with damages above $10,000.00, matters of general equity, Administrative and District Court appeals. Written decisions are issued at times.

1988 – 1997
I was appointed by Governor Edward DiPrete to be an Associate Judge, Rhode Island District Court.
District Court is a court of limited jurisdiction and is Rhode Island's lower level trial court. Judges preside over misdemeanor criminal proceedings, felony arraignments and bail hearings, civil cases with damages up to ten thousand dollars, housing and eviction matters, administrative appeals, civil commitment proceedings, domestic abuse restraining orders, tax appeals.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? I have presided over hundreds of cases.

   i. Of these, approximately what percent were:

   jury trials? _40_ %; bench trials _60_ % [total 100%]

   civil proceedings? _60_ %; criminal proceedings? _40_ % [total 100%]

b. Provide citations for all opinions you have written, including concurrences and dissents.

   Because of the volume of cases we handle on a daily basis, written decisions are not routine in our courts. The decisions cited in the attached list account for about 1% of my total work performance over the past 20 years.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the

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case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. Woodland Manor, III Associates, L.P. v. Reisma, No. PC-89-2447, 2003 WL 1224248 (R.I. Super. Feb. 24, 2003), available at http://www.courts.ri.gov/superior/pdf/89-2447-5-23-03.pdf, clarified by No. PC-89-2447, 2003 WL 21297130 (R.I. Super. May 23, 2003).

   Suit by developer against the State of Rhode Island Department of Environmental Management alleging an unconstitutional taking of property without just compensation. After a bench trial I entered judgment for the Plaintiff.

   Attorney for Plaintiff
   Edward Miggiacomo
   1 Citizens Plaza, 8th Floor
   Providence, Rhode Island 02903
   401-274-7200

   Attorney for Defendant
   James Lee
   Assistant Attorney General
   150 South Main Street
   Providence, Rhode Island
   401-274-4400

2. State v. Briggs, No. N1-97-0276A (R.I. Super. Jan. 16, 2003), available at http://www.courts.ri.gov/superior/pdf/97-0276.pdf, aff'd 886 A.2d 735 (R.I. 2005).

   State brought first degree murder charges against the Defendant, Chester Briggs. After jury trial, guilty verdict returned.

   Attorney for State
   Stephen Dambruch (former Assistant Attorney General)
   US Attorney's Office
   50 Kennedy Plaza, 8th floor
   Providence, Rhode Island
   401-709-5000

   Randy White
   Assistant Attorney General
   150 South Main Street
   Providence, Rhode Island
   401-274-4400

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Attorney for Defendant
John F. Cicilline
381 Atwells Avenue
Providence, Rhode Island
401-709-5000

3. State v. Motyka, No. N1-99-0341A (R.I. Super. Jan. 23, 2001), available at http://www.courts.ri.gov/superior/pdf/99-0341.pdf, aff'd 893 A.2d 267 (R.I. 2006).

State brought first degree murder and first degree sexual assault charges against the Defendant, Jeremy Motyka. DNA material was primary evidence. After jury trial, guilty verdict returned.

Attorney for State
Stephen Dambruch (former Assistant Attorney General)
50 Kennedy Plaza, 8th floor
Providence, Rhode Island
401-709-5000

Jennifer Sternick (former Assistant Attorney General)
P.O. box 1172
Charlestown, RI
401-364-7399

Attorney for Defendant
Michael DiLauro
Assistant Public Defender
160 Pine Street
Providence, RI 02903
401-222-1526

4. State of Rhode Island vs. John Moniz No. NC-98-0098 (R.I. Super. 1998) and Department of Environmental Management v. John & Olivia Moniz, No. PC-98-0221 (R.I. Super. 1998)

Suit against landowners who illegally stored material considered toxic waste, to wit clam shells, on their farm. Consent decree was entered but efforts to enforce the decree lasted years in the courts. The defendants were incarcerated in an effort to force compliance.

Attorneys for the State
Stephen Dambruch (former Assistant Attorney General)
50 Kennedy Plaza, 8th floor
Providence, Rhode Island
401-709-5000

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Gary Powers
RI Department of Environmental Management
4808 Tower Hill Road
Wakefield, RI 02879
401-222-6607

Attorney for the Defendants
John Kupa
20 Oakdale Road
North Kingstown, RI 02852
401-294-5566

5. Rowey v. Children's Friend and Service, No. PC-98-0136 (R.I. Super. 1999), cert. denied, No. 99-466-M.P. (R.I. Oct. 28, 1999), available at http://www.courts.ri.gov/supreme/misc-orderspdf/99-466.pdf.
Consolidated with
Children's Friend & Service v. St. Paul Fire& Marine, Ins. Co., 893 A.2d 222, 2006 WL 238963, R.I., February 02, 2006(No. 2004-35-Appeal.

Parents of adopted child brought suit against the adoption agency alleging 'wrongful adoption,' to wit, the agency's failure to disclose substantive information about the child which would have been needed to enter into an informed adoption. I handled two aspects of the case. First, should the birth parents be contacted to seek information relative to the child's background? I ordered parents to be contacted by third party seeking their willingness to participate in the proceeding. Second, in the action by Children's Friend & Service against their insurance carrier, a jury concluded that the agency's policy was in effect at the time and thus, the carrier had a duty to defend the action.

Attorneys for the Plaintiff in Rowey
Thomas Dickinson
1315 Atwood Avenue
Johnston, RI 02919
401-490-8083

Diane Magee
572 Main Street
Warren, RI 02885
401-245-8550

Deborah Barclay
600 New London Avenue
Louis Pasteur Building 57
Cranston, RI 02920
401-462-2326

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Attorneys for the Defendant in Rowey
Ronald Langlois
2 Charles Street, 3rd Floor
Providence, RI 02904
401-351-9970

Stephen Prignano
Edwards, Angell, Palmer & Dodge
2800 Financial Plaza
Providence, RI 02903
401-276-6670

Attorney for Mary Moe, biological mother of Lisa Rowey
Michael Furtado
Furtado Legal Services
1 Grove Avenue
East Providence, RI 02914
401-228-6080

Attorney for the Plaintiff in Children's Friend & Service
Matthew Oliveiro
55 Dorrance Street Suite 400
Providence, Rhode Island 02903
401-861-2900

Attorney for the Defendant in Children's Friend and Service
Thomas Bender
Hanson Curran, LP
146 Westminster Street
Providence, RI 02903
401-421-2154

6. American Telephone & Telegraph Co. v. Clark, No. A.A. 94-15 (R.I. Dist. Apr. 22 1996); cert. denied, No. 96-253-M.P. (R.I. Apr. 4, 1997).

Telephone company appealed the state's tax levy on intrastate phone calls alleging the tax unconstitutional. State argued the validity of the tax. Court ruled the tax constitutional. RI Supreme Court denied cert indicating its agreement with the court's ruling.

Attorney for the Plaintiff
Marcia Ippolito
P/O. Box 1214
East Greenwich, Rhode Island

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7. Pastore v. Samson, 900 A.2d 267, 2006 WL 1652248, R.I., June 16, 2006 (No. 2005-110-MP.)

Plaintiff filed a medical negligence action against the Defendants doctor and hospital. Defendants objected to the production of certain hospital documents alleging privilege under RI's medical peer privilege law and alleging confidentiality under RI's Confidential Health care laws. Court ordered all records produced. Supreme Court upheld in part, reversed in part.

Attorneys for Plaintiff
Amato Deluca and
Miriam Weizenbaum
Deluca and Weizenbaum
199 North Main Street
Providence, Rhode Island 02903
401-453-1500

Attorneys for Defendants
Michael G. Sarli and
Matthew D. Rocheleau
Gidley, Sarli & Marusak, LLP
One Turks Head Place, Suite 900
Providence, Rhode Island 02903
401-274-6644

8. Blue Coast, Inc. vs. Suarez Corporation Industries, No. PC-98-0136 (R.I. Super. 1999)

Rhode Island Corporation filed collection action against out of state Corporation doing business in Rhode Island. Jury returned verdict for Plaintiff. Rhode Island Supreme Court upheld verdict.

Attorney for Plaintiff
Brian Newberry
Donavan Hatem, LLP
2 Seaport Lane, 8th floor
Boston, Massachusetts
617-406-4500

Attorney for Defendant
Melissa Horne
Winograd Shine & Zacks, P.C.
123 Dyer Street
Providence, Rhode Island 02903
401-273-8300

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9. Kathy L. Kennedy, Individually and as Representative of the Beneficiaries of the Estate of Jack Kennedy and Robert D. Kennedy, Individually and as Representative of the Beneficiaries of the Estate of Jack Kennedy v. David A. Carcieri, M.D., Women & Infants Hospital, and Ocean State Women's Health, Inc., No P.C.

Medical negligence action filed against defendants arising out of the still born death of plaintiffs' child. Jury returned a verdict for the defendants.

Attorney for Plaintiff
Phillip M. Weinstein
99 Wayland Avenue, Suite 200
Providence, Rhode Island
401-521-3500

Attorney for Defendant
David W. Carrol
Roberts, Carrol, Feldstein, and Pierce
10 Weybosset Street, 8th Floor
Providence, Rhode Island 02903
401-521-7000

10. Joel K. Gerstenblatt, Administrator of the Estate of Anthony A. Porter, and Joellyn M. Porter, as natural parent and next friend of Monica M. Porter, a minor Vs. Nordic Lodge, Inc., No. KC-01-563 (R.I. Super. 2001)

Dram shop wrongful death action. Jury returned a verdict for the Defendant.

Attorneys for Plaintiff
Donna DiDonato
Decof and Decof
1 Smith Hill
Providence, Rhode Island
401-272-1110

Patrick Barry
The Packett Building
155 South Main Street, Suite 304
Providence, Rhode Island 02903
401-274-5556

Attorney for Defendant
John J. Barton
10 Dorrance Street, Suite 700
Providence, Rhode Island 02903
401-273-7171

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d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. Daponte v. Ocean State Job Lot, Inc., No. WC-02-0646 (R.I. Super. Mar. 3, 2009), available at http://www.courts.ri.gov/superior/pdf/02-0646.pdf.

Attorneys for Plaintiff
Noelle Clapham
24 Salt Pond Road, Unit A-8
South Kingstown, Rhode Island 02879
401-783-3600

Stephen Robinson
155 South Main Street, 4th floor
Providence, RI 02903
401-331-6565

Attorney for Defendants
Joseph Whelan and Meghan Siket
Hinckley, Allen and Snyder, LLC
50 Kennedy Plaza Suite 1500
Providence, Rhode Island 02903
401-274-0457

2. Quidnessett Country Club, Inc. v. Bd. of Assessment Rev. of the Town of N. Kingstown, No. WC-04-0296 (R.I. Super. Sept. 8, 2008), available at http://www.courts.ri.gov/superior/pdf/04-0296.pdf.

Attorneys for Plaintiff
Brian Spero
The Beacon Mutual Insurance Company
One Beacon Center
Warwick, Rhode Island 02886
401-825-2725

James W. Ryan
Partridge Snow and Hahn
180 South Main Street
Providence, Rhode Island 02903
401-861-8200

Attorneys for Defendants
A. Lauriston Parks

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3. In re Estate of Downes, No. WP-07-0503 (R.I. Super. May 23, 2008), available at http://www.courts.ri.gov/superior/pdf/07-0503.pdf.

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4. Daly v. Bd. of Regents for Elementary and Secondary Educ., No. WC-06-0164 (R.I. Super. Jan. 15, 2008), available at http://www.courts.ri.gov/superior/pdf/06-0164.pdf, corrected Jan. 15, 2008, available at http://www.courts.ri.gov/superior/pdf/06-0164c.pdf.

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5. Washington Village Country Club v. Island Green Golf, LLC, No. KC-05-0553 (R.I. Super. Aug. 21, 2007), available at http://www.courts.ri.gov/superior/pdf/05-0553%20Washington%20Village%20Country%20Club%20v.%20Island%20Green%20Golf%20(MSJ)21.pdf.

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6. UAG West Bay AM, LLC v. Cambio, No. KC-05-0061 (R.I. Super. Nov. 21, 2006), available at http://www.courts.ri.gov/superior/pdf/05-0061.pdf.

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7. Coleman v. Windham Aviation, Inc., No. KC-04-0985 (R.I. Super. Aug. 18, 2005), available at http://www.courts.ri.gov/superior/pdf/04-0985.pdf, and No. KC-04-0985 (R.I. Super. Oct. 19, 2006), available at http://www.courts.ri.gov/superior/pdf/04-0985-10-19-06.pdf.

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8. Keane v. Mulligan, No. KC-02-0946 (R.I. Super. Jun. 23, 2005), available at http://www.courts.ri.gov/superior/pdf/02-0946.pdf.

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9. Mai v. Nolan, Nos. PC-01-0166 and PC-03-5094 (consolidated), 2005 WL 372047 (R.I. Super. Jan 19, 2005), available at http://www.courts.ri.gov/superior/pdf/01-0166.pdf.

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10. Abad v. City of Providence, Nos. PC-01-2223 and PC-01-2224 (consolidated) (R.I. Super. Oct. 5, 2004), available at http://www.courts.ri.gov/superior/pdf/01-2223.pdf, aff'd sub nom. Arena v. City of Providence, 919 A.2d 379 (R.I. 2007).

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e. Provide a list of all cases in which certiorari was requested or granted.

Neither the Rhode Island Supreme Court nor lower trial courts keep appellate records based upon the identity of the Trial Justice. Thus, having been a Rhode Island Trial Court Judge for over 20 years, I have produced the following list based upon the Westlaw data I have culled, my consultation with the Supreme Court Administrator and my own personal records.

Imperial Cas. and Indem. Co. v. Bellini, 746 A.2d 130, 2000 WL 195081, , R.I., February 16, 2000(No. 98-546-M.P.)

State v. Motyka, 893 A.2d 267, 2006 WL 694641, , R.I., March 21, 2006(No. 2002-403-C.A.)

Pastore v. Samson, 900 A.2d 1067, 2006 WL 1652248, , R.I., June 16, 2006(No. 2005-110-MP.)

State v. Badessa, 869 A.2d 61, 2005 WL 466052, , R.I., March 01, 2005(No. 2004-180-M.P.)

Haydon v. Stamas, 900 A. 2d. 1104, 2006 WL 1689208, , R.I., June 21, 2006(No. 2005-173-Appeal.)C.2004-0239.)

Mortgage Guar. & Title Co. v. Cunha, 745 A.2d 156, 2000 WL 157274, , R.I., February 11, 2000(No. 98-598-M.P.)

Bolton v. Quincy Mut. Fire Ins. Co., 730 A.2d 1079, 1999 WL 415400, , R.I., June 17, 1999(No. 98-399-M.P.)

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Zarella v. Minnesota Mutual Life Ins. Co., Not Reported in A.2d, 1999 WL 226223, , R.I.Super., April 14, 1999(No. CIV A 96-2782.)

Daniels v. Andrukiewicz, Not Reported in A.2d, 2002 WL 31867872, , R.I.Super., December 13, 2002(No. PC02-2782.)

Coleman v. Windham Aviation Inc., 2006 WL 3004071, , RI. Super., October 19, 2006 (C.A. No. KC 2004-0985)

State of Rhode Island v. Briggs, 886 A.2d 735, 2005 WL 3287950, , R.I., December 06, 2005(No. 2003-404-C.A.)

American Telephone and Telegraph Company and Tatty Communications of New England, Inc. v. R. Gary Clark, Tax Administrator, No. 96-253 (R.I. 1996) (order denying certiorari).

Maria Hanson v. Board of Review, Department of Employment and Training, No. 96-33 (R.I. 1996) (order denying certiorari).

Stephanie A. Niedzwiadek v. Joseph N. Laliberte, No. 99-170-M.P. (R.I. Sept. 9, 1999) (order denying certiorari)

Joseph L. Rowey, et. al. v. Children's Friend and Service, et. al., No. 99-466-M.P. (R.I. Oct. 28, 1999) (order denying certiorari)

Cardi et al v. Medical Homes of Rhode Island et al., 741 A.2d 278 (R.I. 1999)

Timothy Raiche v. Timothy Scott, No. WC-05-0336, *cert. denied*, No. 08-283-M.P. (R.I. July 16, 2009).

Robert Palmisciano v. Caroline Peck, No. WC-05-0683, *cert. denied*, No. 08-308-M.P. (R.I. May 21, 2009).

Jack Deraismes v. Bruce Ferguson, No. WC-07-0040, *cert. denied*, No. 09-44-M.P. (R.I. Mar. 12, 2009).

Bradley v. Moran, Nos. WC-06-0036 and WC-06-0366 (consolidated) (R.I. Super. Aug. 5, 2009), *cert. granted*, No. 09-235-M.P. (R.I. Sept. 16, 2009).

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

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Decisions which were affirmed in part and reversed in part:

Pastore v. Samson, 900 A.2d 1067, 2006 WL 1652248, , R.I., June 16, 2006(No. 2005-110-MP.)

Background: Medical malpractice action was brought against hospital and physicians by administratrix of patient's estate. I granted administratrix's motion to compel discovery related to credentialing of defendant physicians.

Holdings: On certiorari review, The Supreme Court, Frank J. Williams, C.J., held that: (1) statutes providing for medical peer-review privilege were subject to strict construction; (2) medical peer-review privilege did not extend to transcript of hearing before hospital committee investigating complaint against physician; (3) report of physicians conducting meeting pertaining to whether defendant physician failed to respond to patient who needed emergency room treatment came within scope of peer-review privilege, although list of physicians who conducted meeting did not; (4) peer-review privilege with respect to information originating with peer-review board did not preclude disclosure of other health care information obtained from original sources; (5) action for corporate negligence against hospital based on claim that hospital negligently credentialed patient's physician did not necessarily abrogate peer-review privilege; (6) trial court was required to determine and redact from documents subject to disclosure order medical information of other individuals; and (7) statute providing that records of board of medical licensure and discipline relating to complaints against a licensed medical practitioner are confidential did not necessarily create statutory privilege against disclosure of such information.

Affirmed in part; reversed in part; remanded.

Imperial Cas. and Indem. Co. v. Bellini, 746 A.2d 130, 2000 WL 195081, , R.I., February 16, 2000(No. 98-546-M.P.)

Liability insurer for judgment debtor's shareholder sought declaratory judgment that the debtor was not an insured. The judgment creditor brought an action against the insurer for reformation of the policy, estoppel or waiver, and bad faith. Cases were consolidated. I denied insurer's motions to dismiss, sever the bad-faith claim, and limit discovery. Insurer petitioned for writ of certiorari. The Supreme Court, Lederberg, J., held that: (1) the insurer was not entitled to dismissal in light of factual issues raised by the pleadings; (2) trial court should have severed bad-faith claim from other claims; and (3) the creditor was entitled to discovery of only some information in the claim file.

Petition granted in part and denied in part.

Providence Journal Co. v. Convention Center Authority, 774 A.2d 40, 2001 WL 699858, 29 Media L. Rep. 2217, , R.I., June 21, 2001(No. 99-320-Appeal.)

Newspaper brought action against Convention Center Authority to obtain disclosure of documents concerning golf tournament and convention center banquet. I entered summary judgment in favor of the Authority. Newspaper appealed. The Supreme Court, Goldberg, J., held that: (1) documents reflecting negotiations that led to the booking of the tournament and banquet were exempt

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from disclosure as confidential commercial or financial information, and (2) the final agreements were subject to disclosure with redaction of confidential or privileged financial information. Affirmed in part and reversed in part, and papers remanded.

Arena v. City of Providence, 919 A.2d 379, 2007 WL 1087343, 181 L.R.R.M. (BNA) 3307, R.I., April 12, 2007(No. 2005-207-A.)

Background: Retired members of city's fire department and police department brought action against city and members of city council, challenging city's application of cost-of-living-adjustment (COLA) in city ordinances to police and fire department employees who retired before effective dates of the ordinances, and seeking declaratory judgments, injunctions, and damages. I entered a bifurcated judgment in favor of plaintiffs. Defendants appealed.

Holdings: The Supreme Court, Williams, J., held that:
(1) Superior Court, not interest arbitration panel, had exclusive subject-matter jurisdiction; (2) terms of most recent, expired collective bargaining agreement (CBA) was not basis for determining proper COLA; (3) ordinance in effect at time of retirement governed COLA benefits; (4) plaintiffs had vested interest in lifetime five percent compounded COLA under the ordinance, and (5) Court would apply laches to apply five percent COLA prospectively only.

Affirmed in part; reversed and remanded in part.

Moseley v. Fitzgerald, 773 A.2d 254, 2001 WL 699821, , R.I., June 19, 2001(No. 99-544-Appeal.)

Parents of child injured in bicycle collision with guy wire supporting utility pole brought negligence action against city and telecommunications company. I granted summary judgment for city and company. Parents appealed. The Supreme Court held that: (1) company had duty to correct and warn of dangerous condition, and (2) parents' failure to give required notice to city precluded action against city.

Affirmed in part, vacated in part, and remanded.

Metro Properties, Inc. v. Yatsko, 763 A.2d 617, 2000 WL 1855105, , R.I., December 18, 2000(Nos. 99-353-Appeal.)

Broker for prospective purchaser brought action against vendor's broker to recover commission on theories of breach of contract, unjust enrichment, constructive trust, and fraud after tenant exercised a right of first refusal. Vendor's broker counterclaimed for attorney fees. I entered summary judgment in favor of vendor's broker and awarded attorney fees. Purchaser's broker appealed. The Supreme Court held that: (1) the agreement to share the commission needed to be in writing; (2) even if the agreement did not need to be in writing, the purchaser's broker was not the procuring cause and failed to establish reliance necessary for recovery on the theories of unjust enrichment, constructive trust, and fraud; and (3) the vendor's broker was not entitled to attorney fees.

Affirmed in part and reversed in part.

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Levin v. Kilborn, 756 A.2d 169, 2000 WL 800720, , R.I., June 19, 2000(No. 99-1-Appeal.)

Investor brought action against advisor and his employers to recover for securities fraud, breach of fiduciary duty, negligence, and misrepresentation. I dismissed the suit as barred by the statute of limitations. Investor appealed. The Supreme Court, Weisberger, C.J., held that: (1) the one-year statute of limitations on the investor's statutory claims began to run when the investor learned that the investment was worthless, and (2) the statutes of limitations in the Uniform Securities Act (USA) and the Securities Act of 1933 did not apply to the common-law claims.

Affirmed in part, reversed in part, and remanded.

Levin v. Kilborn, 756 A.2d 169, 2000 WL 800720, , R.I., June 19, 2000(No. 99-1-Appeal.)

Investor brought action against advisor and his employers to recover for securities fraud, breach of fiduciary duty, negligence, and misrepresentation. I dismissed the suit as barred by the statute of limitations. Investor appealed. The Supreme Court held that ; 91) the one year statute of limitations on the investor's statutory claims began to run when the investor learned that the investment was worthless, and (2) the statutes of limitations in the Uniform Securities Act (USA) and the Securities Act of 1933 did not apply to the common-law claims.

Affirmed in part, reversed in part, and remanded.

Cases reversed and remanded

State v. Badessa, 869 A.2d 61, 2005 WL 466052, , R.I., March 01, 2005(No. 2004-180-M.P.)

Background: Petitioners sought to expunge record of certain prior criminal offenses. I granted petitions over State's objection, and State appealed.

Holding: The Supreme Court held that petitioners who were convicted on subsequent offenses were not "first offenders" entitled to have conviction on prior offense expunged.

Order granting petitions for expungement quashed; remanded.

Mortgage Guar. & Title Co. v. Cunha, 745 A.2d 156, 2000 WL 157274, , R.I., February 11, 2000(No. 98-598-M.P.)

Title insurer brought action against lawyer to recover for negligence and breach of contract in applying for policy. The insurer sought to recover attorney fees paid to settle coverage claim. I ordered insurer to produce correspondence with its attorney for the coverage suit. Insurer's petition for certiorari was granted. The Supreme Court held as a matter of first impression that insurer did not implicitly waive the attorney-client privilege by bringing the claim to recover attorney fees.

Order quashed.

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Bolton v. Quincy Mut. Fire Ins. Co., 730 A.2d 1079, 1999 WL 415400, , R.I., June 17, 1999(No. 98-399-M.P.)

Insured brought action against automobile insurer to recover underinsured motorist (UIM) benefits and damages for bad faith refusal to permit settlement of tort case for liability insurance limits. I severed the counts. Insured's petition for certiorari was granted. The Supreme Court held that: (1) insurer has a duty to consider seriously a reasonable offer to settle within the liability policy limits; (2) insurer's mere act of uncovering information that a tort-feasor owns real estate is not sufficient grounds for refusing permission to settle the tort case; and (3) insured was entitled to discovery concerning the carrier's investigation into the tort-feasor's assets and the results of that asset check. Quashed and remanded.

Medeiros v. Cornwall, 911 A.2d 251, 2006 WL 3542987, , R.I., December 11, 2006(No. 2006-32-Appeal.)

Background: Brother sued sibling seeking equal distribution of proceeds of sale in which they both had an interest. Sibling moved for judgment of dismissal and brother moved to amend his complaint. I entered summary judgment for sibling and denied brother's motion to amend his complaint. Brother appealed. The Supreme Court, Flaherty, J., held that trial court abused its discretion in dismissing complaint before ruling on motion to amend. Reversed and remanded.

Johnston v. Poulin, 844 A.2d 707, 2004 WL 602695, , March 29, 2004 (No. 2002-0318-Appeal.)

Background: Plaintiff brought personal injury action against horse owner, alleging horse kicked plaintiff after horse had escaped from owner's property. I granted summary judgment for defendant. Plaintiff appealed.

Holdings: The Supreme Court, Paul A. Suttell, J., held that:
(1) as a matter of first impression, an animal is "at large," within meaning of statute making the owner of a horse, bull, boar, ram, or goat strictly liable for damages done by the animal while at large, when it is free, unrestrained, at liberty to follow its own instincts, and not under effective control, and (2) genuine issue of material fact as to whether defendant's horse had been in state of excitability precluded summary judgment. Reversed and remanded.

Martellini v. Little Angels Day Care, Inc., 847 A.2d 838, 2004 WL 527121, , R.I., March 18, 2004(No. 2002-597-Appeal.)

Background: Neighbors brought suit against operators of family day care home, seeking enforcement of restrictive covenant which limited use of properties in subdivision for "single family private residence purposes." I granted summary judgment in favor of operators of family day care home, and neighbors appealed.

Holding: The Supreme Court, Flaherty, J., held that restrictive covenant precluded the operation of family day care home. Reversed, vacated, and remanded with instructions.

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Couture v. Pawtucket Credit Union, 765 A.2d 831, 2001 WL 68336, , R.I., January 29, 2001(No. 99-400-Appeal.)

Joint account holders, who added their son's name to joint accounts, brought action to recover funds from accounts that credit union set off against son's unpaid mortgage loan deficiency. I granted summary judgment for account holders, and credit union appealed. The Supreme Court, Flanders, J., held that: (1) credit union had contractual right to setoff; (2) credit union was entitled to hold funds during bankruptcy proceedings and to set off funds against loan deficiency; and (3) credit union's claim for setoff survived son's bankruptcy discharge despite its failure to file proof of claim. Vacated and remanded.

Kiley v. Patterson, 763 A.2d 583, 2000 WL 1911489, , R.I., November 02, 2000(No. 98-46-Appeal.)

Second baseman brought action seeking to recover damages for the injuries she suffered as a result of collision with base runner during recreational softball game. I entered summary judgment for runner, and second baseman appealed. The Supreme Court, Flanders, J. held that: (1) as issue of first impression, duty of care owed by participants in team athletic events to each other is measured not by ordinary negligence standards, but by willfulness or recklessness standards; and (2) material issues of fact as to whether base runner was merely negligent or whether he acted deliberately or in reckless disregard of injuring second baseman precluded summary judgment for runner. Vacated and remanded.

Hargreaves v. Jack, 750 A.2d 430, 2000 WL 582808, , R.I., May 12, 2000(No. 98-563-Appeal.)

Firefighter's widow, individually and in her capacity as administratrix of firefighter's estate, brought wrongful death action against city and superior officers. The widow filed a second complaint against individual police officers at the scene, alleging that they were negligent in their provision of fireground support and security, that this was proximate cause of firefighter's injuries, and that injured-on-duty (IOD) statute violated federal and state constitutional provisions. Police officers removed case to federal court. A federal district court granted officers' motion to dismiss the federal claims, declined to exercise pendent jurisdiction over claims arising under the State Constitution, and remanded state law claims. Both complaints were consolidated, and defendants moved for summary judgment on the wrongful death action and to dismiss the second complaint. I granted both motions, and widow appealed. The Supreme Court, Weisberger, C.J., held that IOD statute, with respect to claim of surviving spouse, is not exclusive remedy, and thus, surviving spouse is not limited to the statutory benefits contained therein, but, rather, may seek additional remedies made available by wrongful death statute. Vacated and remanded.

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General Motors Acceptance Corp. v. Johnson, 746 A.2d 122, 2000 WL 195073, 43 UCC Rep.Serv.2d 1034, , R.I., February 16, 2000(No. 98-413-Appeal.)

Secured party brought action against debtor to recover deficiency judgment after repossessing and selling damaged car. I entered summary judgment in favor of secured party. Debtor appealed. The Supreme Court held that summary judgment was precluded by factual issues as to whether secured party sold damaged car in commercially reasonable manner and properly discontinued property insurance. Reversed and remanded.

Allstate Ins. Co. v. Lombardi, 773 A.2d 864, 2001 WL 674143, , R.I., June 12, 2001(No. 98-476-Appeal.)

Judgment creditor, who obtained judgment against insurer, appealed from my order granting summary judgment in favor of judgment-debtor insurer that sought relief from previous judgment. On consolidated appeal, the Supreme Court, Flanders, J., held that: (1) insurer could not obtain relief from judgment merely because Superior Court may have committed legal error; (2) insurer had proper notice of proceeding to confirm arbitration award; (3) insurer's failure to attend hearing on arbitration award was not due to excusable neglect; and (4) creditor's negotiation of check for policy limits did not entitle insurer to relief from judgment. Judgment vacated and remanded.

Lindia v. Nobles, 760 A.2d 1244, 2000 WL 1641159, , R.I., November 01, 2000(No. 99-268-Appeal.)

Plaintiff motorist filed action against defendant motorist and car rental company for injuries arising from automobile accident. I dismissed case with prejudice with respect to car rental company for failure to timely effect service of process. Plaintiff appealed. The Supreme Court held that dismissal for failure to timely effect service of process was without prejudice. Vacated and remanded.

Mitchell v. Mitchell, 756 A.2d 179, 2000 WL 868074, , R.I., June 28, 2000(No. 98-479-Appeal.)

Depositor on certificates of deposit (CDs) and her fellow trustee brought action against co-trustee, the depositor's child, to recover reimbursement and payment on a promissory note after lender foreclosed on the CDs. I entered partial summary judgment in favor of plaintiffs. Child appealed. The Supreme Court, Flanders, J., held that: (1) a rebuttable presumption of intent to make a gift of a joint interest in the CDs was created, and (2) factual questions precluded summary judgment. Vacated and remanded.

Lord v. Major, 729 A.2d 697, 1999 WL 326382, , R.I., May 14, 1999(No. 98-47-Appeal.)

Widow of driver who was killed when he drove into rear of tractor trailer brought wrongful death action against truck driver and trailer owner. I granted summary judgment for defendants. Widow appealed. The Supreme Court held that truck driver might have been at least partially negligent in pulling fully-loaded trailer at 15 miles per hour in passing lane of highway. Vacated and remanded.

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Haydon v. Stamas, 900 A. 2d. 1104, 2006 WL 1689208, , R.I., June 21, 2006(No. 2005-173-Appeal.)C.2004-0239.)

Background: Vendor brought action seeking an injunction ordering removal of lis pendens that purchaser, who had signed an agreement to convey land, filed on the land. Purchaser counterclaimed for specific performance and breach of contract. After the parties agreed that action could be decided based on parties' depositions and stipulated facts, I entered judgment for vendor. Purchaser appealed. The Supreme Court, Suttell, J., held that: (1) agreement between vendor and purchaser was an option contract, not a contract for the sale of land, and thus time was of the essence; (2) option contract satisfied the statute of frauds; (3) an expiration provision in an option contract was not impervious to oral modification; and (4) vendor orally waived closing date in option contract. Vacated and remanded.

Hendrick v. Hendrick, 755 A.2d 784, 2000 WL 959927, , R.I., July 10, 2000(Nos. 97-627-Appeal, 98-436-Appeal.)

In a majority shareholder's action for declaratory judgment on the meaning of a reciprocal stock purchase agreement among minority shareholders, a minority shareholder filed counterclaims and cross-claims alleging oppression, seeking a liquidation or a stock buyout, and stating a derivative action. I entered summary judgment against shareholder and dismissed her derivative action. Shareholder appealed. The Supreme Court, Bourcier, J., held that: (1) factual issues precluded summary judgment on shareholder's claims of oppression warranting liquidation or stock buyout; (2) dismissal of the derivative action was proper; but (3) the dismissal should have been without prejudice. Vacated and remanded.

Cardi et al v. Medical Homes of Rhode Island et al., 741 A.2d 278, 1999 WL 1069858, , R.I., October 20, 1999(No. 98-502-M.P.)

Background: The case involves a family dispute over the ownership of stocks. During the discovery phase I granted the defendants' request to take 67 out-of-state depositions. The Plaintiff's filed a petition for certiorari.

Holdings: The Supreme Court held that the discovery order was overly broad in light of the subject matter of the litigation and thus the trial justice abused her discretion in granting same. Vacated and remanded.

Nationwide v. Steele, 747 A.2d 1013, 2000 WL 345744, , R.I., March 17, 2000(No. 98-372-A.)

Background: The defendant, the victim of a violent car-jacking, made a claim with her automobile insurer for injuries sustained during the attack. The insurer filed a declaratory judgment action seeking a declaration that the policy did not apply to injuries inflicted by a pedestrian who had no connection to the operation of an uninsured vehicle. I granted the defendant's motion for summary judgment and the insurer appealed.

Holding: The Supreme Court held that the Defendant's occurrence was not covered by her policy. Vacated and remanded.

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General Financial Services v. Abilheira, et al., 762 A.2d 799, 1999 WL 33210896, R.I., November 17, 1999(No. 98-277-Appeal.)

Background: The plaintiff obtained a default judgment against the defendants for noncompliance with discovery orders. Before plaintiff submitted an order embodying the court's ruling, defendants moved to vacate the default and also moved for summary judgment. I granted the defendants' motion to vacate and motion for summary judgment and the plaintiff appealed.

The Supreme Court held:

(1) Because defendants' motion to vacate was not timely filed nor properly supported by affidavit describing excusable neglect vacating the default judgment was error; (2) Because the default judgment was not properly vacated, granting the defendants' motion for summary judgment was improper.

(3) Case remanded for defendants to file proper affidavit that would allow trial court to consider defendants' motion. Vacated and remanded.

Almado v. Santos et al., 755 A.2d 836, 2000 WL 978681, , R.I., May 11, 2000(No. 98-507-Appeal.)

Background: Plaintiff sustained injuries in a fall down a stairwell. I granted the defendants' motion for summary judgment and the plaintiff appealed.

Holding: The Supreme Court held that the trial justice erred in granting the defendant's motion by passing on the weight and credibility of witnesses. Vacated and remanded.

Smith v. Rhode Island's Only 24 Hour Truck and Auto Plaza, 749 A.2d 590, 2000 WL 345755, , R.I., March 20, 2000(No. 98-506-Appeal.)

Background: Plaintiff filed a breach of contract and declaratory judgment action seeking to recover accrued distributions arising out of a receivership petition. I granted the defendants' motion for summary judgment and the plaintiff appealed.

Holding: The Supreme Court held that because the receivership justice never made a determination regarding any aspect of the accrued distributions that dismissal without prejudice was a more appropriate remedy than summary judgment. Vacated, modified and remanded.

g. Provide 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.

The Superior Court is a court of record and does not issue unpublished opinions.

h. Provide 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, provide copies of the opinions.

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District Court Only:

American Telephone & Telegraph Co. v. Clark, No. A.A. 94-15 (R.I. Dist. Apr. 22 1996); cert. denied, No. 96-253-M.P. (R.I. Apr. 4, 1997).

Superior Court Only:

Louis A. Regnier Associates, Inc. v. R.I. Commission for Human Rights, No. PC-00-3951 (R.I. Super.).

Ide v. Charlestown Planning Commission, No. WC-01-0226 (R.I. Super. Feb. 14, 2003).

Woodland Manor, III Associates, L.P. v. Reisma, No. PC-89-2447, 2003 WL 1224248 (R.I. Super. Feb. 24, 2003), clarified by No. PC-89-2447, 2003 WL 21297130 (R.I. Super. May 23, 2003).

Manglass v. Rhode Island Dep't of Human Services, No. PC-03-0125 (R.I. Super. Oct. 6, 2003).

Coleman v. Windham Aviation, Inc., No. KC-04-0985 (R.I. Super. Jul. 18, 2005) and No. KC-04-0985 (R.I. Super. Oct. 13, 2006).

Sjogren v. City of Warwick Bd. of Pub. Safety, No. KC-03-0027 (R.I. Super. Dec. 6, 2006).

Daly v. R.I. Board of Regents for Elementary and Secondary Educ., No. WC-06-0164 (R.I. Super. Jan. 15, 2008).

South County Sand & Gravel v. Town of South Kingstown, No. WC-96-0444 (R.I. Super. Aug. 14, 2008).

Superior Court and Supreme Court:

State v. Briggs, No. N1-97-0276A (R.I. Super. Jan. 16, 2003), aff'd 886 A.2d 735 (R.I. 2005).

State v. Motyka, No. N1-99-0341A (R.I. Super. Jan. 23, 2001), aff'd 893 A.2d 267 (R.I. 2006).

Abad v. City of Providence, Nos. PC-01-2223 and PC-01-2224 (consolidated) (R.I. Super. Oct. 5, 2004) and Nos. PC-01-2223 and PC-01-2224 (consolidated) (R.I. Super. May 5, 2005), aff'd in part, rev'd in part sub nom. Arena v. City of Providence, 919 A.2d 379 (R.I. 2007).

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N & M Properties, LLC v. Town of West Warwick, No. KC-06-0894 (R.I. Super. Apr. 19, 2007), aff'd 964 A.2d 1141 (R.I. 2009).

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

None; I have not sat by designation on a federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (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.) 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 in which you have recused yourself sua sponte. 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.

In 2007 I sua sponte recused myself from a case involving the Narragansett Indians because of my past association with the tribal government and my personal professional involvement with the particular legal issue which was before the court. I have recused myself from other cases wherein I previously represented one of the litigants.

More recently in 2008 an attorney representing the Defendant in civil damages action, Elizabeth Conklin, MD vs. Harold Arcaro, III, No. WC-2005-729, filed a motion requesting that I recuse myself from hearing the trial because of alleged comments by me in the context of pretrial discussions which she felt demonstrated bias towards her client. The other side objected to the motion and the request and objection were argued on the record. Although I strongly disagreed with her assertions in every respect, particularly her assertion that I harbored bias towards her client whom I had never seen nor met, I granted her motion to avoid any appearance of impropriety and passed the case to a colleague to try. Recently, the Defendant retained new counsel and at the request of the Defendant and his new attorney, I resumed hearing the post trial proceeding after full review, on the record, of the case status and with the consent of all parties.

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In August, 2009 I was presiding over an evidentiary preceding, Joan Moran Kelly vs. Michael Bradley, WC 06-366 wherein the Defendant alleged the Plaintiff had committed a fraud upon the court. At the beginning of the testimonial proceeding and without written notice to the Defendant, the Plaintiff's attorney asked that I recuse myself. He alleged that in an earlier proceeding in the matter occurring two years prior, I had expressed an opinion on the record which suggested I had a predetermined view of the fraud allegation. The Defendant objected. I denied the Plaintiff's motion.

15. **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

    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, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

       None

16. **Legal Career:** 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;

          In 1980 I opened my own legal practice as follows: O. Rogeriee Thompson, Attorney and Counselor at Law, 94 Gallatin Street, Providence, Rhode Island 02906. In 1984 my sister, M. LaVonne Thompson, graduated from law school and we became the law firm of Thompson and Thompson, 94 Gallatin Street, Providence, Rhode Island, 02905.

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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.

1984 – 1988
Thompson and Thompson
Attorneys at Law
94 Gallatin Street
Providence, Rhode Island 02906
Senior Partner

1980 – 1984
O. Rogeriee Thompson, Solo Practitioner
94 Gallatin Street
Providence, Rhode Island 02906

1980 – 1982
Assistant City Solicitor
City of Providence
25 Dorrance Street
Providence, Rhode Island 02903

1979 – 1980
McKinnon and Fortunato
1168 Newport Avenue
Pawtucket, Rhode Island 02861
Associate

1976 – 1979
Rhode Island Legal Services, Inc.
56 Pine Street, 4th floor,
Providence, Rhode Island 02903
Senior Staff Attorney and Family Law Manager

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator in an alternative dispute resolution proceeding.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

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Following my graduation from law school in 1976, I was awarded a Reginald Haber Smith Community Lawyer Fellowship and began work with Rhode Island Legal Services, Inc. At Legal Services, I represented indigent clients in a variety of civil law areas. Eventually, I became the managing attorney of the Family Law Unit. In that capacity, I supervised and trained all lawyers and staff personnel in that unit. I designed and implemented systems to effectuate the qualitative handling of large client caseloads. I was chief litigation counsel for all major domestic and juvenile trials. I acquired experience researching and writing legal briefs and drafting legislation. Finally, part of my job responsibility was to conduct legal training seminars for social agencies and community organizations, primarily in the areas of consumer law, housing and family law.

In 1979 I joined the small law firm of McKinnon and Fortunato, (now known as McKinnon and Harwood). The firm operated a general practice of law handling criminal and civil cases.

As a solo practitioner, I had a general practice primarily handling civil litigation. In approximately 1983 I became tribal counsel for the Narragansett Indian Tribe and a good portion of my practice shifted to Native American Law. In 1984, I formed Thompson and Thompson.

Between 1980 and 1982 I was a part time Assistant City Solicitor for the city of Providence, RI. In that capacity I was responsible for defending the city in civil actions involving claims above $5,000.00. I also prosecuted District Court misdemeanor crimes. I served as legal advisor to the Providence Human Relations Commission, the city agency responsible for investigating civil rights and discrimination complaints.

Between 1980 and 1991 I did consulting work for the National Legal Services Corporation as a trainer in Basic Lawyering Skills and Advanced Trial Advocacy. I also did program evaluation consultation. During that same time, I also became a volunteer consulting attorney for the National Institute of Trial Advocacy and taught trial skills.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

At Legal Services, I represented indigent clients in civil law areas including but not limited to consumer, housing, family, probate, tort, bankruptcy, social security, benefits and other administrative law areas. Pursuant to a special United Way grant, I represented parents in child abuse and neglect proceedings. I also represented several non-profit community groups.

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At McKinnon, I represented clients in the areas of labor, tort, juvenile, civil rights, family, personal injury and criminal law.

In my solo practice I represented clients in the areas of personal injury, family, juvenile, child abuse and neglect, guardianships, trust and estates, administrative proceedings, small corporations. In approximately 1983 I became tribal counsel for the Narragansett Indian Tribe and a good portion of my practice shifted to Native American Law. In my own firm, Thompson and Thompson, the practice areas continued as described above but we also began to handle real estate and collection 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.

A significant portion of my practice was in litigation. I appeared in court frequently.

i. Indicate the percentage of your practice in:
   1. federal courts: 1%
   2. state courts of record: 98%
   3. other courts:
   4. administrative agencies: 1%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 90%
   2. criminal proceedings: 10%
   3.

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Between 1976 and 1988, I tried cases to verdict, judgment or final decision in Superior, District, Family and Worker's Compensation Court. I also handled Federal Social Security SSI and SSA claims, Rhode Island Department of Motor Vehicle Appeals and Unemployment and TDI appeals. A conservative guess for totals would be 250. I acted as sole counsel in 98% of the cases.

i. What percentage of these trials were:
   1. jury: 1%
   2. non-jury: 99%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any

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oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. 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.

I have not practiced law for 21 years and have not retained the records which would permit me to fully answer with the specific information requested. However, I am providing a summary, as best I can recall, of cases which I deemed significant.

(1) In 1979 I conducted my first jury trial. I represented a bicyclist who was struck by an automobile. Comparative negligence and damages were the controversy. It is memorable because not only did the jury attribute 100% negligence to the defendant but, following the courts instruction that the jury was not bound by counsels' suggested damage figures, the jury returned a verdict for damages greater than I had requested. Although I do no recall the case name, opposing counsel was David P. Whitman, Hanson and Curran, 146 Westminster Street, Providence, RI, 401-421-2154.

(2) In approximately 1979 I sought, on behalf of a surviving daughter, a restraining order against a Mausoleum Funeral director who refused to honor a funeral contract for internment between the Funeral Company and decedent citing an increase in burial costs since the making of the contract. Prevailing on the merits, the funeral proceeded in a timely fashion without the additional payment of costs. The Superior Court Clerk advises me that the file has been destroyed.

(3) In approximately 1983 I represented two mentally challenged parents in a termination of parental rights case. Because of their cognitive disabilities the state sought to end their parental rights to their 2 sons. I argued that since the right to raise one's family was a fundamental constitutional right the state had a duty to provide extra social services to the family if doing so would keep the family in tact. The family court rejected the argument and granted the states petition. On appeal the Rhode Island Supreme Court sided with the

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state's position. In Re: Michael and Joseph. Opposing Counsel, Nicholas Colangelo, 838 Reservoir Avenue, Cranston, RI, 401-942-7663

(4) In approximately 1984, I co-represented with my husband a plaintiff in Federal Court in a claim involving 42 USC 1983 charging the city of Providence with excessive police force. Midway the trial the case settled for the highest settlement figure then paid by the city. Brenton Smith vs. City of Providence and John Francis, Alias, et al. CA 80-416. Attorney for the defendant was Joseph F. Penza, Jr., Olenn and Penza, 530 Greenwich Avenue, Warwick, RI, 401-737-3700

(5) In approximately 1985 I represented a father in a contested child custody proceeding. I had to overcome the lingering "child of tender years" presumption which continued to result in custody decisions favoring mothers of young children. After arguing updated principles of the "best interests of the child" doctrine my client was awarded custody of his two minor children.

(6) In approximately 1985 I moved to intervene on behalf of the Narragansett Indians in a Family Court adoption petition, citing the Tribe's rights to participate and seek relief under the Federal Indian Child Welfare Act. It was the first time this federal law and the rights of federally recognized tribes were brought to the attention of the Rhode Island Family Court and considered.

(7) In another piece of Indian litigation in the same time frame, I represented members of the Narragansett tribal counsel who were being challenged in Superior Court by other tribal members for control of the counsel. Alleging sovereign immunity and the right of tribal self governance, I argued that the Court lacked jurisdiction to hear the dispute. It was the first such assertion in a Rhode Island Court. The court rejected the jurisdictional argument but ruled in favor of my clients on other grounds. In this matter and the above, the current address of the Tribe is: 4375 B South County Trail, Charlestown, Rhode Island. Two persons with whom I previously dealt are Medicine Man Lloyd Wilcox, 401-364-1265 and current Medicine Man In Training and former Tribal Council Person John Brown, 401-491-9459.

(8) In approximately 1985 I represented a poor, mentally challenged mother in a termination of parental rights case. The mother had custody of her son off and on for 13 years caring for him as best she could given her abilities. When the state filed its petition the child was 14 years old and wanted ongoing contact with his mother which would not have been possible if the petition was granted. I convinced the court that since the child was 14 and could only be adopted if he gave written consent, a termination was futile since the child refused to consent if such would bar his contact with his mother. The petition to terminate was denied. In Re: Christopher L., FC #... Opposing Counsel was (The Honorable) Laureen D'Ambra, Rhode Island Family Court, 1 Dorrance Plaza, Providence, Rhode Island 02903, 401-458-5310

(9) In approximately 1986 I represented a couple accused of child abuse. I was able to prove at trial through expert testimony that the discoloration on the child's rear end which

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the state alleged to be the product of assault was actually a marking commonly found on African American children.

(10) In approximately 1986 I represented the mother of an adult child in a probate proceeding of her former husband's estate. During the child's minority years, the father had seldom paid the weekly child support figure as ordered by the Family Court. The executor of the estate rejected the mother's claim for support owed. Arguing that the ordered amount became a judgment against the father each week it went unpaid, the RI Supreme Court eventually ordered payment of the arrearage debt from the decedent's estate.

18. **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. 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 most challenging and stimulating legal work as a practicing attorney was with the Narragansett Indian Tribe. As Tribal Counsel I handled every legal issue which arose, from land claim issues to negotiations with the Bureau of Indian Affairs.

19. **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, provide four (4) copies to the committee.

I have participated in CLE presentations teaching Trial advocacy Skills and Basic Lawyering Skills for National Legal Services, Inc., Rhode Island Legal Services, Inc., and National Institute of Trial Advocacy, however I have discarded those calendars and can no longer produce the specifics. These trainings took place in Albuquerque, New Mexico, Portland Oregon, Seattle Washington, Cleveland Ohio, Des Moines Iowa, and Philadelphia, Pennsylvania and Providence, Rhode Island.

20. **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. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

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21. **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 currently serve on several non-profit Boards and Foundations. If this service does not constitute a conflict of interest, I would like to continue my work with these groups until my terms expire.

22. **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, licensing fees, 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 attached Financial Disclosure Report.

23. **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.

24. **Potential Conflicts of Interest**:

    a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

       Parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when I first assume the position to which I have been nominated would include family members and close personal friends. Other than that, I can think of no other 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.

       In all cases, I will follow the Code of Conduct for United States Judges and applicable statutes, policies and procedures.

25. **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.

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Since my admission to the bar in 1976, I have served on numerous non-profit and governmental board and committees. Additionally I regularly mentor law and undergraduate students and supervise internships for them throughout the year.

I often preside over mock trial or moot court programs sponsored by Roger Williams Law School Trial Advocacy Program, Bryant University, URI, the Rhode Island Legal and Education Partnership Program, the Community Association Collaborative, the John Hope Settlement House AIDS peer education program, or Brown University Summer Program.

26. **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. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

Our state has no judicial nominating commission for Federal Court vacancies.

I was aware through newspaper accounts of the vacancies in the United States Court of Appeals for the First Circuit and in the United States District Court for the District of Rhode Island. Having an interest in both courts, I sent a letter of interest and resume to Rhode Island Senator Jack Reed with copies to Rhode Island Senator Sheldon Whitehouse in early January, 2009. I asked colleagues who know and work with me to write letters to the Senators Reed and Whitehouse in support of my application. Senator Reed's staff contacted me in late January to set up an interview with the Senator. That interview took place on February 2, 2009. I answered his questions as best I could. At the end of the interview, he indicated that I should also seek an interview with Senator Whitehouse as he would be part of the deliberations. He also told me I would be asked to complete a questionnaire. I met with Senator Whitehouse on March 1, 2009. The next day I received the questionnaire and returned it on March 10, 2009. I was contacted by the White House Counsel's Office on March 20, 2009 and asked if I still had an interest in the First Circuit Court of Appeals. I was then contacted by staff at the Department of Justice who further explained the process and asked that I complete pre-nomination paperwork. I have had subsequent conversations with Department of Justice staff regarding that paperwork and the nominations process. I interviewed with staff from the Department of Justice and White House Counsel's office on May 11, 2009. I also met with Counsel to the President Gregory Craig and members of his staff on June 12, 2009. My nomination was submitted by the President to the Senate on October 6, 2009.

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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, explain fully.

No.

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AFFIDAVIT

I, Ojetta Rogerice Thompson, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

10-25-09
(DATE)

Ojetta Rogerie Thompson
(NAME)

Susan N. DeLeo
(NOTARY)

My Commission expires on 6-16-13

QUESTIONS AND ANSWERS

Responses of O. Rogeriee Thompson
Nominee to the U.S. Court of Appeals for the First Circuit
to the Written Questions of Senator Tom Coburn, M.D.

1. **What is your view of the role of a judge?**

Response: A judge plays the key role in dispute resolution. In all disputes brought before the court it is the role of a judge to fairly and impartially apply the law to the facts consistent with due deference to the plain and ordinary meaning of legal text, and applicable case precedent.

2. **If confirmed, what strengths do you think you bring to this position?**

Response: I have 21 years of serving as a neutral judicial arbiter at the state court level. This extensive legal experience of hearing and deciding a myriad of civil and criminal cases has provided me with valuable skills and judgment which I would bring to the Federal Circuit Court should I be confirmed.

a. **What weaknesses do you think you bring to this position?**

Response: Although not a weakness, a new aspect of being a Federal Court Judge if confirmed would be working in collaboration with other judges to reach case resolution.

3. **The American Bar Association's Standing Committee on the Judiciary rated your nomination "Majority Qualified, Minority Not Qualified." Were you satisfied with the ABA's review of your record?**

Response: The ABA Committee review is a confidential process so I do not know the manner of its deliberations, nor the methodology of its ratings. Therefore, I am not in a position to evaluate it.

a. **Did the ABA explain why you received the "Not Qualified" rating?**

Response: No. I was not provided with an explanation of why a minority of the ABA Committee voted not qualified.

b. **Did you agree with their analysis of the factors that resulted in the "Not Qualified" rating?**

Response: Because I am not aware of the specific factors used by the ABA Committee in its analysis, I cannot respond. However, I agree with the majority vote which deemed me qualified and I do believe I am prepared and qualified to serve as a United States Circuit Court Judge if confirmed.

c. **Did you have an opportunity to provide contrary evidence to counter the findings that resulted in the "Not Qualified" rating?**

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Response: I was not asked nor did I provide any additional information to the ABA Committee after it concluded its vote.

4. Is ever proper for judges to indulge their own values in determining what the law means?

Response: No.

a. If so, under what circumstances?

Response: See above response.

b. Please identify any cases in which you have done so.

Response: None.

c. If not, please discuss an example of a case you have decided where you have had to set aside your own values and rule based solely on the law?

Response: All of my decisions have been based solely upon the law. I cannot think of an example where my personal values have conflicted with my legal rulings.

5. Is ever proper for judges to indulge their own policy preferences in determining what the law means?

Response: No.

a. **If so, under what circumstances?**

Response: See above response.

b. **Please identify any cases in which you have done so.**

Response: None.

c. **If not, please discuss an example of a case you have decided where you have had to set aside your own policy preferences and rule based solely on the law.**

Response: I cannot think of an example where any personal policy preferences have been set aside in order to rule solely on the law.

6. How do you define "judicial activism?"

Response: I do not believe the term "judicial activism" has a commonly accepted meaning. I do not use the term and therefore have no definition for it.

7. What principles of constitutional interpretation help you to begin your analysis of whether a particular statute infringes upon some individual right?

Response: First, I would start with the text of the statute and then look to applicable U.S. Supreme Court and First Circuit precedent. If none exists, I would look for analogous holdings.

8. **As you know the Second Amendment right to bear arms is one that is very important to all Americans, but particularly those in my home state of Oklahoma. Do you believe that the Second Amendment is an individual right or a collective right? Please explain your answer.**

Response: The United States Supreme Court in *District of Columbia vs. Heller* ruled the right to bear arms an individual right under the Second Amendment within federal enclaves. The decisions of the Supreme Court are binding precedent and if confirmed, I would follow that precedent.

a. **Do you believe an individual Second Amendment right exists outside the context of military service or hunting? If so, please explain.**

Response: The Supreme Court has not ruled on this issue as applied to the states but I will follow the ruling of the Court once it has rendered a decision.

b. **Do you believe the right to bear arms is a fundamental right?**

Response: The Supreme Court has granted certiorari in a case wherein it will rule if the right to bear arms is a fundamental right as applied to the states. If confirmed as a Circuit Court Judge, I will follow the holding of the Supreme Court.

c. **What constitutional analysis would you use to determine whether it is a fundamental right?**

Response: If confirmed I will follow the analytical framework dictated by the Supreme Court and First Circuit for determining if an individual right is fundamental.

d. **Do you believe the right to self defense is a fundamental right?**

Response: The Supreme Court has not ruled on this issue but if confirmed, I will follow any precedent it hands down.

9. **Since at least the 1930s, the Supreme Court has expansively interpreted Congress' power under the Commerce Clause. Recently, however, in the cases of United States v. Lopez, 514 U.S. 549 (1995) and United States v. Morrison, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power**.

a. **Generally speaking, are *Lopez* and *Morrison* consistent with the Supreme Court's earlier Commerce Clause decisions?**

Response: In *Gonzales v. Raich*, the Supreme Court indicated that its *Lopez* and *Morrison* decisions are consistent with earlier Supreme Court Commerce Clause decisions.

b. Why or why not?

Response: In *Gonzales v. Raich*, the Court rejected a reading of *Lopez* and *Morrison* as inconsistent with prior Commerce Clause precedent. 545 U.S. 1, 23 (2005). Specifically, the Court rejected the respondent's "myopic focus" on *Lopez* and *Morrison*, which "overlook the larger context of modern-era Commerce Clause jurisprudence preserved by those cases."

10. Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?

Response: No. Society does not interpret the Constitution. The Supreme Court does. The words and structure of the Constitution change only when amended in accordance with Article 5. The Constitution is the philosophical underpinning of our governmental structure and is constructed to be enduring. Yet I think it is appropriate to acknowledge that new situations can and do arise which could not have been envisioned by the drafters, e.g., the creation of the internet and its impact upon first amendment rights. In such instances, constitutional interpretation must be grounded in the text of the document, its undergirding principles, historical analogies, and the Supreme Court's interpretation of it meaning.

11. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the "evolving standards of decency" to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy's analysis?

Response: If confirmed, I would accept the Supreme Court's analysis and would have no difficulty applying the holding of the Court

a. How would you determine what the evolving standards of decency are?

Response: If required to apply the evolving standards of decency test, I would follow the Supreme Court's analysis and apply same.

12. In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of provisions of the Constitution?

Response: If confirmed I would rely solely on the wealth of existing American statutory and case law unless instructed to do otherwise by the Supreme Court.

a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: See above response.

b. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: See above response.

Responses of O. Rogeriee Thompson
Nominee to the U.S. Court of Appeals for the First Circuit
to the Written Questions of Senator Jeff Sessions

1. **At your hearing, Senator Franken asked you about "comments [you] made on the importance of diversity" and whether, if confirmed, you would judge based on the law. You answered:**

> **"It would certainly be incumbent upon me as a Federal judge, just as it is incumbent on me as a State court judge, to view every single person who comes before the court with the utmost respect and afford them the utmost dignity. My job is to make sure that I don't have preconceived notions about persons or to come to any kind of proceeding with any kind of bias or prejudice towards any person. My job is to make sure that I examine the facts of a particular case without bias or prejudice, apply the law to those facts, and try to afford the litigants the justice which they deserve."**

While I appreciate your answer, I would like to ask you about another statement that you made in an interview prior to your appointment to the Rhode Island state judiciary. Specifically, you said that you would "bring a fresh perspective to the job because [you have] a different background and different experiences."

a. **Do you believe that an individual's race or gender affects the quality of his or her decisionmaking? Please explain your answer.**

Response: No, I do not believe that an individual's race or gender has any bearing on the quality of one's decisionmaking. Nonetheless, we all grow up with different life experiences and necessarily bring different perspectives to any discussion.

b. **Please provide an example, if any, of a case in which your background and/or your experiences informed your decisionmaking as a judge.**

Response: Background and/or experience do not play a role in my decisionmaking. My judicial decisions are based upon the law. Nonetheless, I can think of one example wherein I relied upon my knowledge to assist jurors, the ultimate triers of fact. During a criminal jury trial one of the witnesses who was an African American testified several times, "I returned to my car to get my 'Timmys'," a term I have heard my children use with their friends. Because of my familiarity with the term, I understood his reference. I finally asked the all white jury if they understood the meaning of the word 'Timmys.' None of the 14 understood. I asked the witness to explain what he meant and he told the jury that the word 'Timmys' is street slang for

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Timberland boots. After the trial the jurors told me they appreciated the explanation, particularly those who thought the witness was referring to a gun.

2. You were quoted in an article in the *Sunday Journal Magazine* as saying that with respect to sentencing, you "always try to give folks a break."

a. Please explain what you meant by this statement.

Response: The 1990 Providence Journal Magazine article was written when I was a member of the District Court bench. In the article that particular quote was not referencing my sentencing practices. Rather, it was said relative to a defendant's absence from a court proceeding. It reflects my realization that sometimes unforeseen emergencies do crop up in a person's life that might interfere with a person's ability to attend court, i.e., illness and family emergencies.

b. Please explain your approach to sentencing as a state court judge.

Response: When I was a member of the District Court bench my sentencing philosophy can be summarized as follows. The Rhode Island District Court has jurisdiction over misdemeanors which carry a maximum sentence of 1 year in jail and a $1,000.00 fine. Within that sentencing range it was incumbent upon me to view the circumstances of each crime and fashion an appropriate sentence taking into consideration the traditional sentencing objectives of punishment, general and specific deterrence, retribution, rehabilitation, and restitution. The nature of the crime, its impact upon the victim, and the defendant's prior criminal contacts were also sentencing factors. With due consideration for the aforementioned criteria I imposed the most appropriate sentence for the particular crime committed. The Rhode Island Superior Court where I now preside has original jurisdiction over all felonies which are defined as crimes carrying a maximum sentence of life in prison. Although sentencing is within the sound discretion of the judge, the Superior Court adopted Sentencing Benchmarks in 1981 as guidelines for the Court. I adhere to those guidelines. Our official sentencing policy is as follows:

> "In order to eliminate, insofar as possible, disparity in the sentencing of defendants for crimes committed under the same or similar circumstances, the court may consider and utilize the sentencing benchmarks formulated by the Supreme Court Committee on Sentencing as guidelines."

All Rhode Island Superior Court Judges utilize the periodically updated guidelines when sentencing. An upward or downward departure from a sentencing benchmark is made based upon substantial and compelling circumstances as listed in the guidelines.

Additionally RIGL 12-19.3-2 entitled Adoption of presumptive sentences reads as follows:

> Each year the justices for the superior court shall by majority vote, and with the approval of the supreme court, adopt as a rule of court presumptive sentences to be imposed upon defendants who have been found guilty after a trial. The rule shall establish a presumptive sentence or sentencing range for each category of felony which constituted more than five percent (5%) of the criminal caseload in the superior court during the preceding year and for any additional categories of felonies that the justices deem appropriate. It shall also set forth the criteria for evaluation upon which the presumptive sentences are based...

As with the sentencing benchmarks, all Rhode Island Superior Court Judges, including me, reference the presumptive sentences when applicable and upward or downward departures are based upon substantial and compelling circumstances justifying an alternative sentence.

c. **Under the Supreme Court's decision in *United States v. Booker*, the federal sentencing guidelines are advisory, rather than mandatory. Following the Supreme Court's decision in *Gall v. United States*, appellate courts must apply the highly deferential "abuse of discretion" standard when reviewing these sentencing decisions. As a circuit court judge, you will be required to review sentences imposed by district courts.**

i. **How do you view the role of an appellate judge in the sentencing process?**

Response: In *Gall v. United States*, the Supreme Court stated that the Circuit Court does not do a de novo review of a sentence imposed by a District Court Judge. Instead the Circuit Court must review the sentence based upon a reasonableness standard and examine the judgment of the District Judge for abuse of discretion. If confirmed as a Circuit Court Judge I would comply with the ruling of the Supreme Court.

ii. **Under what circumstances do you think it is appropriate for a court to depart downward from the sentencing guidelines?**

Response: Federal Sentencing Guidelines do allow for downward departure. If confirmed as a Circuit Court Judge, I would review the District Court Judge's reasoning for the downward departure and

determine if the articulated factors for departure are reasonable within the context of the totality of circumstances. I would further review the sentencing decision to determine whether the District Court Judge's actions complied with the exercise of discretion envisioned by section 5K of the U.S. Sentencing Guidelines Manual.

3. **As you may know, President Obama has described the types of judges that he will nominate to the federal bench as follows:**

"We need somebody who's got the heart, the empathy, to recognize what it's like to be a young teenage mom. The empathy to understand what it's like to be poor, or African-American, or gay, or disabled, or old. And that's the criteria by which I'm going to be selecting my judges."

a. **Without commenting on what President Obama may or may not have meant by this statement, do you believe that you fit President Obama's criteria for federal judges, as described in his quote?**

Response: It is impossible for me to answer this question without commenting upon what I believe the President may have meant by his statement since such are his criteria. By nominating me I can only assume the President has determined I meet his criteria for Federal Circuit Court Judges.

b. **What role do you believe that empathy should play in a judge's consideration of a case?**

Response: The Merriam-Webster Pocket Dictionary defines empathy as "capacity for participating in the feelings or ideas of another." Using that definition, empathy, or expressing it more euphemistically, 'getting into another's head' has assisted me in assessing the credibility of witnesses and has enabled me on many occasions to flesh out bias, motive, and intent of witnesses who appear before the court in civil and criminal matters.

c. **Do you think that it is proper for judges to consider their own subjective sense of empathy in determining what the law means?**

Response: No.

i. **If so, please explain under what circumstances such a consideration would be proper.**

Response: See above response.

ii. **Please discuss any cases in which you have considered your own subjective sense of empathy in determining what the law means.**

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Response: None.

iii. Please discuss an example of a case where you have had to set aside your own subjective sense of empathy and rule based solely on the law.

Response: All of my judicial rulings are based solely on the law. However I can give you an example of a situation where I feel empathy, but nonetheless base my decision upon the applicable law. I often hear cases on appeal from the district court involving landlord/tenant disputes. I sometimes have empathy for residential tenants who cannot pay rent due to unexpected loss of employment. Likewise, I may empathize with struggling landlords who are dependent upon rental income to make their monthly mortgage payments on the property. It is a lose/lose proposition for each litigant but my job as a judge is to make a decision based solely on Rhode Island's Residential Housing law. That is what I do.

SUBMISSIONS FOR THE RECORD

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee
Hearing On The Nomination Of O. Rogeriee Thompson
December 1, 2009

Today the Senate Judiciary Committee hears from Justice O. Rogeriee Thompson. Justice Thompson is a respected judge in Rhode Island who has been nominated by President Obama to the United States Court of Appeals for the First Circuit. She has the support of both of her highly-respected home state Senators.

In 1988, Justice Thompson became the first African-American woman judge in the history of the Rhode Island state courts. Now, more than 20 years later, if approved by the Senate, she will become the first African-American judge, and only the second woman, to serve on the First Circuit. Justice Thompson has talked about the incredible story of her lineage and the historical barriers that her family has overcome. She continues in this great tradition.

She has twice been appointed by Republican governors. At her 1997 swearing-in ceremony, becoming the first African-American woman judge to sit on the state's highest trial court, Justice Thompson told the crowd, "I accept [this] place in history with pride and with honor, but . . . the fact that I am the only one means we have work yet to do [in] broadening the scope of the bench."

This nomination can be considered and confirmed before the end of the year. Recently the Senate showed what it can do when we work in good faith. It should not take weeks for the Judiciary Committee to report nominations, and additional weeks and months before Republicans allow nominations to be considered by the Senate. We have shown what we can do. The Senate took final action on the nominations of Judge Christina Reiss of Vermont and Judge Abdul Kallon of Alabama just 17 days after their hearing. That prompt action by the Senate demonstrates what can be done when we work together. Following the model we established for Judges Reiss and Kallon, the Senate should be able to consider and confirm the nomination of Justice Thompson by the third week in December and certainly before the end of this session of Congress.

Indeed, the Senate should also be able to confirm all eight of the judicial nominations currently on the Senate Executive Calendar awaiting final action by the Senate, and the additional five judicial listed for Committee votes this week. Acting on these nominations, we can reach a total of 23 Federal circuit and district court confirmations this year. That is short of the total of 28 nominations that a Democratic Senate majority worked to confirm in President Bush's first year in office, 2001, but better than the nine confirmations achieved in the first 11 months of this year.

This year we have witnessed unprecedented delays in the consideration of qualified and noncontroversial nominations. We have had to waste weeks seeking time agreements in order to consider nominations that were then confirmed unanimously. We have seen nominees strongly supported by their home state Senators delayed for months and unsuccessfully filibustered. I have been concerned that these actions by the Republican leadership signal their return to their practices in the 1990s, which resulted in more than doubling circuit court vacancies and led to

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the pocket filibuster of more than 60 of President Clinton's nominees. The crisis they created led to public criticism of their actions by Chief Justice Rehnquist during those years.

I hope that instead of withholding consent and threatening filibusters of President Obama's judicial nominees, Senate Republicans will treat the nominees of President Obama fairly. I made sure that we treated President Bush's nominees more fairly than President Clinton's nominees had been treated. In the 17 months that I served as chairman of this Committee during President Bush's first term, the Senate confirmed 100 of his judicial nominations.

During the month of December in 2001, a Democratic-led Senate confirmed 10 of President Bush's judicial nominees to get to a total of 28 that year. We will have to exceed that number this month in order to get to 20 confirmations, or better, to a possible total of 23 this year. I fear that, instead, this year's total will be the lowest in modern history. If Senate Republicans continue their delaying tactics, the total could be as low as that in 1996 when a Republican Senate majority would only allow 17 judicial confirmations all session.

Today, with the scheduled consideration of a judicial nomination at Noon, the Senate will finally move to double-digit confirmations of Federal circuit and district court judges—it will be our tenth confirmation this year. Although there have been nearly 110 judicial vacancies this year on our Federal circuit and district courts around the country, only 10 vacancies have been filled. That is wrong. The American people deserve better.

It has not been for lack of qualified nominees. As I have noted, there are eight nominations awaiting Senate action on the Executive Calendar, and another five who have had their confirmation hearings and are awaiting approval by the Judiciary Committee. The Senate should do better, and could, if Senate Republicans would remove their holds and stop delaying.

During President Bush's last year in office, we reduced judicial vacancies to as low as 34, even though it was a presidential election year. Judicial vacancies have now spiked. There are currently 98 vacancies on our Federal circuit and district courts, and 23 more have already been announced. This is approaching record levels. I know we can do better. The American people deserve better. Justice should not be delayed or denied to any American because of overburdened courts and the lack of Federal judges.

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Statement of

The Honorable Sheldon Whitehouse

United States Senator
Rhode Island
December 1, 2009

Opening Statement of Senator Sheldon Whitehouse
Senate Judiciary Committee Hearing on the Nomination of O. Rogeriee Thompson to the U.S. Court of Appeals for the First Circuit

Today we will consider the nomination of O. Rogeriee Thompson to the United States Court of Appeals for the First Circuit. I am grateful to Chairman Leahy for the opportunity to chair this hearing, and I do so with great pleasure since the nominee is a distinguished Rhode Island judge who I have known well for many years. I welcome Justice Thompson, and her family and friends, to the Judiciary Committee and to the United States Senate. I also welcome to the Committee the senior Senator from Rhode Island, Jack Reed, who will introduce Justice Thompson. It has been a great honor to serve with him in the Senate and it was a pleasure to assist him in identifying the best possible nominee to serve on the First Circuit, which serves our home state of Rhode Island. I was proud to join him in recommending Justice Thompson to President Obama and thank the President for recognizing her expertise and good judgment.

Justice Thompson comes before the Committee with an exceptional record of achievement that speaks both to her remarkable talents and her lifetime of hard work. Born in segregated South Carolina, Justice Thompson pursued the opportunity to finish high school in Scarsdale, New York, even though it meant moving away from her family at an early age. After excelling there, Justice Thompson went on to graduate from Brown University and to receive a law degree from Boston University. With those academic credentials, one might have expected Justice Thompson to pursue a lucrative career in the corporate realm, but she instead chose to employ her talents in underserved communities in Providence. I am very glad that she did.

A successful career in legal practice led to Justice Thompson's appointment as an Associate Judge on the Rhode Island District Court and subsequently as an Associate Justice on the Rhode Island Superior Court. Justice Thompson now has twenty-one years of judicial experience and a record of respect from all corners of Rhode Island's bench and bar. Her courtroom deservedly has come to be known as a place in which every party can expect a fair hearing.

Justice Thompson's extensive experience on the Rhode Island bench prepares her well for the work of the First Circuit. Not only has it allowed her to consider the customary range of federal issues that state courts regularly face, but it has allowed Justice Thompson to demonstrate the proper role of a judge: to respect the role of the legislature; decide cases based on the law and the facts; not prejudge any case, but listen to every party that comes before them; respect precedent;

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and limit themselves to the issues that the Court must decide.

But Justice Thompson not only is an exceptionally qualified nominee. She also is a historic nominee, as she would be the first African American, and only the second woman, to serve on the First Circuit. Indeed, Justice Thompson has a habit of breaking barriers, as she was the first African American woman appointed to Rhode Island's District Court and to Rhode Island's Superior Court. It is fitting that she is the one to make another piece of long-overdue history. She is a worthy nominee for such a historic occasion.

I look forward to working with Chairman Leahy and my colleagues as this nomination proceeds through the Committee and ultimately to confirmation.

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NOMINATIONS OF JAMES A. WYNN, JR., NOMINEE TO BE UNITED STATES CIRCUIT JUDGE FOR THE FOURTH CIRCUIT; AND, ALBERT DIAZ, NOMINEE TO BE UNITED STATES CIRCUIT COURT JUDGE FOR THE FOURTH CIRCUIT

WEDNESDAY, DECEMBER 16, 2009

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 3 p.m., Room 226, Dirksen Senate Office Building, Hon. Benjamin A. Cardin presiding.

Present: Senators Klobuchar, Specter, Franken, Sessions and Hatch.

OPENING STATEMENT OF HON. BENJAMIN L. CARDIN, A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator CARDIN. The Committee will come to order. Let me thank Chairman Leahy for allowing me to chair this hearing.

I first want to acknowledge two of my former colleagues from the House of Representatives. I do that, Senator Burr, because I served a lot longer in the House than I have been in the Senate. So it was nice that we have a hearing of North Carolina judges to bring Congressman Watt and Congressman Butterfield to our Committee room. We welcome both of them to the Committee room.

Judge Wynn, I want you to know one thing. I was on a plane ride with Congressman Butterfield, for a long plane ride, and for hours he was telling me about you. So you have a good friend in Congressman Butterfield and he assured me that you are going to make a great addition to the Fourth Circuit.

I take special interest in the court circuit. It is a Fourth Circuit in which, of course, Maryland is a party to. We currently have four vacancies. I guess it is about 20 to 25 percent of the workload. So it is critically important that we move forward on the confirmation process in the Fourth Circuit.

I am pleased that we have been able to confirm recently two additions to the Fourth Circuit, last year and this year, and that we have another person who has been approved by our Committee. But we have already confirmed Judge Agee from Virginia and Judge Davis from Maryland, and we have had a hearing on Justice Keenan from Virginia, who has received the voice vote from our

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Committee and we are hoping that she can be confirmed prior to the end of this session of Congress.

It is important that we move forward with these nominations. As I evaluate judicial candidates, I use several criteria. First, I believe judicial nominees must have an appreciation for the Constitution and the protections it provides to every American. Second, I believe each nominee must embrace a judicial philosophy that reflects mainstream American values, not narrow ideological interests.

Third, I believe a judicial nominee must respect the role and responsibilities of each branch of government. Finally, I look to a strong commitment and passion for the continued progress for civil rights protection.

We are fortunate to have two nominees before us who have devoted a good deal of their life to public service and we thank them for their public service and we thank their families, because we know this is a joint sacrifice.

Judge James Wynn comes to this Committee with a broad range of both civilian and military judicial experience. Judge Wynn currently sits on the North Carolina Court of Appeals, the state's intermediate appellate court.

Prior to taking the bench in 1990, he served as an appellate public defender and worked in private practice. Judge Wynn is also a certified military trial judge and a captain in the U.S. Navy Reserves.

He served on active duty in the U.S. Navy JAG Corps from 1979 to 1983. As a military lawyer, he tried over 100 court-martial cases before sitting as a military judge.

He has been awarded the Meritorious Service Medal three times, the Navy Commendation Medal twice, the Navy Reserve Medal, the National Defense Service Medal, and the Global War on Terrorism Medal.

Congratulations. That is quite an impressive array.

He is chair of the American Bar Association Judicial Division, a former chair of the association's Appellate Judges Conference, and a member of the standing Committee on Minorities in the Judiciary.

He received his BA from the University of North Carolina-Chapel Hill, his JD from Marquette University Law School, and a master's of law from the University of Virginia School of Law. Quite impressive.

He has received a unanimous well qualified recommendation from the American Bar Association.

Judge Diaz also comes to this Committee with a broad range of both judicial and legal experience in both civilian and military court systems.

Judge Diaz currently serves as a special superior court judge for the complex business cases, one of only three in the State of North Carolina.

Judge Diaz began his legal career in the United States Marine Corps, Legal Services Support Section, where he served as a prosecutor, defense counsel, and, ultimately, chief review officer. He then moved to the Navy's Office of Judge Advocate General, where he served for 4 years as appellate government counsel, handling criminal appeals.

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In 1995, Judge Diaz left active duty in the Marine Corps and worked as an associate at Hutton & Williams, with a primary focus on commercial litigation. He remained in the Marine Corps Reserves while in private practice, serving as Reserve appellate defense counsel in the Navy JAG Corps, a Reserve military judge in the U.S. Navy and Marine Corps judiciary, and a Reserve appellate military judge in the U.S. Navy-Marine Corps Court of Criminal Appeals.

He resigned as a military judge when he retired from the Marine Corps in 2006. Once again, a very impressive record.

Judge Diaz was the first Latino appointed to the North Carolina Superior Court, where he was named as a resident superior court judge in 2001. In 2002, he was appointed as a special superior court judge and he was designated a special court judge for the complex business cases in 2005.

He earned his BS from the University of Pennsylvania's Wharton School. He received his JD from NYU School of Law, and he earned his master's degree in business administration from Boston University.

Judge Diaz is nominated for the Fourth Circuit Court of Appeals and received a rating of unanimously well qualified by the American Bar Association.

So we thank both of you for your willingness to continue to serve in the public. I want to compliment particularly your two Senators, one a Democrat, one a Republican, working together to bring us the very best for our consideration. It is a model for other states to follow and I compliment both Senator Burr and Senator Hagan.

We will start with the introductions by your two Senators.

Senator Burr.

Senator Burr, just for one second. I see that Senator Sessions has arrived. If I could yield first to Senator Sessions and then we will——

Senator BURR. Gladly.

STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. Thank you. Sorry to be running late. We just had an Armed Services hearing I had to be a part of.

Mr. Chairman, it is good to be with you. We will have two nominees today for hearing, which is unusual and not something we do often, but it is something we were requested to do. And the nominees sort of have come forward together for the same circuit and the desire, I understand, is to keep them together.

So I think under those circumstances, I have agreed to go forward with both nominees today and I look forward to a good hearing.

Senator CARDIN. Senator Burr.

PRESENTATION OF JAMES A. WYNN, JR., NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE FOURTH CIRCUIT AND ALBERT DIAZ, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE FOURTH CIRCUIT BY HON. RICHARD BURR, A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

Senator BURR. Thank you, Mr. Chairman. I hope to solve 50 percent of the Fourth Circuit vacancies with a North Carolina solution.

I thank you and Senator Sessions. I want to welcome not just our nominees, but I want to welcome their family and their friends who are here to celebrate in this day.

It is a great pleasure for me to introduce not just one, but two nominees for the Fourth Circuit court.

Judge Wynn and Judge Diaz may be unique in the legal community in which they both serve not only because of their impressive credentials, but, also, their outstanding character and commitment to public service.

Both of these men have served their country in the military and I am particularly grateful to them for that service.

Judge Wynn grew up on a farm in Robertsonville, North Carolina. He has six brothers and a sister, some of whom are here today. He says he learned the values of hard work helping out on the family farm, where his family still gathers for regular reunions.

He joined the U.S. Navy Judge Advocate General Corps in 1979, upon graduation. He always had a desire to serve in the military and thought that that might be his last opportunity to do so.

Upon completing his commitment to active duty, Judge Wynn's mentors in the JAG Corps convinced him to become a Reservist and he continued that duty into much of his time as a judge. In August 2009, he retired as a Navy captain with 30 years service.

Throughout his career, he has shown a continued commitment to learning. Although on the bench and more than 15 years into his legal career, Judge Wynn decided to continue his legal education by pursuing a master's degree in judicial process. He even spent 8 years studying the human genome project.

Judge Wynn is a deacon of the Providence Missionary Baptist Church in Robertsonville, North Carolina and every Sunday, he drives 45 miles to pick up a fellow deacon, his father, James Andrew Wynn, Sr., who is here with us today and 87 years old.

Welcome, Mr. Wynn.

Judge Wynn currently serves on the North Carolina Court of Appeals. His wife, Jacqueline, and two of their three children, Javius and Jaeander, are here today, as are many of his fellow JAG officers. His middle son, Conlan, could not be here today because of college exams. I am sure he would rather be here with us.

Judge Diaz also started his legal career in the JAG Corps, but as a United States Marine. He enlisted in the Marine Corps at age 17 and broke his mother's heart. She had hoped that he would go to college and be the first in his family to get a college degree.

Judge Diaz felt strongly that the Marine Corps would be best for him. He had a friend who had joined before him and he could see that it had changed his way of life.

Judge Diaz said, and I quote, "I just looked at him and thought, 'I need some of that,'" unquote. Well, a young 17-year-old con-

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vinced his mother to sign him to join, however, by promising her that the Marine Corps would not keep him from going to college.

Judge Diaz followed through on his commitment to his mother. Two years into his service in the Corps, he joined the ROTC program to go to college and then on to law school to become a Marine Corps JAG. He continued to serve until October of 2006, when he retired as a lieutenant colonel.

He, too, shows a commitment to his community, working as a truancy court judge for elementary school kids, meeting regularly with their parents to determine what kind of issues may be interfering in their children's school attendance.

He recruits mentors from the legal profession for "Lunch with a Lawyer," a program for middle schoolers who are interested in legal careers. The kids sit down and have lunch with a lawyer once a month to learn about their careers. He says eighth graders generally do not know what they want to do with their lives, but that the program is a good way to mentor kids who need role models to help them think more about the future.

We will just have to give Judge Diaz the benefit of the doubt that it is a positive thing to draw more kids into the practice of law.

Judge Diaz currently serves as a superior court judge in the North Carolina business court. He has been praised by those who have practiced before his court as fair and impartial as a judge, but, also, they refer to his dealing with some of the most difficult cases. He says this is just a testament to the work ethic he learned in the Marine Corps and that the greatest experience anyone can have is to serve their country in some way.

I quote Judge Diaz, "Democracy isn't free. We have to remember to work for it."

He says he works hard, but remembers the limits of the bench; that his responsibility is to faithfulness of the law. Beyond that, he said he just treats people with dignity and respect.

He is joined today by his wife, Hilda, and his daughter, Christina. His youngest daughter, Gabriella, is also taking exams today.

We have so many similarities between these two nominees.

Mr. Chairman, I am proud to present to the Committee two distinguished nominees for the Fourth Circuit court and I suggest that this Committee look for an expedited review and referral to the full Senate so that that deficiency on the Fourth Circuit can be filled.

I thank the Chair and I thank the Ranking Member.

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

Senator CARDIN. And we thank you very much for your support.

Senator Hagan.

PRESENTATION OF JAMES A. WYNN, JR., NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE FOURTH CIRCUIT AND ALBERT DIAZ, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE FOURTH CIRCUIT BY HON. KAY HAGAN, A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

Senator HAGAN. Thank you, Mr. Chairman. I, too, want to welcome Judges James Wynn and Albert Diaz and thank both of them

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for being here today and for the service that they have both given our state and nation over the past several years.

I also want to thank President Obama for selecting such exemplary nominees. And I sincerely want to extend my gratitude to my esteemed colleague, Senator Richard Burr, for working so hard with me to ensure that North Carolina has adequate and highly capable representation on the Fourth Circuit.

These two judges are exactly what we need on the Fourth Circuit Court of Appeals, for several reasons, and you have just heard Senator Burr's excellent qualities and biographies of these two esteemed gentlemen, and I will not go any further into their biographies.

I also see Congressman Mel Watt here, who so ably recognizes the citizens in North Carolina.

But when I first came to the U.S. Senate earlier this year, I had high hopes for increasing the number——

Senator CARDIN. Congressman Butterfield is also there.

Senator HAGAN. I did not see Congressman Butterfield. And Congressman Butterfield—I am so sorry—also, who so ably represents his district in North Carolina.

But when I first came to the Senate earlier this year, I had high hopes for increasing the number of North Carolinians on this court. North Carolina is the fastest-growing and largest state served by the Fourth Circuit; yet, only two of the 15 seats were filled by the abundant talent from our state. And over the past century, North Carolina has had fewer total judges on this court than any other state.

Furthermore, there have been inexcusable vacancies on this court throughout history and given that the United States Supreme Court only reviews 1 percent of the cases it receives, the Fourth Circuit is the last stop for almost all Federal cases in the region, and we must bring this court back to its full strength.

Since 1990, when this circuit was granted 15 seats, it has never had 15 active judges. But specifically, there has been a history of partisan bickering over the vacancies on the Fourth Circuit.

But with these nominees and this process, we are changing the course of history and I am very excited about confirming these judges.

However, I know that members of this Committee will be less interested in these historical issues than they will be in the particular qualifications and experiences of these two accomplished judges.

I am proud to note that both of them have received unanimous ratings of well qualified from the American Bar Association. They both bring a wealth of experience in the courtroom, advising courts and judges and serving in the armed services.

These judges show respect for the law and apply it as it is written. In a recent dissenting opinion, Judge Wynn wrote, "Judicial prudence requires us to leave these policy questions to our Legislative and executive branches of government. Our role is to apply the law, not to make it."

Editorials in newspapers throughout North Carolina have praised these nominations. The *Charlotte Observer* said, "Judges Wynn and Diaz are widely regarded as intelligent, ethical judges,

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who have won respect for their judicial and military careers. They are the kind of judges the Federal bench needs. Their quality is so unquestioned that only partisanship could stall their nominations."

The *Raleigh News and Observer* said, "There appears to be no good reason they shouldn't be moved through the confirmation process with dispatch."

And I am honored to have the opportunity to play some role in this process and that we are now moving toward putting Judge Diaz and Judge Wynn on the Fourth Circuit bench.

I want to express my sincere gratitude to this Committee for holding this hearing today.

Thank you, Mr. Chairman and Mr. Ranking Member. Thank you very much.

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

Senator CARDIN. I want to thank both Senator Hagan and Senator Burr not only for their testimony here today and their introductions, but the manner in which these nominees have been brought forward.

I particularly want to thank Senator Sessions for accommodating the fact that we could take two appellate court judges in one hearing, because that is unusual. We normally want to have a separate hearing on each of our appellate judges.

So I want to thank Senator Sessions. I think it reflects the fact that the two Senators worked together in a nonpartisan manner to bring us forward the nominees.

So congratulations to both of you.

We will now proceed to the hearing of the two judges, if they would come forward please and remaining standing, if you would, please.

We ask that you take an oath, which is traditional in the Judiciary Committee.

[Nominees sworn.]

Senator CARDIN. Please have a seat. Judge Wynn, we will start with you. Glad to hear from you. And I think your family has already been introduced, but if you care to do it again, certainly, they deserve it.

STATEMENT OF JAMES A. WYNN, JR., NOMINEE TO BE UNITED STATES CIRCUIT JUDGE FOR THE FOURTH CIRCUIT

Judge WYNN. [Off microphone] and allowing us this opportunity to appear before this Committee. I am particularly thankful, of course, to my God for this opportunity and I thank my President Obama for this opportunity. And I thank the judges of my court, the North Carolina Court of Appeals and the Supreme Court of North Carolina, my colleagues who have helped me through the years to be a better judge and a good judge, and my former colleagues.

I am particularly pleased, of course, to have my father here, who has already been mentioned. I am pleased to have my wife, Jacqueline, and two of my three sons, Javius and Jaeander. Of course, Conlan could not be here for the reason stated, that he is taking an exam.

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I am happy to have my sister, Angela, here and her husband, Arthur. My sister, Anita, is also here and, unfortunately, my sisters, Joan and Romaine (ph) and her husband, Benny, could not be here, nor could my brothers, Reggie and Arnie, be here.

In addition, I believe my niece, April, is in the audience here and I hope I am not forgetting someone behind me here.

But I do want to make special note of my Navy friends who are here, because the Judge Advocate General of the Navy said he would attempt to show up. He is having a meeting with the Undersecretary at this time, but he would be coming.

I know that Rear Admiral Steve Talson is here, who is the Deputy JAG in charge of Reserve Affairs; and, a very special friend of mine, who is a line officer in the Navy, Captain Glen Flanagan, who commanded two major ships, a nuclear cruiser and a frigate during his time. We have been friends for over 30 years and I am particularly happy he was able to make it.

I believe Chief Judge Andy Effron of the Court of Appeals-Armed Forces will also be here. And I saw a number of surprise guests here, some of my former classmates. I know that Justice Timmons-Goodson, who is on our Supreme Court, has joined us and a number of my other friends are here.

I see in the back of the court—earlier—saw them in the back of the court earlier, folks from the Troopers Association, the North Carolina law enforcement group, have come, also, and a number of other friends.

And I hope, if I missed anybody behind me, please charge that not to my heart, just to the fact that perhaps the moment is consuming me.

[The biographical information follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name: State full name (include any former names used).**

   James Andrew Wynn, Jr.

2. **Position:** State the position for which you have been nominated.

   United States Circuit Judge for the Fourth 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.**

   Office
   North Carolina Court of Appeals
   Post Office Box 888
   Raleigh, NC 27602

   [redacted]

4. **Birthplace:** State year and place of birth.

   1954; Robersonville (Martin County), North Carolina

5. **Education:** List in reverse chronological order 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.

   January 2001; Judge Advocate School, Charlottesville, Va;
   Military Trial Judge Certification

   October 1979 to December 1979; Naval Justice School, Naval Education and Training Center, Newport, RI; Article 27(b) UCMJ Certification

   June 1993 to May 1995; University of Virginia School of Law; Masters of Law in Judicial Process received May 1995

   1976 - 1979; Marquette University Law School; J.D., 1979

   1972 - 1975; University of North Carolina at Chapel Hill; B.A., May 1975

6. **Employment Record**: List in reverse chronological order 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 description.

2009-Present Vice President
National Conference of Uniform Law Commission
111 N. Wabash, Suite 1010
Chicago, IL 60602

2009-Present Chair
Judges Advisory Committee on Ethics
Standing Committee on Ethics and Professionalism
American Bar Association
321 N. Clark Street
Chicago, IL 60654

2009-Present Chair
Appellate Judges Ethics Committee
Appellate Judges Conference
American Bar Association
321 N. Clark Street
Chicago, IL 60654

2008-2009 (completed) Co-Chair
2009 Diversity Conference
American Bar Association
321 N. Clark Street
Chicago, IL 60654

2007-2009 (completed) Division Chair
National Conference of Commissioners on Uniform State Laws
111 N. Wabash Avenue
Suite 1010
Chicago, IL 60602

2005-2009 (completed) Vice Chair
Board of Directors
Justice at Stake Campaign
717 D Street, N.W. Suite 203
Washington, DC 20004

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1979-2009 (Retired)	Judge Advocate General's Corps (Active & Reserve) United States Navy Washington Navy Yard 1322 Patterson Avenue, S.E. Suite 3000 Washington, DC 20374
2007-2008	Chair Judicial Division American Bar Association 321 N. Clark Street Chicago, IL 60654
2003-2006	Trustee Interest on Lawyer Trust Account Committee North Carolina State Bar 208 Fayetteville Street Raleigh, NC 27601
2003-2004	Chair Appellate Judges Conference Judicial Division American Bar Association 321 N. Clark Street Chicago, IL 60654
2003-2004	Chair *Brown v. Board of Education* Fiftieth Anniversary Committee North Carolina Bar Association 8000 Weston Parkway Cary, NC 27513
2002-2005	Executive Committee National Conference of Commissioners on Uniform State Laws 111 N. Wabash Avenue Suite 1010 Chicago, IL 60602
2000-2001	Vice President North Carolina Bar Association 8000 Weston Parkway Cary, NC 27513

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2000	Board of Governors American Judicature Society The Opperman Center at Drake University 2700 University Avenue Des Moines, IA 50311
1/99-Present	Associate Judge North Carolina Court of Appeals Post Office Box 888 Raleigh, NC 27602
10/98-12/98	Associate Justice Supreme Court of North Carolina 2 East Morgan Street Raleigh, NC 27601
1998-2004	Executive Board Member Program in the Humanities and Human Values University of North Carolina, Chapel Hill CB# 3425, UNC-Chapel Hill Chapel Hill, NC 27599-3425
1990-1998	Associate Judge North Carolina Court of Appeals Post Office Box 888 Raleigh, NC 27602
1989-1994	Trustee Pitt Community College 1986 Pitt Tech Road Winterville, NC 28590
1988-1990	Partner Fitch, Wynn & Associates Attorneys at Law 615 East Nash Street Wilson & Greenville, NC
1998-1990	Vice-Chairman Greenville Environmental Advisory Commission Greenville City Hall 200 West Fifth Street Greenville, NC 27835

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1998-1990 Trustee
North Carolina Health Care Advisory Board
Raleigh, NC

1986-1988 Partner
Fitch, Butterfield & Wynn
Attorneys at Law
615 East Nash Street
Wilson & Greenville, NC

1984-1986 Associate
Fitch & Butterfield
Attorneys at Law
615 East Nash Street
Wilson, NC

1983-1984 Assistant Appellate Defender
Office of the Appellate Defender for North Carolina
123 West Main Street, Suite 500
Durham, NC 27701

1979-1983 Judge Advocate General's Corps (Active)
United States Navy
Washington Navy Yard
1322 Patterson Avenue, S.E.
Suite 3000
Washington, DC 20374

7. **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, and whether you have registered for selective service.

Yes, I have registered for selective service.

Military Service:
July 27, 1979 to September 30, 1983
United States Navy (Active)

October 1, 1983 to August 1, 2009
United States Navy (Reserve) (Retired)
Judge Advocate General's Corps

Rank: Captain (O-6)

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8. **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. H

2008 Raymond Pace Alexander Award, National Bar Association
2008 Harvey E. Beech Outstanding Alumni Award, University of North Carolina at Chapel Hill
2004 All-University Alumni Merit Award, Marquette University
2002 Hallows Fellow & Visiting Scholar, Marquette University Law School
1996 Martin Luther King Achievement Award, General Baptist State Convention of North Carolina
1995 Appellate Judge of the Year, North Carolina Academy of Trial Lawyers
1995 Warren Burger Scholarship, John Marshall Harlan Symposium on Comparative Law
1979 Order of the Barristers, Marquette University Law School
1979 Woolsack Society Award, Marquette University Law School
1979 Order of the Old Well, University of North Carolina at Chapel Hill

Military Decorations:
Meritorious Service Medal (Three Awards)
Navy Commendation Medal (Two Awards)
Naval Reserve Medal
National Defense Service Medal
Global War on Terrorism Medal

9. **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.

American Bar Association
Chair, Judges Advisory Committee on Ethics, 2009-Present
Chair, Appellate Judges Conference Ethics Committee, 2008-Present
Co-Chair, ABA 2009 Diversity Conference, 2008-2009 (completed)
Member, World Justice Commission, 2007-Present
ABA House of Delegates, 2004-2008
Standing Committee on Minorities in the Judiciary, 2000-2008
Chair, Judicial Division, 2007-2008
Chair, Appellate Judges Conference, 2003-2004
Joint Commission to Evaluate Model Code of Judicial Conduct, 2003-2007
Chair, Working Groups on First Amendment and Judicial Speech, 2002-2003
Standing Committee on Judicial Independence, 2001-2005
Standing Committee on State Judicial Selection Standards, 2001-2003

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Executive Committee and Membership Committee Chair, Appellate Judges Conference, 1996-1998
Appellate Judges Education Committee
Chair, Appellate Judges Seminar, Reno, 2000
Chair, Appellate Judges Seminar, Hawaii, 1999
Special Committee on Judicial Selection, Judicial Independence Commission, 1999

The American Law Institute
Member, 2000-Present

National Bar Association
Judicial Council, 1995-Present

North Carolina Association of Black Lawyers, 1983-Present
Secretary, Judicial Council, 1997-2000

North Carolina Bar Association
Vice President, 2000-2001
Strategic Planning Committee, 2009-Present
Chair, *Brown v. Board of Education* Fiftieth Anniversary Committee, 2003-2004
Bench Bar Liaison Committee
Legal Disaster Committee
Public Information Committee

North Carolina Judicial Conference
Treasurer, 1997-1998

National Conference of Commissioners on Uniform State Laws
Vice President,, 2009-Present
Division Chair, 2007-2009
Scope & Program Committee, 2005-2007
Executive Committee, 2002-2005
Drafting Committee, Revised Uniform Arbitration Act, 1997-2000
Study Committee, Uniform Arbitration Act, 1997-1998
Drafting Committee, Uniform Tort Apportionment Act, 2000-2003
Drafting Committee, Uniform Protection of Genetic Information in Employment and Insurance Act, 2005-Present

Pitt County Bar Association

Wake County Bar Association

Wilson County Bar Association

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10. **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.

North Carolina State Bar, 1984

Wisconsin State Bar, 1979

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.

United States Supreme Court, 1985

United States Court of Appeals, Armed Forces, 1985

United States Court of Appeals, Fourth Circuit, 1984

United States District Court, Eastern District of North Carolina, 1984

United States District Court, Middle District of North Carolina, 1984

United States Court of Appeals, Seventh Circuit, 1979

U. S. Military Courts, Article 27(b) Certification, 1979

U.S. Military Courts, Article 26(b), (c) and 42(a) - Military Trial Judge

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, 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.

Member, Sigma Pi Phi Fraternity, Gamma Boule, 1995-Present
Member, Kappa Alpha Psi Fraternity, 1981-Present
Deacon, Providence Missionary Baptist Church, Robersonville, North Carolina, 1965-Present
Member, American Judicature Society, 1995-1996

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Member, National Association for Advancement of Colored People, 1988-1990
Member, North Carolina Academy of Trial Lawyers, 1985-1990
Cornerstone Missionary Baptist Church, Greenville, North Carolina, 1984-1992
Master Mason, Prince Hall Masonic Lodge, 1984-1990
Corinth Missionary Baptist Church, Milwaukee, Wisconsin, 1976-1979
VISTA Supervisor, Wesley Foundation of Greenville, 1975-1976

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, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin 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.

To the best of my knowledge, during the tenure of my membership in the above organizations, none had policies of discrimination based on race, sex, religion, or national origin.

12. **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. Supply four (4) copies of all published material to the Committee.

See below as well as documents attached.

State v. Mann: Judicial Choice or Judicial Duty?, 87 U.N.C. L. Rev. 991 (2009)

Judicial Diversity: Where Independence and Accountability Meet, 67 Alb. L. Rev. 775 (2004)

Judging the Judges, 86 Marq. L. Rev. 753 (2003)

All-University Alumni Merit Award Speech Excerpt, Marquette University Law Alumni Magazine 34 (2004)

Chair's Column, American Bar Association Judicial Division Record, Volume II Issue I (Fall 2007)

Chair's Column, American Bar Association Judicial Division Record, Volume II Issue IV (Summer 2008)

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Contributor to Online ABA-CLE Program, *Race and Gender Bias in Judicial Election and Selection: Truth or Fiction? Are Women and Minority Judges More Likely to be Targeted by Special Interests?* (April 17, 2007)
https://www.abanet.org/cle/clenow/raceandgenderbias.html

Quoted in American Bar Association Magazine, *Revising the Rules Update of Judicial Conduct Code will Address the Changing Justice System* (February 2004 Issue)
http://www.abajournal.com/magazine/revising_the_rules/

Quoted in American Bar Association Magazine, *Bench Learners: The Judiciary's Changing Role Sparks Hotter Topics for CLE Courses* (June 2006 Issue)
http://www.abajournal.com/magazine/bench_learners/print/

b. 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, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

Committee Member & Contributor, *The National Conference of Commissioners on Uniform State Laws*, Uniform Apportionment of Tort Responsibility Act (2003)

Current Drafting Committees: Business Organizations Act; Misuse of Genetic Information in Employment and Insurance Act; Relocation of Children Act; Notarial Acts; Harmonize Legal Framework for Unincorporated Nonprofit Associations in North America

Current Study Committees: Model Drug Dependence and Rehabilitation Act; Administrative Procedures for Interstate Compact Entities Act

c. 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.

Not applicable.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the

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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 recording of your remarks, 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, furnish a copy of any outline or notes from which you spoke.

Before becoming a judge, I sometime spoke at churches and community events such as Men's Day and Youth Day. The talks' subject matter varied but generally followed the pattern of a personal introduction, a reference to the organization, and then general remarks usually addressing a theme given to me by the group that invited me. The church talks generally centered around religious commitment and stewardship. Additionally, I occasionally spoke to civic groups on legal issues, such as estate planning. I have neither transcripts/recordings nor notes of these speeches.

During my contested judicial campaigns in 1990, 1998, 2000, 2004, and 2008, I gave numerous extemporaneous campaign speeches that were typically no more than ten minutes long. These campaign speeches did not touch on any issues that could come before the court for which I was running, but rather generally addressed, first, my educational and professional background, second, the role of a judge and North Carolina's court system, and, finally, an appeal for election-day support. I have neither transcripts/recordings nor notes of these speeches.

Aside from judicial election-related speeches, since becoming a member of the judiciary, my speeches have been based on general drafts with extemporaneous comments to fit the occasion.

A list of such speeches and the groups to whom they were presented, and copies of the speech drafts are attached as APPENDIX A.

e. 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.

See below as well as attached documents.

PBS News Hour Interview with Video, May 11, 2005, "Judging Judges" Interviewed by Gwen Fill with Judge Charles Pickering on confirmation process. http://www.pbs.org/newshour/bb/congress/jan-june05/judges_5-11.html

PBS News Hour Story with Video, May 8, 2001, "Race and Justice"

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Kwame Holman report on diversity on the federal bench which includes interview with Judge Wynn, Sen. John Edwards and others.
http://www.pbs.org/newshour/bb/race_relations/jan-june01/justice_05-08.html

PBS News Hour Story, January 5, 2000, "Clearing the Bench"
Kwame Holman report on the politics of the federal bench with interviews of Judge Wynn, Sen. John Edwards, Sen. James Clyburn and others
http://www.pbs.org/newshour/bb/law/jan-june00/backlog_1-5.html

Womble Carlyle North Carolina Appellate Blog Interview with Judge Wynn
http://womblencappellate.blogspot.com/2006/10/spotlight-on-judges-series-judge-james_20.html

UNC TV Online Election 2008 Biography, Video Statement, and Audio Interview
http://www.unctv.org/election/candidates/courts/james_wynn.html

Virginia Lawyers Weekly: "Minimal Presence of N.C. Judges on 4th Circuit Raises Concerns" By Guy Loranger, September 29, 2008
Judge Wynn interviewed
http://www.valawyersweekly.com/weeklyedition/2008/09/29/minimal-presence-of-nc-judges-on-4th-circuit-raises-concerns/

"Abolish Assignments of Error, Says N.C. Appeals Court Judge," Daily Record and the Kansas City Daily News-Press, Jul 30, 2006 by Ertel Berry
http://findarticles.com/p/articles/mi_qn4181/is_/ai_n16648546

13. Judicial Office: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

NORTH CAROLINA COURT OF APPEALS
General Court of Justice
Statewide Jurisdiction

This State intermediate appellate court decides all types of appeals, with the exception of capital murder and utility rate cases. It is composed of fifteen judges elected for terms of eight years in nonpartisan statewide elections. The judges sit in panels of three at the Court of Appeals Building in Raleigh. One three-judge panel may not overrule another panel's decision, and therefore prior panels' decisions are binding. However, a dissenting opinion confers an appeal of right based on the dissent to the Supreme Court of North Carolina.

Elected: November 30, 1990 to December 31, 1992
Reelected: November 3, 1992 to September 30, 1998

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Appointed: January 1, 1999 to December 31, 2000
Reelected: November 7, 2000 to December 31, 2008
Reelected: November, 4 2008 to Present

SUPREME COURT OF NORTH CAROLINA
General Court of Justice
Statewide Jurisdiction

North Carolina's highest court reviews by discretion on all appeals except capital murder and utility rate cases, as well as appeals based on Court of Appeals dissents, which are heard as a matter of right. The Court is composed of seven justices elected for terms of eight years in nonpartisan statewide elections. The justices sit en banc at the Supreme Court Building in Raleigh.

Appointed: October 1, 1998 to December 31, 1998

a. Approximately how many cases have you presided over that have gone to verdict or judgment?

   i. Of these, approximately what percent were:

   jury trials? ___%; bench trials 100% [total 100%]

   civil proceedings? 65 %; criminal proceedings? 35 % [total 100%]

b. Provide citations for all opinions you have written, including concurrences and dissents.

   See attached

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *State v. Jones*, 133 N.C. App. 448, 516 S.E.2d 405 (1999).

   State's Counsel: Isaac Avery, Jonathan Babb, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC 27602, (919) 716-6400

   Defense Counsel: David B. Freeman, 301 N. Main St., Suite 1100, Winston-Salem, NC 27101, (336) 725-1304

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Outcome: I dissented from an affirming judgment, which was reversed by the Supreme Court of North Carolina.

Summary: I dissented from the majority opinion, which affirmed a first-degree felony murder conviction where the underlying felony was a traffic violation with culpable or criminal negligence. The traffic offense and facts were extremely serious – a drunk driver struck a car, killing two passengers and seriously injuring three others. However, the conviction was not at all specific to driving while intoxicated but rather was for assault with a deadly weapon, *i.e.*, a car – a charge that could also be supported by a person who goes more than fifteen miles over the speed limit and has a minor accident. I would have held that subjecting such drivers to potential first-degree felony murder charges, with the attendant possibility of capital punishment, violated due process for lack of fair notice as to the potential consequences of the conduct. I also would have held that applying the felony murder rule as done in this case impermissibly expanded the legislative intent of the felony murder statute and that any such expansion should be undertaken by the General Assembly and not the judiciary. Upon review, the Supreme Court of North Carolina reversed based on my dissent.

2. *Hyde v. Abbott Laboratories, Inc.*, 123 N.C. App. 572, 473 S.E.2d 680 (1996).

Plaintiff's Counsel: Raymond D. Large, Jr., Diane E. Sherrill, 28 Maple St., Sylva, NC 28779, (828) 586-4051

Defense Counsel: James Exum, Larry Sitton, Richard Coughlin, Smith Moore Leatherwood, 300 N. Greene St., Greensboro NC 27401, (336) 378-5200

Outcome: Reversed

Summary: In this case, the defendants had successfully moved to dismiss plaintiff's North Carolina statutory antitrust claims for lack of standing because plaintiff consumers were indirect purchasers. The court reversed, holding that the statute did not limit standing to direct purchasers and the General Assembly, in its last, 1969, amendment broadened the statute, evidencing legislative intent that the statute apply broadly. Further, the court noted that while a similar federal statute has been held not to provide relief to indirect purchasers, the federal case law so holding post-dated the General Assembly's last statutory amendment, and the case law at that time primarily went the other way.

3. *State v. Tutt*, 171 N.C. App. 518, 615 S.E.2d 688 (2005).

Defense Counsel: Terry F. Rose, 212 Bridge St., Smithfield, NC 27577, (919) 938-1616

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State's Counsel: Kimberly Duffley, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC 27602, (919) 716-6400

Outcome: Affirmed

Summary: This case confronted the court with a recent statutory amendment that conflicted with a North Carolina rule of appellate procedure. The amendment, to a rule in the Evidence Code, made unnecessary renewing an objection to evidence when a motion *in limine* had been made. The appellate rules, however, expressly require renewal to preserve the objection for appeal. Because the North Carolina Constitution vests in the Supreme Court of North Carolina the exclusive authority to make rules of appellate practice and procedure, and because of the conflict, the General Assembly's amendment therefore was struck down as unconstitutional. The court nevertheless reviewed the merits to prevent manifest injustice and found no error.

4. *Broderick v. Broderick*, 175 N.C. App. 501, 623 S.E.2d 806 (2006).

Plaintiff's Counsel: Timothy M. Stokes, 122 N. McDowell St., Charlotte, NC 28204, (704) 376-6874

Defense Counsel: Susan v. Thomas, 19410 Jetton Rd., Suite 130, Cornelius, NC 28031, (704) 896-7570

Outcome: Dismissed

Summary: This alimony-related appeal was dismissed due to appellate rules violations relating to assignments of error. While I concurred in result, I authored a concurring opinion urging the Supreme Court of North Carolina to consider abolishing assignments of error, which purportedly limit the issues on appeal but which are unnecessary, have been abolished in numerous jurisdictions, and have lead to the dismissal of numerous appeals, resulting in denial of access to justice for many North Carolinians. I also urged the Supreme Court to provide the Court of Appeals with guidance as to when, if at all, it could invoke discretionary review to avoid manifest injustice, pointing out numerous inconsistent cases in the Court of Appeals. The Supreme Court of North Carolina has now abolished assignments of error, effective October 1, 2009.

5. *Nelson v. Freeland*, 349 N.C. 615, 507 S.E.2d 882 (1998).

Plaintiff's Counsel: E. Thomas Maddox, 100 S. Elm St., Suite 313, Greensboro, NC 27420, (336) 272-8149; A. Wayland Cooke, 100 S.. Elm St., Suite 300, Greensboro, NC 27420, (336) 275-9867

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Defense Counsel: Walter K. Burton, David K. Williams, James D. Sector, Burton & Sue LLP, 419 N. Elm St., Greensboro, NC 27420, (336) 275-0512

Outcome: Reversed

Summary: In this premises liability case, the court modified law, doing away with the licensee/invitee distinction that had caused confusion and conflict in North Carolina jurisprudence. The court adopted in its stead the reasonable duty of care standard, homogenizing the duty to all lawful entrants, though maintaining the distinction regarding the lesser duty owed trespassers.

6. *Hospira Incorporated v. Alphagary Corporation*, __ N.C. App.__, 671 S.E.2d 7 (2009).

Plaintiff's Counsel: R. Stephen DeGeorge, Jonathan C. Krisko, Robinson Bradshaw & Hinson, 101 N. Tryon St., Suite 1900, Charlotte, NC 28246, (704) 377-8314

Defense Counsel: Bradley Kutrow, Brian Kahn, McGuire Woods, 100 N. Tryon St., Charlotte, NC 28202, (704) 373-8999

Outcome: Affirmed in part, reversed in part

Summary: In this recent tort case, a medical devices manufacturer who outsourced production of device components to a contracting manufacturer sued a third-party manufacturer, who produced parts for the contractor. The plaintiff sued for fraud, Unfair Trade Practices Act deception, negligent misrepresentation, and negligence. The court limited the indirect liability, holding that where the allegedly fraudulent, deceptive, or negligently misrepresentative statements were not made by the defendant or an agent of the defendant, the plaintiff's claims could not lie. The court did uphold the negligence claims, however, noting that because the plaintiff and defendant had no contractual relationship, the economic loss doctrine did not bar the claim.

7. *Row v. Row*, 185 N.C. App. 450, 650 S.E.2d 1 (2007).

Plaintiff's Counsel: George Mast, Bradley Schulz, Ron Trimyer, 1 Courthouse Square, Smithfield, NC 27577, (919) 934-6187

Defense Counsel: Marcia Armstrong, 602 S. Third St., Smithfield NC 27577, (919) 934-1575

Outcome: Affirmed

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Summary: The court upheld the trial court's determination that the North Carolina Child Support Guidelines did not violate the Supremacy Clause. 42 U.S.C.S. §§ 651-669b prescribed minimal requirements and encouraged states to act in accordance with them to receive full federal funding. The plaintiff's argument that custodial parents were a suspect class under equal protection was meritless, and plaintiff, who had attended a two-day hearing, had been given ample due process. The court held that the State has a compelling interest in regulating child support obligations, the North Carolina laws were narrowly drawn, and there was no constitutional violation.

8. *Okuma America Corporation v. Bowers*, 181 N.C. App. 85, 638 S.E.2d 617 (2007).

Plaintiff's Counsel: Jonathan C. Krisko, Robinson Bradshaw & Hinson, 101 N. Tryon St., Suite 1900, Charlotte, NC 28246, (704) 377-8314

Defense Counsel: Gary Hemric, Preston Odom, Adam Ross, Fred Parker, 600 S. College St., Charlotte NC 28202

Outcome: Reversed

Summary: The court held a non-compete clause to be enforceable where the clause barred the employee, a high-level executive, from taking a similar job anywhere the international employer operated for six months. The clause's broad geographic application should be read together with its relatively brief term, six months, as well as its not prohibiting the executive from taking another, different type of job during that time frame and in those geographic areas.

9. *Middleton v. The Russell Group, Ltd.*, 126 N.C. App. 1, 483 S.E.2d 727 (1997).

Plaintiff's Counsel: Jack W. Floyd, Constance Floyd Jacobs, 219 W. Washington St., Greensboro, NC 27401, (336) 273-0589

Defense Counsel: Harold Mahler, Cynthia Jarrell, Torin Fury, 217 Edgedale Dr., High Point, NC 27262

Outcome: Affirmed in part, reversed in part

Summary: A former employer and his wife sued the employer, the benefit administrator, and the insurer seeking to recover medical benefits. The court held that the insurer was liable for the mistake in determining that the former employee and his family were not entitled to continued medical coverage under the Consolidated Omnibus Reconciliation Act (COBRA), that the employee and his family were indeed entitled to coverage at the time of the employee's termination,

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and that the attorneys' fees awarded against the employer, the benefit administrator, and the insurer were not an abuse of discretion. However, the court struck down the trial court's enhancement of the attorneys' fees award, held that the trial court lacked a basis for imposing joint and several liability as to the defendants for unpaid medical expenses, and held that ERISA preempted the plaintiffs' State claims for, *inter alia*, breach of contract and unfair and deceptive trade practices.

10. In re N.C. Pesticide Board File Nos. IR94-128, IR94-151, IR94-155, 349 N.C. 656, 509 S.E. 2d 165 (1998).

Petitioner's Counsel: David H. Permar, Tina Frazier, 327 Hillsborough St., Raleigh, NC 27603, (919) 856-3940

State's Counsel: Melissa H. Taylor, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC 27602, (919) 716-6400

Outcome: Reversal of North Carolina Court of Appeals

Summary: A licensee challenged an administrative decision revoking his license for aerial application of pesticides for one year and imposing fines for pesticide regulations. The court held that the court held that the evidence supported the administrative findings supporting the regulations' violation, that the regulations did not violate due process or equal protection, and that the licensee could seek judicial review as opposed to administrative rulings on constitutional issues, which are for the judiciary and not administrative boards to decide.

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

State v. Jones, 133 N.C. App. 448, 516 S.E.2d 405 (1999).
State's Counsel: Isaac Avery, Jonathan Babb, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC 27602, (919) 716-6400
Defense Counsel: David B. Freeman, 301 N. Main St., Suite 1100, Winston-Salem, NC 27101, (336) 725-1304

Hyde v. Abbott Laboratories, Inc., 123 N.C. App. 572, 473 S.E.2d 680 (1996).
Plaintiff's Counsel: Raymond D. Large, Jr., Diane E. Sherrill, 28 Maple St., Sylva, NC 28779, (828) 586-4051
Defense Counsel: James Exum, Larry Sitton, Richard Coughlin, Smith Moore Leatherwood, 300 N. Greene St., Greensboro NC 27401, (336) 378-5200

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State v. Tutt, 171 N.C. App. 518, 615 S.E.2d 688 (2005).
Defense Counsel: Terry F. Rose, 212 Bridge St., Smithfield, NC 27577, (919) 938-1616
State's Counsel: Kimberly Duffley, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC 27602, (919) 716-6400

Broderick v. Broderick, 175 N.C. App. 501, 623 S.E.2d 806 (2006).
Plaintiff's Counsel: Timothy M. Stokes, 122 N. McDowell St., Charlotte, NC 28204, (704) 376-6874
Defense Counsel: Susan v. Thomas, 19410 Jetton Rd., Suite 130, Cornelius, NC 28031, (704) 896-7570

Nelson v. Freeland, 349 N.C. 615, 507 S.E.2d 882 (1998).
Plaintiff's Counsel: E. Thomas Maddox, 100 S. Elm St., Suite 313, Greensboro, NC 27420, (336) 272-8149; A. Wayland Cooke, 100 S.. Elm St., Suite 300, Greensboro, NC 27420, (336) 275-9867
Defense Counsel: Walter K. Burton, David K. Williams, James D. Sector, Burton & Sue LLP, 419 N. Elm St., Greensboro, NC 27420, (336) 275-0512

Hospira Incorporated v. Alphagary Corporation, __ N.C. App.__, 671 S.E.2d 7 (2009).
Plaintiff's Counsel: R. Stephen DeGeorge, Jonathan C. Krisko, Robinson Bradshaw & Hinson, 101 N. Tryon St., Suite 1900, Charlotte, NC 28246, (704) 377-8314
Defense Counsel: Bradley Kutrow, Brian Kahn, McGuire Woods, 100 N. Tryon St., Charlotte, NC 28202, (704) 373-8999

Row v. Row, 185 N.C. App. 450, 650 S.E.2d 1 (2007).
Plaintiff's Counsel: George Mast, Bradley Schulz, Ron Trimyer, 1 Courthouse Square, Smithfield, NC 27577, (919) 934-6187
Defense Counsel: Marcia Armstrong, 602 S. Third St., Smithfield NC 27577, (919) 934-1575

Okuma America Corporation v. Bowers, 181 N.C. App. 85, 638 S.E.2d 617 (2007).
Plaintiff's Counsel: Jonathan C. Krisko, Robinson Bradshaw & Hinson, 101 N. Tryon St., Suite 1900, Charlotte, NC 28246, (704) 377-8314
Defense Counsel: Gary Hemric, Preston Odom, Adam Ross, Fred Parker, 600 S. College St., Charlotte NC 28202

Middleton v. The Russell Group, Ltd., 126 N.C. App. 1, 483 S.E.2d 727 (1997).
Plaintiff's Counsel: Jack W. Floyd, Constance Floyd Jacobs, 219 W. Washington St., Greensboro, NC 27401, (336) 273-0589

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Defense Counsel: Harold Mahler, Cynthia Jarrell, Torin Fury, 217 Edgedale Dr., High Point, NC 27262

In re N.C. Pesticide Board File Nos. IR94-128, IR94-151, IR94-155, 349 N.C. 656, 509 S.E. 2d 165 (1998).
Petitioner's Counsel: David H. Permar, Tina Frazier, 327 Hillsborough St., Raleigh, NC 27603, (919) 856-3940
State's Counsel: Melissa H. Taylor, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC 27602, (919) 716-6400

e. Provide a list of all cases in which certiorari was requested or granted.

See attached

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings.

Blankenship v. Bartlett, 184 N.C. App. 327, 646 S.E.2d 584 (2008), *rev'd in part*, 363 N.C. 518, 681 S.E.2d 759 (2009).

This opinion held that the Equal Protection Clause does not require proportionality in districting for judicial elections, and also that the trial court erred in failing to consider certain evidence offered by the Defendants. The Supreme Court ruled that the "one man, one vote" principle of the Equal Protection Clause is applicable to judicial elections, as judges hold a representative capacity under North Carolina's constitution. The Supreme Court affirmed regarding the admission of excluded evidence.

State v. Icard, 190 N.C. App. 76, 660 S.E.2d 142 (2008), *rev'd in part*, 363 N.C. 303, 677 S.E.2d 822 (2009).

This opinion held that a defendant was unlawfully seized under the Fourth Amendment when approached by a police officer, but that she consented to a subsequent search of her personal items. The Supreme Court agreed that the defendant was unlawfully seized under the Fourth Amendment, but ruled that the evidence discovered subsequently was required to be excluded as fruit of the poisonous tree.

State v. Turnage, __ N.C. App. __, 660 S.E.2d 129, *rev'd in part*, 362 N.C. 491, 666 S.E.2d 753 (2008).

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This opinion held that the State failed to carry its burden at trial to produce sufficient evidence showing that an entry occurred for purposes of burglary, and that the defendant was the perpetrator of the offense alleged. The Supreme Court ruled that the State produced sufficient evidence to show that the defendant was the perpetrator and remanded to the North Carolina Court of Appeals.

State v. Duncan, 188 N.C. App. 508, 656 S.E.2d 597, *rev'd*, 362 N.C. 665, 669 S.E.2d 738 (2008).

This opinion held that the defendant received ineffective assistance of counsel where his counsel failed to request an instruction on diminished capacity in a first-degree murder trial. The Supreme Court reversed upon the reasoning that the trial court was in a better position than the North Carolina Court of Appeals to assess the defendant's counsel's performance.

Williams v. Vonderau, 181 N.C. App. 18, 638 S.E.2d 644, *rev'd in part*, 362 N.C. 76, 653 S.E.2d 144 (2007).

This opinion dismissed an appeal from a domestic violence civil no-contact order as moot because the order had expired at the time the appeal was heard. The Supreme Court reversed upon the rationale that a judgment creating potential adverse legal consequences for an appellant is not rendered moot.

State v. Locklear, 178 N.C. App. 732, 632 S.E.2d 516 (2006), *vacated in part*, 361 N.C. 688, 361 N.C. 700, 654 S.E.2d 704 (2007).

This opinion found that an indictment was defective because it failed to allege an essential element of the charged offense, and remanded the case for re-sentencing on a lesser included offense which had been properly alleged. The Supreme Court vacated the order of remand for resentencing based upon precedent requiring the State to obtain a new indictment.

State v. Oglesby, 174 N.C. App. 658, 622 S.E.2d 152 (2005), *vacated in part*, 361 N.C. 550, 648 S.E.2d 819 (2007).

Among other things, this opinion found *Blakely* error in the trial court's finding and imposing aggravating factors without a jury. The Supreme Court vacated that part of the decision, and remanded for application of harmless error review.

State v. Hernandez-Madrid, 617 S.E.2d 724, 2005 WL 2125044 (2005) (unpublished), *rev'd in part*, 361 N.C. 421, 646 S.E.2d 105 (2007) (per curiam).

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This opinion found *Blakely* error where the trial court found and imposed an aggravating factor, and remanded for re-sentencing. The Supreme Court reversed on this point and remanded for application of the harmless error doctrine.

D'Aquisto v. Mission St. Joseph's Health Sys., 171 N.C. App. 216, 614 S.E.2d 583 (2005), *rev'd in part*, 360 N.C. 567, 633 S.E.2d 89 (2006).

This opinion held, in part, that the trial court did not abuse its discretion in awarding attorney's fees against a worker's compensation defendant for lack of reasonable grounds in defending the claim. The Supreme Court reversed on this point, ruling that the defendant had reasonable grounds to defend the claims.

Myers v. McGrady, 170 N.C. App. 501, 613 S.E.2d 334, *rev'd*, 360 N.C. 460, 628 S.E.2d 761 (2006).

This opinion held that the North Carolina Division of Forest Resources was not shielded from liability by the public duty doctrine because the defendant forest ranger was not a law enforcement officer. The Supreme Court reversed, holding that the Division of Forest Resources was protected from liability by the public duty doctrine because the statutes creating that agency imposed a duty to protect the public.

Sawyers v. Farm Bureau Insurance of N.C., Inc., 170 N.C. App. 17, 612 S.E.2d 184, *rev'd*, 360 N.C. 158, 622 S.E.2d 490 (2005).

This opinion held that a non-party was bound by an out-of-State judgment upon proper service. The Supreme Court of North Carolina reversed upon the reasoning that the out-of-State judgment did not bind the nonparty, despite proper service, because that party had not been a part of the prior action.

Young v. Young, 169 N.C. App. 31, 609 S.E.2d 795, *appeal dismissed and vacated by*, 360 N.C. 58, 620 S.E.2d 674 (2005).

The Supreme Court of North Carolina vacated this decision and dismissed the appeal on mootness grounds.

North Carolina Dept. Transp. v. Stagecoach Village, 166 N.C. App. 272, 601 S.E.2d 279 (2004), *vacated*, 360 N.C. 46, 619 S.E.2d 495 (2005).

This opinion held that the appellants had no right to immediate review of an interlocutory trial court order because that order did not affect a substantial right. The Supreme Court found a substantial right making the trial court's order immediately appealable and remanded to the North Carolina Court of Appeals for full consideration of the issue.

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State v. Blackwell, 603 S.E.2d 168, 2004 WL 1964878 (2004) (unpublished), *aff'd in part rev'd in part*, 361 N.C. 41, 638 S.E.2d 452 (2006).

This opinion found, in part, *Blakely* error in the trial court's finding and imposing an aggravating factor without a jury. The Supreme Court reversed the order of remand for a new sentencing hearing, instead finding that the *Blakely* error was harmless beyond a reasonable doubt.

Whitt v. Harris Teeter, Inc., 165 N.C. App. 32, 598 S.E.2d 151 (2004), *rev'd*, 359 N.C. 625, 614 S.E.2d 531 (2005).

This opinion held that a claim for wrongful discharge in violation of public policy exists in North Carolina, even where the discharge is constructive. The Supreme Court reversed, holding that a claim for wrongful discharge in violation of public policy does not exist in North Carolina where the discharge is constructive.

Jonesboro United Methodist Church v. Mullins-Sherman Architects, L.L.P., 591 S.E.2d 598, 2004 WL 191758 (2004) (unpublished), *rev'd*, 359 N.C. 593, 614 S.E.2d 268 (2005).

This opinion held that certain claims related to construction of a building were not barred by the doctrines of res judicata, collateral estoppel, and the compulsory counterclaim rule. The Supreme Court reversed, holding that the claims were barred by the compulsory counterclaim rule.

Brown v. Floyd Travis Millsap, 161 N.C. App. 282, 588 S.E.2d 71 (2003), *rev'd*, 358 N.C. 212, 594 S.E.2d 1(2004).

This opinion held that the trial court erred by adding court costs and prejudgment interest to a jury's award of damages, taking the total judgment over the statutory threshold for eligibility for attorney's fees. The Supreme Court reversed, reasoning that the trial court lacked discretion not to apply prejudgment interest to the total judgment, thereby surpassing the statutory threshold in any event.

State v. Sneed, 161 N.C. App. 331, 588 S.E.2d 74 (2003), *rev'd*, 358 N.C. 538, 599 S.E.2d 365 (2004).

This opinion vacated a defendant's conviction of possession of a firearm by a felon where the indictment alleged only prior misdemeanor offenses. The Supreme Court reversed based upon one of its subsequent decisions declaring that a misdemeanor conviction may, in some instances, be treated as a felony for purposes of habitual felon indictments.

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Howerton v. Helmet Ltd., 158 N.C. App. 316, 581 S.E.2d 816, *rev'd*, 358 N.C. 440, 597 S.E.2d 674 (2004).

This opinion held that North Carolina adheres to the federal *Daubert* standard for determining the admissibility of expert testimony. The Supreme Court reversed, ruling that North Carolina does not adhere to the *Daubert* standard.

In re Barnes, 157 N.C. App. 144, 579 S.E.2d 585 (2003), *rev'd*, 358 N.C. 143, 592 S.E.2d 688 (2004).

This opinion held that caveators offering a second will executed by the testator lacked standing and the trial court did not acquire subject-matter jurisdiction over the caveat because, having only a copy, they failed to rebut the presumption that the testator's first will was revoked. The Supreme Court reversed upon the reasoning that the trial court acquired subject-matter jurisdiction over the estate because a statute gave the caveators standing to litigate the caveat.

State v. Phelps, 156 N.C. App. 119, 575 S.E.2d 818 (2003), *rev'd*, 358 N.C. 142, 592 S.E.2d 687 (2004).

This opinion held that the trial court erred in admitting the defendant's statements to police prior to receiving *Miranda* warnings, but concluded that those statements were harmless beyond a reasonable doubt because of other evidence admitted during the trial. The Supreme Court reversed, holding that the admission of the pre-*Miranda* statements was not harmless.

In re Maharishi Spiritual Ctr. of Am., 152 N.C. App. 269, 569 S.E.2d 3 (2002), *rev'd*, 357 N.C. 152, 579 S.E.2d 249 (2003).

This opinion held, in part, that the evidence did not support a finding by the Tax Commission that the taxpayer's property was not the kind commonly employed for educational purposes, and therefore, the taxpayer was entitled to an educational tax exemption. The Supreme Court reversed, reasoning that the evidence was sufficient to sustain the Tax Commission's findings of fact under a deferential standard of review.

Arp v. Parkdale Mills, Inc., 150 N.C. App. 266, 563 S.E.2d 62 (2002), *rev'd*, 356 N.C. 657, 576 S.E.2d 326 (2003).

This opinion held that an employee's injury, occurring toward the end of a work day when the employee attempted to leave the employer's premises by scaling a fence, was compensable under the Worker's Compensation Act as it arose out of the scope of the employment. The Supreme Court reversed, holding that the

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injury was not in the course and scope of the employment because the means by which the employee attempted to leave the premises were unreasonable.

Deadwood, Inc. v. North Carolina Dept. of Revenue, 148 N.C. App. 122, 557 S.E.2d 596 (2001), *rev'd*, 356 N.C. 407, 572 S.E.2d 103 (2002).

This opinion held that a privilege tax assessed on a live entertainment business created an unreasonable classification under the North Carolina Constitution where movie picture businesses were not subject to the same taxation. The Supreme Court reversed, concluding that the tax was sustainable given that different interests lay behind live entertainment and move picture entertainment, and giving deference to legislative determinations, North Carolina's General Assembly could have found rational distinctions to support the classification.

Swinson v. Lejeune Motor Co., Inc., 147 N.C. App. 610, 557 S.E.2d 112 (2001), *rev'd*, 356 N.C. 286, 569 S.E.2d 646 (2002).

This opinion held that a jury question was presented as to whether the hazard existing on the defendant's property, which caused the plaintiff's injury, was open and obvious. The Supreme Court reversed, finding the evidence insufficient to create a jury question on whether the hazard was open and obvious.

State v. Hearst, 147 N.C. App. 298, 555 S.E.2d 357 (2001), *rev'd*, 356 N.C. 132, 567 S.E.2d 124 (2002).

This opinion concluded that a probationer that spent part of his probationary term in an alternative, motivational program, and subsequently found to have willfully violated terms of his probation resulting in his original sentence being activated, was not entitled to have the time spent at the alternative program credited to his activated sentence. The Supreme Court reversed, determining that the probationer was committed to or confined in a correctional institution during the time spent in the alternative program, and thus he was entitled to have that time credited to his active sentence.

Hanes Const. Co. v. Hotmix & Bituminous Equip. Co., Inc., 146 N.C. App. 24, 552 S.E.2d 177 (2001), *rev'd*, 354 N.C. 560, 557 S.E.2d 529 (2001).

This opinion concluded that the trial court had personal jurisdiction, under North Carolina's long-arm statute, over an out-of-State seller on the in-State buyer's breach of contract claims. The Supreme Court reversed on the reasoning that the out-of-State seller's in-State activity was insufficient to support personal jurisdiction.

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Dep't of Transp. v. Rowe, 138 N.C. App. 329, 531 S.E.2d 836 (2000), *rev'd*, 353 N.C. 671, 549 S.E.2d 203 (2001).

This opinion held, in part, that a North Carolina statute allowing juries to consider general benefits of a taking when calculating just compensation was unconstitutional in that it violated the takings and equal protection clauses of the State constitution. The Supreme Court reversed, reasoning that a jury's consideration of general benefits does not violate equal protection and was a proper element of compensation to consider.

Parker v. Barefoot, 130 N.C. App. 18, 502 S.E.2d 42 (1998), *rev'd*, 351 N.C. 40, 519 S.E.2d 315 (1999).

This opinion held that the trial court reversibly erred by failing to give a requested jury instruction relating to a defense to a nuisance claim. The North Carolina Supreme Court reversed, holding that the instruction was not necessary because the evidence did not support it.

Isenhour v. Hutto, 129 N.C. App. 596, 501 S.E.2d 78 (1998), *aff'd in part rev'd in part*, 350 N.C. 601, 517 S.E.2d 121 (1999).

This opinion held, in part, that a crossing guard was not susceptible to individual liability in negligence for the death of a school child crossing the street because the guard was an immune public official. The North Carolina Supreme Court reversed, holding that plaintiff had sufficiently alleged that the crossing guard's duties were ministerial in nature, such that the crossing guard was not immune.

Goins v. Puleo, 130 N.C. App. 28, 502 S.E.2d 621 (1998), *rev'd*, 512 S.E.2d 748 (1999).

Defendant made requests for admissions, and Plaintiff never responded. Defendant sought summary judgment, contending that the requests were deemed admitted. The trial court denied the defendant's motion. The Court of Appeals affirmed, and the Supreme Court reversed, holding that the "trial court could not have reasonably concluded that plaintiff made any motion in this case to withdraw or amend her admissions."

County of Carteret v. Long, 128 N.C. App. 477, 495 S.E.2d 391, *rev'd*, 507 S.E.2d 39 (1998).

The Court of Appeals found that a county's lien for ad valorem taxes under the Machinery Act had priority over the state's tax lien under the Revenue Act. The Supreme Court reversed, holding that the Machinery Act is subject to the provisions of the Revenue Act prescribing the priority of the lien for State taxes.

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Harlow v. Voyager Comm. V, 126 N.C. App. 492 S.E.2d 45 (1997), *rev'd*, 348 N.C. 568, 501 S.E.2d 72 (1998).

The Court of Appeals held that under North Carolina law, when a plaintiff alleges joint liability against multiple defendants of which only one defaults, a default judgment may not be entered against the defaulting defendant until after the court adjudicates the liability of the non-defaulting defendant. The Supreme Court reversed, holding that because the plaintiff alleged that the defendants were both jointly and severally liable as oppose to being only jointly liable, each defendant's liability may stand alone.

State v. Ruff, 127 N.C. App. 575, 492 S.E.2d 374 (1997), *rev'd*, 349 N.C. 213, 505 S.E.2d 579 (1998).

Defendant was convicted of first-degree kidnapping and first-degree rape. The trial court entered judgment sentencing defendant for second-degree kidnapping. The trial court, however, enhanced the second-degree conviction on the basis of the defendant's use of a firearm while committing the felony. The Court of Appeals vacated the enhanced sentence, but the Supreme Court reversed.

Hartsell v. Integon Indemnity Corp., 126 N.C. App. 511, 495 S.E.2d 893, *rev'd*, 347 N.C. 385, 493 S.E.2d 740 (1997).

Plaintiff leased a car insured by the defendant. The car was stolen and set on fire, and the defendant insurer paid the actual cash value to the named Loss Payee--Wachovia Auto Leasing (which held title to the car)–while refusing to provide any payment to plaintiff on the ground that he had no ownership interest in the vehicle. The Court of Appeals affirmed, but the Supreme Court reversed, saying that the plaintiff was entitled to insurance proceeds to the extent of his interest in the vehicle, such as overpayment.

Creech v. Melnik, 124 N.C. App. 502, 477 S.E.2d 680 (1996), *rev'd*, 347 N.C. 520, 495 S.E.2d 907 (1998).

The Supreme Court concluded that the Court of Appeals improvidently affirmed the trial court's summary judgment order in a medical malpractice case.

State v. Davidson, 123 N.C. App. 326, 473 S.E.2d 387 (1996), *rev'd*, 345 N.C. 496, 480 S.E.2d 701 (1997).

The Court of Appeals reversed the defendant's second-degree murder conviction on the ground that there was not enough evidence to support a finding that the defendant was the perpetrator of the offense. The Supreme Court reversed, determining that there had been sufficient evidence.

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N.C. Steel, Inc. v. Nat. Council on Compensation Ins., 123 N.C. App. 163, 472 S.E.2d 578 (1996), *rev'd*, 347 N.C. 627, 496 S.E.2d 369 (1998).

Plaintiffs contended that the defendants withheld evidence from the Insurance Commissioner in a rate case causing the Commissioner to approve excessive rates for workers' compensation insurance. The Supreme Court affirmed part of this decision but disagreed on the question of whether the plaintiffs can recover on a "non-rate" theory.

Lee v. Lylerly, 120 N.C. App. 250, 461 S.E.2d 775 (1995), *rev'd*, 343 N.C. 115, 468 S.E.2d 60 (1996).

Plaintiff sued defendant for defamation. Defendant was granted summary judgment on the ground that the conversation was privileged and that plaintiff failed to show actual malice. This opinion agreed, but the Supreme Court concluded that there was a genuine issue of material fact as to whether the defendant had actual malice.

Royster v. Culp, Inc., 119 N.C. App. 598, 459 S.E.2d 65 (1995), *rev'd*, 343 N.C. 279, 470 S.E.2d 30 (1996).

Plaintiff was struck by a car while attempting to walk across a public highway that separated her place of employment from a parking lot which was owned and operated by defendant-employer. This opinion held that the accident arose out of employment, and the Supreme Court reversed under the "coming and going" rule.

State v. Patton, 119 N.C. App. 229, 458 S.E.2d 230 (1995), *rev'd*, 342 N.C. 633, 466 S.E.2d 708 (1996).

Defendant was convicted for numerous charges relating to forgery. This opinion remanded, holding that there must be a separate habitual felon indictment for each separate felony indictment. The Supreme Court reversed, finding that the habitual felon statute does not require a separate habitual felon indictment for each substantive felony indictment.

Bray v. N.C. Farm Bureau Mut. Ins. Co., 115 N.C. App. 438, 445 S.E.2d 79 (1994), *rev'd*, 341 N.C. 678, 462 S.E.2d 650 (1995).

The Supreme Court affirmed most of this opinion, but it reversed the part of the opinion applying a member/household-owned exclusion to uninsured motorist coverage above the statutory minimum liability limits.

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Lavelle v. Guilford Area Mental Illness, Mental Retardation, and Substance Abuse Authority, 115 N.C. App. 75, 443 S.E.2d 761 (1994), *rev'd*, 340 N.C. 250, 456 S.E.2d 827 (1995).

This opinion affirmed the trial court's summary judgment because plaintiff had received the relief requested, i.e. records. The Supreme Court reversed because the plaintiff had sought a declaratory judgment, not just records.

Crowell Constructors, Inc. v. Cobey, 114 N.C. 75, 440 S.E.2d 848 (1994), *rev'd*, 342 N.C. 838, 467 S.E.2d 675 (1996).

This opinion dealt with whether a prevailing party can recover attorney's fees when the State brings a claim that it loses. The Supreme Court reversed, holding that one must look at what the agency knew when it filed the action.

Able Outdoor, Inc. v. Harrelson, 113 N.C. App. 483, 439 S.E.2d 245 (1994), *rev'd*, 341 N.C. 167, 459 S.E.2d 626 (1995).

The Supreme Court overruled part of this opinion dealing with whether the petitioner could have execution against the State (Petitioner won rule 11 sanctions against the State).

Haas v. Warren, 112 N.C. App. 574, 436 S.E.2d 259 (1993), *rev'd*, 341 N.C. 148, 459 S.E.2d 254 (1995).

Plaintiffs sued their former attorneys for legal malpractice. The trial court granted directed verdict for defendant, and this opinion affirmed. The Supreme Court reversed, saying there was a jury question as to whether the defendant-attorney breached the standard of care.

Thrift v. Food Lion, Inc., 111 N.C. App. 758, 433 S.E.2d 481 (1993), *rev'd*, 336 N.C. 309, 442 S.E.2d 504 (1994).

Plaintiff sued Food Lion and an independent contractor when she slipped on a puddle of melted ice. This opinion affirmed summary judgment in favor of the contractor on the basis of the "completed and accepted" rule, and the Supreme Court reversed on the grounds that the "completed and accepted" rule applies only in the context of contracts for construction.

State v. Brooks, 111 N.C. App. 558, 432 S.E.2d 900 *(1993), rev'd*, 337 N.C. 132, 446 S.E.2d 579 (1994).

This opinion held that a search was illegal because the agent's approaching the car was a stop without reasonable suspicion. The Supreme Court reversed, saying

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there was no stop since police officers can approach people in public places so long as a reasonable person feels free to leave.

Morrell v. Flaherty, 109 N.C. App. 628, 428 S.E.2d 492 (1993), *rev'd*, 338 N.C. 230, 449 S.E.2d 175 (1994).

This opinion held that the North Carolina Division of Social Services' policy of determining an assistance unit was unlawful because it contravened federal regulations. The Supreme Court reversed based on the Department of Health and Human Service's interpretation made subsequent to the Court of Appeals' decision.

Anderson v. Baccus, 109 N.C. App. 16, 426 S.E.2d 105 (1993), *rev'd*, 335 N.C. 526, 439 S.E.2d 136 (1994).

This opinion held that summary judgment should not have been granted for defendants on plaintiff's negligent infliction of emotional distress claim since it was foreseeable that the plaintiff would suffer such distress. The Supreme Court reversed.

United Services Automobile Ass'n v. Universal Underwriters Ins. Co., 104 N.C. App. 206, 408 S.E.2d 750 (1991), *rev'd*, 332 N.C. 333, 420 S.E.2d 155 (1992).

A test driver had an accident, had personal insurance, and the dealer had garage owner's liability insurance. The dealer's insurance had a clause which said it was not primarily liable if the driver had personal insurance. The Court of Appeals held that the clause was unlawful, and the Supreme Court reversed.

State v. Ballard, 127 N.C. App. 316, 489 S.E.2d 454 (1997), *rev'd*, 349 N.C. 286, 507 S.E.2d 38 (1998).

In part, this opinion concluded that the evidence supported the trial court's finding of an aggravating factor, and otherwise found no prejudicial error in the defendant's trial. The North Carolina Supreme Court reversed, holding that the evidence was insufficient to support the aggravating factor at issue.

State v. Smith, 123 N.C. App. 162, 472 S.E.2d 610 (1996) (*unpublished*), *rev'd*, 346 N.C. 794, 488 S.E.2d 210 (1997).

The defendant moved to suppress evidence seized during a warrantless search of his residence. The trial court granted defendant's motion, the Court of Appeals affirmed, and the Supreme Court reversed, holding that the police officer's "knock and talk" procedure did not taint the consent or render the procedure *per se* violative of the Fourth Amendment and that the trial court's failure to make a

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specific finding on the conflicting evidence as to whether the resident of the house voluntarily consented to a search of the room she and defendant occupied required remand.

DKH Corp. V. Rankin-Patterson Oil Co., 126 N.C. App. 634, 487 S.E.2d 588 (1997) (*unpublished*), *rev'd*, 348 N.C. 583, 500 S.E.2d 666 (1998).

A lessee of a service station/convenience store sued lessor for, *inter alia*, unfair and deceptive-trade practices. The trial court granted the lessor partial summary judgment, dismissing lessee's unfair practice claim. The Court of Appeals dismissed the appeal as interlocutory, but the Supreme Court held that the Court of Appeals had jurisdiction over the appeal.

In re Thompson, 117 N.C. App. 731, 453 S.E.2d 877 (*unpublished*), *rev'd*, 342 N.C. 401, 464 S.E.2d 45 (1995).

The Supreme Court reversed the Court of Appeals' holding affirming a trial court order dismissing Wake County Department of Social Services' petition for the termination of the respondent's parental rights.

g. Provide 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.

Roughly 60% of the North Carolina Court of Appeals' opinions are unpublished. Unpublished opinions dating back to 1996 are available at the North Carolina Administrative Office of the Courts' internet site (http://www.aoc.state.nc.us/www/public/html/opinions.htm), as well as on Westlaw and Lexis.

h. Provide 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, provide copies of the opinions.

1. *State v. Mangino*, __ N.C. App __, __ S.E.2d __ , 2009 WL 3381669 (October 20, 2009).

2. *State v. Christian*, __ N.C. App. __, 680 S.E.2d 903, 2009 WL 2137428 (Unpublished).
3. *Bryant v. Jones*, __ N.C. App. __, 680 S.E.2d 271, 2009 WL 1664066 (Unpublished).
4. *State v. Best*, __ N.C. App. __, 674 S.E.2d 467 (April 07, 2009).
5. *State v. Icard*, __ N.C. App. __, 660 S.E.2d 142 (May 6, 2008).

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6. *Heatherly v. State*, 189 N.C. App. 213, 658 S.E.2d 11 (2008), *aff'd*, 363 N.C. 115., __ S.E.2d __ (March 20, 2009).
7. *State v. Sellers*, 185 N.C. App. 726, 649 S.E.2d 656 (2007).
8. *Row v. Row*, 185 N.C. App. 450, 650 S.E.2d 1 (2007), *disc. review denied*, 362 N.C. 238; 659 S.E.2d 741 (2008).
9. *McIntosh v. McIntosh*, 184 N.C. App. 697, 646 S.E.2d 820 (2007).
10. *Blankenship v. Bartlett*, 184 N.C. App. 327, 646 S.E.2d 584 (2007).
11. *Winebarger v. Peterson*, 182 N.C. App. 510, 642 S.E.2d 544 (2007).
12. *Bowling v. Margaret R. Pardee Memorial Hosp.*, 179 N.C. App. 815, 635 S.E.2d 624 (2006).
13. *DirecTV, Inc. v. State*, 178 N.C. App. 659, 632 S.E.2d 543 (2006).
14. *Philip Morris USA Inc. v. Tolson*, 176 N.C. App. 509, 626 S.E.2d 853 (2006), *disc. review denied*, 361 N.C. 356, 644 S.E.2d 231 (2007).
15. *Fox v. Gibson*, 176 N.C. App. 554, 626 S.E.2d 841 (2006).
16. *A.R. Haire, Inc. v. St. Denis*, 176 N.C. App. 255, 625 S.E.2d 894 (2006).
17. *State v. Wright*, 172 N.C. App. 464, 616 S.E.2d 366, *aff'd*, 360 N.C. 80, 621 S.E.2d 874 (2005).
18. *State v. Ledwell*, 171 N.C. App. 328, 614 S.E.2d 412, *disc. review denied*, 360 N.C. 73, 622 S.E.2d 624 (2005).
19. *State v. Watson*, 169 N.C. App. 331, 610 S.E.2d 472 (2005).
20. *Lemon v. Combs*, 164 N.C. App. 615, 596 S.E.2d 344 (2004).
21. *State v. Cathey*, 162 N.C. App. 350, 590 S.E.2d 408 (2004).
22. *State v. Haskins*, 160 N.C. App. 349, 585 S.E.2d 766, *disc. review denied*, 357 N.C. 580, 589 S.E.2d 356, (2003).
23. *Lea v. Grier*, 156 N.C. App. 503, 577 S.E.2d 411 (2003).
24. *Wilson County ex rel. Egbert v. Egbert*, 153 N.C. App. 283, 569 S.E.2d 727 (2002).
25. *Deadwood, Inc. v. North Carolina Dept. of Revenue*, 148 N.C. App. 122, 557 S.E.2d 596 (2001).
26. *Hanes Constr. Co. v. Hotmix & Bituminous Equip. Co., Inc.*, 146 N.C. App. 24, 552 S.E.2d 177 (2001), *rev'd*, 354 N.C. 560, 557 S.E.2d 529
27. *In re Allison*, 143 N.C. App. 586, 547 S.E.2d 169 (2001).
28. *State ex rel. Barker v. Ellis*, 144 N.C. App. 135, 547 S.E.2d 166, (2001).
29. *Comer v. Ammons*, 135 N.C. App. 531, 522 S.E.2d 77 (1999).
30. *State v. Chisholm*, 135 N.C. App. 578, 521 S.E.2d 487 (1999).
31. *Polaroid Corp. v. Offerman*, 349 N.C. 290, 507 S.E.2d 284 (1998), *cert. denied*, 526 U.S. 1098, 143 L. Ed. 2d 671 (1999).
32. *Hinton v. Hinton*, 128 N.C. App. 637, 496 S.E.2d 409 (1998).
33. *Meads v. North Carolina Dep't of Agric.*, 349 N.C. 656, 509 S.E.2d 165 (1998).
34. *Armstrong v. North Carolina State Bd. Of Dental Examiners*, 129 N.C. App. 153, 499 S.E.2d 462 (1998).
35. *Hanton v. Gilbert*, 126 N.C. App. 561, 486 S.E.2d 432 (1997).
36. *Bullard v. U.S. Air, Inc.*, 114 N.C. App. 791, 443 S.E.2d 80 (1994).

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37. *State v. Harris*, 111 N.C. App. 58, 431 S.E.2d 792 (1993).
38. *County of Hoke v. Byrd*, 107 N.C. App., 421 S.E.2d 800 (1992).
39. *In re Belk*, 107 N.C. App. 448, 420 S.E.2d 682 (1992).
40. *State v. Mauney*, 106 N.C. App. 26, 415 S.E.2d 208 (1992).

I. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

Not applicable.

14. Recusal: If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (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.) 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 in which you have recused yourself sua sponte. 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

State v. Philip Morris, USA, Inc., __ N.C. App. __, 666 S.E.2d 783 (2008). I recused myself *sua sponte* because the treasurer for my then-current re-election campaign, while not an attorney of record, was nevertheless staffed to that case by the law firm for which she worked.

Land v. Tall House Bldg. Co., 165 N.C. App. 880, 602 S.E.2d 1 (2004). I recused myself *sua sponte* because the issue on appeal concerned the application of stucco as a building material to a home, and I had encountered the same issue personally regarding the use of synthetic stucco on my home.

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15. **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.

Public Offices:

North Carolina Health Care Advisory Board, 1988-1990
Appointed by Speaker, NC House of Representatives
Greenville Environment Advisory Committee, 1988-1990
Appointed by Greenville City Council
Pitt Community College Board of Trustees, 1989-1994
Appointed by Pitt County Board of Commissioners
National Conference of Commissioners on Uniform State Laws
Appointed by Governor - June 1993-Present

Candidacies (unsuccessful):

Associate Justice, Supreme Court of North Carolina, 2004 (special election that included a field of eight candidates in a plurality race).
Associate Justice, Supreme Court of North Carolina, 1998

Nominations (unsuccessful):

United States Court of Appeals for the Fourth Circuit, August 1999
Nominated by President William Jefferson Clinton
United States Court of Appeals for the Fourth Circuit, January 2001
Nominated by President William Jefferson Clinton

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, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have played a significant role in my own election campaigns for the North Carolina Court of Appeals and Supreme Court of North Carolina in 1990, 1992, 1998, 2000, 2004, and 2008. I have not participated in campaigns for others seeking political office, except to the extent that my own campaigns intersected with other judicial campaigns going on during the same election cycles as my own.

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16. **Legal Career:** 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 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.

1979-present Judge Advocate General's Corps (Active & Reserve)
United States Navy
Washington Navy Yard
1322 Patterson Avenue, S.E.
Suite 3000
Washington, DC 20374

I served in the United States Navy on active duty for four years as an Assistant Judge Advocate General. After completing Naval Justice School, I was assigned to the Naval Legal Service Office (NLSO) in Norfolk, Virginia. I tried over 100 courts-martial cases. I also served as a Claims Attorney for claims brought under the Federal Torts Claims Act.

As a reservist, I have served in the following leadership roles:

Commanding Officer, Navy Trial Judiciary, 2004-2007

Military Judge, Navy Trial Judiciary, 2002-2007

Staff Judge Advocate, Navy Reserve Readiness Command Six, Washington, DC 2000-2002

Commanding Officer, Civil Law Support Activity, Navy Reserve Center, Atlanta, GA, 1998 - 2000

Commanding Officer, Naval Reserve Legal Service Office, Jacksonville, FL, 1996-1998

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Deputy Reserve Senior Staff Judge Advocate to the Commander in Chief of the Atlantic Forces, 1994-1996

Executive Officer, Naval Reserve Legal Service Office, Raleigh, NC, 1988-1994

1983-1984 Assistant Appellate Defender
Office of the Appellate Defender for North Carolina
123 West Main Street, Suite 500
Durham, NC 27701

Worked as an Assistant Appellate Defender for North Carolina handling criminal appeals for indigent defendants before North Carolina's appellate courts.

1984-1990 Fitch, Wynn & Associates f/k/a Fitch, Butterfield & Wynn f/k/a Fitch & Butterfield
Attorneys at Law
615 East Nash Street
Wilson & Greenville, NC

Worked first as an associate and then as a partner in this general practice law firm located in the Eastern North Carolina counties of Wilson and Pitt. My practice included criminal and civil litigation as well as administrative cases on the State and federal level. I also handled estate and probate matters.

i. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

Summary of Character of My Legal Practice:

1979-1983: Judge Advocate General's Corps, United States Navy
65% -- Military Justice
30% -- Federal Tort Claims
2% -- Military Magistrate
3% -- Navy Officer Training Activities

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1983-1984: Assistant Appellate Defender, Office of the Appellate Defender for North Carolina
100% -- Criminal Appellate Defense

1984-1990: Private Practice at Fitch, Butterfield & Wynn, Attorneys at Law
25% -- Real Estate
15% -- Social Security
10% -- Criminal
50% -- Civil litigation and Administrative

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

1. Assistant Judge Advocate General: As Defense Counsel, clients were active Navy personnel. As Federal Torts Claim Attorney, client was United States.

2. Assistant Appellate Defender: Indigent criminal defendants.

3. Private Practice of Law: Primarily citizens of Eastern North Carolina.

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.

Assistant Judge Advocate General (Active Service): Handled primarily litigation and appeared frequently in General and Special Courts-Martial Proceedings.

Assistant Judge Advocate General (Reserve): Handled litigation during occasional appearances as trial judge in General and Special Courts-Martial during periods of active reserve duty and on special assignments, 2002-2007. While serving as a Senior Trial Counsel in the reserve, I handled litigation and appeared occasionally during active reserve drills as a prosecutor for the government.

Assistant Appellate Defender: Handled only litigation, frequent practice in the appellate courts and appeared occasionally, when requested, to argue cases before North Carolina's appellate courts.

Private Practice: Handled primarily litigation, occasionally in District and Superior Courts. Appeared in Appellate Courts to handle appeals and before administrative agencies including the Social Security Administration and the North Carolina Industrial Commission.

SUMMARY OF COURT APPEARANCES AND PERCENTAGES IN COURT:

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1979-1983: Appeared frequently in Military Court
1983-1984: Appeared in Supreme Court of North Carolina and North Carolina Court of Appeals
1984-1990: Appeared occasionally in Magistrate, District, and Superior Courts of North Carolina, in Supreme Court of North Carolina and North Carolina Court of Appeals, in Federal District Court, and before administrative law bodies

i. Indicate the percentage of your practice in:
1. federal courts;
1979-1983 -- 100%
1983-1984 -- 0%
1984-1990 -- 5%
2. State courts of record;
1979-1983 – 0%
1983-1984 -- 100%
1984-1990 -- 65%
3. other courts;
1979-1983 – 0%
1983-1984 -- 0%
1984-1990 –10%
4. administrative agencies
1979-1983 – 0%
1983-1984 -- 0%
1984-1990 –25%

ii. Indicate the percentage of your practice in:
1. civil proceedings;
1979-1983: 10%
1983-1984: 0%
1984-1990: 70%

2. criminal proceedings.
1979-1983: 90%
1983-1984: 100%
1984-1990: 30%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

1979-1983: Approximately 30 cases -- Sole Counsel
Approximately 5 cases -- Co-Counsel
1983-1984: Appellate Litigation --

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1984-1990: Approximately 35 cases -- Sole Counsel
Approximately 3 cases -- Associate Counsel

i. What percentage of these trials were:
1. jury;
1979-1983 -- 90%
1983-1984 -- Not Applicable
1984-1985 -- 20%
2. non-jury.
1979-1983 -- 10%
1983-1984 -- Not Applicable
1984-1990 -- 80%

e. Describe your practice, if any, before the Supreme Court of the United States. 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 not practiced before the Supreme Court of the United States.

17. Litigation: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. 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. *Hargrove v. Debase*, 82 Cas 79, Wilson County Superior Court

Plaintiff, Gertrude Hargrove, sued her brother, James Debase, Jr., alleging that in 1952 she gave him money to purchase in his name but for her three tracts of land to hold in trust for her. Nearly 30 years later, she sued him, and while the suit was initially dismissed, the North Carolina Court of Appeals found that Ms. Hargrove had alleged sufficient facts to warrant a trial on the issue of constructive or resulting trust. I tried that case representing Mr. Debase before a jury in the Wilson County Superior Court. A verdict on those issues was rendered in favor of Mr. Debase. However, the jury did find that he had converted other monies ($2,000) from Ms. Hargrove.

Presiding Judge: Superior Court Judge Paul Wright
Date: 1988

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Plaintiff's Attorney: Robert A. Farris, Jr., Farris and Farris, P.A., 303 Nash Street, Wilson, NC 27894, (252) 291-5945

2(a) *State v. Lee R. Trent*, – CAS --, Pitt County Superior Court

I represented the criminal defendant along with co-counsel. I prepared all motions and discovery documents, examined most witnesses, including expert witnesses, and gave opening and closing arguments. The trial resulted in a guilty verdict of first-degree rape and taking indecent liberties with a minor. Defendant was sentenced to life imprisonment.

Presiding Judge: Superior Court Judge David Reid (Deceased)
Date: 1986
Opposing Counsel: Thomas Haigwood, Pitt County District Attorney, P.O. Box 8185, Greenville, NC 27835, (252) 830-6434; Nancy Aycock, Assistant District Attorney, Pitt Memorial Hospital, Inc., 2100 Stantonsburg Road, Greenville, NC 27835
Co-Counsel: Milton F. Fitch, Jr., Wilson, P.O. Box 156, Thurber, NC 27886, (252) 823-4761

2(b) *State v. Lee R. Trent*, 320 N.C. 610, 359 S.E.2d 463 (1987)

I handled the defendant's appeal of his first-degree rape and taking indecent liberties with a minor convictions. I prepared the record on appeal, drafted the brief, and argued the issues before the Supreme Court of North Carolina (I moved, on the defendant's behalf, to bypass the Court of Appeals). The Supreme Court held that: (1) the indictment charging defendant with first-degree rape was fatally defective and should have been quashed; (2) the testimony of the pediatrician to the effect that child had been sexually abused was erroneously admitted; and (3) the erroneous admission of the pediatrician's testimony was prejudicial, and thus, defendant was entitled to new trial on charge of taking indecent liberties with a minor.

Judgment on conviction for first-degree rape arrested; new trial granted on charge of taking indecent liberties with minor.

Presiding Justices: Exum, Martin, Meyer, Webb, Frye, Mitchell, Whichard; Authoring Justice: Henry E. Frye
Date: 1987
Opposing Counsel: Stephen F. Bryant, Assistant Attorney General, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC 27602, (919) 716-6400
Co-Counsel: Milton F. Fitch, Jr., Wilson, P.O. Box 156, Thurber, NC 27886, (252) 823-4761

3. *State v. Gustarivus Whitaker*, 76 N.C. App. 52, 331 S.E.2d 752 (1985)

I handled only the appeal of this case, challenging the defendant's conviction of second-degree kidnapping. The Court of Appeals held that the evidence was sufficient to supported and that the trial court did not err in refusing to instruct the jury on a lesser included offence. However, the court agreed that the indictment did not comport with best practice.

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Presiding Judges: Hedrick, Cozort, Johnson; Authoring Judge was Jack Cozort
Date: 1985
Opposing Counsel: Michael Rivers Morgan, P.O. Box 351, Raleigh, NC, 27602, (919) 755-4100
Co-Counsel: Malcolm Ray Hunter, Jr., Office of the Appellate Defender for North Carolina, 123 West Main Street, Suite 500, Durham, NC 27701, (919) 560-3334

4. *State v. Toney Wiggins*, 78 N.C. App. 405, 337 S.E.2d 198 (1985)

I handled only the appeal of this case and challenged the defendant's conviction of armed robbery. The North Carolina Court of Appeals upheld the conviction, determining that a box cutter was a dangerous weapon *per se* and that the defendant was not entitled to an instruction on common-law robbery.

Presiding Judges: Whichard, Eagles, Cozort; Authoring Judge was Willis Whichard
Date: 1985
Opposing Counsel: John F. Maddrey, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC 27602, (919) 716-6400

5. *State v. Walter Jackson, Jr.*, 74 N.C. App. 92, 327 S.E.2d 270 (1985)

I handled only the appeal of this case, challenging the defendant's conviction of assault with a deadly weapon upon a law enforcement officer. The Court of Appeals held that the evidence was sufficient to support defendant's conviction, unrefuted testimony supported admission of in-court and out-of-court identifications of defendant, and the trial court did not err in admitting the identification evidence without making factual findings.

Presiding Judges: Eagles, Arnold, Parker; Authoring Judge was Sidney Eagles
Date: 1985
Opposing Counsel: Michael Smith, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC 27602, (919) 716-6400

6. *State v. Allen Mitchell Owens*, 73 N.C. App. 631, 327 S.E.2d 42 (1985)

I handled only the appeal of this case, challenging the defendant's conviction of common-law robbery. The Court of Appeals held that the trial court properly instructed jury that defendant could be found guilty of common-law robbery, as lesser included offense of indicted offense of robbery with a dangerous weapon.

Presiding Judges: Hedrick, Johnson, Cozort; Authoring Judge was Clifton Johnson
Date: 1985
Opposing Counsel: James Peeler Smith, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC 27602, (919) 716-6400

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7. *State v. Robert Bruce Marlowe*, 73 N.C. App. 443, 326 S.E.2d 351 (1985)

I handled the appeal of this case, in which the defendant was convicted of felonious larceny. The Court of Appeals that the trial court properly entered a judgment of felonious larceny and that the trial court's failure to summarize the evidence in its jury instructions was not reversible error.

Presiding Judges: Hedrick, Johnson, Cozort; Authoring Judge was Jack Cozort
Date: 1985
Opposing Counsel: Archie W. Andrews, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC 27602, (919) 716-6400

8. *State v. Amy Riggsbee*, 72 N.C. App. 167, 323 S.E.2d 502 (1985)

I handled the appeal of the defendant's conviction of felonious child abuse. The Court of Appeals upheld the conviction, finding that the evidence was sufficient to reasonably infer the defendant's guilt, that examination about injuries to two other children sustained while in the defendant's care was within the scope of permissible impeachment, and that evidence of a prior striking of another infant by defendant was admissible.

Presiding Judges: Vaughan, Johnson, Whichard; Authoring Judge was Clifton Johnson
Date: 1985
Opposing Counsel: Jane Rankin Thompson, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC 27602, (919) 716-6400

9. *State v. Hammie Lee Washington*, 71 N.C. App. 767, 323 S.E.2d 420 (1984)

I handled this appeal of the defendant's conviction of armed robbery, assault with a deadly weapon with intent to kill inflicting serious injury, and assault with a deadly weapon. The Court of Appeals upheld the conviction, holding, among other things, that instruction on common-law robbery was not required where the uncontradicted evidence showed that the robberies were committed with a dangerous weapon.

Presiding Judges: Whichard, Hedrick, Eagles; Authoring Judge was Willis Whichard
Date: 1984
Opposing Counsel: Steven F. Bryant, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC 27602, (919) 716-6400

10. *State v. Larry James Atkins*, 311 N.C. 272, 316 S.E.2d 306 (1984)

I handled the appeal of this case, challenging the defendant's conviction of felonious breaking and entering and second-degree sexual offense. The Court of Appeals, in 66 N.C. App. 67, 310 S.E.2d 629, affirmed. On further appeal, the Supreme Court, Exum, J., held that evidence did not disclose excessive brutality, or physical pain, psychological suffering, or dehumanizing

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aspects not normally present in second-degree sex offenses so as to support sentencing court's finding that defendant's second-degree sexual offense was especially heinous, atrocious, or cruel.

Presiding Justices: Branch, Exum, Meyer, Mitchell, Martin, Frye, Billings
Date: 1984
Opposing Counsel: Richard L. Kucharski, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC 27602, (919) 716-6400

18. 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. 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.)

I litigated a large number of cases in the military trial courts during my active service between 1979 and 1983. Over 25 of those cases were tried before military members, the equivalent of the civilian jury. The charges at issue included property and violent crimes.

In my last year as an active-duty Navy lawyer, I acted as a military magistrate and determined whether military persons charged with crimes would be detained for trial. I also prepared litigation reports for the United States Attorney's Office in the Eastern District of Virginia on cases arising under the Federal Tort Claims Act. These matters generally involved medical malpractice claims made against Navy medical personnel by civilian dependents.

After completing my active Navy duty, I acted as an Assistant Appellate Defender, representing indigent criminal defendants in North Carolina. That work exposed me to all aspects of appellate advocacy and gave me the opportunity to hone my appellate skills, both written and oral.

Thereafter, I practiced general law in Wilson and Greenville, North Carolina. I represented a number of individuals in Social Security matters before Administrative Law Judges. I handled many real estate and contract actions. And I litigated cases dealing with land condemnation, including a condemnation proceeding against Sycamore Hill Baptist Church in Greenville; that matter was eventually resolved by settlement.

While I have varied work experience prior to going on the bench, I have never been engaged as a lobbyist.

In addition to the above activities, I have had extensive involvement in bar and legal organizations. In the North Carolina State Bar, I served as a Trustee for the IOLTA Board and made decisions on the expenditure of trust fund income in the provision of legal services for indigent persons.

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In the North Carolina Bar Association, I have served in various capacities including Vice President. I was appointed by then President of the NCBA, Judge Allyson Duncan, to serve as the Chair of the NC Bar Association's Brown v. Board of Education 50th Anniversary celebration. The program included major media coverage and the presence of Dr. John Hope Franklin and Professor Jack Greenberg.

In the American Bar Association, I chaired the Appellate Judges Conference and the Judicial Division and I have served in a number of leadership roles including as a drafter of the recently adopted Revised ABA Model Code of Judicial Conduct. I served as a co-chair for the ABA National Diversity Summit in June, 2009. I serve on the World Justice Commission, which seeks to promote adherence to the Rule of Law around the world; the Commission met in the Fall of 2008 in Vienna, Austria with representatives from over 90 countries.

In the National Conference of Commissioners on Uniform State Laws, I have served on the Executive Committee, Scope and Program Committee, and now as a Division Chair overseeing the work of several drafting and study committees. Recently, the incoming President, Robert Stein, asked me to serve as Vice President for the coming year which is subject to the approval of the Executive Committee at the 2009 Annual Meeting.

I am also a member of the American Law Institute.

19. **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, provide four (4) copies to the committee.

While I have, with some frequency, given talks on various topics, I have not done so as an instructor of a course at an educational institution.

20. **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. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I am vested in the State of North Carolina Judicial Retirement System and I will be entitled to receive a pension at age 60 as a result of my active and reserve service in the U.S. Navy. I maintain a Thrift Savings Plan through the Navy Reserve.

21. 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.

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I do not have plans, commitments, or agreements to pursue outside employment during service with the court. All of the various organizations to which I belong are voluntary. As for the United States Navy Reserve, I completed 30 years of service and retired on August 1, 2009.

22. 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, licensing fees, 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

23. Statement of Net Worth: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. Potential Conflicts of Interest:

a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I do not foresee any such conflicts.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

Under the 2007 ABA Model Code of Judicial Conduct which I was a principal drafter, Rule 2.11 requires a judge to disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned. This rule is counterbalanced by the commentary under Rule 2.7, which states that a judge should not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.

When faced with a potential conflict of interest, I would disclose my concerns with the court's ethics advisor, or if appropriate, with the Chief Judge or designated judicial official. If it is a waivable conflict of interest matter, then I would disclose it to the parties and determine if they would like to waive the conflict to allow me to proceed. If it is not a waivable conflict, then I would disqualify myself from participating.

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25. **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.

I have served on a number boards, committees and commissions as a volunteer to promote adherence to the rule of law, enhance the public's confidence in the judiciary, and educate the public on the judiciary and our legal system. I have given countless talks in the school system to young students; made presentations at civic organizations on legal developments; and participated in workshops and conferences on legal subjects.

As an Assistant Appellate Defender, all of my working time was devoted to representing the disadvantaged. While in private practice, I represented individuals who were no able to afford legal fees, including through my representation of individuals seeking social security benefits at a time when the Legal Services Corporation in Wilson, North Carolina was overwhelmed with indigent clients; in fact, I agreed to accept referrals from them. Additionally, I provided free counsel to area churches on matters such as the drafting of church constitutions and by laws, as well as advising church members on the legal obligations of church trustees. Further, I gave numerous talks to community groups, including, for example, free lectures on wills and probate matters.

As a judge, I regularly speak to high school and community groups on the role of the judiciary, the importance of respecting the law, and law as a career field for all, even the most disadvantaged. I also spend a significant amount of time on bar committees that seek to improve the court system and address the relationship between the legal system and the public. For example, I served as Co-Chair of the ABA's 2009 Diversity Conference and was the Chair of the *Brown v. Board of Education* Fiftieth Anniversary Committee. I have also served community committees by, *e.g.*, serving as a trustee for Pitt Community College and as a member of the Greenville Environmental Advisory Commission.

I have devoted countless hours toward the appointed work of the National Conference of Commissioners on Uniform State Laws. My work on the World Justice Commission has led me to make international presentations on the value of the Rule of Law in Ghana and Austria. At the behest of the United States State Department, I gave 10 lectures in North and South Vietnam on Judicial Independence and the Rule of Law.

26. 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

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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. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

I was first nominated to the United States Court of Appeals for the Fourth Circuit in 1999 and 2000 by then-President William Jefferson Clinton. Under a committee commissioned by Senator Kay Hagan of North Carolina, I was favorably endorsed, unanimously, for renomination this year. I earlier met with Senator Richard Burr's Chief Legal Counsel and received positive feedback. The White House communicated with me regarding whether I was interested in being re-nominated in March, 2009 and in April, 2009 advised me that the Justice Department would contact me soon. In May, 2009, the Justice Department provided these forms to me to assist in the vetting process.

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, explain fully.

No.

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AFFIDAVIT

I, JAMES A. WYNN, JR., do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

6 NOV 09 James A. Wynn Jr.
(DATE)(NAME)

CRYSTAL WRIGHT NOTARY *** PUBLIC WAKE COUNTY, N.C.

Crystal Wright
(NOTARY)

My commission expires: 6/15/2010

Senator CARDIN. Thank you.
Judge Diaz.

STATEMENT OF ALBERT DIAZ, NOMINEE TO BE UNITED STATES CIRCUIT JUDGE FOR THE FOURTH CIRCUIT

Judge DIAZ. Thank you, Mr. Chair and Mr. Ranking Member, for holding this hearing this afternoon. I know how busy you all are and we appreciate the opportunity to appear before you.

I don't have an opening statement. I simply want to thank the President for his confidence in me. If confirmed, I hope to do all I can to justify his confidence, as well as the confidence of the American people.

I want to thank Senator Burr and Senator Hagan for their kind introductions here this afternoon.

You did identify, Senator Cardin, some of my family members. But if I might, I want to take a moment to identify some others, as well as friends that are here.

My wife, Hilda, is here. She has put up with me for 25 years and it is clear that I would not be here without her. I love her very much and I appreciate her support.

My daughter, Christina, is here, who graduated from Chapel Hill last year. I am very proud of her and I am happy to have her support, as well. As was mentioned, my daughter, Gabriella, is very upset because she is not here, but she is doing God's work by getting through her freshman year and hopefully everything will be just fine with her.

I have my brother, Edwin Diaz, here, who is an assistant deputy warden with the New York City Department of Corrections in Riker's Island. Every time I think that I have a difficult job, I just look to him and realize how fortunate I am and that he is doing that kind of work. His wife, Stacey Haliburton, is here, as well. She is also a corrections officer in New York City.

My two nephews, Joel and Javier Diaz, are here, as well. Stacey's daughter, Amanda Radcliffe, is here. I am pleased to have them here. My college roommate Clark Brett, a former Marine who served on active duty with me for a time, is here. I am very pleased that he is here in support of me.

I have several other Marine colleagues who are here, two retired colonels, Roger Harris and Michael Rayhouser are here in support of me and I am so pleased that they are here, as well. And two friends from Charlotte, North Carolina, Georgia and Robert Lewis are here, as well, in support of me this afternoon.

So thank you, Mr. Chairman, for the opportunity to introduce them, and Mr. Ranking Member.

[The biographical information follows.]

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UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   Albert Diaz

2. **Position**: State the position for which you have been nominated.

   United States Circuit Judge for the Fourth 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.

   North Carolina Business Court
   832 East Fourth St., Suite 9600
   Charlotte, NC 28202

4. **Birthplace**: State year and place of birth.

   1960; Brooklyn, New York

5. **Education**: List in reverse chronological order 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.

   1992 – 1993, George Washington University; no degree

   1989 – 1993, Boston University; M.S. Business Administration, 1993

   1985 – 1988, New York University School of Law; J.D., 1988

   1980 – 1983, Wharton School, University of Pennsylvania; B.S. Economics, 1983

   1979 – 1980, State University of New York, Maritime College; no degree

6. **Employment Record**: List in reverse chronological order 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 description.

August 2005 – Present
North Carolina Business Court
832 East Fourth St., Suite 9600
Charlotte, NC 28202
Special Superior Court Judge for Complex Business Cases

September 2007 – Present
University of North Carolina Charlotte
8701 Mallard Creek Rd.
Charlotte, NC 28262 – 6007
Part-time instructor (Paralegal Program)

September 2006 – Present
Central Piedmont Community College
8120 Grier Rd.
Charlotte, NC 28215
Part-time instructor (Paralegal Program)

March 2005 – October 2006
U.S. Navy-Marine Corps Court of Criminal Appeals
Office of the Judge Advocate General of the Navy
Washington Navy Yard
716 Sicard St. SE, Suite 1000
Washington, DC 20374-5047
Reserve Appellate Military Judge

December 2001 – July 2005
North Carolina Superior Court
Criminal Courts Bldg.
700 East Fourth St., Suite 3304
Charlotte, NC 28202
Superior Court Judge

May 2000 – March 2005
U.S. Navy-Marine Corps Trial Judiciary
Piedmont Judicial Circuit
67 Virginia Dare Drive, Suite 145
Camp Lejeune, NC 28542
Reserve Military Judge

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August 1995 – December 2001
Hunton & Williams, L.L.P.
101 S. Tryon St., Suite 3500
Bank of America Plaza
Charlotte, NC 28280
Associate (August 2000 – December 2001)
Associate, Raleigh, NC office (August 1995 – July 2000)

August 1991 – May 2000
Office of the Judge Advocate General of the Navy
Navy-Marine Corps Appellate Review Activity
Washington Navy Yard
716 Sicard St., SE, Suite 1000
Washington, DC 20374-5047
Reserve Appellate Defense Counsel (September 1995 – April 2000)
Appellate Government Counsel (August 1991 – July 1995)

November 1988 – July 1991
United States Marine Corps
Legal Services Support Section
2d Force Service Support Group
59 Molly Pitcher Rd.
Camp Lejeune, NC 28542
Prosecutor (November 1988 – December 1989)
Defense Counsel (January 1990 – January 1991)
Chief Review Officer (February 1991 – July 1991)

1985 – 1988
United States Marine Corps
(full time law student)

June 1983 – August 1985
United States Marine Corps
Third Tank Battalion, Seventh Marine Regiment
Marine Corps Air Ground Combat Center
Twentynine Palms, CA 92284
Supply Officer (May 1984 – August 1985)
Officer Training, Quantico, VA & Camp Johnson, NC (June 1983 – March 1984)

Non-Employment Affiliations

Marine Corps Coordinating Council of Greater Charlotte
8494 Plantation Way
Harrisburg, NC 28075
Board of Advisors (2008 – Present)

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Florence Crittenton Services
1300 Blythe Blvd.
Charlotte, NC 28203
Board of Directors/Advisors (January 2003 – Present)

Chief Justice William H. Bobbitt Inn of Court
c/o Judge Hugh B. Lewis, Treasurer
832 East Fourth St., Suite 9600
Charlotte, NC 28202
Member/Secretary (2003 – Present)

Providence Crossing Homeowners Association
c/o William Douglas Management Company
4523 Park Rd., Suite 201A
P.O. Box 37109
Charlotte, NC 28237-7109
Board Member & Vice-President (January 2002 – January 2004)

United Family Services
601 E. 5th St., Suite 400
Charlotte, NC 28202-3095
Board of Directors (2001 – 2004)

7. **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, and whether you have registered for selective service.

I served in the United States Marine Corps from 1978 to 2006. I enlisted March 10, 1978 and served until August 1979, when I went to college on a Naval Reserve Officer Training Corps scholarship. I became a Commissioned Officer in May 1983 and served on active duty until 1995, when I transferred to the United States Marine Corps Reserve. In October 2006, I retired at the rank of Lieutenant Colonel.

8. **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.

U. S. Marine Corps Funded Law Education Program Scholarship (1985 – 1988)

Moot Court Advocacy Award, NYU School of Law (1986)

American Jurisprudence Award-Creditors' Rights and Debtors' Protection, NYU School of Law (1986)

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NYU School of Law Moot Court Board, Senior Casebook Editor (1987 – 1988)

Navy Commendation Medal for meritorious service as a military appellate government counsel (1993)

Meritorious Service Medal for outstanding meritorious service as a military appellate government counsel (1995)

Letter of Appreciation for outstanding support of the mission of the Appellate Defense Division (1997)

Award of Excellence for outstanding performance of duties as a military appellate defense counsel (1999)

E. Randolph Williams Award for distinguished pro bono service (1999 & 2000)

Meritorious Service Medal for outstanding meritorious service as a military appellate judge (2006)

National Defense Service Medal (1991 & 2003)

Armed Forces Reserve Medal (2006)

Selected Marine Corps Reserve Medal (1998 & 2001)

9. **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.

American Bar Association, (1989 – Present)
Member, Litigation Section (1989 – Present)
Member, Judicial Division & Conference of State Trial Judges (2001 – Present)
Member, Business and Commercial Courts Committee, (2005 – Present)
Member, Standing Committee on Minorities in the Judiciary (2008 – 2009)
Member, Construction Law Committee (No recollection of dates)
Co-chair, Mechanics Lien and Miller Act Subcommittee (November 2000 – 2001)
Business Court Representative, Business Law Section (2007 – 2008)

New York State Bar Association (1989 – 2001)

Association of Trial Lawyers of America (1989 – 1993)

Judge Advocates Association (approximately 1992 – 1995)

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North Carolina Bar Association (1995 – Present)
Vice-President (June 2007 – June 2008)
Chair, CLE Committee, Litigation Section (July 2003 – July 2004)
Member, Construction Law Section (1995 – 2000)
Member, Minorities in the Profession Committee (approximately 1995 – 2000)
Member, Hispanic Latino Lawyers Committee (approximately 1995 – 2000)

Defense Research Institute (1995 – 2001)
Member, Insurance Law Committee (No recollection of specific dates)

Mecklenburg County Bar (2000 – Present)
Board of Directors (June 2009 – Present)
Member, Nominating Committee (2007)
Co-Chair, Mecklenburg County Bar Special Committee on Diversity (May 2009 Present)
Member, Nominating Subcommittee, Julius L. Chambers Diversity Champion Award (2007 – Present)
Member, Hispanic Latino Lawyers Bar (May 2009 – Present)

North Carolina State Judicial Council (September 2001 – March 2004)

Conference of North Carolina Superior Court Judges (2005 – Present)
Member, Judicial Education Committee

American College of Business Court Judges (2008 – Present)
Member, Corporate Governance and Business Litigation Committee (2008 – Present)

Hispanic National Bar Association (1995 – Present)
Member, Judicial Council (2001 – Present)

National Conference of Bar Examiners
Member, Contract Law Drafting Committee (July 2009 – Present)

10. **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.

North Carolina, August 4, 1995 (no lapses in membership)

New York (2nd Department), February 8, 1989 (presently on retired status)

District of Columbia, September 27, 1990 (presently on inactive status)

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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.

United States Court of Appeals for the Fourth Circuit, 1997
United States Court of Appeals for the Third Circuit, 1996
United States District Court for the Eastern District of North Carolina, 1995
United States District Court for the Middle District of North Carolina, 1995
United States District Court for the Western District of North Carolina, 1995
United States Navy-Marine Corps Court of Criminal Appeals, 1992
United States Court of Appeals for the Armed Forces, 1991

State courts of New York (1989),
Courts of the District of Columbia (1990)
State courts of North Carolina (1995)

There have been no lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, 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.

Marine Corps League (approximately 2001 – 2004)

St. Gabriel Catholic Church Men's Club (approximately 2001 – 2005)

WFAE Radio (local NPR station) (2006 – Present)

United Agenda Structure Design Team (2007)

Navy Mutual Aid Association (1983 – Present)

United Services Automobile Association (1983 – Present)

Navy Federal Credit Union (1983 – Present)

American Automobile Association (2007 – Present)

Marine Corps Association (1983 – Present)

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Marines' Memorial Association (April 2009 – Present)

Wharton Alumni Club (2007 – 2008)

Brooklyn Tech High School Alumni Club (approximately 2004 – Present)

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, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin 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.

The St. Gabriel Catholic Church Men's Club is a religious service organization whose membership has traditionally been limited to men. Because it is an organization dedicated exclusively to fellowship, spiritual growth, and participation in a variety of service projects, I do not believe the Club's membership limitation results in invidious discrimination.

12. **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. Supply four (4) copies of all published material to the Committee.

"Lunch with a Lawyer," *The Mecklenburg Bar News*, October 2009

"The New North Carolina Business Court," *North Carolina State Bar Journal*, Spring 2008 (co-author with my law clerk)

Letter to the Editor, *The Charlotte Observer*, February 2007

"The Least Among Us," *The Mecklenburg Bar News*, March 2005

"View from the Bench: Professionalism," *The Mecklenburg Bar News*, July 2003

Letter to the Editor, *The Charlotte Observer*, August 2003

Letter to the Editor, *The Charlotte Observer*, August 2002

Letter to the Editor, *The Charlotte Observer*, July 2002

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2 Douglas Forms, *Civil Litigation,* Ed. Hunton & Williams. Albany: Matthew Bender, 1997 – 1999 (assisted in preparing 1997 – 1999 supplements) (I do not have a copy of the supplement)

NYU School of Law Moot Court Board, *Moot Court Casebook,* (1987) (served as Senior Casebook Editor and drafted a moot court problem for publication)

Letter to the Editor, *The New York Times*, (August 1, 1982) (co-author with Clark A. Brett)

b. 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, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

Mecklenburg County Bar 2009 Diversity Initiative Report

2006 – 2008 Report of the North Carolina Business Court to the General Assembly

North Carolina Bar Association, E-Discovery Committee Report on Proposed Amendments to the North Carolina Rules of Civil Procedure

North Carolina Bar Association, E-Filing Committee Report on Proposed E-filing Pilot Project Rules (I do not have the report)

North Carolina Bar Association, 8000 Weston Parkway, Cary, NC 27513 Litigation Section Council Local Rules Sub-Committee (2007) (I do not have a copy of the report.)

Chief Justice's Commission on the Future of the North Carolina Business Court—Final Report and Recommendation (Oct. 28, 2004)

c. 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.

On or about June 27, 2002, I responded to a survey promulgated by Court Watch of North Carolina regarding a bill then pending before the North Carolina General Assembly, which called for the public financing of judicial appellate elections. I believe the survey responses were submitted to the General Assembly for its consideration. I do not have a copy of my original responses.

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d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. 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 recording of your remarks, 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, furnish a copy of any outline or notes from which you spoke.

I have spoken at other events that I cannot recall and for which I have no records. I have submitted materials where available, although they may not reflect my remarks as delivered.

Speaker, "The North Carolina Business Court," Latin American Chamber of Commerce of Charlotte, Charlotte, NC, October 2009

Presiding Judge, Mecklenburg County Bar Fall Swearing-in Ceremony, Charlotte, NC, October 2009

Panelist, "Court Specialization: Fad or Effective Strategy?" Hispanic National Bar Association Conference, Albuquerque, NM, September 2009

Panelist, "Civil Litigation Forum," Mecklenburg County Bar, 438 Queens Rd., Charlotte, NC 28207, February 2009 & February 2008 (No notes—gave general update on Business Court docket)

Panelist, "Judicial Independence," Charlotte School of Law Symposium, Charlotte, NC, February 2009

Speaker, "Orientation Program for New Superior Court Judges," UNC-Chapel Hill School of Government, Chapel Hill, NC, February 2009 & December 2006

Panelist, Charlotte-Mecklenburg Schools, 701 E. Martin Luther King, Jr. Blvd., P.O. Box 30035, Charlotte, NC 28202, January 2009 (No notes—gave media briefing on importance of mentoring and discussed Lunch with a Lawyer Program)

Speaker, "Personal Jurisdiction/Servicemembers Civil Relief Act," Conference of Superior Court Judges, Chapel Hill, NC, October 2008

Panelist, "Administrative Law," Mecklenburg County Bar, Charlotte, NC, September 2008

Panelist, "The Growing Importance of Unfair Trade Practices Claims," North Carolina Association of Defense Attorneys, Hilton Head, SC, June 2008 (No

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notes—was one of three panelists discussing North Carolina's Unfair and Deceptive Trade Practices Act)

Speaker, Merry Oaks Elementary School Graduation and Awards Ceremony, Charlotte, NC, June 2008

Welcoming Remarks, Judge James B. McMillan, Jr., Fellowship Dinner, Charlotte, NC, April 2008 (No notes—I gave brief welcoming remarks)

Speaker, "Corporate Finance for Business Court Judges," American College of Business Court Judges, Searle Center on Law, Regulation, and Economic Growth Northwestern University College of Law, 357 East Chicago Ave., Chicago, IL 60611-3069, April 2008 (No notes—discussed and summarized business court decisions)

Speaker, "Advanced Litigation Strategies for Trial and Beyond: Avoiding Common Pitfalls and Coming Out on Top," North Carolina Bar Association, Asheville, NC, April 2008

Speaker, "Spanish Nite," Hispanic League of the Piedmont Triad, Winston-Salem, NC, March 2008

Panelist, "Diversity and the Bench: Diversity's Role in Charlotte's Judiciary," Charlotte School of Law, 2145 Suttle Ave., Charlotte, NC 28208, March 2008 (No notes—participated with other judges in a panel discussion on the importance of a diverse bench)

Panelist, "All Star Trial Advocacy," Mecklenburg County Bar, 438 Queens Rd., Charlotte, NC 28207, February 2008 (No notes—participated in judges roundtable on best practices before the Court)

Speaker, Wake Forest Babcock Graduate School of Management, One Morrocroft Centre, 6805 Morrison Blvd., Suite 150, Charlotte, NC 28211, November 2007 (No notes—spoke to graduate students on history and operation of the North Carolina Business Court and discussed contract law issues that frequently come before the Court)

Moderator, "Developing and Supporting Collegiality and Professionalism," Superior Court Judges of the Seventh and Eighth Divisions, Gastonia, NC, October 2007 (No notes—lead group discussion and presented summary of judges' responses to civility scenarios)

Speaker, "Business Court Perspective," Charlotte School of Law, Charlotte, NC October 2007

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Panelist, "An Introduction to Business Courts and Complex Litigation Courts—What Works Best and Why," ABA Annual Meeting, 321 N. Clark St., Chicago, IL, 60654-7598, August 2007 (No notes—part of panel discussion on business courts)

Panelist, "Forum Selection—Has the Business Court Changed the Equation?" North Carolina Association of Defense Attorneys, Hilton Head, SC, June 2007 (No notes—spoke on practice and procedure before the North Carolina Business Court and, in particular, the procedure for transferring cases to the Court)

Speaker, Central Piedmont Community College Paralegal Graduation Ceremony, Charlotte, NC, April 2007.

Panelist, "An Introduction to Business Courts," ABA Business Law Section, 321 N. Clark St., Chicago, IL, 60654-7598, March 2007 (No notes—I participated in a panel discussion on business courts)

Panelist, "Minorities in the Law," Charlotte School of Law, 2145 Suttle Ave., Charlotte, NC 28208, February 2007 (No notes—I participated in a panel discussion on challenges facing minority lawyers in the profession)

Speaker, "Business Court Perspectives," American College of Trial Lawyers, Charleston, SC, February 2007

Panelist, "Increasing Diversity in the Legal Profession," Mecklenburg County Bar, 438 Queens Rd., Charlotte, NC 28207, February 2007 – 2009 (No notes—annual conference targeted at high school and college students interested in a career in the law)

Panelist, "Diversity Matters," Mecklenburg County Bar, 438 Queens Rd., Charlotte, NC 28207, February 2007 (No notes—I spoke as part of a panel on the importance of diversity in the legal profession)

Panelist, "All-Star Trial Advocacy," Mecklenburg County Bar, Charlotte, NC, January 2007

Speaker, Youth Civics 101, Kids Voting Mecklenburg County, Charlotte, NC, August 2006

Speaker, "North Carolina Unfair and Deceptive Trade Practices Act," Conference of North Carolina Superior Court Judges, Asheville, NC, June 2006

Speaker, The Business Court Expansion & Practice before the Business Court, North Carolina Association of Defense Attorneys, Hilton Head, SC, June 2006

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Panelist, "Beyond the Basics of Civil Litigation," North Carolina Bar Association, Greensboro, NC, May 2006

Speaker, "Nuts and Bolts of Practice in the Business Court," Sole Practitioner/Small Firm Section, Mecklenburg County Bar, 438 Queens Rd., Charlotte, NC 28207, May 2006 (No notes—I spoke over lunch on best practices before the Business Court)

Speaker, "Business Torts: Deception Fraud and the Usual Suspects," Mecklenburg County Bar, 438 Queens Rd., Charlotte, NC 28207, April 2006 (No notes—panelist over lunch on best practices before the Court)

Speaker, "Top Ten List for Young Trial Lawyers," Mecklenburg County Bar, Young Lawyers Section, Charlotte, NC, April 2006

Speaker, "Business Litigation Forum," Mecklenburg County Bar, Civil Litigation Section, 438 Queens Rd., Charlotte, NC 28207, February 2006 (No notes—panelist on business litigation issues)

Speaker, "Business Court Update," Conference of North Carolina Superior Court Judges, Chapel Hill, NC, October 2005 (No notes—gave short summary of recently passed legislation expanding the Business Court)

Moderator, "Deposition Evidence," Joint session, Conference of North Carolina Superior Court Judges and Litigation Section, North Carolina Bar Association, Asheville, NC, June 2005 (No notes)

Panelist, "Update on Civil Practice Basics (Jury Instructions)," Mecklenburg County Bar, Charlotte, NC, February 2005

Speaker, "Findings of Fact and Conclusions of Law," Conference of North Carolina Superior Court Judges, Chapel Hill, NC, November 2004

Speaker, "South Carolina Oath Affirmation Program," North Carolina Bar Association, Charlotte, NC, November 2004 (Administered an oath required by the South Carolina Supreme Court for attorneys jointly licensed in North and South Carolina and also facilitated a discussion on legal ethics)

Speaker, Latin American Coalition, High School Graduation Ceremony, Charlotte, NC, late May or early June 2004

Co-Course Planner & Moderator, "All-Star Trial of a Business Case," North Carolina Bar Association, Greensboro, NC, May 2004 (No notes—I did not give remarks, except in my capacity as moderator)

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Speaker, Reception for Prospective Students, Hispanic/Latino Law Student Association, University of North Carolina at Chapel Hill School of Law, Chapel Hill, NC, November 24, 2003

Speaker, High School Law Career Conference, North Carolina Bar Association, Minorities in the Profession Committee, Charlotte, NC, October 2003 (No notes—I spoke about different career opportunities in the law)

Speaker, Latin American Festival, Charlotte, NC, October 2003. (Gave invocation)

Speaker, Fifth Grade Recognition and Awards Ceremony, Montclair Elementary School, Charlotte, NC, June 2003

Speaker, S.T.O.P & Change Direction Graduation Exercise Albemarle Correctional Institution, Badin, NC, May 20, 2003

Speaker, Civics 101 (in Spanish), League of Women Voters, Charlotte, NC, March 2003

Panelist, Increasing Diversity in the Legal Profession, University of North Carolina School of Law, 160 Ridge Rd., CB #3380, Chapel Hill, NC 27599-3380, February 22, 2003. (No notes—I was on a panel discussing the pros and cons of a career in the law)

Panelist, Hispanic Heritage Month, sponsored by Evergreen Investments, Three Wachovia Bldg, 401 S. Tryon St. Charlotte, NC 28202, September 17, 2002 (No notes – I discussed what it means to be Hispanic in the United States, what interactions the panelists have with the Hispanic community, and the importance of the services we provide to the Hispanic community.)

Speaker, Matthews Executive Group, P.O. Box 433, Matthews, NC, 28106, September 11, 2002. (No notes—I gave a general presentation on the state's court system)

Speaker, Judicial Candidate Forum, Uptown Optimist Club, 428 East 4th St. Suite 200 Charlotte, NC 28202, June 2002 (No notes—This was a Q&A session during my 2001 – 2002 campaign for judicial election. I spoke at many other events during the election campaign, but I have no notes or other records that detail the dates and/or the substance of my remarks, except that they all focused on my qualifications for judicial office.)

Speaker, North Carolina Migrant Education AIM Leadership Conference, Gardner Webb University, Boiling Springs, NC, June 19, 2002. (No notes—I spoke to Latino high school students from across the state about my experiences working in the justice system and the importance of getting an education.)

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Speaker, Merry Oaks Elementary School Latino Symposium, "Recognizing Heroes and Sheroes in Charlotte," 3508 Draper Ave., Charlotte, NC, 28205 (No notes—I was part of a panel discussing my work as a state court judge.)

Speaker, "Appellate Government Practice," Naval Justice School, 360 Elliot St., Newport, RI 02841, August 1994 (No notes—I gave a general overview of the work of the appellate government division)

Speaker, "Capital Litigation in the Military," Minneapolis, MN, November or December 1994 (No notes—I gave a general update on capital cases in the military)

Speaker, "Article 32 Investigations," U.S. Marine Corps, Marine Corps Combat Development Command, Quantico, VA, July 1994 (No notes—I presented on the use of pre-trial investigations in the military)

e. 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 done my best to identify all items requested in this question, but I may have given other interviews that I cannot recall and for which I have no records.

August 10, 2009: Print interview with *The South Charlotte Weekly*, and TV interviews with News Channel 14 and one other local TV outlet, all regarding the Mecklenburg County Bar's Lunch with a Lawyer Program

August 6, 2009: Print interview with *My School Rocks! Magazine* regarding the Lunch with a Lawyer Program

November 21, 2008: Print interview with *Mi Gente* regarding the importance of responding to a jury service summons

August 16, 2008: Print interview with *The Charlotte Observer* on the growth of the North Carolina Business Court

June 13, 2008: Print interview with *The Charlotte Business Journal* on the growing role of the North Carolina Business Court

December 2007: Print interview with *My School Rocks! Magazine* regarding the Mecklenburg County Bar's Lunch with a Lawyer Program

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October 9, 2007: Radio Interview with WFAE (local NPR station) for "Charlotte Talks" program on the criminal justice system (I do not have a copy of the transcript)

August 2007: TV Interview (in Spanish) with Central Piedmont Community College regarding my personal and professional background for program called "Perfiles Latinos"

March/April 2007: Print interview with *North Carolina Lawyer* following dedication ceremony for the new Mecklenburg County courthouse

December 2006: Print interview with *The Mecklenburg Bar News* for an article on my personal and professional background

December 2006: Print interview with *The Charlotte Business Journal* as part of an article on "Who to Watch" in 2007

November 2006: Print interview with *North Carolina Business Law Magazine* on the North Carolina Business Court

August 15, 2006: Print interview with *The Mecklenburg Times* regarding the Mecklenburg County Bar's Lunch with a Lawyer Program

January 26, 2006: Print interview with *The Charlotte Observer* regarding the expansion of the North Carolina Business Court

March 2005: Print interview with *The Hunton & Williams Reporter* for its alumni news section

November 6, 2002: Print interview with *The Charlotte Observer* regarding the results of my campaign for election to the Superior Court

November 2002: Print interview with *The Charlotte Observer* regarding my request for recount of the votes in the election for Superior Court

November 2002: Print interview with *El Pueblo Magazine* regarding my appointment to the Superior Court bench

October 2002: Print interview with *The Asian Herald* for a piece on my personal and professional background

October 26, 2002: Print interview with *The Charlotte Observer* in advance of the November 2002 judicial elections

July 2002: Print interview with *The Charlotte Observer* regarding Juror Appreciation Week

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June 28, 2002: Print interview with *The Charlotte Observer* regarding the effect of *Republican Party v. White*, 536 U.S. 765 (2002), on judicial campaigns

June 2002: Print interview with *El Progreso Hispano* regarding my campaign for election to the Superior Court

January 30, 2002: TV interview with local public access channel 21 for "Charlotte Tonight" program on Diversity in the Legal System (I do not have a copy of the transcript.)

December 9, 2001: Print interview with *La Noticia* regarding my appointment as the first Hispanic judge on the North Carolina Superior Court

November 22, 2001: Print interview with *The Raleigh News & Observer* following my appointment to the Superior Court bench

November 22, 2001: Print interview with *The Charlotte Observer* following my appointment to the Superior Court bench

October 2001: Print interview with *The Hunton & Williams Reporter* on my appointment to the Superior Court bench

Open/Net en Espanol, North Carolina Department of Administration, 116 West Jones St., Raleigh, NC, 27603. I appeared on this public service radio call-in show to answer questions in Spanish regarding the state's justice system. I have not been able to find the date of the program, but I believe it was sometime in 2002.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

May 2000 – March 2005: Appointed by the Judge Advocate General of the Navy as a military trial judge. The Court's jurisdiction is exclusively criminal, extending to misdemeanor and felony offenses, which are heard either by the military judge alone or by a panel of members.

November 2001 – November 2002: Appointed by the Governor of North Carolina as a Resident Superior Court Judge for Mecklenburg County, an elected position. The Superior Court of North Carolina is a trial court of general jurisdiction, which handles all criminal felony cases, all civil cases where the demand exceeds $10,000, and a few special categories of cases, such as those involving appeals from administrative agencies and constitutional issues.

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December 2002 – Present: Twice appointed by the Governor of North Carolina as a Special Superior Court Judge, each for a five-year term. As a Special Superior Court judge, I continue to exercise general jurisdiction over criminal felony cases and civil cases.

August 2005 – Present: Designated by the Chief Justice of the Supreme Court of North Carolina as a Special Superior Court Judge for Complex Business Cases. The Business Court is a specialized forum of the Superior Court assigned to hear cases that fall within a defined statutory category of "mandatory" complex business cases.

March 2005 – October 2006: Appointed by the Judge Advocate General of the Navy as a Judge of the U.S. Navy-Marine Corps Court of Criminal Appeals. The Court conducts mandatory review, unless waived by the appellant, of all courts-martial of members of the naval service referred to the Court pursuant to law.

a. Approximately how many cases have you presided over that have gone to verdict or judgment?

I have presided over approximately 120 cases that have gone to verdict following a trial. I have presided over thousands of civil and criminal matters, many of which resulted in entry of judgment without trial (although I can provide no precise figure).

i. Of these, approximately what percent were:

jury trials:	90%
bench trials:	10%
civil proceedings:	50%
criminal proceedings:	50%

b. Provide citations for all opinions you have written, including concurrences and dissents.

See attached list of citations.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *State v. Sapp*, 02 CRS 238989, 03 CRS 2597-2603, 2605-2609, Mecklenburg County, *aff'd*, 661 S.E.2d 304 (N.C. Ct. App. 2008), *appeal dismissed, rev. denied*, 2009 N.C. LEXIS 969 (N.C. Oct. 8, 2009)

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Defendant was charged with capital murder and other offenses. At trial, the State's evidence showed that Defendant and an accomplice entered an apartment in search of money and drugs. The apartment belonged to the murder victim's girlfriend, whose mother, brother, and three young children were also present. Both Defendant and his accomplice raped the victim's girlfriend. The mother, brother, and three young children were confined to a bedroom. After the murder victim directed Defendant and his accomplice to the items, Defendant shot and killed the victim.

A jury convicted Defendant of first-degree murder, first-degree burglary, three counts of first-degree rape, two counts of first-degree kidnapping, and five counts of second-degree kidnapping. Following a capital sentencing hearing, the jury recommended a sentence of life without parole on the murder conviction. I imposed that sentence, along with consecutive prison sentences on the remaining convictions. Defendant appealed, but the North Carolina Court of Appeals affirmed his conviction and sentence.

Counsel for the State: R. David Wallace and Glenn Cole III, District Attorney's Office, Mecklenburg County Courthouse, 700 East Trade St., Second Floor, Charlotte, NC 28202 (704) 417-1889.

Counsel for the Defendant: R. Locke Bell, Gaston County Courthouse, 325 North Marietta St., Suite 2003, Gastonia, NC 28052, (704) 852-3113 and William A. Anthony, III, 223 West Main Ave., Suite A, Gastonia, NC 28053 (704) 867-3688.

2. *State v. Montgomery*, 07 CRS 215042, 215044, Mecklenburg County (Pending but I do not anticipate having further involvement in the case)

I have presided over two motions in this capital murder case.
Defendant is charged with the shooting deaths of two Charlotte-Mecklenburg Police Department officers who were responding to a domestic violence call. The media sought access to the 911 recordings and police radio transmissions generated on the day the officers were killed.

The State moved for an order prohibiting the release of the recordings, contending their release would undermine its criminal investigation and jeopardize the right of the State and Defendant to a fair trial. The State also contended that several potential witnesses (including some who called 911 following the shootings) feared for their safety if their identities were disclosed.

To test the State's claims, I conducted an *in camera* review of the recordings and transmissions. Following that review, I concluded that North Carolina state law governing access to public records required that I release redacted versions of the recordings and transmissions.

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Defendants' lawyers also sought to have their client declared incompetent to stand trial. I presided over a four-day hearing on this issue, and thereafter denied the motion.

Counsel for the State: Marsha L. Goodenow, Elizabeth Freeman Greene, and Glenn Cole, III, District Attorney's Office, Mecklenburg County Courthouse, 700 East Trade St., Second Floor, Charlotte, NC 28202 (704) 358-6299, (704) 358-6258.

Counsel for Defendant: Duane L. Bryant, 1207 Brentwood St., High Point, NC, 27260, (336) 887-4804, and Bruce Lee, 701 E. Market St., Greensboro, NC 27401, (336) 272-8273.

Counsel for The Charlotte Observer and other media outlets: Jonathan Buchan, McGuire Woods, Bank of America Corporate Center, 100 North Tryon St., Suite 2900, Charlotte, NC 28202-4011, (704) 343-2063.

3. *State v. Freeman*, 06 CRS 218510, 28031, Mecklenburg County

Defendant was convicted of first degree murder and possession of a firearm by a felon. Prior to trial, Defendant moved to discharge his lawyer. Another member of my court granted the motion, but also directed that the lawyer remain as standby counsel.

Defendant was subsequently ordered committed to a mental hospital for examination on his capacity to proceed to trial. Following receipt of a report by a staff psychiatrist, I determined that Defendant was in fact competent to stand trial. I also held, based on the U.S. Supreme Court's recent decision in *Indiana v. Edwards*, 128 S. Ct. 2379 (2008), that Defendant lacked the mental capacity to represent himself at trial, given his significantly limited intellectual and academic skills (as described in the report of the state psychiatrist), and his refusal to cooperate with the Court's processes. As a result, I ordered standby counsel to resume his representation of Defendant. The case is on appeal.

Counsel for the State: Marsha L. Goodenow and Elizabeth Freeman Greene, District Attorney's Office, Mecklenburg County Courthouse, 700 East Trade St., Second Floor, Charlotte, NC 28202, (704) 358-6299, (704) 358-6258.

Counsel for the Defendant: Eric A. Bach, P.O. Box 33566, Charlotte, NC 28233, (704) 364-6580.

4. *Ehrenhaus v. Baker*, 08 CVS 22632, 2008 NCBC LEXIS 21 (N.C. Super. Ct. Dec. 5, 2008)

Plaintiff (a Wachovia Bank shareholder) filed a putative class action alleging that Wachovia and its board of directors breached their fiduciary duties toward the

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public shareholders of the Bank in connection with a merger agreement between the Bank and Wells Fargo, Inc. Plaintiff sought to enjoin the merger and recover money damages.

The case garnered substantial media and public interest because of the turmoil roiling the financial and credit markets at the time. The dispute also was complicated by the fact that a shareholder vote on the proposed merger was scheduled for the end of the year. I held that, with one limited exception, Plaintiff failed to show a likelihood of success on the merits of his claim alleging a breach of fiduciary duty because the decision-making process of the directors, although necessarily compressed given the extraordinary circumstances confronting them, was reasonable and fell within the standard of care demanded by law. Accordingly, I allowed the merger vote to proceed.

Plaintiff's Counsel: Greg Jones, 3015 Market St., Wilmington, NC 28403, (910) 251-2240, Robert M. Kornreich, Chet Waldman, Carl L. Stine, and Anthony Green, all of Wolf Popper L.L.P., 845 Third Ave., New York, NY 10022, (212) 759-4600.

Counsel for Defendants Wachovia and its Board: Robert W. Fuller, Mark W. Merritt, Garland S. Cassada, and Katherine G. Maynard, all of Robinson, Bradshaw & Hinson, P.A., 101 North Tryon St., Suite 1900, Charlotte, NC 28246, (704) 377-2536.

Counsel for Wells Fargo & Company: T. Thomas Cottingham, III, Winston & Strawn, L.L.P., 214 N. Tryon St., Charlotte, NC 28202, (704) 350-7700, Patrick L. Robson and Edward J. Fuhr, Hunton & Williams, Riverfront Plaza, East Tower, 951 East Byrd St., Richmond, VA 23219, (804) 788-8200, Paul K. Rowe and George T. Conway, III, of Wachtell, Lipton, Rosen & Katz, 51 West 52nd St., New York, NY, 10019, (212) 403-1000, and Eric Seiler of Friedman Kaplan Seiler & Adelman, L.L.P., 1633 Broadway, New York, NY 10019-6708, (212) 833-1100.

5. *Speedway Motorsports International, Ltd. v. Bronwen Energy Trading, Ltd.*, 08 CVS 9450, 2009 NCBC LEXIS 17 (N.C. Super. Ct. Feb. 18, 2009)

In a case of first impression in North Carolina, I held that a Defendant bank, which was not a party to contracts containing mandatory forum selection clauses compelling litigation in the commercial court of Paris, France, could nevertheless enforce the forum selection provision against co-Defendant Swift Aviation Group, Inc., which was a party to the contracts and who had filed cross-claims against the bank related to the underlying contracts.

Counsel for the Defendant BNP Paribas, S.A.: William K. Davis and Edward B. Davis, Bell, Davis & Pitt, P.A., 227 W. Trade St., Suite 2160, Charlotte, NC 28202-1697, (704) 227-0400.

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Counsel for Swift Aviation Group, Inc.: James P. Cooney, III, Debbie W. Harden, and Meredith J. McKee, all of Womble Carlyle Sandridge & Rice, P.L.L.C., One Wachovia Center, Suite 3500, 301 South College St., Charlotte, NC 28202-6037, (704) 331-4900.

6. *Fisher v. Communications Workers of America*, 08 CVS 3154, 2008 NCBC LEXIS 19 (N.C. Super. Ct. Oct. 30, 2008)

Plaintiff employees sued Defendant unions alleging that the unions violated the North Carolina Identity Theft Protection Act (NCITPA), committed unfair and deceptive trade practices under state law, and invaded their privacy by posting the employees' names and social security numbers on bulletin boards at work.

Defendants moved to dismiss the Complaint. In a first impression ruling, I held that Plaintiffs stated viable claims under the NCITPA and for unfair and deceptive trade practices, but that their claim alleging invasion of privacy failed as a matter of law because the alleged injury was not the type of intentional intrusion, physically or otherwise, necessary to state a claim for invasion of privacy.

Counsel for Plaintiffs: Philip M. Van Hoy and Stephen Dunn of Van Hoy, Reutlinger, Adams & Dunn, P.L.L.C., 737 East Blvd., Charlotte, NC 28203, (704) 375-6022, and Matthew C. Muggeridge, National Right to Work Legal Defense Foundation, Inc., 8001 Braddock Rd., Springfield, VA 22160, (703) 321-8510.

Counsel for Defendants: Joyce M. Brooks, 6845 Fairview Rd., Charlotte, NC 28210, (704) 765-4899, Robert M. Weaver, Nakamura, Quinn, Walls, Weaver & Davies L.L.P., Suite 380, 2700 Highway 280 East, Birmingham, AL 35233, (205) 870-9989, and Ann Groninger, Patterson Harkavy, L.L.P., 521 East Blvd., Charlotte, NC 28203, (704) 200-2009.

7. *Wake County v. Hotels.com, L.P.*, Master File 06 CVS 16256, 2007 NCBC LEXIS 35 (N.C. Super Ct. Nov. 20, 2007)

Plaintiffs are state counties that have enacted an occupancy tax based on the gross receipts derived from hotel room rentals within each county. Defendants are business entities that sell hotel rooms over the Internet. In their Complaint, Plaintiffs alleged that Defendants were not remitting the full amount of the occupancy tax purportedly due on each sale. The Complaint alleged claims for violations of the Occupancy Tax statute, conversion, and unfair and deceptive trade practices.

Defendants moved to dismiss the Complaint. I granted the motion as to the claims for unfair trade practices and conversion, but denied it as to the alleged failure to pay the full amount of the occupancy tax. I also granted a separate

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motion to dismiss as to Plaintiff Cumberland County based on the county's failure to exhaust administrative remedies it had established to resolve tax disputes.

Plaintiffs' Counsel: Kieran J. Shanahan, The Shanahan Law Group, 128 E. Hargett St., Suite 300, Raleigh, NC 27601, (919) 856-9494, Scott W. Jones and Steven R. Warren, Long, Parker, Warren & Jones, P.A., 14 South Pack Square, Suite 600, Asheville, NC 28802, (828) 258-2296, and Hugh R. Overholt and Gary J. Rickner, Ward & Smith, P.A., Wade II, Suite 400, 5430 Wade Park Blvd. (27607), P.O. Box 33009, Raleigh, NC 27636-3009, (919) 277-9100.

Defendants' Counsel: Charles B. Neely, Jr., Nancy S. Rendleman, and Robert W. Shaw, Williams Mullen Maupin Taylor, P.A., Highwoods Tower One, 3200 Beechleaf Court, Suite 500, Raleigh, NC 27604, (919) 981-4000, Darrel J. Hieber, Skadden, Arps, Slate, Meagher & Flom, L.L.P. & Affiliates, 300 South Grand Ave., Suite 3400, Los Angeles, CA 90071, (213) 687-5220, and Karen L. Valihura, Skadden, Arps, Slate, Meagher & Flom, L.L.P. & Affiliates, One Rodney Square, P.O. Box 636, Wilmington, DE 19899 (302) 651-3140 .

8. *Media Network, Inc. v. Mullen Adver., Inc.*, 05 CVS 15428, 2007 NCBC LEXIS 1 (N.C. Super. Ct. Jan. 19, 2007), *aff'd*, 678 S.E.2d 671 (N.C. Ct. App. 2009)

A jury returned a verdict for the Plaintiff on a claim alleging a violation of North Carolina's Unfair and Deceptive Trade Practices Act and awarded damages of $1,258,695.00, which I trebled pursuant to the statute. I declined, however, to award Plaintiff its attorney fees. Both parties appealed.

The North Carolina Court of Appeals affirmed, concluding that the jury's verdict was supported by the evidence and that I properly exercised my discretion in declining to award attorney fees.

Plaintiff's Counsel: Jackson N. Steele and Erik M. Rosenwood, Hamilton Moon Stephens Steele & Martin, P.L.L.C., 201 South College St., Suite 2020, Charlotte, NC 28244, (704) 344-1117.

Defendant's Counsel: James H. Kelly, W. Mark Conger, and Elliot A. Fus, Kilpatrick Stockton L.L.P., 1001 West Fourth St., Winston-Salem, NC 27101-2400, (336) 607-7300.

9. *Wachovia Bank, N.A. v. Harbinger, Capital Partners Master Fund I, Ltd.*, 07 CVS 5097, 2008 NCBC LEXIS 6 (N.C. Super. Ct. Mar. 13, 2008)

Wachovia Bank funded part of a credit agreement to a third-party borrower and created a syndicate to fund the balance. The third-party borrower (LeNature's, Inc.) filed for bankruptcy following discovery of a massive internal fraud allegedly perpetrated by management. Thereafter, Defendants purchased interests in the syndicate and purported to receive an assignment of tort claims. Wachovia

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sued Defendants in North Carolina, seeking a declaratory judgment that North Carolina law barred an assignment of tort claims. Defendants moved to stay the North Carolina action, contending that a more comprehensive action was pending in New York federal district court.

After weighing the relevant factors, I granted the motion to stay in favor of the New York action, in part because the far broader scope of the New York suit was more likely to fully and finally resolve the dispute, and because New York was an equally convenient, reasonable, and fair forum for resolution of the case.

Counsel for Plaintiffs: Robert W. Fuller and Katherine G. Maynard, Robinson, Bradshaw & Hinson, P.A., 101 North Tryon St., Suite 1900, Charlotte, NC 28246, (704) 377-2536.

Counsel for Defendants: C. Richard Rayburn, Jr., James B. Gatehouse, Ross R. Fulton, Rayburn Cooper & Durham, 227 W. Trade St., Suite 1200, Charlotte, NC, 28202-1672, (704) 334-0891, Michael B. Carlinsky, Robert S. Loigman, Adam Wolfson Quinn Emanuel Urquhart Oliver & Hedges, L.L.P., 51 Madison Ave., 22nd Floor, New York, NY 10010-1601, (212) 849-7000.

10. *Windsor Jewelers, Inc. v. Windsor Fine Jewelers, L.L.C.*, 08 CVS 24643, 2009 NCBC LEXIS 19 (N.C. Super Ct. February 16, 2009)

This is a state trademark infringement case. I granted Plaintiff's request for a temporary restraining order but later denied the motion for a preliminary injunction. I concluded that, whether viewed as a function of Plaintiff's "market penetration" or its "zone of natural expansion," Plaintiff's market presence in the relevant market was insufficient to warrant preliminary injunctive relief for infringement of its "Windsor Jewelers" mark.

Plaintiff's counsel: Eric A. Rogers, Joseph J. Santaniello, and Dawn Barker Floyd, Shumaker, Loop & Kendrick, L.L.P., 128 S. Tryon St., Suite 1800 Charlotte, NC 28202-5013, (704) 375-0057.

Defendants' counsel: Anthony T. Lathrop and J. Mark Wilson, Moore & Van Allen, P.L.L.C., 100 North Tryon St., Suite 4700, Charlotte, NC 28202-4003, (704) 331-1000.

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

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1. *United States v. Orellana*, 62 M.J. 595 (N-M.C.C.A. 2005)

   Counsel for the United States: Maj. Raymond Beal, USMC (No contact information available)

   Counsel for the Appellant: Lt. M.J. Navarre, JAGC, USNR (No contact information available)

2. *Ehrenhaus v. Baker*, 08 CVS 22632, 2008 NCBC LEXIS 21 (N.C. Super. Ct. Dec. 5, 2008)

   Plaintiff's Counsel: Greg Jones, 3015 Market St., Wilmington, NC 28403, (910) 251-2240, Robert M. Kornreich, Chet Waldman, Carl L. Stine, and Anthony Green, all of Wolf Popper L.L.P., 845 Third Ave., New York, NY 10022, (212) 759-4600

   Counsel for Defendants Wachovia and its Board: Robert W. Fuller, Mark W. Merritt, Garland S. Cassada, and Katherine G. Maynard, all of Robinson, Bradshaw & Hinson, P.A., 101 North Tryon St., Suite 1900 Charlotte, NC 28246, (704) 377-2536

   Counsel for Wells Fargo & Company: T. Thomas Cottingham, III, Winston & Strawn, L.L.P., 214 N. Tryon St., Charlotte, NC 28202, (704) 350-7700, Patrick L. Robson, and Edward J. Fuhr, Hunton & Williams, Riverfront Plaza, East Tower, 951 East Byrd St., Richmond, VA 23219, (804) 788-8200, Paul K. Rowe and George T. Conway, III, of Wachtell, Lipton, Rosen & Katz, 51 West 52nd St., New York, NY 10019, (212) 403-1000, and Eric Seiler of Friedman Kaplan Seiler & Adelman L.L.P., 1633 Broadway, New York, NY 10019-6708, (212) 833-1100

3. *Wachovia Bank, N.A. v. Harbinger, Capital Partners Master Fund I, Ltd.*, 07 CVS 5097, 2008 NCBC LEXIS 6, (N.C. Super. Ct. Mar. 13, 2008)

   Counsel for Plaintiffs: Robert W. Fuller and Katherine G. Maynard, Robinson, Bradshaw & Hinson, P.A., 101 North Tryon St., Suite 1900, Charlotte, NC 28246, (704) 377-2536

   Counsel for Defendants: C. Richard Rayburn, Jr., James B. Gatehouse, Ross R. Fulton, Rayburn Cooper & Durham, 227 W. Trade St., Suite 1200, Charlotte, NC 28202-1672, (704) 334-0891, Michael B. Carlinsky, Robert S. Loigman, Adam Wolfson, Quinn Emanuel Urquhart Oliver & Hedges, L.L.P. 51 Madison Ave., 22nd Floor, New York, NY 10010-1601, (212) 849-7000

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4. *Speedway Motorsports International, Ltd. v. Bronwen Energy Trading, Ltd.*, 08 CVS 9450, 2009 NCBC LEXIS 17 (N.C. Super. Ct. Feb. 18, 2009)

   Counsel for the Plaintiff: Michael G. Adams, and William L. Esser, IV, Parker, Poe, Adams & Bernstein, L.L.P., Three Wachovia Center, Suite 3000, 401 South Tryon St., Charlotte, NC 28202, (704) 372-9000

   Counsel for Defendant BNP Paribas, S.A.: William K. Davis and Edward B. Davis, Bell, Davis & Pitt, P.A., 227 W. Trade St., Suite 2160, Charlotte, NC 28202-1697, (704) 227-0400

   Counsel for Defendant BNP Paribas (Suisse) SA: Nash E. Long, III and Valerie B. Mullican, Winston & Strawn, 214 N. Tryon St., Charlotte, NC 28202, (704) 350-7700

   Counsel for Swift Aviation Group, Inc.: James P. Cooney, III, Debbie W. Harden, and Meredith J. McKee, Womble Carlyle Sandridge & Rice, P.L.L.C., One Wachovia Center, Suite 3500, 301 South College St., Charlotte, NC 28202-6037, (704) 331-4900

5. *Classic Coffee Concepts, Inc. v. Anderson*, 06 CVS 2941, 2006 NCBC LEXIS 24 (N.C. Super. Ct. December 1, 2006)

   Plaintiff's Counsel: Eric H. Cottrell, Mayer, Brown, Rowe & Maw, L.L.P. 214 North Tryon St., Suite 3800, Charlotte, NC 28202, (704) 444-3500, and Daniel L. Tedrick, 4609 Charlestowne Manor Dr., Charlotte, NC 28211, (704) 641-1753

   Defendant's Counsel: Marna M. Albanese and Allan W. Singer, McNair Law Firm, P.A., Two Wachovia Center, 301 South Tryon St., Suite 1615, Charlotte, NC 28282, (704) 347-1170

6. *Wake County v. Hotels.com, L.P.*, Master File 06 CVS 16256, 2007 NCBC LEXIS 35 (N.C. Super Ct. November 20, 2007)

   Plaintiffs' Counsel: Kieran J. Shanahan, The Shanahan Law Group, 128 E. Hargett St., Suite 300, Raleigh, NC 27601, (919) 856-9494, Scott W. Jones and Steven R. Warren, Long, Parker, Warren & Jones, P.A., 14 South Pack Square, Suite 600, Asheville, NC 28801, (828) 258-2296, and Hugh R. Overholt and Gary J. Rickner, Ward & Smith, P.A., Wade II, Suite 400, 5430 Wade Park Blvd., (27607), P.O. Box 33009, Raleigh, NC 27636-3009, (919) 277-9100

   Defendants' Counsel: Charles B. Neely, Jr., Nancy S. Rendleman, and Robert W. Shaw, Williams Mullen Maupin Taylor, P.A., Highwoods Tower One, 3200 Beechleaf Court, Suite 500, Raleigh, NC 27604, (919) 981-4000, Darrel J. Hieber, Skadden, Arps, Slate, Meagher & Flom, L.L.P. & Affiliates, 300 South Grand Ave., Suite 3400, Los Angeles, CA 90071, (213) 687-5220, and Karen L.

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Valihura, Skadden, Arps, Slate, Meagher & Flom, L.L.P. & Affiliates, One Rodney Square P.O. Box 636, Wilmington, DE 19899, (302) 651-3140

7. *Battleground Veterinary Hospital, P.C. v. McGeough*, 05 CVS 18918, 2007 NCBC LEXIS 33 (N.C. Super. Ct. Oct. 19, 2007)

   Plaintiff's Counsel: Paul H. Derrick and Kimberly Doyle, Jackson Lewis, L.L.P., 1400 Crescent Green, Suite 320, Cary, NC 27518, (919) 854-0044

   Defendant's Counsel: Jacqueline M. Druar, 125-5 North Main St., Mooresville, NC 28115, (704) 663-0772

8. *Green v. Short*, 06 CVS 22085, 2007 NCBC LEXIS 8 (N.C. Super. Ct. Mar. 9, 2007)

   Plaintiff's Counsel: Ted F. Mitchell and William E. Moore, Jr., Gray, Layton, Kersh, Solomon, Sigmon, Furr & Smith, P.A., 516 South New Hope Rd. P.O. Box 2636, Gastonia, NC 28053-2636, (704) 865-4400

   Defendant's Counsel: J. Daniel Bishop, Bishop, Capitano & Moss, P.A., 4521 Sharon Rd, Suite 350, Charlotte, NC 28211-3781, (704) 716-1200

9. *Piedmont Ventures Partners, L.P. v. Deloitte & Touche, L.P.P.*, 06 CVS 10418, 2007 NCBC LEXIS 6 (N.C. Super. Ct. Mar. 5, 2007)

   Plaintiffs' Counsel: Walker P. Badham, III and Brannon J. Buck, Badham & Buck, 420 20th St. N., Suite 2585, Birmingham, AL 35203, (205) 521-0036, Kurt F. Hausler and Gary W. Jackson, The Jackson Law Group, 521 East Blvd., Charlotte, NC 28203-5109, (704) 377-6690, Arcangela M. Mazzariello, P.O. Box 1574, Gastonia, NC 28053, (704) 864-8883

   Defendants' Counsel: John S. Buford, Jim W. Phillips, Jr., and Jennifer K. Van Zant, Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., P.O. Box 26000, Greensboro, NC 27420-6000, (336) 373-8850

10. *Media Network, Inc. v. Mullen Adver., Inc.*, 05 CVS 7255, 2007 NCBC LEXIS 1 (N.C. Super. Ct. Jan. 19, 2007)

    Plaintiff's Counsel: Jackson N. Steele and Erik M. Rosenwood, Hamilton Moon Stephens Steele & Martin, P.L.L.C., 201 South College St., Suite 2020, Charlotte, NC 28244, (704) 344-1117

    Defendant's Counsel: James H. Kelly, W. Mark Conger, and Elliot A. Fus, Kilpatrick Stockton L.L.P., 1001 West Fourth St., Winston-Salem, NC 27101-2400, (336) 607-7300

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e. Provide a list of all cases in which certiorari was requested or granted.

None, to the best of my knowledge.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

1. *Blitz v. Agean, Inc.*, 05 CVS 441, 2007 NCBC LEXIS 21 (N.C. Super Ct. June 25, 2007), *aff'd in part, rev'd in part*, 677 S.E.2d 1 (N.C. Ct. App. 2009)

I denied Plaintiff's motion for class certification for claims arising under the Telephone Consumer Protection Act. The North Carolina Court of Appeals reversed, and Defendant has petitioned for discretionary review by the Supreme Court of North Carolina.

2. *Hospira, Inc. v. AlphaGary Corp.*, 05 CVS 6371, Mecklenburg County, *aff'd in part, rev'd in part*, 671 S.E.2d 7 (N.C. Ct. App. 2009)

I dismissed Plaintiff's claims for fraud, negligent misrepresentation, negligence, estoppel, third party beneficiary breach of contract, and violation of the North Carolina Unfair and Deceptive Trade Practices Act. The North Carolina Court of Appeals reversed only my decision on the negligence claim.

3. *State v. Morgan*, 05 CRS 225657, Mecklenburg County, *rev'd*, 189 N.C. App. 716, 660 S.E.2d 545 (2008)

I held that the Double Jeopardy Clause did not bar Defendant's prosecution where previous charges had been dismissed on grounds unrelated to factual guilt or innocence. The North Carolina Court of Appeals reversed.

4. *State v. Stone*, 02 CRS 245456 & 03 CRS 079221, Mecklenburg County, *rev'd* 179 N.C. App. 297, 634 S.E.2d 244 (2006), *aff'd* 362 N.C. 50, 653 S.E.2d 414 (2007)

I denied Defendant's motion to suppress a police officer's seizure of narcotics from Defendant's person, finding that the officer's brief look into Defendant's sweat-pants was within the scope of Defendant's general consent to a search of his person for drugs. The North Carolina Court of Appeals reversed, and the Supreme Court of North Carolina affirmed the Court of Appeals.

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5. *State v. Gilbert*, 04 CRS 18296-97, 26161, 64133, 64779 Gaston County, *aff'd in part, rev'd in part*, 180 N.C. App. 476, 637 S.E.2d 307 (2006)

   I entered separate judgments for convictions based on the taking and possession of the same items. The North Carolina Court of Appeals vacated one of the convictions.

6. *United States v. Reyes*, 2005 CCA LEXIS 132, (N-M.C.C.A. Apr. 29, 2005), *aff'd in part, rev'd in part*, 63 M.J. 265 (C.A.A.F. 2006)

   On appeal, I determined that the military judge committed errors that were plain and obvious but not prejudicial. The United States Court of Appeals for the Armed Forces reversed with respect to prejudice.

7. *North Carolina Department of Transportation v. Haywood County*, 01 CVS 78, Haywood County, *rev'd* 167 N.C. App. 55, 604 S.E.2d 338 (2004), *rev'd*, 360 N.C. 349, 626 S.E.2d 645 (2006)

   I granted the State's motion for a directed verdict as to Defendant's expert testimony. The North Carolina Court of Appeals reversed, but the Supreme Court of North Carolina reversed the Court of Appeals and affirmed my ruling.

8. *MMR Holdings, L.L.C. v. City of Charlotte*, 04 CVS 919, Mecklenburg County, *rev'd*, 174 N.C. App. 540, 621 S.E.2d 210 (2005)

   I affirmed a municipal zoning board decision. The North Carolina Court of Appeals reversed.

9. *Nolan v. Village of Marvin*, 03 CVS 01701, Union County, *aff'd* 172 N.C. App. 84, 615 S.E.2d 898, *rev'd*, 360 N.C. 256, 624 S.E.2d 305 (2006)

   I affirmed the involuntary annexation of Petitioner's property by Respondent. The North Carolina Court of Appeals affirmed, but the Supreme Court of North Carolina reversed.

10. *State v. Price*, 02 CRS 61580, 15483, 61581, 65019, 03 CRS 9087, 050310, Buncombe County, *aff'd in part, rev'd in part*, 170 N.C. App. 672, 613 S.E.2d 60 (2005)

    I entered judgment following a jury's conviction of Defendant on multiple counts. The North Carolina Court of Appeals vacated certain of the convictions on the ground that the indictments were inadequate.

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11. *Transland Financial Services, Inc. v. Pompeii*, 02 CVS 15910, Mecklenburg County, *rev'd*, 2005 N.C. App. LEXIS 841 (N.C. Ct. App. Apr. 19, 2005)

    I granted Plaintiff's motion for summary judgment as to Defendant's counterclaim alleging negligent supervision. The North Carolina Court of Appeals reversed.

12. *Gallis v. M&R Investors*, 01 SP-3391, 02 SP-1197, Mecklenburg County, *rev'd*, 2004 N.C. App. LEXIS 2325 (N.C. Ct. App. Dec. 21, 2004)

    I granted Petitioner's motion for summary judgment regarding ownership of surplus funds following a foreclosure sale. The North Carolina Court of Appeals reversed.

13. *Odom v. Lane*, 01 CVS 7283, Mecklenburg County, *rev'd*, 161 N.C. App. 534, 588 S.E.2d 548 (2003)

    I granted summary judgment in favor of Defendants, finding that they were entitled to governmental immunity. The North Carolina Court of Appeals reversed.

g. Provide 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.

    I have issued hundreds of unpublished orders during my tenure as a state trial judge. These orders are filed in the paper case files, but are not otherwise retrievable via conventional electronic databases.

    Since my appointment to the North Carolina Business Court, I have authored over fifty unpublished opinions in business court cases, all of which may be retrieved via the Court's website, LEXIS or Westlaw.

    During my tenure as a reserve military appellate judge, I authored 13 opinions (two published) all of which are retrievable via LEXIS or Westlaw.

h. Provide 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, provide copies of the opinions.

1. *United States v. Orellana*, 62 M.J. 595 (N-Mil. Ct. Crim. App. 2005), *pet. rev. denied*, 63 M.J. 295 (C.A.A.F. May 26, 2006)

    Appellant pled guilty at a general court-martial to a number of offenses, including adultery. He appealed, contending that the criminalization of adultery was unconstitutional under *Lawrence v. Texas*, 539 U.S. 558 (2003).

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Appellant engaged in a sexual relationship with an adult female in his quarters on occasions when his wife and children were away. He also had sexual intercourse at his quarters with a minor female who was a friend of the female adult and invited another Marine to engage in sex with the females.

I held that *Lawrence* did not extend to the misconduct charged in this case, because (1) appellant's conduct went far beyond a private consensual encounter with another adult, and (2) the military had a legitimate interest in proscribing misconduct that was prejudicial to good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces. The U.S. Court of Appeals for the Armed Forces declined to grant further review of my decision.

2. *State v. Sings*, 02 CRS 200244, Mecklenburg County, *aff'd*, 182 N.C. App. 162, 641 S.E.2d 370 (2007) (no trial court opinion available). Defendant was charged with capital murder, but he pled no contest to voluntary manslaughter pursuant to a plea agreement. I presided over Defendant's sentencing hearing and, over his objection, admitted hearsay testimony that Defendant offered a witness a bribe to suppress the witness's testimony. The North Carolina Court of Appeals affirmed, holding that because the Rules of Evidence do not apply in sentencing, the admitted evidence did not violate the Confrontation Clauses of the federal and state constitutions.

3. *Robbins v. Ingham*, 04 CVS 17626, Mecklenburg County, *aff'd*, 635 S.E.2d 610 (N.C. Ct. App. 2006); *Rodgers v. Ingham*, 04 CVS 15629, Mecklenburg County, *aff'd*, 2006 N.C. App. LEXIS 2114 (N.C. Ct. App. Oct. 17, 2006)

   In these companion cases, I granted the individual Defendants' motions to dismiss for lack of personal jurisdiction, holding that (1) Plaintiffs failed to show any activity by Defendants that would satisfy the requirements of North Carolina's long-arm statute, and (2) Defendants did not have the required minimum contacts to support personal jurisdiction consistent with due process. The North Carolina Court of Appeals affirmed on both points.

4. *State v. Byers*, 01 CRS 51748, 51749, Mecklenburg County, *aff'd*, 175 N.C. App. 280, 623 S.E.2d 357 (2006) (no trial opinion available)

   A jury convicted Defendant of first-degree murder. At trial, Defendant objected to the introduction of certain out of court statements, contending that such evidence violated the Confrontation Clause and the dictates of *Crawford v. Washington*, 541 U.S. 36 (2004). I overruled Defendant's objections, and the North Carolina Court of Appeals affirmed, holding that the evidence was properly admitted for purposes other than for the truth of the matters asserted and thus did not violate Defendant's right of confrontation.

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5. *State v. Stanley*, 03 CRS 260027, Mecklenburg County, *aff'd*, 175 N.C. App. 171, 622 S.E.2d 680 (2005)

   Police received a tip from a confidential informant (who, over the course of 14 years, had provided the police with information leading to over 100 arrests and numerous convictions) that an individual was selling drugs outside a local convenience store. A police officer approached Defendant, who was in the area and fit the description provided by the informant. Defendant initially gave the officer consent to search, but subsequently resisted. Defendant was then arrested, and a search uncovered crack cocaine. I denied Defendant's motion to suppress, concluding that the informant's description to the police of the individual selling drugs was sufficient to constitute probable cause for the officer to arrest and search Defendant. The North Carolina Court of Appeals affirmed, holding that defendant's arrest and subsequent search were permissible under the state and federal constitutions.

6. *City of Concord v. Stafford*, 01 CVS 02632, Cabarrus County, *aff'd*, 173 N.C. App. 201, 618 S.E.2d 276 (2005)

   The City commenced a condemnation proceeding, seeking rights of way for a road widening project. Defendant owners contended that the City was improperly exercising its police powers for aesthetic rather than public safety reasons. Defendants also presented an appraisal showing the corresponding reduction in value of their remaining property to be almost $104,000.00, the majority of which was attributable to the restriction of access to lanes in only one direction of travel because of the median built by the City. The City, however, contended that Defendants were only entitled to approximately $12,000.00 for the taking. I granted partial summary judgment for the City and denied Defendants' claim to recover for the alleged reduction in property value.

   The North Carolina Court of Appeals affirmed, holding that the City was properly exercising its police power because the proposed median was intended to promote public safety and the means used to accomplish the City's purpose were reasonable. As a result, Defendants were not entitled to recover for the alleged reduction in value of the remaining property.

7. *State v. Blount*, 03 CRS 55881-55882, Union County (N.C. Super Ct. Oct. 12, 2005)

   In this capital murder case, I denied Defendant's motion seeking a change of venue, concluding that: (1) the print media coverage of the case was largely factual, informative, and non-inflammatory; and (2) given the limited circulation of the print media carrying the articles, Defendant failed to show that prospective jurors would be tainted by the media coverage.

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8. *Mascaro v. Mountaineer Land Group*, 06 CVS 3016, Mecklenburg County (N.C. Super. Ct. Oct. 17, 2006)

   I denied a third-party defendant's motion to dismiss for lack of personal jurisdiction, finding that North Carolina's long-arm statute supported the exercise of jurisdiction, and that the third-party defendant had sufficient minimum contacts with North Carolina to satisfy any due process concerns.

9. *Vandiver v. Town of Huntersville*, 01 CVS 9801, Mecklenburg County (N.C. Super. Ct. Jun. 10, 2002)

   I granted Defendants' cross-motion for summary judgment in a zoning ordinance case, concluding that the Defendant Board of Commissioners did not violate Plaintiffs' due process rights in approving a rezoning petition filed by a third party.

10. *State v. Price*, 02 CRS 61580, 65019, 50310, 61581, 15483, 03 CRS 9087 Buncombe County (N.C. Super. Ct. Oct. 28, 2003)

    Defendant was charged with several counts of breaking into city parking meters. I granted Defendant's motion to suppress evidence seized from his person after concluding that the police did not have a sufficient reason to frisk him.

11. *State v. McIlwaine*, 01 CRS 47549, 47550, 47551, Mecklenburg County (N.C. Super. Ct. Feb. 19, 2003)

    Defendant was charged with several drug offenses. Police seized the drugs that formed the basis for the charges during a traffic stop, after Defendant gave consent to search. At trial, Defendant denied that he had given consent and moved to dismiss the charges because of the State's failure to preserve the police cruiser videotape that Defendant claimed would corroborate his version of the events.

    I denied the motion to dismiss, holding that the destroyed videotape did not contain "materially exculpatory" evidence or even potentially useful evidence and that there was no bad faith or willful intent on the part of the police.

12. *State v. Blanton*, 05 CRS 213467, Mecklenburg County (N.C. Super. Ct. Aug. 14, 2006)

    Defendant was charged with possession of cocaine. I granted Defendant's motion to suppress a crack cocaine rock seized during a search of his person. I held that, while the police lawfully initiated an investigative stop of Defendant's car, the officers lacked probable cause to search Defendant.

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13. *State v. Grimm*, 01 CRS 015312-14, 015318-20, Mecklenburg County (N.C. Super. Ct. May 17, 2002)

    Defendant moved to dismiss the drug trafficking charges against him, contending that the State's attempt to prosecute him following the assessment of a controlled substance tax on the drugs seized by the police (which Defendant paid) violated the Double Jeopardy Clause.

    I denied Defendant's motion, concluding that the relevant tax statute did not have such fundamentally punitive characteristics as to run afoul of the Double Jeopardy Clause.

14. *State v. Covington*, 05 CRS 232844, 232845, 232847, Mecklenburg County (N.C. Super. Ct. Aug. 15, 2006)

    Police seized marijuana from Defendant after he was stopped at a license and registration checkpoint. I granted Defendant's motion to suppress the evidence (as well as statements Defendant made to the officers at the checkpoint), holding that the State had failed to show that the checkpoint had been established for a proper programmatic purpose.

15. *State v. Staley*, 01 CRS 143571-74, Mecklenburg County (N.C. Super. Ct. Feb. 26, 2003).

    Defendant moved to suppress an undercover police officer's pre-trial and in-court identifications of Defendant as the perpetrator of the charged drug offenses. Although the single photo array shown to the undercover officer was unnecessarily suggestive, I held that the totality of the relevant circumstances nevertheless favored admission of the officer's pretrial identification and that the officer's in-court identification was of independent origin and was not tainted by the pre-trial identification procedure.

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (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.) 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 in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

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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.

In assessing the necessity or propriety of recusal, I have adhered to the North Carolina Code of Judicial Conduct, and in particular Canon 3C of the Code.

During my first four years on the bench, I recused myself from any cases involving my former law firm or clients of the firm with whom I dealt. Additionally, I have recused myself from cases involving my wife's employer, although I have heard such cases where the parties waived any potential disqualification. While I served as a member of the board of my local homeowners association, I recused myself from cases involving the law firm that represented the association.

In Ehrenhaus v. Baker, 08 CVS 22632 (pending in Mecklenburg County), I disclosed that a putative class member objecting to a proposed settlement had supported my appointment to the bench and had contributed to my 2002 campaign for judicial office. I did not believe it necessary for me to recuse myself on these facts, and no party requested that I do so.

I recall at least one personal injury case where I disclosed that I carried automobile and homeowner's insurance with the insurance carrier funding the defense. I did not believe it necessary for me to recuse myself on these facts, and no party requested that I do so.

In *J. Freeman Floor Company, LLC v. Freeman*, 08 CVS 691 and 08 CVS 1120 (both pending in Henderson County), Plaintiffs requested that I recuse myself based on my former law firm's having represented the company for which the Defendant's attorney had previously served as general counsel. I declined to recuse myself because, to the best of my knowledge and recollection, I had no involvement in my former firm's representation of that company.

I recused myself *sua sponte* in *City of Charlotte v. Hurlahe*, 02 CVS 22903 (Mecklenburg County), based on my having acted *ex parte* to schedule a hearing on shortened notice, as authorized by the North Carolina Rules of Civil Procedure, after the Plaintiff requested an *ex parte* order extending the time to serve a proposed record

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on appeal. Although I believed there was absolutely no basis for recusal, I elected to recuse myself as authorized by the North Carolina Code of Judicial Conduct.

15. **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.

I have not held any public office other than judicial office.

On November 21, 2001, I was appointed to the Superior Court bench in Mecklenburg County, North Carolina. I took the oath of office as a judge on December 17, 2001. I lost my bid to retain the seat in the November 2002 election, but was subsequently reappointed to the bench by the Governor.

In or around November 2003, I applied for appointment as a U.S. Magistrate Judge for the Western District of North Carolina. I was one of five finalists interviewed for the seat, but did not receive the appointment.

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, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have not held a membership or office in any political party or election committee. I was a candidate for judicial office from December 2001 to November 2002 in Mecklenburg County, North Carolina, when I ran to retain my seat as a resident superior court judge.

16. **Legal Career:** 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 law alone.

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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.

1988 – 1991
United States Marine Corps
Legal Services Support Section
2d Force Service Support Group
59 Molly Pitcher Rd.
Camp Lejeune, NC 28542
Prosecutor (November 1988 – December 1989), Defense Counsel (January 1990 – January 1991) & Chief Review Officer (February 1991 – July 1991)

1991 – 2006
Office of the Judge Advocate General of the Navy
Washington Navy Yard
716 Sicard St., Suite 1000
Washington, DC 20374-5047
Appellate Government Counsel (1991 – 1995)
Reserve Appellate Defense Counsel (1995 – 2000)
Reserve Appellate Military Judge (2005 – 2006)

1995 – 2001
Hunton & Williams, L.L.P.
101 S. Tryon St., Suite 3500
Bank of America Plaza
Charlotte, NC 28280
Associate (2000 – 2001)
Associate, Raleigh, NC office (1995 – 2000)

2000 – 2005
U.S. Navy-Marine Corps Trial Judiciary
Piedmont Judicial Circuit
67 Virginia Dare Dr., Suite 145
Camp Lejeune, NC 28542
Reserve Military Judge

2001 – Present
North Carolina Business Court
832 East Fourth St., Suite 9600
Charlotte, NC 28202
Resident Superior Court Judge (2001 – 2002)
Special Superior Court Judge (2003 – 2005)
Special Superior Court Judge for Complex Business Cases (2005 – Present)

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iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

From 1988 – 1995, I served on active duty as a Marine lawyer. I first served at Camp Lejeune, North Carolina from 1988 – 1991. There, I prosecuted cases and defended clients in over 80 felony and misdemeanor cases (including 15 contested cases), and later served as the legal section's chief review officer, where I supervised three attorneys and 10 support staff in the post-trial processing of a daily docket of over 100 criminal cases.

From 1991 – 1995, I served as an appellate government counsel in the Office of the Judge Advocate General of the Navy. In that role, I represented the United States in over 200 criminal appeals and personally argued 18 cases before the U.S. Court of Appeals for the Armed Forces and the U.S. Navy-Marine Corps Court of Criminal Appeals. I also worked with the Solicitor General to prepare responses to certiorari petitions filed in the U.S. Supreme Court by convicted service members, and served as lead military counsel in a case before the Supreme Court questioning whether the method of appointing military judges and the lack of a fixed term of office for those judges violated the U.S. Constitution.

From 1995 until December 14, 2001, I was a trial lawyer for Hunton & Williams, L.L.P., one of the largest law firms in the country. I represented corporate clients in a wide variety of matters before federal and state courts, regulatory agencies, arbitration panels, and other alternative dispute forums.

After leaving active military duty in 1995, I served as a reserve appellate defense counsel for five years, representing over 200 clients in criminal cases before the military appellate courts.

Since December 17, 2001, I have served as a judge of the North Carolina Superior Court, which has included service as a Business Court Judge from August 2005 to the present.

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From May 2000 to March 2005, I served as a military trial judge. My final duty assignment in the military before my retirement in October 2006 was as a Judge of the U.S. Navy-Marine Corps Court of Criminal Appeals.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

As a Marine lawyer, I represented the United States as well as individual Marines and Sailors in criminal proceedings, with the bulk of that practice concentrated on appellate work.

From 1995 until I was sworn in as a Superior Court Judge on December 17, 2001, I was a trial lawyer for one of the largest law firms in the country. I represented a variety of corporate clients in matters before federal and state courts, regulatory agencies, arbitration panels, and other alternative dispute forums.

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.

Virtually my entire practice has been devoted to litigation, either trial or appellate. During my service as a Marine lawyer, I appeared frequently in the military trial and appellate courts. As a lawyer at Hunton & Williams, I appeared in court much less frequently.

i. Indicate the percentage of your practice in:
   1. federal courts: 10%
   2. state courts of record: 10%
   3. other courts: 75% (military courts)
   4. administrative agencies: 5%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 25%
   2. criminal proceedings: 75%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried 17 cases to verdict, 15 as sole counsel, one as chief counsel, and another as associate counsel. Eleven of these cases were jury trials.
In addition, I tried four cases to verdict before arbitration panels, one as sole counsel, and three others as co-counsel.

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i. What percentage of these trials were:
   1. jury: approximately 52%
   2. non-jury: approximately 48%

e. Describe your practice, if any, before the Supreme Court of the United States. 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.

While serving as an appellate government counsel in Washington, D.C., I assisted the Solicitor General in preparing responses to certiorari petitions filed in the Supreme Court by convicted service members. In 1993, I worked with Solicitor General Drew S. Days, III, and other lawyers in his office to draft the Government's brief and prepare General Days for oral argument before the Supreme Court in a case addressing whether the method of appointing military judges violated the Appointments Clause of the Constitution, and whether the lack of a fixed term of office for military judges violated the Fifth Amendment's Due Process Clause. On January 19, 1994, the Court issued its opinion in *Weiss v. United States*, 510 U.S. 163 (1994), ruling unanimously in favor of the Government on the disputed issues.

Mitchell v. United States, 513 U.S. 874 (1994)

Weiss v. United States, 510 U.S. 163 (1994)

Figueroa v. United States, 507 U.S. 910 (1993)

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. 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.

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1. *Weiss v. United States*, 510 U.S. 163 (1994) (Before Chief Justice Rehnquist, and Associate Justices Stevens, O'Connor, Scalia, Kennedy, Souter, Thomas, Ginsburg, and Blackmun)

Petitioners Weiss and Hernandez challenged their court-martial convictions alleging that (1) the method of appointing the military judges who heard their cases violated the Appointments Clause of the Constitution, and (2) the lack of a fixed term of office for military judges violated the Fifth Amendment's Due Process Clause. On January 19, 1994, the Supreme Court ruled unanimously in favor of the Government on the disputed issues.

I was lead military counsel for the United States. In that role, I prepared the first draft of the brief in opposition and helped to prepare the Solicitor General for oral argument.

Co-counsel: Drew S. Days, III, Solicitor General, now on the faculty of the Yale Law School, P.O. Box 208215, New Haven, CT 06520, John C. Keeney, then Acting Assistant Attorney General (no contact information available); William C. Bryson (then in the solicitor general's office), now a Judge on the United States Circuit Court for the Federal Circuit, Paul J. Larkin, Jr. (then in the Solicitor General's office), now Assistant General Counsel, Verizon Communications, 1515 North Court House Rd., Arlington, VA 22201, (703) 251-3900, Thomas E. Booth, an attorney at the Department of Justice, Robert F. Kennedy Building, Washington, DC 20530, (202) 514-5201; and Brigadier General Theodore G. Hess, USMC (Ret.), 804 Colorado Ave., Suite 200, Glenwood Springs, CO 81601, (970) 949-1144

Opposing counsel: Alan B. Morrison, The George Washington University Law School, 2000 H St., N.W. Washington, DC 20052, (202) 994-7120, Philip D. Cave, 1318 Princess St., Suite 200, Alexandria, VA 22314, (703) 298-9562, Col. Dwight H. Sullivan, USMCR, U.S. Air Force Appellate Defense Division, 112 Luke Ave., Bolling AFB, Washington, DC 20032-8000 (no phone number available), Eugene R. Fidell, Feldesman, Tucker, Leifer & Fidell, L.L.P., 2001 L St., NW, Second Floor, Washington, DC 20036, (202) 466-8960, and Ronald W. Meister (no contact information available)

2. *Mitchell v. United States*, 513 U.S. 874 (1994) (Before Chief Justice Rehnquist, and Associate Justices Stevens, O'Connor, Scalia, Kennedy, Souter, Thomas, Ginsburg, and Breyer).

Petitioner in this case contended that the role of the Judge Advocate General in preparing fitness reports for military officers who serve as judges on the military courts of criminal appeals undermined their independence and violated due process. I was lead military counsel for the United States and assisted in preparing the brief in opposition to the petition for certiorari.

On October 3, 1994, the Supreme Court denied the petition for certiorari.

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Co-counsel: Drew S. Days, III, Solicitor General, now on the faculty of the Yale Law School, P.O. Box 208215, New Haven, CT 06520; and Brigadier General Joseph Composto, USMC (Ret.), now serving as Director of Security and Installation Operations Directorate of the National Geospatial-Intelligence Agency, NGA Office of Corporate Communications, Public Affairs Division, MS D-54, 4600 Sangamore Rd., Bethesda, MD 20816-5003, (703) 755-5900 and (800) 777-6104

Opposing counsel: Lieutenant Alice B. Lustre, JAGC, USN (no contact information available)

3. *United States v. Curtis*, 44 M.J. 106 (C.A.A.F. 1996) (Before Chief Judge Cox, and Judges Crawford, Wiss, Sullivan, and Gierke)

I was co-counsel for the United States in this death penalty case. I assisted in drafting the Government's brief on appeal before the U.S. Court of Appeals for the Armed Forces ("CAAF") and helped to prepare lead counsel for oral argument.

Appellant raised 76 assignments of error. The CAAF concluded that appellant received a fair trial free from any prejudicial errors affecting his substantial rights, and affirmed his conviction and death sentence. A year later, however, the CAAF granted appellant's petition for reconsideration and set aside the sentence of death.

Co-counsel: Commander Stephen A. Stallings, JAGC, USN (Ret.), 214 W. Texas Ave., Suite 600, Midland, TX, 79701 (432) 638-8170, Brigadier General Theodore G. Hess, USMC (Ret.), 804 Colorado Ave., Suite 200, Glenwood Springs, CO 81601, (970) 949-1144; and Lieutenant Brian B. Rippel, JAGC, USNR, 810 Vermont Ave. NW, Mail Code 027, Washington, DC 20420, (202) 639-4854

Opposing counsel: Commander Mary T. Hall, JAGC, USN (Ret.), P.O. Box 637, Hollywood, MD 20636, (301) 373-8601; Lieutenant William M. Schrier, JAGC, USNR (no contact information available), and Lieutenant David P. Sheldon, JAGC, USNR, Law Offices of David P. Sheldon, P.L.L.C., Barracks Row, 512 8th St., SE Washington, DC 20003, (202) 546-9575

4. *United States v. Thomas*, 43 M.J. 550 (N-Mil. Ct. Crim. App. 1995) (Before Chief Judge David C. Larson, and Judges W.A. DeCicco, Edwin W. Welch, T.D. Keating, E.D. Clark, James E. Orr, Albert A. Reed, and R.M. Mollison)

I was lead counsel for the United States in this death penalty case. I supervised the drafting of the Government's brief on appeal before the U.S. Navy-Marine Corps Court of Criminal Appeals and argued the case before the Court *en banc*.

The appellant raised 89 issues on appeal. The Court of Criminal Appeals affirmed. On further appeal, the U.S. Court of Appeals for the Armed Forces affirmed the appellant's

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conviction but set aside the sentence of death. *United States v. Thomas,* 46 M.J. 311 (C.A.A.F. 1997).

Co-counsel: Lieutenant Commander Lyle H. Bowen, JAGC, USN (Ret.), no contact information available; Lieutenant Jack R. Livingston, Jr., JAGC, USN, 4914 Tarheel Way, Annandale, VA 22003, (703) 425-4418, Colonel Daren K. Margolin, USMC, Depot Law Center (BLDG 293), Marine Corps Recruit Depot, Unit 18001, Parris Island, SC 29905-8001, (843) 228-2790/2558, Major Michael K. Lambert, USMCR (no contact information available).

Opposing counsel: Major David S. Jonas, USMC, now General Counsel, National Nuclear Security Administration, U.S. Department of Energy, 1000 Independence Ave., SW, Washington, D.C. 20585, (202) 586-5000, and Lieutenant Philip L. Sundel, JAGC, USNR, now Deputy Legal Advisor in the Washington Regional Delegation of the International Committee of the Red Cross, Suite 500, 1100 Connecticut Ave., NW, Washington, DC 20036, (202) 587-4600

5. *United States v. Kossman*, 38 M.J. 258 (C.M.A. 1993) (Before Chief Judge Sullivan, and Judges Cox, Crawford, Gierke, and Wiss)

Appellant moved to dismiss certain charges for lack of speedy trial. The military judge granted the motion, and the Government appealed. The U.S. Navy-Marine Corps Court of Military Review affirmed. The Government then appealed to the U.S. Court of Military Appeals (now known as the Court of Appeals for the Armed Forces).

That Court reversed, and in doing so established a new standard for determining when charges may be dismissed for violating a military accused's right to a speedy trial.

I was lead counsel for the United States in the appeal before the lower military appellate court and the U.S. Court of Military Appeals. I prepared the government's briefs and delivered the arguments before both courts.

Co-counsel: Commander Stephen A. Stallings, JAGC, USN (Ret.), 214 W. Texas Ave., Suite 600, Midland, TX, (432) 638-8170, Brigadier General Theodore G. Hess, USMC (Ret.), 804 Colorado Ave., Suite 200, Glenwood Springs, CO 81601, (970) 949-1144

Opposing counsel: Lieutenant Michael C. Pallesen, JAGC, USNR (no contact information available)

6. *United States v. Gonzalez*, 39 M.J. 459 (C.M.A. 1994) (Before Chief Judge Sullivan, and Judges Crawford, Cox, Gierke, and Wiss)

Appellant was convicted of the premeditated murder of his wife, who was found dead in Rota, Spain. At trial, Appellant requested the appointment of an independent investigator

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to explore defense theories and interview witnesses. The trial judge appointed a Spanish language interpreter for the defense team, but otherwise denied the motion.

The U.S. Navy-Marine Corps Court of Criminal Appeals affirmed. Appellant then appealed to the U.S. Court of Military Appeals, contending that the military trial judge erred in refusing to provide an independent investigator.

I was lead counsel for the United States before the U.S. Court of Military Appeals. I prepared the response brief and argued the cause before the CMA. That Court affirmed.

Co-counsel: Commander Stephen A. Stallings, JAGC, USN (Ret.), 214 W Texas Ave., Suite 600, Midland, TX, 79701, (432) 638-8170, Brigadier General Theodore G. Hess, USMC (Ret.), 804 Colorado Ave., Suite 200, Glenwood Springs, CO 81601, (970) 949-1144, and Major Laura L. Scudder, USMC (Ret.), 61 Eagle Trail, Fairfield, PA 17320, (717) 642-8680.

Opposing counsel: Lieutenant Phillip L. Sundel, JAGC, USNR, now Deputy Legal Advisor in the Washington Regional Delegation of the International Committee of the Red Cross, Suite 500, 1100 Connecticut Ave., NW, Washington, DC 20036, (202) 587-4600, and LT. Ruth G. Finn, JAGC, USNR (no contact information available)

7. *Fisher v. American General Finance, Co.,* CA 00-350-2 (S.D.W.Va.) (Before Judge Elizabeth V. Hallanan), *rev'd in part, vacated in part,* 52 F. App'x. 601 (4th Cir. 2002) (Before Judges Wilkins, Magill, and Hudson).

I was lead counsel for Defendants at trial. Plaintiffs sued Defendants for bad faith, fraud, violations of the Truth in Lending Act and violations of related West Virginia consumer protection statutes. A jury found for Plaintiffs, and awarded damages, civil penalties, and attorney fees.

On appeal, the Fourth Circuit held that: (1) the trial court erred in admitting (over my objection) testimony about Defendants' general practice of falsifying loan applications because the alleged prior bad acts were dissimilar to the acts giving rise to the suit; (2) the trial court erred in denying Defendants' motion for judgment as a matter of law on the claim alleging bad faith; and (3) Plaintiffs' evidence of emotional distress was insufficient to justify a damages award on the state law claims.

The Court reversed the denial of judgment as a matter of law on the bad faith claim, vacated the balance of the judgment in favor of Plaintiffs, and remanded for further proceedings.

Co-counsel: Carrie Goodwin Fenwick, Goodwin & Goodwin, L.L.P., 300 Summers St., Suite 1500, Charleston, WV 25301, (304) 346-7000

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Opposing counsel: Daniel F. Hedges and Bren Joseph Pomponio, Mountain State Justice, Inc., 1031 Quarrier St., Suite 200, Charleston, WV 25301, (304) 344-3144

8. *United States v. Diaz*, NMCM 92 00955, 1995 CCA LEXIS 428 (N-Mil. Ct. Crim. App. June 19, 1995) (Before Judges James E. Orr, Albert A. Reed, and W.A. DeCicco)

Appellant was convicted of carnal knowledge. At issue on appeal was whether the military judge erred in admitting the results of DNA testing tying appellant to the crime, an issue of first impression in the Naval service.

I was lead counsel for the United States. I prepared the response brief and delivered the oral argument before the U.S. Navy-Marine Court of Criminal Appeals. The Court declined to address the evidentiary issue relating to the admission of the DNA evidence, concluding that, even if the military judge did err, any such error was harmless in light of the other overwhelming evidence pointing to appellant's guilt.

Co-counsel: None

Opposing counsel: Lieutenant William M. Schrier, JAGC, USNR (No contact information available)

9. *Jonas B. Crooke Interests, Inc. v. CTL En'g, Inc.*, CA-96-494-3 (E.D.Va.) (Before Judge James R. Spencer), *aff'd in part, rev'd in part*, 1999 U.S. App. LEXIS 5742 (4th. Cir. Mar. 29, 1999) (Before Judges Widener, Wilkins, and G. Ross Anderson, Jr.)

I was co-counsel for Plaintiff at trial and on appeal. At trial in the U.S. District Court for the Eastern District of Virginia, I conducted direct and cross-examination of witnesses. I also prepared the initial draft of the brief on appeal.

Plaintiff sued Defendant for claims arising out of negligent performance of an environmental site assessment. Plaintiff sought to recover the sums it expended on the construction project as well as the economic loss flowing from the Defendant's negligence. The jury verdict was limited to the sum Plaintiff expended on the project.

On appeal, the Fourth Circuit ruled that Plaintiff could recover its damages for economic loss. The Court remanded the case for a new trial on damages.

Co-counsel: Cheryl G. Ragsdale, Hunton & Williams, L.L.P., Riverfront Plaza, East Tower, 951 East Byrd St., Richmond, VA 23219, (804) 788-8601

Opposing counsel: Murray H. Wright and David E. Boelzner, Wright, Robinson, Osthimer & Tatum, 411 East Franklin St., Richmond, VA 23219, (804) 783-1104

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10. *United States v. Isham*, 48 M.J. 603 (N-Mil. Ct. Crim. App. 1998) (Before Senior Judge William J. Lucas, and Judges John T. Oliver, and R.B. Leo)

I represented appellant on appeal. Appellant was convicted of communicating threats, based in part on testimony presented by a chaplain. The U.S. Navy-Marine Corps Court of Criminal Appeals reversed appellant's conviction and sentence and dismissed the charge with prejudice, accepting my argument that statements appellant made to the chaplain regarding his struggle with stress and depression and his plans to shoot others and then kill himself with his weapon while on the rifle range were privileged as confidential communications to a clergyman.

Co-counsel: Lieutenant Robert Attanasio, JAGC, USNR (No contact information available)

Opposing counsel: Lieutenant Russell J.E. Verby, JAGC, USNR, and Lieutenant Commander Paul Jones, JAGC, USNR (No contact information available)

18. **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. 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.)

During my tenure with Hunton & Williams, L.L.P., from August 1995 to December 2001, I engaged in a general commercial litigation practice, handling client matters in a myriad of subject areas, including construction law, bankruptcy, environmental law, international commercial law, labor law, professional malpractice, insurance law, copyright and trademark law, banking law, energy and telecommunications law, trust and estates, and tax law.

Despite my heavy workload with the firm, I devoted hundreds of hours to pro bono work, taking on the post-conviction representation of a North Carolina death row inmate, representing a federal criminal defendant in his direct appeal to the Fourth Circuit and subsequent parole hearing, staffing a pro bono legal clinic at the Mecklenburg County Shelter for Battered Women, and assisting an individual in recovering unpaid wages. For my efforts, I twice received the E. Randolph Williams Award, given annually by my former law firm for outstanding pro bono service.

From December 1997 to March 1998, I supervised the collection, review and production of documents in a federal class action suit brought against Colonial Pipeline Company for claims arising from a pipeline oil spill. This was one of a number of complex business cases where I managed all or part of the document discovery process, including the preparation of document databases.

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In 1998, I also assisted in the defense of Philip Morris, USA, and other tobacco companies in cases brought by the states' attorneys general to recover funds spent by the states for the medical care and treatment of smokers. I conducted document review and prepared legal memoranda on issues related to the litigation.

I served as lead and/or co-counsel in proceedings before a number of North Carolina administrative agencies, including the North Carolina Utilities Commission, the North Carolina Real Estate Commission, the North Carolina Department of Insurance, and the North Carolina Property Tax Commission. I was also co-counsel in three arbitration proceedings, and lead counsel in a separate arbitration hearing.

In 1998, I served as a panel member charged with evaluating and screening candidates for appointment as federal administrative law judges.

As a Marine reserve appellate defense counsel, I assisted my active duty colleagues in researching issues related to potential attorney conflicts of interest in a death penalty appeal. For my work as an appellate defense counsel, I received the Reserve Navy Judge Advocate General's "Award of Excellence" for outstanding meritorious service.

From September 4, 2001 to approximately March 17, 2004, I served on the North Carolina State Judicial Council, a body tasked with studying and monitoring the operations of the court system, and identifying areas for improvement.

I served as a Vice-President of the North Carolina Bar Association from June 2007 to June 2008, and currently serve on the Board of Directors for the Mecklenburg County Bar.

In March 2007, I was appointed as one of three Business Court representatives to the Business Law section of the American Bar Association. In that role, I attended the annual spring and summer meetings of the Business Law section. I also appeared regularly on continuing legal education panels sponsored by the section and participated in committee proceedings.

Since 2005, I have been a member of the Education Committee for the North Carolina Conference of Superior Court Judges. The committee develops continuing judicial education programs for the Superior Court Bench. I am a frequent instructor at the conferences, and I also teach at the annual orientation program for new Superior Court Judges.

In the summer of 2007, I hosted an LLM student from Saudi Arabia, as part of Wake Forest University's School of Law Judicial Observation Program for International Law Students, Lawyers, and Judges. The program, which is sponsored by the Federal U.S. Judicial Conference Committee on International Judicial Relations, gives international law students an opportunity to gain an understanding of our civil and criminal justice system.

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In January 2009, I (along with several judicial colleagues) hosted a delegation of trial judges from South Korea. I also recall participating in a similar event for a delegation of judges from Russia, but I cannot recall the specific date.

In addition to my regular duties as a Business Court judge, I have volunteered to preside over a wide variety of our district's miscellaneous dockets, including juror show cause hearings, vehicle forfeiture proceedings, sex offender registration hearings, and drug treatment court proceedings.

I have never performed lobbying activities for any client or organization.

19. **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, provide four (4) copies to the committee.

Commercial Law, Paralegal Program, Central Piedmont Community College, Charlotte, NC (September 2006-Present)

Litigation, Paralegal Program, University of North Carolina, Charlotte (September 2007-Present)

20. **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. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

Military Pension at age 60 (approximately $51,000/year)

North Carolina Judicial Pension: I am eligible to receive a reduced retirement benefit at age 50 of approximately $20,400/year. Alternatively, I am entitled to a full retirement benefit of approximately $37,080/year at age 65. I am also entitled to free individual medical insurance coverage from the state of North Carolina upon retirement.

21. **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 my judicial workload permits, I plan to continue teaching. In addition, I also would like to continue serving as a member of the Contract Law Drafting Committee of the

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National Conference of Bar Examiners, if not otherwise inconsistent with the Code of Judicial Conduct for United States Judges.

22. **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, licensing fees, 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.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

    a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

        I am not aware of any such conflicts.

    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 potential conflicts consistent with federal law and the requirements of the Code of Conduct for United States Judges.

25. **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.

    I have mentored public school and first-year law students, and have been a frequent speaker at high school and college law career conferences for minority students. As a member of the North Carolina Bar Association's Minorities in the Profession Committee, I have tutored minority law students preparing for the North Carolina bar examination and helped to develop a minority clerkship program.

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I devoted hundreds of hours to pro bono work while in private practice, and was twice honored by my former firm for providing outstanding pro bono service.

As a member of the North Carolina Bar Association's Hispanic/Latino Lawyers Committee, I helped to create a directory of North Carolina bilingual attorneys for use in making referrals. I also served as co-chair of a 2001 symposium sponsored by the Committee to identify and address barriers to equal justice confronted by North Carolina's Latino community.

As a Superior Court Judge, I participated in a collaborative program designed to engage judges and other court personnel on issues of race, ethnicity, fairness and equality in the courtroom and develop solutions to foster positive systemic change.

In March 2003, I was the judicial speaker for the League of Women Voters Civics 101 class—the first such program ever presented entirely in Spanish. Additionally, I have appeared on numerous radio and television programs to educate the Latino community about our judicial system.

I volunteer annually as a judge for high school, college, and law school mock trial competitions, and served in 2005 as Presiding Judge of the Wade Edwards National Mock Trial Competition.

I currently serve as co-chair of the Mecklenburg County Bar's Special Committee on Diversity. I founded the Committee's "Lunch with a Lawyer" program, a mentoring program now in its fourth year, targeted at 8th grade students with an interest in the law. Since 2002, I have served as a substitute judge for our Drug Treatment Court, a program designed to rehabilitate and treat adult offenders by holding them accountable for complying with their court-ordered treatment plans.

Since 2005, I have also served as a volunteer Truancy Court Judge in two elementary schools. The Truancy Court program is a joint effort between North Carolina's 26th Judicial District and local public schools to address the causes of truancy and provide parents and their children with the tools to achieve academic success.

26. **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

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regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

I wrote to Senator Kay Hagan's office in January 2009 expressing my interest in serving on the federal bench, either as a Circuit or District judge. I subsequently met with Senator Richard Burr's General Counsel (at his request) to discuss my interest.

I also sought the support and endorsement of the Hispanic National Bar Association for a judicial nomination, which I received on July 9, 2009.

Senator Hagan appointed a panel to screen candidates and make recommendations to her for U.S. Attorney and federal District Court vacancies. I do not know whether the panel made formal recommendations to Senator Hagan regarding the Fourth Circuit. On August 26, 2009, I interviewed with the panel regarding a vacancy on the U.S. District Court for the Western District of North Carolina.

On July 31, 2009, I met in Washington, D.C. with White House Counsel Greg Craig and two Associate Counsel to discuss my interest in a nomination. On August 14, 2009, I had a follow-up telephone conference with Associate Counsel.

On August 11, 2009, I met personally with Senator Hagan. On September 3, 2009, I spoke with Mr. Craig, who advised me that the President was considering nominating me to the Fourth Circuit. The next day, I received a call from staff from the Department of Justice regarding nomination paperwork and the process. I have had subsequent communication with Justice Department lawyers regarding the process.

On September 10, 2009, I received a call from Senator Burr's office inquiring generally about the status of my effort to seek the nomination. On September 11, 2009, I again spoke with Senator Hagan regarding my possible nomination to the Fourth Circuit.

On October 23, 2009, I met in Washington, D.C. with Deputy White House Counsel Cassandra Butts and other lawyers from the office of White House Counsel and the Department of Justice. My nomination was submitted to the United States Senate on November 4, 2009.

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, explain fully.

No.

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AFFIDAVIT

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

7 Novmbr 2009
(DATE)

(NAME)

Amel Bullard Mabrouk
(NOTARY)

AMEL BULLARD MABROUK
Notary Public
My Comm. Exp. MAY 5, 2012
MECKLENBURG CO., NC

Senator CARDIN. Thank you. Let me just inform the people that are here that a vote has started on the floor of the U.S. Senate. I am going to yield to Senator Sessions to allow him to go first.

We anticipate that we will be able to keep the hearing going during the vote. There is only one vote that is scheduled. We may have to take a short recess, but we hope to keep the hearing open.

Senator Sessions.

Senator SESSIONS. [Off microphone.] While both of the nominees have impressive backgrounds, including extensive service to their country, the Senate does have a constitutional duty to review these nominees carefully. I would just say that, of course, your backgrounds have been examined. FBI has done their background work. The ABA has done theirs. The President and Department of Justice have done theirs, and members of the staffs of the Committee have also looked into that. You would not be here if we were not making some progress through those investigations. This is a lifetime appointment and it requires that kind of review.

I am pleased to see that both nominees have the support of your home state Senators. That means a lot to all of us. You have got two Senators who have spent time at this and they have strongly supported you and that is valuable to us.

Both Judge Diaz and Judge Wynn were nominated by the President on November 4, 2009. So this is a quick turnaround for any circuit court nominee. It is especially quick for a nominee to the Fourth Circuit.

Steve Matthews, who President Bush nominated for the same seat on the Fourth Circuit which Judge Diaz has now been nominated waited 485 days for a hearing that never occurred.

Another of President Bush's nominees, Chief Judge Robert Conrad, who was chosen by Attorney General Janet Reno to conduct a sensitive investigation, out of all the United States attorneys in the country, who was rated highly by the bar association, was nominated for the seat for which Judge Wynn is now nominated, he waited over 500 days for a hearing that never came.

So there are other examples, I think, of unreasonable delay and obstruction, but I am not going go talk about that today. How about that? I just want to say that I am pleased that we could move you forward at what is really a fairly rapid pace, I have to say.

Both of your records have been examined and I will not go into a lot of detail. I did note a concern, as a former prosecutor, Judge Wynn, on a number of your cases involving search and seizure issues that are troubling to me.

In *McClendon*, you argued in dissent that it violated the Fourth Amendment to detain an individual who was stopped for speeding, appeared nervous, gave inconsistent and vague answers regarding his destination and could not produce a registration card for the vehicle. An eventual search yielded 50 pounds of marijuana. The Supreme Court of North Carolina affirmed the majority opinion in that case and not your view.

In *State* v. *Brooks*, you held that approaching a parked car and talking with the driver constituted an investigatory stop, requiring reasonable suspicion for the purposes of the Fourth Amendment.

In *Brooks*, a state bureau investigation agent was executing a search warrant at a business, where a car was parked. When he walked over to the car and engaged the driver in conversation, he noticed an empty gun holster next to the driver. When he asked where the gun was located, the defendant told the officer he was sitting on it. After seizing the gun, the officer obtained consent to search the car and located drugs.

The North Carolina Supreme Court unanimously reversed your decision that the officer's actions amounted to an investigatory stop that required a higher level of proof, which was reasonable suspicion.

So I would just say that these are fact-intensive cases. People can disagree or even make an error on occasion. Judges are not perfect. But when you have a lifetime appointment, unaccountable to the public, we do want your commitment that you will follow the law faithfully, regardless of whether you might agree with it or have a different view, and that would be some of the matters that we would be questioning today.

What do you think, Mr. Chairman, about the time?

Senator CARDIN. There is still some.

Senator SESSIONS. Judge Wynn, I mentioned those two cases. Would you tell me how you felt about them and your view of it, particularly after the court of appeals ruling?

Judge WYNN. Thank you, Senator. And I appreciate the opportunity to respond to the concerns that you have on those cases. I would note that during the tenure of my 19 years on the court, I have written perhaps close to 1,500 opinions and concurred in another 3,000 of them, and the vast majority of them the Supreme Court has affirmed, particularly in the criminal cases.

One of the unique things about the State of North Carolina, I don't think another state has this system, is that in order to get an appeal, as a matter of right, to the Supreme Court, a dissenting opinion from the court of appeals would put it there.

So quite often, as you indicated, where you have factual situations, where the issues are close, the Supreme Court has made it clear that a three-judge panel cannot certify that appeal to the Supreme Court. The only way it can get there on an appeal of right would be by a dissenting judge.

Understanding this process and the limited role that an intermediate court plays in the State of North Carolina and the opportunity for this to be reviewed by the Supreme Court, there are instances in which there is a fuzziness in the law or unclearness in the law. It perhaps is helpful to have a word from the Supreme Court.

I will assure you that once the Supreme Court made its pronouncement in these cases, I followed that law to the letter thereafter and in every instance in which you have enumerated, it has been helpful for the court to understand how to proceed from that point on and there are no court cases after any of those cases that would appear where I have deviated to any degree from what the Supreme Court has mandated.

Senator SESSIONS. Well, thank you. That is a direct answer and I appreciate it. What about, both of you, we have Federal sentencing guidelines that are rather significant and reduce the free-

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dom that judges in state court may have had with regard to sentencing.

Are you familiar with that, Judge Wynn, and are you committed to—how do you view, since the Supreme Court has reduced the binding nature of those guidelines, how do you feel about the general principal that sentences should be within the guideline range under normal circumstances?

Judge WYNN. Senator, again, thank you. And I recognize that you have a great deal of knowledge in terms of the legal system.

One of the things that you know and, of course, I know is that over the years, there was complete discretion given to judges at times to sentence defendants to virtually any sentence, from probation to many years.

I have, for many years, thought it was quite wise, whenever the legislative process was in place, to limit that discretion to the extent that there would be some consistency in the types of sentences that would be awarded.

To the extent that the Supreme Court is interactive, of course, if I am selected, I will fully support the holdings of the Supreme Court and the rulings of Congress that are held by the Supreme Court to be constitutional.

Senator SESSIONS. Judge Diaz.

Judge DIAZ. Thank you, Mr. Ranking Member. I appreciate the question. Although I am not directly familiar with Federal sentencing guidelines, because we operate under a state court system, we do have a fairly analogous system in North Carolina called structured sentencing, where a judge's discretion is cabined by the severity of the offense and the prior record of the offender, and that provides a grid box where the judge's discretion is limited by an aggravated, a mitigated and a presumptive range of sentences, and that system has worked very well for North Carolina.

I agree that, as a general principle, it should not be to the detriment of a defendant who it is that he or she appears in front of in determining what type of sentence should be awarded.

So I do agree that there is some benefit to relative uniformity of sentences and we have had some good experiences in North Carolina with that process, and I would commit to you that I would follow the law with respect to Federal sentencing guidelines, if I were confirmed.

Senator SESSIONS. Thank you. Both of you have dealt with lawyers and clients. Would you describe briefly your view about how an advocate ought to be treated in your courtroom and how you will treat them, if you are confirmed?

Judge Wynn.

Judge WYNN. Senator, again, thank you. Perhaps just as a matter of background, I grew up in a farm community in eastern North Carolina and I learned to respect, from my father and those around me, the individuals, no matter what path of life they came from.

It has been my intent and my practice at every stage of being in the judiciary to appreciate and to respect the lawyers and the litigants that come to the court no matter what their backgrounds, to allow and afford them a full hearing, to provide for access to justice in every instance.

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So I have attempted to and believe strongly in respecting individuals that come to the court and yielding and being as humbled as I can and recognizing the limited nature of my role as a judge is not to be the person in a superior position, but the person who is there to adjudicate with a fair and impartial view.

Senator SESSIONS. Judge Diaz.

Judge DIAZ. Thank you, Senator, for that question. I agree with my colleague. I believe that respect is the coin of the realm when it comes to our justice system. As important as it is to administer justice, it's equally important that citizens believe that justice is being fairly administered and part of that is having dignity and respect both for the process and the litigants.

Lawyers have a very difficult job, I know that, having been a civilian practitioner, as well as a military practitioner. It is a difficult task to balance client interests, as well as the integrity of the process. And judges ought not to sit as princesses or princes domineering the process.

It ought to be a respectful, two-way process, with dignity for all participants. The judge has to be in control, obviously, but he can do that while ensuring dignity and respect for all concerned.

Senator SESSIONS. Thank you.

Senator CARDIN. Thank you, Senator Sessions. We are going to need to take a brief recess because of the vote that is on the floor. I have been informed that we will not be able to continue the hearing at this time. So it will be a brief recess and we will be returning.

[Whereupon, at 3:34, the Committee was recessed, to reconvene at 3:50.]

Senator CARDIN. The Judiciary Committee will come back into order, please. Again, we apologize for the recess. It was unavoidable due to a vote on the floor.

We are joined by Senator Franken. We welcome him to the Committee.

Let me ask, if I might start off with some questions and just point out what Senator Sessions pointed out, which I think is critically important. The confirmation hearing is part of the process. Prior to your selection by the President, there was a long questionnaire that you had to fill out. I am sure it took you a long time. You probably had to recall things in your background that you had long thought would never be relevant again in your life.

So we have a lot of material. You have written a lot of opinions. You have given many speeches. All that has been reviewed by our staffs. We have summaries of that here.

So the confirmation hearing is one part of the confirmation process. As Senator Sessions pointed out, this is the court of appeals, where most of the court decisions are going to be reached in the Judicial Branch of government, because the Supreme Court takes very few cases. And this is a lifetime appointment.

So we treat the confirmation hearings very seriously and the confirmation process very seriously. I say that knowing full well that your backgrounds are incredible and your records are very strong.

But let me ask a question that was asked to you before, but I want you to elaborate a little bit more, and that is on your judicial philosophy, how you will go about reaching decisions and how your

background will impact the way in which you go about evaluating the decisions of the cases that come before you.

Since, Judge Wynn, we have been working with you first usually on the questioning, because you were first to testify, I am going to call on Judge Diaz first.

Mr. Diaz. Thank you, Senator.

Senator CARDIN. You have to turn your mic on, please.

Mr. Diaz. Thank you, Senator, for the question. I have tried in each and every case that has come before me, in terms of deciding cases, particularly as a trial judge, where the cases come frequently and often in a very busy docket, to rely on the lawyers to give me as much information as possible regarding the law and, obviously, the evidence that comes before the court.

I think it is critically important that a judge listen carefully to all points of view in a courtroom and recognize that his or her decisions have consequences; that we are not dealing simply with an academic exercise, but we are affecting, people's lives. And I try to do that in each and every case.

I also recognize the limits of the judicial decision-making process. We do not sit as a super legislature. We are not here to change policy, in a broad sense. We are here to decide cases and resolve disputes. And so I take that with me to the bench each and every day and hope to decide cases narrowly, with much restraint as possible, resolve the disputes that come before the court, but give all parties a full and fair opportunity to be heard, recognizing that I do not know everything there is to know about the law and certainly do not know anything about the facts before the parties come before me.

So it is an open process and I try to be as considerate as possible. But in the end, I make a decision and then live with it and decide later on or at least the appellate authorities can decide later on whether or not I have made the correct decision. I hope to do so in every case.

Senator CARDIN. Judge Wynn.

Judge WYNN. Thank you, Senator. And I agree with Judge Diaz and his comments that have been made. The role of a judge is to follow the law, not make the law. And in my decisionmaking process, I seek to apply the applicable statutes, the constitutional law, relevant precedent based on precedents, and reach a decision in the cases.

Senator CARDIN. The Fourth Circuit is one of the most diversified circuits in our country. Just looking at the numbers, it consists, of course, as you know, of Maryland, Virginia, West Virginia, North Carolina, South Carolina. Twenty-two percent of the residents are African-American. In North Carolina, it is even more diverse; 32 percent are African-Americans.

So I want to talk a little bit about diversity and how important it is to have diversity on our bench. And a related issue, the oath that you take as a Federal judge requires you to render your judgment without respect to the wealth or poverty of the person, to give equal justice to all, which, I would submit, is a goal that has not yet been reached in our system.

So my question is, how important is diversity in our bench and what does your background, your individual backgrounds, what

role does that play in dispensing of your decisionmaking or your responsibilities on the bench?

Judge WYNN. Thank you, Senator. I think that the role of a judge, of course, first and foremost, is to follow the law, not make the law. In every instance, the judge should treat every litigant with fairness and with impartiality.

It is my belief that—and I call upon a recent case by the United States Supreme Court, in which Justice Scalia brought forth the indication of the judicial speech case. He indicated quite pointedly that judges come to the court quite often with preconceived notions on relevant issues of law and he said, and I quote, "You would hardly expect anything differently. You wouldn't want a judge to be any different."

I take that to mean that the opportunity to have a wide range of input on relevant legal issues is important, but in every instance, the ultimate role of a judge, regardless of the background of the judge, regardless of the experience, is to follow the law, not make the law, to treat litigants fairly, and provide open access to our courts.

Senator CARDIN. Judge Diaz, does empathy have any role to play here? President Obama said he was looking for empathy in the nominees that he would submit to the courts.

Evidently, you all passed the test. Does empathy have any role here?

Judge DIAZ. Thank you for the question, Senator Cardin. First of all, I certainly do not presume to speak for President Obama and what he meant by that comment. I am honored that he felt that I have satisfied his requirements for this nomination and I am pleased to be a part of this process.

I do believe that empathy has a role to play in our judicial process, but not as the ultimate—as part of the ultimate decisionmaking process. Where I think empathy is important is, as I indicated earlier, in recognizing that our decisions have consequences and in recognizing that we, as judges, do not know everything there is to know, whether about the law or about the facts.

So it is critically important to listen carefully to litigants and lawyers, to engender respect and dignity for the process, because as important as it is to dispense justice, it is equally important that our citizens have the notion that there is the appearance of justice, and that is where empathy comes in; that folks believe that they have gotten a fair shake, that the judge has listened carefully to what it is that they have to say, considered all viewpoints.

But in the end, as my colleague, Judge Wynn, indicated, we, as judges, have to be fair and impartial arbiters. We do take that oath, if we are honored to do so, to do justice to rich and poor alike, and that is what I will do if I am honored by your vote for confirmation.

Senator CARDIN. I thank both of you for those answers. One last point and then I will turn it over to Senator Franken. And that is that is, the importance of pro bono legal services.

I have read your resumes and your backgrounds and your answers to those questions that were compounded by the Committee. As a judge, you cannot handle pro bono cases. But as a leader in

the Judicial Branch, you have a responsibility for leadership in access to justice, regardless of wealth.

So how do you see the role you can play as an appellate court judge in promoting programs to provide equal access to justice? I am going to preface your answer by what was done by the head of the Maryland courts, the chief judge, when he required lawyers to report on their pro bono activities as part of their professional responsibility. He helped expand access in Maryland.

How do you see your role as an appellate court judge in helping us achieve the goal of equal access to our courts?

Judge Diaz, we will start with you again.

Judge DIAZ. Thank you for the question, Senator Cardin. And I appreciate the importance of what it is that you are getting at.

I do believe, and I tried, in my private practice, in particular, to honor the commitment to pro bono work. We have a privilege as lawyers to practice law. It is not a right and it is something that we have an obligation to give back to whenever we can, and I have tried to do that and did that when I was in private practice. You have that information before you.

As a judge, I think it is critically important that we serve as role models in encouraging, not dictating—I do not think that we can dictate those requirements, because I do not know that required pro bono is necessarily effective pro bono work, but certainly encouraging lawyers to come forward and give of themselves and give of their time and service.

I have often chaffed against the notion that judges need to live a monkish lifestyle. We serve as role models. We ought to be public officials out amongst the public, understanding our limitations. We have to be careful about what it is that we say.

But because of our role as judges, we have an important responsibility to ensure that lawyers are encouraged to give back in every way that they can. And so I commit to you, Senator, that I would do that.

Senator CARDIN. Thank you.

Judge Wynn.

Judge WYNN. Thank you, Senator. And I, of course, agree with Judge Diaz's comments. As a lawyer, I offered and provided a number of pro bono hours. In fact, I received an award from the North Carolina Bar Association one year for having provided pro bono services during that year.

As a judge, it has been incumbent upon me to reach back into the community, such as the one that I came from, out of Martin County, North Carolina, where, unfortunately, sometimes the economic times have made it very difficult in those times.

I have so many great friends and supporters there, and I especially feel a need to go back quite often and reach back into the community through the high schools and through community activities to help to educate about the legal process and to afford our citizens an opportunity to learn more about the judiciary and to offer more back to our community.

Senator CARDIN. Well, I thank both of you. I was very impressed with your backgrounds and very impressed by your appearance here today, and I wish you only the best.

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I am going to turn the gavel over to Senator Franken. When he is completed, he will adjourn the Committee.

Senator FRANKEN. [Presiding] Thank you.

Senator CARDIN. You are chairman.

Senator FRANKEN. I guess, yes, I am chairman.

Senator CARDIN. Seniority moves quick around here.

Senator FRANKEN. Well, congratulations to both of you for your nominations. I want to go back to diversity again, because you are both military judges. Right?

Judge WYNN. That is correct, Senator.

Judge DIAZ. Yes, Senator.

Senator FRANKEN. Do you think that is a good idea to have two military judges on the same appellate court? That is not unusual, is it; or is it?

Judge WYNN. I am not sure in terms of how many individuals on the appellate courts have been former military judges. But I am certainly honored to be here with a fellow military judge who happened to be a Marine. I, of course, am Navy and I am quite honored that we are able to sit together in this opportunity.

Judge DIAZ. But only for an hour or so, Senator, no longer.

[Laughter.]

Senator FRANKEN. But, say, if a Marine came before you, that would not matter, you would give them equal justice, or her.

Judge DIAZ. Absolutely, Senator. Absolutely.

Senator FRANKEN. How about if Army came in front of you?

Judge WYNN. Absolutely, sir. Absolutely.

Senator FRANKEN. Seriously, how do you think your experiences in the military inform your work as a judge not in the military and especially on an appeals court?

Judge WYNN. Well, I think the level of discipline and the level of respect that we have in the military—it is a very, very tight community. Whenever we had individuals who would come before the court, regardless of the crime, we ensured—we had to understand that these individuals had volunteered to serve in the military and that their rights were something that needed to be protected; but at the same time, military discipline is important.

And I think that in being able to serve as a military judge at bases literally around the country and around the world—and I might add that the Navy is composed both of the Marine and the Navy. So I had cases on Marine Corps bases, as well as Naval bases.

Senator FRANKEN. Judge Diaz.

Judge DIAZ. Senator, I agree with my colleague, Judge Wynn. Part of what little success I have enjoyed as a civilian judge I attribute directly to my experiences in the military.

I served as both a military trial judge and an appellate judge. So I have had some appellate experience while serving in the military. It has been my honor to serve my country.

I also think that, as a practical matter, having that experience is going to be useful on the Fourth Circuit, because we do deal or would, if we were confirmed, deal with cases involving national security on occasion in the Fourth Circuit that come up from the Eastern District of Virginia, and I believe that our collective experi-

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ences as military officers would hold us in good stead with respect to those cases.

Senator FRANKEN. I was fascinated with Judge Wynn's answer on experience and talking about Justice Scalia's idea that, of course, you are going to come to the court with certain ideas about the law and that is what you want.

So sometimes we have this argument in this Committee about the role of diversity and it seems to me that when you talk about experience, I think it was Oliver Wendell Holmes who said experience is the law.

Help me, if you can, make this distinction where we have lots of nominees come before us who have said something like diversity is very important, experience is very important, and then we get a little pushback from people saying, "Ah, but you have to be completely neutral as a judge."

What is a good way to reconcile—how would you put reconciling those two?

Judge WYNN. Well, it looks like the Marine is deferring to the Navy guy here, so I will start out, Senator. Thank you, Senator, for that question.

I think the important aspect that we have to understand is that the judiciary depends a great deal on the public confidence.

Alexander Hamilton I think was the one who said that—when he was talking about separation of powers, he said the legislature has the money, the executive power has the force, and the judiciary has neither. And I think what you can glean from that is that the power of the judiciary in terms of enforcing the decisions lie in the fact that the public has confidence and they trust the judiciary and they have confidence in the integrity of the judicial decisions; in other words, they respect them.

If they do not respect them, then enforcing them will be difficult. And in order to respect and have public confidence, quite often, it may be necessary at least that the judiciary reflect at least an openness, at least some degree of diversity in terms of the individuals who may be there or the experiences.

The individuals who may come from rural communities or may come from urban communities or individuals of wealth or individuals of not so much wealth, to have a diversity of experience, I think most people can agree that, generally, that adds to the ultimate product, that is, yield, as a result of the decisionmaking process.

But ultimately, in every instance, regardless of the individuals who are there, the ultimate role of a judge is to follow the law, not make the law, not make it based on their past experiences, not make it based on things outside of that that is before them, but to use their best efforts to reach the results based upon the applicable law.

Senator FRANKEN. So, Judge Diaz, that sort of assumes that experience—people just intuitively understand that experience is going to inform judgment. It just is.

In other words, if you trust the judiciary because there is a diversity of experience there, if that creates that more trust, that is because human beings understand that experience informs judgment,

and, yet, your job is to treat everyone equally and to be neutral and judge on the law.

Is there a conflict there or is there not a conflict there?

Judge DIAZ. I do not think there is, Senator. I think in the end, as my colleague, Judge Wynn, said, one of the principal benefits of having a diverse bench is to inspire confidence in our larger institutions.

A few years ago, the Supreme Court decided a case involving diversity in law school admissions processes and Justice Sandra Day O'Connor emphasized the importance of diversity in bringing together differing views in order to enrich the academic experience.

And in part, she said one of the reasons why it was important to have a diverse legal profession was the importance of lawyers in the governance of our institutions and military institutions and the executive branch and in the judiciary.

It is critically important that people have—our citizens have an understanding that not only justice is being done, but the appearance of justice is being satisfied, and I think that is where having a diverse set of views comes into play and encourages that conclusion.

Senator FRANKEN. Well, I would like to thank both of you and congratulate both of you. Like Senator Cardin, I am incredibly impressed with your background and your experience.

We are going to keep the record open for 1 week for written questions, and our hearing is adjourned. Thank you, gentlemen.

Judge DIAZ. Thank you, Mr. Chairman.

Judge WYNN. Thank you, sir.

[Whereupon, at 4:09 p.m., the hearing was concluded.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Responses of Albert Diaz
Nominee to the U.S. Court of Appeals for the Fourth Circuit
to the Written Questions of Senator Tom Coburn, M.D.

1. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

   Response: No, the text of the Constitution is fixed and may only be modified by amendment. The framers, however, penned broad constitutional principles that courts are often called upon to interpret in light of modern circumstances.

2. **What principles of constitutional interpretation help you to begin your analysis of whether a particular statute infringes upon some individual right?**

   Response: My analysis would begin with the text of the statute. I would also look to U.S. Supreme Court or Fourth Circuit precedent, and would consider persuasive authority from other circuits. If the statute infringes upon a fundamental right, it would pass constitutional muster only if narrowly tailored to serve a compelling governmental interest. *Reno v. Flores*, 507 U.S. 292, 302 (1993). If the right being infringed upon is not fundamental, a court should (1) presume the statute is constitutional, and (2) uphold it so long as the statute is rationally related to a legitimate governmental interest. *Washington v. Glucksberg*, 521 U.S. 702, 728 (1997).

3. **As you know the Second Amendment right to bear arms is one that is very important to all Americans, but particularly those in my home state of Oklahoma. Do you believe that the Second Amendment is an individual right or a collective right? Please explain your answer.**

   Response: The U.S. Supreme Court held in *District of Columbia v. Heller,* 128 S. Ct. 2783 (2008) that the Second Amendment right to keep and bear arms is an individual right, at least in federal enclaves. If confirmed, I would apply that holding.

   a. **Do you believe an individual Second Amendment right exists outside the context of military service or hunting? If so, please explain.**

      Response: Yes, *Heller* extends the Second Amendment right to keep and bear arms beyond the context set out in your question.

   b. **Do you believe the right to bear arms is a fundamental right?**

      Response: The U.S. Supreme Court will decide this issue in *McDonald v. City of Chicago,* 567 F.3d 856 (7th Cir. 2009), *cert. granted,* 130 S. Ct. 48 (2009). If confirmed, I would apply the Supreme Court's holding in that case.

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c. What constitutional analysis would you use to determine whether it is a fundamental right?

Response: The U.S. Supreme Court will determine the appropriate constitutional analysis governing this question when it decides *McDonald*. If confirmed, I would apply the Supreme Court's holding in that case.

d. Do you believe the right to self defense is a fundamental right?

Response: In *Heller*, the U.S. Supreme Court stated that "the inherent right of self-defense [is] central to the Second Amendment right" to keep and bear arms. 128 S. Ct. at 2817. Whether the right to keep and bear arms is a fundamental right will be decided by the Supreme Court in *McDonald*. If confirmed, I would apply the Supreme Court's holding in that case.

4. Since at least the 1930s, the Supreme Court has expansively interpreted Congress' power under the Commerce Clause. Recently, however, in the cases of United States v. Lopez, 514 U.S. 549 (1995) and United States v. Morrison, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.

a. **Generally speaking, are *Lopez* and *Morrison* consistent with the Supreme Court's earlier Commerce Clause decisions?**

Response: Yes.

b. Why or why not?

Response: As the Supreme Court noted in *Lopez*, Congress' regulatory authority under the Commerce Clause has historically extended to (1) the use of channels of interstate commerce, (2) protection of the instrumentalities of interstate commerce, as well as persons or things in interstate commerce, and (3) activities that substantially affect interstate commerce. 514 U.S. at 558-59. In *Lopez* and *Morrison*, the Court concluded that the two statutes in question—the first making it a crime to possess a gun in a school zone and the second providing a civil remedy for victims of gender-motivated crimes of violence—were unconstitutional because they had no logical nexus to interstate commerce and did not regulate economic activity. Viewed in that context, I believe *Lopez* and *Morrison* are consistent with the Supreme Court's Commerce Clause jurisprudence.

c. Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?

Response: No, the text of the Constitution is fixed and may only be modified by amendment. The framers, however, penned broad constitutional principles that courts are often called upon to interpret in light of modern circumstances.

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5. **In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the "evolving standards of decency" to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy's analysis?**

   Response: If confirmed, I would apply the holding in *Roper v. Simmons,* whether I agree with it or not.

   a. **How would you determine what the evolving standards of decency are?**

      Response: In *Roper,* the Supreme Court explained that determining evolving standards of decency regarding the proportionality of punishments for criminal offenses begins with a review of objective indicia of consensus, as expressed by legislative enactments, followed by an independent judicial determination as to whether a particular punishment violates the constitutional prohibition against "cruel and unusual punishments." *Roper,* 543 U.S. at 564. If confirmed, I would apply this analysis.

6. **In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of provisions of the Constitution?**

   Response: Foreign or international laws or decisions should never bind a judge when determining the meaning of provisions of the Constitution. The Supreme Court has on occasion cited foreign law as persuasive authority for its decisions. *See e.g. Roper* and *Lawrence v. Texas,* 539 U.S. 558 (2003). If confirmed, I would apply the Supreme Court's holdings in these cases.

   a. **If so, under what circumstances would you consider foreign law when interpreting the Constitution?**

      Response: I cannot envision any circumstance where I would consider foreign law when interpreting the Constitution, except when applying Supreme Court precedents that cite foreign law as persuasive authority,

   b. **Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?**

      Response: See response above.

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Responses of Albert Diaz
Nominee to the U.S. Court of Appeals for the Fourth Circuit
to the Written Questions of Senator Charles E. Grassley

1. **What is your view of the role of a judge?**

Response: The role of a judge is to decide cases by fairly and impartially applying the law, as set forth in the Constitution, applicable statutes and regulations, and precedent. In doing so, a judge should be mindful of the limits of judicial power, and respect the constitutional prerogatives of the other co-equal branches of government.

2. **Do you believe it is ever appropriate for judges to indulge their own values in determining the meaning of statutes and the U.S. Constitution?**

Response: No.

a. **If so, under what circumstances?**

Response: See my response above.

b. **Please provide an example of a case in which you have done so.**

Response: I have never done so.

c. **Please provide an example of a case where you have had to set aside your own values and rule based solely on the law.**

Response: I do not recall ever having done so.

3. **Do you believe it is ever appropriate for judges to indulge their own policy preferences in determining the meaning of statutes and the U.S. Constitution?**

Response: No.

a. **If so, under what circumstances?**

Response: See my response above.

b. **Please provide an example of a case in which you have done so.**

Response: I have never done so.

c. Please provide an example of a case where you have had to set aside your own policy preferences and rule based solely on the law.

Response: In *Latigo Invs. II, LLC v. Waddell & Reed Fin., Inc.*, 06 CVS 18666, 2007 NCBC LEXIS 17 (N.C. Super. Ct. Jun. 11, 2007), I dismissed a claim alleging a violation of the North Carolina Unfair and Deceptive Trade Practices Act arising out of alleged misrepresentations made by the defendant during the issuance of corporate securities. I did so because binding precedent excluded capital raising transactions from the reach of the statute. As I noted in my order, however, I believed that result to be inconsistent with the broad remedial purpose of the statute. *Id.* at ¶ 47.

4. How do you define "judicial activism?"

Response: I have no personal definition of the term, but as commonly used, it describes a process by which a court extends judicial power beyond its proper limits and engages in results-oriented decision making at the expense of applicable law and precedent.

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Responses of Albert Diaz
Nominee to the U.S. Court of Appeals for the Fourth Circuit
to the Written Questions of Senator Jeff Sessions

1. **At your hearing, you testified that you believe empathy has a role to play in the judicial process. As you may know, President Obama has described the types of judges that he will nominate to the federal bench as follows:**

"We need somebody who's got the heart, the empathy, to recognize what it's like to be a young teenage mom. The empathy to understand what it's like to be poor, or African-American, or gay, or disabled, or old. And that's the criteria by which I'm going to be selecting my judges."

a. Do you believe that you fit President Obama's criteria for federal judges, as described in his quote?

Response: I cannot speak for the President, but I am honored that he believes me qualified to serve as a federal judge. If confirmed, I will abide strictly by the federal judicial oath to "administer justice without respect to persons, and do equal right to the poor and to the rich."

b. During her confirmation hearing, Justice Sotomayor rejected this so-called "empathy standard" stating, "We apply the law to facts. We don't apply feelings to facts." Do you agree with Justice Sotomayor?

Response: Yes.

c. What role do you believe that empathy should play in a judge's consideration of a case?

Response: Empathy for a litigant or a cause should play no role in deciding a case. As I define the term, however, an empathetic judge is one who (1) respects those who come before the court, (2) affords all parties a full and fair hearing, and (3) recognizes that the court's decisions have substantial consequences for the parties and the public. Viewed in that light, empathy helps to promote public confidence in the decisions a judge makes.

d. Do you think that it is proper for judges to consider their own subjective sense of empathy in determining what the law means?

Response: No.

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i. If so, under what circumstances?

Response: I do not think it proper for judges to consider their own subjective sense of empathy in determining what the law means.

ii. Please provide an example of a case in which you have considered your own subjective sense of empathy in determining what the law means.

Response: I have not done so.

iii. Please provide an example of a case where you have had to set aside your own subjective sense of empathy and rule based solely on the law.

Response: I have on occasion been called upon to hear appeals of foreclosure orders entered by our Clerk of Court. There are few things more devastating to an individual's sense of self-worth than to lose his or her home. At the time I considered these appeals, North Carolina law required that I affirm the Clerk's order upon a finding that (1) the lender was the holder of a valid debt secured by the property, (2) the borrower was in default, (3) the debt instrument allowed for foreclosure, and (4) proper notice was provided. Although I felt great empathy for the homeowners, in each case where the lender made the required showing, I affirmed the Clerk's order.

2. At your hearing, you testified that, if confirmed, you will follow the law with respect to the U.S. Sentencing Guidelines. Under the Supreme Court's decision in *United States v. Booker*, the federal sentencing guidelines are advisory, rather than mandatory. It seems to me that as long as the sentencing judge (1) correctly calculates the guidelines, and (2) appropriately considers factors set forth therein, the judge may impose any sentence ranging from probation to the statutory maximum.

Following the Supreme Court's decision in *Gall v. United States*, appellate courts must apply the highly deferential "abuse of discretion" standard when reviewing these sentencing decisions. As a result, district court judges may impose virtually any sentence, and as long as the decision is procedurally sound, there is virtually no substantive review on appeal.

a. Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw?

Response: Yes. My view is that general uniformity in sentencing best promotes confidence in our criminal justice system. As with any decision that involves

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some level of discretion, however, there will be occasions where it may be appropriate for a sentencing judge to depart from this general principle.

b. Under what circumstances do you believe it appropriate for a district court judge to depart downward from the sentencing guidelines?

Response: *Gall* addresses this issue. A district court's sentencing decision begins by correctly calculating the applicable guidelines range. *Gall v. United States,* 552 U.S. 38, 49 (2007). From there, the court should consider the parties' respective proposals for an appropriate sentence, in light of the factors set out in 18 U. S. C. § 3353(a). If a district court elects to deviate from the applicable guideline, the court must explain its conclusion so as "to allow for meaningful appellate review and to promote the perception of fair sentencing." *Id.* at 50. If confirmed, I would apply *Gall* in reviewing a district court's sentencing decisions.

3. Please describe with particularity the process by which these questions were answered.

Response: I received the questions on December 24, 2009. I did some legal research and prepared my answers. I then discussed my answers briefly with lawyers at the Department of Justice on January 6, 2010, before submitting them in final form.

4. Do these answers reflect your true and personal views?

Response: Yes.

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Responses of James A. Wynn , Jr.
Nominee to the U.S. Court of Appeals for the Fourth Circuit
to the Written Questions of Senator Tom Coburn, M.D.

1. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

   Response: I do not agree that the Constitution is a "living" document that constantly evolves as society sees fit.

2. **What principles of constitutional interpretation help you to begin your analysis of whether a particular statute infringes upon some individual right?**

   Response: First and foremost, in this type of analysis, a court must give the words of the Constitution their plain meaning to determine whether a particular statute infringes upon some individual right.

   Second, the court must apply the presumption that the statute is constitutional. In some situations, the statutory language could be interpreted to have more than one meaning. In such cases, courts apply the interpretation that will render the statute constitutional, that is, one that would not infringe upon the individual right in question.

   Third, if the statute infringes upon some individual right, then the court looks to existing case law and precedent to determine the nature and scope of the right at issue, and applies the proper standard of judicial review to weigh the asserted government interest against the individual right allegedly infringed.

3. **As you know the Second Amendment right to bear arms is one that is very important to all Americans, but particularly those in my home state of Oklahoma. Do you believe that the Second Amendment is an individual right or a collective right? Please explain your answer.**

   Response: The Supreme Court of the United States has held that the right to bear arms is an individual right. If confirmed to serve as a federal circuit court judge, I would apply that binding precedent without any reservation whatsoever.

   a. **Do you believe an individual Second Amendment right exists outside the context of military service or hunting? If so, please explain.**

      Response: The Supreme Court of the United States has held that an individual Second Amendment right exists outside the context of military service or hunting. If confirmed to serve as a federal circuit court judge, I would be bound by this precedent and would apply it without any reservation whatsoever.

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b. Do you believe the right to bear arms is a fundamental right?

Response: I understand that the Supreme Court of the United States has not yet ruled on this issue. If confirmed to serve as a federal circuit court judge, I would adhere to Supreme Court precedent and apply it without any reservation whatsoever.

c. What constitutional analysis would you use to determine whether it is a fundamental right?

Response: If confirmed to serve as a federal circuit court judge, I would faithfully follow the constitutional analysis set forth by the Supreme Court of the United States.

d. Do you believe the right to self defense is a fundamental right?

Response: I understand that the Supreme Court of the United States has not yet ruled on this issue. If I am confirmed to serve as a federal circuit court judge, I will adhere to Supreme Court precedent and apply it without any reservation.

4. Since at least the 1930s, the Supreme Court has expansively interpreted Congress' power under the Commerce Clause. Recently, however, in the cases of United States v. Lopez, 514 U.S. 549 (1995) and United States v. Morrison, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.

a. Generally speaking, are *Lopez* and *Morrison* consistent with the Supreme Court's earlier Commerce Clause decisions?

Response: The Supreme Court, in *Gonzales v. Raich*, 545 U.S. 1 (2005), indicated that its decisions in *Lopez* and *Morrison* were consistent with its earlier Commerce Clause decisions.

b. Why or why not?

Response: The Supreme Court in *Raich* distinguished the circumstances presented in *Lopez* and *Morrison*, which challenged laws that were noneconomic in nature and thus outside of the Commerce Clause's scope.

c. Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?

Response: I do not agree that the Constitution is a "living" document that constantly evolves as society interprets it.

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5. **In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the "evolving standards of decency" to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy's analysis?**

Response: If confirmed to serve as a federal circuit court judge, I would faithfully follow Supreme Court precedent and apply it without any reservation.

a. **How would you determine what the evolving standards of decency are?**

Response: If confirmed to serve as a federal circuit court judge, I will faithfully follow precedent and apply the analysis set forth by the Supreme Court of the United States.

6. **In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of provisions of the Constitution?**

Response: I am not aware of any circumstances under which it would be proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of provisions of the United States Constitution.

a. **If so, under what circumstances would you consider foreign law when interpreting the Constitution?**

Response: None. If confirmed as a federal circuit court judge, I would rely only on American law in determining the meaning of the United States Constitution.

b. **Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?**

Response: No. If confirmed as a federal circuit court judge, I would rely only on American law in determining the meaning of the United States Constitution.

7. **From 2005 to 2009, you served as Vice-Chair of the Board of Directors of Justice at Stake, a nonpartisan interest group founded to combat the impact of "special interests" on judges. According to press reports, Justice at Stake is funded substantially by George Soros' Open Society Institute. The organization has been highly critical of national security reforms, such as the USA PATRIOT Act, and of the Obama Administration for not trying all terrorist detainees on American soil. Given that you were Vice-Chair of this organization for 5 years, it is only reasonable to assume that you agree with the organization's views, and as a circuit court judge, these issues may come before you.**

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a. Do you agree with the organization's views regarding the USA PATRIOT Act? Please explain your answer.

Response: As an active reserve military officer (Captain) in the United States Navy for 30 years with service as a certified military judge (Commanding Officer of the Navy Reserve Trial Judiciary Unit), I never expressed, endorsed, adopted, or joined in any view on the constitutionality of the USA PATRIOT Act. Nor have I ever expressed, adopted, or endorsed any criticism of any decision made by the President, who serves as the Commander-in-Chief of the Armed Forces, regarding where detainees are tried.

Regarding my former affiliation with Justice at Stake, that nonpartisan organization works with more than 50 national partners to keep state and federal courts fair and impartial. Its board of directors is comprised of diverse individuals, including the Chief Justice of the Supreme Court of Ohio, a former President of the National Center for State Courts, a Republican nominee for the U.S. Senate in 1982, a board member of the Institute for Legal Reform with the U.S. Chamber of Commerce and former General Counsel for General Motors, a federal judge, a former President of the National Hispanic Bar Association, a former Director of the League of Women Voters in Illinois, and the Vice-President of the Committee on Economic Development.

Although Justice at Stake staff and partner organizations may comment on various issues, those comments do not necessarily reflect the views of the Justice at Stake board members. Generally, comments by Justice at Stake partners, as well as the Justice at Stake blog, explicitly state that the views expressed are the commentators' own and do not necessarily reflect those of other Justice at Stake campaign partners, or Justice at Stake staff or board members.

b. Do you believe you can render fair and impartial judgment on matters involving the USA PATRIOT Act?

Response: Yes.

c. Do you share the organization's view that all detainees should be tried in American courts? Please explain your answer.

Response: Although Justice at Stake staff and partner organizations may comment on various issues, those comments do not necessarily reflect the views of the Justice at Stake board members. Moreover, as an active reserve military officer (Captain) in the United States Navy for 30 years

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with service as a certified military judge (Commanding Officer of the Navy Reserve Trial Judiciary Unit), I never expressed, endorsed, adopted, or joined in any view on the constitutionality of the USA PATRIOT Act. Nor have I ever expressed, adopted, or endorsed any criticism of any decision made by the President, who serves as the Commander-in-Chief of the Armed Forces, regarding where detainees are tried.

d. Do you believe that the Constitution requires the United States to try all detainees in United States courts? Please explain your answer.

Response: I very respectfully submit that this question seeks an opinion on an issue that, if confirmed, I may be asked to address as a federal judge. Accordingly, I must respectfully decline to render an advisory opinion on this issue.

e. As mentioned above, the organization is substantially funded by the George Soros' Open Society Institute. Do you know who the other persons or entities are who fund the organization?

Response: Yes.

i. If so, please list them.

Response: My understanding is that Justice at Stake is funded almost entirely by foundations: the Carnegie Corporation, the Herbert Block Foundation, the Joyce Foundation, the Moriah Fund, the Open Society Institute, and the Public Welfare Foundation. It has received a small amount of support from some of its board members and from citizens. I have made no financial contributions to the organization.

ii. Did you ever participate in the fund raising activities of this organization?

Response: No. Canon 5 B(2) of the North Carolina Code of Judicial Conduct prohibits me, as a sitting judge, from actively assisting such an organization in raising funds.

1. If so, whom did you solicit for money?

Response: Not applicable.

8. The Justice at Stake website recently had posted some comments attributed to you regarding the need for diversity on the courts: "The American judiciary is

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disproportionately white and male. These white men disproportionately make judgments affecting African-Americans, women, and other minorities . . . . This disparity between the judges and the judged creates a crisis of legitimacy."

a. Do you believe that there is a relationship between a judge's race and the legitimacy of his rulings?

Response: No. To the contrary, as a result of my personal experiences growing up in the era of legally-enforced segregation in North Carolina, I believe that no citizen, including a judge, should be treated or viewed differently on account of his or her race, gender, ethnic origin, religion or other traits. My personal experiences reinforce my commitment to unbiased judging based on the law.

If not, what did you mean by this statement?

Response: The three statements in the question appear in a 2004 *Albany Law Review* article that I co-authored (*Judicial Diversity: Where Independence and Accountability Meet*, 67 Albany Law Review 775 (2004)).

The first and second sentences are statements of fact as we understood such facts to be at the time of writing our article. Footnotes 24 and 25 in our article provide the sources on which these statements of fact were based.

Regarding the third statement, it may be useful to provide the full context in which that statement appears in our article. The complete statement was,

> "Scholars have detailed how this disparity between the judges and the judged creates a crisis of legitimacy because our courts are perceived by much of the public as biased 'instruments of oppression.'"

Thus, the statement is simply an attribution to the research findings of scholars regarding the *perception* by the public of our courts. Footnote 26 of our article provides the sources on which the attribution is based.

b. You use the phrase "crisis of legitimacy" to describe the current state of the American judiciary. Please explain what you meant by this phrase.

Response: Our article focused on the issue of diversity in the context of electing judges. In that context, we used this phrase in the same manner that it was used by Justice Kennedy in an interview with Bill Moyers in November of 1999, in which he stated: "If there is the perception or the

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reality that courts are influenced in their decisions based upon campaign funding sources, we will have a crisis of legitimacy, a crisis of belief, a crisis of confidence." (available at http://www.pbs.org/wgbh/pages/frontline/shows/justice/etc/synopsis.html) Our 2004 article used Justice Kennedy's analogy to indicate that if there is the perception that courts are influenced in their decisions based upon a lack of diversity, then, as the research findings of scholars suggest, an analogous crisis could develop. Our article applied Justice Kennedy's phrase "crisis of legitimacy" to another context; it was not my description of "the current state of the American judiciary."

Additionally, in his 2006 Year-End Report on the Federal Judiciary, Chief Justice Roberts addressed the categorical exclusion of nonwealthy persons from the judiciary arising from "the failure to raise judicial pay." He characterized this issue as having "reached the level of a constitutional crisis that threatens to undermine the strength and independence of the federal Judiciary." As in our article, Chief Justice Roberts' reference to a "constitutional crisis" highlights the necessity of diversity in the judiciary, not only in regards to race, gender and religion, but also in regards to wealth, legal experience, and background.

c. Do you believe that African American defendants are currently being discriminated against by white judges?

Response: No.

Please explain your answer.

Response: I have no personal knowledge that any sitting judge has unlawfully discriminated against any defendant. Indeed, various state and federal laws prohibit such discrimination including the North Carolina Code of Judicial Conduct and the American Bar Association Model Code of Judicial Conduct. If I knew of any such discrimination, I would report it to the appropriate authority.

d. If justice is blind, why do you believe it matter if a white judge or an African-American judge is ruling in a case affecting a minority?

Response: I very respectfully submit that I have neither stated nor held any such belief. As I stated in an earlier response, as a result of my personal experiences growing up during the era of legally-enforced segregation in North Carolina, I have devoted my life to promoting my belief that no citizen, including a judge, should be treated or viewed differently on account of his or her race, gender, ethnic origin, religion or other traits. Indeed, I explicitly expressed this life-long belief in a published opinion, *Johnson v. Amethyst Corp.*, 120 N.C. App. 529, 463 S.E.2d 397 (1995).

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In *Johnson,* counsel argued to a jury that it should disregard defendant's plea of guilty to prior counts of sexual harassment because the female judge would not have given him probation if the sexual harassment charges had merit. I rejected this argument as offensive and inappropriate, stating:

> Finally and most egregious are counsel's disparaging statements that because District Court Judge Jane Harper is a female judge, she would not have accepted a plea bargain giving Bartolotta "no active time if there was believable evidence that any of the [allegations] were true." This argument is not only insulting to the judicial system as a whole, it further calls into question the fairness of female judges who preside over trials involving sexual misconduct. It is no more than a blatant attack on the integrity of judges who may share diverse qualities with a particular litigant. This court will neither condone nor permit practicing attorneys to take leave of their responsibilities to uphold the respectability of the judicial system.
>
> *Id.* at 537, 463 S.E.2d at 402 (emphasis added).

e. Do you believe that African-American defendants are being subjected to unconstitutional conditions when white judges hear their cases? Please explain your answer.

Response: Of course not. My judicial career has been devoted to ensuring that judges are fair and impartial. The North Carolina Code of Judicial Conduct and the American Bar Association Model Code of Judicial Conduct, of which I was one of the drafters, affirmatively require judges to be fair and impartial.

f. How would you correct the "crisis" you describe?

Response: I very respectfully submit that, as I stated in response to an earlier question, the word "crisis" is not my word but is one that arose from Justice Kennedy's analogy in his interview with Bill Moyers. Our article attributed the analogy to the research findings of scholars on diversity. I believe, however, that to alleviate any potential "crisis" that the scholars indicate arises from the public's perception of the judiciary, we must work to promote and enhance the public's confidence and trust in the integrity of the judicial system.

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g. Do you believe presidents should employ affirmative action principles in the selection of federal judges?

Response: No. While a diverse judiciary broadens the variety of voices and experiences informing the deliberative process, I believe a president's primary focus should be on selecting qualified judges who will be fair and impartial.

9. In *State v. Turnage*, you held that the state did not provide sufficient evidence to support the defendant's conviction for first-degree burglary. At four o'clock in the morning, a homeowner heard breaking glass and called the police. The police found the defendant behind the house carrying tool. His hand was bloody and his fingerprints were found on the front door of the house. After noting that neither the defendant's fingerprints nor his blood were not found inside the house and that no glass was found on the defendant, you held that the evidence only gave rise to "mere speculation" that the defendant carried out the burglary. The North Carolina Supreme Court reversed noting that, in ruling on a motion to dismiss for lack of evidence, a court must consider evidence in the light most favorable to the State.

a. Please explain your reasoning in this case.

Response: In *State v. Turnage,* the Supreme Court of North Carolina did not decide the issue of whether the state proffered sufficient evidence to support the defendant's conviction for first-degree burglary. Instead, the Supreme Court considered "the only issue before this Court on the State's appeal of right, namely, the sufficiency of the evidence as to defendant's identity as the perpetrator of the offense *if a burglary occurred.*" *State v. Turnage*, 362 N.C. 491, 496, 666 S.E.2d 753, 757 (2008) (emphasis added). Thereafter, the Supreme Court remanded the case to the Court of Appeals to decide the issue of "the sufficiency of the evidence on the element of entry for purposes of first-degree burglary...." The Supreme Court left undisturbed the Court of Appeals' holding that affirmed the defendant's convictions for possession of housebreaking implements and habitual felon status which did not involve the issue of the defendant's identity.

Because the issue of whether the state presented sufficient evidence to establish the element of entry for purposes of obtaining a conviction on first-degree burglary remains pending on remand before the North Carolina Court of Appeals, I must respectfully decline to offer an opinion on the issue.

b. Do you agree with the North Carolina Supreme Court that "the evidence was sufficient to support a reasonable inference that

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defendant was the perpetrator of the crime and to withstand a motion to dismiss"?

Response: Yes. As a North Carolina appellate judge for over nineteen years, I faithfully follow without any reservation whatsoever the precedent set by the Supreme Court of North Carolina, including but not limited to *State v. Turnage*.

10. In *Parker v. Union Camp Corp.*, you argued in dissent that an individual confined in jail could continue to collect worker's compensation because being confined in jail was not the kind of "change of condition" that allowed for the modification of a compensation award.

a. Please explain your reasoning in this case.

Response: As the majority opinion stated, "The only issue on appeal is whether imprisonment of a person already receiving worker's compensation disability payments cuts off the employer's duty to make payments during the period of confinement." *Parker v. Union Camp Corp.*, 108 N.C. App. 85, 86, 422 S.E.2d 585, 587 (1992). At the time of the *Parker* decision, other states did not statutorily cut off an employer's duty to make workers' compensation payments if the worker was already receiving benefits before imprisonment. *See, e.g.*, OKLA. STAT. ANN. tit. 57, § 549(B) (West 1996) (providing that workers compensation benefits shall be placed into an inmate account, from which the Oklahoma State Board of Corrections may charge up to 50% of any deposits to cover costs of incarceration).

In *Parker*, I stated in my dissent that "[i]f a different result is desired by the legislature, then it is up to that body of government, not this Court, to enact laws to that effect." *Id.* at 89, 422 S.E.2d at 587.

b. Do you accept the majority's decision in this case that the individual could not continue to collect worker's compensation?

Response: Yes. In North Carolina, the decisions of one North Carolina Court of Appeals panel binds all subsequent panels. *In re Civil Penalty*, 324 N.C. 373, 379 S.E.2d 30 (1989). As a North Carolina appellate judge for over nineteen years, I faithfully follow without any reservation whatsoever all binding precedent, including but not limited to *Parker v. Union Camp Corp.*

11. In *Arp v. Parkdale Mills*, you affirmed the grant of worker's compensation for an employee who was injured after he attempted to climb a locked gate leading out of the employer's facility. As Judge Tyson noted in dissent, the employee "climbed a

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seven and one-half foot chain link and barbwire gate to leave work when another safe route was provided by defendant." Clearly, the plaintiff's injuries did not 'arise out of' and 'in the course of' his employment." The North Carolina Supreme Court unanimously reversed your ruling in a one-sentence *per curiam* opinion.

a. In this case, you were willing to grant worker's compensation to an individual whose actions contributed to his disability. Under your ruling, when would an individual's actions bar him from receiving worker's compensation?

Response: Because the Supreme Court of North Carolina reversed our Court of Appeals decision in *Arp v. Parkdale Mills,* our Court of Appeals decision cannot serve as the basis for a worker's compensation benefits determination. If faced with this question again, I would faithfully follow the Supreme Court's ruling in *Arp*.

Additionally, the North Carolina Workers' Compensation Act vests the Industrial Commission with the exclusive jurisdiction to hear evidence from the parties, find the relevant facts, and make initial determinations as to the compensability of injuries. If there is any competent evidence in the record to support those facts – regardless of the weight of the evidence, or the quantum of evidence with which it conflicts – North Carolina statutory law and precedent bind an appellate court to those findings of fact. Thus, without being presented with an opinion and award from the Commission, I am not in a position to state, under North Carolina law, when an individual's actions might bar him or her from receiving worker's compensation.

b. Do you accept the North Carolina Supreme Court's reversal of your opinion?

Response: Yes. As a North Carolina appellate judge for over nineteen years, I faithfully follow without any reservation whatsoever the precedent set by the Supreme Court of North Carolina, including but not limited to *Arp v. Parkdale Mills*.

c. Do you agree with it? Why or why not?

Response: Yes. I appreciate the clarification and additional guidance that the Supreme Court of North Carolina provided on its earlier holding, which stated that "[t]he only ground set out in the statute upon which compensation may be denied on account of the fault of the employee is

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when the injury is occasioned by his intoxication or willful intention to injure himself or another." *Hartlely v. North Carolina Prison Dept.*, 258 N.C. 287, 290, 128 S.E.2d 598, 600 (1962) (holding that the employee's injury while using a shortcut (climbing a fence) was compensable). As *Arp* is the more recent pronouncement by the Supreme Court of North Carolina on this issue, it is the current binding and controlling precedent. I faithfully follow that precedent without any reservation.

12. **In *Whitt v. Harris Teeter Inc.*, you held that a former employee could pursue a state wrongful discharge claim based on a "constructive discharge" theory. That is, even though the employee was not fired from her job, she could pursue her claim as if she had been terminated. This was a novel theory that had not been recognized previously by the North Carolina Supreme Court. Indeed, the state Supreme Court unanimously reversed your ruling in a one-sentence *per curiam* opinion.**

a. **Why did you decide to recognize a novel cause of action?**

Response: I very respectfully submit that I did not recognize a "novel" cause of action in *Whitt v. Harris Teeter*. The law in North Carolina regarding constructive discharge was, at the time of the *Whitt* opinion, not fully settled. My understanding of binding North Carolina precedent, at that time, specifically *Coman v. Thomas Mfg. Co.*, 325 N.C. 172, 381 S.E.2d 445 (1989) and *Garner v. Rentenbach Constructors Inc.*, 350 N.C. 567, 515 S.E.2d 43 (1999), the latter of which expressly used the term "constructive discharge" in referring to the former, indicated that North Carolina, like a number of other states, recognized constructive discharge. *See, e.g., Collier v. Insignia Financial Group,* 981 P.2d 321, 326 (Okla., 1999) (holding that a victim of quid pro quo sexual harassment may maintain a tort claim against her employer based on her constructive discharge).

Further, several North Carolina Court of Appeals decisions alluded to constructive discharge claims. *See, e.g., Doyle v. Asheville Orthopaedic Assocs., P.A.*, 148 N.C. App. 173, 177, 557 S.E.2d 577, 579 (2001) ("We recognize the viability of [the plaintiff's claim for constructive discharge] in the context of interpreting whether constructive termination by her employer triggered the termination payment provision of the employment contract."), *disc. review denied*, 355 N.C. 348, 562 S.E.2d 278 (2002); *Wagoner v. Elkin City Schools' Bd. of Education*, 113 N.C. App. 579, 588, 440 S.E.2d 119, 125 ("Assuming that plaintiff was wrongfully constructively discharged, she is nonetheless not entitled to assert the tort of wrongful discharge because the tort of wrongful discharge arises only in the context of employees at will."), *disc. review denied*, 336 N.C. 615, 447 S.E.2d 414 (1994).

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b. What led you to believe that the plaintiff could pursue this particular claim?

Response: As stated above, I understood binding North Carolina precedent to allow the plaintiff to pursue this claim.

c. In recognizing this theory, were you influenced by the equities at stake and the outcome of your decision?

Response: No, I was not influenced by the equities or outcome.

d. Did you rely on a particular judicial philosophy or approach in recognizing this constructive discharge theory?

Response: No. In *Whitt*, as in all cases in which I participate, I faithfully followed North Carolina binding precedent as I understood it at the time and applied it neutrally and impartially to the facts of the case.

e. Do you accept the North Carolina Supreme Court's reversal of your opinion?

Response: Yes. As a North Carolina appellate judge for over nineteen years, I faithfully follow without any reservation whatsoever the precedent set by the Supreme Court of North Carolina, including but not limited to *Whitt v. Harris Teeter*.

f. Do you agree with the North Carolina Supreme Court's decision?

Response: Yes. I faithfully follow without any reservation whatsoever the precedent set by the Supreme Court of North Carolina, including but not limited to *Whitt v. Harris Teeter*.

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Responses of James A. Wynn , Jr.
Nominee to the U.S. Court of Appeals for the Fourth Circuit
to the Written Questions of Senator Charles E. Grassley

1. **What is your view of the role of a judge?**

Response: The role of a judge is to adjudicate disputes in a neutral and impartial manner by applying the pertinent law to the facts.

2. **Do you believe it is ever appropriate for judges to indulge their own values in determining the meaning of statutes and the U.S. Constitution?**

Response: No.

a. **If so, under what circumstances?**

Response: Not applicable.

b. **Please provide an example of a case in which you have done so.**

Response: There are no examples.

c. **Please provide an example of a case where you have had to set aside your own values and rule based solely on the law.**

Response: There are no examples.

3. **Do you believe it is ever appropriate for judges to indulge their own policy preferences in determining the meaning of statutes and the U.S. Constitution?**

Response: No.

a. **If so, under what circumstances?**

Response: Not applicable.

b. **Please provide an example of a case in which you have done so.**

Response: None. In each case in which I participate, I provide the parties with a neutral and impartial decision. Individual policy preferences play no role.

c. **Please provide an example of a case where you have had to set aside your own policy preferences and rule based solely on the law.**

Response: None. In each case in which I participate, I provide the parties with a neutral and impartial decision. Individual policy preferences play no role.

4. **How do you define "judicial activism?"**

Response: Judicial activism is not a term that I use. My understanding is that some people use the term to refer to a judge's basing decisions on personal views rather than on the letter of the law.

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Responses of James A. Wynn, Jr.
Nominee to the U.S. Court of Appeals for the Fourth Circuit
to the Written Questions of Senator Jeff Sessions

1. **In a 2004 law review article entitled, "Judicial Diversity: Where Independence and Accountability Meet," published in the *Albany Law Review*, you stated:**

"The representative function of the judiciary is not limited to fact-finding and case outcomes. Even when a litigant is unsuccessful, a judge's ability to empathize with his or her diverse perception and circumstance is essential to the litigant's respect for the court's adverse action. . . . [J]udges must engage in the diverse and disaffected life stories of these groups."

As you may know, President Obama has described the types of judges that he will nominate to the federal bench as follows:

"We need somebody who's got the heart, the empathy, to recognize what it's like to be a young teenage mom. The empathy to understand what it's like to be poor, or African-American, or gay, or disabled, or old. And that's the criteria by which I'm going to be selecting my judges."

   a. **Do you believe that you fit President Obama's criteria for federal judges, as described in his quote?**

      Response: I do not know, and cannot comment as to, President Obama's criteria for selecting federal judges. I assume, because he nominated me, that President Obama believes that my record demonstrates that I am qualified to serve as a federal judge.

   b. **During her confirmation hearing, Justice Sotomayor rejected this so-called "empathy standard" stating, "We apply the law to facts. We don't apply feelings to facts." Do you agree with Justice Sotomayor?**

      Response: Yes, I agree with her statement.

   c. **What role do you believe that empathy should play in a judge's consideration of a case?**

      Response: Empathy should not play any role in a judge's applying the law to the facts. The judge's job is to apply the law to the facts of the particular case in front of him.

   d. **Do you think that it is proper for judges to consider their own subjective sense of empathy in determining what the law means?**

      Response: No.

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i. If so, under what circumstances?

Response: Not applicable.

ii. Please provide an example of a case in which you have considered your own subjective sense of empathy in determining what the law means.

Response: None. In each case in which I participate, I provide the parties with a neutral and impartial decision. I base my decisions on the law, not empathy.

iii. Please provide an example of a case where you have set aside your own subjective sense of empathy and ruled based solely on the law.

Response: None. In each case in which I participate, I provide the parties with a neutral and impartial decision. Empathy plays no role in that.

e. Do your above-quoted statements reflect your judicial philosophy?

Response: No. The quotes from our article are not statements about judicial philosophy. Rather, they are simply observations about the representative function of judges in a democracy.

f. Do your above-quoted statements reflect your view of the role of a judge? If not, please explain your view of the role of a judge.

Response: No. The role of a judge is to apply the pertinent law to the facts in a neutral and impartial manner. The above-quoted statements are an abbreviated excerpt from our article about the role of diversity in achieving an impartial and representative judiciary. The very next sentence after the above-noted quotations plainly states that "[t]o be sure, the absence of diversity in the judiciary does not necessarily mean that nondiverse judges are unable to adjudicate matters fairly and impartially."

2. In your article, you stated that "lack of diversity has direct and deleterious impacts on the success of minority litigants, the representative function of the elected judiciary, and most importantly, the quality of judicial decisionmaking."

a. Do you believe that a judge's racial or ethnic background affects the quality of his or her decision-making? Please explain your answer.

Response: No. Decisions should be the product of a neutral and impartial application of the pertinent law to the facts of a case. That process should not be affected by the judge's race or ethnic background.

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b. Please explain how "lack of diversity" impacts "the quality of judicial decisionmaking."

Response: My co-author and I wrote that diversity in the judiciary broadens the variety of experiences informing the deliberative process. This is a view expressed by other judges. For example, in his testimony to the Senate Judiciary Committee during his confirmation hearings on January 11, 2006, Justice Alito eloquently spoke of the impact of his immigrant background on his judicial decisionmaking, stating:

> When I get a case about discrimination, I have to think about people in my own family who suffered discrimination because of their ethnic background or because of religion or because of gender. And I do take that into account.

The statements in our article are narrower than those given by Justice Alito. Our article addresses the fact that elected judiciaries are generally less diverse than their appointed federal counterparts. Our article concludes that where there is a lack of diversity in the elected system, there is a general lack of a variety of experiences informing the deliberative process.

3. You also argued that "each judge brings to the bench a sum of life experience [of race and gender]" and that experience influences perception, which in turn influences judicial decisionmaking. You concluded that "a lack of diversity in the judiciary creates a structural bias – a partiality – which is biased against [minorities]."

a. Do you agree that every judge has an obligation render justice impartially, without respect to persons?

Response: Yes.

b. How do you reconcile the above statements with the judicial oath, which requires judges to faithfully and impartially "administer justice without respect to persons, and do equal right to the poor and the rich . . . under the Constitution and the laws of the United States"?

Response: The statements do not conflict with the judicial oath. Indeed, I believe that diversity on the bench helps to prevent the public's perception of a structural bias and enhances a judge's ability to "administer justice without respect to persons, and do equal right to the poor and the rich."

c. Please explain your statement that a lack of diversity creates a structural bias against minorities.

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Response: In this section of our article, my co-author and I looked at the potential value of diversity within the judicial system. In this context, for example, we looked at laws regarding diversity in the jury system. We cited *Taylor v. Louisiana*, 419 U.S. 522, 42 L. Ed. 2d 690 (1975), as an example that "the Supreme Court has endorsed the view that the Fourteenth Amendment and Sixth Amendment require structural impartiality in a jury venire." The Supreme Court there held that the systematic exclusion of women from the jury panel violated the Sixth Amendment's fair-cross-section requirement, and that "[t]he broad representative character of the jury . . . [is an] assurance of a diffused impartiality." *Id.* At 530, 42 L. Ed. 2d at 698.

Diversity itself will not change the outcome of a case. In fact, as Justice Scalia says in *Republican Party v. White*, 536 U.S. 765, 153 L. Ed. 2d 694 (2002), "it is virtually impossible to find a judge who does not have preconceptions about the law . . . . Indeed, even if it were possible to select judges who did not have preconceived views on legal issues, it would hardly be desirable to do so." *Id.* at 777-78, 153 L. Ed. 2d at 706. Justice Scalia explained that the fundamental guarantee of impartiality is that every person coming before a court will have the law applied to him or her equally because a judge is "willing to consider views that oppose his preconceptions and remain open to persuasion." *Id.* at 778, 153 L. Ed. 2d at 707.

Our article's point is that "judicial 'diversity promotes impartiality by ensuring that no one viewpoint, perspective, or set of values can persistently dominate legal decisionmaking.'" Therefore, the converse is that a lack of diversity and the dominance of one perspective might, under certain circumstances, result in a structural bias as opposed to an individual bias.

4. In your article, you also argued that "[i]n the absence of diversity, the goals of obtaining an impartial and representative judiciary are credibly challenged."

a. Do you believe that it is necessary to have a diverse court in order to have a fair and functioning court? If so, what kind of diversity?

Response: No, it is not necessary to have a diverse court in order to have a fair and functioning court. As our article states, "[t]o be sure, the absence of diversity in the judiciary does not necessarily mean that nondiverse judges are unable to adjudicate matters fairly and impartially."

b. Do you believe that if a court does not have the proper level of diversity with respect to race and gender, minorities and women will not receive justice?

Response: No.

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5. **In *State v. McClendon*, 130 N.C. App. 368 (N.C. Ct. App. 1998), you argued in dissent that it violated the Fourth Amendment to detain an individual who was stopped for speeding, appeared nervous, gave inconsistent and vague answers regarding his destination, and could not produce a registration card for the vehicle. A search yielded over 50 pounds of marijuana. The North Carolina Supreme Court affirmed the majority's conclusion that "based on the totality of the circumstances . . . the detention of the defendant beyond the issuance of the warning ticket was justified and . . . no violation of defendant's constitutional rights occurred."**

   a. **Please explain your reasoning in this case.**

   Response: My dissent in *McClendon* did not address the Fourth Amendment and, in fact, did not even mention the Fourth Amendment. Rather, the dissent relied on two binding North Carolina precedents. (States may provide greater protection than is required by the federal constitution.) As I wrote in the *McClendon* dissent:

   > Because our Supreme Court in *State v. Pearson*, 348 N.C. 272, 498 S.E.2d 599 (1998), and this Court most recently in *State v. Falana*, 129 N.C. App. 813, 501 S.E.2d 358, found that evidence similar to that in the case at hand was insufficient to support a conclusion that the officers were justified in detaining the drivers in those cases, I dissent from the majority's decision in this case.

   State v. McClendon, 130 N.C. App. 368, 379, 502 S.E.2d 902, 909 (1998). Significantly, in its decision in *McClendon*, the Supreme Court of North Carolina "recognize[d] that *Pearson* could be so construed," as in my dissent. *State v. McClendon*, 350 N.C. 630, 637, 517 S.E.2d 128, 133 (1999). The Supreme Court "revisit[ed] *Pearson* . . . in order to clarify its meaning and to illustrate how the totality of the circumstances are distinguishable from those in the case." *Id.*

   b. **Do you accept the Supreme Court's decision?**

   Response: Yes, I accept the Supreme Court's decision as binding North Carolina law and have faithfully followed it as such. I relied on and cited the Supreme Court's decision, for example, in *State v. Hernandez*, 170 N.C. App. 299, 612 S.E.2d 420 (2005), to uphold an officer's detention of a suspect.

6. **In *State v. Brooks*, 111 N.C. App. 558 (N.C. Ct. App. 1993), rev'd, 337 N.C. 132 (N.C. 1994), you held that approaching a parked car and talking with the driver constituted an investigatory stop requiring reasonable suspicion for purposes of the Fourth Amendment. There, a State Bureau of Investigation Agent was executing a search warrant on a business where the car was parked when he noticed the defendant in a parked car. When he walked over to the car and engaged the driver**

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in conversation, he noticed an empty gun holster next to the driver. When he asked where the gun was located, the defendant told the agent that he was sitting on it. After seizing the gun, the agent obtained consent to search the car and found drugs. The North Carolina Supreme Court unanimously reversed your decision.

a. Please explain your reasoning in this case.

Response: Sixteen years ago, when the *Brooks* opinion was issued, the law in this area was less clear than it is today. In *Brooks,* the case in state court arose after a federal judge had dismissed similar charges arising from the same facts. The federal judge who reviewed the case reached the same conclusion that we did. In reaching our decision, we looked to then-recent and binding state law precedent, *State v. Fleming*, 106 N.C. App. 165, 415 S.E.2d 782 (1992), indicating that generalized suspicion was insufficient to comport with the Fourth Amendment. Our panel, which included a concurring judge who authored *Fleming*, found the *Brooks* facts similar to those in *Fleming*.

On discretionary review, the Supreme Court of North Carolina provided clarity in this area by addressing, for the first time, a then-recent United States Supreme Court opinion, *Florida v. Bostick,* 501 U.S. 429, 115 L. Ed. 2d 389 (1991).

In the fifteen years since the Supreme Court of North Carolina's decision in *Brooks*, I have relied on and cited it. For example, in *State v. Wilson*, No. COA08-1536, 2009 WL 2177694 (N.C. App. July 21, 2009), I cited *Brooks* and wrote for a panel that no seizure had occurred and that the defendant's motion to suppress was therefore properly denied.

b. The North Carolina Supreme Court concluded that "upon seeing the empty holster, the officer was not required to give Miranda warnings prior to asking the defendant, 'where is your gun?' [and] that upon being told by the defendant that the weapon was under the defendant's thigh, the officer had probable cause to arrest him." Do you disagree with this analysis? Please explain your answer.

Response: I agree with the Supreme Court of North Carolina's analysis. Significantly, my colleagues and I on the Court of Appeals panel did not reach the issue of whether the officer was required to Mirandize the defendant.

7. In *State v. Smith*, 123 N.C. App., 162 (1996), *rev'd*, 346 N.C. 794 (1997), an unpublished opinion, you affirmed a lower court's decision that police violated the defendant's Fourth Amendment rights when they employed a technique called "knock and talk." Even though police suspected that drugs were present in the defendant's home, and although they obtained permission to enter and search the home, you affirmed the trial court's decision that the search violated the Fourth

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Amendment. The North Carolina Supreme Court unanimously reversed your decision. Citing the U.S. Supreme Court's decision in *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973), the North Carolina Supreme Court noted that while searches of a home without a warrant are presumptively unreasonable, "[c]onsent . . . has long been recognized as a special situation excepted from the warrant requirement, and a search is not unreasonable within the meaning of the Fourth Amendment when lawful consent to the search is given."

a. Did you consider the Supreme Court's decision in *Bustamonte* in affirming the trial court's decision? If so, please explain how the decision figured into your reasoning.

Response: Thirteen years ago, our opinion in *Smith* cited *Bustamonte*. We did not, however, hold that the "knock and talk" procedure was unconstitutional. Rather, we affirmed the trial court's holding on the basis that, under the totality of the circumstances, the consent to search was invalid. We cited *Bustamonte* as support for the principle that, although a valid consent is a recognized exception to the Fourth Amendment's warrant requirement, the prosecution must prove and the court must find that the consent was valid, voluntary, and untainted by illegality in any form.

On discretionary review, the Supreme Court of North Carolina addressed the "knock and talk" procedure. However, regarding the consent issue addressed in our Court of Appeals opinion, the Supreme Court concluded that "the trial court did not make a specific finding" regarding whether the consent was voluntary, and that "the evidence on this point is conflicting." *Smith*, 346 N.C. at 801, 488 S.E.2d at 214. Accordingly, the Supreme Court remanded the matter to the trial court "for reconsideration of, and further findings on, defendant's motion to suppress in light of this opinion." *Id.*

No appeal followed from the trial court's ruling upon remand by the Supreme Court. Records in the county of origin indicate that the case was dismissed.

b. Do you believe that the police technique of conducting a "knock and talk" is unconstitutional? Please explain your answer and whether this was part of your reasoning in this case.

Response: The Supreme Court of the United States and the Supreme Court of North Carolina have held that the "knock and talk" technique is constitutional. I have faithfully followed that precedent without any reservation. As stated above, the constitutionality of a "knock and talk" was not addressed by our Court of Appeals opinion in *Smith*.

c. Considering the potential impact of the decision, why was this opinion unpublished?

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Response: In 1996, the North Carolina Court of Appeals consisted of twelve judges who wrote over 1200 opinions each year. To expedite the adjudication of the high number of appeals before the court, the Court of Appeals employed a "fast-track" calendar by which the Chief Judge determined that certain cases could be decided quickly. Since one of the three judges on the *Smith* panel was a special emergency judge, it appears that *Smith* was a fast-track case. As with nearly every case placed on the fast-track calendar, it was not published.

Because the decision was unpublished, under North Carolina's Rules of Appellate Procedure, it had no precedential value. Additionally, in 1996, it could not have been cited even as "guidance." Thus, it would have had no "potential impact" on North Carolina jurisprudence.

8. Please describe with particularity the process by which these questions were answered.

Response: I reread the relevant materials and cases, conducted research on the issues raised by the questions presented, and drafted responses to each of the questions. The Department of Justice reviewed my responses and discussed them with me, and I made some revisions thereafter. These answers are my own.

9. Do these answers reflect your true and personal views?

Response: Yes.

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SUBMISSIONS FOR THE RECORD

Statement of

The Honorable Benjamin L. Cardin

United States Senator
Maryland
December 16, 2009

OPENING STATEMENT OF

SENATOR BENJAMIN L. CARDIN

CONFIRMATION HEARING FOR

JAMES A. WYNN, JR.
U.S. CIRCUIT JUDGE FOR THE FOURTH CIRCUIT

ALBERT DIAZ
U.S. CIRCUIT JUDGE FOR THE FOURTH CIRCUIT

SENATE JUDICIARY COMMITTEE

December 16, 2009

The Committee will come to order. Let me thank Chairman Leahy for asking me to chair today's hearing.

Today we consider two of President Obama's nominations to the federal appellate bench. The nominees are James A. Wynn, Jr. and Albert Diaz, both from North Carolina, and both to be U.S. Circuit Judges for the Fourth Circuit.

I take a special interest in the 4th Circuit, as it includes my home state of Maryland. When President Bush was in office, in May 2008 I chaired the confirmation hearing for Justice Steven Agee, who served on the Virginia Supreme Court and was confirmed to be a U.S. Circuit Judge for the Fourth Circuit. Since President Obama has taken office, in April 2009 I chaired the confirmation hearing for Judge Andre Davis of Maryland, a federal district judge in Baltimore, who was confirmed last month to be a U.S. Circuit Judge for the Fourth Circuit. And finally in October 2009 I chaired the confirmation hearing of Justice Barbara Keenan of Virginia, who also serves on the Virginia Supreme Court, and was favorably reported by voice vote of our Committee to the full Senate in late October. She now awaits consideration by the full Senate. I am hopeful that we can confirm Justice Keenan to the Fourth Circuit before the end of this session of Congress.

I mention these nominations by way of background for my colleagues, because the Fourth Circuit has had one of the highest vacancy rates in the country. Today, out of the 15 seats authorized by Congress, 4 are vacant, which means that over one-quarter of the court's seats are now vacant. Our Circuit Courts of Appeals are the final word for most of our civil and criminal litigants, as the Supreme Court only accepts a handful of cases. I hope that President Obama and the Senate will move quickly to nominate and confirm qualified candidates for these seats.

I also look forward to increasing the diversity of the judges of the Fourth Circuit. The Fourth Circuit is one of the most diverse Circuits in the nation, according to the most recent Census estimates. In terms of the Fourth Circuit – which consists of Maryland, Virginia, West Virginia, North Carolina and South Carolina – 22 % of the residents are African-American. North Carolina is even more diverse: 32% of the residents are African-American. By way of comparison, the U.S. population is 12% African-American. If confirmed, Judge Wynn would be the third African-American to currently serve on the Court.

Let me also note for the record that Judge Diaz was the first Latino to serve as a Superior Court judge in North Carolina. If confirmed, he will be the first Latino ever to sit on the Fourth Circuit. I am proud that this summer the Senate confirmed Sonia Sotomayor to be the first Latina ever to serve on the Supreme Court.

As I evaluate judicial candidates, I use several criteria. First, I believe judicial nominees must have an appreciation for the Constitution and the protections it provides to every American. Second, I believe each nominee much embrace a judicial philosophy that reflects mainstream American values, not narrow ideological interests. Third, I believe a judicial nominee must respect the role and responsibilities of each branch of government. Finally, I look for a strong commitment and passion for the continued forward progress of civil rights protections.

Judge Wynn

Judge James Wynn comes to this Committee with a broad range of both civilian and military judicial experience. Judge Wynn currently sits on the North Carolina Court of Appeals, the state's intermediate appellate court. Prior to taking the bench in 1990, he served as an appellate public defender and worked in private practice.

Judge Wynn also previously served as a certified Military Trial Judge and a Captain in the U.S. Navy Reserves. He served on active duty in the U.S. Navy JAG Corps from 1979 to 1983. As a military lawyer he tried over 100 courts-martial cases before sitting as a military judge.

He has received the Meritorious Service Medal three times, the Navy Commendation Medal twice, the Naval Reserve Medal, the National Defense Service Medal, and the Global War on Terrorism Medal.

He is the Chair of the American Bar Association's Judicial Division, a former Chair of the Association's Appellate Judges Conference, and a member of the Standing Committee on Minorities in the Judiciary.

He received his B.A. from the University of North Carolina at Chapel Hill, his J.D. from Marquette University Law School, and a Master of Laws from the University Of Virginia School Of Law.

Judge Wynn received a rating of unanimously well-qualified from the Standing Committee on the Federal Judiciary of the American Bar Association.

Judge Diaz

Judge Diaz also comes to this Committee with a broad range of both judicial and legal experience in both the civilian and military court systems.

Judge Diaz currently serves as a Special Superior Court Judge for Complex Business Cases, one of only three in the state of North Carolina.

Judge Diaz began his legal career in the United States Marine Corps Legal Services Support Section, where he served as a prosecutor, defense counsel, and ultimately Chief Review Officer. He then moved to the Navy's Office of the Judge Advocate General (JAG), where he served for four years as appellate government counsel handling criminal appeals.

In 1995, Judge Diaz left active duty in the Marine Corps and worked as an associate at Hunton & Williams with a primary focus on commercial litigation. He remained in the Marine Corps Reserves while in private practice, serving as Reserve Appellate Defense Counsel in the Navy's JAG Corps, a Reserve Military Judge in the U.S. Navy-Marine Corps Trial Judiciary, and a Reserve Appellate Military Judge in the U.S. Navy-Marine Corps' Court of Criminal Appeals. He resigned as a military judge when he retired from the Marine Corps in 2006.

Judge Diaz was the first Latino appointed to the North Carolina Superior Court when he was named as a Resident Superior Court Judge in 2001. In 2002, he was appointed as a Special Superior Court Judge and he was designated as Special Superior Court Judge for Complex Business Cases in 2005.

He earned a B.S. from the University of Pennsylvania's Wharton School, and received his J.D. from New York University School of Law. He also earned a Masters degree in Business Administration from Boston University.

Judge Diaz received a rating of unanimously well-qualified from the Standing Committee on the Federal Judiciary of the American Bar Association.

Let me conclude by just complementing the two Senators from North Carolina who are here today. The process they used to recommend these nominations to the President – working in a bipartisan fashion with each other and the White House – is a model for how we can improve the judicial selection and confirmation process going forward.

Before I turn to Senators Burr and Hagan to introduce our nominees to the Committee, I will first turn to the Ranking Member for any comments he would care to make.

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Statement of Senator Kay Hagan
On the Nominations of James Wynn and Albert Diaz to the Fourth Circuit
December 16, 2009

Thank you, Mr. Chairman. I want to welcome Judges James Wynn and Albert Diaz and thank you both for being here today, and for the service you've given our state and nation over the past several years. I also want to thank President Obama for selecting such exemplary nominees, and I want to extend my gratitude to my esteemed colleague Senator Burr for working so hard with me to ensure that North Carolina has adequate and highly capable representation on the Fourth Circuit. These two judges are exactly what we need on the Fourth Circuit Court of Appeals, for several reasons.

When I first came to the U.S. Senate earlier this year, I had high hopes for increasing the number of North Carolinians on the court. We are the fastest growing and largest state served by the Fourth Circuit, yet only two of the 15 seats were filled by the abundant talent from our state, and, over the past century, North Carolina has had fewer total judges on the court than any other state.

North Carolina has been underrepresented since 1966. That year, two seats were added to the court, and while North Carolina was the most populous state, neither of those seats were filled by North Carolina judges. In 1978, three more seats were added, yet only one of those seats was filled by a North Carolina judge. In 1984, one seat was added to the court and it filled by a nominee from the state with the second lowest population, rather than North Carolina, which maintained the largest population. Finally, in 1990, there were four seats added to the court, bringing it from 11 judges to the current level of 15, but again, no judge from North Carolina filled any of those seats. Today there is a growing consensus that we need to move toward restoring equity and balance to this court.

Furthermore, there have been inexcusable vacancies on this court throughout history. Given that the United States Supreme Court only reviews 1% of the cases it receives, the Fourth Circuit is the last stop for almost all federal cases in the region and we must bring this court back to its full strength. Since 1990, when this circuit was granted 15 seats, we have never had 15 active judges.

Specifically, there has been a history of partisan bickering over the North Carolina vacancies on the Fourth Circuit, but with these nominees, we can change the course of history. Now we have two judges with bipartisan support who clearly demonstrate an end to the partisanship that has infected the confirmation process for this circuit. I know that confirming these judges will help restore the public's faith in the system.

However, I know that members of the committee will be less interested in these historical issues than they will be in the particular qualifications and experiences of these two accomplished judges. I'm proud to note that both of whom have received unanimous ratings of "well qualified" from the American Bar Association. Additionally, both men's ascensions to the federal bench are historically significant, as Judge Diaz would be the first Latino American on the Fourth Circuit, and Judge Wynn would be just the fourth African American on this bench.

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Judge Wynn brings decades of judicial experience to the bench. He has served on the North Carolina Court of Appeals since 1990, and had a brief tenure on the state Supreme Court. He has been the chair of the Bar Association's Judges Advisory Committee on Ethics. Additionally, he served on active and reserve duty in the Navy for 30 years and was a certified Military Trial Judge. He has been honored for his extraordinary service several times, including three Meritorious Service Medals.

Judge Diaz has served as one of North Carolina's three Business Court judges since 2005, and prior to that was a judge on the state's Superior Court for nearly four years. As a business court judge, he has handled complex business cases. He started as a lawyer in the U.S. Marine Corps, was an appellate counsel in the Navy's Office of the Judge Advocate General and has been a judge in the Marine Corps Reserves. Judge Diaz also has extensive experience in business litigation, and has served on the State Judicial Council, which advises the state Supreme Court's chief justice on ways to improve the courts. He is a graduate of New York University Law School with a graduate degree in business from Boston University and an undergraduate degree in business from the University of Pennsylvania.

These judges show respect for the law and apply it as it is written. In a recent dissenting opinion, Judge Wynn wrote, "Judicial prudence requires us to leave these policy questions to our legislative and executive branches of government...Our role is to apply the law, not to make it."

Editorials in newspapers throughout North Carolina have praised these nominations. The Charlotte Observer said Judges Wynn and Diaz are "widely regarded as intelligent, ethical judges who have won respect for their judicial and military careers. They are the kind of judges the federal bench needs…Their quality is so unquestioned that only partisanship could stall their nominations." The Raleigh News & Observer said, "There appears to be no good reason they shouldn't be moved through the confirmation process with dispatch." Last year, the Raleigh News & Observer stated of Wynn, "There may be no more distinguished member of the North Carolina judiciary."

I am honored to have the opportunity to play some role in this process and that we are moving toward putting Judge Diaz and Judge Wynn on the Fourth Circuit bench. I want to express my sincere gratitude to this Committee for holding this hearing today. Thank you.

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
December 16, 2009

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
On The Nominations Of James Wynn And Albert Diaz Of North Carolina,
To The United States Court Of Appeals For The Fourth Circuit
December 16, 2009

Today's hearing gives us another golden opportunity to make progress. The two nominees before us can fill two longstanding vacancies on the United States Court of Appeals for the Fourth Circuit. Both are from North Carolina. I commend President Obama for his selections, and his White House Counsel, Greg Craig, for his diligence and good work in bringing us to this day. Senator Burr and Senator Hagan have worked with each other and with the White House on these nominations. And I wish to thank Senator Graham of South Carolina for his graciousness and cooperation in connection with these matters.

Judge Wynn is a well-respected judge who is familiar to many of us on this Committee. Judge Wynn has been a North Carolina state appellate judge for nearly 20 years, serving both on the North Carolina Court of Appeals and the North Carolina Supreme Court. He dedicated 30 years to the U.S. Navy, where he was a Judge Advocate General and a military trial judge. He also worked as an attorney in private practice and as a public defender. Judge Wynn earned his B.A. from the University of North Carolina, his J.D. from Marquette University School of Law, and his L.L.M. from the University of Virginia School of Law.

Dean Joseph D. Kearney of Marquette Law School, a former clerk to Justice Antonin Scalia, wrote to the Judiciary Committee in support of Judge Wynn, describing him as "a man of unfailing courtesy, intelligence, commitment to the rule of law, and loyalty." More than a decade after Judge Wynn's first nomination to the Fourth Circuit, I am pleased that he will finally receive a hearing before this Committee. With his confirmation, we can take an important step toward righting a wrong and strengthening the Fourth Circuit.

Judge Albert Diaz is a well-respected judge who serves on the North Carolina Business Court and the North Carolina Superior Court. If confirmed, Judge Diaz will be the first Latino on the Fourth Circuit. He already has the honor of being the first Latino to serve as a Superior Court judge in North Carolina.

Judge Diaz has a wealth of experience, much of which comes from his time in the Marine Corps.

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He gave nearly 30 years of service to the Marines, serving as an officer, a prosecutor, a defense attorney, and a judge. He also spent six years in private practice. Judge Diaz earned his B.S. in economics from the University of Pennsylvania's Wharton School, his J.D. from the New York University School of Law, and his M.S. in business administration from Boston University.

The Charlotte News & Observer noted that these "outstanding" nominees are "widely regarded as intelligent, ethical judges who have won respect for their judicial and military careers," and it emphasized that "they are the kind of judges the federal bench needs." The newspaper urged the Senate to quickly confirm Judge Wynn and Judge Diaz, as did the president of the North Carolina Bar Association. We should heed their advice and consider these nominations without extended delays.

Both of the nominees appearing before us today are experienced judges, highly-decorated veterans, and both received unanimous "well qualified" ratings from the American Bar Association's Standing Committee on the Federal Judiciary, the highest rating possible.

These nominations are just the most recent examples of this President reaching out to home state Senators from both parties to consult before making nominations. Just as I worked last year to end a decade-long impasse on the Sixth Circuit with the confirmations of Judge Helene White and Ray Kethledge of Michigan, I will work to see that these nominations are considered fairly, and confirmed expeditiously. With the support of the senior Senator from North Carolina, a Republican, and the determined efforts of Senator Hagan, a Democrat, North Carolina will finally get the representation on the Fourth Circuit that it deserves.

Our ability to work together to fill vacancies on the Fourth Circuit stands in stark contrast to the time and effort we have wasted for the previous eight years on controversial nominations. For example, the nomination and renomination of Jim Haynes led the Richmond Times-Dispatch to write an editorial in late 2006 entitled "No Vacancies," about President Bush's counterproductive approach to nominations in the Fourth Circuit. The editorial criticized the Bush administration for pursuing political fights at the expense of filling vacancies. President Bush's insistence on nominating and renominating Terrence Boyle over the course of six years to a North Carolina vacancy on the Fourth Circuit contributed to the longstanding vacancy. He should have heeded the opposition 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 the Paramedics of North Carolina. Law enforcement officers from North Carolina and across the country opposed that nomination along with civil rights groups.

The years wasted on President Bush's controversial nominations followed in the wake of the Republican Senate majority's refusal to consider any of President Clinton's nominees to the Fourth Circuit from North Carolina. All four of these nominees were blocked from consideration by the Republican Senate majority. These outstanding nominees included United States District Court Judge James Beaty, Jr., United States Bankruptcy Judge J. Richard Leonard, Professor Elizabeth Gibson and Judge James Wynn, who is finally before us today. The failure to proceed on Judge Wynn's nomination and the other nominations was never explained. Had either Judge Beaty or Judge Wynn been considered and confirmed, he would have been the first African-

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American judge appointed to the Fourth Circuit.

I worked to change course and to break through the impasse in North Carolina with the confirmation of Judge Allyson Duncan of North Carolina to the Fourth Circuit when President Bush nominated her. When I chaired the Senate Judiciary Committee from the summer of 2001 to the end of 2002, I presided over the consideration and confirmation of three Fourth Circuit judges nominated by President Bush.

Today, as the Judiciary Committee holds its final confirmation hearing of President Obama's first year, the Senate threatens to achieve the lowest number of judicial confirmations in the first year of a new presidency in modern history.

The Senate has been allowed to confirm only one judicial nominee all month. It is now December 16. By this date in President Bush's first year the Senate had confirmed 27 men and women to fill important vacancies on Federal circuit and district courts. Ultimately, the Democratic Senate majority confirmed 10 judicial nominations in December 2001. That was, of course, a tumultuous year with the September 11 attacks and the anthrax attack on the Senate. By this date in President Clinton's first year in office, the Senate had also confirmed 27 Federal circuit and district court judges. In stark contrast, as it stands today, due to Republican objection and obstruction, the Senate has confirmed only 10 of President Obama's nominations for circuit and district courts, roughly one third of the number confirmed during the first years of the last two Presidents.

Judicial nominees have been and are available for consideration. This lack of action is no fault of the President. He has made quality nominations. They have had hearings, have been considered by the Senate Judiciary Committee and favorably reported to the Senate. There are now more judicial nominations on the Senate's Executive Calendar—12—than the number that have been confirmed all year. One has been ready for Senate consideration for more than 13 weeks, another more than 10 weeks, and the list goes on. Nor are these controversial nominees. Eight of the 12 were reported from the Judiciary Committee without a single dissenting vote. The Majority Leader and all Democratic Senators have been ready to proceed. The Republican Senate leadership has not.

The Republican obstruction and delay in considering well-qualified noncontroversial nominees comes at a tremendous cost to the ability of our Federal courts to provide justice for all Americans. We have seen a tremendous spike in judicial vacancies. Although there have been nearly 110 judicial vacancies this year on our Federal circuit and district courts around the country, only 10 vacancies have been filled. That is wrong. The American people deserve better.

When I became Chairman in June of President Bush's first year in office, I was determined not to repeat the Republican practices in the 1990s which had resulted in more than 100 Federal court vacancies, and the doubling of circuit court vacancies. Senate Republicans pocket filibustered more than 60 of President Clinton's nominees. The crisis they created eventually led to public criticism of their actions by Chief Justice Rehnquist during those years. Instead, in only five months of President Bush's first year in office when I served as Senate Judiciary Committee Chairman and with a Democratic Senate majority, we confirmed 28 judicial nominees. During

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17 months of President Bush's first two years in office, we confirmed 100 of his judicial nominees. Although two Republicans chaired the Senate Judiciary Committee and Senate Republicans held the Senate majority for more than half of President Bush's time in office, more judges were confirmed by the Senate Democratic majority and when I served as Senate Judiciary Committee Chairman. During President Bush's last year in office, we had reduced judicial vacancies to as low as 34, even though it was a presidential election year. When President Bush left office, we had reduced vacancies in nine of the 13 circuits since President Clinton left office.

As matters stand today, judicial vacancies have spiked and are being left unfilled. We will start 2010 with the highest number of vacancies on Article III courts since 1994, when the vacancies created by the last comprehensive judgeship bill were still being filled. While it has been nearly 20 years since we enacted a Federal judgeship bill, judicial vacancies are nearing record levels, with 97 current vacancies and another 23 already announced. If we had proceeded on the judgeship bill recommended by the Judicial Conference to address the growing burden on our Federal judiciary, as we did in 1984 and 1990, in order to provide the resources the courts need, current vacancies would stand at 160 today. That is the true measure of how far behind we have fallen. I know we can do better. Justice should not be delayed or denied to any American because of overburdened courts and the lack of Federal judges.

Earlier this year, after extended delay, we confirmed Judge Andre Davis of Maryland to a Fourth Circuit seat. Before the end of the year, with Republican cooperation, we can confirm the nomination of Justice Barbara Keenan of Virginia, which has been pending on the Senate Executive Calendar since being reported by the Committee nearly two months ago by unanimous consent, with not a single dissenting vote. When Justice Keenan is confirmed and Judge Wynn and Judge Diaz are confirmed, we will have reduced the five vacancies that existed on the Fourth Circuit to one.

Part of the challenge to Republican Senators is to reject the efforts of the extreme right to treat these nominations in a partisan manner and obstruct them. The head of one far right-wing group has urged Republican Senators to obstruct these nominations saying: "I will predict ... that life will not be made easy for these two nominees." I urge all Senators to join together as Senator Burr and Senator Hagan have to make progress. The nominations today show what we can accomplish by working to fill judicial vacancies with qualified nominees.

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