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S. HRG. 111–695, Pt. 5

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

JANUARY 20, FEBRUARY 11, FEBRUARY 24, and MARCH 10, 2010

PART 5

Serial No. J–111–4

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CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

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VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00004 Fmt 5904 Sfmt 5904 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

CONTENTS

JANUARY 20, 2010

STATEMENTS OF COMMITTEE MEMBERS

	Page
Kaufman, Hon. Edward E., a U.S. Senator from the State of Delaware	1
opening statement	365
Leahy, Hon. Patrick J., a U.S. Senator from the State of Vermont, prepared statement	366
Sessions, Hon. Jeff, a U.S. Senator from the State of Alabama	300

PRESENTERS

Barrasso, Hon. John, a U.S. Senator from the State of Wyoming presenting Nancy D. Freudentahl, Nominee to be U.S. District Judge for the District of Wyoming	3
Brown, Hon. Sherrod, a U.S. Senator from the State of Ohio presenting Timothy S. Black, Nominee to be U.S. District Judge for the Southern District of Ohio; and Benita Y. Pearson, Nominee to be U.S. District Judge for the Northern District of Ohio	7
Enzi, Hon. Michael B., a U.S. Senator from the State of Wyoming presenting Nancy D. Freudentahl, Nominee to be U.S. District Judge for the District of Wyoming	2
Lincoln, Hon. Blanche L., a U.S. Senator from the State of Arkansas presenting Denzil Price Marshall, Jr., Nominee to be U.S. District Judge for the District of Arkansas	4
Pryor, Hon. Mark L., a U.S. Senator from the State of Arkansas presenting Denzil Price Marshall, Jr., Nominee to be U.S. District Judge for the District of Arkansas	6

STATEMENTS OF THE NOMINEES

Black, Timothy S., Nominee to be U.S. District Judge for the Southern District of Ohio	165
Questionnaire	166
Freudenthal, Nancy D., Nominee to be U.S. District Judge for the District of Wyoming	10
Questionnaire	11
Lynch, James P., Nominee to be Director of the Bureau of Justice Statistics	213
Questionnaire	214
Marshall, Denzil Price, Jr., Nominee to be U.S. District Judge for the Eastern District of Arkansas	69
Questionnaire	70
Pearson, Benita Y., Nominee to be U.S. District Judge for the Northern District of Ohio	116
Questionnaire	117

QUESTIONS AND ANSWERS

Responses of Timothy S. Black to questions submitted by Senators Coburn, Grassley and Sessions	316
Responses of Nancy D. Freudenthal to questions submitted by Senators Coburn, Grassley and Sessions	324
Responses of James P. Lynch to questions submitted by Senators Coburn and Sessions	334

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00005 Fmt 5904 Sfmt 5904 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

Page

Responses of Denzil Price Marshall, Jr., to questions submitted by Senators Coburn, Grassley and Sessions 343
Responses of Benita Y. Pearson to questions submitted by Senators Coburn, Grassley and Sessions 351

SUBMISSIONS FOR THE RECORD

American Society of Criminology, Richard Rosenfeld, President, Columbus, Ohio and Academy of Criminal Justice Sciences, Janice Joseph, President, Greenbelt, Maryland, joint letter 363
Lauritsen, Janet L., Professor, University of Missouri, St. Louis, Missouri, letter 369
Pryor, Hon. Mark, a U.S. Senator from the State of Arkansas, prepared statement 370
Sullivan, Michael J., Attorney at Law, Rothgerber Johnson & Lyons LLP, Casper, Wyoming, letter 372
Voinovich, Hon. George V., a U.S. Senator from the State of Ohio, letter 373

THURSDAY, FEBRUARY 11, 2010

STATEMENTS OF COMMITTEE MEMBERS

Feinstein, Hon. Dianne, a U.S. Senator from the State of California, prepared statement 710
Klobuchar, Hon. Amy, a U.S. Senator from the State of Minnesota 375
Leahy, Hon. Patrick J., a U.S. Senator from the State of Vermont, prepared statement 718
Sessions, Hon. Jeff, a U.S. Senator from the State of Alabama 376

PRESENTERS

Bayh, Hon. Evan, a U.S. State Senator from the State of Indiana presenting Tanya Walton Pratt, Nominee to U.S. District Judge for the Souther District of Indiana; Jon E. DeGuilio, Nominee to be U.S. District Judge for the Northern District of Indiana, and Jane E. Magnus-Stinson, Nominee to be U.S. District Judge for the Southern District of Indiana 378
Boxer, Hon. Barbara, a U.S. State Senator from the State of California presenting Lucy H. Koh, Nominee to be U.S. District Judge for the Northern District of California 381
McCaskill, Hon. Claire, a U.S. State Senator from the State of Missouri presenting Audrey G. Fleissig, Nominee to be U.S. District Judge for the Eastern District of Missouri 383
Reid, Hon. Harry, a U.S. State Senator from the State of Nevada presenting Gloria Navarro, Nominee to be U.S. District Judge for the District of Nevada 376

STATEMENTS OF THE NOMINEES

DeGuilio, Jon E., Nominee to be U.S. District Judge for the Northern District of Indiana 525
Questionnaire 526
Fleissig, Audrey G., Nominee to be U.S. District Judge for the Eastern District of Missouri 422
Questionnaire 423
Koh, Lucy H., Nominee to be U.S. District Judge for the Northern District of California 487
Questionnaire 488
Magnus-Stinson, Jane E., Nominee to be U.S. District Judge for the Southern District of Indiana 599
Questionnaire 600
Navarro, Gloria M., Nominee to be U.S. District Judge for the District of Nevada 385
Questionnaire 386
Pratt, Tanya Walton, Nominee to be U.S. District Judge for the Southern District of Indiana 559
Questionnaire 560

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00006 Fmt 5904 Sfmt 5904 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

Page

QUESTIONS AND ANSWERS

Responses of Jon E. DeGuilio to questions submitted by Senators Coburn and Sessions 657
Responses of Audrey G. Fleissig to questions submitted by Senators Coburn and Sessions 663
Responses of Lucy H. Koh to questions submitted by Senators Coburn and Sessions 670
Responses of Jane E. Magnus-Stinson to questions submitted by Senators Coburn and Sessions 677
Responses of Gloria M. Navarro to questions submitted by Senators Coburn and Sessions 689
Responses of Tanya Walton Pratt to questions submitted by Senators Coburn and Sessions 697

SUBMISSION FOR THE RECORD

Asian American Justice Center, Karen K. Narasaki, President and Executive Director, Washington, DC, January 29, 2010, letter 702
Burchfield, Bobby R., Attorney at Law, McDermott Will & Emery, Washigton, DC, February 9, 2010, letter 704
Carr, Dolores A., District Attorney County of Santa Clara, San Jose, California, February 1, 2010, letter 705
Chandler, Mark, Senior Vice President, General Counsel and Secretary, Cisco, San Jose, California, February 5, 2010, letter 706
Dinh, Viet D., Professor of Law, Georgetown University Law Center, Washington, DC, February 9, 2010, letter 708
Gallagher, Catherine A., Judge, Superior Court of California, County of Santa Clara, San Jose, California, February 27, 2009, letter 714
George, Eric M., Browne Woods George LLP, Law Offices, Los Angeles, California, March 3, 2010, letter 716
Lee, Randall R., Wilmer Hale, Los Angeles, California, February 9, 2010, letter 723
Lugar, Richard G., a U.S. Senator from the State of Indiana, prepared statement 725
National Asian Pacific Bar Association, Washington, DC:
Daniel Levin, February 4, 2010, letter 726
Joseph J. Centeno, President; Tina R. Matsuoka, Executive Director; John C. Yang, Co-Chair, Judiciary Committee and Wendy Wen Yun Chang, Co-Chair Judiciary Committee, February 9, 2010, joint letter 727
Schwarzenegger, Arnold, Governor, Sacramento, California, January 29, 2010, letter 732
Smith, Laurie, Sheriff, County of Santa Clara, San Jose, California, January 29, 2010, letter 733
Weld, William F., McDermott Will & Emery, New York, New York, February 2, 2010, letter 735
Young, Ernest A., Alston & Bird Professor of Law, Durham, North Carolina, February 9, 2010, letter 737
Zweig, Sally Franklin, Attorney at Law, Katz & Korin, PC, Indianapolis, Indiana, March 10, 2010, letter 739

WEDNESDAY, FEBRUARY 24, 2010

STATEMENTS OF COMMITTEE MEMBERS

Franken, Hon. Al, a U.S. Senator from the State of Minnesota 741
Leahy, Hon. Patrick J., a U.S. Senator from the State of Vermont, prepared statement 971
Sessions, Hon. Jeff, a U.S. Senator from the State of Alabama 742

PRESENTERS

Chambliss, Hon. Saxby, a U.S. Senator from the State of Georgia presenting Marc T. Treadwell, Nominee to be U.S. District Judge for the Middle District of Georgia 747

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00007 Fmt 5904 Sfmt 5904 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

Page

Feinstein, Hon. Dianne, a U.S. Senator from the State of California presenting Josephine Staton Tucker, Nominee to be U.S. District Judge for the Central District of California 743
Levin, Hon. Carl, a U.S. Senator from the State of Michigan presenting Mark Allan Goldsmith, Nominee to be U.S. District Judge for the Eastern District of Michigan 744
Landrieu, Hon. Mary L., a U.S. Senator from the State of Louisiana presenting Brian Anthony Jackson, Nominee to be U.S. District Judge for the Middle District of Louisiana and Elizabeth E. Foote, Nominee to be U.S. District Judge for the Western District of Louisiana 746
Stabenow, Hon. Debbie, a U.S. Senator from the State of Michigan presenting Mark C. Goldsmith, Nominee to be U.S. District Judge for the Eastern District of Michigan 745

STATEMENTS OF THE NOMINEES

Foote, Elizabeth E., Nominee to be U.S. District Judge for the Western District of Louisiana 780
Questionnaire 781
Goldsmith, Mark A., Nominee to be U.S. District Judge for the Eastern District of Michigan 898
Questionnaire 899
Jackson, Brian A., Nominee to be U.S. District Judge for the Middle District of Louisiana 748
Questionnaire 750
Treadwell, Marc T., Nominee to be U.S. District Judge for the Middle District of Georgia 821
Questionnaire 822
Tucker, Josephine S., Nominee to be U.S. District Judge for the Central District of California 860
Questionnaire 861

QUESTIONS AND ANSWERS

Responses of Elizabeth E. Foote to questions submitted by Senators Coburn and Sessions 943
Responses of Mark A. Goldsmith to questions submitted by Senators Coburn and Sessions 949
Responses of Brian A. Jackson to questions submitted by Senators Coburn and Sessions 956
Responses of Marc T. Treadwell to questions submitted by Senators Coburn and Sessions 960
Responses of Josephine S. Tucker to questions submitted by Senators Coburn and Sessions 965

WEDNESDAY, MARCH 10, 2010

STATEMENTS OF COMMITTEE MEMBERS

Leahy, Hon. Patrick J., a U.S. Senator from the State of Vermont, prepared statement 1146
Sessions, Hon. Jeff, a U.S. Senator from the State of Alabama 980
Whitehouse, Hon. Sheldon, a U.S. Senator from the State of Rhode Island 975

PRESENTERS

Bennet, Hon. Michael F., a U.S. Senator from the State of Colorado presenting William J. Martínez, Nominee to be U.S. District Judge for the District of Colorado 979
Durbin, Hon. Richard J., a U.S. Senator from the State of Illinois presenting Gary S. Feinerman, Nominee to be U.S. District Judge for the Northern District of Illinois and Sharon J. Coleman, Nominee to be U.S. District Judge for the Northern District of Illinois 976
Udall, Hon. Mark, a U.S. Senator from the State of Colorado presenting William J. Martínez, Nominee to be U.S. District Judge for the District of Colorado 978

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00008 Fmt 5904 Sfmt 5904 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

Page

STATEMENTS OF THE NOMINEES

Coleman, Sharon J., Nominee to be U.S. District Judge for the Northern District of Illinois 981
Questionnaire 983
Feinerman, Gary S., Nominee to be U.S. District Judge for the Northern District of Illinois 1023
Questionnaire 1024
Martínez, William J., Nominee to be U.S. District Judge for the District of Colorado 1060
Questionnaire 1061

QUESTIONS AND ANSWERS

Responses of Sharon Johnson Coleman to questions submitted by Senators Coburn and Sessions 1104
Responses of Gary S. Feinerman to questions submitted by Senators Coburn and Sessions 1110
Responses of William J. Martínez to questions submitted by Senators Coburn and Sessions 1120

SUBMISSION FOR THE RECORD

Anti-Defamation League, Abraham H. Foxman, National Director, New York, New York, March 9, 2010, letter 1137
Bennet, Hon. Michael F., a U.S. Senator from the State of Colorado, statement 1139
Colorado Hispanic Bar Association, Damian J. Arguello, President, Denver, Colorado, March 9, 2010, letter 1142
Hispanic National Bar Association, Román D. Hernández, National President, Washington, DC, March 19, 2010, letter 1144
Mexican American Legal Defense and Educational Fund, Claudine Karasik, Legislative Staff Attorney, Washington, DC, March 12, 2010, letter 1150
National Employment Lawyers Association, Bruce A. Fredrickson, President, and Sara J. Rich, President Colorado PELA, Washington, DC, March 9, 2010, letter 1152

ALPHABETICAL LIST OF NOMINEES

Black, Timothy S., Nominee to be U.S. District Judge for the Southern District of Ohio 165
Coleman, Sharon J., Nominee to be U.S. District Judge for the Northern District of Illinois 981
DeGuilio, Jon E., Nominee to be U.S. District Judge for the Northern District of Indiana 525
Feinerman, Gary S., Nominee to be U.S. District Judge for the Northern District of Illinois 1023
Fleissig, Audrey G., Nominee to be U.S. District Judge for the Eastern District of Missouri 422
Foote, Elizabeth E., Nominee to be U.S. District Judge for the Western District of Louisiana 780
Freudenthal, Nancy D., Nominee to be U.S. District Judge for the District of Wyoming 10
Goldsmith, Mark A., Nominee to be U.S. Judge for the Eastern District of Michigan 898
Jackson, Brian A., Nominee to be U.S. District Judge for the Middle District of Louisiana 748
Koh, Lucy H., Nominee to be U.S. District Judge for the Northern District of California 487
Lynch, James P., Nominee to be Director fo the Bureau of Justice Statistics ... 213
Magnus-Stinson, Jane E., Nominee to be U.S. District Judge for the Southern District of Indiana 599
Marshall, Denzil Price, Jr., Nominee to be U.S. District Judge for the Eastern District of Arkansas 69
Martínez, William J., Nominee to be U.S. District Judge for the District of Colorado 1060
Navarro, Gloria M., Nominee to be U.S. District Judge for the District of Nevada 385

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00009 Fmt 5904 Sfmt 5904 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

Page

Pearson, Benita Y., Nominee to be U.S. District Judge for the Northern District of Ohio 116
Pratt, Tanya Walton, Nominee to be U.S. District Judge for the Southern District of Indiana 559
Treadwell, Marc T., Nominee to be U.S. District Judge for the Middle District of Georgia 821
Tucker, Josephine S., Nominee to be U.S. District Judge for the Central District of California 860

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00010 Fmt 5904 Sfmt 5904 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

NOMINATIONS OF NANCY D. FREUDENTHAL, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF WYOMING; DENZIL PRICE MARSHALL, JR., NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF ARKANSAS; BENITA Y. PEARSON, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO; TIMOTHY S. BLACK, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF OHIO; AND, JAMES P. LYNCH, NOMINEE TO BE DIRECTOR OF THE BUREAU OF JUSTICE STATISTICS

WEDNESDAY, JANUARY 20, 2010

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 2:33 p.m., Room SD–226, Dirksen Senate Office Building, Hon. Edward E. Kaufman presiding.

Present: Senators Franken, Sessions and Coburn.

OPENING STATEMENT OF HON. EDWARD E. KAUFMAN, A U.S. SENATOR FROM THE STATE OF DELAWARE

Senator KAUFMAN. Good afternoon, everybody. I am pleased to call this nomination hearing of the Senate Committee on Judiciary to order, and I thank Chairman Leahy for permitting me to chair this hearing.

I would like to welcome each of the nominees, their families and friends to the U.S. Senate and congratulate them on their nomination and hope you will have a good experience.

I would also like to welcome my colleagues—what a lineup—here to introduce the nominees. I am pleased to note that Republican and Democratic Senators have worked together to bring us these well qualified individuals today.

Today, we welcome the First Lady of Wyoming, Nancy Freudenthal, nominated to be a judge in the District of Wyoming.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00011 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

If confirmed, Ms. Freudenthal will be Wyoming's first female Federal judge.

Wyoming has a history of promoting equal rights for women. I remember, when I went there, I learned that it first gave women the right to vote in 1869, 21 years before achieving statehood and 51 years before the ratification of the Ninth Amendment. So it is especially fitting.

She will be introduced by her home state Senators, Mike Enzi and John Barrasso.

I would also like to welcome the Honorable Denzil Price Marshall, nominated to be a judge of the Eastern District of Arkansas. Judge Marshall is currently a judge in the Arkansas Court of Appeals.

He will be introduced from his home state by Senators Blanche Lincoln and Mark Pryor.

We further welcome the Honorable Benita Pearson, nominated to be the judge in the Northern District of Ohio. If confirmed, Judge Pearson will be Ohio's first African-American female Federal judge.

She will be introduced by her home state Senator, Sherrod Brown.

We welcome, also, the Honorable Timothy Black, nominated to be a judge for the Southern District of Ohio. Judge Black currently serves the Southern District as a magistrate judge and previously was a municipal court judge in Hamilton, Ohio. Senator Brown will introduce him, too.

Finally, we welcome Dr. James Patrick Lynch, nominated to be Director for the Bureau of Justice Statistics at the U.S. Department of Justice. Over the last 30 years, Dr. Lynch has been involved in major efforts to build and improve our crime and criminal justice statistics systems. I look forward to introducing him.

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

Senator KAUFMAN. I am going to yield time for the Ranking Member, Senator Sessions, when he arrives. What I would like to do, I would like to thank all the Senators who have come to speak on behalf of their home state nominees this afternoon. I know you are incredibly busy, and I know you are incredibly busy, but your presence and support speaks volumes about their qualifications and your respect for their qualifications.

First, we will hear from the Senators from the State of Wyoming to introduce Ms. Freudenthal. First, Senator Enzi.

PRESENTATION OF NANCY D. FREUDENTHAL, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF WYOMING BY HON. MICHAEL B. ENZI, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator ENZI. Thank you, Mr. Chairman. I am pleased to have the opportunity to introduce Nancy Freudenthal, who has been nominated by President Obama to serve as a judge of the United States District Court for the District of Wyoming.

I want to thank the Chairman and Senator Sessions and your staff for moving quickly on scheduling this hearing.

Nancy is a Wyoming native, born in Cody, and received her BA and her JD from the University of Wyoming. After being admitted

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00012 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

to the Wyoming State Bar in 1980, Nancy took a position with Governor Ed Herschler, as his attorney for intergovernmental affairs for 8 years. She then served in the same position for Governor Mike Sullivan for 2 years.

In this capacity, Nancy served as the Governor's representative on numerous boards, worked extensively with the state legislature, taught at the University of Wyoming College of Law, and served as acting Administrator of the Department of Environmental Quality in the Land Quality Division.

In 1989, Nancy was appointed by Governor Sullivan to the Wyoming Tax Commission and State Board of Equalization, where she served as chairman for a 6-year term. While the State Board of Equalization is taxed with the annual process of equalizing value of property in Wyoming counties, the board has a main function of listening to disputes between taxpayers and the Department of Revenue and reviewing appeals. Nancy's experience as chairman of this board will greatly enhance her abilities as a judge.

Since joining Davis & Cannon in 1995, Nancy has handled a wide variety of matters, including complex mineral litigation, environmental and natural resource disputes, public utility law, oil and gas litigation, employment litigation, and commercial transactions.

She has experience at both the trial and appellate levels. Nancy is well respected among her peers and judges in Wyoming. I have followed some of the things that she has worked on and I know that she is able to sort out the wheat from the intentional chaff.

I also want to mention how important this judgeship is for Wyoming. While Senators disagree at times about specific nominees, we can all agree that without judges in place, our legal system slows down and does a disservice to the people we represent.

I am pleased that the Senate Judiciary Committee is moving quickly and thoroughly on this nomination. I hope that we can finish the whole confirmation process promptly.

Mr. Chairman, Nancy Freudenthal's experience as a private attorney and in state government will serve her well as a district court judge.

I, again, appreciate the Committee's time and I look forward to the quick approval of this nomination.

Senator KAUFMAN. Thank you, Senator Enzi.

Senator Barrasso.

PRESENTATION OF NANCY D. FREUDENTHAL, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF WYOMING BY HON. JOHN BARRASSO, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator BARRASSO. Thank you very much, Mr. Chairman. Thank you to the other members of the Committee for allowing me the opportunity to be with you today.

I am pleased to join Senator Enzi to speak in support of the nomination of Nancy Freudenthal to be a U.S. District Court Judge for the District of Wyoming.

I have been a long-time admirer of Nancy Freudenthal. She and I were classmates in the first ever Class of Leadership Wyoming, long before either of us served in our current positions, and Nancy played an integral and an influential role in that program.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00013 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

I have great respect for her public service. Much of her career has been dedicated to working for the people of Wyoming. As the First Lady of Wyoming, Nancy has championed causes with significant focus on reducing childhood and underage drinking. She is the national chair of the countrywide initiative called Leadership to Keep Children Alcohol-Free.

She has been instrumental and played an instrumental role on the Steering Committee on Underage Drinking Research and Prevention nationally. As a doctor, Mr. Chairman, I understand the importance of prevention and awareness.

I appreciate her energetic and enthusiastic work in advocating for the health and safety of our children. Nancy Freudenthal has the qualifications to be an effective member of the Federal bench. If confirmed, Nancy will be just the seventh Federal district court judge in the history of the district and the first woman to sit on the Federal bench for Wyoming.

Mr. Chairman, Nancy has been a valued member of the Wyoming State Bar for nearly 30 years and the American Bar Association voted to give her a well qualified rating. Nancy has been a mentor and an inspiration to Wyoming's next generation of legal professionals through her work at the University of Wyoming's College of Law.

Nancy Freudenthal has my full support, Mr. Chairman. I would ask members of this Committee to support her nomination, as well.

Thank you, Mr. Chairman.

Senator KAUFMAN. Thank you, Senator Barrasso. Now, the Senators from Arkansas will introduce Judge Marshall.

Senator Lincoln.

PRESENTATION OF DENZIL PRICE MARSHALL, JR., NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF ARKANSAS, BY HON. BLANCHE L. LINCOLN, A U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator LINCOLN. Thank you, Mr. Chairman and to the members of the Judiciary Committee. I, too, appreciate the opportunity to appear before you today to introduce Judge Price Marshall, who has been nominated to fill a Federal judicial vacancy in the Eastern District of Arkansas.

I first want to thank the Chairman, Chairman Leahy, for granting my request, as well as the Committee, as was mentioned by Senator Enzi, for receiving a hearing so timely so that the Judiciary Committee could learn about Judge Marshall's qualifications, abilities, and why he will make a terrific U.S. district judge for the State of Arkansas.

Judge Price Marshall has enjoyed an impressive and lengthy legal career in Arkansas, where he has served as a judge on the Arkansas Court of Appeals since 2006 and as a reporter for the Arkansas Supreme Court Committee on Civil Practice since 2004.

Previously, Judge Marshall practiced law in his hometown of Jonesboro, Arkansas for 15 years as a principal at the firm of Barrett & Deacon. Mr. Deacon is a long-time, established legal figure in our state.

He also clerked for U.S. Circuit Judge Richard Arnold from 1989 to 1991, and I think Judge Arnold's widow was here earlier or is

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00014 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

not here today, Kay Kelly Arnold, as well as two of his previous law partners, Robert Jones, who I know quite well, as well as Jim Bradbury, who are here in the audience, and grateful for that incredible support that they lend to him.

Judge Marshall graduated from Arkansas State University in Jonesboro in 1985, where he currently serves as an adjunct professor of political science. Judge Marshall also received a degree from the London School of Economics and graduated with honors from Harvard Law School in 1989.

I have heard from dozens of our Arkansans from across the legal and the business community who support Judge Marshall's nomination. He is well known in Arkansas as a gifted appellate advocate, a brilliant legal mind, and a well respected man of integrity.

In my judgment, Judge Marshall possesses the intellect, the capabilities and the character to carry out the duties of the U.S. district judge and would well represent the State of Arkansas and our country in this capacity.

Not only is Judge Marshall a distinguished professional, he is a dedicated family man. Like so many Arkansans, Judge Marshall believes in our Arkansas values of family and community. He and his wife, Polly Pickett Marshall, have been married for 22 years and they have two daughters, Adison, who is 15, and Lara Harden, who is 13, and who join us today. So we are proud to have them, as well, here in the Committee.

Judge Marshall is a member and a deacon of the First Baptist Church in Jonesboro. He is involved in the Eastern Arkansas Council of the Boy Scouts of America and has received a Golden Gavel Award for exemplary service by the Arkansas Bar Association.

Mr. Chairman, as a U.S. Senator from the State of Arkansas, I take the Senate's role of advice and consent on lifetime judicial appointments very seriously. In fact, I interviewed, either in person or, certainly, by phone, each and every Arkansan who was interested in being nominated for a judicial appointment in Arkansas.

I evaluate judicial nominees based on their skills, their experience, and ability to understand and apply established precedent, not only or on any particular point of view a nominee may hold.

Fundamentally, I am interested in knowing that a nominee can fulfill his responsibilities under the Constitution in a court of law, and I am absolutely satisfied that Judge Price Marshall has more than met that standard and that my colleagues on the Judiciary Committee and the Senate will come to the same conclusion.

So in closing, Mr. Chairman, I want to thank you and the Ranking Member of the Judiciary Committee for allowing Judge Price Marshall to receive a hearing and request your full attention and careful consideration of his nomination and hope that we can move it forward in an expeditious way.

Thank you, Mr. Chairman and to the Committee.

Senator KAUFMAN. Thank you, Senator Lincoln.

Senator Pryor.

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PRESENTATION OF DENZIL PRICE MARSHALL, JR., NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF ARKANSAS BY HON. MARK L. PRYOR, A U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator PRYOR. Thank you, Mr. Chairman. As is the custom around here, my staff wrote a very nice statement for the Committee and I may just ask to have that submitted into the record, because I have something—as wonderful the things that Senator Lincoln has just said, and they're all true, and as good a job as my staff did, they're all true, I would like to say something just on a personal note.

I have known Price Marshall for 20-some-odd years now. I knew him right when we both came out of law school and he is a really fine person. He is exactly the kind of person we want on the Federal bench deciding cases.

He is a great husband, a great father. He is very involved in his community and in his church, as Senator Lincoln said. He has been involved with the Arkansas Bar Association, but also with the State Supreme Court, who regulates the practice of law in Arkansas.

Since law school, Price Marshall has been the kind of person that, when you see him in action, when lawyers practice either with him or against him, they come away with the impression, "One day, this guy will make a great judge."

He is a great judge. He is on the Arkansas Court of Appeals right now. When he was in private practice for 15 or more years up in Jonesboro, Arkansas, he had a statewide reputation for being able to handle very complex litigation or very complex legal matters, whatever they may be, and, also, had a statewide reputation of being an excellent appellate lawyer and a great brief-writer and a great arguer before the appellate courts in Arkansas and in the Federal appellate courts, as well.

When you look at Price and when you have practiced with him and been around him like I have, there are really, I think, two words that come to mind for Price Marshall. The first is integrity. He has it, an over-abundance of it. He is just known to have integrity in everything he does and every part of his life; second, impartiality.

That is the kind of judge that he has been on the Arkansas Court of Appeals. That is the kind of judge he will be, if this Committee approves him and sends him to the Senate floor and he is confirmed, when he gets on the Federal district court.

For me and for many Arkansas lawyers, the fact that Price Marshall is here today and is going through this process and the fact that he has been nominated by President Obama is really a dream come true, because he is exactly the kind of person that I think we would all like to see in our Federal judiciary.

Thank you, Mr. Chairman.

Senator KAUFMAN. Thank you, Senator Pryor.

Now, Senator Brown will introduce Judge Pearson and Judge Black.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00016 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

PRESENTATION OF TIMOTHY S. BLACK, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF OHIO, AND BENITA Y. PEARSON, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO BY HON. SHERROD BROWN, A U.S. SENATOR FROM THE STATE OF OHIO

Senator BROWN. Thank you, Mr. Chairman. Senator Franken, Senator Coburn, thank you. I echo, for the two nominees that I have the privilege of introducing, the last words of Senator Pryor in the kind of integrity they bring, the kind of impartiality they bring.

I will speak about each nominee consecutively, if I could, Mr. Chairman. My first, in alphabetical order, Tim Black, is the nominee for the U.S. District Judge for the Southern District of Ohio. Tim's wife and two daughters are here with him today. We welcome them. They are friends/relatives of people that are very close to both Senator Klobuchar and Senator Franken.

Since 2004, Judge Black has served the Southern District of Ohio as a magistrate judge. I have known Judge Black for over 10 years now.

Prior to his work as a magistrate, he was a municipal judge in Hamilton County, in Cincinnati, for a decade, and a civil litigator with one of the most prominent firms in southwest Ohio, Graydon Head & Ritchey, also in Cincinnati.

As a Federal magistrate, Tim has issued opinions and recommendations on numerous cases, with some of his most noteworthy ones in the area of constitutional law and housing rights. His broad experience also includes hearing many criminal cases as a municipal judge and litigating civil and commercial cases in private practice with the Cincinnati law firm, Graydon Head.

Judge Pearson, prior to our formally sitting down now, said that she would, as a magistrate in the Northern District, always look—before she had met Tim Black—look at his decisions as a magistrate and how well reasoned and well thought-out they were.

Senator Voinovich and I—Senator Voinovich is supporting both of these nominees. He was very intricately involved in the selection process. He and I assembled a distinguished group of 17 Ohioans, about half Republicans. Actually, one of them in the Southern District was more than half Republican. The other one, in the Northern District, happened to be more than half Democrat.

They conducted interviews with dozens of candidates. The rule was at least 11 of them of the 17 had to support these candidates to hand them over to me to make the final decision, and then I interviewed each of the three candidates in both the Northern and the Southern Districts.

Paul Harris, the chair of the event, a lawyer in Cleveland, chair of the committee in Cleveland did a particularly outstanding job in putting this together for the Southern District, and we flipped the districts. In the Northern District, Nancy Rogers, who was the Dean of the Ohio State Law School and later appointed Attorney General of Ohio, chaired that committee.

The nomination committee spent hours vetting and interviewing these candidates and they were willing to devote substantial

amounts of time and energy to see who would serve and who would serve and who would serve best.

The screening panel was more than impressed with Tim Black. They recognized his leadership, his commitment to legal excellence, his temperament, his qualities that made him well suited to serve in this capacity.

Based on their recommendations, I had no reservation whatsoever in suggesting Tim Black to President Obama for nomination as U.S. District Judge in the Southern District, and, as I said, Senator Voinovich concurred in that decision.

Beyond the major cases he has been involved with as a litigator, a Federal magistrate or municipal judge, beyond the long list of honors and awards he has received, one of the most important things that you all should know in this Committee about Tim Black is that he has dedicated his life to serving others.

President Obama, in nominating him, stated that Tim has the evenhandedness, intellect and spirit of service that Americans expect and deserve from their Federal judges. Tim has exemplified a commitment to service through his work as a co-convener of the Round Table, a partnership between the Black Lawyers Association of Cincinnati and the Cincinnati Bar to improve diversity and inclusion in the legal profession.

He helped establish a Domestic Violence Coordinating Council to increase communications, coordination and uniformity within the criminal justice system and the community to reduce domestic violence.

His yeoman's work as a member and vice president of Pro Kids, an organization that represents abused and neglected children, is one more example.

Tim is quoted as saying that he is ready for the work of being a district judge in the Southern District. He absolutely is.

I would also like to take the opportunity, Mr. Chairman, of introducing the other nominee from Ohio, and that is Magistrate Judge Benita Pearson to be the U.S. District Judge in the Northern District. She will be in Youngstown, if she is confirmed.

I am proud to introduce this native Ohioan to the Committee. She has with her today her mother and four of her five siblings, who are here, most of them; her very, very, very proud mother and her pretty, pretty proud siblings, too. But her mother is really, really proud of this.

She earned her JD from Cleveland State, her bachelor's degree here in Washington from Georgetown. Before law school, Judge Pearson spent several years as a certified public accountant.

I asked her how that would help her as a judge in our interview and she said, "Being a CPA helps me tell stories with numbers."

Throughout her career, Judge Pearson has litigated and presiding over a range of criminal and civil matters, housing, public corruption cases. In addition to her work as a magistrate judge, her legal experience includes serving as an adjunct professor at Cleveland State's Law School, 8 years as an Assistant U.S. Attorney in the Northern District, and several years in private practice.

When one looks to Judge Pearson's life, it becomes evident that she is someone who cares both about her profession and her community. Last year, at the Akron Bar Association's annual bench

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00018 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

bar luncheon, she urged attorneys to be better prepared and to be more civil to one another, something we in these hallowed halls could benefit from, Mr. Chairman.

At the 2009 Youth in Excellence Performing Arts Workshop, she shared her life story and accomplishments with a group of 50 middle and high school-aged students from at-risk communities.

Her community service includes more than a decade of ongoing work as a board member of the Eliza Bryant Village. The Eliza Bryant Village is a multi-facility campus providing services for impoverished elderly citizens, founded by and named after the daughter of a freed slave.

The facility began simply as a nursing home built to serve Eliza's mother and other African-Americans who had been turned away from nursing homes because of their race.

Her background as a prosecutor, private practice attorney, CPA and Federal magistrate make her uniquely qualified to serve as a Federal district judge. When asked to describe the most significant legal activity she has been engaged in, she replied, "My most significant legal activity has been my steadfast commitment to administering equal justice for all, the poor and the rich, the likeable and the unlikeable, the first time offender and the repeat offender."

Chief U.S. District Judge James Carr lauded Judge Pearson as "a splendid choice, imminently well qualified by intelligence, experience and judicial temperament."

Mr. Chairman and Ranking Member Sessions, both of these nominees are brilliant, both of them have acute legal minds, and both of them have terrific records of lifetime community service.

Thank you.

Senator KAUFMAN. Thank you, Senator Brown.

I would like to, without objection, enter into the record a letter from Senator Voinovich commending both of the nominees.

[The letter appears as a submission for the record.]

Senator KAUFMAN. Now, I would like to introduce Dr. Lynch.

The mission of the Bureau of Justice Statistics is to help law enforcement by collecting, analyzing and disseminating information on crime and the criminal justice system, and Dr. Lynch is one of the foremost experts in all these areas.

He has a great deal of experience in working with the Bureau. Recently, he served on a National Academy panel that reviewed the Bureau's programs and recommended steps for their improvement.

As a professor at John Jay College of Criminal Justice, the City University of New York and at American University, Dr. Lynch has taught courses on crime, criminal justice and research methods. He is the author and coauthor of several books and articles on crime statistics and victimization, including *Understanding Crime Incident Statistics*, the definitive work in the field.

Dr. Lynch, your credentials are truly impressive.

With that, I would like to give my colleagues the opportunity to move on to the important things they are doing and for us to swear in the nominees. Senators, thank you very much for coming.

I would like the five nominees to step forward and remain standing. Please raise your right hand and repeat after me.

[Nominees sworn.]

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00019 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

Senator KAUFMAN. Thank you. Let the record show that each of the nominees has taken an oath. Please be seated.

Now, the nominees will have an opportunity to recognize their family and friends and give an opening statement. We will start with Ms. Freudenthal. Starting with you, I welcome you. Acknowledge any family members or friends you have with you here today and then give an opening statement, even if they are Governor.

STATEMENT OF NANCY D. FREUDENTHAL, NOMINATED TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF WYOMING

Ms. FREUDENTHAL. Thank you, Mr. Chairman. I am pleased to be here with my family, Dave Freudenthal, my husband; my one daughter out of a total of four children, Hillary Chen; my brother, Neill Archer Roan; and, my guest and friend, Rob Wallace.

I'd like to thank the Committee for being here today, for your attention, and for your deliberations in this nomination hearing. I'd like to particularly thank you, Mr. Chairman, for convening and chairing this hearing.

I would like to extend my appreciation to my home Senators, Mike Enzi and John Barrasso, for their kind remarks today in support of my nomination.

Last, I would like to thank the President for the honor of this nomination.

Thank you.

Senator KAUFMAN. Thank you.

Judge Marshall.

[The biographical information of Nancy D. Freudenthal follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Nancy Dell Freudenthal

   Formerly Nancy Dell (or D.) Roan. Nancy Dell (or D.) Wood. Nancy Roan Wood.

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

   United States Court Judge for the District of Wyoming

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.

   Davis & Cannon, LLP
   422 West 26th Street, P.O. Box 43
   Cheyenne, WY 82003.

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

   1954; Cody, Wyoming.

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.

   1977-1980, University of Wyoming College of Law; J.D., 1980.

   1972-1976, University of Wyoming; B.A., 1976.

   1977. University of Wyoming; no graduate 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.

Paid positions:

1995 – Present:
Davis & Cannon, LLP
422 West 26th Street, P.O. Box 43
Cheyenne, WY 82003.
Partner (1998-present)
Associate (1995-1997)

1989 – 1995:
Wyoming Board of Equalization
Herschler Building
Cheyenne, WY 82002
Chairman of the Board (1989-1995)
Board Member (1989)

1994:
Governor's Natural Gas Task Force
Wyoming Board of Equalization
Herschler Building
Cheyenne, WY 82002
Member

1989 – 1991:
Wyoming Tax Commission
Herschler Building
Cheyenne, WY 82002
Chairman of the Commission (1989-1995)
Commission Member (1989)

1980 – 1989:
Office of the Wyoming Governor
State Capitol
Cheyenne, WY 82002
Attorney for Intergovernmental Affairs

1985 – 1986:
University of Wyoming, College of Law
1000 E. University Ave., Dept. 3035
Laramie, WY 82071
Adjunct Professor

1983:
State of Wyoming Department of Environmental Quality
Land Quality Division
Herschler Building

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00022 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Cheyenne, WY 82002
Interim acting Administrator

1978 – 1980:
State of Wyoming
State Planning Coordinator's Office
Herschler Building
Cheyenne, WY 82002
Legal intern

Unpaid positions:
2005 – current:
K&N, LLC
P.O. Box 43
Cheyenne, WY 82003
Member

2007 – current:
Leadership to Keep Children Alcohol Free Foundation
2933 Lower Bellbrook Rd.
Spring Valley, OH 45370-9001
Officer

2003 – current:
Leadership to Keep Children Alcohol Free
2933 Lower Bellbrook Rd.
Spring Valley, OH 45370-9001
Officer

2006 – current:
Richard H. Castle and Nancy Dell Freudenthal TTEES U/A
DTD 11/16/00 for the Richard Castle Living Trust.
1502 Alger Ave
Cody, WY 82414
Co-trustee

2000 – 2006:
Richard H. Castle, Shirley A. Castle and Nancy Dell Freudenthal TTEES U/A
DTD 11/16/00 for the Richard and Shirley Castle Living Trust
1502 Alger Ave.
Cody, WY 82414
Co-trustee

1992 – current:
Zonta Club of Cheyenne, Wyoming
P.O. Box 2135

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00023 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Cheyenne, WY 82003
Former director

1994-1998:
Wyoming Council for the Humanities
1315 E. Lewis St.
Laramie, WY 82072-3459
Former officer

1990-1996:
Rhodes Scholarship Wyoming Selection Committee
University of Wyoming
1000 E. University Ave.
Laramie, WY 82071
Member

1994-2003:
St. Christopher's Church Vestry
2602 Deming Ave.
Cheyenne, WY 82001
Former officer (dates are approximate)

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. 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.

Martindale AV® Preeminent™ 5.0 out of 5
The Order of the Coif, Wyoming Chapter
Fellow, American Bar Foundation
Selected to Mountain States Super Lawyers, 2008
Selected to Best Lawyers in America
Exemplary Alumnus, University of Wyoming, College of Arts & Sciences
Phi Kappa Phi
Phi Beta Kappa
Honorary Chair, Family Day in Wyoming, National Center of Addiction and Substance Abuse at Columbia University
Friend of the Young Child Award, Wyoming Early Childhood Association
Starfish Thrower Award, Wyoming Department of Health
2005 Leadership Award, Mothers Against Drunk Driving (MADD)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00024 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Honorary lifetime membership, Natrona County Parent-Teacher Association
Family Values Award, Church of Jesus Christ of Latter Day Saints
Making a Difference Award, Uplift Wyoming
Outstanding Service Award, Wyoming Alliance for Health, Physical Education, Recreation and Dance
Molly Pitcher Award for Services to the Field Artillery, Wyoming National Guard
I received merit scholarships to attend the University of Wyoming

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.

Wyoming State Bar
Laramie County Bar Association
Administrative Law Section of Wyoming State Bar, Past Chairman from approximately 1995 – 2000
Tenth Circuit Advisory Committee – Civil Rules
Wyoming Supreme Court Registry of Mediators
Wyoming Inns of Court
American Judicature Society

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.

Wyoming, 1980. 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.

Wyoming, 1980
United States District Court for the District of Wyoming, 1980
United States Court of Appeals for the Tenth Circuit, 1982

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.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00025 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Wyoming's First Lady's Initiative. Founder. 2004 – current.
Wyoming Carbon Sequestration Working Group. 2008 – current.
National Governor's Spouses Leadership Committee. 2008 – current.
Western States Arts Federation. Advisory board member. 2009 – current.
Wyoming 2-1-1 Leadership Group. 2009 – current.
Wyoming Governors Residence Foundation. Board member. 2003 – current.
Art Museum National Advisory Board, University of Wyoming. Board member. 2003 – current.
Women's Civic League of Cheyenne, honorary member as First Lady of Wyoming. 2003 – current.
Wyoming Childhood Early Development Council, ex-officio member. 2003-current.
Historic Governor's Mansion Foundation, board member. 2003 – current.
National Institute on Alcohol Abuse and Alcoholism's Underage Drinking Initiative Steering Committee. 2004 – 2007.
National Conference of State Legislatures' Advisory Committee on Substance Abuse. 2006.
Wyoming Family Economic Self Sufficiency Standard Advisory Committee. 2004 – 2006.
Wyoming Inns of Court. 2004 – 2005.
Wyoming Women's Foundation. Advisory Board member. 2003 – 2008.
Wyoming Department of Environmental Quality Compliance Advisory Panel. 1998 – 2002.
Wyoming Capitol Club. 1999.
Commercial Law Affiliates (through Davis & Cannon). 1995 – 2001.
Athena Committee of the Greater Cheyenne Chamber of Commerce. 1996 – current.
Leadership Wyoming, Class of 2001. 2000 – 2001.
Cheyenne Schools Foundation. 1995 – 2000 (approximate).
Rhodes Scholarship Wyoming Selection Committee. 1990 – 1996 (approximate).
Governor's Natural Gas Task Force, 1993 – 1994.
Advisory Board, University of Wyoming School of Environment and Natural Resources. 1994.
University of Wyoming Alumni Association – lifetime member
Member, Staff Advisory Council for the National Governors' Association and Western Governors' Association, 1982 – 1989.
Governor's Task Force on Tort Reform, 1986.
Governor's Representative to the Federal Regional Coal Leasing Teams for both the Powder River Basin and the Green River/Hamms Fork Coal Leasing Teams, 1987 – 1989.
Governor's Drug Policy Board, 1987 – 1989.
Governor's Representative to the Western Interstate Energy Board, 1982 – 1989.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00026 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.

None of the organizations listed above currently or formerly discriminated on the basis of race, sex, or 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.

The following publications are provided except where noted:

- *Administrative Law – The Scope of Judicial Review of Administrative Actions, Laramie River Conservation Council v. Industrial Siting Council and Basin Electric Power Cooperative*, 14 Land & Water Law Review 607 (1979).
- *Public Participation Under the Surface Mining Control and Reclamation Act of 1977: A Panoply of Rights*, 15 Land & Water Law Review 503 (1980).
- *White Paper and Proposal on the Homeowners Tax Credit Program*, prepared for Governor Herschler and ultimately distributed. Date unknown.
- *SMCRA in the States: Wyoming's Perspective*, Forum for Applied Research and Public Policy, 26, Vol. 3, No. 1 (1988).
- Documents and publications developed to assist Taxpayers in Contested Cases – distributed and available through the State Board of Equalization.
- Presentation to the County Attorneys at the Wyoming Association of County Officers, 1993.
- *Open Letter to Members of the Wyoming State Bar* (on personal property reporting for taxation), Wyoming Lawyer, December 1993.
- *Nuts and Bolts on Administrative Case Practice and Procedure in Wyoming*, CLE presentation with Terry J. Harris, the Administrative Law Judge, on January 30, 1993.
- Administrative Law Panel Outline, *Discretionary Justice or "Administrative Mischief?"* – a panel CLE presentation at the Wyoming State Bar, September, 1996.
- *Contested Case Practice*, a panel CLE presentation at the Wyoming State Bar, September 17, 1998.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00027 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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- *Administrative Law Outline*, a CLE presentation of recent administrative law cases, July 26, 1999.
- *Practical Pointers on Appeal*, a CLE presentation. Date unknown.
- *Findings of Fact and Conclusions of Law*, a presentation to the Municipal and Circuit Judges of Wyoming, May 21, 2003.
- *A Summary of Administrative Law Cases*, a CLE panel presentation, 2003.
- *Coping with Contested Case Practice Before Natural Resource Agencies*, a CLE presentation, March 2005.
- *Wyoming Administrative Law Journal*, The Quarterly Newsletter of the Administrative Law Section of the Wyoming State Bar, Roger C. Fransen and Nancy D. Freudenthal, Editors, Issue #1 – Issue #37 (missing Issue #32) (December 1995 – March 2005)
- *Administrative Law: Rulemaking and Contested Case Practice in Wyoming*, 31 Land & Water Law Review 685 (1996).
- *Ten Hints for Lower Property Tax Assessments*, CLA Advantage, June 1996.
- *How to Be a Hero*, CLA Advantage, September 1996.
- *The Wyoming Hazardous Waste Landscape*, CLA Advantage, December 1996.
- *Don't Get Stung by Use Tax*, CLA Advantage, March 1997.
- *Six Audit Survival Hints*, CLA Advantage, June 1997.
- *Do you Owe Contractor Excise Tax?*, CLA Advantage, September 1997.
- *In Search of a Mediator*, CLA Advantage, March 1998.
- *Businesses Can Take Steps Now to Prepare for Risk Management Program*, CLA Advantage, September 1998.
- *Impaired Professionals ... Time to Act*, Wyoming Lawyer, April 2004.
- *Chapter 7 – Administrative Appeals.* Note: I was contacted to contribute or edit a chapter for larger publication, "The Appellate Practice Handbook." I do not know if this publication was ever published showing me as an author or contributor, but a copy of the last document available to me is included.

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.

The following reports were drafted through a collaborative effort and not individually authored. The reports are provided except where noted:

- *Report and Recommendations of the Carbon Sequestration Working Group to the Joint Minerals, Business and Economic Development Committee and the Joint Judicial Committee of the Wyoming State Legislature*, Wyoming Department of Environmental Quality, Herschler Building, 122 West 25th St., Cheyenne, WY 82002. September 2009.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00028 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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- *The Self-Sufficiency Standard for Wyoming*, Office of the Governor, 200 West 24th Street, Room 124, Cheyenne, WY 82002. Winter 2005.
- *Economic Development: Does Wyoming Want It? Can Wyoming Have It?*- Report of Class Projects for Leadership Wyoming, Wyoming Business Alliance, 145 S. Durbin St., Suite 101, Casper, WY 82601. 2001.
- *Report of the Tort Reform Working Group,* Office of the Governor, State Capitol, Cheyenne, WY 82002. 1986. This report outlined a variety of legislative options for tort reform. The report may be available through the Division of Cultural Resources, State Archives and Historical Program, Barrett Building, 2301 Central Ave., Cheyenne, WY 82002.
- *Report of the Governor's Natural Gas Task Force,* Office of the Governor, State Capitol, Cheyenne, WY 82002. 1993 or 1994. This report outlined this issues and options for valuing processed natural gas. The report may be available through the Division of Cultural Resources, State Archives and Historical Program, Barrett Building, 2301 Central Ave., Cheyenne, WY 82002.
- *Biennial Budget reports to the Wyoming Legislature for the Governor's Residence,* Governor's Residence, 5001 Central Ave., Cheyenne, WY 82009. 2006, 2008, 2010.

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 my employment in the Office of the Governor and the Wyoming State Board of Equalization, I submitted extensive testimony, official statements and communications relating to matters of public policy or legal interpretation. All written documents were the property of the State of Wyoming. I retained very few copies of any such testimony or statements. After an extensive review of my files, I am producing limited documents. All other documents, to the extent that either the Governor's Office or the Wyoming State Board of Equalization retained them, may be available through the Division of Cultural Resources, State Archives and Historical Program, Barrett Building, 2301 Central Ave., Cheyenne, WY 82002.

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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In my employment in the Office of the Governor and the Wyoming State Board of Equalization, in working in support of my husband's 2002 and 2006 gubernatorial campaigns, and in my position as First Lady of Wyoming, I have given numerous speeches, talks and remarks throughout Wyoming. During my time with the Office of the Governor and on the Equalization Board, I retained very few copies of any testimony or statements. Following a diligent effort to locate and describe these activities, a table was prepared which is enclosed Attachment 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.

In my employment in the Office of the Governor and the Wyoming State Board of Equalization, in working in support of my husband's 2002 and 2006 gubernatorial campaigns, and in my position as First Lady of Wyoming, I have been interviewed numerous times. During my time with the Office of the Governor and on the Board, I retained very few copies of any testimony or statements. Following a diligent effort to locate and describe these activities, a table was prepared which is enclosed Attachment B.

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.

1989 – 1995: Wyoming Board of Equalization, Herschler Building, Cheyenne, WY 82002.
In March, 1989, I was appointed to the Board by Wyoming Governor Michael Sullivan, and confirmed by the State Senate.
This tribunal is an administrative law tribunal with jurisdiction over all cases contesting state sales and use taxes and all cases brought by taxpayers contesting the valuation of state-assessed property (pipelines, railroads, public utilities, and minerals). It also has jurisdiction over all appeals from County Boards of Equalization for cases brought by taxpayers contesting local assessments (residential, commercial and industrial properties).

1989 – 1991: Wyoming Tax Commission, Herschler Building, Cheyenne, WY 82002.
In April, 1989 I was appointed to the Board by Wyoming Governor Michael Sullivan, and confirmed by the State Senate.
This tribunal was abolished in government reorganization, and its duties were merged into the Wyoming Department of Transportation. Before it was abolished, the Commission had administrative law tribunal duties including contested case hearings protesting Department of Revenue actions dealing with applications by vehicle dealers, applications for license plates, and the operating authority for commercial vehicles. The Commission also heard appeals from hearings held by independent hearing examiners involving decisions on vehicle license suspensions and the revocation of license plates and registration certificates for violating laws on compulsory automobile insurance.

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

I have presided over 595 cases to hearing.

i. Of these, approximately what percent were:

jury trials?: 0% bench trials? 100% [total 100%]

civil proceedings? 100% criminal proceedings? 0% [total 100%]

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

See attached list of cases. The State Board of Equalization did not record the author for written opinions. I wrote or contributed significantly to nearly all decisions except for the 9 cases in which I was recused. The 9 recusals are identified in the answer to paragraph 14 below.

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. *In the Matter of the Appeals of Amax Coal Company (Eagle Butte Mine and Belle Ayr Mine),* Doc. No. A-88-40 and A-88-41 (1989), 1989 WL 234550 (Wyo.St.Bd.Eq.).

Case Description:

The Taxpayer appealed notices of valuation for its 1987 coal production claiming the Department of Revenue erred in refusing to allocate Black Lung Excise Tax (BLET), and in refusing deductions of reclamation costs attributable to processing and post mine mouth transportation activities. The State Board denied the allocation of BLET but remanded the valuation to the Department to calculate the deductions for reclamation costs attributable to processing and post mine mouth transportation. Both the Taxpayer and the Department appealed the case, and the Wyoming Supreme Court affirmed the State Board's ruling in *Amax Coal v. State Bd. of Equalization*, 819 P.2d 825 (Wyo. 1991).

Counsel for Petitioner: Lawrence J. Wolfe
Holland and Hart
2515 Warren Ave., Suite 450
Cheyenne, WY 82003-1347
(307) 778-4200.

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65688.011

Counsel for Respondent: Milo M. Vukelich
1250 SE Waddell Way
Waukee, IA 50263
(515) 480-0697

2. *In the Matter of the Appeals of Amax Coal Company (Eagle Butte and Belle Ayr Mines)*, Doc. Nos. A-89-84 and A-89-85 (1990), 1990 WL 260297 (Wyo.St.Bd.Eq.).

Case Description:

The Taxpayer protested the taxable value for its 1988 coal production as established by the Department of Revenue, making numerous claims of error concerning the Department's methodology for valuation. The State Board affirmed the Department's valuation in part, remanding the valuation to be recalculated to exclude from the numerator of the direct cost factor any reclamation costs associated with areas and facilities after the mouth of the mine.

Counsel for Petitioner: Lawrence J. Wolfe
Holland and Hart, 2515 Warren Ave., Suite 450
Cheyenne, WY 82003-1347
(307) 778-4200

Counsel for Respondent: Matthew D.C.P. Meuli
509 Palisade Mountain Drive
Windsor, CO 80550
(970) 674-3068

3. *In the Matter of the Appeal of Barcon, Inc.*, Doc. No. A-91-154 (1992), 1992 WL 46661 (Wyo.St.Bd.Eq.).

Case Description:

The case concerned the assessment of use tax on used equipment purchased outside of Wyoming from a company that was not a "vendor" under Wyoming law. There were no facts in dispute and the case was one of statutory interpretation. The State Board concluded that Petitioner was required to pay use tax without regard to whether the property sold was by a person or a vendor, but vacated the penalty assessment. The case was affirmed on appeal to the district court, and then the Wyoming Supreme Court in *Barcon, Inc. v. Wyoming State Bd. of Equalization*, 845 P.2d 373 (Wyo. 1992).

Counsel for Petitioner: Tracy J. Copenhaver
Copenhaver, Kath, Kitchen & Kolpitcke, LLC
224 North Clark Street
Powell, WY 82435-0839
(307) 754-2276

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65688.012

Counsel for Respondent: Vicci M. Colgan
Wyoming State Auditor's Office
Capitol Building, Room 114
Cheyenne, WY 82002
(307) 777-6648

4. *In the Matter of the Appeal of W.A. Moncrief, Jr.*, Doc. No. 89-63 (1992), 1992 WL 118446 (Wyo.St.Bd.Eq.).

Case Description:

The case arose in the context of an audit assessment, and concerned whether interest on severance tax assessments begins to accrue from the date the taxes were originally due, or whether interest begins to accrue thirty days after the Department of Revenue issues its notice of assessment of severance tax underpayment. No facts were in dispute. Based on statutory interpretation, the State Board concluded the tax was delinquent when it should have been paid, and affirmed the Department's interest calculation. The Board's decision was affirmed by the Wyoming Supreme Court in *Moncrief v. Wyoming State Bd. of Equalization*, 856 P.2d 440 (Wyo. 1993).

Counsel for Petitioner: Morris R. Massey, Brown
Drew & Massey, LP
159 N. Wolcott St., Suite 200
Casper, WY 82601
(307) 234-1000

Counsel for Respondent: Vicci M. Colgan
Wyoming State Auditor's Office
Capitol Building, Room 114
Cheyenne, WY 82002
(307) 777-6648

5. *In the Matter of the Appeal of Enron Oil & Gas Company,* Doc. No. 91-143 (1992), 1992 WL 200904 (Wyo.St.Bd.Eq.).

Case Description:

The Taxpayer protested the denial of a refund request pertaining to its oil and gas production as outside a two-year statutory limit. There were no material facts in dispute and the case involved statutory interpretation. Based on the statute and finding no basis for tolling the two-year period, the Board affirmed the Department's denial. The State Board's decision was affirmed in *Enron Oil & Gas Co. v. Freudenthal*, 861 P.2d 1090 (Wyo. 1993).

Counsel for Petitioner: Dante L. Zarlengo

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65688.013

4204 Knox Ct.
Denver, CO 80211
(303) 477-2455

Counsel for Respondent: Vicci M. Colgan
Wyoming State Auditor's Office
Capitol Building, Room 114
Cheyenne, WY 82002
(307) 777-6648

6. *In the Matter of the Appeal of Jan Charles Gray*, Doc. No. 91-156 (1993), 1993 WL 220382 (Wyo.St.Bd.Eq.).

Case Description:

This was an appeal from a decision by the Converse County Board of Equalization (CBOE) affirming the 1991 ad valorem values established by the Assessor. The Taxpayer urged that his purchase transactions at public auction represented arms-length negotiations and met the definition of fair market value. The State Board affirmed the CBOE concluding that evidence of purchase prices paid following auction was not sufficient to meet the Taxpayer's burden of proof. I issued a separate concurring opinion explaining that the Computer Assisted Mass Appraisal System (CAMA) only automates recognized appraisal methods and that appraisal judgments on valuation issues should have been better documented to build long-term confidence and credibility in the ad valorem tax area. This case was affirmed by the Wyoming Supreme Court in *Gray v. Wyoming State Bd. of Equalization*, 896 P.2d 1347 (Wyo. 1995), a precedent-setting case holding that CAMA conforms with the equal and uniform taxation requirements of the constitution and that reliance upon actual sales prices may lead to discrimination and lack of equality and uniformity.

Counsel for Petitioner: Not represented by counsel

Counsel for Respondent: Thomas A. Burley
628 North 6th St.
Douglas, WY 82633
(307) 358-3226

7. *In the Matter of the Appeal of Walt Guion, d/b/a Preferred Energy Properties,* Doc. No. 92-206 (1993), 1993 WL 445355 (Wyo.St.Bd.Eq.).

Case Description:

The Taxpayer appealed a Department of Revenue assessment of additional oil valuation for the 1991 production year, claiming it was not the operator of the subject properties and thus was not responsible for the taxes. The State Board affirmed the Department's assessment. The State Board's decision was affirmed in *Preferred Energy Properties v. Wyoming State Bd. of*

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Equalization, 890 P.2d 1110 (Wyo. 1995), which is an important case on the liability for severance taxes as well as the Board's authority to consider deeds in determining liability for taxes under the statute.

Counsel for Petitioner: Neil J. Short
235 S. David St., Suite #C
Casper, WY 82601
(307) 234-2401

Counsel for Respondent: Michael D. Basom
Dray, Thomson & Dyekman, PC
204 E. 22nd St.
Cheyenne, WY 82001-3799
(307) 634-8891

8. *In the Matter of the Appeal of Exxon Company, USA, from a Decision of the Sublette County Board of Equalization, 1992,* Doc. No. 92-185, 1993 WL 69808 (Wyo.St.Bd.Eq.).

Case Description:

Taxpayer appealed from an adverse determination by the Sublette County Board of Equalization upholding the Assessor's denial of applications filed by the Taxpayer for pollution control exemptions from ad valorem taxation for equipment located at the Exxon – LaBarge facility. The case concerned a primary question of the interpretation and application of the pollution control exemption law in the context of criteria applied by a contract appraising firm and the county. The State Board overturned the County Board, concluding the water disposal system, sour water disposal system, and increase sour water filtration capacity should have been 100% exempt as pollution control equipment. The flare system and the well field flare system were remanded for reconsideration by the assessor following receipt of installed-cost information to justify a value for those devices for exemption purposes.

Counsel for Petitioner: Brent R. Kunz
Hathaway & Kunz, PC
2515 Warren Ave., Suite 500
Cheyenne, WY 82003-1208
(307) 634-7723

Counsel for Respondent: John Crow
P.O. Box 817
Pinedale, WY 82941
(307) 367-2430

9. *In the Matter of the Appeals of Amax Coal Company*, Doc. Nos. 92-198 (1994), 1994 WL 76631(Wyo.St.Bd.Eq.).

Case Description:

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The Taxpayer protested the result of an audit and Department of Revenue decision increasing the taxable value for coal production from Taxpayer's Belle Ayr and Eagle Butte mines for production years 1986 and 1987, and also requested offsetting refunds and credits for all years subject to the audit. The State Board reversed the Department's assessment, remanding it for recalculation in several areas. Certain Taxpayer claims for deductions were disallowed, and the Taxpayer's claims for refund or credit were disallowed. The case was appealed and affirmed in *Amax Coal West, Inc. v. Wyoming State Bd. of Equalization,* 896 P.2d 1329 (Wyo. 1995). See also a companion case affirming the State Board in *Thunder Basin Coal Co. v. Wyoming State Bd. of Equalization*, 896 P.2d 1336 (Wyo. 1995).

Counsel for Petitioner: Lawrence J. Wolfe
Holland and Hart
2515 Warren Ave., Suite 450
Cheyenne, WY 82003-1347
(307) 778-4200

Counsel for Respondent: Michael D. Basom
Dray, Thomson & Dyekman, PC
204 E. 22nd St.
Cheyenne, WY 82001-3799
(307) 634-8891

10. *In the Matter of the Appeal of Rock Springs Ford Nissan*, Doc. No. 93-133 (1994), 1994 WL 50846 (Wyo.St.Bd.Eq.).

Case Description:

The case arose from the denial of a refund request for sales tax paid to obtain a repossession title. No sales tax was initially paid on the original sale of the motor vehicle. There were no disputed facts and the issue involved statutory interpretation. The State Board concluded an automobile dealer is liable for unpaid sales tax. The State Board's decision was affirmed in *Rock Springs Ford Nissan v. State Bd. of Equalization,* 890 P.2d 1100 (Wyo. 1995).

Counsel for Petitioner: Lawrence J. Wolfe
Holland and Hart
2515 Warren Ave., Suite 450
Cheyenne, WY 82003-1347
(307) 778-4200

Counsel for Respondents: Gayle R. Stewart (for Sweetwater County)
State Board of Equalization
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Cheyenne, WY 82002
(307) 777-2445

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65688.016

Emily S. Birtell Gardyasz (for the Department of Revenue)
1900 W. Euclid Ave.
Indianola, IA 50125
(515) 961-3349

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) citations for decisions that were published:

1. *In the Matter of the Appeals of Amax Coal Company (Eagle Butte Mine and Belle Ayr Mine),* Doc. No. A-88-40 and A-88-41 (1989), 1989 WL 234550 (Wyo.St.Bd.Eq.).

Counsel for Petitioner: Lawrence J. Wolfe
Holland and Hart
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Cheyenne, WY 82003-1347
(307) 778-4200.

Counsel for Respondent: Milo M. Vukelich
1250 SE Waddell Way
Waukee, IA 50263

2. *In the Matter of the Appeals of Amax Coal Company (Eagle Butte and Belle Ayr Mines),* Doc. Nos. A-89-84 and A-89-85 (1990), 1990 WL 260297 (Wyo.St.Bd.Eq.).

Counsel for Petitioner: Lawrence J. Wolfe
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Counsel for Respondent: Matthew D.C.P. Meuli
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(970) 674-3068

3. *In the Matter of the Appeal of Barcon, Inc.,* Doc. No. A-91-154 (1992), 1992 WL 46661 (Wyo.St.Bd.Eq.).

Counsel for Petitioner: Tracy J. Copenhaver
Copenhaver, Kath, Kitchen & Kolpitcke, LLC
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65688.017

Counsel for Respondent: Vicci M. Colgan
Wyoming State Auditor's Office
Capitol Building, Room 114
Cheyenne, WY 82002
(307) 777-6648

4. *In the Matter of the Appeal of W.A. Moncrief, Jr.*, Doc. No. 89-63 (1992), 1992 WL 118446 (Wyo.St.Bd.Eq.).

Counsel for Petitioner: Morris R. Massey, Brown
Drew & Massey, LP
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Casper, WY 82601
(307) 234-1000

Counsel for Respondent: Vicci M. Colgan
Wyoming State Auditor's Office
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5. *In the Matter of the Appeal of Enron Oil & Gas Company,* Doc. No. 91-143 (1992), 1992 WL 200904 (Wyo.St.Bd.Eq.).

Counsel for Petitioner: Dante L. Zarlengo
4204 Knox Ct.
Denver, CO 80211
(303) 477-2455

Counsel for Respondent: Vicci M. Colgan
Wyoming State Auditor's Office
Capitol Building, Room 114
Cheyenne, WY 82002
(307) 777-6648

6. *In the Matter of the Appeal of Jan Charles Gray*, Doc. No. 91-156 (1993), 1993 WL 220382 (Wyo.St.Bd.Eq.).

Counsel for Petitioner: Not represented by counsel

Counsel for Respondent: Thomas A. Burley
628 North 6th St.
Douglas, WY 82633
(307) 358-3226

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65688.018

7. *In the Matter of the Appeal of Walt Guion, d/b/a Preferred Energy Properties,* Doc. No. 92-206 (1993), 1993 WL 445355 (Wyo.St.Bd.Eq.).

Counsel for Petitioner: Neil J. Short
235 S. David St., Suite #C
Casper, WY 82601
(307) 234-2401

Counsel for Respondent: Michael D. Basom
Dray, Thomson & Dyekman, PC
204 E. 22nd St.
Cheyenne, WY 82001-3799
(307) 634-8891

8. *In the Matter of the Appeal of Exxon Company, USA, from a Decision of the Sublette County Board of Equalization, 1992,* Doc. No. 92-185, 1993 WL 69808 (Wyo.St.Bd.Eq.).

Counsel for Petitioner: Brent R. Kunz
Hathaway & Kunz, PC
2515 Warren Ave., Suite 500
Cheyenne, WY 82003-1208
(307) 634-7723

Counsel for Respondent: John Crow
P.O. Box 817
Pinedale, WY 82941
(307) 367-2430

9. *In the Matter of the Appeals of Amax Coal Company*, Doc. Nos. 92-198 (1994), 1994 WL 76631(Wyo.St.Bd.Eq.).

Counsel for Petitioner: Lawrence J. Wolfe
Holland and Hart
2515 Warren Ave., Suite 450
Cheyenne, WY 82003-1347
(307) 778-4200

Counsel for Respondent: Michael D. Basom
Dray, Thomson & Dyekman, PC
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10. *In the Matter of the Appeal of Rock Springs Ford Nissan*, Doc. No. 93-133 (1994), 1994 WL 50846 (Wyo.St.Bd.Eq.).

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00039 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

65688.019

Counsel for Petitioner:	Lawrence J. Wolfe Holland and Hart 2515 Warren Ave., Suite 450 Cheyenne, WY 82003-1347 (307) 778-4200
Counsel for Respondents:	Gayle R. Stewart (for Sweetwater County) State Board of Equalization Herschler Building, 1 West, #1706 122 West 25th Street Cheyenne, WY 82002 (307) 777-2445

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.

1. *Allied-Signal v. Board of Equalization*, 813 P.2d 214 (Wyo. 1991), rev'g, *In the Matter of the Appeal of Allied Corporation from a Denial of Sales Tax Refund*, 1989 WL 234662 . The Board ruled that a "sale" occurred when assets of a corporation were exchanged for stock in a newly formed subsidiary corporation. The Wyoming Supreme Court ruled that a sale had occurred, but disagreed that the value of the stock was the same as the value of the assets. Refusing to speculate, the Court determined that the fair market value of the stock was either zero or nominal, thus no tax was due.

2. *Burlington Northern v. Bd. of Equalization*, 820 P.2d 993 (Wyo. 1991), rev'g *In the Matter of the Appeal of Burlington Northern Railroad Company from Sales/Use Tax Assessment Numbers S/U 390A and S/U 390B*, 1989 WL 234671. The State Board ruled that a use tax could be imposed by Wyoming on refurbished wheel assemblies installed on interstate railroads. The Wyoming Supreme Court ruled that the "first use" of the new repair parts took place in Nebraska when they were installed as component parts, and the mere replacement in Wyoming of repaired wheel assemblies on the cars is not a "first use" triggering the application of the test in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977).

3. *Meridian Aggregates Company v. Bd. of Equalization*, 827 P.2d 375 (Wyo. 1992), rev'g

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In the Matter of the Appeal of Meridian Aggregates Co., 1991 WL 117361 (Wyo.St.Bd.Eq.). The State Board ruled that denial of a taxpayer's refund request was time-barred. The Wyoming Supreme Court ruled that an amendment to the refund statute afforded the Taxpayer one year after its effective date for filing the claim for refund so long as the refund claim was filed within the original three-year period.

4. *Holly Sugar v. State Bd. of Equalization*, 839 P.2d 959 (Wyo. 1992), rev'g *In the Matter of the Appeal of Holly Sugar Corporation*, 1991 WL 172239. The State Board modified a county valuation to allow for additional functional and economic obsolescence, but denied some obsolescence requested by the Taxpayer. The Wyoming Supreme Court ruled that the State Boards' usage of 1986 functional and economic obsolescence figures to answer a 1990 obsolescence problem was not supported by substantial evidence.

5. *Amoco Production Co. v. Wyoming State Bd. of Equalization*, 882 P.2d 866 (Wyo. 1994), rev'g *In the Matter of the Appeal of Amoco Production Company and Amoco Rocmount Company (Oil and Gas Valuation Methodology, Non Arms-Length Situations)*, 1992 WL 126533. The State Board ruled that the Department of Revenue must adopt a more determinative formula for computation of comparable value based upon reasonable inferences from confidential third-party natural gas processing fees, and that if a more determinative formula was not adopted, valuation shall be under the proportionate profits method. The State Board further concluded that selection by the Department of the more determinative formula would be final, subject to review only through an appeal of Amoco's 1991 production value. The Wyoming Supreme Court ruled the product of the Board's Order was to deprive Amoco of due process. The matter was remanded to the State Board with instructions to remand the case to the Department to determine whether the Taxpayer could be permitted to participate in the development of the more determinative formula and, if it concluded that Amoco could not participate, then to utilize the proportionate profits methodology proposed by the Taxpayer for valuation of its gas.

6. *State v. Wyo. State Bd. of Equalization*, 891 P.2d 68 (Wyo. 1995), rev'g *In the Matter of the Appeal of Molin Concrete Products Company*, 1993 WL 335630. The State Board ruled that a contractor was not liable for use tax on the cost of materials sold to an exempt entity. The Wyoming Supreme Court ruled that either a contractor or a subcontractor selling to a tax-exempt institution and later installing the materials results in a use tax liability.

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 decisions are published in Westlaw.

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65688.021

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.

As an administrative tribunal, the State Board of Equalization does not rule on federal or state constitutional issues. Those matters must initiate in court. *See In re Worker's Compensation Claim of Williams*, 2009 WY 57, ¶ 17-18, 205 P.3d 1024, 1032-1033 (Wyo. 2009) and cases cited therein.

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:

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 recused myself in the following cases:

1993. *In the Matter of the Appeal of TCI Cablevision of Wyoming from a Decision of the Park County Board of Equalization*, Doc. No. 92-264 (1993), 1993 WL 281829.

I recused myself sua sponte. My husband had previously represented the Taxpayer in related matters. I alerted the State Board to the conflict by writing, and notice was provided to all parties by Order. The recusal appears in the records of all orders entered in the case. I recused to avoid the potential for the appearance of impropriety and the potential for the appearance of ex parte contacts.

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1993. *In the Matter of the Petition and Appeal by Union Pacific Resources Company (Audit/Sweetwater and Crook),* Doc. No. 93-59 (1993), 1993 WL 118663.

I recused myself sua sponte. My husband's law firm represented a party in the case. I alerted the State Board to the conflict by writing, and notice was provided to all parties by Order. The recusal appears in the records of all orders entered in the case. I recused to avoid the potential for the appearance of a conflict and of impropriety, and the potential for the appearance of ex parte contacts.

1993. *In the Matter of the Appeals of Amoco Production Company,* Doc. No. 92-290 (1993), 1993 WL 7189.

I recused myself sua sponte. My husband's law firm represented a party in the case. I alerted the State Board to the conflict by writing, and notice was provided to all parties by Order. The recusal appears in the records of all orders entered in the case. I recused to avoid the potential for the appearance of a conflict and of impropriety, and the potential for the appearance of ex parte contacts.

1992. *In the Matter of the Petition for Declaration by Union Pacific Resources Company, (Point of Valuation),* Doc. No. 92-292 (1992), 1993 WL 118669.

I recused myself sua sponte. My husband's law firm represented a party in the case. I alerted the State Board to the conflict by writing, and notice was provided to all parties by Order. The recusal appears in the records of all orders entered in the case. I recused to avoid the potential for the appearance of a conflict and of impropriety, and the potential for the appearance of ex parte contacts.

1992. *In the Matter of the Appeal of Amoco Production Company from a Decision of the Carbon County Commissioners and In the Matter of the Appeal of Amoco Production Company from a Decision of the Sweetwater County Commissioners*, Doc. No. 92-189 (1992), 1992 WL 339597.

I recused myself sua sponte. My husband's law firm represented a party in the case. I alerted the State Board to the conflict by writing, and notice was provided to all parties by Order. The recusal appears in the records of all orders entered in the case. I recused to avoid the potential for the appearance of a conflict and of impropriety, and the potential for the appearance of ex parte contacts.

1992. *In the Matter of Proceedings to Equalize the Level of Assessment of Cable TV Properties in Big Horn, Hot Springs, Johnson, Park, Sheridan, and Washakie Counties, Wyoming*, Equalization Order 92-1, 1992 WL 200902.

I recused myself sua sponte. My husband had previously represented the Taxpayer in related matters. I alerted the State Board to the conflict by writing, and notice was provided to all parties by Order. The recusal appears in the records of all orders entered in the case. I

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recused to avoid the potential for the appearance of impropriety and the potential for the appearance of ex parte contacts.

1992. *In the Matter of the Appeal of TCI Cablevision of Wyoming, Inc.*, Doc. No. 91-168 (1992), 1992 WL 126530.

I recused myself sua sponte. My husband had previously represented the Taxpayer in related matters. I alerted the State Board to the conflict by writing, and notice was provided to all parties by Order. The recusal appears in the records of all orders entered in the case. I recused to avoid the potential for the appearance of impropriety and the potential for the appearance of ex parte contacts.

1990. *In the Matter of the Appeals of 1989 Valuation for 1988 Sand and Gravel, Coal, Uranium, and Bentonite Production,* 1990 WL 260524.

I recused myself on one issue sua sponte. I recused myself on all remaining issues upon motion by Exxon Coal USA, Inc., Cordero Mining Company, North Antelope Mining Company, and Rochelle Mining Company. I had previously been involved with legislative discussions and action on legislation passed in 1990 which was or may have been at issue in the case. I alerted the State Board to the conflict by writing, and notice was provided to all parties by Order. The recusal appears in the records of all orders entered in the case. I recused to avoid the potential for the appearance of a conflict and the potential for appearance of impropriety.

1989. *In the Matter of the Appeals of Rosebud Coal Sales Company,* Doc. Nos. A-88-35, 88-37, 88-42 (1989), 1989 WL 234646.

I recused myself sua sponte. My husband's law firm represented a party in the case. I alerted the State Board to the conflict by writing, and notice was provided to all parties by Order. The recusal appears in the records of all orders entered in the case. I recused to avoid the potential for the appearance of a conflict and of impropriety, and the potential for the appearance of ex parte contacts.

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.

In October, 1980, I was appointed by Governor Ed Herschler as his attorney for intergovernmental affairs. I served in this capacity until January 1987.

In January 1987, I was appointed by Governor Mike Sullivan as his attorney for intergovernmental affairs. I served in this capacity until March 1989.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00044 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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In March, 1989, I was appointed by Governor Michael Sullivan to the Wyoming Board of Equalization. I served until my term ended in March 1995.

In March, 1989, I was appointed by Governor Michael Sullivan to the Wyoming Tax Commission. I served until the Tax Commission was abolished during government reorganization in July, 1992.

In 1993, as chairman of the Wyoming Board of Equalization, I was appointed by Governor Michael Sullivan to the Governor's Natural Gas Task Force. I served through 1994.

In 1998, I was appointed by Wyoming State Senator Guy Cameron to the Department of Environmental Quality Compliance Advisory Panel. I served until January 2002.

In 2003, I was elected by the University of Wyoming Art Museum National Advisory Board as an Advisory Board Member. I continue to serve on the Board.

In 2004, I was appointed by Dr. Ting-Kai Li, Director, or Mark Goldman, Associate Director, to serve on the National Institute on Alcohol Abuse and Alcoholism's Underage Drinking Initiative Steering Committee. I served until 2007.

In 2004, I was appointed by Governor David Freudenthal to the Wyoming Family Economic Self Sufficiency Standard Advisory Committee. I served until 2006.

In 2006, I was appointed or invited by Allison Colker to serve on the National Conference of State Legislatures' Advisory Committee on Substance Abuse. I served through 2006.

In July 2008, I was elected by the National Governors' Spouses to the National Governor's Spouses Leadership Committee. I continue to serve on this Committee.

In June 2008, I was appointed by John Corra, Director of the Wyoming Department of Environmental Quality to the Wyoming Carbon Sequestration Working Group. I continue to serve as a member of this Working Group.

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

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00045 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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

I am registered as a Democrat and thus consider myself a member of the Wyoming Democratic Party. I have held no offices in any political party or election committee. I participated in a candidate's seminar at the request of the Wyoming Democratic Party in 2006.

I assisted in the 1982 re-election campaign for Wyoming Governor Ed Herschler. I did research as requested and met with the campaign staff and with the candidate. I had no title and was not paid.

I assisted in the 1986 election and 1990 re-election campaigns for Wyoming Governor Mike Sullivan. I did research as requested and met with the campaign staff and the candidate. I had no title and was not paid.

I supported my husband, Dave Freudenthal, in his two gubernatorial campaigns in 2002 and 2006. I had no title and was not paid. My responsibilities included some fundraising, appearing at numerous functions and events, speaking on occasion for the candidate, and various other duties as the candidate's wife.

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 clerk to a judge.

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

I have never 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.

1995 – current:
Davis & Cannon, LLP
422 West 26th Street, P.O. Box 43
Cheyenne, WY 82003.
Partner (1998-present)
Associate (1995-1997)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00046 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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1989 – 1995:
Wyoming Board of Equalization
Herschler Building
Cheyenne, WY 82002
Chairman of the Board (1989-1995)
Board Member (1989)

1989 – 1991:
Wyoming Tax Commission
Herschler Building
Cheyenne, WY 82002
Chairman of the Commission

1980 – 1989:
Office of the Wyoming Governor
State Capitol
Cheyenne, WY 82002
Attorney for Intergovernmental Affairs.

1985 – 1986:
University of Wyoming, College of Law
1000 E. University Ave., Dept. 3035
Laramie, WY 82071
Adjunct Professor.

1983:
State of Wyoming Department of Environmental Quality
Land Quality Division
Herschler Building
Cheyenne, WY 82002
Interim acting Administrator.

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. I have served as an arbitrator by appointment from the National Arbitration Forum. All disputes appointed to me were simple consumer arbitration matters, specifically the arbitration of claims relating to alleged unpaid and delinquent credit card charges. For all disputes, the Forum's rules require that I retain no records. Given the lack of records, I have no basis to identify any matters responsive to this question.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00047 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.

When I was admitted to practice in 1980, I became the Attorney for Intergovernmental Affairs for Governor Ed Herschler and did both staff and legal work for the Governor. I reviewed all rules filed with the Governor for approval under the Wyoming Administrative Procedure Act. I also dealt with special criminal justice and clemency issues. I requested and received assignments involving special projects with the Attorney General's Office. In this capacity I worked on water rights litigation. I also served as the Governor's representative on a number of boards and task forces as noted above. I also dealt with tax issues, including mineral tax issues and the statewide property tax reappraisal.

My practice changed upon appointment to the Wyoming State Board of Equalization (SBOE) and the State Tax Commission. I was elected Chairman one month after my appointment in 1989 and served until the end of my six-year term. During my tenure, my practice also encompassed administrative law as the State Board heard contested cases and appeals, and promulgated administrative rules to interpret and administer valuation and tax laws. Attention was spent on new rules addressing valuation, equalization, exemptions, property tax deferral, agricultural land classification, and assessor education, among others.

My practice changed again in 1995 when I left government and joined the law firm of Davis & Cannon. As an associate, I worked on many matters in support of partners and some matters independently, as assigned. As a partner, I worked on most matters as either chief or sole counsel. My practice focused on administrative and governmental law, State and local taxation, corporate, environmental and natural resources, alternative dispute resolution, and general civil litigation.

My practice changed again in 2003 upon my husband's election to the office of Governor. I withdrew from the litigation and the administrative hearings involving the Department of Revenue's valuation of sour gas production from Exxon's LaBarge facility given the potential for an appearance of impropriety. I restricted any new matters taken so that my practice was no longer primarily focused on disputes involving administrative agencies. The law firm made the decision to not provide contract legal services to the State of Wyoming.

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

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00048 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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From 1980 to 1995, my client was the State of Wyoming. My primary areas of work in the Governor's Office were: 1) to represent the Governor on various councils and task forces; 2) to research legal issues as requested by the Governor; 3) to draft speeches; 4) to meet with constituents, research constituent matters and draft responses for the Governor's signature; 5) to research, develop and draft legislative initiatives; 6) to act as the Governor's lobbyist to the Wyoming State legislature; 7) to review and recommend action on rules submitted for the Governor's signature and filing; 8) to undertake assignments with the Wyoming Attorney General; 9) to assist in the drafting and development of Wyoming's surface coal mining program consistent with federal law and regulations; 10) to address criminal justice and clemency issues as requested; 11) to serve as a point of contact with federal agencies, particularly federal land management and resource agencies; 12) to serve as the point of contact on mineral tax, royalty and property tax matters. My primary areas of work on the Tax Commission and the State Board of Equalization was to adjudicate tax and drivers license disputes, to promulgate rules and regulations, to set tax policy, and to coordinate with the Department of Revenue Ad Valorem Tax Division and the various county assessors dealing with the interpretation and administration of valuation and tax laws.

Since 1995, in private practice, I have represented a broad range of clients including businesses, nonprofits, individuals, and local government officials. My practice has consisted of plaintiff and defense work. The focus of my practice has been civil litigation, primarily in the areas of real estate, administrative law, and defense of claims against law enforcement officers.

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 70% of my practice has been in litigation. Throughout my career, I have appeared in court and before administrative tribunals frequently, primarily for non-dispositive motions and scheduling matters, and for oral arguments in dispositive motions. The vast majority of evidentiary hearings have been before administrative tribunals.

i. Indicate the percentage of your practice in:
   1. federal courts; 40%
   2. state courts of record; 30%
   3. other courts; 0%
   4. administrative agencies 30%

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00049 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.

The total number of cases, including cases before administrative tribunals, which went to a final decision is 37. Of these cases, I was sole counsel in 20, chief counsel in 11, and associate counsel in 6.

i. What percentage of these trials were:
1. jury; 0%
2. non-jury. 100%

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.

With others, I represented the State of Wyoming as an amicus in *Commonwealth Edison Co. et al v. Montana et al*, 101 S.Ct. 2946, 453 U.S. 609, 69 L.Ed.2d 884, 49 U.S.L.W. 4957, 1981 S. Ct.42725. My only role was to assist with the amicus brief. No oral argument was made by Wyoming.

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. *BP America Production Co. v. Department of Revenue*, 130 P.3d 438 (Wyo. 2006). Wyoming State Board of Equalization, members Edmund J. Schmidt, Roberta Coates, and Sylvia Hackl. Third Judicial District, Judge Nena R. James. Wyoming Supreme

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00050 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Court, Justices William U. Hill, Michael Golden, Marilyn S. Kite, Barton R. Voigt and E. James Burke. 1999 – 2006.

I was the chief attorney in this case for an intervening party, the Board of County Commissioners for the County of Sweetwater, Wyoming. This case concerned production from wells operated by Petitioner BP America Production Co. (BP) that were located in Sweetwater County but were being reported for tax purposes by BP to Carbon County. Sweetwater County alerted the Respondent Department of Revenue (Department) of this discrepancy. The Department reallocated BP's production from Carbon to Sweetwater County. BP appealed to the Wyoming State Board of Equalization. Sweetwater County intervened during the State Board proceedings and participated fully in the contested case. The State Board ruled in favor of the Department and Sweetwater County. BP appealed the State Board's decision to district court. Sweetwater County was denied intervention by the district court. The district court affirmed the State Board's decision. The Wyoming Supreme Court affirmed the district court and State Board's decisions, ruling against all Taxpayer's claims of error, refusing to give retroactive application to a 1990 law, and affirming the State Board's use of "well-head" reporting for allocation of production.

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Counsel for Respondent:
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Providence, RI 02906
(401) 861-2044

Co-counsel for Sweetwater County:
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Davis & Cannon, LLP
422 West 26th St.
Cheyenne, WY 82001
(307) 634-3210

2. *Amoco Production Company v. Board of County Com'rs of County of Sweetwater*, 55 P.3d 1246 (Wyo. 2002). Third Judicial District, Judge John Troughton. Wyoming Supreme Court, Justices William U. Hill, Michael Golden, Marilyn S. Kite, Barton R. Voigt and E. James Burke. 1999 – 2006.

I was the chief attorney in this case for Plaintiff, the Board of County Commissioners for the County of Sweetwater, Wyoming. The case was a declaratory judgment and tax

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00051 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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collection case to collect the proportional share of ad valorem tax and interest owed by Amoco associated with revaluation actions taken by the Department of Revenue in 1992 and 1994 as to Amoco's undisputed ownership interest in oil and gas property for production years 1980 through 1985. Amoco raised numerous defenses against the collection action including res judicata, judicial estoppel, due process, and factual errors. Amoco also urged equitable considerations for the abatement of interest. The district court ruled for Sweetwater County on all issues, and this decision was appealed to and affirmed by the Wyoming Supreme Court.

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Cheyenne, WY 82001
(307) 634-3210

Counsel for Defendant:
Frederick W. Bradley
King, Krebs & Jergens
45th Floor, Capitol One Building
201 St. Charles Ave.
New Orleans, LA 70170
(504) 582-3800

Algirdas M. Liepas (local counsel)
1401 Airport Parkway, Suite 200
Cheyenne, WY 82001
(307) 635-3335

3. *In the Matter of the Application of Cheyenne Light, Fuel & Power Company,* Doc. Nos. 20003-EP-01-59 & 20003-ES-01-58. Wyoming Public Service Commission, Members Steve Ellenbecker, Steve Furtney, and Kristin H. Lee. 2001.

I was the sole attorney in these cases representing intervenors EchoStar Satellite Corporation (EchoStar) and Meridian Granite Company (Meridian). The case concerned an application by a local electric utility, Cheyenne Light, Fuel and Power, as well as an investigation by the Wyoming Public Service Commission on the issue of an electric cost rate increase of approximately $35,899,745.00, and on an extended electric cost deferral plan. My clients offered testimony on the catastrophic impact that the initial filing would have had on their businesses and discussed the comparative benefits of a negotiated stipulation. The negotiated stipulation saved EchoStar nearly $690,000 in electric costs the first year alone, and then over $700,000 each year thereafter for the next two years. Meridian saved nearly $100,000 in the first year, and then over $75,000 for the next two years. The stipulation included a commitment from Cheyenne Light for improved resource planning and disclosure processes, and for the establishment of a Working

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00052 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Group forum for large industrial and commercial customers. The Wyoming Public Service Commission approved the stipulation.

Counsel for Petitioner Cheyenne Light:
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Sundahl, Powers, Kapp & Martin
1725 Carey Ave.
Cheyenne, WY 82003-0328
(307) 632-6421

Counsel for Intervenor Coastal Chem, Inc:
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Hirst & Applegate
1720 Carey Ave., Suite 200
Cheyenne, WY 82003-1083
(307) 6322-0541

Counsel for Intervenor Frontier Refining Inc:
Thorvald D. Nelson
Holland & Hart
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4. *State ex rel. Dept. of Revenue v. Buggy Bath Unlimited, Inc.*, 18 P.3d 1182 (Wyo. 2001). State Board of Equalization, members Edmund J. Schmidt, Roberta A. Coates and Ron Arnold. Wyoming Supreme Court, Justices Larry Lehman, Michael Golden, Marilyn Kite, and Dan Spangler, D.J. 1999 – 2001.

I was the sole attorney in this case for Buggy Bath Unlimited, Inc. The case was preceded by an earlier declaratory judgment action I brought as counsel for RyCarDen, Inc., challenging a 1997 Wyoming Department of Revenue rule imposing sales tax on the sales price charged for washing motor vehicles (car-wash rule), *RyCarDen, Inc. v. State*, Civ. No. 76011-A (7th Jud. Dist.) (4 copies are provided of this unpublished decision). The *RyCarDen* case was heard and decided by the Honorable Daniel Spangler (retired). In *RyCarDen*, the district court invalidated the car wash rule as not constituting either the sale of a taxable service or the rental of personal property. This ruling was not appealed by the Department of Revenue and the rule was repealed. Based on the *RyCarDen* case, Buggy Bath filed sales tax refund requests for sales taxes erroneously reported and paid for the periods of January1996 through October 1998. The Department of Revenue denied the request, which was protested to the State Board of Equalization. Following a contested case hearing, the State Board interpreted W.S. § 39-6-410(c) prior to a 1997 amendment, to require erroneously collected sales tax be refunded to purchasers and, subsequent to the amendment, to require erroneously collected sales tax be refunded to vendors. The Department and Buggy Bath appealed to the district court for review of the decision, and the cases were certified to the Wyoming Supreme Court. The Supreme Court held that W.S. § 39-6-410(c), both pre-and post-1997 amendment, required all erroneously collected sales tax be refunded to the Taxpayer, Buggy Bath.

Counsel for Respondent:
Michael Dinnerstein
49 Lorimer Ave.
Providence, RI 02906
(401) 861-2044

5. *Petra Energy, Inc. v. Department of Revenue*, 6 P.3d 1267 (Wyo. 2000). Wyoming Board of Equalization, members Roberta A. Coates and Ron Arnold, and the Wyoming Supreme Court, Justices Larry Lehman, Richard Thomas, Richard J. Macy, Michael Golden, and William U. Hill. 1996 – 2001.

I was the sole attorney for Petitioners Petra Energy, Inc. and Asher Associates, Inc. The case concerned the interpretation and application of the Wyoming mineral tax lien laws. Petitioner requested release of liens filed by Respondent, Department of Revenue. The Department refused, and Taxpayers appealed to the State Board of Equalization. The State Board of Equalization concluded that the Department held a valid lien against Taxpayer's property for the unpaid severance taxes and the accrued interest, and waived penalties. Taxpayer appealed to the district court, which certified the case to the Wyoming Supreme Court. The Wyoming Supreme Court, in a case of first impression, concluded that the statutory lien applied to only the interests in the extracted minerals that

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00054 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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gave rise to the severance tax liability, and it did not apply to all interests in the mineral estate or to future production from the same deposits. The Court further found that the Department failed to perfect its lien, as filed, because it failed to attach the exhibits containing legal descriptions of the property. Therefore, the Department's lien did not encumber any real property or mining claim owned by Petra Energy.

Counsel for Respondent:
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Jay Jerde
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123 State Capitol
Cheyenne, WY 82002
(307) 777-6946

6. Snyder v. Lovercheck, 992 P.2d 1079 (Wyo. 1999) and companion case *Snyder v. Lovercheck*, 2001 WY 64, 27 P.3d 695 (Wyo. 2001). Eighth Judicial District, Judge Keith G. Kautz. Wyoming Supreme Court, Justices Larry Lehman, Richard Thomas, Richard J. Macy, Michael Golden, and William A. Taylor (1999), and Justices Larry Lehman, Michael Golden, William U. Hill, and Marilyn Kite, and Dan Spangler, D.J. (2001). 1997 – 2001

I was sole attorney for Defendant Ron Lovercheck. This case concerned a dispute over the purchase and sale of a wheat farm. Plaintiff filed suit alleging that two Lovercheck Defendants breached the contract for sale, that they negligently and fraudulently misrepresented the extent of the problem of rye growing within wheat fields purchased by Plaintiff, and that Plaintiff's real estate agent breached its duty to delete or explain certain provisions in the Contract. The district court granted summary judgment in favor of all Defendants and awarded fees and costs. Plaintiff appealed and the Wyoming Supreme Court upheld the district court decision on summary judgment, agreeing with the Lovercheck Defendants' argument that parties are free to contract for whatever terms they wished, and they chose to allocate the risk of loss to Plaintiff, thus precluding Plaintiffs' claims. The Court remanded the attorney fee issue and vacated a portion of the award on costs. In the second appeal dealing with costs, *Snyder v. Lovercheck*, 2001 WY 64, 27 P.3d 695 (Wyo. 2001), the Supreme Court affirmed the district court's decision and remanded a portion of the cost award addressing interest.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00055 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Counsel for Defendants O.W. and Margaret O. Lovercheck:
John J. Maier
110 West 22nd Ave.
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(307) 532-4933

Counsel for Defendant Hayek and the Property Exchange:
Stephen N. Sherard
Sherard, Sherard & Johnson
602 10th Street
Wheatland, WY 82201-0069
(307) 322-5050

7. *Exxon Corp. v. Board of County Com'rs, Sublette County*, 987 P.2d 158 (Wyo. 1999) and related case *In the Matter of the Appeal of Sublette County, Wyoming, of Illegal, Improper and Unequal Assessment of Mineral Production Owned and/or Extracted and Sold by Exxon*, Doc. Nos. 97-3 & 97-10 (2000), 2000 WL 966561 (Wyo.St.Bd.Eq.). Wyoming State Board of Equalization, members Roberta Coates and Ron Arnold. First Judicial District, Judge Nicholas Kalokathis. The Wyoming Supreme Court, Justices Larry Lehman, Richard Thomas, Richard J. Macy, Michael Golden, and William A. Taylor. 1996 – 2003.

I was a chief attorney for the Board of County Commissioners of the County of Sublette. The matter was initiated by Sublette County requesting an examination by the State Board of Equalization into alleged improper and unequal assessment practices by the Department of Revenue of Exxon's complex sour gas stream produced and processed at its LaBarge facility. The Department and Exxon then brought a declaratory judgment action in district court, seeking to prohibit the Board examination. The district court agreed with Sublette County's arguments, ruling that the State Board has jurisdiction to examine into allegations of improper or unequal assessment practices and that Sublette County could void an earlier settlement addressing valuation of the gas. The Department and Exxon appealed the decision to the Wyoming Supreme Court. The Wyoming Supreme Court affirmed the district court's ruling that the State Board has jurisdiction to examine into allegations of improper or unequal assessment practices, and reversed the ruling that the County could void the settlement. Following this ruling, Sublette County pursued its Petition for Board Examination. The State Board concluded the settlement agreement valuation scheme was not contrary to law, it produces a fair cash market value, and it was properly interpreted and administered by the Department. The State Board declined to consider Sublette County's allegations that the sale prices, amount of deductions and volumes reported to the Department were incorrect, advising that those

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issues must be pursued in the separate appeals that were pending. I worked with my co-counsel pursuing the multiple appeals until 2003, when I withdrew from the case following my husband's election to the office of Governor.

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8. *United States ex rel Heitz v. Campbell County Memorial Hospital*, Case No. 02-CV-1058-B (2005). United States District Court for the District of Wyoming, Judge Clarence A. Brimmer. 2003 – 2005.

I was a chief attorney in this case representing Campbell County Memorial Hospital. The case was brought by Plaintiff as a *qui tam* action under the False Claims Act (FCA), alleging inadequate protection of confidential mental health and substance abuse records stored in Defendant's medical record management software program. The United States declined intervention. Other claims in the case included a retaliatory discharge ("whistleblower") claim under the FCA and a first amendment violation of 42 U.S.C. §1983. The federal district court granted summary judgment for Defendants ruling that all billing error allegations were publicly disclosed without proof of original source, that Plaintiff did not put Defendants on notice of his intent to bring or assist in a FCA claim, and that all communications were within Plaintiff's primary job duties. On the §1983 claims, all official capacity claims were dismissed based on no evidence of a written policy supporting termination under the facts presented. On the individual capacity §1983 claims, the court found the speech at issue was not a matter of public concern and, if it were, the speech was not a substantial or motivating factor behind the termination. The case was appealed to the 10th Circuit Court of Appeals and was ultimately settled.

Counsel for Plaintiff:
Jeff Gosman

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9. *Milligan v. Laramie County, et al.*, Doc. No. 06 CV 002B. United States District Court for the District of Wyoming, Judge Clarence A. Brimmer. 2006 – 2007.

I was the sole attorney in this case representing the Laramie County Board of County Commissioners, Laramie County Sheriff Danny Glick, and Laramie County Detention Captain Bill Long in their official capacities. This case was an "inmate-on-inmate" assault which gave rise to 42 U.S.C. §1983 claims by Plaintiff that Defendants failed to take reasonable measures to insure his safety in violation of the Eighth and Fourteenth Amendments to the Constitution of the United States. The court granted summary judgment for Defendants concluding that Plaintiff failed to show that the jail's practice and procedure regarding staffing and inmate supervision presented an obvious deficiency or inadequacy in maintaining a safe environment. The decision was appealed to the 10th Circuit and was mediated and settled.

Counsel for Plaintiff:

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Counsel for Defendants (individual capacity and state law claims):
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10. *Polston et al v. Alsop et al*, Doc. No. 03-CV-022D. United States District Court for the District of Wyoming, Judge William F. Downes. 2003 – 2004.

I was the sole attorney in this case representing Defendants, Chief of Police Roger Allsop, Deputy Rick Lopez and Deputy Dave Stevens in their official capacities, and the Laramie County Board of County Commissioners. Plaintiff pled 42 U.S.C. §1983 civil rights claims against Defendants claiming that they entered their home, seized various persons, and conducted a search without a warrant or consent. The official capacity claims alleged inadequate official government policy and custom and a failure to train and supervise the deputies. The Court granted summary judgment against Plaintiffs' official capacity claims concluding Plaintiffs failed to identify any action taken by a policymaker or any action taken pursuant to official policy, practice or custom that caused the alleged constitutional violation. The Court also concluded Plaintiffs provided no evidence of inadequate training or supervision.

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Counsel for Defendants (individual capacity and state law claims:
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(307) 777-8904

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.)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00059 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Significant litigation which did not progress to trial or that has not fully concluded:

Hartman et al v. Questar Exploration and Production Company et al. I was an associate attorney of record for Defendant Arrowhead Resources (U.S.A.) Ltd. (Arrowhead), defending against Plaintiffs' claims that a 1954 contract creating a net profits interest in the terminated Pinedale Unit continues to burden leases held by Arrowhead and other Defendant oil and gas companies. Arrowhead argued that Plaintiffs cannot show proof of ownership, and sought declarations that the contract promised to pay net profits only on oil and gas operations on leases committed to the Pinedale Unit, which no longer applied to Arrowhead's leases because they contracted out of the Pinedale Unit in 1977. Among other defenses, Arrowhead also argued it did not breach the contract because, as a non-operator, it had no obligation to calculate or to pay the net profits interest, and the Wyoming Royalty Payment Act did not apply to non-operators. Questar and Wexpro settled and were dismissed. All remaining parties went to trial. The district court ruled generally for the Plaintiffs although certain claims were dismissed. All parties appealed the decision to the Wyoming Supreme Court, where it remains under deliberation. I made the oral argument for Arrowhead before the Supreme Court. This case is significant to me because of the number of parties, and the complex gas accounting at issue which involved multiple companies over a 50+ year period owning initially 62 leases in a terminated Unit that ultimately left 23 leases still in effect. It also is significant because of the variety of claims and defenses at issue.

Diet Drug Litigation. Davis & Cannon, LLP was retained as Wyoming counsel by Wyeth (formerly American Home Products) to represent it in the class action multi-district litigation brought by thousands of plaintiffs who claimed to have been injured by the diet drug known as "phen-fen." I worked as an associate in the post-settlement phase, during which we defended Wyeth against the claims of plaintiffs who had "opted out" of the class settlement. I took the depositions of numerous plaintiffs and worked extensively with expert cardiologists. Our assigned cases settled. This litigation was significant to me in three aspects: I had the opportunity to learn a great deal about a fascinating area of cardiology (most of the cases dealt with claims of valvular regurgitation), I was exposed to the logistical challenges of managing a large class action lawsuit, and I had the opportunity to work with and learn from many defense counsel across the country.

Hough v. Terex Corporation et al, Docket No. 22818 (6th Jud. Dist.). I was associate counsel in this case with Anthony Wendtland representing Terex Corporation. The facts behind this case were that a mine employee for the Buckskin Mine near Gillette drove a coal haul truck over the cab of the pickup truck in which Hough was sitting. Hough died from the accident. Terex designed and manufactured the coal haul truck that the mine employee was driving. Hough's widow filed a wrongful death complaint against the mine employee and Terex. The mine was immune from suit under Wyoming's worker compensation laws and constitutional provisions. Co-employees are only liable for willful, wanton or intentional acts. The complaint alleged willful, wanton, and/or intentional acts against the mine employees, and products liability against Terex based in part on allegations that Terex could have or should have offered to sell the haul truck to

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the mine with different mirrors or other visibility equipment. The case settled right before trial. This case was significant to me because of some novel intervening cause and comparative fault questions presented by the facts of the case, the law concerning co-employee liability within a worker compensation setting, and the challenge of drafting jury instructions and a jury verdict form capturing these issues.

In the Matter of the Arbitration of Claims and Disputes between CST Environmental Inc., a California Corporation and High Sierra Energy, LP, a Delaware Limited Partnership. I was chief counsel for High Sierra Energy, LP (HSE) in its defense against a lien and lawsuit filed by CST Environmental, Inc. (CST) for unpaid bills for work done for a MTBE dismantlement project at a chemical plant in Cheyenne, Wyoming. The matter was referred to arbitration where HSE answered and denied the claims for unpaid work, and also filed a large counterclaim against CST alleging breach of contract and damages for failing to exercise proper skill and judgment to dismantle, match mark, package, and store equipment from the STAR furnace area and the compressor building. The case required extensive depositions and expert assistance. It was ultimately settled after the second mediation and very close to the date of the arbitration. This arbitration was significant to me in the following aspects: It offered significant challenges given the number of witnesses and documents relating to a multi-million dollar project which was neither a typical construction nor a typical demolition project. It presented legal questions in the area of construction law which have not been decided in Wyoming. Finally, it offered the opportunity to learn from experts, arbitration panelists and the mediator, given their specialized knowledge and professionalism.
Hatfield v. State et al, Doc. No. 07CV109-D: At the time of settlement, this case involved twenty named defendants, "John Doe" defendants, and eight law firms. I was hired to represent the Board of County Commissioners of the County of Laramie, the Laramie County Detention Center, Sheriff Danny Glick in his official capacity, and Jennifer Hansen, a former mental health counselor at the jail. Plaintiff was an inmate in the jail. A few days after he came into the jail, Laramie County learned that he sprayed cleaning chemicals in his left eye resulting in serious self-injury. Hatfield went to the State Hospital and was discharged back to the jail. Hatfield then claimed he used cleaning chemicals again in his right eye, causing serious injury. Hatfield asserted a 42 U.S.C. §1983 "official capacity" claim against Laramie County and Sheriff Glick, arguing there were no effective policies and procedures to provide mental health treatment, the jail had a custom of making chemicals available at all times with little or no supervision, there was a failure to investigate the two incidents showing deliberate indifference, there were deficiencies in staffing and procedures for mental health care, there was a lack of appropriate supervision and training, and there was a violation by the Sheriff of policies which resulted in a failure to coordinate care and share records. Hatfield also asserted a 42 U.S.C. §1983 claim as well as a medical malpractice claim against Jennifer Hansen. Summary judgment motions were filed by all parties including the Plaintiff, which included separate motions relating to bankruptcy and to the Prison Litigation Reform Act. The case ultimately settled before a decision on any of the pending motions was rendered. This case was significant to me because of the extensive records, the number of defendants, the number of depositions, the number of experts, the number of claims and defenses present in the case, and the interesting aspects of mental

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00061 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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health care within a county jail facility in the context of inmate rights under the Eighth and Fourteenth Amendments to be free from cruel and unusual punishment.

Sublette County v. Exxon: I participated as co-counsel in filing numerous cases with the State Board of Equalization, working with experts, and reviewing written documents from Exxon associated with the valuation of their sour gas production from the LaBarge facility for ad valorem tax purposes. I decided to withdraw from the case prior to the end of discovery and the contested cases and litigation relating to the valuation of the gas stream for ad valorem tax purposes. This case was significant to me given the number of issues and defenses raised at all stages of the proceedings, the amount of documentation associated with the production and valuation issues, and the opportunity to work on a complex gas valuation matter.

Other significant legal activities:

City of Cheyenne: I worked with my law partners Kate Fox and John McKinley in the representation of the City of Cheyenne in the matter of the environmental cleanup of the "Wyott Site". From approximately 1951 to 1966, the City of Cheyenne operated a municipal landfill in the general vicinity of the Wyott site. Following closure, the City leased the land to the Wyott Corporation, which used it to manufacture stainless steel and aluminum products associated with the food service industry. In 1993, the Wyoming Department of Environmental Quality (DEQ) issued a notice of violation, citing rusted, corroded and leaking barrels containing hazardous wastes were stored at the plant. A corrective action plan was established with Minstar (the entity taking Wyott's place) that required investigation and remediation of the contamination. The City was sued by Minstar under the federal Superfund law for cost contribution, based on the claim that the landfill could be contributing to the contamination. The City settled and agreed to pay half the corrective action costs incurred at the site under a "PRP Agreement." I became involved with my partners to help minimize the City's exposure and end the PRP Agreement. This resulted in many years of study by environmental consultants, work with DEQ, review of decades of reports, and legal analysis to understand the best options available to the City. In 2000, DEQ approved a "monitored natural attenuation" remedy for the groundwater contamination which requires regular monitoring and reporting to assure the contamination is naturally reducing over a reasonable time. The cost contribution agreement was then terminated through a mediated settlement.

Wyoming Professional Assistance Program. I have been privileged to represent the Wyoming Professional Assistance Program ("WPAP") since 1998. WPAP is a non-profit corporation providing substance abuse assistance for healthcare professionals, lawyers and judges who have problems with alcoholism or chemical dependency. WPAP is not a treatment facility, but offers intervention, evaluation, referral and monitoring services, as well as guidance for reentry into the workplace, and relapse prevention, detection and reporting. It supports the vast majority of its work through contracts with Wyoming licensing boards, the State Bar, the State Supreme Court, and hospitals. Programs like WPAP's exist around the country and show an 85% to 90% success rate in helping clients achieve a chemically free and professionally productive lifestyle. I have worked

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00062 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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with the Board in many areas including contract negotiation and educational seminars, as well as in providing advice with relapse and reporting issues. This work has been significant to me by affording the opportunity to gain a better understanding of addiction, to help a very worthwhile and important program, and to work both outside and within disciplinary processes to protect the investment Wyoming has in its healthcare and legal professionals.

Lobbying activities:

Goshen Irrigation District: 1997. I worked with Goshen Irrigation District, a public entity organized to provide for the irrigation of, or to improve the existing water supply for lands within their defined district. The District sought to amend W.S. § 31-2-207 to specifically include irrigation districts as political subdivisions for motor vehicle registration exemption and "exempt" license plates. Four copies of the handouts given to the legislature are provided.

Sublette County Commissioners: 1999 & 2001. In general, I worked with my partner, John McKinley, for the Board of County Commissioners of Sublette County, Wyoming. We worked with representatives of the Wyoming Association of County Commissioners and various legislators, to change the law and allow county officers broader access to information, and full participation in cases and appeals concerning the valuation of mine products.

Wyoming Professional Assistance Program (WPAP): 1999 & 2005. In 1999, I worked for the Wyoming Professional Assistance Program, a non-profit corporation organized to assist professionals with substance abuse impairment through intervention, evaluation, referral for treatment and post-treatment monitoring. WPAP, with the Wyoming Board of Medicine, the Wyoming Medical Society, approached various Wyoming legislators requesting a bill to protect the confidentiality of WPAP's records and to provide WPAP with qualified immunity similar to state licensing agencies. The law was passed. In 2005, in response to additional interest, WPAP worked with the Wyoming State Bar on legislative amendments to expand the program beyond healthcare professionals to lawyers and judges. These amendments were passed. Four copies of the handouts given to the legislature are provided.

M&K Oil Company, Inc (M&K): 2000. I was hired by M&K, a Wyoming oil and gas company, to work with other interested groups and companies, and to join with M&K in speaking with the Wyoming delegation on S. 1950. S. 1950 was a bill that proposed allowing mining companies to have federal eminent domain power as a means to resolve potential conflicts between the owners of coal beds in the Powder River Basin and the owners of the coalbed methane imbedded within the coal. M&K's perspective on S. 1950 dealt more with conventional oil and gas. Their position was that the BLM had established a new administrative process to resolve leaseholder disputes which should be given a chance to work, that the bill was injurious to private property rights, that the bill could negatively affect optimal recovery of all energy resources, that the bill was specifically directed at a very focused area of the Powder River Basin in which M&K had

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00063 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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substantial assets, and that the proposed procedure in the bill might not result in establishing a fair market value amount for gas resources lost by intrusion of coal mining into an area before the oil and gas could be developed.

Guernsey Stone Company: 2001. I was hired by Guernsey Stone Company, a Wyoming company which mines sand, gravel, and other aggregate products. Guernsey Stone Company sought to oppose a bill that would have expanded a current mine permitting exemption allowing limited mining of aggregate materials, to allow the unpermitted mining of any non-metallic mineral except coal. I helped a representative of Guernsey Stone in arguing that passage of the bill would not be fair to those mine operators who have paid the price of permitting and compliance, and that the current exemption was not satisfactorily monitored by the Department of Environmental Quality to assure compliance and adequate bond levels. Four copies of the handout given to the legislature are provided.

Pershing Point Limited Partnership: 2001. I was hired by Pershing Point Limited Partnership, a company that owns Section 42 low income housing. Pershing Point Limited Partnership asked me to monitor a subsidized housing bill. I attended a legislative committee meeting but did not testify on the bill. The bill was indefinitely postponed in committee because of time considerations.

EchoStar Communications, Inc.: 2001 & 2006. In 2001, I was hired by EchoStar Communications, a company that delivers content and data to individuals and businesses by satellite and fiber optic networks. I was asked to review legislative activities, speak to legislators and testify before the House Revenue Committee on a bill under deliberation that would have changed the definition of "telecommunication" to potentially include television or radio programming, cable or satellite television, and data services through satellite. I monitored the legislative session in 2006 on essentially the same issue. Four copies of a handout given to the legislature are provided.

Wyoming Car Wash Association: 2001. I was hired by the Wyoming Car Wash Association, a group of self-service and automated car wash owners and operators. The Association asked me to monitor legislative interim work and the legislative session, talk to legislators and other lobbyists, and appear in legislative committees on legislative proposals that could affect the taxability of self-service car washes.

TSP Two, Inc: 2003, 2005 & 2006. I was hired by TSP Two, Inc., an architecture firm that also provides construction management services. I reviewed legislative activities, spoke to legislators and testified before legislative committees on bills under deliberation in the Wyoming State Legislature during these sessions which would have established alternative construction delivery systems for public entities. The lobbying work was primarily to assure legislators understood the comprehensive professional services as historically provided by TSP Two, Inc (a CMA delivery system) and to minimize unintended problems with any new legislation that might be enacted authorizing alternative construction delivery systems. Four copies of the handouts given to the legislature in 2004 are provided.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00064 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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YMCA of Wyoming: 2005 - current. I was hired by the YMCA of Wyoming, an association of nonprofit YMCA entities in Wyoming. I was asked to generally monitor legislative proposals that may affect the YMCA, without attending any legislative meetings or talking to any legislators. In 2005, I attended and testified in legislative committee meetings on bills designed to improve and expand Wyoming's childcare and early childhood education system consistent with the Governor's proposal in this area which was based on a comprehensive report from the Wyoming Children & Families Initiative. In addition, as a volunteer and in a pro bono capacity, I have attended Advocacy Days sponsored by the National YMCA's, along with Wyoming YMCA representatives, and have met with Wyoming's delegation to discuss issues of interest to the Wyoming YMCA and to provide information about Wyoming YMCA activities.

Sand Creek Development Services III, Inc. (Sand Creek): 2009. I was hired by Sand Creek, a corporation created to pursue innovative ranch conservation and development in lieu of conventional subdivision of a ranch. Sand Creek asked me to work with legislators interested in assisting creative "ranch-like" subdivision development, by working on a bill to change the law and allow land in excess of 35 acres lying within a platted subdivision to retain agricultural land classification for ad valorem tax purposes. Four copies of the handout given to the legislature are provided.

Sherd Lake, Inc. & Lake DeSmet Properties, LLC: 2009. I was hired by these related companies that are subdivision developers. These companies asked me to work with legislators on the issue of amending the law to specifically allow lots held for resale by subdivision developers to be valued under a method which recognizes the time period over which the lots will be sold in order to realize current market values for the lots for ad valorem tax purposes.

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 was a member of the Faculty of Law at the University of Wyoming, College of Law in 1977. I taught a seminar on federal environmental law. No syllabus is available. As a graduate student, I taught an Introduction to Philosophy Course in 1977. The course introduced students to critical thinking through a study of elementary logic, scientific method and philosophical problems of ethics, religion, epistemology and metaphysics. No syllabus is available.

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.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00065 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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I have a 401(k) with Davis & Cannon, LLP. This is 100% vested.

Pursuant to the 2005 Amended and Restated Partnership Agreement of Davis & Cannon, partnership income is distributed to partners from time to time, and the percentage of income which I currently receive is 15%. The Partnership Agreement further provides, at Article VIII, that terminated partners (with certain exceptions not applicable to me) shall receive payments for their share of the income account, net profits and capitol account, according to a formula which determines the departing partner's fractional share of the firm's assets as of the date immediately preceding the date of termination. Finally, I would also be eligible to receive the cash value of the life insurance policy which the firm maintains on me. I would request immediate payment of all income and payments due to me under the partnership agreement so as to bring to an end all financial ties with the firm as soon as possible.

I have retirement funds (contributions and interest) administered by the State of Wyoming. These funds are available for distribution on a monthly basis now, with distributions on a monthly basis required to begin by age 70 ½. No distributions are currently taken.

I expect future benefits from my membership in K&N, LLC, which is the entity that owns the building Davis & Cannon, LLP rents as its Cheyenne office. If nominated and appointed, I plan to sell this interest as soon as possible so as to bring to an end all financial ties with K&N, LLC.

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 continue as First Lady of Wyoming for the duration of my husband's term as Governor, and I would desire to continue as a member of the Leadership to Keep Children Alcohol Free and as a member of the National Governors' Spouses' Leadership Committee. I also would desire to continue as co-trustee of the Richard H. Castle and Nancy Dell Freudenthal TTEES U/A DTD 11/16/00 for the Richard Castle Living Trust. Richard H. Castle is my step-father. I serve in all these capacities without compensation. I have no plans, commitments or agreements to pursue any other 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

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00066 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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 Net Worth Statement and related worksheet.

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 interests during my initial service in the position to which I have been nominated would include family members, relatives, close friends, former clients, former law partners, or matters pending any law firm in which I was formerly associated. In addition, there is a potential conflict of interest if a matter were brought involving the Dick Castle Family Trust identified in response to question #6 above, as I am a co-trustee with my step-father, Dick Castle.

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 handle all matters involving actual or potential conflicts of interests through the careful and diligent application of the Code of Conduct for United States Judges as well as other relevant Canons and statutory provisions.

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 tried to meet this obligation by my service on non-profit boards as identified above. I attended as many meetings of these boards as possible. During private practice, I represented 11 financially disadvantaged individuals or nonprofit entities on legal matters without charge for my legal services. Forms of representation included consultation and advice, drafting powers of attorney and living wills, drafting correspondence to resolve disputes, drafting corporate organizational documents for nonprofit organizations, reviewing leases for nonprofits, and representation for settlement purposes in a personal injury lawsuit. This pro bono work did not involve appearing for clients in state or federal courts. I have also expressed a willingness to accept referrals from legal aid services.

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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.

There is no selection commission in Wyoming to recommend candidates for nomination to the federal courts.

My husband asked me if I would be interested in serving as federal district court judge. I told him I was. I did not know that he had submitted my name to the White House along with another attorney and a state district court judge until several months after the list was submitted.

In August, 2009 I was contacted by the Department of Justice regarding pre-nomination paperwork. Since then, I have had a number of conversations with the Department of Justice and the White House regarding that paperwork and the nominations process. I interviewed with staff from the White House and Department of Justice on October 5, 2009. My nomination was submitted to the Senate on December 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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Rev. 1/2008

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Freudenthal, Nancy D.	District of Wyoming	12/7/2009
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type** (check appropriate type) ☑ Nomination, Date 12/3/2009 ☐ Initial ☐ Annual ☐ Final **5b.** ☐ Amended Report	**6. Reporting Period** 01/01/2008 to 11/30/2009
District Judge - Nominee		
7. Chambers or Office Address Davis & Cannon, LLP 422 W. 26th Street Cheyenne, WY 82001	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.** Reviewing Officer_____ Date_____	

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

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

☐ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. Partner	Davis & Cannon, LLP
2. Member	K&N, LLC
3. President	Leadership to Keep Children Alcohol Free
4. Co-Chairman	Leadership to Keep Children Alcohol Free
5. Representative	Wyoming First Lady's Initiative
6. Officer	National Governors' Spouses Leadership Committe
7. Representative	Western States Arts Federation
8. Representative	Wyoming 2-1-1 Leadership Group
9. Director	Wyoming Governor's Residence Foundation
10Representative	UW Art Museum National Advisory Board
11Director	Wyoming Women's Foundation
12Representative	Wyoming Carbon Sequestration Working Group
13Trustee	Trust #1

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

☐ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1. 2003	State of Wyoming Retirement Plan with former employer, no control, agreement signed in 2003.
2. 2005	Amended & Restated Partnership Agreement with Davis & Cannon, LLP, no control. Will request immediate payment of amounts due.
3.	

FINANCIAL DISCLOSURE REPORT Page 3 of 8	Name of Person Reporting Freudenthal, Nancy D.	Date of Report 12/7/2009

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

A. Filer's Non-Investment Income

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

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2007	Davis & Cannon - gross partner distributions	$140,391.93
2. 2008	Davis & Cannon, LLP - gross partner distributions	$149,612.52
3. 2009	Davis & Cannon, LLP - gross partner distributions to 11/30/09	$103,677.05
4.		

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

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

DATE	SOURCE AND TYPE
1. 2008	State of Wyoming - salary
2. 2009	State of Wyoming - salary
3.	
4.	

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

☐ NONE *(No reportable reimbursements.)*

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. Exempt				
2.				
3.				
4.				
5.				

FINANCIAL DISCLOSURE REPORT Page 4 of 8	Name of Person Reporting	Date of Report
	Freudenthal, Nancy D.	12/7/2009

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

☐ NONE *(No reportable gifts.)*

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

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☐ NONE *(No reportable liabilities.)*

CREDITOR	DESCRIPTION	VALUE CODE
1. Security State Bank of Gillette	unsecured construction loan	J
2. American National Bank	contingent liability secured by assets owned by K&N, LLC	N
3. First Interstate Bank	contingent liability - unsecured line of credit for Davis & Cannon, LLP	J
4. Security State Bank of Gillette	contingent liability - mortgage on Iowa property	L
5.		

FINANCIAL DISCLOSURE REPORT
Page 5 of 8

Name of Person Reporting	Date of Report
Freudenthal, Nancy D.	12/7/2009

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. Credit Union cash accounts (reporter & spouse)	A	Interest	K	T	Exempt				
2. Ameriprise cash equivalents (reporter)	A	Int./Div.	K	T					
3. RVS Divers Equity Inc -A (reporter)	A	Int./Div.	J	T					
4. RVS Dividend Opp - A (reporter)	A	Int./Div.	J	T					
5. RiverSource Life Annuity (reporter)		None	M	T					
6. RiverSource Life Annuity IRA (reporter)		None	L	T					
7. RiverSource Life Annuity IRA (spouse)		None	N	T					
8. AEPGX Mutual Fund (401K) (reporter)	A	Int./Div.	K	T					
9. CABDX Mutual Fund (401(K) (reporter)	A	Int./Div.	J	T					
10. ADGAX Mutual Fund (401K) (reporter)	A	Int./Div.	J	T					
11. CWGIX Mutual Fund (401K) (reporter)	B	Int./Div.	K	T					
12. SEVAX Mutual Fund (401K) (reporter)	A	Int./Div.	J	T					
13. AGTHX Mutual Fund (401K) (reporter)	A	Int./Div.	K	T					
14. NEWFX Mutual Fund (401K) (reporter)	A	Int./Div.	K	T					
15. NYVTX Mutual Fund (401K) (reporter)	A	Int./Div.	K	T					
16. NFJ Closed End Mutual Fund (401K) (reporter)	A	Int./Div.	J	T					
17. GECapCorp Bonds (401K) (reporter)	A	Int./Div.	K	T					

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

FINANCIAL DISCLOSURE REPORT
Page 6 of 8

Name of Person Reporting	Date of Report
Freudenthal, Nancy D.	12/7/2009

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period: (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period: (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period: (1) Type (e.g., buy, sell, redemption)	D. (2) Date Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
18. Citigroup Capital X 173064205 (401K) (reporter)	A	Int./Div.	J	T					
19. Keycorp Cap V 49327J200 (401(K) (reporter)	A	Int./Div.	J	T					
20. Wyoming State Retirement (reporter)	D	Interest	M	T					
21. Wyoming State Retirement (spouse)	D	Interest	L	T					
22. Deferred Comp (spouse) BGI LifePath Ind. 2035 Fund M		None	M	T					
23. Rental property in Cheyenne, Laramie County, Wyoming	D	Rent	N	S					
24. K&N, LLC	C	Distribution	L	U					
25. Davis & Cannon, LLP		None	J	W					
26. Mass Mutual Life Insurance (spouse)	B	Dividend	M	T					
27. ING Life Insurance (spouse)	B	Interest	K	T					
28. Cash & Sweep Balance-Wells Fargo (401K) (reporter)	A	Interest	J	T					
29. Dependent cash account	A	Interest	J	T					
30.									
31.									

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

FINANCIAL DISCLOSURE REPORT Page 7 of 8	Name of Person Reporting Freudenthal, Nancy D.	Date of Report 12/7/2009

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

Part I. and VII. The assets associated with Trust #1 is not reported because I have no present right or interest in any income or principle. Any interest I may have to the income or principle associated with the assets in the Trust is contingent and the future is uncertain by survivorship.
Part VII, #23 - The value of the property located in Cheyenne, Laramie County, Wyoming, has been estimated using the Laramie County Assessor's 2009 estimate of fair market value of $365,441.

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting Freudenthal, Nancy D.	Date of Report 12/7/2009

IX. CERTIFICATION.

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

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

Signature Nancy Freudenthal

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		67	081	Notes payable to banks-secured		1	174
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		18	137	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		4	000
Due from relatives and friends		34	259	Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful		4	000	Real estate mortgages payable-add schedule			
Real estate owned-add schedule		360	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		200	000				
Cash value-life insurance		148	659				
Other assets itemize:							
K&N, LLC		58	000				
Retirement accounts (see attached schedule)	1	196	707				
				Total liabilities		515	751
				Net Worth	1	571	092
Total Assets	2	086	843	Total liabilities and net worth	2	086	843
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		497	377	Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you a defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax		13	200				
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
RVS Divers Equity Inc.	$ 9,032
RVS Dividend Opp – A	9,105
Total Listed Securities	$ 8,137
Real Estate Owned	
Personal residence	$ 360,000
Other Assets – Retirement accounts	
NDF's RiverSource Life Annuity (IRA)	$ 121,374
NDF's RiverSource Life Annuity IRA	96,907
NDF's 401(k)	281,381
NDF's WY Retirement Account	130,721
RiverSource IRA	363,210
Wyoming State Retirement Account	81,691
Spouse's Deferred Compensation	121,423
Total Listed Securities	$ 1,196,707

Detail of Contingent Liabilities	
Co-guarantor on mortgage for K&N, LLC (law office)	$394,775
Co-guarantor on line of credit for Davis & Cannon LLP	$ 8,531
Guarantor on mortgage for relative's house	$ 94,071

AFFIDAVIT

I, Nancy D. Freudenthal, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

12/4/09
(DATE)

(NAME)

LORI LOGEMANN NOTARY PUBLIC
COUNTY OF LARAMIE STATE OF WYOMING
MY COMMISSION EXPIRES MAY 23, 2011

(NOTARY)

STATEMENT OF HON. DENZIL PRICE MARSHALL, JR., NOMINATED TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF ARKANSAS

Judge MARSHALL. Good afternoon, Mr. Chairman, and thank you. I echo what Ms. Freudenthal said. I appreciate the Committee scheduling a hearing promptly and I know that involves your work, as well as the Ranking Member.

I thank my friends, Senator Pryor and Senator Lincoln, for those generous introductions, and the President for nominating me. I appreciate the Committee's time, all of the members here, for this important work.

I'm blessed to have my family and some dear friends with me here today. My wife, Polly, is here and our two daughters, Adison and Lara Harden. Two of my friends, my closest of friends and former law partners, Robert Jones and Jim Bradbury are here, as well as our dear friend, Kay Arnold.

Senator KAUFMAN. Thank you.

Judge Pearson.

[The biographical information of Denzil Price Marshall, Jr., follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Denzil Price Marshall Jr.

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

   United States District Judge for the Eastern District of Arkansas

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.

   Arkansas Court of Appeals
   Justice Building
   625 Marshall Street
   Little Rock, Arkansas 72201

   Additional Office:
   Craighead County Courthouse, Room 311
   511 South Main Street
   Jonesboro, Arkansas 72401

   Residence: Jonesboro, Arkansas

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

   1963; Memphis, 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.

   1986-1989, Harvard Law School; J.D. cum laude, 1989

   1985-86, The London School of Economics and Political Science; M.Sc., 1987

   1981-1985, Arkansas State University; B.A. cum laude, 1985

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.

2007-present
Arkansas Court of Appeals
Justice Building
625 Marshall Street
Little Rock, Arkansas 72201
Associate Judge

2008-present and in 2001
Arkansas State University
Department of Political Science
Wilson Hall
State University, Arkansas 72467
Adjunct Faculty

1997-present
Arkansas Supreme Court Committee on Civil Practice
Justice Building
625 Marshall Street
Little Rock, Arkansas 72201
Member (1997-2003) (unpaid)
Reporter (2004-present) (unpaid)

2001-2006
Journal of Appellate Practice and Process
William H. Bowen School of Law
University of Arkansas at Little Rock
1201 McMath Avenue
Little Rock, Arkansas 72202
Contributing Editor (unpaid)

1993-2006
Barrett & Deacon, A Professional Corporation
300 South Church Street, Third Floor
Jonesboro, Arkansas 72401
Principal (1995-2006)
Associate (1993-1995)

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1999-2007
Jonesboro Church Health Center, Inc.
500 Kitchen Street
Jonesboro, Arkansas 72401
Member, Board of Directors (1999-2007) (unpaid)
President (2005-2006) (unpaid)

1998-2000
Union Planters Bank of Northeast Arkansas
(now merged with Regions Bank)
2400 East Highland Drive
Jonesboro, Arkansas 72401
Member, Community Development Board

1997-2007
Arkansas Law Review, Inc.
Waterman Hall
Leflar Law Center
University of Arkansas
Fayetteville, Arkansas 72701
Member, Board of Directors (1997-2007) (unpaid)
Secretary (1998-1999) (unpaid)
President (1999-2003) (unpaid)

1978-1995 (intermittent association)
Boy Scouts of America
Eastern Arkansas Area Council
(now merged with Quapaw Area Council)
3220 Cantrell Road
Little Rock, Arkansas 72202
Member, Board of Directors (1991-1995) (unpaid)
Vice President for Program (1994-1995) (unpaid)
Pine Trail Reservation, Camp Cedar Valley, Staff Member (summers 1978-1983, 1985)

1992-1996
Northeast Arkansas Comprehensive Learning Center, Inc.
(now The Learning Center, Inc.)
2808 Fox Meadow Lane
Jonesboro, Arkansas 72404
Member, Board of Directors (1992-1996) (unpaid)
Vice-President (1993-1994) (unpaid)
President (1995-1996) (unpaid)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00082 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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1989, 1991-1993 (intermittent association)
Barrett, Wheatley, Smith & Deacon
(now known as Womack, Landis, Phelps & McNeill)
301 West Washington Avenue
Jonesboro, Arkansas 72401
Summer Law Clerk (1989)
Associate (1991-1993)

1989-1991
The Honorable Richard S. Arnold, Circuit Judge
United States Court of Appeals for the Eighth Circuit
208 U.S. Post Office and Courthouse
600 West Capitol Avenue
Little Rock, Arkansas 72201
Law Clerk

1990-1991
University of Arkansas at Little Rock
Political Science Department
2801 South University Avenue
Little Rock, Arkansas 72204
Adjunct Faculty

1990
Webster University
200 West Capitol Avenue
Little Rock, Arkansas 72201
Adjunct Faculty

1989
University of Arkansas at Little Rock School of Law
(now the William H. Bowen School of Law)
1201 McMath Avenue
Little Rock, Arkansas 72202
Research Assistant, Prof. John Pagan

1988
Foley, Hoag & Eliot
(now Foley, Hoag)
Seaport West
155 Seaport Boulevard
Boston, Massachusetts 02109
Summer Associate

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1987-1989
Harvard University
1350 Massachusetts Avenue
Cambridge, Massachusetts 02138
Research Assistant, Prof. William W. Fisher III
Research Assistant, Prof. Morton J. Horowitz
Teaching Fellow, Justice, Prof. Michael Sandel
Teaching Fellow, American Government, Prof. Paul Peterson and Prof. Morris Fiorina

1987
Arkansas Attorney General
Suite 1100, 323 Center Street
Little Rock, Arkansas 72201
Summer Law Clerk

1985-1986
The British Library of Political and Economic Science
London School of Economics and Political Science
Houghton Street, Aldwych
London, Great Britain, WC2A 1AE
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 not served in the military. I registered for Selective Service in 1981.

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.

Equal Access to Justice Panel, Outstanding Craighead County Volunteer, 2005
Golden Gavel for Exemplary Service, Arkansas Bar Association, 1998, 2002 & 2009
Best of CLE, Arkansas Bar Association, 1998, 2000, 2001, 2002, & 2005
Elcan Leadership Award, Young Lawyers Section, Arkansas Bar Association, 2001
Elected to Membership, The American Law Institute, 1999
40 under 40, Arkansas Business, 1998
Presidential Award of Excellence, Arkansas Bar Association, 1997
Wilson Outstanding Graduate Award, Arkansas State University, 1985
Distinguished Service Award, Arkansas State University, 1985
2nd Place, Future Farmers of America, National Extemporaneous Public Speaking, 1980
Craighead County Livestock Judging Champion, 1980
Eagle Scout, 1977

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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.

American Bar Association (1991-present)
Section on Litigation, Products Liability Committee (approx. 1994-present)
Section on Judicial Administration, Council of Appellate Lawyers (2001-present)
Committee on State Justice Initiatives (approx. 1998- approx. 1999)

American Law Institute (1999-present)
Members Consultative Group, Restatement (Third) of Restitution and Unjust Enrichment (1999-present)
Members Consultative Group, Restatement (Third) of Torts: General Principles and Physical and Emotional Harm (1999-present)

Arkansas Bar Association (1989-present)
Executive Director Search Committee (2006-2007)
Law-Related Education Committee (2006-2007)
Board of Governors, Chair (2003-2004)
Income Planning Taskforce, Chair (2003-2004)
Future Internet Presence Taskforce, Chair (2001-2003)
Professional Ethics Committee (2001-2003)
Professionalism Task Force (1999-2002)
Judicial Article Task Force (1999-2000)
Membership Dues Structure Task Force (1997-1998)
Executive Council, Parliamentarian (1997-1998)
Membership Development Committee, Chair (1997-1998)
Editorial Board for Handbooks (1997-2007)
Young Lawyers Section, Chair (1996-1997)
Appellate Practice Committee (1995-2001)
Civil Procedure Committee (1993-1997)
Young Lawyers Section Executive Council (1993-1996)
Uniform Laws Committee (1992-1996)

Association of the Bar of the U. S. Court of Appeals for the Eighth Circuit (2003-2006)

Arkansas Association of Defense Counsel (1992-2005)

Craighead County Bar Association (1991-2006)
Secretary-Treasurer (1994-1995)
Program Chair (1995-1998)

American Inns of Court, Judge William Overton Inn (2006-present)

Scribes, The American Society of Legal Writers (1996-present)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00085 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.

Arkansas (1990) (no lapses)

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States (1999)
United States Court of Appeals for the Eighth Circuit (1991)
United States Court of Appeals for the District of Columbia Circuit (2006)
United States District Court for the Eastern District of Arkansas (1991)
United States District Court for the Western District of Arkansas (1991)

No lapses in any of these memberships.

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.

Arkansas Bar Foundation (2004-present)
Jonesboro County Club (1998-2006)
Arkansas State University Alumni Association (2001-present)
Tau Kappa Epsilon International Fraternity, Beta Psi Chapter Alumni Association (approx. 1992-2009) (intermittent association)
Crowley's Ridge Girl Scout Council (approx. 2002-approx. 2003)
Board of Directors Nominating Committee
Council Performance Assessment Task Force
Camp Cedar Valley Alumni Association (approx. 1994-present)
Farm Bureau of Arkansas (1999-present)
United Way of Jonesboro (now Craighead County) (1991-1997)
Campaign Volunteer and Professional Division Chair
Jonesboro University Rotary Club (approx. 1992-approx. 1993)

I have supported our local public radio station, KASU, and the Arkansas Educational Television Network, AETN, and thus have been a "member" or "friend" of these institutions from time to time.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00086 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.

When I was in college at Arkansas State University, I joined the Beta Psi chapter of Tau Kappa Epsilon International Fraternity, an all-male group. There were approximately twenty such all-male or all-female fraternal organizations on the campus. In approximately 1992, I joined the alumni group that supports the T.K.E. chapter at A.S.U. and thereafter participated from time to time in various group activities. I resigned my membership in the alumni association in 2009 because I support the anti-discrimination principle embodied in the ABA's Commentary to its Code of Judicial Conduct.

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.

Newbern & Watkins, ARKANSAS CIVIL PRACTICE AND PROCEDURE (West 4th Ed. 2006) (co-authored 2008, 2009, and revised 2009 pocket parts)

HANDLING APPEALS IN ARKANSAS (Ark. Bar. Ass'n 1st ed. 1998, 2nd ed. 2007, supplements in 2008 and 2009) (authored chapter in both editions, was the editorial board chair for the second edition, and edited the supplements)

Preface, After The Bench Special Section, 8 The Journal Of Appellate Practice And Process 223 (2006)

RSA and Reading Statutes, 58 Arkansas Law Review 519 (2005)

From The Library: Learning From Professor Llewellyn, 7 Journal Of Appellate Practice And Process 171 (2005)

From The Library: A Time To Lose, 6 Journal Of Appellate Practice And Process 155 (2004)

From The Library: Advice From Justice Jackson, 5 Journal Of Appellate Practice And Process 215 (2003)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00087 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Model Appellant's Brief, available on the Arkansas Judiciary Website, www.courts.state.ar.us/aoc/forms (July 2003 and updated in 2008)

From The Library: Meet Mortimer Levitan, 4 Journal Of Appellate Practice And Process 303 (2002)

From The Library: Listening to John W. Davis, 3 Journal Of Appellate Practice And Process 743 (2001)

A Modest Proposal: Simplify Arkansas Appellate Practice By Abolishing The Abstracting Requirement, 53 Arkansas Law Review 37 (2000) (co-author)

Supper, Elephants, and Phil's Plan, 33 Arkansas Lawyer 12 (1998)

Clerking for RSA, 1 Journal Of Appellate Practice And Process 199 (1999)

A Careless Written Letter: Situating Amendments To The Federal Constitution, 51 Arkansas Law Review 95 (1998)

On Appeal: First Impressions, 32 Arkansas Lawyer 9 (1997)

On Appeal: Have You Got Your Addendum Ready?, 33 Arkansas Lawyer 12 (1998)

First Impressions: Young Lawyers Section Report, 32 Arkansas Lawyer 39 (1996)

On Appeal: Amicus Curiae, 31 Arkansas Lawyer 45 (1996)

Your Young Lawyer's Section Is Busy, 31 Arkansas Lawyer 41 (1996)

On Appeal: Resources For Arkansas Lawyers, 30 Arkansas Lawyer 41 (1996)

No Political Truth: The Federalist *And Justice Scalia On The Separation Of Powers*, 12 University of Arkansas At Little Rock Law Journal 245 (1990)

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 served on, chaired, and contributed to the reports of various Arkansas Bar Association Task Forces and Committees. I do not have copies of any of these reports. I served as the special co-editor of Judicial Independence and

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00088 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Accountability, 61 Law and Contemporary Problems No.3 (1998). This publication is a report of symposia sponsored by the American Bar Association. As Reporter for the Arkansas Supreme Court's Committee on Civil Practice, since 2004 I have been the primary author of civil court rule amendments and the reporter's notes that accompany them. These materials are integrated into the various court rules and are unavailable in stand-alone form.

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.

Remarks at the Presentation of Portraits of Judge Richard S. Arnold, 28 June 2002, 315 Federal Reporter 3d. XXXVII-XL, Little Rock, Arkansas

Remarks at the U.S. Court of Appeals for the Eighth Circuit's Memorial Session in honor of Judge Richard S. Arnold, 10 January 2005, 432 Federal Reporter 3d. XXXVIII-XL, St. Louis, Missouri

Remarks at Arkansas Court of Appeals Investiture Ceremony for myself and others, 19 March 2006, Little Rock, Arkansas

Remarks introducing the 2008 Equal Access to Justice Panel's Outstanding Craighead County Volunteer Lawyer on 26 February 2009. I encouraged pro bono service and summarized why the winner deserved thanks and recognition. I spoke without notes.

I gave speeches during the 2000 campaign supporting what is now Amendment 80 to the Arkansas Constitution, which merged law and equity, made judicial elections nonpartisan, and made other reforms. I do not recall the dates of any of these events, do not have copies of any resulting press reports, and do not have copies of my remarks or outlines of them.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00089 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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I made brief introductions for various candidates for public office at northeast Arkansas gatherings of supporters between 1991 and 2006. These candidates included Nate Coulter, U.S. Senator Mark Pryor, Chief Justice Jim Hannah, and Circuit Judge Collins Kilgore. I have no record or memory of exactly when these events occurred or exactly what I said.

Since 1989, I have made remarks and speeches at various non-law-related events in my hometown of Jonesboro, Arkansas. These events were funerals for friends, receptions for retiring teachers, civic club meetings, and banquets. I do not have copies of my outlines for any of these remarks except one, a 2008 banquet speech.

Since about 1994, I have spoken several times a year to bar groups and at continuing legal education seminars about law-related matters. I have also participated in Law Day and Constitution Day activities at public schools and Arkansas State University in Jonesboro, Arkansas. I have not kept a list of all these occasions or copies of all my outlines. After reviewing my old calendars, I have compiled the following list. I know of no press reports generated by any of these events. I have a DVD of the Bridging the Gap presentation that I did in 1998 for the Arkansas Bar Association.

2009

Bridging the Gap: Appellate Practice in Arkansas and the United States Court of Appeals for the Eighth Circuit, Arkansas Bar Association, 2 October 2009 (co-presenter)

Recent Rule Changes and Pending Proposal, Craighead County Bar Association, Jonesboro, Arkansas, 20 August 2009

Appellate Points of Interest: Recent Rule Changes and Best Practices, Arkansas Bar Association Annual Meeting, Hot Springs, Arkansas, 12 June 2009 (co-presenter)

Judge Richard S. Arnold—A Legacy of Justice on the Federal Bench: RSA's Judicial Temperament In Oral Argument, Arkansas Bar Association Annual Meeting, Hot Springs, Arkansas, 12 June 2009 (co-presenter)

Ethics in Pre-trial Practice, Arkansas State University-Craighead County Bar Association, 17 April 2009

2008

Bridging the Gap: Appellate Practice in Arkansas and the United States Court of Appeals for the Eighth Circuit, Arkansas Bar Association, November 2008 (co-presenter)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00090 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Appellate Practice: Recent Rule Changes and Court of Appeals' Operation, First Judicial Circuit CLE, Forrest City, Arkansas, 21 November 2008

Ethical Issues On Appeal, Arkansas Trial Lawyers Association Seminar, Little Rock, Arkansas, 26 September 2008

Summary Judgment Day: State and Federal, Overton Inn of Court, Little Rock, Arkansas, 16 September 2008 (co-presenter)

Argument As Character, Arkansas Association of Defense Counsel, Branson, Missouri, 1 August 2008

2007

Bridging the Gap: Appellate Practice in Arkansas and the United States Court of Appeals for the Eighth Circuit, Arkansas Bar Association, 2 November 2007 (co-presenter)

A Time to Lose, Panel Discussion on *Brown v. Board of Ed.*, Arkansas State University Constitution Day Celebration, 17 September 2007

Court of Appeals Operation and Proposed Rule Changes, Craighead County Bar Association, Jonesboro, Arkansas, 16 August 2007

Handling Appeals, Panel Discussion, Arkansas Bar Association Annual Meeting, Hot Springs, Arkansas, 8 June 2007

2006

Bridging the Gap: Appellate Practice in Arkansas and the United States Court of Appeals for the Eighth Circuit, Arkansas Bar Association, 3 November 2006 (co-presenter)

2005

Bridging the Gap: Appellate Practice in Arkansas and the United States Court of Appeals For The Eighth Circuit, Arkansas Bar Association, November 2005 (co-presenter)

Writing Briefs That Sing While They March, Arkansas Bar Association Best of CLE, 30 June 2005

Writing Briefs That Sing While They March, Arkansas Bar Association Annual Meeting, 10 June 2005

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00091 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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1994-2004

During the fall of each of these years, I participated in the Arkansas Bar Association's Bridging the Gap continuing legal education seminar for new lawyers. I was a co-presenter in a session usually entitled Appellate Practice in Arkansas and the United States Court of Appeals for the Eighth Circuit.

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 occasionally given short statements for newspaper stories about cases (in particular, the *Lake View* school-funding case) and law-related matters. I do not have copies of any such article. Between 1999 and 2005, I gave interviews to the local television station and local newspaper about the Jonesboro Church Health Center's annual peach sale. No copies of the clips or transcripts are available to me. I was interviewed by the local newspaper in 1997 about the Young Lawyers Section of the Arkansas Bar Association and again in 2006 about my election to the Arkansas Court of Appeals.

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 elected in May 2006 in a non-partisan election for Associate Judge, District 1, position 2, on the Arkansas Court of Appeals. I ran unopposed. I took office on 1 January 2007 and continue to serve. The Court of Appeals has jurisdiction over most civil, criminal, and administrative appeals in Arkansas.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? _0_____

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.

Elkins v. State, No. CACR09-1252, slip op., 2009 Ark. App. 808 (Dec. 2, 2009)
Hanna v. State, CACR09-121, slip op., 2009 Ark. App. 809 (Dec. 2, 2009)
Dunahue v. State, CACR09-360, slip op., 2009 Ark. App. 810 (Dec. 2, 2009)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00092 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Ludlam v. State, CACR09-707, slip op., 2009 Ark. App. 811 (Dec. 2, 2009)
Parker v. Stant, CA09-432, slip op., 2009 Ark. App. 812 (Dec. 2, 2009)
White v. State, 2009 WL 3855689 (Ark. App. 2009)
Valley v. Helena National Bank, 2009 WL 3855695 (Ark. App. 2009)
Reid v. Ark. Dep't. of Human Services, 2009 WL 3855700 (Ark. App. 2009)
SubTeachUSA, Inc. v. Director, Dep't. of Workforce Services, 2009 WL 3643442 (Ark. App. 2009) (dissenting opinion)
R.A.S. v. State, 2009 WL 3466015 (Ark. App. 2009)
McKenzie v. State, 2009 WL 3460714 (Ark. App. 2009)
Hodgson v. State, 2009 WL 3384437 (Ark. App. 2009)
QHG of Springdale, Inc. v. Archer, 2009 WL 3400690 (Ark. App. 2009)
Butcher v. Beatty, 2009 WL 3199151 (Ark. App. 2009)
Burdette v. City of Van Buren, 2009 WL 3153327 (Ark. App. 2009)
Carroll v. State, 2009 WL 3028984 (Ark. App. 2009)
Howell v. Ark. Dep't. of Human Services, 2009 WL 3028987 (Ark. App. 2009)
Maxey v. Kossover, 2009 WL 3029310 (Ark. App. 2009)
Furlow v. State, 2009 WL 2958337 (Ark. App. 2009)
Swaim v. State, 2009 WL 2777999 (Ark. App. 2009)
Wonder v. McLeese, 2009 WL 2778048 (Ark. App. 2009)
Elkins v. State, 2009 WL 1884592 (Ark. App. 2009)
Boen v. State, 2009 WL 1884633 (Ark. App. 2009)
Ark. Appraiser Licensing & Cert. Bd. v. Emig, 2009 WL 1812512 (Ark. App. 2009) (unpublished)
Radford v. State, 2009 WL 1812948 (Ark. App. 2009) (unpublished)
Harbin v. Ark. Dep't. of Health & Human Services, 2009 WL 1812948 (Ark. App. 2009) (unpublished)
Mckenzie v. State, 2009 WL 1708644 (Ark. App. 2009) (unpublished)
Costley v. Ark. Dep't. of Human Services, 2009 WL 1818269 (Ark. App. 2009) (unpublished)
Bronakowski v. Lindhurst, 2009 WL 1816165 (Ark. App. 2009) (concurring opinion)
Hudgens v. Martin, 2009 WL 1553631 (Ark. App. 2009) (unpublished)
Miles v. Manpower Temporary Services, 2009 WL 1553634 (Ark. App. 2009) (unpublished)
Burcham v. State, 2009 WL 1556565 (Ark. App. 2009) (unpublished)
Fitzgerald v. State, 2009 WL 1478259 (Ark. App. 2009) (unpublished)
Torrence v. State, 2009 WL 1362053 (Ark. App. 2009) (unpublished)
Tipps v. State, 2009 WL 1233469 (Ark. App. 2009) (unpublished)
Carter v. State, 2009 WL 1152008 (Ark. App. 2009)
Holifield v. Mullenax Financial & Tax Advisory Group, 2009 WL 1010886 (Ark. App. 2009) (dissenting opinion)
Sams v. Crabtree RV Center, Inc., 2009 WL 1152987 (Ark. App. 2009) (unpublished)
Jones v. Ark. Dep't. of Health & Human Services, 2009 WL 1154927 (Ark. App. 2009) (unpublished)

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Bruton v. Van Buren Pipe Corp., 2009 WL 1076828 (Ark. App.2009) (unpublished)
Hollins v. Hollins, 2009 WL 1085959 (Ark. App. 2009) (unpublished)
Southern Development Corp. v. Freightliner of New Hampshire, Inc., 2009 WL 1010871 (Ark. App. 2009)
Bean v. Global Geophysical Services, 2009 WL 1017711 (Ark. App. 2009) (unpublished)
Pender & Sons, Inc. v. Lee, 2009 WL 1010866 (Ark. App. 2009) (dissenting opinion)
Webb v. State, 2009 WL 942054 (Ark. App. 2009) (unpublished)
Lagasse v. Strait, 2009 WL 942327 (Ark. App. 2009) (unpublished)
Childress v. State, 2009 WL 863952 (Ark. App. 2009) (unpublished)
Thompson v. State, 2009 WL 700770 (Ark. App. 2009) (unpublished)
Holman v. Coker, 2009 WL 700824 (Ark. App. 2009) (unpublished)
Prows v. Ark. Dep't. of Human Services, 2009 WL 700886 (Ark. App. 2009) (unpublished)
Carter v. State, 2009 WL 702198 (Ark. App. 2009) (unpublished)
Mathis v. State, 2009 WL 613458 (2009) (Ark. App. 2009) (concurring opinion)
Griffin v. Ark. Dep't. of Health & Human Services, 2009 WL 613538 (Ark. App. 2009)
Guffey v. Counts, 2009 WL 613539 (Ark. App. 2009)
Deutscher v. Aluminum Co. of America, 2009 WL 539564 (Ark. App. 2009) (unpublished)
Care Manor of Baxter County v. Wheeler, 2009 WL 465064 (Ark. App. 2009)
Watkins v. State, 2009 WL 475960 (Ark. App. 2009) (unpublished)
Castillo v. State, 2009 WL 398210 (Ark. App. 2009) (unpublished)
Parkerson v. McMurtry, 2009 WL 331468 (Ark. App. 2009) (unpublished)
Superior Industries v. Shaddock, 2009 WL 331477 (Ark. App. 2009) (unpublished)
Ramey v. State, 2009 WL 344394 (Ark. App. 2009) (unpublished)
Flowers v. Ark. Dep't. of Health & Human Services, 2009 WL 263358 (Ark. App. 2009) (unpublished)
Montgomery v. Ark. Dep't. of Human Services, 2009 WL 195935 (Ark. App. 2009) (unpublished)
Bailey v. State, 2009 WL 88485 (Ark. App. 2009) (unpublished)
Banks v. State, 2009 WL 88600 (Ark. App. 2009) (unpublished)
Bedsole v. State, 104 Ark. App. 253, 290 S.W.3d 607 (2009)
Williams v. State, 2009 WL 33509 (Ark. App. 2009) (unpublished)
Contreras v. Ramos, 2008 WL 5264998 (Ark. App. 2008) (unpublished)
Jones v. Currens, 104 Ark. App. 187, 289 S.W.3d 506 (2008)
Goodsell v. State, 104 Ark. App. 183, 289 S.W.3d 534 (2008)
Hausman v. Throesch, 104 Ark. App. 113, 289 S.W.3d 493 (2008)
Ellis v. J.D. & Billy Hines Trucking, Inc., 104 Ark. App. 118, 289 S.W.3d 497 (2008)

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Costley v. Ark. Dep't. of Human Services, 2008 WL 5176759 (Ark. App. 2008) (unpublished)
Farmer v. Riddle, 2008 WL 5104246 (Ark. App. 2008) (unpublished)
Mitchner v. State, 2008 WL 4939626 (Ark. App. 2008) (unpublished)
Howard v. State, 2008 WL 4939742 (Ark. App. 2008) (unpublished)
Roberts v. Yang, 2008 WL 4946350 (Ark. App. 2008) (unpublished)
Watts v. Nelson Utility Construction, 2008 WL 4946430 (Ark. App. 2008) (unpublished)
Rogers v. Ark. Dep't. of Health & Human Services, 2008 WL 4874789 (Ark. App. 2008) (unpublished)
Holt v. Ark. Dep't. of Human Services, 2008 WL 4874818 (Ark. App. 2008) (unpublished)
Dixie Care 106 v. Gross, 2008 WL 4875939 (Ark. App. 2008) (unpublished)
Moody v. Addison Shoe Co., 104 Ark. App. 27, 289 S.W. 3d 115 (2008)
Rice v. State, 2008 WL 4736295 (Ark. App. 2008) (unpublished)
Battles v. Morehead, 103 Ark. App. 283, 288 S.W. 3d 693 (2008)
Brown v. Frank, 2008 WL 4724123 (Ark. App. 2008) (unpublished)
Pullam v. State, 2008 WL 4493430 (Ark. App. 2008) (unpublished)
Vela v. Djafazadeh, 2008 WL 4493603 (Ark. App. 2008) (unpublished)
Hicks v. Cook, 103 Ark. App. 207, 288 S.W.3d 244 (2008) (concurring opinion)
Sharp v. Keeler, 103 Ark. App. 233, 288 S.W.3d 256 (2008)
Rivers v. State, 2008 WL 4335959 (Ark. App. 2008) (unpublished)
Delamar v. State, 2008 WL 4336123 (Ark. App. 2008) (unpublished)
Shaw v. Dyson, 2008 WL 4336125 (Ark. App. 2008) (unpublished)
Carroll v. Carroll, 2008 WL 4286494 (Ark. App. 2008) (unpublished)
IH Services v. Perry, 2008 WL 4287338 (Ark. App. 2008) (unpublished)
Owens v. State, 2008 WL 4152870 (Ark. App. 2008) (unpublished)
Young v. Young, 2008 WL 4062081 (Ark. App. 2008) (unpublished)
Lackey v. Mays, 103 Ark. App. 70, 286 S.W.3d 193 (2008)
Hernandez v. State, 2008 WL 4006728 (Ark. App. 2008) (unpublished)
Warren v. State, 2008 WL 4006746 (Ark. App. 2008) (unpublished)
Bailey v. State, 2008 WL 2515484 (Ark. App. 2008) (unpublished)
Benedict v. Ark Dep't. of Human Services, 2008 WL 2515678 (Ark. App. 2008) (unpublished)
Sullivent v. Sullivent, 2008 WL 2444737 (Ark. App. 2008) (unpublished)
Vandiver v. Ark. Dep't. of Human Services, 2008 WL 2444808 (Ark. App. 2008) (unpublished)
Hite v. J & J Trucking, 2008 WL 244810 (Ark. App. 2008) (unpublished)
Patterson v. United Parcel Service, Inc., 102 Ark. App. 378, 285 S.W.3d 683 (2008)
Roberts v. Yang, 102 Ark. App. 384, 285 S.W.3d 689 (2008)
C. Bean Transport, Inc. v. Justice, 2008 WL 2268314 (Ark. App. 2008) (unpublished)
Pathfinder, Inc. v. Williams, 2008 WL 2268336 (Ark. App. 2008) (unpublished)
Diebold, Inc. v. Webber, 2008 WL 2268343 (Ark. App. 2008) (unpublished)
Henley v. Estate of Reddell, 2008 WL 2268352 (Ark. App. 2008) (unpublished)

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Ester v. State, 2008 WL 2192136 (Ark. App. 2008) (unpublished)
Fiore v. State, 2008 WL 2192150 (Ark. App. 2008) (unpublished)
Owen v. Quarles, 2008 WL 2192807 (Ark. App. 2008) (unpublished)
Matlock v. State, 2008 WL 1962032 (Ark. App. 2008) (unpublished)
Prows v. Ark. Dep't. of Health & Human Services, 102 Ark. App. 205, 283 S.W.3d 637 (2008)
Marshall v. State, 102 Ark. App. 175, 283 S.W.3d 597 (2008)
Warren V. Warren, 2008 WL 1812970 (Ark. App. 2008) (unpublished)
Reed v. State, 2008 WL 1812971 (Ark. App. 2008) (unpublished)
England v. Eaton, 102 Ark. App. 154, 283 S.W.3d 228 (2008)
Gehre v. Gehre, 2008 WL 1735120 (Ark. App. 2008) (unpublished)
RWR Properties, Inc. v. Mid-State Trust VIII, 102 Ark. App. 115, 282 S.W.3d 297 (2008)
Brown v. State, 2008 WL 946100 (Ark. App. 2008) (unpublished)
Polly v. State, 2008 WL 907632 (Ark. App. 2008) (unpublished)
Davitt v. State, 2008 WL 907635 (Ark. App. 2008) (unpublished)
Miller v. Cothran, 102 Ark. App. 61, 280 S.W.3d 580 (2008)
Lee v. State, 102 Ark. App. 23, 279 S.W.3d 496 (2008)
Central Moloney, Inc. v. Ringo, 2008 WL 651655 (Ark. App. 2008) (unpublished)
Thornton v. Thornton, 2008 WL 651695 (Ark. App. 2008) (unpublished)
Glenn Mechanical, Inc. v. South Ark. Regional Health Center, Inc., 101 Ark. App. 440, 278 S.W.3d 583 (2008)
Ryan's Family Steak Houses v. Miros, 2008 WL 588639 (Ark. App. 2008) (unpublished)
McCloud v. State, 2008 WL 509929 (Ark. App. 2008) (unpublished)
Taylor v. Landherr, 101 Ark. App. 279, 275 S.W.3d 656 (2008)
Stewart v. State, 2008 WL 376279 (Ark. App. 2008) (unpublished)
Mitchell v. Nettles, 2008 WL 376323 (Ark. App. 2008) (unpublished)
Clouse v. Tu, 101 Ark. App. 260, 274 S.W.3d 344 (2008)
Downum v. Downum, 101 Ark. App. 243, 274 S.W.3d 349 (2008)
Duke v. Shinpaugh, 101 Ark. App. 331, 276 S.W.3d 713 (2008) (concurring opinion)
Brewton v. State, 2008 WL 316170 (Ark. App. 2008) (unpublished)
Nichols v. Ark State Highway & Transportation Dep't., 2008 WL 241285 (Ark. App. 2008) (unpublished)
Roberts v. Green Bay Packaging, Inc., 101 Ark. App. 160, 272 S.W.3d 125 (2008)
McCain v. State, 2008 WL 186190 (Ark. App. 2008) (unpublished)
Leon's Catfish & Restaurant, Inc. v. Hosto & Buchan, P.L.L.C., 2008 WL 142513 (Ark. App. 2008) (unpublished)
Sales v. State, 2008 WL 142574 (Ark. App. 2008) (unpublished)
Melton v. State, 2008 WL 82239 (Ark. App. 2008) (unpublished)
Steak House v. Weigel, 101 Ark. App. 81, 270 S.W.3d 365 (2007)
Bull Motor Co. v. Murphy, 101 Ark. App. 33, 270 S.W.3d 350 (2007) (dissenting opinion)
Roberts v. United Water, Inc., 2007 Wl 4415388 (Ark. App. 2007) (unpublished)

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Green v. State, 2007 WL 4415458 (Ark. App. 2007) (unpublished)
Crow v. State, 2007 WL 4327781 (Ark. App. 2007) (unpublished)
Stouffer v. T&L Janitorial, Inc., 2007 WL 4327957 (Ark. App. 2007) (unpublished)
Lackey v. Mays, 100 Ark. App. 386, 269 S.W.3d 397 (2007)
Miller v. State, 100 Ark. App. 391, 269 S.W.3d 400 (2007)
Tate v. Director, Dep't. of Workforce Services, 100 Ark. App. 394, 269 S.W.3d 402 (2007)
Stephens v. State, 2007 WL 4248299 (Ark. App. 2007) (unpublished)
Brunetti v. Brunetti, 2007 WL 4180959 (Ark. App. 2007) (unpublished)
Bledsoe v. Director, Dep't. of Workforce Services, 2007 WL 3358496 (Ark. App. 2007) (unpublished)
Presley v. Brown, 2007 WL 3276987 (Ark. App. 2007) (unpublished)
Aubrey v. Aubrey, 2007 WL 3276988 (Ark. App. 2007) (unpublished)
Stokan v. Estate of Cain, 100 Ark. App. 216, 266 S.W.3d 210 (2007)
King v. State, 100 Ark. App. 208, 266 S.W.3d 205 (2007)
Frawley v. Wood, 2007 WL 3171948 (Ark. App. 2007) (unpublished)
Crossno v. State, 2007 WL 3172142 (Ark. App. 2007) (unpublished)
Misenheimer v. State, 100 Ark. App. 189, 265 S.W.3d 764 (2007)
Forte v. State, 2007 WL 3088273 (Ark. App. 2007) (unpublished)
Rymor Builders, Inc. v. Tanglewood Plumbing Co., Inc., 100 Ark. App. 141, 265 S.W.3d 151 (2007)
Texarkana School District v. Conner, 100 Ark. App. 100, 264 S.W.3d 579 (2007)
Lieblong v. State, 2007 WL 2852614 (Ark. App. 2007) (unpublished)
Shelnut v. State, 2007 WL 2782540 (Ark. App. 2007) (unpublished)
Lyons v. Ark. Dep't. of Health & Human Services, 2007 WL 2713466 (Ark. App. 2007) (unpublished)
Fitzgerald v. State, 2007 WL 2713585 (Ark. App. 2007) (unpublished)
McAlmont Suburban Sewer Improvement District No. 242 v. McCain-Hwy. 161, LLC, 99 Ark. App. 431, 262 S.W.3d 185 (2007)
Wardlow v. State, 2007 WL 2660248 (Ark. App. 2007) (unpublished)
Roehm v. Ark. Dep't. of Health & Human Services, 2007 WL 2482130 (Ark. App. 2007) (unpublished)
McFarland v. EZ Loader Boat Trailer, 2007 WL 2482146 (Ark. App. 2007) (unpublished)
Hendrix v. Walters, 2007 WL 2429526 (Ark. App. 2007) (unpublished)
Donahue v. Arkansas Dep't. of Health & Human Services, 99 Ark. App. 330, 260 S.W.3d 334 (2007)
Thomas v. State, 2007 WL 1831776 (Ark. App. 27 June 2007) (unpublished)
Jim Ray, Inc, v. Williams, 99 Ark, App. 315, 260 S.W.3d 307 (2007)
Cox v. Cedar Creek, 2007 WL 1765548 (Ark. App. 2007) (unpublished)
Waltz v. Golden, 2007 WL 1765554 (Ark. App. 2007) (unpublished)
Sellars v. St. Vincent Health Services, 2007 WL 1765557 (Ark. App. 2007) (unpublished)
Parkerson v. McMurtrey, 2007 WL 1643216 (Ark. App. 2007) (unpublished)
Foote v. State, 2007 WL 1643240 (Ark. App. 2007) (unpublished)

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Porter v. State, 99 Ark. App. 137, 257 S.W.3d 919 (2007)
Owen v. Quarles, 2007 WL 1556289 (Ark. App. 2007) (unpublished)
Thacker v. State, 2007 WL 1430043 (Ark. App. 2007) (unpublished)
Rhodes v. State, 2007 WL 1430048 (Ark. App. 2007) (unpublished)
McKinney v. State, 2007 WL 1347656 (Ark. App. 2007) (unpublished)
Cox v. Cedar Creek, 2007 WL 1347661 (Ark. App. 2007) (unpublished)
Hill v. White River Health Systems, Inc., 2007 WL 1277913 (Ark. App. 2007) (unpublished)
Aguilar v. Galdamez, 2007 WL 1277920 (Ark. App. 2007) (unpublished)
White v. State, 2007 WL 1207364 (Ark. App. 2007) (unpublished)
Scott v. State, 2007 WL 1207366 (Ark. App. 2007) (unpublished)
Staab v. Mainard, 2007 WL 1207374 (Ark. App. 2007) (unpublished)
Pollard v. Newman, 2007 WL 1207383 (Ark. App. 2007) (unpublished)
Brandt v. Willhite, 98 Ark. App. 350, 255 S.W.3d 491 (2007)
First Ark. Bail Bonds, Inc. v. State, 2007 WL 987806 (Ark. App. 2007)
Coombs v. Hot Springs Village Property Owners Association, 98 Ark. App. 226, 254 S.W.3d 5 (2007)
Bolden v. State, 2007 WL 842068 (Ark. App. 2007) (unpublished)
Hooder v. Life of the South Insurance Co., 2007 WL 842072 (Ark. App. 2007) (unpublished)
Oliver v. State, 2007 WL 757540 (Ark. App. 2007)(unpublished)
Ganter v. Ark. Dep't. of Health & Human Services, 2007 WL 678551 (Ark. App. 2007) (unpublished)
Clemons v. State, 2007 WL 701047 (Ark. App. 2007) (unpublished)
Bishop v. Bishop, 98 Ark. App. 111, 250 S.W.3d 570 (2007)
Brady v. Perdue, 2007 WL 521806 (Ark. App. 2007) (unpublished)
Weston v. State, 2007 WL 521815 (Ark. App. 2007) (unpublished)
Douglas v. State, 2007 WL 466811 (Ark. App. 2007) (unpublished)
White v. State, 2007 WL 466830 (Ark. App. 2007) (unpublished)
JB Wayne, Inc. v. Hot Springs Village Property Owners Association, 97 Ark. App. 288, 248 S.W.3d 503 (2007)
Freeman v. State, 2007 WL 266434 (Ark. App. 2007) (unpublished)

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).

As an appellate judge, I have not presided over trials. Our court does most of its work in three-judge panels. From time to time, I have handled the administrative duties of a presiding judge for the panel, such as recording votes and in one or two instances presiding over an oral argument.

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.

1. *Carter v. State*, 2009 WL 1152008 (Ark. App. 2009) (forfeiture procedure and due process). Counsel for Carter was Billy Bob Webb, P.O. Box 682, Springdale, Arkansas 72765, 479.751.9100. Counsel for the State was Eileen W. Harrison, Assistant Attorney General, 323 Center Street, Suite 200, Little Rock, Arkansas 72201, 501.682.2007.

2. *Jones v. Currens*, 104 Ark. App. 187, 289 S.W.3d 506 (2008) (excited-utterance exception to the hearsay rule). Counsel for Jones were Jerry J. Sallings and Gary D. Marts, Jr., of Wright, Lindsey & Jennings, 200 West Capitol Avenue #2300, Little Rock, Arkansas 72201, 501.371.0808. Counsel for Currens was Chuck Gibson of the Gibson Law Office, P.O. Box 510, Dermott, Arkansas 71638, 870.538.3288.

3. *Battles v. Morehead*, 103 Ark. App. 283, 288 S.W. 3d 693 (2008) (constructive fraud in discovery). Counsel for Battles were Troy A. Price, Kathryn A. Pryor, Regina A. Young, and Gary D. Marts, Jr., of Wright, Lindsey & Jennings, 200 West Capitol Avenue #2300, Little Rock, Arkansas 72201, 501.378.0808. Counsel for Morehead was John Doyle Nalley, P.O. Box 606, Benton, Arkansas 72018, 501.315.7491.

4. *Patterson v. United Parcel Service*, 102 Ark. App. 378, 285 S.W.3d 683 (2008) (judicial notice of federal law). Counsel for Patterson was David S. Mitchell, David S. Mitchell, P.A., 1120 North Street, Little Rock, Arkansas 72201, 501.663.3322. Counsel for UPS were Mariam T. Hopkins and Jarrod Russell of Anderson, Murphy & Hopkins LLP, 400 West Capitol Avenue #2470, Little Rock, Arkansas 72201, 501.372.1887.

5. *Marshall v. State*, 102 Ark. App. 175, 283 S.W.3d 597 (2008) (eleven-person jury). Counsel for Marshall was Leah Lanford, Christian Legal Service, 515 Oak Street, Suite B, Conway, Arkansas 72032, 501.327.5800. Counsel for the State was Vada Berger, Assistant Attorney General, 323 Center Street, Suite 200, Little Rock, Arkansas 72201, 501.682.1052.

6. *Miller v. Cothran*, 102 Ark, App. 61, 280 S.W.3d 580 (2008) (inter-vivos gifts). Counsel for Miller was T. David Carruth, P.O. Box 91, Clarendon, Arkansas 72029, 870.747.3839. Counsel for Cothran was Charles E. Davis, Davis & Associates, P.A., P.O. Drawer 6, Springdale, Arkansas 72765, 479.751.3314.

7. *Lee v. State*, 102 Ark. App. 23, 279 S.W.3d 496 (2008) (confrontation clause). Counsel for Lee was Constance Grayson, P.O. Box 1328, West Memphis, Arkansas 72303, 870.735.4545. Counsel for the State was Nicana C. Sherman,

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00099 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Assistant Attorney General, 323 Center Street, Suite 200, Little Rock, Arkansas, 72201, 501.682.5313.

8. *Taylor v. Landherr*, 101 Ark. App. 279, 275 S.W.3d 656 (2008) (revival and substitution on appeal). Counsel for Taylor was Charles Karr, Law Offices of Charles Karr, P.A., 602 Garrison Avenue, #650, Fort Smith, Arkansas 72901, 479.782.4028. Counsel for Landherr were Walter B. Cox and James R. Estes of Cox, Cox & Estes, PLLC, P.O. Box 878, Fayetteville, Arkansas 72702, 479.251.7900. Counsel for Sparks Medical Center were Wayne Harris and Stephanie Harper of Warner, Smith & Harris, PLC, P.O. Box 1626, Fort Smith, Arkansas 72902, 479.782.6041.

9. *Clouse v. Tu*, 101 Ark. App. 260, 274 S.W.3d 344 (2008) (service, commencement, and limitations). Counsel for Clouse were Constance G. Clark and Sidney P. Davis, Jr., of Davis, Wright, Clark, Butt & Carithers, PLC, P.O. Box 1688, Fayetteville, Arkansas 72702, 479.521.7600. Counsel for Tu was Phillip L. Votaw, Carr & Carr, Suite D, 14 North 3rd Street, Fort Smith, Arkansas 72901, 479.649.0100.

10. *Jim Ray, Inc. v. Williams*, 99 Ark. App. 315, 260 S.W.3d 307 (2007) (punitive damages). Counsel for Jim Ray was Thomas D. Stockland, Stockland & Trantham, P.A., 157 East Colt Drive, Suite One, Fayetteville, Arkansas 72703, 479.521.7130. Counsel for Williams were Troy Gaston and Bill Walters of Walters, Hamby and Gaston, 1405 West Center, 3rd Floor, Greenwood, Arkansas 72936, 479.996.2122.

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

None insofar as I know.

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 written two hundred and four majority decisions for the Court of Appeals. One has been reversed on review by the Arkansas Supreme Court. *Texarkana School District v. Conner*, 100 Ark. App. 100, 264 S.W.3d 579 (2007). Conner, a school custodian, was injured badly when he unlocked an old gate and it fell on him. He was going a back way to his preferred parking place after returning from a personal errand off campus during lunch. Our Court held that, because he was not advancing his employer's interests at the time of the accident, he was not entitled to workers-compensation benefits. The Supreme Court held that he was performing employment services, and was entitled to benefits, because he was on

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00100 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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call during lunch and was on campus and returning to work when the accident occurred. 373 Ark. 372, 284 S.W.3d 57 (2007).

I concurred in the judgment, but did not join the majority opinion of the Court of Appeals sitting en banc in *Duke v. Shinpaugh*, 101 Ark. App. 331, 276 S.W. 3d 713 (2008). The Court of Appeals affirmed in part and reversed and remanded in part in this undue-influence case involving real property. The Supreme Court granted review. The Court affirmed without reaching the merits because it held that the appellant had not challenged an alternative basis for the circuit court's decision. 375 Ark. 358, 2009 WL 102714 (2009).

I wrote the majority opinion for the Court of Appeals panel in *Guffey v. Counts*, 2009 WL 613539 (Ark. App. 2009), a child-support case. The panel affirmed based on the voluntariness of the father's payments and an estoppel analysis. On review, the Supreme Court affirmed on voluntariness without mentioning estoppel or our Court's analysis on that issue. 2009 WL 2971752 (Ark. 2009).

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.

Approximately 75% of Court of Appeals opinions during my tenure have been designated unpublished. I have written two hundred and four majority opinions, four concurrences, and four dissents. Approximately 70% of my opinions have been designated unpublished. All unpublished opinions are available on the date filed on the Arkansas Judiciary website (www.courts.arkansas.gov). The Reporter of Decisions also sends all these opinions to West, Lexis, and other companies that maintain electronic databases. The Arkansas Supreme Court abandoned unpublished opinions for our appellate courts effective 1 July 2009. All decisions filed after that date are precedent.

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.

Bronakowski v. Lindhurst, 2009 WL1816165 (Ark. App. 2009) (punitive damages) (concurring opinion)
Carter v. State, 2009 WL 1152008 (Ark. App. 2009) (due process)
Mathis v. State, 2009 WL 613458 (Ark. App. 2009) (due process) (concurring opinion)
Bedsole v. State, 2009 WL 33312 (Ark. App. 2009) (fourth amendment)
Lee v. State, 102 Ark. App.23, 279 S.W.3d 496 (2008) (confrontation clause)
Jim Ray, Inc. v. Williams, 99 Ark. App. 315, 260 S.W.3d 307 (2007) (punitive damages)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00101 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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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.

I have endeavored to follow Canon 2 of the Arkansas Code of Judicial Conduct, and in particular Rule 2.7 (Responsibility to Decide) and Rule 2.11 (Disqualification). I have participated in the Arkansas Court of Appeals' automatic recusal system and have recused sua sponte in some other cases. No one has ever suggested that I recuse in any case.

I have supplied a recusal list, which I have periodically revised, to our Court's Chief Staff Attorney for purposes of our Court's automatic recusal system. The list contains litigants whose cases I should not hear. These litigants include: entities in which I have a financial interest or a longstanding business relationship, family members and close friends, clients or former clients of my law firm with whom I had a long-term relationship or for whom I was working with when I left the firm at the end of 2006. I have recused in all cases in which my former firm is involved, and will continue to do so for several more years. I have recused in all cases where lawyers who represented me or family members are involved. I have recused in cases involving any circuit judge while any matter involving any family member is pending before that judge.

My election to the Court of Appeals was coordinated by a committee of lawyers and citizens. The committee sponsored receptions and collected donations to pay

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00102 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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campaign expenses. I screened myself from information about who contributed to the committee's campaign fund. For two years after my election, I recused in all cases in which any committee member or other prominent campaign supporter was involved in any way.

Periodically a member of our court's central staff circulates a list of cases (including counsel) ready for submission. My staff and I review each such list carefully and make sure that I have recused in all matters implicating any of the concerns that I have described.

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 do not recall ever being a member of any political party. Before I became a judge, I volunteered in several local and state non-judicial campaigns---handing out literature, introducing the candidate around town, helping plan meet-and-greets, and mailing postcards. These candidates included Nate Coulter, U.S. Senator Mark Pryor, and others. I do not remember ever having any kind of position or role other than volunteer in these campaigns.

I have served as a member of several committees seeking to elect someone to the Arkansas Supreme Court. I remember being on such committees for Chief Justice Jim Hannah, Justice Annabelle Clinton Imber, Justice Robert Brown, and Circuit Judge Collins Kilgore. I introduced the candidates around my home town, took them by the newspaper and TV station for interviews, and sometimes coordinated placing signs. I recall helping plan receptions for Hannah and Kilgore.

16. **Legal Career:** Answer each part separately.

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

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00103 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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 1989-1991, I clerked for Judge Richard Sheppard Arnold, United States Court of Appeals for the Eighth Circuit.

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

I have never 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.

Barrett & Deacon, A Professional Corporation
300 South Church Street, Third Floor
Jonesboro, Arkansas 72401
Associate (1993-1995); Principal (1995-2006)

Barrett, Wheatley, Smith & Deacon
(now Womack, Landis, Phelps, and McNeill)
300 West Washington Avenue
Jonesboro, Arkansas 72401
Summer Law Clerk (1989); (Associate 1991-1993)

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 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.

I had a general law practice emphasizing civil litigation throughout my fifteen years at the bar.

Between 1991 and 1995, when I was an associate, I handled insurance-defense cases of various kinds, did probate work, drafted simple wills, and did some real estate transactions. I drafted and argued motions for summary judgment, motions in limine, jury instructions, and post-trial motions in cases being litigated by senior lawyers in the firm. I also did a few state and federal appeals.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00104 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Between 1995 and 2006, approximately two-thirds of my practice involved litigating cases in federal and state court. I handled commercial litigation of various sorts, will contests, ERISA cases, an Arkansas Teacher Fair Dismissal Act case or two, Title VII and other civil rights cases, and tort cases of many kinds. I also worked on several Superfund cases, one for more than a decade.

Between 1995 and 2006, I also maintained an office practice. I represented the local newspaper, a school district, and a school for disabled children. These clients generated soup-to-nuts issues---some litigation, but mostly counseling and drafting on employment, contract, and property matters.

In 1995, around the time that I became a principal in Barrett & Deacon, I began emphasizing appellate work. This practice grew to about 50% of my litigation work. When I stopped practicing law in 2006, I had handled approximately 100 federal and state appeals. These cases dealt with a range of issues: abstention, arbitration, attorney's fees, causation, contracts, damages, jurisdiction, environmental law, ERISA, expert witnesses, injunctions, jury misconduct, pleading, and statutory interpretation in many contexts.

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

I handled cases for individuals, the insureds of various insurance companies and some times the insurance company itself in declaratory-judgment cases, and businesses of all kinds. I represented school teachers and a school district, doctors and one of our local hospitals, employers small and large, employees, estates, our local newspaper, farmers, banks, prisoners, and railroads.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

One-half to two-thirds of my practice has always involved litigation in trial and appellate courts. I have appeared in court frequently throughout my career.

i. Indicate the percentage of your practice in:
   1. federal courts; 50%
   2. state courts of record; 50%
   3. other courts;
   4. administrative agencies

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00105 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.

As best as I can remember, I tried ten cases to verdict or judgment. I was associate counsel in two, chief counsel in one, and sole counsel in the other seven.

i. What percentage of these trials were:
1. jury; 50%
2. non-jury. 50%

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.

As best as I can recall, I responded to three petitions for certiorari and petitioned for certiorari once. The Supreme Court denied review in all these cases.

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. South 8th Street Landfill/Gurley Pit

This Superfund litigation lasted more than a decade. My former law firm represented the Burlington Northern Railroad Company, a potentially responsible party (PRP) at both sites. My senior partner Jack Deacon's name was on the papers too, but I handled all aspects of the case. I investigated the facts and

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00106 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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prepared the railroad's defense. The Burlington Northern was a founding participant in the PRP Group, which grew to almost two hundred members. The Group entered into a consent decree with EPA and cleaned up the South 8th Street site. *USA v. Aircraft Services International, Inc.*, et al., No. 3:98CV00362 (E.D. Ark. 19 Dec. 2000). I served as local counsel for the Group in the parts of the litigation pending in Arkansas before U.S. District Judge Stephen M. Reasoner (now deceased) and later U.S. District Judge Bill Wilson Jr. In 2005, I was part of the team of lawyers who persuaded Judge Wilson to reject a proposed settlement and consent decree between the United States and a recalcitrant party. After cleaning up the South 8th Street site, and collecting contributions from recalcitrants, the PRP Group refunded money to its members (including Burlington Northern) and dissolved.

This case involved hundreds of lawyers. The PRP Group counsel, and my lead counsel, was Gary P. Gengel, Latham & Watkins LLP, One Newark Center, 16th Floor, Newark, New Jersey 07101, 973.639.7287 (then with Morgan, Lewis & Bockius LLP). In the last stages of the case, the lead trial lawyer was Michael Dillon, Professor of Political Science, La Salle University, 1900 W. Olney Ave., Philadelphia, Pennsylvania 19141, 215.991.3748 (then with Morgan, Lewis & Bockius LLP). The PRP who left the Group and sought a separate settlement with the United States was represented by Michael F. Rafferty, Harris, Shelton, Dunlap and Cobb, Suite 2700, One Commerce Square, Memphis, TN 38103, 901.525.1455. The United States was represented by Richard Gladstein, Environmental Enforcement Section, Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, 202.514.1711.

2. *Lake View* School Funding Case

I represented the Arkansas Chamber of Commerce and Associated Industries of Arkansas as amici curiae in most of the *Lake View* appeals to the Arkansas Supreme Court and in the proceedings before Special Masters David Newbern and Bradley Jesson. The issue was whether our State was providing every child with the equal opportunity for an adequate education. The Circuit Court held that it was not. In the appeal from that ruling, the State Chamber was the only party that urged the Supreme Court to affirm the Circuit Court's decision in every major respect. With one main exception, the Supreme Court did so. *Lake View School District No. 25 of Phillips County v. Huckabee*, 351 Ark. 31, 91 S.W.3d 472 (2002). The Arkansas General Assembly then passed landmark legislation on educational adequacy, accountability, and standards. As the State Chamber urged, Special Masters Newbern and Jesson reported favorably on that legislation to the Supreme Court. The Court endorsed the Special Masters' report. *Lake View School District No. 25 of Phillips County v. Huckabee*, 358 Ark. 137, 189 S.W.3d 1 (2004).

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00107 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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I was sole counsel for the State Chamber. There were many other lawyers in the case. The following counsel played lead roles. For the State of Arkansas: Timothy Gauger and Mark Hagemeier, of the Attorney General's Office. Gauger is now counsel to Arkansas Governor Mike Beebe, 250 State Capitol, 500 Woodlane, Little Rock, Arkansas 72201, 501.682.2345. Hagemeier is now a lawyer for the University of Arkansas System, UAMS, 4301 West Markham, Slot #860, Little Rock, Arkansas 72205, 501.686.7608. Larger school districts were represented by David R. Matthews, Matthews, Campbell, Rhoads, McClure, Thompson & Fryauf, P.A., 119 South 2nd Street, Rogers, Arkansas 72756, 479.636.0875 and Chris Heller, Friday, Eldridge & Clark, 400 West Capitol Avenue #2000, Little Rock, Arkansas 72201, 501.370.1506. Arkansas Supreme Court Justice Robert L. Brown wrote the opinions mentioned.

3. *Biedenharn v. Hogue*

I handled this matter from the answer to the appeal. Several taxpayers filed an illegal-exaction case against former Arkansas State Representative and Speaker of the Arkansas House Bobby Hogue. They alleged that he had secured some funding for Arkansas State University in return for a job there. The complaint raised complicated legal issues about the Arkansas Constitution, various state statutes, and doctrines about the conduct of public officials. I was lead counsel, although two senior lawyers in our firm were also counsel of record. I supervised one associate. After discovery, briefing, and a hearing, Circuit Judge David Burnett granted summary judgment to Hogue. The taxpayers appealed. The Arkansas Supreme Court affirmed the judgment for Hogue on mootness grounds. 338 Ark. 660, 1 S.W.3d 424 (1999).

The senior lawyers on the case in our firm were Jack Deacon and Barry Deacon. The firm's address is listed several other places in my answers. Their telephone number is 870.931.1700. Jennifer Donaldson, the associate, no longer works at the firm. She is a lawyer for the United States Post Office in Memphis, Tennessee, but I have no contact information for her. The lawyer for the taxpayers was Oscar A. Stilley, 2120 North B Street, Fort Smith, Arkansas 72901, 479.575.0726. Former Justice Tom Glaze of the Arkansas Supreme Court wrote the opinion.

4. Westside School Shooting Case

In March 1998, two teenagers killed several classmates and a teacher and wounded several others at the Westside Middle School in Jonesboro, Arkansas. The families of those killed and injured sued (among others) the shooters, the grandfather of one of the shooters (from whom the boys stole the guns), and Remington Arms Company, who made one of the rifles used. The Plaintiffs asserted defective-product theories against the rifle manufacturer. Together with lawyers from New York and Chicago, I represented Remington. In my role as local counsel, I worked on discovery and motions. The Circuit Court of

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00108 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Craighead County, Arkansas, granted Remington's motion for summary judgment, which I helped draft and argued orally. The case number is CIV-98-394 (B). It remains pending.

Lead counsel for Remington was Anne E. Cohen, Debevoise & Plimpton, 919 Third Avenue, New York, New York 10022, 212.909.6078. Regional counsel for Remington was Dale G. Wills, Swanson, Martin & Bell, One IBM Plaza, Suite 3300, 330 North Wabash, Chicago, IL 60611, 312.923.8266. For the grandfather: David A. Hodges, Centre Place – Fifth Floor, 212 Center Street, Little Rock, Arkansas 72201, 501.374.2400. For the Plaintiffs: Bobby McDaniel and Dustin McDaniel, McDaniel & Wells, 400 S. Main Street, Jonesboro, Arkansas 72401, 870.932.5950. Dustin McDaniel now serves as Attorney General of Arkansas, Suite 1100, 323 Center Street, Little Rock, Arkansas 72201, 501.682.2007.

5. *Mountain Pure*

Mountain Pure bottles water. It was pursuing parallel state and federal cases against several suppliers (on product-defect theories) and a customer (on a contract). I joined the case as co-counsel for Mountain Pure midstream. With the help of co-counsel and an associate at my firm, I handled the appeal to the Eighth Circuit where that Court reversed U.S. District Judge Susan Webber Wright's decision dismissing the federal case on alternative preclusion and absention grounds. *Mountain Pure LLC v. Turner Holdings LLC*, 439 F.3d 920 (8th Cir. 2006). I also led the work on two appeals in state court, one on appellate jurisdiction and one on the merits of summary judgment. Mountain Pure prevailed in both. *Mountain Pure LLC v. Affiliated Foods Southwest, Inc.* 366 Ark. 62, 233 S.W.3d 609 (2006) and 96 Ark. App. 346, 241 S.W.3d 774 (2006). Most of this litigation was settled. The Mountain Pure/Affiliated matter remains pending.

My co-counsel was Tim Dudley, 114 South Pulaski Street, Little Rock, Arkansas 72201, 501.372.0080. The associate at Barrett & Deacon was Brandon J. Harrison, 870.931.1700. The following individuals were counsel for the other parties. For Affiliated: William A. Waddell, Jr., Friday, Eldridge & Clark, 2400 Regions Center, 400 West Capitol Avenue, Little Rock, Arkansas 72201, 501.370.1510. For Turner: Bruce Munson and Kara B. Mikles, Huckabay, Munson, Rowlett & Moore, 400 West Capitol, Suite 1900, Little Rock, Arkansas 72201, 501.374.6535. For Stone: M. Stephen Bingham, Cross, Gunter, Witherspoon & Galchus, P.C., 500 President Clinton Avenue, Suite 200, Little Rock, Arkansas 72201, 501.371.9999. For Consolidated: Cotton Cunningham, Laser Law Firm, P.A., 101 South Spring Street, Suite 300, Little Rock, Arkansas 72201, 501.376.2981. For Portola: Gary Corum, Wilson, Engstrum, Corum & Coulter, P.O. Box 71, Little Rock, Arkansas 72203, 501.375.6453.

U.S. Circuit Judge Kermit Bye wrote the opinion for the Eighth Circuit. Justice Annabelle Clinton Imber wrote the opinion for the Arkansas Supreme Court on

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appellate jurisdiction. And then-Judge (now Chief Judge) Larry Vaught of the Arkansas Court of Appeals wrote the opinion reversing summary judgment on the merits.

6. *Bennett*

This case began as a purported nationwide class action in the Western District of Arkansas asserting Title VII and 1981 claims against various Nucor entities. Nucor is a steel manufacturer. I was local counsel. The defense team, led by Nucor's labor and employment counsel in Texas, succeeded in getting the case split into four pieces and transferred to the Eastern District of Arkansas and federal courts in Texas, Alabama, and South Carolina. I worked with lead counsel on all the motions – evidentiary, discovery, class certification, and summary judgment – on the part of the case in the Eastern District. The case was styled *Bennett v. Nucor Corporation*, No. 3:04CV00291SWW. The case remains pending. U.S. District Judge Susan Webber Wright presided in the Eastern District of Arkansas. U.S. District Judge Harry Barnes presided when the case was first filed in the Western District of Arkansas.

The lawyers at Alaniz and Schraeder, L.L.P., 2500 City West Blvd., Suite 1000, Houston, Texas 77042, 281.833.2200, were lead counsel for Nucor. I worked with Rick Alaniz, Terry Schraeder, John Linker, Cary Ferris, and others. Local counsel for plaintiffs was Philip E. Kaplan, now at Williams & Anderson PLC, 22nd Floor, 111 Center Street, Little Rock, Arkansas 72201, 501.372.0800. Lead counsel for plaintiffs were Robert L. Wiggins, Jr., Ann Wiggins, and Ben DeGweck, Wiggins, Childs, Quinn & Pantazis, The Kress Building, 301 19th Street North, Birmingham, Alabama 35203, 205.314.0500.

7. *White*

Arkansas has a strong Teacher Fair Dismissal Act. The Manila School District could not terminate a particular teacher/coach under the Act, but it wanted to get him off the basketball court. The District changed all his teaching assignments. I sued the District for White. We prevailed after a mini-trial in Circuit Court, and prevailed again on appeal. The case made precedent by establishing the limits of a District's statutory authority to make adjustments in a teacher's class schedule by reassignment. *Manila School District Number 15 v. White*, 338 Ark. 195, 992 S.W.2d 125 (1999).

I was sole counsel for White. Richard Roachell, Suite 208F, 415 North McKinley Street, Little Rock, Arkansas, 72205 was counsel for Manila. I have not been able to locate a phone number for him. Now–retired Circuit Judge Samuel Turner presided. Justice Annabelle Clinton Imber wrote the opinion for the Arkansas Supreme Court.

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8. Federal Pre-emption

In a series of railroad cases, my former law firm helped make law in Arkansas and the Eighth Circuit on the federal pre-emption of state-law claims about inadequate warning devices at grade crossings. I located the microfilm records in the archives of the Arkansas State Highway & Transportation Department that established federal funding of the warning devices. The railroad would seek summary judgment on this basis and then press the pre-emption issue on appeal. Representative cases are *Elrod v. Burlington Northern Railroad Company*, 68 F.3d 241 (8th Cir. 1995) and *St. Louis Southwestern Railway v. Malone Freight Lines, Inc.*, 39 F.3d 864 (8th Cir 1994), *cert. denied*, 514 U.S. 1110 (1995).

I worked with Jack and Barry Deacon at my former firm on these issues. Their telephone number is 870.931.1700. Now-Senior U.S. District Judge G. Thomas Eisele presided over the *Elrod* case in District Court. Now-Senior Circuit Judge Pasco M. Bowman II wrote the opinion for the Eighth Circuit. Counsel for plaintiffs in that case were: Wm. Pal Rainey, P.O. Box 89, Marion, Arkansas 72364, 870.739.4446 and Robert G. Gilder, P.O. Box 93, Southaven, Mississippi 38671, 601.342.1444.

9. Union Activity at Wal-Mart

An Arkansas Circuit Court entered a nation-wide injunction barring any person connected with the United Food and Service Workers International Union from entering any Wal-Mart store and talking about the union with employees. I was hired to handle the union's appeal to the Arkansas Supreme Court. My co-counsel was George Wiszynski, assistant general counsel for the UFCW. The case involved interesting issues about alleged trespasses on property open to the public, union solicitation, and injunctions. The Arkansas Supreme Court vacated the injunction and remanded the case. *UFCW v. Wal-Mart*, 353 Ark. 902, 120 S.W.3d 89 (2003). The case was dismissed without prejudice on Wal-Mart's motion after the remand.

George Wiszynski, UFCW, 1775 K Street, N.W., Washington, D.C. 20006, 202.466.1597. Lead counsel for Wal-Mart was Ben Shipley, Cross, Gunter, Witherspoon & Galchus, 5491 Rogers Avenue, Suite 200, Fort Smith, Arkansas 72903, 479.783.8200. Former Justice Ray Thornton of the Arkansas Supreme Court wrote the opinion vacating the nation-wide injunction.

10. North Hills

Belz-Burrow Development Group, LLC, got a section 404(b) permit to fill some wetlands in connection with developing The Shoppes at North Hills, a planned commercial development in North Little Rock, Arkansas. An environmental lawyer then at my former firm, Andy Adams, helped Belz-Burrow get the permit.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00111 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Several citizens and environmental groups filed suit against the Corps in the Eastern District of Arkansas seeking to invalidate the permit. The case was styled *Arkansas Nature Alliance, Inc. v. United States Corps of Engineers*, 4:05-CV-00622GH. It was assigned to U.S. District Judge George Howard Jr. (now deceased). Belz-Burrow intervened to help defend the permit. I led the team of four lawyers representing Belz-Burrow. The plaintiffs raised several claims, most of which involved either the Clean Water Act or the National Environmental Policy Act. The parties filed voluminous cross motions for summary judgment on the merits. In addition, Belz-Burrow also argued lack of standing. After a day-long hearing on all issues, Judge Howard concluded that the plaintiffs lacked standing and entered summary judgment on that basis without prejudice. After I became a judge, the case was refiled by new plaintiffs. U.S. District Judge Bill Wilson invalidated the permit. The Eighth Circuit dismissed the developer's appeal.

Lead counsel for the plaintiffs was Richard H. Mays, P.O. Box 1450, Heber Springs, Arkansas 72543, (501) 362-0055. My co-counsel were Andy Adams and E.B. "Chip" Chiles IV and David Curran of Quattlebaum, Grooms, Tull & Burrow, suite 1900, 111 Center Street, Little Rock, Arkansas 72201 (501) 379-1700. Adams is no longer at my former law firm. He is an in-house environmental lawyer for Koch Companies Public Sector, LLC, 4111 East 37th Street North, Wichita, Kansas 67201, 316.828.5500. Lead counsel for the Corps was Daniel Steele, U.S. Department of Justice, Environmental and Natural Resources Division, Defense Section, 601 D Street NW, Room 3122, Washington, D.C. 20024, (202) 305-0506.

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.)

One of my most significant legal activities was representing the local newspaper and the family who owned and then sold it. I handled everything from Arkansas Freedom of Information Act litigation to human-resources issues for the paper. One of my former partners and I handled the sale of the paper, a multi-million dollar transaction. After the family sold the paper, I represented them in a multitude of litigated and non-litigated matters about their investments and business activities.

Another significant legal activity has been my work as a member and as reporter of the Arkansas's Supreme Court's Committee on Civil Practice. The Committee is charged with making at least annual reports to the Arkansas Supreme Court suggesting needed amendments to the Arkansas Rules of Civil Procedure, the Arkansas Rules of Appellate Procedure—Civil, the Arkansas District Court Rules, the Arkansas Rules of Evidence,

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00112 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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and the Rules of the Arkansas Supreme Court and Court of Appeals. I have been the Committee's reporter since 2004. In that capacity, I have been the primary author of proposed rule amendments and reporter's notes. I write the Committee's reports to Justice Annabelle Clinton Imber, our liaison. Helping keep our court rules fair, efficient, and just has been one of the most challenging and rewarding aspects of my legal career.

I have never been a lobbyist.

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.

Judicial Process and Legal Reasoning
Arkansas State University
Fall 2008 and Fall 2009
This course covers how state and federal courts work, judicial selection, statutory interpretation, and constitutional interpretation.

Introduction To American Government
Arkansas State University
Spring 2001
This course surveys our nation's founding, the three branches of government, state government, interest groups, elections, and the media.

American National Government
University of Arkansas at Little Rock
While I was a law clerk, I taught this course at night in the spring of 1990 and again in the early morning during the summer of 1991. It is the same basic course described above.

The Judicial System
University of Arkansas at Little Rock
I taught this course at night in the fall of 1990. This was essentially the same course that I am now teaching at ASU.

Constitutional Law
University of Arkansas at Little Rock
I also taught this course at night while I was a law clerk, but do not remember exactly when. It covered constitutional structure: federalism, separation of powers, and judicial review. I have been unable to find the syllabus.

Administrative Law and Process
Webster University, Little Rock
I taught this graduate course at night in the fall of 1990 at the Jacksonville Air Force Base. It covered the post-New Deal development of administrative law, judicial review of

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00113 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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administrative decisions, and federal rulemaking.

When I was a law student, I served as a teaching fellow at Harvard University in two courses: Justice, taught by Professor Michael Sandel, and American Government, taught by Professors Paul Peterson and Morris Fiorina. The latter was a typical survey course like those of the same name described above. The former introduced students to theories of justice in the context of contemporary policy issues. I have been unable to locate a syllabus for the American Government course.

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-benefits arrangements from any previous relationships. I have an interest in the Arkansas Judicial Retirement System, which will vest after I have served on the state bench for eight years. If I leave the state bench before that date, then the System will refund my contributions.

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 always put my court work first in my professional life and will continue to do so. I am teaching a class, which ends this month, at Arkansas State University. I have no plans to teach in the future. I might do so, however, if it did not interfere with discharging all my judicial obligations and complied with all applicable rules of judicial conduct. My co-author and I are under contract with West to prepare a new edition of Arkansas Civil Practice and Procedure by early next year. I am also compiling and editing the late Judge Richard Arnold's speeches and essays into a book. I have no publication agreement for this project.

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 and Schedules.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00114 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.

Parties, categories of litigation, and financial arrangements likely to present potential conflicts of interest include my family, cases where my former law firm is counsel of record, clients with whom I had a long-standing relationship, and the companies in whom my IRA owns stock or with whom I have an ongoing business relationship.

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 conflict of interest by following 28 U.S.C § 455, the Code of Conduct for United States Judges, and all applicable policies and procedures of the United States Courts.

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.

Every year during my fifteen years of private practice, I handled several cases without charge for people who could not pay. Some of these cases walked in the door, while Legal Services of Northeast Arkansas and Arkansas Volunteer Lawyers for the Elderly referred others to me. I drafted simple wills, handled small estates, resolved landlord/tenant disputes, gave legal advice, and handled appeals. E.g., *Davis v. Office of Child Support Enforcement*, 341 Ark. 349, 20 S.W.3d 273 (2000) (federal disability payments not income for child-support purposes).

Between 1991 and 2006, the U.S. District Court for the Eastern District of Arkansas appointed me to represent plaintiffs and prisoners in civil rights cases. I did so gladly and without fee. By appointment from the Eighth Circuit, I also handled two criminal appeals at a reduced rate. *Shaw v. Norris*, 33 F.3d 958 (8th Cir. 1994) (habeas and double jeopardy); *Osment v. United States*, 13 F.3d 1240 (8th Cir. 1994) (guilty-plea procedure).

In 2005, the Equal Access to Justice Panel named me the Outstanding Craighead County Volunteer Attorney. That award was based on my handling an appeal for a disabled man, whose access to his property and house trailer had been blocked by an adjoining landowner. We won. *Powhatan Cemetery Association v. Phillips*, 90 Ark. App. 424, 206 S.W.3d 377 (2005).

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I also believe that lawyers should help organizations that help people in their community. I therefore did various legal work for free, or at a substantially reduced rate, for a school for disabled children, a clinic providing medial care for the working uninsured, and other local charitable enterprises.

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.

There is no selection commission in Arkansas for vacancies on the federal bench. After U.S. District Judges Bill Wilson Jr. and James M. Moody took senior status, I wrote to U.S. Senators Blanche L. Lincoln and Mark L. Pryor and told them that I would be honored to be considered for one of those vacancies. I had periodic contacts with their staff members about the status of their selection process. I filled out a questionnaire sent by Senator Lincoln. She interviewed me on 29 December 2008. During the next six weeks, I had periodic contacts with members of the Senators' staffs about where things stood. On 12 March 2009, Senator Lincoln and Senator Pryor each called and told me that they were recommending me and others to the President for consideration. On 20 August 2009, a lawyer from the White House Counsel's office telephoned and told me that the President was sending my name to the Justice Department for further evaluation. That afternoon, I began a series of communications with Justice Department personnel about my background. On 1 October 2009, lawyers from the White House Counsel's office and the Department of Justice interviewed me in Washington, DC. My nomination was submitted to the Senate on 3 December 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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FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Marshall Jr., Denzil P.	Eastern District of Arkansas	12/3/2009
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type** (check appropriate type)	**6. Reporting Period**
District Judge - Nominee	☑ Nomination, Date 12/3/2009 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2008 to 11/30/2009
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
Arkansas Court of Appeals Justice Building 625 Marshall Street Little Rock, Arkansas 72201	Reviewing Officer_____ Date_____	

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

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

☐ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. Employee---Part-Time Instructor	Arkansas State University, Department of Political Science
2. Reporter	Arkansas Supreme Court Committee on Civil Practice
3.	
4.	
5.	

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

☐ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1. 2009	David Newbern, John J. Watkins, me, and West Services, Inc., the publisher of Arkansas Civil Practice and Procedure. Royalty division and co-author obligations.
2.	
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 8	Name of Person Reporting Marshall Jr., Denzil P.	Date of Report 12/3/2009

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

A. Filer's Non-Investment Income

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

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2009	State of Arkansas, Court of Appeals Judge salary	$126,395.70
2. 2009	West Publishing, share of royalties from Arkansas Civil Practice and Procedure	$2,319.93
3. 2009	Arkansas State University, salary for teaching a class	$1,436.54
4. 2008	State of Arkansas, Court of Appeals Judge salary	$134,186.50
5. 2008	Arkansas State University, salary for teaching a class	$2,000.00
6. 2008	West Publishing, share of royalties from Arkansas Civil Practice and Procedure	$672.06
7. 2007	State of Arkansas, Court of Appeals Judge salary	$131,555.46

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

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

DATE	SOURCE AND TYPE
1. 2009	Niche Publications & Creative LLC, magazine publishing and graphic design (gross)
2. 2009	Arkansas State University, salary for teaching
3. 2009	Jonesboro Public Schools, wages for substitute teaching
4. 2008	Niche Publications & Creative LLC, magazine publishing and graphic design (gross)

IV. REIMBURSEMENTS – *transportation, lodging, food, entertainment.*

(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. Exempt				
2.				
3.				
4.				

FINANCIAL DISCLOSURE REPORT Page 3 of 8	Name of Person Reporting Marshall Jr., Denzil P.	Date of Report 12/3/2009

5.

FINANCIAL DISCLOSURE REPORT Page 4 of 8	Name of Person Reporting Marshall Jr., Denzil P.	Date of Report 12/3/2009

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

☐ NONE *(No reportable gifts.)*

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

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☐ NONE *(No reportable liabilities.)*

CREDITOR	DESCRIPTION	VALUE CODE
1. Regions Bank	unsecured note and line of credit	J
2. Corning Printing Company	Niche Publications & Creative LLC/spouse debt for printing	K
3. Bank of America	Niche Publications & Creative LLC/spouse credit card	None
4. AT&T Universal Card	Niche Publications & Creative LLC/spouse credit card	None
5. Washington Mutual	Niche Publications & Creative LLC/spouse credit card	None
6. Citibank	Niche Publications & Creative LLC/spouse credit card	None
7. First Equity	Niche Publications & Creative LLC/spouse credit card	None

FINANCIAL DISCLOSURE REPORT Page 5 of 8	Name of Person Reporting Marshall Jr., Denzil P.	Date of Report 12/3/2009

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Lot 15B, Marshall Estates, Jonesboro, Arkansas		None	K	W	Exempt				
2. Lot 14B, Marshall Estates, Jonesboro, Arkansas		None	K	W					
3. Niche Publications & Creative LLC (Spouse)		None	K	W					
4. Mineral Rights, Arkansas and Jefferson Counties, AR		None	K	W					
5. Regions Bank	A	Interest	J	T					
6. Liberty Bank of Arkansas	A	Interest	J	T					
7. DPM Self-Directed IRA, Liberty Bank of Arkansas, Custodian	C	Int./Div.	M	T					
8. --Liberty Bank of Arkansas Money Market Fund									
9. --Fidelity Overseas Pacific Basin Fund									
10. --Vanguard Fixed Income Securities Fund									
11. --Vanguard Index Trust 500 Fund									
12. --AT&T Inc.									
13. --Apple Inc.									
14. --Nucor Corporation									
15. --Pepsico Inc.									
16. --Toyota Motor Corp.									
17. --Visa Inc.									

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

FINANCIAL DISCLOSURE REPORT
Page 6 of 8

Name of Person Reporting	Date of Report
Marshall Jr., Denzil P.	12/3/2009

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
18. --J Crew Group Inc.									
19. DPM Self-Directed IRA, Liberty Bank of Arkansas, Custodian	E	Distribution							
20. Fidelity College Savings Plan for Child #1	B	Int./Div.	J	T					
21. Fidelity College Savings Plan for Child #2	B	Int./Div.	J	T					
22. Arkansas Judicial Retirement Plan (unvested account)	A	Int./Div.	K	W					
23. TIAA-CREF #1	B	Int./Div.	J	T					
24. --CREF Stock									
25. --CREF Money Market									
26. TIAFF-CREF #2 (all in CREF Money Mar ket)	A	Int./Div.	J	T					
27. Liberty Bancshares, Inc. Stock		None	K	T					
28. Bank of America Fair Fund	A	Distribution							
29. Alliance Capital Management Fair Fund	A	Distribution							

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

FINANCIAL DISCLOSURE REPORT Page 7 of 8	Name of Person Reporting Marshall Jr., Denzil P.	Date of Report 12/3/2009

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

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting Marshall Jr., Denzil P.	Date of Report 12/3/2009

IX. CERTIFICATION.

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

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

Signature D P Marshall Jr.

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		3	253	Notes payable to banks-secured		7	114
U.S. Government securities-add schedule				Notes payable to banks-unsecured		8	073
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		160	187
Real estate owned-add schedule		355	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		55	000	Credit Cards		6	455
Cash value-life insurance				Niche - (Spouse business liabilities)		33	527
Other assets itemize:				First Baptist Church Pledges		4	296
College Savings Plans		18	697	Harvard Law School Fund Pledge			100
Niche Publications (Spouse business assets)		20	384				
IRA—see schedule		165	576				
Arkansas Judicial Retirement Account		19	556	Total liabilities		219	752
TIAA-CREFF		2	176	Net Worth		419	890
Total Assets		639	642	Total liabilities and net worth		639	642
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	YES		
On leases or contracts –				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Real Estate Owned	
Personal residence	$ 275,000
Undeveloped lots	60,000
Non-producing Mineral Rights (estimate)	20,000
Total Real Estate Owned	355,000
Real Estate Mortgages Payable	
Personal residence	$ 160,187
Other Assets – IRA Account:	
AT&T	$ 13,335
Apple	28,787
Nucor	14,844
Visa	25,596
Toyota	13,823
Pepsico	17,733
Mutual Funds	48,916
Cash reserve	2,542
Total IRA	$ 165,576

Pledged Non-Real Estate Assets

2005 Mercury Sable to secure the related note

AFFIDAVIT

I, **Denzil Price Marshall Jr.**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

3 December 2009
(DATE)

D P Marshall Jr.
(NAME)

(NOTARY)

NANCY NELMS
NOTARY PUBLIC-STATE OF ARKANSAS
CRAIGHEAD COUNTY
MY COMMISSION EXPIRES 01-01-2019

STATEMENT OF HON. BENITA Y. PEARSON, NOMINATED TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO

Judge PEARSON. Thank you, Mr. Chairman. I thank you and the Ranking Member and all of the members of the Committee for the opportunity to appear before you here today. I also thank Senator Brown for that gracious introduction and both Senators Brown and Voinovich for their recommendations, and President Obama for his nomination.

I'm privileged to be accompanied here today, sir, with several friends and family members, all of whom have traveled great distances to be in the presence of the Committee today.

I'm pleased to introduce my mother, Kay Spates, who is here; my brothers, Wayne Dancie and Kevin Spates; my sisters, Kassandra Spates and Tabitha Spates. My sister, Renee Dancie, is home caring for all of the things that need to be done in our absence.

I have several friends, Mr. Chairman, who are also here today. Karen Hamilton, a great friend from law school; Diedre Wolff. Mary Butler is here, as well; Daniel Katz. Phil and Marilyn Carr are also present today, along with Jay Huntley Palmer.

Thank you very much for the opportunity to be present and to have those with me.

Senator KAUFMAN. Thank you.

Judge Black.

[The biographical information of Benita Y. Pearson 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).

   Benita Yalonda Pearson

   Benita Y. Pearson; Benita Pearson Render; and Benita Render

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

   United States District Judge for the Northern District of Ohio

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: 480 U.S. Court House
   Two South Main Street
   Akron, Ohio 44308

   Residence: Solon, Ohio

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

   1963; Cleveland, Ohio

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 1992 -May 1995, Cleveland State University; Juris Doctorate, 1995
   (Cleveland-Marshall College of Law)

   August 1991- May 1992, Case Western Reserve ; No Degree Obtained
   (Weatherhead School of Management M.B.A. Program)

   August 1981- May 1985, Georgetown University; B.S. Accounting, 1985

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

65688.152

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.

8/08 – Present
U.S. District Court Northern District, Ohio
480 U.S. Court House
Two South Main Street
Akron, Ohio 44308
Magistrate Judge

8/07 - Present
Cleveland-Marshall College of Law
1801 Euclid Avenue
Cleveland, OH. 44115
Adjunct Professor

7/00 - 8/08
Office of U.S. Attorney
U.S. Court House, Suite 400
801 W. Superior Ave
Cleveland, OH. 44113
Assistant United States Attorney

9/98 - 7/00
Jones Day Reavis & Pogue
North Point
901 Lakeside Avenue
Cleveland, OH. 44114
General Litigation Associate

8/98 - 8/00
Cleveland-Marshall College of Law
1801 Euclid Avenue
Cleveland, OH. 44115
Lecturer

7/96 - 8/98
U.S. District Court
Cleveland, OH 44114
Law Clerk (Judge Manos)

8/95 - 7/96
McDonald Hopkins
600 Superior Avenue, E.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00128 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

65688.153

Cleveland, OH. 44114
Litigation Associate

7/95 -8/95
U.S. District Court
201 Superior Ave
Cleveland, OH. 44114
Law Clerk (Judge Solomon Oliver)

5/94 - 5/95
McDonald Hopkins
600 Superior Avenue, E
Cleveland, OH. 44114
Summer Associate

5/92 - 5/94
Reminger & Reminger
1400 Midland Building
101 Prospect Avenue, W.
Cleveland, OH. 44115
Law Clerk

6/85-8/92
BP America (formerly Standard Oil of Ohio)
200 Public Square
Cleveland, OH 44114
Corporate Accountant (6/85-9/87)
Supervisor Retail Marketing Accounting (9/87 – 8/90)
Retail Sales (8/90 – 8/92)

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

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.

   Cleveland-Marshall College of Law:
   Executive Council, Moot Court Board of Governors; Dean's List, 1995; Order of Barristers, 1995; Dean's Moot Court Award, 1995; Best Advocate, Annual Fall Moot Court Night, 1995; Best Team, Annual Fall Moot Court Night, 1995; Law Alumni

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00129 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

65688.154

Association's Hugo Black Award, 1994; Spangenberg, Shibley, Traci & Lancione Scholarship, 1994; 17th Annual Frederick Douglass Moot Court Competition, Member, Second Place Team, Midwest Region, Participated in National Finals in Houston, Texas, 1993; Dean's Scholar, 1992

Georgetown University:
Dean's List 1983 and 1985

Office of the U.S. Attorney, NDOH:
Recipient of U.S. Attorney's Special Act Award, 2005, 2006 and 2007;
Recognition by U.S. Attorney General, 2004

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.

Cleveland Metropolitan Bar (formerly Cleveland Bar Association): 1995 - 2004
Chair, Young Lawyers
Chair, Juvenile Justice Committee
Chair, School Visitation Committee
Volunteer, Minority Outreach Committee
Member, Membership Development Committee
Member, Board of Trustees
Member, Nominating Committee

Cleveland Bar Foundation: 2004 -2007
Member Board of Trustees, 2 terms ending June 14, 2007
Member, Fundraising Committee - Chair of Bench-Bar Run Event

Federal Bar Association: 2008 – Present
Member Board of Trustees (effective October 7, 2009)

Inns of Court:
Scanlon Inn, Member, Master Bencher, August 2009 - Present
Judge John M. Manos Inn, Member, September 2002 – August 2009
(formerly known as Celebreeze Inn)
Harold Burton Inn, Member, 2000- 2001 (approximately); Member, Nominating Committee
William K. Thomas Inn, Member, 1998 - 2000 (approximately)

Law Fraternity:
Delta Theta Phi, 2000 - Present

Federal Magistrate Judges Association, Member

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00130 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

65688.155

Information Technology Committee, Northern District of Ohio

Criminal Justice Panel Act Selection Committee, Northern District of Ohio

Library Fund Committee, Northern District of Ohio

Public Outreach Committee, Northern District of Ohio

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.

Supreme Court of Ohio: 1995
Federal Bar Admission: June 21, 1996

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 Ohio: 1995 to present
Federal Bar Admission: June 21, 1996 to present

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.

Eliza Bryant Village, Board of Trustees
Advent Lutheran Church
Synod, Evangelical Lutheran Church in America, Executive Council Member
American Society for the Prevention of Cruelty to Animals, Member
Animal Legal Defense Fund, Member
U.S. Humane Society, Member

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

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00131 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.

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.

None

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.

Testimony provided in a hearing *State of Ohio v. Philip George,* Case No. 02CR061237 in my role as a "privilege team" or "taint team" I was the Assistant United States Attorney responsible for segregating and safeguarding documents that had been seized during a search warrant issued in a criminal matter. I was responsible for reviewing the documents seized to determine if any were covered by the attorney-client privilege. After identifying privileged documents, I segregated them and returned them to the appropriate person (defense attorney) while ensuring that no one else had access to them.)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00132 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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 do not have a copy of any speeches, transcripts or recordings of remarks made or of any outlines or notes on which I may have relied upon at that time. Although I typically rely on brief notes, I usually do not retain them. Below is a summary of the remarks made for all my speaking engagements.

Ohio State Bar Association Annual Convention, Panelist, Role of Magistrate Judge, etc. – 2009:

I participated on two consecutive panels. One focused on the process used to select, appoint and reappoint Magistrate Judges in the Northern and Southern Districts of Ohio. The second panel focused on matters of concern regarding attorneys appearing before Magistrate Judges. I filled a vacancy on the second panel due to an unexpected absence. I do not recollect much of the presentation. Each panel lasted one hour and fifteen minutes and was facilitated by a moderator.

Advent Lutheran Church, Cleveland Ohio – Women's Day – 2009:
The Women's Day theme was "God's Work Our Hands." I spoke for about 30 minutes on what the women of the church could physically do to enact God's word. I used Michelle Obama's public service as an example. I also referenced her arms. You may know that her sleeveless outfits have earned some notoriety and inspired a local columnist to name her arms "Thunder" and "Lightning." I urged the women of the church to have Michelle Obama arms spiritually, if not physically. I also cited an example of discretion I'd shown a man charged with violating the terms of his supervised release who credibly explained that his ill-health and lack of money fueled his recent poor judgment. I cited an opportunity for service in the form of an elderly person's house I'd passed as I walked to the church whose grass was badly in need of mowing. I reminded my audience to be more patient as people count coins, put items back or ask for subtotals at the grocer's as we all adjust to the financial difficulties plaguing many, especially those in the low-income neighborhood where the church stands. Lastly, I reminded them that I'd lived just a few blocks away with my family before going to college.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00133 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

65688.158

Eighth District Court of Appeals, Panelist, Role of Race and Gender in the Courtroom – 2009:
I was on a panel with others; we were asked questions about our experiences with race and gender in the courtroom. I spoke no more than 5-7 minutes mostly about my experience as a prosecutor who faced the dual duty of trying to identify jurors who could judge the facts fairly and impartially while also not objecting to my race or gender.

Akron Bar Association's Annual Bench Bar Luncheon, Keynote Speaker – 2009:
I spoke for approximately 15 minutes about my early impressions as a Magistrate Judge; including urging attorneys to be better prepared and more civil to one another. I praised my staff and my judicial colleagues -- many of whom attended, despite the 50-minute drive from Cleveland. I thanked the Akron Bar Association and its members for its warm reception.

Youth Excellence Performing Arts Workshop (YEPAW 365), Akron Ohio – 2009:
I spoke to a group of approximately 50 middle and high-school aged students and shared "my story" and talked about my professional experiences. YEPAW is a year-around after-school and weekend program that engages "at risk" students in activities designed to build leadership and performance arts skills, enhance academic achievement, teach career options in the arts, develop self-esteem, provide services to the neighborhood community and encourage team-building and decision-making skills

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 attached electronic copies of three recent news articles in which I am quoted or identified as the source. I am not aware of any other quotations.

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 am currently serving as a United States Magistrate Judge in the Northern District of Ohio. On August 29, 2008 I was appointed by the District Court Judges of the Northern District of Ohio to serve an eight-year term. The Northern District of Ohio is one of the two in Ohio and covers the 44 most northern counties in the state. My chambers are located in the Akron, Ohio Federal Court House. As a United States Magistrate Judge, I have frontline responsibility for initial criminal proceedings (such as arraignments) and

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00134 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

65688.159

preside over a wide variety of other criminal and civil matters referred by the District Court Judges or Local Rule. Although the NDOH has eight Magistrate Judges, I am one of only two Magistrate Judges designated handle the civil cases that are assigned to the Youngstown District Court Judge and the only Magistrate Judge in the Akron, Ohio Court House. I am also assigned criminal cases as directed by the NDOH Local Rules. The authority of Magistrate Judges is primarily dictated by 28 U.S.C. Section 636 and enhanced by Local Rule and General Orders of the Court. As a federal judicial officer currently serving the Youngstown area, I offer a unique combination of federal legal expertise and a familiarity with the legal matters and concerns of the Youngstown area litigants and residents. This experience would allow me to transition smoothly into the new judicial position.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? ___1___

   i. Of these, approximately what percent were:

   jury trials? __0_%; bench trials _100__% [total 100%]

   civil proceedings? _0__%; criminal proceedings? _100__% [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).

   See summaries below

   Hammad v. Astrue, 2009 WL 700745 (N.D. Ohio March 13, 2009): This was an action for judicial review of the final decision of the Commissioner of Social Security Administration, which denied benefits to the plaintiff. The parties consented to my jurisdiction in this case. A copy of the entire decision is attached.

   Tyler v. Sento Corp., 2008 WL 4999985, at page 2 (N.D. Ohio Nov. 25, 2008): This matter was referred to me by Judge Dowd for the issuance of a Report and Recommendation on Defendants' Motion to Dismiss for Lack of Personal Jurisdiction or, in the alternative, to Transfer Venue to Utah. Judge Dowd adopted my Report and Recommendation and reprinted it entirely in the decision cited above. A copy of the entire decision is attached.

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R.D. Marks Consulting, Inc. v. Astra Holdings, LP, 2009 WL 1362972, at page 1 (N.D. Ohio May 14, 2009): This breach of contract matter was referred to me for general pretrial supervision. Under that umbrella, I issued a Report and Recommendation on Defendants' Motion to Dismiss for Lack of Personal Jurisdiction. Judge Dowd adopted my Report and Recommendation and reprinted it entirely in the decision cited above. A copy of the entire decision is attached.

Whittiker v. Deutsche Bank Nat. Trust Co., 2009 WL 6921923, at page 20 (N.D. Ohio May 14, 2009): This case involved mortgage holders, against whom state foreclosure actions had been filed in state court and adjudicated. The mortgage holders brought a putative class action in federal court against the banks and/or law firms that had initiated the foreclosure actions alleging violations of the Fair Debt Collection Practices Act. I issued a Report and Recommendation in this case that Judge Dowd slightly modified and adopted. Judge Dowd reprinted my Report and Recommendation in the decision cited above. A copy of the entire decision is attached.

In re Title Insurance Antitrust Litigation, No. 1:08-CV-00677 (N.D. Ohio Sept. 7, 2009):The above captioned case presents a putative class action lawsuit that challenges the propriety of state-regulated title insurance rates *(i.e.* price) under both federal and state antitrust laws. Summarily, Plaintiffs (individuals who have purchased title insurance) allege that Defendants illegally conspired to suppress price competition, artificially raise and maintain title insurance prices and deprive purchasers of title insurance of the benefit of free and open competition. Count One alleges violation of the Sherman Antitrust Act, a federal antitrust statute. Count Two alleges violation of the Valentine Act, Ohio's antitrust statute. Both Counts One and Two rely upon the same facts. All Defendants jointly seek dismissal of the Complaint in its entirety based upon Plaintiffs' failure to state a claim due to the Filed Rate Doctrine, pursuant to Federal Rule of Civil Procedure 12(b)(6), and, alternatively, lack of subject matter jurisdiction due to the McCarran-Ferguson Act, 15 U.S.C. § 1011, *et seq.*, pursuant to Federal Rule of Civil Procedure 12(b)(1). Additionally, one corporate parent defendant seeks dismissal, pursuant to Fed.R.Civ.P.12(b)(6), due to Plaintiffs' failure to allege that the parent agreed or conspired to commit anti-competitive behavior. That same corporate parent defendant and one other also seek dismissal due to lack of personal jurisdiction and improper venue, pursuant to Fed.R.Civ.P 12(b)(2) and (3). Magistrate Judge Pearson found the Filed Rate Doctrine and the McCarran-Ferguson Act bar the claim in Count One (the federal antitrust claim) and the Filed Rate Doctrine bars the claim in Count Two (the state antitrust claim). Magistrate Judge Pearson recommended: (1) Granting Defendants' Joint Motion to Dismiss relative to Counts One and Two of the Complaint without prejudice. (2) Granting the *sua sponte* dismissal of all other corporate parent defendants, with the exception of one corporate parent against whom all matters are stayed due to bankruptcy. (3) And, denying as moot the one remaining motion. The Honorable Judge David D. Dowd, Jr. has not yet ruled on Magistrate Judge

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00136 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Pearson's Report and Recommendation. Objections are due October 9 and 23, 2009. A copy of that Report and Recommendation is attached.

Carleton E. Averill, II v. Gleaner Life Ins. Soc'y, et al., No. 3:06-CV-02867 (N.D. Ohio Feb. 27, 2009):
The above captioned matter involves a dispute over retirement benefits due Plaintiff Carleton E. Averill, II, formerly an insurance agent for Defendant Gleaner Life Insurance Society. Essentially, the parties disagreed on the interest rate that should be used to calculate Averill's lump sum retirement benefit and ask the Court, via Fed. R. Civ. P. 56(c), to determine as a matter of law the correct payout. As an alternative remedy, Averill asked the Court to compel discovery by granting Averill "direct access" to Gleaner's files. Averill's motion for summary judgment argues Defendant Gleaner breached the terms of the Gleaner Supplemental Savings Plan by using an interest rate contractually prohibited by the terms of the GSSP, specifically Article 4, to calculate the amount of Plaintiff's retirement benefit upon the termination of the Plan. Defendant Gleaner's motion for summary judgment urges that the rate it used to calculate Averill's retirement benefit amount did not run afoul of Article 4 because Gleaner used a rate more favorable than provided for by the terms of the GSSP. Because genuine issues of material fact precluded summary judgment, Magistrate Judge Pearson recommended denying both motions for summary judgment. Additionally, Magistrate Judge Pearson recommended granting Plaintiff's motion to compel discovery. Chief Judge James G. Carr adopted the findings of the R&R with respect to both motions for summary judgment but denied the motion to compel discovery.

Michael Abdelshahid v. Michael J. Astrue, Comm'r of Soc. Sec., No. 1:08-CV-01480 (N.D. Ohio July 10, 2009):
The above captioned matter involved Plaintiff Michael Abdelshahid who sought judicial review of the Social Security Administration's final decision denying his application for Supplemental Security Income, pursuant to 42 U.S.C. § 405(g). This is an unfortunate case wherein the record was clearly ambiguous or otherwise incomplete in certain important respects. The ambiguity centered around the functional effects of Plaintiff Michael Abdelshahid's hearing loss in both ears ("bilateral") and was so pervasive as to convince the Court that the Agency's denial and the testimony of the Medical Expert were, at crucial times, based upon speculation rather than substantial evidence. Magistrate Judge Pearson determined that the instant record was insufficient to support the ALJ's finding that Plaintiff Michael Abdelshahid did not demonstrate at least a marked limitation in the domains of (1) acquiring and using information, (2) interacting and relating with others, and (3) health and physical well-being. Magistrate Judge Pearson found that the lack of medical and objective evidence clearly articulating Michael's ability to hear creates a conflict in the evidence, which the reviewing court may not resolve. Magistrate Judge Pearson recommended that the Court reverse and remand the final decision of the Commissioner denying benefits,

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pursuant to the Fourth Sentence of 42 U.S.C. § 405(g) with instructions that, upon remand, the ALJ evaluate the extent of Michael Abdelshahid's bilateral hearing loss and the effect of that hearing loss on his ability to function in a manner consistent with governing regulations. The Defendant objected but Judge Peter C. Economus adopted Magistrate Judge Pearson's R&R.

Michael S. Smith v. Stuart Hudson, Warden, No. 1:08-CV-01010 (N.D. Ohio Aug. 27, 2009):
The above captioned matter involved Petitioner Michael Smith who sought a writ of habeas corpus pursuant to Title 28 U.S.C. § 2254. Smith raised four grounds for relief alleging trial court error and that he was denied effective assistance of trial and appellate counsel. Respondent Stuart Hudson, Warden, argued to dismiss the petition as procedurally defaulted and lacking merit. Upon review, Magistrate Judge Pearson found that Grounds One through Three and two claims within Ground Four were procedurally defaulted. The remaining two claims within Ground Four lacked merit because Smith could not satisfy the required element of the *Strickland* test in order to prove ineffective assistance of appellate counsel. Judge Dan Aaron Polster adopted the R&R and denied Petitioner's writ for habeas corpus.

Dwain Farrow v. Carl Anderson, Warden, 2009 WL 3004024 (N.D. Ohio Sept. 15, 2009):
The above captioned matter involved Petitioner Dwain Farrow who sought a writ of habeas corpus pursuant to Title 28 U.S.C. § 2254. Finding that the grounds upon which the habeas petition were sought were non-cognizable and/or time-barred, Magistrate Judge Pearson recommended dismissing the case. District Court Judge Christopher Boyko adopted the R&R over Petitioner Farrow's objections and denied the writ of habeas corpus.

Henry Smith v. Julius Wilson, Warden, 2009 WL 700419 (N.D. Ohio March 11, 2009):
The above captioned matter involved Petitioner Henry Smith who sought a writ of habeas corpus pursuant to Title 28 U.S.C. § 2254, claiming that his trial attorney labored under an actual conflict of interest. Finding that there was no conflict of interest and that the petition was time-barred, Magistrate Judge Pearson recommended dismissing the case. District Court Judge Sara Lioi adopted the R&R and denied the writ of habeas corpus.

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.

Citations for these cases and copies of the opinions are attached. Attorney contact information as follows:

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00138 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Hammad v. Astrue, 2009 WL 700745 (N.D. Ohio March 13, 2009):
Counsel for Plaintiff Kim Hammad – Paulette Balin, 7372 Lakeshore Blvd., Mentor, Ohio 44060, 440-257-0096. Counsel for Defendant Commissioner of The Social Security Administration, Lynne Buck, Office of the U.S. Attorney, Suite 400, 801 W. Superior Avenue, Cleveland, Ohio 44113, 216-622-3712.

Tyler v. Sento Corp., 2008 WL 4999985, at page 2 (N.D. Ohio Nov. 25, 2008):
Counsel for Plaintiff Thomas Tyler – John C. Weisensell and Michael Palumbo, 301 Nantucket Bldg., 23 South Main Street, Akron, Ohio 44308; 330-434-1000. Counsel for Defendants Sento Corp. and Xtrasource – Gary Johnson, Brian Riley and Warren Rosman, Weston Hurd Law Firm, 1900 Tower at Erieview, 1301 East Ninth Street, Cleveland, Ohio 44114, 216-687-3295.

R.D. Marks Consulting, Inc. v. Astra Holdings, LP, 2009 WL 1362972, at page 1 (N.D. Ohio May 14, 2009):
Counsel for Plaintiff R.D. Marks – Irving Surgerman, Goldman & Rosen, 11 South Forge Street, Akron, Ohio, 330-255-0714. Counsel for Defendant Ad Astra Holdings, Clifford Mendelsohn and James DeFeo, Thompson Hine, 3900 Key Tower, 127 Public Square, Cleveland, Ohio 44114, 216-566-5856.

Whittiker v. Deutsche Bank Nat. Trust Co., 2009 WL 6921923, at page 20 (N.D. Ohio May 14, 2009):
Lead Counsel for Plaintiff Jerry Whittiker, et al. – Colin Sammon, Novak Robenalt & Pavlik, 950 Skylight Office Tower, 1660 West Second Street, Cleveland, Ohio 441113. Counsel for Deutsche Bank, Hugh McKay, Porter Wright, 1700 Huntington Bldg., 925 Euclid Avenue, Cleveland, Ohio 44115, 216-443-2580 and Jami Wintz McKeon, Morgan Lewis &Bockius, San Francisco, One Market Street, San Francisco, California 94105, 415-442-1405; Counsel for Defendant Weltman, Weinberg & Reis, Francis Goins, Ulmer & Berne, 1100 Skylight Office Tower, Cleveland, Ohio 44113, 216-583-7202; Counsel for Defendant Manley Deas, Robert Tucker, Baker & Hostetler, 2100 Capital Square, 65 East State Street, Columbus, Ohio 43215, 614-462-2680; Counsel for Defendant Reisenfeld & Associates, Orville Reed, Buckingham Doolittle & Burroughs, Ste. 300, 3800 Embassy Parkway, P.O. Box 1500, Akron, Ohio 44333, 330-258-6523.

In re Title Insurance Antitrust Litigation, No. 1:08-CV-00677 (N.D. Ohio Sept. 7, 2009):
The following attorneys along with other represent members of the putative class action (Plaintiffs):

Bruce K. Cohen
Meredith Cohen Greenfogel & Skirnick
1521 Locust Street 8th Floor
Philadelphia, PA 19102

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00139 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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215-564-5182
Fax: 215-569-0958 Email: bcohen@mcgslaw.com
LEAD ATTORNEY for Jordan Katz

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LEAD ATTORNEY for Jordan Katz, Gaby Hasrouni, Gina Hasrouni, Craig Mintz, Sean Nightingale, Micah Watts, Carol Rhamy, Katherine Wirkus, and Adam Falkner

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The following attorney was designated Liaison for Defense Counsel (Defendants had nearly 20 counsel of record):

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200 Public Square
Cleveland, OH 44114
216-621-0150
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ATTORNEY TO BE NOTICED for Defendants

These attorneys also appeared to serve major roles for the defense:

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Ste. 1600
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VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00140 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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LEAD ATTORNEY for Old Republic National Title Insurance

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ATTORNEY TO BE NOTICED for Old Republic National Title Insurance

Carleton E. Averill, II v. Gleaner Life Ins. Soc'y, et al., No. 3:06-CV-02867 (N.D. Ohio Feb. 27, 2009):

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VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00141 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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LEAD ATTORNEY

Michael Abdelshahid v. Michael J. Astrue, Comm'r of Soc. Sec., No. 1:08-CV-01480 (N.D. Ohio July 10, 2009)

Plaintiff's Counsel:
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Michael S. Smith v. Stuart Hudson, Warden, No. 1:08-CV-01010 (N.D. Ohio Aug. 27, 2009):
Pro se Inmate:
Michael S. Smith
#493-636
M.A.N.C.I.
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Mansfield, OH 44901

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00142 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Defense Counsel:
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Dwain Farrow v.Carl Anderson, Warden, 2009 WL 3004024 (N.D. Ohio Sept. 15, 2009):

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Henry Smith v. Julius Wilson, Warden, 2009 WL 700419 (N.D. Ohio March 11, 2009):

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VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00143 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.

To date, I have been reversed (*i.e.* my recommendation has not been adopted) twice. *See* the summaries below. Copies of both my opinion and the reversals are attached.

Report and Recommendation: *Karger v. Comm'r Soc. Sec.*, No. 5:08CV1713, (N.D. Ohio July, 31, 2009)

Plaintiff Juliette Karger sought judicial review of the Social Security Administration's final decision denying her application for Supplemental Security Income pursuant to 42 U.S.C. § 405(g).

The undersigned recommended that the final Agency decision denying Karger benefits be reversed and that the case be remanded, pursuant to the Fourth Sentence of 42 U.S.C. § 405(g), because: (1) the ALJ violated the treating source rule with respect to the opinions of Dr. Dana Watts, by not providing good reasons for the weight determination of a treating source; (2) the ALJ erred by failing to mention, determine and explain the weight given to the State Agency reviewing psychologist's, Dr. Menken, opinion; (3) these errors and omissions were not harmless, as the ALJ's written decision did not represent the entire record; and (4) the ALJ did not apply the proper legal standards in evaluating Karger's medical opinions, and must now reassess Karger's RFC.

For the foregoing reasons, the undersigned recommended with instructions that, upon remand, the ALJ: (1) re-evaluate the weight given and provide good reasons

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00144 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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for such weight to the medical opinions of treating source Dana Watts, Ph.D. consistent with this opinion, Sixth Circuit law, and applicable Agency Regulations, (2) re-evaluate the remaining medical source evidence consistent with this opinion, Sixth Circuit law, and applicable Agency Regulations, and (3) conduct a reassessment of Karger's residual functional capacity, before determining whether Karger is disabled and eligible for Supplemental Security Income.

Reversal Decision Summary: *Karger v. Comm'r Soc. Sec.*, No. 5:08CV1713, (N.D. Ohio Aug. 28, 2009)

In accordance with Federal Rule of Civil Procedure 72, the Court reviewed the Report and Recommendation of this case *de novo* and considered all of the pleadings and filings of the parties. Further, the Court reviewed the ALJ's findings in Plaintiff's administrative proceedings under the substantial evidence standard. After careful evaluation of the record, the Court declined to adopt the Report and Recommendation.

The Court found merit in Defendant's position that, although the ALJ did not expressly mention the opinions of Dr. Watts or Dr. Menken, the ALJ reasonably relied on five contrary opinions, in addition to Plaintiff's activities, in finding Plaintiff not disabled. Because the Court found that the ALJ's determination was supported by substantial evidence, Defendant's Objections to the Report and Recommendation were SUSTAINED and the decision of the ALJ was AFFIRMED.

Report and Recommendation Summary: *Gearhart v. Comm'r of Soc. Sec. Admin.*, No. 5:08-CV-01252, (N.D. Ohio July 17, 2009)

I. Introduction

This was an action for judicial review of the final decision of the Commissioner of Social Security Administration ("Commissioner" or "Agency") denying the application of Plaintiff Jimmie G. Gearhart for Disability Insurance Benefits ("DIB") pursuant to Title II of the Act, 42 U.S.C. §§ 416(I) and 423, and Supplemental Security Income ("SSI") pursuant to Title XVI of the Act, 42 U.S.C. § 1382c(a).

After reviewing the record as a whole, including: (1) the medical evidence presented; (2) Gearhart's testimony and statements made to his medical care providers; and (3) the legal standards applied, Magistrate Judge Pearson found that the ALJ's decision was supported by substantial evidence and based upon properly applied relevant legal standards. As such, the undersigned recommended that the final Agency decision be affirmed and the matter be dismissed.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00145 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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II. The ALJ Properly Evaluated and Denied Gearhart's Impairment Without the Aid of a Medical Expert

Gearhart asserted two arguments regarding in support of why a medical expert should have been present at his hearing before the ALJ. First, his back impairments meet or medically equal Listing 1.04A and a medical expert would have confirmed this finding. Second, the ALJ erred by finding him not fully credible and had a medical expert been present, the medical expert would have helped to support Gearhart's credibility.

Magistrate Judge Pearson found that the ALJ correctly determined that Gearhart does not have an impairment or combination of impairments that meets or medically equals one of the listed impairments in Listing 1.04A. (Tr. 15.) And furthermore, coming "close" to equaling a Listing is not enough at Step Three. *See Dorton v. Heckler*, 789 F.2d 363, 367 (6th Cir. 1986). Magistrate Judge Pearson also found that the ALJ discussed several of the seven factors in his decision and therefore considered requisite evidence in rendering his determination that Gearhart's testimony was not fully credible. As such, substantial evidence existed to support the ALJ's decision to discredit (*i.e.* find less than completely credible) Gearhart's subjective statements of pain.

III. The ALJ Properly Analyzed the Opinions of the Treating Physician

Gearhart had two treating physicians of record, Dr. Pitt and Dr. Kalman. Gearhart argued that Dr. Pitt's medical opinions were consistent with objective medical evidence and that the ALJ failed to properly weigh Dr. Pitt's opinions. Gearhart further asserted that the ALJ erred by failing to adopt Dr. Pitt's opinions, that Gearhart has the capacity for less than sedentary work, and that his impairments meet or equal Listing 1.04A. Dr. Arthur Kalman, another treating physician, found that Gearhart had full strength in all extremities, negative straight leg raising, and full active range of motion of the cervical and lumbar spines, contradicting Dr. Pitt.

The undersigned noted that the ALJ observed that some of Dr. Pitt's opinions contradicted other medical evidence in the record. *See* 20 C.F.R. § 404.1527(c)(2) (Medical evidence may be discounted if it is internally inconsistent or inconsistent with other evidence). Consequently, the ALJ aptly and reasonably declined to give Dr. Pitt's opinions controlling weight because the ALJ determined that "only some of the restrictions are consistent with the findings on examination and the objective medical evidence."

In sum, Magistrate Judge Pearson found that the ALJ's decision evidences a reasonable explanation of how he resolved conflicting medical opinions, and the weight he gave the treating medical source opinions of record was adequate to support his decision. *See Bass v. McMahon*, 499 F.3d 506, 512 (6th Cir. 2007) ("Wilson requires reversal when a treating physician's opinion was ignored and no reasons for doing so were provided . . . That is not the case we have here.").

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00146 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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IV. The ALJ Properly Analyzed the Vocational Expert's Opinions

Gearhart argued that the ALJ erred at Step Five by failing to include Dr. Pitt's reported limitations in the ALJ's hypothetical question to the Vocational Expert ("VE"). The defendant asserted that the ALJ correctly incorporated only those limitations deemed credible. The ALJ observed that some of Dr. Pitt's opinions were internally inconsistent, and therefore the ALJ's hypothetical questions appropriately only included limitations that the ALJ found credible and that were supported by substantial evidence. The VE's testimony in response to a hypothetical question with the added limitations of Gearhart's counselor should not be afforded controlling weight because those limitations were not supported by substantial medical evidence.

The undersigned found that the ALJ observed the VE's testimony and determined that the testimony was reliable regarding the type and availability of jobs Gearhart could perform. Additionally, there was substantial evidence to support the ALJ's finding that Gearhart was able to perform light work and that a significant number of jobs existed in the national economy that he could perform.

V. Conclusion

For the foregoing reasons, Judge Pearson found that substantial evidence supported the ALJ's conclusion that Gearhart was not under a "disability" as defined by the Act and, therefore, not entitled to benefits. Judge Pearson recommended that the Agency's final decision denying benefits be affirmed in its entirety.

Reversal Decision Summary: *Gearhart v. Comm'r of Soc. Sec. Admin.*, No. 5:08-CV-01252, (N.D. Ohio Sept. 18, 2009)

I. Introduction

The Court reviewed the matter *de novo* on the Objections to the Magistrate Judge's Report and Recommendation filed by plaintiff Jimmie G. Gearhart (Gearhart). Because Gearhart objected only to that portion of the R & R relating to the weight given to the evidence offered at the hearing, the remainder of the R & R-including its statement of the factual and procedural history of the case- was accepted as written.

Upon *de novo* review of those portions of the R &R to which Gearhart has made objection, the Court REJECTED the R & R and held that the decision of the ALJ, which has became the final decision of the Commissioner pursuant to 20 C.F.R. § 416.1481, was REVERSED and the matter was REMANDED for further consideration and a new determination, and if the ALJ believes necessary, a new hearing.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00147 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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II. Ruling

By his sole objection to the R & R, Gearhart complained that the ALJ and the Magistrate Judge improperly rejected his argument regarding the treatment and weight to be given to the opinion of his treating physician, Dr. Pitt. Specifically, Gearhart believed that the ALJ and the Magistrate Judge did not fully address Dr. Pitt's findings that Gearhart's impairments and treatment would cause him to be absent from work more than three (3) times a week. The Court agreed, and found that a remand was necessary to permit the ALJ an opportunity to evaluate this restriction.

Dr. Pitt filled out a residual Functional Capacity Questionnaire on September 26, 2006. In responding to the question "On the average, how often do you anticipate that your patient's impairments or treatment would cause your patient to be absent from work," Dr. Pitt placed a check mark next to the line reading "More than three times a month."

The ALJ's decision, however, noted that Dr. Pitt's report indicated that "[t]he claimant would be absent from work about once monthly because of his impairments." As such, the ALJ (and, in turn, the Magistrate Judge) misinterpreted the record.

In a footnote, the Court explained that the error was somewhat understandable, because Dr. Pitt's check marks were unusual in that they contained a common check combined with an "X". The Court, however, concluded that the "More than three times a month" line was actually checked.

In the instant matter, the potential impact of the ALJ's mischaracterization of the record was significant. Based on restrictions contained in the first hypothetical, the VE found that the hypothetical worker was still employable. It was not until Gearhart's counsel posed a second hypothetical, including the restriction that the hypothetical worker would miss three or more days each month, that the VE determined that the worker would be unemployable. Nonetheless, because the ALJ was misinformed about the nature of Dr. Pitt's evaluation, he would have found it appropriate to discount the VE's second opinion as not supported by the record. *See Stanley,* 39 F.3d at 118; *Hardaway*, 823 F.2d at 927-28.

As such, this action must be remanded for further review by the ALJ. On remand, the ALJ should consider the above-mentioned restriction placed on Gearhart by Dr. Pitt, and determine whether it affects his original finding of no disability.

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.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00148 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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To date, all of my opinions are unpublished. Some are, however, available *via* online services such as WestLaw and Lexis. Additionally, my opinions are maintained on an electronic word processing database maintained by the United States District Court and accessible through Pacer at http://pacer.psc.uscourts.gov/.

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

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.

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:

The Northern District of Ohio has an automated program that proactively seeks to prevent assigning judges to cases wherein a conflict may arise. To facilitate this, judges identity persons or entities that would likely create conflicts of interest necessitating recusal. Accordingly, I have submitted names that include organizations of which I am on the board of trustees, banks with which I have financial relationships, the church I attend, etc. The automated program prevents me from being assigned cases involving the parties I have identified, if they are identifiable parties at the time the matter is initially filed. Despite those automated precautions, which only address anticipated conflicts, inevitably, a matter is assigned to a judge that creates an actual or potential conflict due to unforeseen circumstances. Section 455 of Title 28 of the United States Code directs recusal as required, in those types of cases. I have relied upon section 455(a) to recuse myself on three occasions to date. One matter involved the alleged wrongful death of a relative of my nephew; the other two matters involved criminal investigations that I had exposure to while working as an Assistant United States Attorney. I have not had a litigant or party ask me to recuse myself. Below are answers relative to each of my recusals.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00149 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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- *Lynda Dejournett Houser v. City of Akron*, Case No. 5:08cv02774:

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;

My recusal was *sua sponte*.

b. a brief description of the asserted conflict of interest or other ground for recusal;

I recused myself after learning that the decedent in the above-described civil rights case was the cousin of my half-sister's son, Ryan Dejournett.

c. the procedure you followed in determining whether or not to recuse yourself;

I relied upon the language in 28 U.S.C. section 455(a) that states "(a) any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

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 recused immediately after learning that I was assigned as Magistrate Judge to a civil rights case wherein my nephew was related to the decedent whose immediate family allegedly died as the result of neglectful treatment while he was in police custody. Magistrate Judges are automatically assigned to all civil cases, dependent upon the location in which the magistrate judge serves. I was randomly assigned to this case in November 2008 but had not been called upon to assist the District Court Judge in any way so I was not aware of the identity of the parties, the facts of the case, or its existence. On February 18, 2009, I learned of my assignment to the case and my familial connection. I filed my recusal the next day. I played no role in the case as a judicial officer.

- *USA v. Barkus and Lombardo*, Case No. 1:09cr386:

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;

My recusal was *sua sponte*.

b. a brief description of the asserted conflict of interest or other ground for recusal;

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00150 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

65688.175

I recused after learning that this matter had been automatically assigned to me. I served as a "taint team" A.U.S.A., meaning that I reviewed documents seized from Defendant Barkus *via* a search warrant and/or provided through discovery to cull out any that may have been protected by attorney-client privilege.

c. the procedure you followed in determining whether or not to recuse yourself;

I relied upon the language in 28 U.S.C. section 455(a) which states "(a) any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

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 recused immediately after learning that I was assigned as Magistrate Judge to the case wherein I had acted as a "taint team" A.U.S.A. Magistrate Judges are assigned to all matters as a matter of course. I was alerted to my assignment to the case by a telephone call to my staff by the A.U.S.A. prosecuting the matter. I filed my recusal the day after the indictment was returned. I played no role in the case as a judicial officer.

- *USA v. Payne, Case No. 1:09cr272*:

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;

My recusal was *sua sponte.*

b. a brief description of the asserted conflict of interest or other ground for recusal;

Although I had not been directly involved in the matter, I recused after learning that this matter had been automatically assigned to me and was one that was under investigation by A.U.S.A.'s serving in the same unit in which I had worked while an A.U.S.A.

c. the procedure you followed in determining whether or not to recuse yourself;

I relied upon the language in 28 U.S.C. section 455(a) which states "(a) any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00151 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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 recused myself immediately after learning that this matter had been automatically assigned to me and was one, although I was not directly involved, was being investigated by attorneys serving in the same unit I worked in while I was an A.U.S.A. I played no role in the case as a judicial officer.

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 was unsuccessful in my first attempt in securing a federal magistrate judge position. That vacancy was filled by Magistrate Judge Greg White approximately eight months before my current 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.

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;

July 1996- August 1998: Law Clerk to District Court Judge John M. Manos, United States District Court for the Northern District of Ohio

July 1995 – August 1995: Law Clerk to District Court Judge Solomon Oliver, Jr., United States District Court for the Northern District of Ohio

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00152 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.

August 2009 Present: U.S. District Court, Northern District of Ohio, United States Magistrate Judge, 201 South Main Street, Akron, Ohio 44308;

July 2000 – August 2009: Office of the U.S. Attorney, Northern District of Ohio, Federal Prosecutor, serving in Organized Crime and Public Corruption Strike Force located at 801 West Superior Avenue, 4th Floor, Cleveland, Ohio 44113;

September 1998 – July 2000: Jones Day, Associate in General Litigation, located at North Point, 901 Lakeside Avenue, Cleveland, Ohio 44114;

July 1996 - August 1998: U.S. District Court, Northern District of Ohio, Law Clerk to Judge Manos (deceased). Chambers was located at 127 Key Tower, Cleveland, Ohio;

August 1995 – July 1996: McDonald Hopkins, Associate in Litigation Section, located at 600 Superior Avenue, E., Cleveland, Ohio 44114. I also worked as a student law clerk from May 1994 to may 1995;

July 1995 – August 1995: U.S. District Court, Law Clerk to Judge Solomon Oliver, Jr., NDOH located at 801 West Superior Avenue, Cleveland, Ohio 44113;

May 1992 – May 1994: Reminger & Reminger, Student Law Clerk, law firm is currently located at 1400 Midland Building, 101 Prospect Avenue, W., Cleveland, Ohio 44115.

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 prior to becoming a judicial officer. I have not served as an arbitrator in any capacity.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00153 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.

1995- Mid 1996: Private Practice, representing small to mid-sized corporate and individual clients in civil litigation;

Mid 1996- 1998 and summer 1995: Law Clerk to Federal Judge, drafting opinions and jury instructions in civil and criminal matters, including a death penalty habeas petition;

1998-2000 and 2007 to present: Teaching Advanced Brief Writing and Oral Advocacy and Animal Law at Cleveland-Marshall College of Law;

1998-2000: Private Practice, representing primarily large corporate clients in complex civil litigation, including antitrust and complex contract matters;

2000-2009: Federal Prosecutor, Office of U.S. Attorney, NDOH, serving in Organized Crime and Public Corruption Strike Force, primarily prosecuting violations of public corruption laws.

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

In private practice, my client was typically a corporation seeking to protect a commercial interest *via* the enforcement of the terms of a contract or protection under antitrust laws.

As a federal prosecutor, my sole client was the United States. My typical target or subject of an investigation was a very influential and well-respected first-time offender who is extremely resistant to allegations of ill repute. These individuals were usually represented by highly competent legal counsel and were determined to clear their names despite any wrongdoing. My work ethic and temperament remains well suited to these matters because I am well prepared, firm and fair.

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.

- July 1995 – August 1995: As a Law Clerk to Judge Oliver, I did not attend court proceedings;

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00154 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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- August 1995- July 1996: While an Associate at McDonald Hopkins, I had my first solo trial in a civil matter in Rocky River, Ohio Municipal Court;

- July 1996 – August 1998: As a Law Clerk to Judge Manos, I was involved in federal court matters often daily;

- August 1998 – August 2000: as a Lecturer at Cleveland-Marshall, I did not appear in court;

- September 1998 – July 2000: As an Associate at Jones Day, I was present in court regularly for trial related matters but had a speaking role only once during a hearing regarding the admission of exhibits. My primary role was to assist the lead partner in conducting examinations or preparing pleadings;

- July 2000- August 2009: As a federal prosecutor, I appeared in court occasionally because the cases were complex and required long investigations prior to going to trial. During trials, I appeared daily;

- August 2007 – Present: My role as an Adjunct Professor at Cleveland-Marshall does not require court appearances; and

- August 2009 – Present: As a U.S. Magistrate Judge, I preside over matters in court as often as necessary. I also frequently manage my docket via telephonic and in-person conferences.

i. Indicate the percentage of your practice in:
1. federal courts: 90%
2. state courts of record: 10%
3. other courts;
4. administrative agencies

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.

I tried five cases; two cases as co-counsel and three cases a lead counsel.

i. What percentage of these trials were:
1. jury: 100%
2. non-jury.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00155 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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 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.

United States v. Lay, 1:07CR339 (and related cases):
Summary: I along with Co-Counsel represented the United States in a series of related prosecutions involving public corruption in the management of the billions of dollars controlled by the Bureau of Workers' Compensation. Several persons were convicted, including Chief Financial Officer Terry Gasper, Investment Advisors, Mark Lay and Clarke Bizzard. I was lead counsel and first-chaired two trials in related matters. I also led a multi-jurisdictional task force which included representatives of the U.S. Attorney's Office for the Southern District of Ohio and the County Prosecutor Offices for Franklin and Lucas County. The Grand Jury investigation was long-term and involved an inordinately large production of documentary evidence. Mark Lay's conviction involved a securities violation issue of first impression. The appeal is pending before the Sixth Circuit.

(a) Dates of Representation: 2006-2009

(b) Name of Court, Judge before whom the case was litigated: U.S. District Judge David Dowd, NDOH, presided.

(c) The individual name, addresses, and telephone numbers of co-counsel for each of the other parties:

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00156 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Co-Counsel:
Antoinette Bacon, A.U.S.A.
Office of the U.S. Attorney, United States Court House
801 West Superior Avenue, 4th Floor
Cleveland, Ohio 44114
216-622-3600

Opposing Counsel:
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(614) 849-0378

Roger Synenberg (Counsel for Michael Lewis)
Synenberg & Associates, LLC
55 Public Square, Suite 1200
Cleveland, Ohio 44113
(216) 622-2727

William Beyer (Counsel for Daniel O'Neill)
Wuliger, Fadel & Beyer
The Brownell Building 1340
Sumner Court
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Richard Kerger (Counsel for Mark Lay)
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John Cunha and Helen Holcomb (Counsel for Clarke Blizzard)
Cunha & Holcomb
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Boston, MA 02109-3507
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VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00157 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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United States v. Onunwor, 1:04CR211 and United States v. Gray, 1:04CR580: Summary: I along with Co-Counsel represented the United States in related prosecutions involving public contracts corruptly obtained through the bribery of public officials. The following public officials were convicted: the sitting Mayor of the City of East Cleveland, Emmanuel Onunwor; sitting Cleveland Councilman, Joe Jones; and the sitting Chief of Staff to Mayor of Houston, Texas, Oliver Spellman, and Monique McGilbra, former Director of Parks and Recreation for the City of Houston, Texas, along with several other individuals. The Grand Jury investigation was long-term and involved the use of authorized electronic surveillance.

(a) Dates of Representation: 2003-2006

(b) Name of Court, Judge before whom the case was litigated: U.S. District Judge James Gwin, NDOH, presided.

(c) The individual name, addresses, and telephone numbers of co-counsel for each of the other parties:
Co-Counsel:
Steven M. Dettelbach
Partner
Baker Hostetler
3200 National City Center
1900 East 9th Street Cleveland, Ohio 44114-3485
216-621-0200

Opposing Counsel:
John S. Pyle: (Counsel for Mayor Onunwor)
Gold & Pyle
526 Superior Avenue E., Suite 1140
Cleveland, Ohio 44114
(216) 696-6122

Jaime Serrat (Counsel for Mayor Onunwor)
2000 Standard Bldg
1370 Ontario Street
Cleveland, OH 44113
(216) 696-1718

Jerome Emoff (Counsel for Councilman Joe Jones)
Dworkin & Bernstein Co. L.P.A.
60 South Park Place
Painesville, Ohio 44077
(440) 352-3391

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00158 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Robert Jenkins (Counsel for Gilbert Jackson)
631 St. Charles Avenue
New Orleans, LA 70130
(504) 586-1616

William Whitaker (Counsel for Nate Gray)
Union Point
190 North Union Street, Suite 301
Akron, Ohio 44304
(330) 762-0287

United States v. Michael Mirando, 1:07cr401:
Summary: I represented the United States in this second prosecution of an attorney who repeatedly and flagrantly violated taxation laws. The Grand Jury investigation was long-term and involved the use of an undercover operative.

(a) Dates of Representation: 2006-2007

(b) Name of Court, Judge before whom the case was litigated:
U.S. District Judge Solomon Oliver, NDOH, presided.

(c) The individual name, addresses, and telephone numbers of co-counsel for each of the other parties:

Opposing Counsel:
David Doughten (Counsel for Michael Mirando)
4403 St. Clair Avenue
Cleveland, Ohio 44103
(216) 361-1112
(216) 622-2727

United States v. Norman Gore, 1:04cr267 (and related cases) :
Summary: I along with Co-Counsel represented the United States in a series of related prosecutions involving employees of the City of Cleveland Water Division accepting bribes from businesspersons conducting business with the City of Cleveland. Several persons were convicted, including City of Cleveland Water Division employees, Norman Gore and Kenneth McNeil, and several businesspersons, including Joe Sturman, Same Petrony, Arnold Kaufman and Michael Semlar. The Grand Jury investigation was long-term and involved the use of an undercover operative.

(a) Dates of Representation: 2004-2006

(b) Name of Court, Judge before whom the case was litigated: U.S. District Judge Patricia Gaughan, NDOH presided.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00159 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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(c) The individual name, addresses, and telephone numbers of co-counsel for each of the other parties:

Co-Counsel:
Steven M. Dettelbach
Partner
Baker Hostetler
3200 National City Center
1900 East 9th Street
Cleveland, Ohio 44114-3485
216-621-0200

Opposing Counsel:
William McGinty (Counsel for Norman Gore)
McGinty, Gibbons & Hilow Co. L.P.A.
614 W. Superior Ave. Suite 1300
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(216) 344-9220

James Wooley (Counsel for Joe Sturman)
Jones Day
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114-1190
(216) 586-7345

Niki Schartz (Counsel for Joe Sturman)
Schwartz, Downey & Co.
45 West Prospect, Suite 1616
Cleveland, Ohio 44115
(216) 696-7100

Roger Synenberg (Counsel for Arnold Kaufman and Sam Petrony)
Synenberg & Associates, LLC
55 Public Square, Suite 1200
Cleveland, Ohio 44113
(216) 622-2727

United States v. Larry Dean Dusenbery, 5:91cr291:
Summary: Along with Co-Counsel, I represented the United States in this criminal post-conviction and appellate matter. The defendant was convicted of engaging in an continuing criminal enterprise ("CCE"), in addition to other criminal offenses. The CCE conviction was later vacated, the matter appealed and the defendant resentenced on the remaining criminal convictions.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00160 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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(a) Dates of Representation: 2000-2002 (approximately)

(b) Name of Court, Judge before whom the case was litigated: U.S. District Judge Kathleen O'Malley, NDOH presided.

(c) The individual name, addresses, and telephone numbers of co-counsel for each of the other parties:

Co-Counsel:
Ann Rowland, A.U.S.A.
Office of the U.S. Attorney
United States Court House
801 West Superior Avenue, 4th Floor
Cleveland, Ohio 44114
216-622-3600

Opposing Counsel:
Angelo Lonardo (Counsel for Larry Dean Dusenbery)
Yelsky & Lonardo
75 Public Square, Suite 800
Cleveland, Ohio 44113
(216) 781-6688

United States v. Carl Woodman, 115 Fed. Appx. 840, 2004 WL 2711025:
Summary: I along with Co-Counsel represented the United States in this tax prosecution both at trial and on appeal.

(a) Dates of Representation: 2002-2004 (approximately)

(b) Name of Court, Judge before whom the case was litigated: U.S. District Judge Solomon Oliver, NDOH presided.

(c) The individual name, addresses, and telephone numbers of co-counsel for each of the other parties:

Co-Counsel:
Linda Betzer, A.U.S.A. (retired)
11917 Meadowridge Drive
Chesterland, Ohio 44026
(440) 729-3359

Opposing Counsel:
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Yelsky & Lonardo
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Cleveland, Ohio 44113
(216) 781-6688

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00161 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Jeffry Kelleher
526 Superior Avenue
Cleveland, Ohio 44114
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John Gibbons
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Cleveland, Ohio 44113
(216) 363-6048

Jaime Serrat
2000 Standard Bldg
1370 Ontario Street
Cleveland, OH 44113
(216) 696-1718

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 significant legal activity has been my steadfast commitment to administering equal justice to all. Throughout my legal career, I have dedicated myself to providing equal treatment under the law. My goal upon becoming a judicial officer was to ensure that every person who stood before the Court, regardless of race, wealth, gender or social status, received the same courtesies, respect and, most importantly, equal justice under law. This same determination now propels me to seek the position of United States District Court Judge. As a District Court Judge, I would rely upon my wealth of legal and personal experiences along with my commitment to public service to work towards reaffirming and reinvigorating the public's faith in the American judicial system.

A commitment to the administration of equal justice requires an unwavering belief that all - the poor and rich, the likable and unlikable, the pretty and ugly, the first-time offender and repeat offender - are to be afforded the same, equal, treatment under the law. This means that regardless of race, wealth or any other possible discriminating factor, judicial officers are to extend the same courtesies, respect and, most importantly, adjudication to all who stand before them. I believe this with every fiber of my being and my personal and professional actions demonstrate my commitment to equal justice under the law. Moreover, in my legal practice, I have found my devotion to achieving equal justice under the law has been deeply satisfying, both intellectually and emotionally.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00162 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

65688.187

As a Magistrate Judge, in criminal matters, it is often my responsibility to appoint counsel for indigent defendants and to explain to defendants recently charged or arrested their rights under the law and the procedures to be followed. I take these responsibilities very seriously. I often engage in a lengthy dialogue with a defendant and/or his or her attorney until I am satisfied that the defendant and his or her attorney understands. This same opportunity presents itself most often in civil matters during mediation or settlement conferences or any other proceedings where a non-attorney client or *pro se* litigant is present. I take advantage of these opportunities to anticipate and answer questions and ensure that the litigants have a reasonable understanding of how matters will proceed.

As a federal prosecutor, I often found myself in situations where I could assist in the administration of justice by doing more than simply applying facts and circumstances to the applicable law. I often dealt with an unrepresented person or an attorney who was unfamiliar with the workings of federal law, investigative procedures and/or the federal court system. In those cases, I made a point of (1) never taking unfair advantage and (2) coaching to the extent necessary to ensure that proceedings were fair. For example, some attorneys would neglect or forget to ask the status (*i.e.*, target, subject or mere witness) of his or her client in the investigation. This important fact is one best addressed immediately and, if not asked of me, I routinely offered that information, immediately.

Another example involved my habit of extending proffer letter agreements. While not affording full immunity, proffer letter agreements provide protection for the witness who may have some exposure to criminal prosecution by restraining the government's use of that witness's statements made during an interview. A proffer letter is usually extended in criminal investigative matters unless there is a legitimate reason to withhold it. A firmly held belief that the witness will not truthfully answer questions or, even if truthful, the answers will not aid the investigation, are typically the reasons for which I would withhold a proffer letter.

It has been my experience that those criminal defense attorneys who were the least experienced were the ones most likely to agree to permit their clients to be interviewed without first asking for a proffer letter. In those cases, it was usually my experience that the attorney had also not fully debriefed the witness and did not know all that the witness might reveal that could later prove problematic for the witness. Additionally, in most of my investigations, the witnesses had some level of culpability even though they were not subjects or targets of the investigation, making the protections of a proffer letter all the more important. In these situations, I routinely brought up the subject of the proffer letter and suggested that such a letter agreement be entered. I never had a defense attorney refuse to enter a proffer agreement after I had suggested it.

There were times when a potential witness/defendant needed more than the protections of a proffer letter agreement. On one such occasion, a target approached me and offered to cooperate, after he realized that his criminal conduct had been discovered. The target could not afford counsel. On his behalf, I petitioned the Court to inquire about whether

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00163 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

65688.188

the target qualified for appointed counsel. He did. With appointed counsel, the target cooperated and entered a plea of guilty to a public corruption violation.

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.

    Cleveland State University's Cleveland-Marshall College of Law, 1801 Euclid Avenue, Cleveland, Ohio 44115:

    Animal Law, Fall Semester of 2007, 2008 and 2009. The syllabus for 2009 is attached; the syllabi for 2007 and 2008 were very similar. Animal Law surveys all aspects of the intersections of animals and local, state and federal laws. As the syllabus shows, the topics are wide-ranging, *e.g.* from tort law to estates and trusts.

    Advanced Brief Writing and Oral Advocacy, Fall Semester 1998, 1999 and 2000. Syllabus no longer available. This course focused on improving the students' ability to communicate both orally and in writing with the court.

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 continue law school teaching.

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).

In the past, I have earned approximately $2000 per semester for teaching at Cleveland-Marshall College of Law. I do not intend to pursue any other income-generating activity outside of work.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00164 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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 do not anticipate any conflicts of interest. Out of an abundance of caution, I requested an advisory opinion on whether a conflict would arise from my mother's employment as a nanny by the recently appointed. U.S. Attorney serving the Northern District of Ohio. The Committee on Codes of Conduct of the Judicial Conference of the United States responded that it did "not believe that the Code requires [my] disqualification in a case in which my mother's private employer . . . [is] the U.S. Attorney. [It] therefore advise[d] that [my] mother's employment as a nanny by the [] U.S. Attorney in [my] district does not raise a conflict for [me]."

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

       The United States District Court in the Northern District of Ohio has a procedure for identifying potential conflicts of interest. (*See also* response to Question 14.) I began following that procedure immediately after my appointment. I do not anticipate any litigation or financial arrangements that are likely to present conflicts of interest. If necessary, there is also a recusal procedure such as that described in 28 U.S.C. Section 455(a) and discussed in response to Question 14.

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.

    To date, my work as a federal prosecutor has been my greatest contribution to the public. Restrictions in my ability to represent clients other than the United States caused me to focus as described below.

    I have spent approximately eleven years (over two-thirds of my legal career) in public service. Towards the end of my career as a federal prosecutor, I began investigating and

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00165 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

65688.190

prosecuting civil rights violations. Overall, regardless of the case I prosecuted, my foremost concern was to best serve the public.

I have served on the board of the Eliza Bryant Village for over a decade. Eliza Bryant Village was founded by a woman of the same name who was the daughter of a freed slave. Eliza watched as her mother and other aged African Americans were turned away from nursing homes because of their race. These circumstances motivated Eliza Bryant to start a nursing home dedicated to caring for needful African American elderly. Today, the nursing home has bloomed into a multi-facility campus where impoverished elderly of all races live in a dignified, compassionate and secure environment and receive qualified medical care and social stimulation. Well over 90% of the campus residents are totally reliant upon government subsidies. I willingly volunteer my time to this worthwhile organization.

After becoming a federal prosecutor, I seriously curtailed my charitable and community service activities to avoid any improprieties or potential conflicts of interests. Prior to that time, however, I was heavily involved in promoting the services provided to attorneys by the Cleveland Metropolitan Bar Association, formerly known as the Cleveland Bar Association. As my resume reflects, I am a Past Member Board of Trustees of both the Bar Association and its Foundation; Past Chair of Young Lawyers Division; and Past Co-Chair of a fundraiser, the Bench-Bar Run.

I am actively involved in a local church and serve in many capacities, including being a member of the Bell Choir and Altar Guild, member of the Executive Council for our regional Synod and past secretary for the church's Council, member of the Ministry Board and past Chair of the Mutual Ministry Committee.

6. **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 was aware that Judge Economus would be eligible for Senior Status and that, if he transitioned to Senior Status, an opening would then exist on the District Court in the Northern District of Ohio. I watched for opportunities to apply for the expected judicial vacancy and sent a letter of interest to Senator Brown's office after Judge Economus' transition to Senior Status was announced. I met with Senator Brown's State Director who informed me that Senators Sherrod Brown

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00166 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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and George Voinovich would be jointly establishing a Commission to accept applications and inquiries. I kept myself apprised of the Commission's formation by following updates on Senator Brown's Senate website. After the bipartisan Commission had been formed, I sent the same letter of interest that I had earlier forwarded to Senator Brown's office directly to the Commission. I eventually began receiving emails from persons acting on behalf of the Commission. I interviewed with the Commission on June 29, 2009 and was notified that I had made the list of three finalist *via* email. Senator Brown interviewed me on July 19, 2009. On July 21, 2009, Senator Brown notified me of my selection for recommendation by himself and Senator Voinovich. I was contacted by the Department of Justice regarding the nomination paperwork to complete.

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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Rev. 1/2008

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Pearson, Benita Y.	Northern District of Ohio	12/07/2009
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type** (check appropriate type)	**6. Reporting Period**
District Judge - Nominee	☑ Nomination, Date 12/3/2009 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	1/1/2008 to 11/30/2009
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
480 U.S. Courthouse Two South Main Street Akron, Ohio 44308	Reviewing Officer_____ Date_____	

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

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

☐ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. First Vice President	Eliza Bryant Village
2.	
3.	
4.	
5.	

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

☑ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting Pearson, Benita Y.	Date of Report 12/07/2009

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2009	Cleveland State Univ., Cleveland-Marshal College of Law, Teaching	$2,500.00
2.	2008	Cleveland State Univ., Cleveland-Marshal College of Law, Teaching	$2,000.00
3.	2007	Cleveland State Univ., Cleveland-Marshal College of Law, Teaching	$2,000.00
4.			

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

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

	DATE	SOURCE AND TYPE
1.		
2.		
3.		
4.		

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

☐ NONE *(No reportable reimbursements.)*

	SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.	EXEMPT				
2.					
3.					
4.					
5.					

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting Pearson, Benita Y.	Date of Report 12/07/2009

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

☐ NONE *(No reportable gifts.)*

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

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☐ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.	U.S. Department of Education	Student Loans	K
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 4 of 6	Name of Person Reporting Pearson, Benita Y.	Date of Report 12/07/2009

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Vanguard Retirement Plan - 500 Index Fund	A	Dividend	J	T	Exempt				
2. Vanguard Retirement Plan-Windsor II Fund	A	Dividend	K	T					
3.									
4.									
5.									
6.									
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

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

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting Pearson, Benita Y.	Date of Report 12/07/2009

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

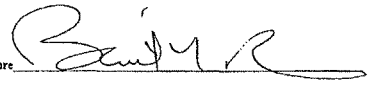
Part III.A. - Non-Investment Income: Additional non-investment income was earned during the reporting period as salary from the U.S. Government for service as a United States Magistrate Judge, Northern District of Ohio.

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Pearson, Benita Y.	Date of Report 12/07/2009

IX. CERTIFICATION.

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

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

Signature 

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		3	500	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		9	000
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		166	000
Real estate owned-add schedule		170	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		25	000				
Cash value-life insurance							
Other assets itemize:							
Vanguard retirement accounts		20	628				
				Total liabilities		175	000
				Net Worth		44	128
Total Assets		219	128	Total liabilities and net worth		219	128
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you a defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Real Estate Owned	
Personal residence	$ 170,000
Real Estate Mortgages Payable	
Personal residence	$ 122,000
Home Equity Line of Credit	44,000
Total Real Estate Mortgages Payable	$ 166,000

AFFIDAVIT

I, Benita Y. Pearson, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

12-2-09
(DATE)

(NAME)

NOTARIAL SEAL STATE OF OHIO

Kathleen Conley
Resident Summit County
Notary Public, State of Ohio
My Commission Expires: 12/15/2013

Kathleen Conley
(NOTARY)

STATEMENT OF HON. TIMOTHY S. BLACK, NOMINATED TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF OHIO

Judge BLACK. Mr. Chairman, good afternoon. Ranking Member, Senator Sessions, all Senators who are present, it's a high honor and great privilege to appear before you and we appreciate the opportunity.

I wish to express my appreciation to the President, President Obama, for his nomination; to Senator Brown and Senator Voinovich from Ohio for recommending both myself and Judge Pearson to this body; and, to all Senators, Senator Coburn and Senator Franken.

I, too, am pleased to have family with me present. I would ask that they stand. Best decision I ever made in my life as a judge or a human being, my wife of 33 years, Marnie Chapman Black. The most important work we've been engaged in is raising two daughters. They are both present, Abigail Chapman Black, Emily Harrison Black; my cousin, who works on the Hill, Heidi Black; long-time family friend, who lives in D.C., Caroline Orrick.

Smaller turnout than Judge Pearson's, but we're just as pleased and honored. Thank you.

[Laughter.]

Senator KAUFMAN. Thank you.

Mr. Lynch.

[The biographical information of Timothy S. Black 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).

   Timothy Seymour Black

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

   United States District Judge for the Southern District of Ohio

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.

   716 Potter Stewart United States Courthouse
   100 E. Fifth Street
   Cincinnati, Ohio 45202

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

   1953; Brookline, Massachusetts

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.

   1978-1983, Salmon P. Chase College of Law, Northern Kentucky University; J.D., 1983

   1971-1975, Harvard University, A.B., *cum laude*, 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.

   2004-present
   United States District Court for the Southern District of Ohio
   100 E. Fifth Street
   Cincinnati, Ohio 45202
   United States Magistrate Judge

1994-2004
Hamilton County Municipal Court
1000 Main Street
Cincinnati, Ohio 45202
Judge

1982-1993
Graydon Head & Ritchey
511 Walnut Street
Cincinnati, Ohio 45202
Partner (1990-1993)
Associate (1983-1990)
Law Clerk (Fall 1982)

Summer 1982
Taft Stettinius & Hollister
425 Walnut Street
Cincinnati, Ohio 45202
Law Clerk

1978-1982
The Seven Hills Schools
5400 Red Bank Road
Cincinnati, Ohio 45227
Director of Development and Teacher and Coach

1975-1977
Roxbury Latin School
101 St. Theresa Avenue
West Roxbury, Massachusetts 02132
Director of Development and Teacher and Coach

Summers 1975 and 1976
Agamenticus Yacht Club
Simpson Lane
York Harbor, Maine 03911
Sailing Master

Other affiliations

1980-present
Cowan Lake Sailing Association
7379 State Route 730
Wilmington, Ohio 45177
Director (2005-present) (unpaid)
Commodore (2009) (unpaid)

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1996-1999
Cincinnati Psychoanalytic Institute
3001 Highland Avenue
Cincinnati, Ohio 45219
Director (unpaid)

1992-1994
Summerbridge Cincinnati, Inc.
6905 Given Road
Cincinnati, Ohio 45243
Director and Treasurer (unpaid)

1982-1993
Invest in Neighborhoods, Inc.
315 W. Court Street
Cincinnati, Ohio 45202
Director (1982-1993) (unpaid)
President (1988-1993) (unpaid)

1986-1989
Planned Parenthood Association of Cincinnati
2314 Auburn Avenue
Cincinnati, Ohio 45219
Director (1986-1989) (unpaid)
President (1988) (unpaid)

1982-1988
Pro-Kids, Inc.
2605 Burnet Avenue
Cincinnati, Ohio 45219
Director (1982-1988) (unpaid)
Vice President (1984-1986) (unpaid)

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. I registered for selective service when I turned 18.

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.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00178 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Cincinnati Bar Association, Themis Award, 2009
(for Extraordinary Service to Law and Community)
NAACP, Cincinnati Branch, Fair and Courageous Award, 2008
Black Lawyers Association of Cincinnati, Honoree of the Year, 2007
Sheila Wellstone Institute, Featured Speaker: Founding Conference, 2003
Franklin County Trial Lawyers Association, Tyack Award for Judicial Excellence, 2002
Cincinnati Coalition on Domestic Violence, Excellence in Criminal Justice, 1995

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.

Cincinnati Bar Association (1983-present)
Trustee (1996-2000)
Cincinnati Academy of Leadership for Lawyers (1997-present)
Chair (2006-2008), Faculty (1997-present)
Diversity Committee of the United States District Court for the Southern District of Ohio (2004-present), Chair (2008)
Potter Stewart American Inn of Court, Master of the Bench (1994-present)
Hamilton County Domestic Violence Coordinating Council (1995-2004)
Founder and Lead Convener
Hamilton County Family Violence Prevention Planning Project (2001-2002)
Ohio State Bar Association (1983-2002)
Supreme Court of Ohio, Board of Comm'rs on Grievances and Discipline (1998-1999)
Kentucky Bar Association (1986-1993)

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.

Ohio, 1983
Kentucky, 1986

None of my state bar memberships has lapsed at any time. I have been an inactive bar member since 1994, when I began service as a judge.

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 Sixth Circuit, 1983
United States District Court for the Southern District of Ohio, 1983
Supreme Court of Ohio, 1983
Supreme Court of Kentucky, 1986

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None of my court admissions has lapsed at any time. I have been inactive in all courts since 1994, when I began service as a 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.

Cowan Lake Sailing Association (1980-present)
Director (2005-present), Commodore (2009)
Abenakee [Golf and Tennis] Club (2004-present)
Cincinnati Psychoanalytic Institute (1996-1999)
Director (1996-1999)
Summerbridge Cincinnati, Inc. (1992-1994)
Director and Treasurer (1992-1994)
Invest in Neighborhoods, Inc. (1982-1993)
Director (1982-1993), President (1988-1993)
Adoptive Parents Support Organization (1991-1993)
Camargo [Golf and Tennis] Club (1980-1990)
Planned Parenthood Assn. of Cincinnati (1986-1989)
Director (1986-1989), President (1988)
Pro-Kids, Inc. (1982-1988)
Director (1982-1988), Vice President (1984-1986)

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 I listed in response to 11a above currently discriminates 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

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material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Teacher Termination in Ohio for "Gross Inefficiency": The Role of Teacher Evaluation, 44 Ohio St. L.J. 1041 (1983)

Criminal Procedure – Due Process – Shifting the Burden of Proving An Affirmative Defense – Isaac v. Engle, 646 F.2d 1129 (6th Cir. 1980), 9 N. Ky. L. Rev. 99 (1982)

Ohio Gets Tough on Domestic Violence, Press Community Papers, Mar. 13, 1995

We Must End Domestic Violence, The Cincinnati Enquirer, Dec. 9, 1994

Domestic Violence Awareness Month, Press Community Papers, Nov. 16, 1994

Municipal Court and People Like Us, Press Community Papers, Oct. 10, 1994

Top Ten Worst Excuses for the Judge, Press Community Papers, May 18, 1994

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.

Fatality Review Report, Hamilton County Domestic Violence Coordinating Council (Oct. 1999)

The Case for Convening the Domestic Violence Coordinating Council, Hamilton County Ohio Domestic Violence Coordinating Council (Sept. 1995)

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

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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.

Leadership Scholars, Inc., "Speak Like A Leader" (Aug. 6, 2009)
Dinsmore & Shohl, LLC, "Lessons for the Young Lawyer" (June 11, 2009)
Cincinnati Academy of Leadership for Lawyers (CALL), "Life/Work Balance" (May 21, 2009)
Ohio State Bar Assn., "The Work of the Magistrate Judge" (May 14, 2009)
Cincinnati Bar Assn., "Acceptance of the Themis Award" (May 8, 2009)
Cincinnati Bar Foundation, "Community Service" (Apr. 29, 2009)
CALL, Lexington, Kentucky, "Speak Like A Leader" (Feb. 20, 2009)
CALL, "Leadership and Service" (Jan. 7, 2009)
Black Lawyers Assn. of Cincinnati-Cincinnati Bar Association (BLAC-CBA) Round Table, "Inclusion in the Practice of Law" (Dec. 23, 2008)
Dinsmore & Shohl, LLC, "New Fed. R. Evid. 502" (Dec. 12, 2008)
BLAC-CBA Round Table, "Diversity and Inclusion" (Nov. 13, 2008)
Naturalization Ceremony, "Welcome to the USA" (Oct. 17, 2008)
Cincinnati NAACP, "Acceptance of Award" (Oct. 10, 2008)
Naturalization Ceremony, "Welcome to the USA" (Aug. 29, 2008)
Naturalization Ceremony, "Welcome to the USA" (Aug. 22, 2008)
Karen Jones Retirement, "Goodbye to a Loyal Friend" (Aug. 8, 2008)
CALL, "Community Service" (Apr. 16, 2008)
CALL, "Leadership Skills and Tasks: Fund Raising" (Mar. 12, 2008)
Federal Bar Assn., "Practice in the District Court" (Feb. 5, 2008)
Black Law Students Assn., "View From the Bench: Life Stories" (Jan. 18, 2008)
Potter Stewart Inn of Court, "Closing Arguments" (Jan. 15, 2008)
Dinsmore & Shohl, LLC, "Alternative Dispute Resolution" (Dec. 7, 2007)
Federal Bar Assn., "District Court Admission Exam Preparation" (Nov. 29, 2007)
U.S. District Court, "Settlement Week Mediators Preparation" (Oct. 22, 2007)
Vorys Sater Seymour, LLC, "Ethics" (Oct. 22, 2007)
Potter Stewart Inn of Court, "Legal Writing" (Oct. 16, 2007)
Summer Work Experience in the Law ("SWEL"), "Life Stories" (Oct. 6, 2007)
BLAC-CBA Round Table, "Presenting the Forward Together Awards" (Oct. 6, 2007)
SWEL Reception for Alumni, "Why We Need You Here" (Oct. 5, 2007)
Federal Bench-Bar Conference, "Panel: Practice in District Court" (Oct. 4, 2007)
Naturalization Ceremony, "Welcome to the USA" (Aug. 31, 2007)
BLAC-CBA Round Table, "Lawyers and Racial Conciliation" (July 12, 2007)
CALL, "Using Your Skills to Lead" (May 23, 2007)
Naturalization Ceremony, "Welcome to the USA" (May 18, 2007)
Cincinnati Bar Association, "Social Security Law" (Apr. 27, 2007)
BLAC-CBA Round Table, "Diversity and Inclusion at Home" (Apr. 26, 2007)
U.S. District Court, "Training in Mediation" (Apr. 4, 2007)
CALL Fellows, "Police and Lawyers and Community" (Mar. 21, 2007)

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U.S. District Court Diversity Committee, "Women's History Month" (Mar. 20, 2007)
CALL, Lexington, Kentucky, "Leadership Styles" (Feb. 22, 2007)
Potter Stewart Inn of Court, "Discovery" (Feb. 20, 2007)
Ohio Bench-Bar Conference, "Panel: Summary Judgment" (Feb. 15, 2007)
CALL, "Leadership and Service" (Jan. 25, 2007)
Potter Stewart Inn of Court, "Oral Argument" (Jan. 16, 2007)
BLAC-CBA Round Table, "Why We Need You Here" (Dec. 28, 2006)
Naturalization Ceremony, "Welcome to the USA" (Nov. 17, 2006)
BLAC-CBA Round Table, "Opportunities in Cincinnati" (Nov. 9, 2006)
Potter Stewart Inn of Court, "Panel: Judicial Decision-Making" (Oct. 17, 2006)
Naturalization Ceremony, "Welcome to the USA" (Aug. 18, 2006)
Bench-Bar Conference, "Judicial Panel" (May 19, 2006)
CALL, "Using Your Leadership Skills" (May 17, 2006)
Naturalization Ceremony, "Welcome to the USA" (May 12, 2006)
Federal Bar Assn., "Practice in U.S. District Court" (May 3, 2006)
Black Lawyers Assn., "Acceptance of Award: Honoree of the Year" (Apr. 22, 2006)
U.S. District Court Diversity Committee, "Panel: Women's History Month" (Mar. 15, 2006)
CALL, "Police, Lawyers & Community" (Mar. 6, 2006)
CALL, Lexington, Kentucky, "Leadership Styles" (Feb. 3, 2006)
CALL, "The Lawyer's Obligation for Community Service" (Jan. 11, 2006)
BLAC-CBA Round Table, "Welcome Home: Why We Need You Here" (Dec. 19, 2005)
Naturalization Ceremony, "Welcome to the USA" (Dec. 9, 2005)
Miami University, Oxford, Ohio, "Constitutional Law" (Nov. 30, 2005)
Potter Stewart Inn of Court, "The Vanishing Jury Trial" (Nov. 15, 2005)
Naturalization Ceremony, "Welcome to the USA" (Nov. 10, 2005)
BLAC-CBA Round Table, "Opportunities in Cincinnati" (Nov. 3, 2005)
Federal Bench-Bar Conference, "Work of the U.S. Magistrate Judge" (Sept. 30, 2005)
Potter Stewart Inn of Court, "Motion Practice in District Court" (Sept. 20, 2005)
Univ. of Cincinnati Law School, "Diversity and Inclusion" (Aug. 17, 2005)
CALL, Lexington, Kentucky, "Leadership Styles" (Feb. 3, 2005)
BLAC-CBA Round Table, "Why We Need You in Cincinnati" (Jan. 29, 2005)
CALL, "The Lawyer's Obligation for Community Service" (Jan. 12, 2005)
BLAC-CBA Round Table, "Why We Need You in Cincinnati" (Dec. 19, 2004)
Naturalization Ceremony, "Welcome to the USA" (Sept. 17, 2004)
Naturalization Ceremony, "Welcome to the USA" (Aug. 27, 2004)
Naturalization Ceremony, "Welcome to the USA" (Aug. 20, 2004)

I only have calendars going back to May 2004, when I was appointed a United States Magistrate Judge. I have reconstructed the following list of speeches given prior to that date from my best recollection. Virtually all such speeches were legal presentations and teaching on the subject of domestic violence, and I have

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00183 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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attached copies of the few syllabi I have been able to locate. Also, in 2000-2002, as part of my campaigns for election to the Ohio Supreme Court, I gave speeches almost daily across the State of Ohio. I have attached the few copies of speeches I still have.

Representative CLE presentations (speeches) prior to May 2004:
Municipal Judges Assn., "Domestic Violence Law" (Feb. 5, 2003)
Ohio Judicial College, "Domestic Violence Law" (Jan. 16, 2002; Dec. 3, 2001; Sept. 13, 2001; Dec. 15, 2000; Apr. 30, 1999)
Newtown Police Division, "Domestic Violence Law" (May 21, 2001)
Ohio Judicial College, "Criminal Domestic Violence" (Aug. 21, 1998)
Ohio Judicial College, "DUI Evidence" (Aug. 22 & 28, 1997)
Ohio Judicial College, "Domestic Violence & Children" (Feb. 26, 1997)
Ohio Judicial College, "Civil Discovery Limits" (Feb. 18, 1997)
Ohio Judicial College, "Domestic Violence & Children" (Feb. 5, 1997)
NASPA Conference, "Domestic Violence & Lethality" (Oct. 17, 1995)
Cincinnati Police Academy, "Domestic Violence Law" (Feb.15, 1995)
Hamilton Cty. Police Assn., "Domestic Violence Law" (Jan. 16, 1995)
Ohio Atty. General's Conf., "Menacing By Stalking" (Dec. 15, 1994)
Ohio Assn. of Pre-Trial Services, "Lethality Review" (Nov. 10, 1994)
Ohio Dept. of Alcohol & Drug Addiction Treatment, "Treatment in lieu of incarceration" (Oct. 20, 1994)

Representative Ohio Supreme Court campaign speech appearances in 2000-2002:
Ohio League of Women Voters, Televised Debate (Oct. 29, 2002)
United Auto Workers Labor Day Rally, Stump Speech (Sept. 7, 2002)
Franklin County Trial Lawyers Association, Acceptance of the Tyack Award for Judicial Excellence (May 21, 2002)
Athens County Democratic Spring Dinner, Stump Speech (Apr. 25, 2002)
Ohio Democratic Party, 2002 Campaign Kick-Off Speech (Jan. 12, 2002)
Ohio Bus Tour, Dayton Labor Rally, Stump Speech (Nov. 1, 2000)
Ohio Labor Rally, Ohio Statehouse, Stump Speech (Oct. 31, 2000)
Democratic Celebration 2000, Stump Speech (Oct. 7, 2000)
Ohio AFL-CIO Convention, Stump Speech (Sept. 28, 2000)
Lima Democratic Party Spring Dinner, Stump Speech (Apr. 11, 2000)

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.

When I ran for election to the Supreme Court of Ohio in 2002 and 2000, I gave interviews to numerous newspapers and various television and radio stations across Ohio. When I was appointed as United States Magistrate Judge in 2004, I became precluded from political activity and discarded virtually all of my campaign materials. I do not have copies of interviews or speeches but for the

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00184 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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few that are attached. I have searched for available news accounts of interviews and speeches, and there are literally hundreds of news accounts of the 2000 and 2002 Ohio Supreme Court campaigns. Very few reference interviews I gave or speeches I made, and, instead, simply reflect news reports of the campaigns. Having comprehensively searched for available news accounts of interviews and speeches I gave, I have found about 75 that quote me directly or comment on a speech, interview or remarks I gave:

Democratic Diners Hear Could-Be Candidate, CINCINNATI ENQUIRER, May 31, 2003
Supreme Court Justice, MANSFIELD NEWS J., Nov. 1, 2002
Ad Nauseam: Judicial Commercials Under Fire, CLEVELAND PLAIN DEALER, Nov. 2, 2002
Supreme Court Candidates Denounce Third-Party Ads, ASSOCIATED PRESS STATE AND LOCAL WIRE, Oct. 30, 2002
Court Candidates Criticize Each Other's Ads, BUCYRUS TELEGRAPH FORUM, Oct. 30, 2002
Candidates Side With Opposite Court Factions, CINCINNATI ENQUIRER, Oct. 30, 2002
Ohio Supreme Court; Rivals Focus on Message to Voters, COLUMBUS DISPATCH, Oct. 30, 2002
Court Candidates Vow Impartial Roles, DAYTON DAILY NEWS, Oct. 30, 2002
Court to Say if O'Connor Misled Voters with Her Ad, CLEVELAND PLAIN DEALER, Oct. 30, 2002
Race Could Change Face of High Court, BUCYRUS TELEGRAPH FORUM, Oct. 28, 2002
O'Connor, Black Seeking High Court Seat, DAYTON DAILY NEWS, Oct. 28, 2002
DeRolph Pulls Every Politician's Strings, CLEVELAND PLAIN DEALER, Oct. 27, 2002
Burnside, Black Can Provide Needed Balance, DAYTON DAILY NEWS, Oct. 25, 2002
Ohio Supreme Court Justice, DAYTON DAILY NEWS, Oct. 24, 2002
Campaign Ad Watch, COLUMBUS DISPATCH, Oct. 22, 2002
Elect Stratton, O'Connor, CINCINNATI ENQUIRER, Oct. 20, 2002
Special Interests Line Up Behind Court Candidates, CLEVELAND PLAIN DEALER, Oct. 20, 2002
Court Philosophy Could Undergo Major Change, ASSOCIATED PRESS STATE & LOCAL WIRE, Oct. 15, 2002
For Supreme Court: Stratton and O'Connor, COLUMBUS DISPATCH, Oct. 13, 2002
Candidates' Ideologies No Guarantee of Performance on Bench, ASSOCIATED PRESS STATE & LOCAL WIRE, Sept. 24, 2002
Judicial Hopefuls Reluctant to Give Stances on Issues, CLEVELAND PLAIN DEALER, Sept. 23, 2002
Supreme Court Candidates Argue Agendas, MANSFIELD NEWS J., Sept. 20, 2002

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00185 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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Supreme Court Candidates Profess Their Impartiality: Part 1 of 2; Black, O'Connor Seek Seat Douglas Is Leaving, COLUMBUS DISPATCH, Sept. 8, 2002
Public Safety Post; O'Connor to Take Leave for Campaign, COLUMBUS DISPATCH, Sept. 6, 2002
Name Game Will Take Toll on High Court Races in Ohio, COLUMBUS DISPATCH, July 28, 2002
2 Incumbents Get Free Rides on Radio Spots, CLEVELAND PLAIN DEALER, July 14, 2002
Judicial Free Speech; Candidates Not Sure of Ruling's Effect on Races, COLUMBUS DISPATCH, June 29, 2002
Some Wary of Candid Candidates, CINCINNATI ENQUIRER, June 28, 2002
Judges: Ruling Likely to Have Some, But Little, Ohio Impact, ASSOCIATED PRESS STATE & LOCAL WIRE, June 27, 2002
Supreme Court Candidates Promise Clean Race, ASSOCIATED PRESS STATE & LOCAL WIRE, May 13, 2002
Voting Often, But Not Early, DAYTON DAILY NEWS, May 13, 2002
High-Court Candidates Promise Clean Race, COLUMBUS DISPATCH, May 11, 2002
Ohio Supreme Court Candidate Pumps Up, Preaches Persistence to Local Democrats, ATHENS NEWS, Apr. 29, 2002
Ideology of the Court Likely to Shift Because of Open Seat, ASSOCIATED PRESS STATE & LOCAL WIRE, Apr. 26, 2002
School Funding Issue May Be Up to Someone Officially Silent, DAYTON DAILY NEWS, Mar. 24, 2002
Candidate Pledges to Shun Outside Help, ASSOCIATED PRESS STATE & LOCAL WIRE, Feb. 28, 2002
Court in the Balance; Sides Line Up for State Justice Races That Will Hold High Stakes at High Cost, CRAIN'S CLEVELAND BUSINESS, Jan. 28, 2002
Court Seats Don't Belong to Groups, DAYTON DAILY NEWS, Jan. 16, 2002
Democratic Leaders Pick Tim Black Again; High Court Candidate in 2000 to Try for Seat vs. Lt. Gov. O'Connor, AKRON BEACON JOURNAL, Jan. 13, 2002
Democrats Pick Pair for High Court Race; Black, Burnside Win Party Backing, COLUMBUS DISPATCH, Jan. 13, 2002
Dems Endorse Judges; Area Judge Not Nominated for Ohio Supreme Court Seat, DAYTON DAILY NEWS, Jan. 13, 2002
2 Campaigns for Top Court Could Exceed $6 Million; Spending, Attack Ads Some of Worst in Country, CLEVELAND PLAIN DEALER, Dec. 27, 2000
Resnick, Cook Seek Re-Election to Supreme Court, ASSOCIATED PRESS STATE & LOCAL WIRE, Nov. 7, 2000
Party Chairmen Agree Race for Court Is 'Ugly', DAYTON DAILY NEWS, Nov. 2, 2000
Low-Profile Race Displays High Degree of Contrast, CINCINNATI ENQUIRER, Nov. 1, 2000
Labor Leaders Rally Troops for Resnick, COLUMBUS DISPATCH, Nov. 1, 2000,
Court's Swing Vote Is Targeted, CLEVELAND PLAIN DEALER, Oct. 29, 2000

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00186 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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Ohio Supreme Court, CINCINNATI ENQUIRER, Oct. 25, 2000
Black Says He's Independent, DAYTON DAILY NEWS, Oct. 23, 2000
Black, Cook Run in the Shadow, COLUMBUS DISPATCH, Oct. 8, 2000
Tim Black Struggling To Be Taken Seriously in Bid for State Bench, AKRON BEACON J., Oct. 1, 2000
Supreme Court: Cook, O'Donnell Can Restore Confidence, COLUMBUS DISPATCH, Oct. 1, 2000
Spending Limits Rejected, COLUMBUS DISPATCH, Sept. 29, 2000
Court Scrubs Cash Limit in Ohio High Court Races, DAYTON DAILY NEWS, Sept. 29, 2000
Union Leaders Glad to See 'Jer-Ree, Jer-Ree!', CLEVELAND PLAIN DEALER, Sept. 29, 2000
Injudicious: Some High Court Rivals Stray Out of Bounds, COLUMBUS DISPATCH, Sept. 26, 2000
Court Candidate Hints At Stand on Issues, COLUMBUS DISPATCH, Sept. 20, 2000
Supreme Court Contests Vital, Speaker Says, LIMA NEWS, Apr. 12, 2000
Black Wins Democrats' Struggle for Nomination Ohio Supreme Court, COLUMBUS DISPATCH, Mar. 8, 2000
Municipal Court Judge Winning High Court Race, CLEVELAND PLAIN DEALER, Mar. 8, 2000
Democrats Vie for High Court; Brogan Has Ohio State Bar Association's Praise; Black Has Party Endorsement, AKRON BEACON JOURNAL, Mar. 4, 2000
Democratic Judges Compete for Seat on Ohio High Court, CLEVELAND PLAIN DEALER, Mar. 4, 2000
A Party Divided: Democrats' Support of Judges Fractured, DAYTON DAILY NEWS, Mar. 2, 2000
Dems Debate Experience for High Court, CINCINNATI ENQUIRER, Mar. 1, 2000
Ohio High Court Race: A Mini McCain vs. Bush?, AKRON BEACON J., Feb. 27, 2000
Black, Brogan Seeking Democratic Bid, Ohio Supreme Court Winner Will Oppose Cook in Nov., COLUMBUS DISPATCH, Feb. 23, 2000
Judicial Race Turns Bitter, CINCINNATI ENQUIRER, Feb. 20, 2000
Ohio Supreme Court: Democrats, DAYTON DAILY NEWS, Feb. 16, 2000
State Bar Rates Judge Brogan 'Highly Recommended' for Post, DAYTON DAILY NEWS, Feb. 9, 2000
Brogan Better Like Going Uphill, DAYTON DAILY NEWS, Jan. 7, 2000
Tim Black Backed for High Court, CINCINNATI ENQUIRER, Dec. 14, 1999
State Democrats Switch Players Late in the Game for Ohio Supreme Court Endorsement, COLUMBUS DISPATCH, Dec. 12, 1999
Democrats Decline to Endorse One, DAYTON DAILY NEWS, Dec. 12, 1999
Abuse at Home Less Often Fatal, CINCINNATI ENQUIRER, Oct. 12, 1999
Counseling's Value Debatable; Batterers Need Longer-Term Help, Advocates Say, CINCINNATI ENQUIRER, Sept. 14, 1999
Judicial Ratings, CINCINNATI MAGAZINE, Sept. 1997
Anti-Abortion Protest Leaders Charged with Contempt, ASSOCIATED PRESS, June 24, 1986

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00187 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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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.

On May 4, 2004, I was appointed a United States Magistrate Judge of the United States District Court for the Southern District of Ohio. My term expires in May 2012. The Court has jurisdiction over federal criminal offenses and federal civil claims.

On November 2, 1993, I was elected Judge of the Hamilton County Municipal Court, in Cincinnati, Ohio, and I took office on January 3, 1994 for a six year term. On November 2, 1999, I was re-elected to a second six year term. I resigned on May 4, 2004, to become a United States Magistrate Judge. The Court has jurisdiction over criminal misdemeanors, traffic offenses, and civil litigation with amounts in controversy of less than $15,000.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? Approximately 3,000

i. Of these, approximately what percent were:

jury trials? 1%; bench trials? 99%

civil proceedings? 1%
criminal proceedings? 99%

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

See attached list of opinions.

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. *Tyndle Ridge Dev., LLC v. City of Cincinnati*, 2009 WL 2901539 (S.D. Ohio Sept. 1, 2009). Plaintiff operators of a liquor-serving establishment brought this Fourth Amendment challenge to police action that included entering the establishment on three occasions and, allegedly, lingering outside the bar on other occasions. Plaintiffs complained these actions were designed merely to harass. I granted the City's motion to dismiss, finding no constitutional violations because no warrant was required when police were entering to check for liquor law compliance and/or in response to trouble calls. My opinion was a final adjudication by consent of the parties pursuant to 28 U.S.C. § 636(c).

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00188 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Counsel for Plaintiffs was Michael J. Wiethe, 30 Garfield Place, Cincinnati, Ohio 45202; 513-241-7332. Counsel for Defendant was Thomas O. Beridon, 801 Plum Street, Cincinnati, Ohio 45202; 513-352-3618.

2. *Shirk v. Fifth Third Bancorp*, 2009 WL 692124 (S.D. Ohio Jan. 29, 2009). Plaintiffs, former employees of the defendant bank, brought this putative class action under the Employee Retirement Income Security Act of 1974 in connection with a retirement plan. Plaintiffs alleged that defendants breached their fiduciary duties by not halting investment of employees' benefits in Fifth Third stock after the bank disclosed a treasury impairment that caused an after-tax write-off of $54 million. I granted summary judgment to the bank defendants because plaintiffs failed to evidence that investment in Fifth Third stock was imprudent. My opinion was a final adjudication by consent of the parties pursuant to 28 U.S.C. § 636(c).

Counsel for Plaintiffs were David Scott and Geoffrey Johnson, 12434 Cedar Road, Suite 12, Cleveland Heights, Ohio 44106; 216-229-6088. Counsel for Defendants were Patrick F. Fischer, One E. Fourth Street, Cincinnati, Ohio 45202; 513-579-6459; and Glenn V. Whitaker, 221 E. Fourth Street, Suite 2000, Cincinnati, Ohio 45201; 513-723-4608.

3. *Johnson v. Ohio Cas. Ins. Co.*, 2008 WL 2387270 (S.D. Ohio, June 11, 2008). I denied defendant's motion for summary judgment, finding that a trial was required on the claims of a 28-year employee that her age and sex were factors in her termination from employment given the evidence that younger, male employees were not terminated for the same conduct as plaintiff. The parties to this case consented to final adjudication by me pursuant to 28 U.S.C. § 636(c).

Counsel for Plaintiff was Tod J. Thompson, 525 Vine Street, Cincinnati, Ohio 45202; 513-721-1975. Counsel for Defendant was Jill S. Kirila, 2000 Huntington Center, 41 S. High Street, Columbus, Ohio 43215; 614-365-2700.

4. *Bailey v. AK Steel Corp.*, 2008 WL 495539 (S.D. Ohio Feb. 21, 2008) *aff'd sub nom. Bailey v. White*, 320 Fed. Appx. 364 (6th Cir. 2009). I found that the parties' class action settlement agreement to commit $636 million dollars toward a voluntary employee benefits association was a fair, adequate and reasonable settlement of claims for alleged lifetime health benefits, notwithstanding the objections of 446 of 4,872 class members, having concluded, *inter alia*, that the plaintiffs' likelihood of success at trial was not overwhelming. My opinion was a final adjudication by consent of the parties pursuant to 28 U.S.C. § 636(c).

Counsel for Plaintiffs was David M. Cook, 22 West Ninth Street, Cincinnati, Ohio 45202; 513-721-0444; and Sally M. Tedrow, 4748 Wisconsin Avenue, N.W., Washington, DC 20016; 202-362-0041. Counsel for Defendant was Gregory P. Rogers, 425 Walnut Street, Cincinnati, Ohio 45202; 513-357-9349.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00189 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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5. *Patrick v. AK Steel Corp.*, 2008 WL 906052 (S.D. Ohio, Mar. 31, 2008). I entered a Report and Recommendation, which was adopted by the District Judge, determining that the interpretation of a pension plan required the defendant to provide a surviving spouse's benefit equal to the deceased spouse's monthly pension plan payment, reduced by one half of the Social Security widow's benefit. I rejected the defendant's position that it could permit the reduction to include one half of the entire Social Security benefit, not just the widow's benefit portion.

Counsel for Plaintiff was Glenn V. Whitaker, 221 E. Fourth Street, Suite 2000, Cincinnati, Ohio 45201; 513-723-4608. Counsel for Defendant was Douglas R. Dennis, 201 E. Fifth Street, Cincinnati, Ohio 45202; 513-651-6727.

6. *Tackett v. Wal-Mart Stores East, Inc.*, 2007 WL 2668133 (S.D. Ohio Sept. 6, 2007). I entered an opinion denying summary judgment to the defendant store for injury sustained at store when stack of bicycles fell on customer because a trial was required to resolve the disputed facts. The parties to this case consented to final adjudication by me pursuant to 28 U.S.C. § 636(c).

Counsel for Plaintiff was Barry D. Levy, 1014 Vine Street, Cincinnati, Ohio 45202; 513-241-1180. Counsel for Defendant was Robert W. Hojnoski, 525 Vine Street, Cincinnati, Ohio 45202; 513-721-1311.

7. *Cameron v. Laser Vision Inst.*, Case No. 1:02-cv-960 (S.D. Ohio Oct. 27, 2006) (Doc. 241). I entered an order requiring an attorney to publish an article regarding the doctrine of juror anonymity as a sanction for his jury consultant having improperly contacted a juror post-trial. The parties to this case consented to final adjudication by me pursuant to 28 U.S.C. § 636(c).

Counsel for Plaintiff was Randolph H. Freking, 525 Vine Street, Cincinnati, Ohio 45202; 513-721-1975. Counsel for Defendant was Jay R. Langenbahn, 312 Walnut Street, Cincinnati, Ohio 45202; 513-421-6630.

8. *Morris v. Comm'r of Soc. Sec.*, Case No. 1:03-cv-617 (S.D. Ohio Feb. 9, 2005) (Doc. 16). I issued a Report and Recommendation, which was adopted by the District Judge, reversing the denial of Social Security disability benefits to a minor. I ruled that the ALJ erred in holding that the child was not disabled. I found that there was substantial evidence that the child had an extreme limitation in the domain of interacting and relating with others and remanded the case for an award of benefits.

Counsel for Plaintiff was Eric P. Allen, 1014 Vine Street, Suite 2200, Cincinnati, Ohio 45202; 513-241-7111. Counsel for Defendant were Kathryn A. Beverly, Social Security Administration, 200 W. Adams Street, 30th Floor, Chicago, Illinois 60606; 317-353-8244; and John J. Stark, Assistant United States Attorney, 303 Marconi Boulevard, Suite 200, Columbus, Ohio 43215; 614-469-5715.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00190 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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9. *English Woods Civic Assoc. v. Cincinnati Metro. Housing Auth.*, 2004 WL 3019505 (S.D. Ohio Dec. 17, 2004). Plaintiff public housing tenants association sued defendant city housing authority under the United States Housing Act to prevent it from demolishing or abandoning a large residential site. I found after an eight-day bench trial that the city housing authority had engaged in statutorily lawful "occupancy consolidation," which was permitted to improve living conditions and provide efficient tenant services, and had not engaged in unlawful *de facto* demolition. Furthermore, the plaintiff did not show that the defendant's acts had a racially discriminatory effect. My opinion was a final adjudication by consent of the parties pursuant to 28 U.S.C. § 636(c).

Counsel for Plaintiff were John E. Schrider, 215 East Ninth Street, Cincinnati, Ohio 45202; 513-241-9400; and Michael J. O'Hara, 25 Town Center Boulevard, Florence, Kentucky 41042; 859-331-2000. Counsel for Defendants were Richard S. Rust, IV, 16 West Central Parkway, Cincinnati, Ohio 45210; 513-977-5681; and Sharon J. Zealey, now with The Coca-Cola Company, 1 Coca-Cola Plaza, NAT 2062, P.O. Box 1734, Atlanta, Georgia 30301; 404-676-3087.

10. *State of Ohio v. Lee*, 657 N.E.2d 604 (Hamilton Cty. Mun. Ct. 1995). In this criminal domestic violence action, a female had called 911 and reported that her husband had hit her and was brandishing a knife. Two officers responded, entered the home, interviewed the son and wife, and arrested the husband for domestic violence. The wife did not appear at trial and the State proceeded to trial without the victim. Defendant moved for acquittal based on the absence of the victim. My opinion held that the State may prosecute domestic violence without the presence of the victim testifying at trial where other evidence (including the defendant's own statements on the 911 tape, the victim's statements on the 911 tape, the son's statement at the scene, and the officer's testimony) satisfied the burden of proof.

Counsel for the State was Melissa Powers, Hamilton County Prosecutor's Office, 230 East Ninth Street, Cincinnati, Ohio 45202; 513-946-3006 (now Judge of the Hamilton County Municipal Court), 1000 Main Street, Cincinnati, Ohio 45202; 513-946-5143. Counsel for the Defendant was Edward C. Perry, 810 Sycamore Street, Cincinnati, OH 45202; 513-621-0442.

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.

The 10 most significant opinions I have written have been in the 10 most significant cases over which I have presided, identified in 13(c) above.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00191 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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

I am not aware of any case in which certiorari was granted. I am aware of only two cases in which certiorari was requested:

Carpenter v. City of Franklin, 2007 WL 120140 (S.D Ohio Jan. 10, 2007)
Loriz v. Connaughton, Case No. 1:05-cv-306 (S.D. Ohio Dec. 29, 2005)

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 recall only two reversals of opinions I issued while sitting as Judge of the Municipal Court of Hamilton County (1994-2004):

1. My decision in Municipal Court reflecting a misdemeanor conviction for child endangerment for leaving a child in a parking lot was reversed by the court of appeals in about 1995. I cannot find a citation or copy.

2. My decision in a Municipal Court traffic ticket case reflecting a conviction upon a plea of no contest was reversed by the court of appeals in about 1996. I cannot find a citation or a copy.

I recall only one appellate reversal of an opinion I issued while sitting as a United States Magistrate Judge:

> In *Loriz v. Connaughton*, Case No. 1:05-cv-306 (S.D. Ohio Dec. 29, 2005) (Doc. 75), I issued a report and recommendation on a takings claim brought by plaintiff tree farm owners who complained that county officials had improperly approved an adjacent commercial shooting range. I recommended summary judgment for defendants on all federal claims. The District Court adopted my Report and Recommendation in full. (S.D. Ohio Feb. 24, 2006) (Doc. 88). The U.S. Court of Appeals affirmed the dismissal of all federal claims, but on only one of the grounds on which my opinion relied. 233 Fed. Appx. 469 (6th Cir. May 11, 2007). The Supreme Court of the United States denied certiorari. 128 S. Ct. 1241 (2008).

I have identified 14 instances where a Report and Recommendation I issued was not adopted by the District Court:

> Five such cases were Social Security Appeals wherein the District Court adopted my recommendation finding that the decision of the Administrative Law Judge was not supported by the evidence but where

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00192 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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the Court remanded for further proceedings in lieu of adopting my recommendation for immediate award of benefits:

Frazee v. Comm'r of Soc. Sec., 2009 WL 1473961 (S.D. Ohio May 27, 2009)
Barger v. Comm'r of Soc. Sec., 2008 WL 5054824 (S.D. Ohio Aug 13, 2008)
Selvey v. Comm'r of Soc. Sec., 2008 WL 4445182 (S.D. Ohio Aug. 11, 2008)
Miller v. Comm'r of Soc. Sec., 2008 WL 4445190 (S.D. Ohio July 22, 2008)
Forman v. Comm'r of Soc. Sec., 2008 WL 3166335 (S.D. Ohio Mar. 18, 2008)

Six such cases were Social Security Appeals wherein the District Court disagreed with my report as to whether the decision of the Administrative Law Judge was supported by the evidence:

Dragon v. Comm'r of Soc. Sec., 2009 WL 3126269 (S.D. Ohio June 30, 2009) (recommending reversal)
Ray v. Comm'r of Soc. Sec., 2009 WL 3151296 (S.D. Ohio June 30, 2009) (recommending affirmance)
Hicks v. Comm'r of Soc. Sec., 2009 WL 3127180 (S.D. Ohio Mar. 3, 2009) (recommending affirmance)
Bowman v. Comm'r of Soc. Sec., 2009 WL 1026447 (S.D. Ohio Feb. 27, 2009) (recommending reversal)
Frederick v. Comm'r of Soc. Sec., 2008 WL 5688391 (S.D. Ohio Dec. 30, 2008) (recommending affirmance)
Roark v. Comm'r of Soc. Sec., Case No. 1:05-cv-543 (S.D. Ohio Sept. 9, 2006) (recommending affirmance)

The remaining three cases were a petition for writ of habeas corpus, a prisoner case, and a discovery dispute:

In *Gaines v. Warden*, 2008 WL 6527868 (S.D. Ohio June 16, 2008), I recommended denying a petition for writ of habeas corpus. The District Court declined to adopt my Report and Recommendation and remanded the case to me for reconsideration in light of two intervening decisions of the Ohio Supreme Court.

In *Marbury v. Abraham*, 2007 WL 4792523 (S.D. Ohio Aug. 24, 2007), I recommended granting the defendants' motion to dismiss, but the District Court declined to accept my Report and Recommendation, finding instead that the prisoner had initiated an informal grievance sufficient to timely comply with the requirement that he exhaust his administrative remedies before filing suit.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00193 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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In *Fossyl v. Watson*, Case No. 1:02-cv-722 (S.D. Ohio Mar. 16, 2005), I recommended granting the defendants' motion to compel the deposition and production of documents of plaintiff's private investigator but the District Court declined to accept my Report and Recommendation and ruled instead that the discovery sought was privileged.

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 file all decisions on our Court's electronic CM/ECF system, making them available to the public. The majority of my decisions addressing significant motions and/or resolving cases on the merits are published electronically on Westlaw and/or Lexis. Although our Court does not issue "unpublished" opinions, not every opinion is selected for publication in a reporter or electronically published by Westlaw or Lexis. I estimate that approximately 25% of my opinions are not published by Westlaw or 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.

Bucio v. Sutherland, 2009 U.S. Dist. LEXIS 112707 (S.D. Ohio Aug. 25, 2009)

G.B. v. Rogers, 2009 WL 1322451 (S.D. Ohio May 11, 2009)

Miller v. Ass'n of Cmty. Orgs. for Reform Now, Inc., Case No. 1:08-cv-797 (S.D. Ohio May 5, 2009)

Kennedy v. City of Cincinnati, 2009 WL 87423 (S.D. Ohio Jan. 12, 2009)

Hicks v. Warden, Case No. 1:05-cv-774 (S.D. Ohio May 21, 2008)

Carpenter v. City of Franklin, 2006 WL 3791931 (S.D. Ohio Dec. 22, 2006) *supplemented by* 2007 WL 120140 (S.D Ohio Jan. 10, 2007), affirmed in *Carpenter v. Bowling*, 276 Fed. Appx. 423 (6th Cir. May 2, 2008)

Klein v. Leis, 2006 U.S. Dist. LEXIS 35332 (S.D. Ohio May 19, 2006)

Doriott v. Warren County Court of Common Pleas, Case No. 1:05-cv-292 (S.D. Ohio Aug. 24, 2005)

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.

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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.

    I follow the federal recusal statutes and the Code of Conduct for United States Judges. If I were to have any personal or financial interest in a matter, I would recuse, but I have sought to minimize the need for recusal by avoiding investments and other relationships likely to cause recusal. If any issue as to potential recusal arises, I consult the Code and applicable statutes and I am always prepared to seek advice from the Code of Conduct Committee of the Judicial Conference. I recognize that I must recuse in any proceeding in which my impartiality might reasonably be questioned. Accordingly, I have identified that I shall be recused in any case involving Allstate Insurance or State Farm Insurance as my daughter has a civil lawsuit pending against them for injuries sustained in an automobile accident.

    The only cases I recall where I have been asked to recuse myself are *Livingston v. Redwine*, Case No. 1:06-cv-337 (S.D. Ohio) and *Smith v. Warden*, Case No. 1:07-cv-977 (S.D. Ohio). In both cases, plaintiffs moved for my recusal. In both cases, I reviewed the federal recusal statutes, the Code of Judicial Conduct, and the allegations against me. I concluded there was no basis for recusal and thus did not recuse in either case. *See Brody v. President & Fellows of Harvard Coll.*, 664 F.2d 10, 12 (1st Cir. 1981) ("[T]here is as much obligation for a judge not to recuse when there is no occasion for him to do so as there is for him to do so when there is.").

    In *Livingston v. Redwine*, the pro se plaintiff asked me to recuse because he alleged without any basis that I was racist and predisposed against him and all African-Americans. I am not.

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In *Smith v. Warden*, the petitioner asked me to recuse because he alleged that I was predisposed against him having ruled against him in a prior habeas case he had brought. *See Green v. Branson*, 108 F.3d 1296, 1305 (10th Cir. 1997) ("adverse rulings cannot in themselves form the appropriate grounds for disqualification").

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 offices but for judicial offices.

I have never had an unsuccessful nomination for appointed office.

I was an unsuccessful candidate for election to the Hamilton County Municipal Court in 1989 and to the Supreme Court of Ohio in 2000 and 2002.

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 served as the Finance Committee Chair (chief volunteer fundraiser) for Guy Guckenberger, a candidate for re-election to Cincinnati City Council, in 1984 and 1986.

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.

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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.

Graydon, Head & Ritchey
511 Walnut Street
Cincinnati, Ohio 45202
Partner (1990-1993)
Associate (1983-1990)

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 in numerous civil cases in U.S. District Court in my work as U.S. Magistrate Judge. The 10 most significant cases are:

1. Mediated to an $8 million dollar settlement the class action claims of family members of deceased persons whose bodies were unlawfully viewed and or sexually molested by employees of the County morgue.

2. Mediated to substantial settlement the claims for damages and attorneys fees relating to sexual harassment claims brought by county employees against a sitting judge and his County.

3. Mediated to a $5 million dollar settlement the Lanham Act claims brought by a pharmaceutical company against a generic drug manufacturer.

4. Approved the settlement of a class action claim by retirees of a Fortune 100 company for lifetime health benefits by conducting fairness hearing, denying objections to the settlement, and approving creation of a $636 million dollar employee benefits trust to cover all future claims.

5. Mediated to a $28 million dollar settlement the claims of a commercial manufacturer for breach of a distribution contract by a foreign company.

6. Mediated to substantial settlement the claims of the cable television provider to a large urban city for breach of contract.

7. Mediated to a $600,000 settlement the claims of a deceased veteran's family for medical malpractice against a Veterans Hospital.

8. Mediated to a $600,000 settlement the claims of an employer against a labor union for a secondary boycott.

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9. Mediated to a multi-million dollar settlement the claims of the United States against a landlord for sexual harassment of tenants of Section 8 housing (involving exchange of sex for rent).

10. Mediated to a $200,000 settlement the claims of a 28 year employee for unlawful discharge based on age.

In addition, I serve as Chair of the District Court's semi-annual Settlement Week, having been appointed by the District Judges to implement this alternative dispute resolution program in 2005.

Describe:

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

As an attorney in 1983-1993, my practice was entirely litigation, primarily civil and commercial. I averaged annually about two full trials on the merits, either as lead counsel or second chair about equally.

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

Throughout the entirety of my career as an attorney, my typical clients included closely held Cincinnati businesses, local banks, large national firms, and individuals. I was especially experienced and skilled in civil RICO litigation.

b. 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.

100% of my practice was in litigation, and I appeared in court frequently.

i. Indicate the percentage of your practice in:
   1. federal courts: 50%
   2. state courts of record: 45%
   3. other courts:
   4. administrative agencies: 5%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 95%
   2. criminal proceedings: 5%

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c. 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 tried about two dozen cases to verdict as a lawyer, about half as sole counsel and half as assistant trial counsel.

i. What percentage of these trials were:

1. jury:	20%
2. non-jury:	80%

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 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.

1. *Grubb v. Standard Oil of Ohio*, Case No. A 8302840 (Hamilton County C.P. 1983). Judge Gilbert Bettman. I achieved summary judgment for my client (Standard Oil) against claims of malicious prosecution and wrongful termination. My co-counsel was William R. Hardy, 511 Walnut Street, Cincinnati, Ohio 45202; 513-621-6464. Counsel for Plaintiff was Thomas J. Ruwe, 5710 Wooster Pike, Suite 211, Cincinnati, Ohio 45227; (513) 271-0808.

2. *Bellamy v. Bradley,* 729 F.2d 416 (6th Cir. 1984). Circuit Judges Engel, Keith, Pratt. I represented a blind inmate (Bellamy) *pro bono* in an unsuccessful appeal of his claim for unconstitutional prison conditions. My co-counsel was Joseph H. Hochbein, 3900 Rose Hill Avenue, Cincinnati, Ohio 45229; 513-221-1411. Counsel for Appellees were William M. Leech, Jr., Attorney General of Tennessee, and Assistants to the Attorney General, John C. Zimmermann, J.

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Andrew Hoyal, II, and William Uhl, P.O. Box 20207, Nashville, Tennessee 37202; 615-741-3491.

3. *Mitchell v. Major Fed. Sav. & Loan Ass'n*, 687 F. Supp. 1164 (S.D. Ohio 1987). Judge Herman J. Weber. I achieved the dismissal of a class action complaint for fraud against my client (Major Federal) upon trial in the district court. My co-counsel was Michael R. Barrett, 100 E. Fifth Street, Cincinnati, Ohio 45202; 513-564-7660. Counsel for Plaintiffs was Drake W. Ebner, 1014 Vine St., Suite 1900, Cincinnati, Ohio 45202; 513-345-4449; and Steven C. Shane, 321 Fairfield Avenue, Bellevue, Kentucky 41073; 859-431-7800.

4. *Artman v. Prudential-Bache Sec., Inc.*, 670 F. Supp. 769 (S.D. Ohio 1987). Judge S. Arthur Spiegel. I negotiated a successful settlement of claims of fraudulent stock churning brought against my client, a securities brokerage firm. Counsel for Plaintiff was John L. Campbell, 201 E. Fifth St., Suite 800, Cincinnati, Ohio 45202; (513) 345-4753.

5. *Ctr. Stage Mktg., Inc. v. Filmco, Inc.*, Case No. 1:88-cv-133 (S.D. Ohio 1988), *aff'd*, 875 F.2d 862 (6th Cir. 1989). District Judge Carl B. Rubin and Circuit Judges Keith, Jones, and Guy. I represented my client (Center Stage) in a successful arbitration of claims for substantial commissions owed. The arbitration award was reduced to judgment in U.S. District Court, and the judgment was affirmed in the Court of Appeals. My co-counsel was John J. Kropp, 511 Walnut Street, Cincinnati, Ohio 45202; 513-621-6464. Counsel for Defendants were William R. Jacobs (deceased), 201 E. Fifth Street, Cincinnati, Ohio 45202; 513-621-2120; and William A. Francis, 100 W. Broadway, Suite 900, Glendale, California 91212; 818-240-5000.

6. *Rescom, Inc. v. Brisben,* Case No. A 9008279 (Hamilton County C.P. 1990). Judge Ralph Winkler. I achieved a successful settlement of very substantial breach of contract and fraud claims of my client (Rescom, Inc.) within less than 30 days of filing of the complaint. Counsel for Defendants was Jerome S. Teller, 255 E. Fifth Street, Cincinnati, Ohio 45202; 513-721-4532.

7. *Mefford v. Rescom Constr., Inc.*, Case Nos. C-900379, C-900416, 1991 Ohio App. LEXIS 3357 (Hamilton County C.P. July 17, 1991), Judge Norbert Nadel; and Court of Appeals of Ohio, First Appellate District, Hamilton County, Judges Doan, Klusmeier, and Hildebrandt. I successfully defended my client (Rescom, Inc.) against a civil suit for services rendered but allegedly unpaid. I lost in the trial court but prevailed in the court of appeals where the trial court's judgment was reversed. Counsel for Plaintiff was Michael D. Triplett, 140 N. Main Street, Williamstown, Kentucky 41097; 606-431-3553.

8. *UC Medical Center v. Hopson* Case No. C-9200344 (Hamilton County C.P. 1992). Judge Thomas Crush. I successfully litigated the entry of a preliminary injunction by the court for my client (UC Medical Center) against a terminated

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physician and subsequently achieved a favorable settlement of all claims. My co-counsel was Thomas W. Kahle, 312 Walnut Street, Cincinnati, Ohio 45202; 513-929-3414. Counsel for Defendant were Robert Manley (deceased) and Matthew Fellerhoff, 225 West Court Street, Cincinnati, Ohio 45202; 513-721-5525.

9. *Frey v. Gen. Motors Corp.*, Case No. 1:90-cv-324 (S.D. Ohio 1990). Judge S. Arthur Spiegel. I successfully pursued a civil action for injuries sustained in a car accident based on negligent design of seat backs susceptible to failure. The case settled favorably for my client (Frey) at the first day of a jury trial. My co-counsel was Barbara Bison Jacobson, 221 E. Fourth Street, Cincinnati, Ohio 45202; 513-723-4016. The Defendant's attorneys were: James W. Halbrooks, Jr., 150 South 5th Street, Suite 2600, Minneapolis, Minnesota 55402; 937-463-4928; and Thomas L. Czechowski, 1100 Courthouse Plaza SW, 10 N. Ludlow Street, Dayton, Ohio 45402; 612-339-8682.

10. *Davis, v. Mut. Life Ins. Co. of New York (MONY)*, Case No. 1:87-cv-727 (S.D. Ohio 1987), *aff'd*, 6 F. 3d 367 (6th Cir. 1993). District Judge S. Arthur Spiegel and Circuit Judges Kennedy, Guy, and Engel. I defended against a civil action brought by life insurance policyholders against two insurance companies (including my client, MONY) and various agents for fraud and civil racketeering (RICO) arising out of a sales scheme seeking to eliminate federal and state income taxes for home-based business owners. The month-long civil jury trial resulted in a substantial plaintiffs' verdict against the defendants, including my client. My co-counsel was Michael R. Barrett, 100 E. Fifth Street, Cincinnati, Ohio 45202; 513-564-7660. The counsel for Plaintiffs was William H. Blessing, 119 East Court St., Suite 500, Cincinnati, Ohio 45202; 513-621-9191. The attorney for the other insurance company defendant was Timothy P. Heather, 300 Pike Street, Suite 500, Cincinnati, Ohio 45202; 513-721-5672.

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 activities I have pursued include my work as a judge, the civil litigation I pursued on behalf of clients, my pro bono work, and my work generally as a Director of non-profit charities. The leading examples of these legal activities include: (1) my service as the Co-Convener of the Round Table of the Black Lawyers Association of Cincinnati and the Cincinnati Bar Association, the collaborative effort to improve diversity and inclusion in Cincinnati's legal community; and (2) my work as founder and lead convener of the Hamilton County Domestic Violence Coordinating Council, a collaborative effort to increase coordination of services in the criminal justice system and the community relating to domestic violence. I have never performed lobbying activities.

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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.

    I taught Seventh and Tenth Grade English at The Roxbury Latin School, in West Roxbury Massachusetts, in 1975-1977, and I taught Sixth, Seventh and Twelfth Grade English at The Seven Hills School, in Cincinnati, Ohio, from 1978 to 1982.

    I taught *Law, Culture and Justice*; *Judicial Independence;* and *Shakespeare and Justice* for Cincinnati's non-profit charitable organization, The Justice Institute for the Legal Profession, in July of 2007, 2008, and 2009.

    I have taught *Leadership* at the Cincinnati Academy of Leadership for Lawyers from 1997-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.

    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 do not have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the court. I will put my work for the Court first in my professional life. As appropriate, I hope to continue to serve in bar association and law-related continuing education programs.

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.

    Since becoming a United States Magistrate Judge in 2004, I have followed the federal recusal statutes and the Code of Conduct for United States Judges, and I have sought to minimize the potential for conflicts of interest by avoiding investments and other relationships likely to cause recusal.

    I have identified and notified our Clerk of Court that I shall recuse in any case involving Allstate Insurance or State Farm Insurance because my daughter has a civil lawsuit pending against them for injuries sustained in an automobile accident. If am confirmed, I anticipate having initially the same conflict as to these two companies.

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

    If I am confirmed, and during my service as a United States Magistrate Judge, I will continue to follow the federal recusal statutes and the Code of Conduct for United States Judges. If any issue of a potential conflict were to arise, I would consult the applicable statutes and the Code and, if necessary, would seek advice from the Code of Conduct Committee of the Judicial Conference. In cases of uncertainty, I would err on the side of disqualification.

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.

    During my time as a lawyer (1983-1993), I served occasionally as an attorney for indigent clients in criminal cases through the Hamilton County Public Defender's Office. I also served pro bono as appellate counsel for a blind inmate appealing the dismissal of his claims of unconstitutional conditions at a federal prison. I serve as the Co-Convener of the Round Table of the Black Lawyers Association of Cincinnati and the Cincinnati Bar Association, the collaborative effort to improve diversity and inclusion in Cincinnati's legal community. I also previously served as founder and lead convener of the Hamilton County Domestic Violence Coordinating Council, a collaborative effort to increase coordination of services in the criminal justice system and the community relating to domestic violence.

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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 wrote a letter to Senator Sherrod Brown in December 2008 identifying my interest in being considered for the vacancy arising on January 1, 2009. I received an application form from his staff in March 2009. A bipartisan judicial selection advisory commission established by Senator Brown and Senator George Voinovich interviewed me (and all other applicants) in May 2009. The Commission recommended me and two other candidates to the Senators, and I interviewed in person with Senator Brown in June 2009. Shortly thereafter, Senator Brown called me to tell me that he and Senator Voinovich were recommending me to the President for nomination.

Beginning in September 2009, I was in contact with pre-nomination officials at the Department of Justice. I had an interview at the Department of Justice on October 20, 2009 with attorneys from the Department of Justice and the White House Counsel's Office. My nomination was submitted to the United States Senate on December 24, 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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FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Black, Timothy S.	Southern District of Ohio	12/30/2009
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type** (check appropriate type)	**6. Reporting Period**
District Judge - nominee	☑ Nomination, Date 12/24/2009 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2008 to 11/30/2009
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
716 United States Courthouse 100 East Fifth Street Cincinnati, OH 45202	Reviewing Officer_____ Date_____	

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

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

☑ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.		
2.		
3.		
4.		
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting	Date of Report
	Black, Timothy S.	12/30/2009

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.			
2.			
3.			
4.			

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

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

	DATE	SOURCE AND TYPE
1.	2008	self-employed - part-time tutor
2.	2009	self-employed - part-time tutor; part-time employee, Monteverdi Residence Club
3.		
4.		

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

☐ NONE *(No reportable reimbursements.)*

	SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.	Exempt				
2.					
3.					
4.					
5.					

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting	Date of Report
	Black, Timothy S.	12/30/2009

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

☐ NONE *(No reportable gifts.)*

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

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☐ NONE *(No reportable liabilities.)*

CREDITOR	DESCRIPTION	VALUE CODE
1. Keybank	credit line	J
2. US Dept. of Education - Wm. D. Ford Federal Direct Loan Program	student loans for two daughters	M
3. American Express	credit card	K
4.		
5.		

FINANCIAL DISCLOSURE REPORT Page 4 of 6	Name of Person Reporting Black, Timothy S.	Date of Report 12/30/2009

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Fifth Third Bank accounts	A	interest	J	T	Exempt				
2. Fifth Third Bank (IRA - cash)		none	K	T					
3. Vanguard Windsor Fund (IRA)		none	K	T					
4. TIAA-CREF		none	L	T					
5. TIAA-CREF		none	L	T					
6.									
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

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

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting Black, Timothy S.	Date of Report 12/30/2009

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

III.A. Non-Investment Income. Non-investment income was earned during the reporting period. I received a salary from the United States Government for services as a United States Magistrate Judge, Southern District of Ohio.

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Black, Timothy S.	Date of Report 12/30/2009

IX. CERTIFICATION.

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

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

Signature Timothy S. Black

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		12	500	Notes payable to banks-secured		11	125
U.S. Government securities-add schedule				Notes payable to banks-unsecured		33	070
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule*		230	323
Real estate owned-add schedule*		425	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		45	500	Student Loans		190	334
Cash value-life insurance							
Other assets itemize:							
TIAA-CREF IRA		88	270				
TIAA-CREF IRA		52	125				
IRA Fifth Third Money Market		44	100	Total liabilities		464	852
Vanguard Windsor Fund money market IRA		24	295	Net Worth		226	938
Total Assets		691	790	Total liabilities and net worth		691	790
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you a defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

*SCHEDULES:
Amounts for Real Estate Owned and Real estate mortgages payable are for Personal residence.

Response to Question 13.b.

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

Below is a list of my federal court opinions published in Westlaw or LEXIS, as well as a list of my published state court opinions. Many of my federal court opinions are not published.

Soehner v. Time Warner Cable, Inc., 2009 WL 3855176 (S.D. Ohio Nov. 16, 2009)
Frazee v. Comm'r of Soc. Sec., 2009 WL 3853806 (S.D. Ohio Nov. 12, 2009)
Back v. Comm'r of Soc. Sec., 2009 WL 3785174 (S.D. Ohio Nov. 11, 2009)
Falconi v. Comm'r of Soc. Sec., 2009 WL 3790176 (S.D. Ohio Nov. 11, 2009)
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Sudberry v. Thomas, 2009 WL 3698411 (S.D. Ohio Nov. 5, 2009)
Wellman v. Hamilton County Municipal Court, 2009 WL 3698424 (S.D. Ohio Nov. 3, 2009)
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Christman v. United States, 2009 WL 3418684 (S.D. Ohio Oct. 19, 2009)
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Tyndle Ridge Dev., LLC v. City of Cinti., 2009 WL 2901539 (S.D. Ohio Sept. 1, 2009)
Waller v. Bear, 2009 WL 2884145 (S.D. Ohio Aug. 31, 2009)
Cincinnati Ins. Co. v. Dorsey Const. Co., Inc., 2009 WL 2579395 (S.D. Ohio Aug. 18, 2009)

65688.140

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Oglesby v. Comm'r of Soc. Sec., 2009 WL 2243022 (S.D. Ohio July 23, 2009)
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VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00212 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00213 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00214 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00215 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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Beckham v. R.W. Juckniess Co., Inc., 2007 WL 2746543 (S.D. Ohio Sept. 19, 2007)

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Recovery Exp., Inc. v. Warren Cty. Frat. Order of Police, Inc., 2007 WL 2746549 (S.D. Ohio Sept. 19, 2007)
Duke Energy Ohio Inc. v. Smith, 2007 WL 2778633 (S.D. Ohio Sept. 19, 2007)
Wemer v. Ohio National Life Ins. Co., 2007 WL 2769694 (S.D. Ohio Sept. 18, 2007)
Livingston v. Redwine, 2007 WL 2713857 (S.D. Ohio Sept. 17, 2007)
Smith v. Voorhies, 2007 WL 2688275 (S.D. Ohio Sept. 12, 2007)
Aubin Industries, Inc. v. Smith, 2007 WL 2626433 (S.D. Ohio Sept. 6, 2007)
Tackett v. Wal-Mart Stores East, Inc., 2007 WL 2668133 (S.D. Ohio Sept. 6, 2007)
Colbert v. Tambi, 2007 WL 2510149 (S.D. Ohio Aug. 30, 2007)
Cooper v. Southern Ohio Corr. Facility, 2007 WL 2781665 (S.D. Ohio Sept. 24, 2007)
Marbury v. Abraham, 2007 WL 4792523 (S.D. Ohio Aug. 24, 2007)
Johnson v. National Legal Prof. Assoc., 2007 WL 2407052 (S.D. Ohio Aug. 22, 2007)
Hicks v. Timmerman-Cooper, 2007 WL 2344915 (S.D. Ohio Aug. 16, 2007)
Torrance v. Performance Honda North, 2007 WL 2344709 (S.D. Ohio Aug. 14, 2007)
Lynch v. Fortis Benefits Ins. Co., 2007 WL 2331940 (S.D. Ohio Aug. 13, 2007)
Nix v. Warden, 2007 WL 2326866 (S.D. Ohio Aug. 10, 2007)
Caito v. Fifth Third Bank, 2007 WL 2303157 (S.D. Ohio Aug. 8, 2007)
Johnson v. Warden, 2007 WL 2206550 (S.D. Ohio July 30, 2007)
Lam v. Lam, 2007 WL 2206551 (S.D. Ohio July 30, 2007)
Morgeson v. OK Interiors Corp., 2007 WL 1982837 (S.D. Ohio July 5, 2007)
Taylor v. Hart, 2007 WL 1959211 (S.D. Ohio June 29, 2007)
Gomez-Silva v. Warden, 2007 WL 1959221 (S.D. Ohio June 29, 2007
Taylor v. Moore, 2007 WL 2477591 (S.D. Ohio June 20, 2007)
Alley v. Leis, 2007 WL 1795299 (S.D. Ohio June 19, 2007)
Benaugh v. Ohio Civil Rights Com'n, 2007 WL 1795305 (S.D. Ohio June 19, 2007)
ATM Exch., Inc. v. Visa Intern. Serv. Ass'n, 2007 WL 1674230 (S.D. Ohio June 7, 2007)
Evans v. Collins, 2007 WL 1656237 (S.D. Ohio June 6, 2007)
United States v. University Hosp., Inc., 2007 WL 1665748 (S.D. Ohio June 6, 2007)
Lowe v. Hamilton Cty Job & Fam. Servs, 2007 WL 1513823 (S.D. Ohio May 22, 2007)
Amadasu v. Mercy Franciscan Hosp., 2007 WL 1412994 (S.D. Ohio May 10, 2007)
Mohammed v. Mail Cont. of America, 2007 WL 1306602 (S.D. Ohio May 3, 2007)
Shirk v. Fifth Third Bancorp, 2007 WL 1100429 (S.D. Ohio Apr. 10, 2007)
Fox v. Clinton Cty. Vets. Service Com'n, 2007 WL 1057379 (S.D. Ohio Apr. 5, 2007)
Darby v. United States Dept. of Energy, 2007 WL 1026366 (S.D. Ohio Mar. 30, 2007)
Howard v. Erwin, 2007 WL 1026373 (S.D. Ohio Mar. 30, 2007)
Todd v. Wolfe, 2007 WL 951616 (S.D. Ohio Mar. 28, 2007)
Coffey v. Warden, 2007 WL 951619 (S.D. Ohio Mar. 28, 2007)
Zink v. Court of Comm. Pleas of Ham. Cty, 2007 WL 950284 (S.D. Ohio Mar. 27, 2007)
Neff v. Brunsman, 2007 WL 912122 (S.D. Ohio Mar. 23, 2007)

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Taylor v. Hart, 2007 WL 869721 (S.D. Ohio Mar. 20, 2007)
Durrette v. Wells Fargo Bank, Minn., N.A., 2007 WL 869726 (S.D. Ohio Mar. 20, 2007)
ComputerEase Software, Inc. v. Hemisphere Corp., 2007 WL 852103 (S.D. Ohio Mar. 19, 2007)
Grimsley v. Warden, 2007 WL 778130 (S.D. Ohio Mar. 12, 2007)
Hoepf v. Obregon, 2007 WL 756692 (S.D. Ohio Mar. 8, 2007)
Dare v. GE Money Bank, 2007 WL 682527 (S.D. Ohio Mar. 1, 2007)
Evans v. Collins, 2007 WL 641980 (S.D. Ohio Feb. 27, 2007)
Kilgore v. City of Cincinnati, 2007 WL 545752 (S.D. Ohio Feb. 16, 2007)
Richardson v. Moore, 2007 WL 539641 (S.D. Ohio Feb. 15, 2007)
Mohammed v. Mail Cont. of America, Inc., 2007 WL 184742 (S.D. Ohio Jan. 19, 2007)
Williams v. Sheets, 2007 WL 184745 (S.D. Ohio Jan. 19, 2007)
Lopez v. Robinson, 2007 WL 162490 (S.D. Ohio Jan. 17, 2007)
Carpenter v. City of Franklin, Ohio, 2007 WL 120140 (S.D. Ohio Jan. 10, 2007)
Arthur v. Donini, 2007 WL 14595 (S.D. Ohio Jan. 3, 2007)
Carpenter v. City of Franklin, Ohio, 2006 WL 3791931 (S.D. Ohio Dec. 22, 2006)
Johnson v. Jackson, 2006 WL 3498290 (S.D. Ohio Dec. 1, 2006)
Gibbons v. Asset Acceptance Corp., 2006 WL 3452521 (S.D. Ohio Nov. 29, 2006)
Byrd v. Warden, 2006 WL 3420210 (S.D. Ohio Nov. 27, 2006)
Operations Mgmt. Intern., Inc. v. Clermont Cty, 2006 WL 3306317 (S.D. Ohio Nov. 13, 2006)
Thompson v. Spencer, 2006 WL 2869589 (S.D. Ohio Oct. 5, 2006)
Walker v. Timmerman-Cooper, 2006 WL 3242101 (S.D. Ohio Oct. 5, 2006)
Schweitzer v. Sedgwick Claims Mgmt. Servs., Inc., 2006 WL 2860990 (S.D. Ohio Oct. 4, 2006)
Johnson v. Ohio Cas. Ins. Co., 2006 WL 2849781 (S.D. Ohio Sept. 29, 2006)
Eads v. Cinergy Corp., 2006 WL 2850512 (S.D. Ohio Sept. 29, 2006)
White v. Warden, 2006 WL 2640633 (S.D. Ohio Sept. 13, 2006)
Taylor v. Warden, 2006 WL 2619850 (S.D. Ohio Sept. 12, 2006)
Anderson v. Liberty Life Assur. Co., 2006 WL 2468282 (S.D. Ohio Aug. 25, 2006)
Dirkes v. Continental Cas. Co., 2006 WL 2381444 (S.D. Ohio Aug. 16, 2006)
Gentry v. Wells Fargo, 2006 WL 2319987 (S.D. Ohio Aug. 9, 2006)
Jenkins v. Leis, 2006 WL 2320128 (S.D. Ohio Aug. 9, 2006)
Livingston v. Redwine, 2006 WL 2266240 (S.D. Ohio Aug. 8, 2006)
United States v. University Hosp., Inc., 2006 WL 2612631 (S.D. Ohio July 28, 2006)
Zielinski v. OSI Collection Services, Inc., 2006 WL 2056676 (S.D. Ohio July 21, 2006)
Franklin v. Bradshaw, 2006 WL 4046088 (S.D. Ohio July 19, 2006)
ABN ABRO Mortg. Group, Inc. v. Smith, 2006 WL 2035542 (S.D. Ohio July 18, 2006)
SW Ohio Carpenters v. E & I Const., 2006 WL 2035646 (S.D. Ohio July 18, 2006)
Preston v. John Alden Life Ins. Co., 2006 WL 2010763 (S.D. Ohio July 17, 2006)
Barnett v. Barnett, 2006 WL 1982880 (S.D. Ohio July 13, 2006)
National Bank & Trust Co. v. Webb, 2006 WL 1966591 (S.D. Ohio July 11, 2006)

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Greenlee v. Postal Service (U.S.), 2006 WL 1892658 (S.D. Ohio July 10, 2006)
Apseloff v. Family Dollar Stores, Inc., 2006 WL 1881283 (S.D. Ohio July 6, 2006)
Carter v. Sheets, 2006 WL 1645041 (S.D. Ohio June 7, 2006)
Gorman v. Brunsman, 2006 WL 1645066 (S.D. Ohio June 7, 2006)
Kilgore v. City of Cincinnati, 2006 WL 1580224 (S.D. Ohio June 5, 2006)
Young v. Brunsman, 2006 WL 1548556 (S.D. Ohio June 2, 2006)
Hughes v. Guanciale, 2006 WL 1207974 (S.D. Ohio Apr. 28, 2006)
Hughes v. Guanciale, 2006 WL 5164777 (S.D. Ohio Apr. 28, 2006)
Steadman v. Dalton, 2006 WL 1645223 (S.D. Ohio Apr. 3, 2006)
Ushery v. Sheets, 2006 WL 2468279 (S.D. Ohio Feb. 22, 2006)
Darnell v. McGinnis, Inc., 2005 WL 5981332 (S.D. Ohio Nov. 23, 2005)
Darnell v. McGinnis, Inc., 2005 WL 5981333 (S.D. Ohio Oct. 21, 2005)
English Woods Civic Association/Resident Community Council v. Cincinnati Metropolitan Housing Authority, 2004 WL 3019505 (S.D. Ohio Dec. 17, 2004)
Reuss v. First Fin. Collection Co., 2009 U.S. Dist. LEXIS 115624 (Dec. 11, 2009)
Holschuh v. Comm'r of Soc. Sec., 2009 U.S. Dist. LEXIS 112828 (Nov. 10, 2009)
Massey v. Warden, 2009 U.S. Dist. LEXIS 120012 (Nov. 10, 2009)
Morris v. Warden, 2009 U.S. Dist. LEXIS 114901 (Nov. 2, 2009)
Piatt v. Collins, 2009 U.S. Dist. LEXIS 109013 (Oct. 27, 2009)
Board of Trs. of the Plumbers v. Airstream Mech., 2009 U.S. Dist. LEXIS 109224 (Oct. 26, 2009)
Nicholson v. Collins, 2009 U.S. Dist. LEXIS 109465 (Oct. 23, 2009)
Torrance v. Citifinancial Mortg. Co., 2009 U.S. Dist. LEXIS 107856 (Oct. 20, 2009)
Gueye v. Tower, 2009 U.S. Dist. LEXIS 107727 (Oct. 15, 2009)
Mansfield v. Warden, 2009 U.S. Dist. LEXIS 109459 (Oct. 7, 2009)
Griffey v. Comm'r of Soc. Sec., 2009 U.S. Dist. LEXIS 111180 (Oct. 7, 2009)
Martin v. Summit Behav. Healthcare Ctr., 2009 U.S. Dist. LEXIS 109460 (Sept. 23, 2009)
Nat'l City Commer. Capital Co. v. Caliber Homes, LLC, 2009 U.S. Dist. LEXIS 108349 (Aug. 27, 2009)
Fussell v. Wilkinson, 2009 U.S. Dist. LEXIS 86468 (Aug. 26, 2009)
Smith v. Jackson, 2009 U.S. Dist. LEXIS 88727 (Aug. 25, 2009)
Bufford v. Warden, 2009 U.S. Dist. LEXIS 109463 (Aug. 25, 2009)
Bucio v. Sutherland, 2009 U.S. Dist. LEXIS 112707 (Aug. 25, 2009)
Sudberry v. Thomas, 2009 U.S. Dist. LEXIS 103885 (Aug. 24, 2009)
Wellman v. Hamilton County Mun. Ct., 2009 U.S. Dist. LEXIS 102173 (Aug. 24, 2009)
Marbury v. Abraham, 2009 U.S. Dist. LEXIS 114471 (Aug. 24, 2009)
Cooley v. Astrue, 2009 U.S. Dist. LEXIS 83996 (Aug. 11, 2009)
Ott v. Comm'r of Soc. Sec., 2009 U.S. Dist. LEXIS 90114 (Aug. 11, 2009)
Covington v. Astrue, 2009 U.S. Dist. LEXIS 92241 (Aug. 11, 2009)
Taylor v. Astrue, 2009 U.S. Dist. LEXIS 88740 (Aug. 10, 2009)
Phillips v. Comm'r of Soc. Sec., 2009 U.S. Dist. LEXIS 70459 (July 14, 2009)
Martin v. Comm'r of Soc. Sec., 2009 U.S. Dist. LEXIS 88057 (July 14, 2009)
Smith v. Warden, 2009 U.S. Dist. LEXIS 110000 (July 9, 2009)
Zimmerman v. Crabtree, 2009 U.S. Dist. LEXIS 66837 (May 27, 2009)

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1330 Old River, LLC v. Broad. Music, Inc., 2009 U.S. Dist. LEXIS 38199 (May 5, 2009)
Butler v. Warden, Warren Corr. Inst., 2009 U.S. Dist. LEXIS 109457 (Apr. 14, 2009)
Clark v. Comm'r of Soc. Sec., 2009 U.S. Dist. LEXIS 82761 (Mar. 3, 2009)
Daniels v. Comm'r of Soc. Sec., 2009 U.S. Dist. LEXIS 44140 (Feb. 25, 2009)
Frederick v. Comm'r of Soc. Sec., 2008 U.S. Dist. LEXIS 107899 (Dec. 30, 2008)
Smith v. Brunsman, 2008 U.S. Dist. LEXIS 109960 (Dec. 16, 2008)
Dirkes v. Hartford Life Group Ins. Co., 2008 U.S. Dist. LEXIS 98166 (Nov. 6, 2008)
Webb v. Oney, 2008 U.S. Dist. LEXIS 92085 (June 24, 2008)
Bowman v. Comm'r of Soc. Sec., 2008 U.S. Dist. LEXIS 110051 (Mar. 18, 2008)
Frazee v. Comm'r of Soc. Sec., 2008 U.S. Dist. LEXIS 109900 (Mar. 1, 2008)
United States v. Standring, 2008 U.S. Dist. LEXIS 92881 (Feb. 26, 2008)
Jackson v. United Dairy Farmers, 2007 U.S. Dist. LEXIS 97632 (Sept. 24, 2007)
Ndiaye v. CVS Pharm. 6081, 2007 U.S. Dist. LEXIS 98611 (Aug. 30, 2007)
Rice v. Moore, 2007 U.S. Dist. LEXIS 98845 (July 6, 2007)
Morgeson v. OK Interiors Corp., 2007 U.S. Dist. LEXIS 48581 (July 3, 2007)
Stanford v. Bp Prods. N. Am., 2007 U.S. Dist. LEXIS 38715 (May 29, 2007)
Durrette (Kenner) v. Wells Fargo Bank, 2007 U.S. Dist. LEXIS 19556 (Mar. 19, 2007)
Colbert v. Tambi, 2007 U.S. Dist. LEXIS 95832 (Feb. 21, 2007)
Martin v. Select Portf. Serv. Hold. Corp., 2006 U.S. Dist. LEXIS 68779 (Sept. 25, 2006)
Whitlow v. Moore, 2006 U.S. Dist. LEXIS 56658 (Aug. 14, 2006)
Bonadies v. Deaconess Hosp., 2006 U.S. Dist. LEXIS 49017 (July 19, 2006)
ABN AMRO Mortg. Group, Inc. v. Smith, 2006 U.S. Dist. LEXIS 48722 (July 18, 2006)
ABN AMRO Mortg. Group, Inc. v. Smith, 2006 U.S. Dist. LEXIS 48716 (July 18, 2006)
Klein v. Leis, 2006 U.S. Dist. LEXIS 36814 (June 6, 2006)
Klein v. Leis, 2006 U.S. Dist. LEXIS 35332 (May 30, 2006)
Market Day Corp. v. Maas, 2006 U.S. Dist. LEXIS 33375 (May 25, 2006)
Moser v. United States, 2006 U.S. Dist. LEXIS 33374 (May 25, 2006)
Amadasu v. Donovan, 2006 U.S. Dist. LEXIS 30635 (May 18, 2006)
Taylor v. McWeeney, 2006 U.S. Dist. LEXIS 36801 (Apr. 21, 2006)
Martin v. Select Portf. Serv. Hold. Corp., 2006 U.S. Dist. LEXIS 24749 (Mar. 17, 2006)
Hanifen v. Ball Corp., 2006 U.S. Dist. LEXIS 9886 (Mar. 13, 2006)
Fox v. Clinton Cty. Veterans Serv. Comm'n, 2006 U.S. Dist. LEXIS 14284 (Mar. 13, 2006)
Dirkes v. Cont'l Cas. Co., 2006 U.S. Dist. LEXIS 97371 (Mar. 3, 2006)
United States v. $53,975 in U.S. Currency, 2006 U.S. Dist. LEXIS 7808 (Mar. 1, 2006)
Ruff v. Moore, 2006 U.S. Dist. LEXIS 54608 (Feb. 16, 2006)
Insurance Distrib. Netw. v. Found. Ins. Co., 2005 U.S. Dist. LEXIS 26419 (Nov. 2, 2005)

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Dayton Power & Light Co. v. Tristate Bldg. & Constr. Trades Council, 2005 U.S. Dist. LEXIS 25360 (Oct. 18, 2005)
Hurston v. Butler Cty. Dep't of Jobs & Fam. Servs., 2005 U.S. Dist. LEXIS 22111 (Sept. 30, 2005)
Fox v. Clinton Cty. Vets. Serv. Comm'n, 2005 U.S. Dist. LEXIS 20420 (Sept. 19, 2005)
United States v. Houck, 2005 U.S. Dist. LEXIS 23037 (Sept. 14, 2005)
Hanifen v. Ball Corp., 2005 U.S. Dist. LEXIS 21226 (July 21, 2005)
Cincinnati Bell Wireless, LLC v. Brown Cty., 2005 U.S. Dist. LEXIS 45866 (July 6, 2005)
Shirk v. Fifth Third Bancorp, 2005 U.S. Dist. LEXIS 12871 (June 29, 2005)
Ruff v. Jackson, 2005 U.S. Dist. LEXIS 35530 (June 29, 2005)
S.W. Ohio Reg'l Cncl. v. PJH Constr., LLC, 2005 U.S. Dist. LEXIS 15245 (June 28, 2005)
Dewert v. Springboro Police Dep't, 2005 U.S. Dist. LEXIS 39601 (June 3, 2005)
Gutter Topper, LTD v. Hart & Cooley, Inc., 2005 U.S. Dist. LEXIS 10271 (May 26, 2005)
Kammeyer v. City of Sharonville, 2005 U.S. Dist. LEXIS 9877 (May 25, 2005)
Klein v. Carter, 2005 U.S. Dist. LEXIS 12571 (May 20, 2005)
El-Amin v. First Transit, Inc., 2005 U.S. Dist. LEXIS 45055 (May 11, 2005)
Gutter Topper, LTD v. Hart & Cooley, Inc., 2005 U.S. Dist. LEXIS 9335 (May 6, 2005)
Sizemore v. SSA, 2005 U.S. Dist. LEXIS 40817 (May 2, 2005)
Moore v. Erwin, 2005 U.S. Dist. LEXIS 9024 (Apr. 18, 2005)
Mills v. Jackson, 2005 U.S. Dist. LEXIS 11017 (Mar. 18, 2005)
Collins v. Allen, 2005 U.S. Dist. LEXIS 9017 (Mar. 16, 2005)
United States v. Houck, 2004 U.S. Dist. LEXIS 22856 (Oct. 5, 2004)
Blue v. Castlerock, 665 N.E. 2d 295 (Hamilton County Mun. Ct. 1996)
Blue v. Castlerock, 665 N.E. 2d 296 (Hamilton County Mun. Ct. 1996)
Atlantic Mut. Ins. Co. v. Provident Bank, 669 N.E. 2d 901 (Hamilton County Mun. Ct. 1996)
State v. Taylor, 671 N.E. 2d 343 (Hamilton County Mun. Ct. 1996)
State v. Linner, 665 N.E. 2d 1180 (Hamilton County Mun. Ct. 1996)
State v. Lee, 657 N.E. 2d 604 (Hamilton County Mun. Ct. 1995)
State v. Johnson, 1994 Ohio Misc. LEXIS 82 (Hamilton County Mun. Ct. 1995)
Doll v. Rapp, 660 N.E. 2d 542 (Hamilton County Mun. Ct. 1995)
State v. Trainer, 670 N.E. 2d 1378 (Hamilton County Mun. Ct. 1995)
Cincinnati Cent. Credit Union v. Goss, 642 N.E.2d 1176 (Hamilton County Mun. Ct. 1994)
State Auto. v. Newman, 640 N.E.2d 627 (Hamilton County Mun. Ct. 1994)
Nationwide Ins. Co. v. Jordan, 639 N.E.2d 536 (Hamilton County Mun. Ct. 1994)
State v. Ham, 639 N.E. 2d 529 (Hamilton County Mun. Ct. 1994)
State v. Gaines, 643 N.E. 2d 624 (Hamilton County Mun. Ct. 1994)

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AFFIDAVIT

I, TIMOTHY SEYMOUR BLACK, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

1/4/10
(DATE)

Timothy S. Black
(NAME)

Mary Ann Ranz
(NOTARY) 1/4/10

NOTARIAL SEAL STATE OF OHIO

Mary Ann Ranz
Notary Public, State of Ohio
My Commission Expires 03-19-2013

STATEMENT OF JAMES P. LYNCH, NOMINATED TO BE DIRECTOR OF THE BUREAU OF JUSTICE STATISTICS

Mr. LYNCH. Senator, I want to thank you all for allowing me to appear before you. I'd also like to thank President Obama for this great honor, Attorney General Holder for his support, and Assistant Attorney General Laurie Robinson for her support.

I would like to acknowledge members of my family. My wife of 37-plus years, Carolyn DuPont Lynch, is here with me. My children, Alex and Sarah, would love to be here, but they had to return to classes and are probably watching me on some sort of electronic medium; the kind, I'm not exactly sure.

I also have some friends and colleagues and students here and I would like to tell them how grateful I am for their support.

With that, I would welcome your questions. Thanks.

[The biographical information of Gerard Edmund Lynch follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Gerard Edmund Lynch

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 for the Southern District of New York
   Daniel P. Moynihan United States Courthouse
   500 Pearl Street
   New York, NY 10007

   Additional Office:

   Columbia University School of Law
   435 W.116th Street
   New York, NY 10027

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

   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.

   1972 – 1975, Columbia University School of Law; J.D., 1975

   1968 – 1972, Columbia College, Columbia University in the City of New York; B.A. summa cum laude, 1972

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.

2003-present
Columbia Law Review
435 W. 116th Street
New York, NY 10027
Member, Board of Directors (unpaid)

2000-present
United States District Court, Southern District Of New York
500 Pearl Street
New York, NY 10007
United States District Judge

1977-present
Columbia University School of Law
435 W. 116th Street
New York, NY 10027
Member of the Faculty of Law
(Paul J. Kellner Professor of Law, since 1996; Vice Dean, 1992-97;
Professor of Law, 1987-96; Associate Professor 1980-86;
Assistant Professor 1977-80)
(On public service leave, 1980-83; 1990-91)

2000-2000
New York Council of Defense Lawyers
New York, NY
Member, Board of Directors (unpaid)

1999-2000
Office of Independent Counsel Carol Elder Bruce
Washington, DC
Special Counsel (part time)

1992-2000
Covington & Burling, LLP
(formerly Howard Smith & Levin LLP; formerly Howard Darby & Levin)
1330 Avenue of the Americas
New York, NY 10019
(present address: 620 Eighth Avenue, New York, NY 10018)
Counsel

1990-1992
United States Department of Justice
Office of the United States Attorney, SDNY

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One St. Andrew's Plaza
New York, NY 10007
Chief, Criminal Division

1988-1990
Office of Independent Counsel, Iran/Contra
555 Thirteenth Street NW
Washington, DC 20004
Associate Counsel (part time)

1987-1988
Office of Independent Counsel James C. Mckay
Washington, DC
Associate Independent Counsel (part-time)

1987-1987
New York State Commission on Government Integrity
(Califano Commission)
1 World Trade Center
New York, NY
Chief Counsel (part time)

1986-1986
City Of New York Special Commission to Investigate City Contracts (Martin Commission)
Special Counsel (part time)

1980-1983
United States Department of Justice
Office of the United States Attorney, SDNY
One St. Andrew's Plaza
New York, NY 10007
Assistant United States Attorney, Criminal Division
(Chief Appellate Attorney, 1983; Deputy Chief Appellate Attorney, 1982-83)

1976-1977
The Honorable William J. Brennan, Jr.
Associate Justice
Supreme Court of the United States
Washington, DC 20543
Law Clerk

1975-1976
The Honorable Wilfred Feinberg
United States Circuit Judge
United States Court of Appeals for the Second Circuit

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United States Courthouse
40 Foley Square
New York, NY 10007
Law Clerk

1974-1974
Nickerson, Kramer, Lowenstein, Nessen, Kamin & Soll
919 Third Avenue
New York, NY 10022
(now known as Kramer, Levin, Naftalis & Frankel, LLP;
present address: 1177 Avenue of the Americas, New York, NY 10036)
Summer Associate

1972-1975
Office of Columbia College Admissions
212 Hamilton Hall
Columbia University
New York, NY 10027
Interviewer and Admissions Representative
(part time during law school terms and full time during summers of 1972 and 1973)

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 1969.

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.

Wien Prize for Social Responsibility (awarded by Columbia Law School), 2008
Elected to Membership, American Law Institute, 1998
Presidential Award for Outstanding Teaching (university-wide, faculty-voted), 1997
Willis Reese Award for Excellence in Teaching (law school, student voted), 1994

Law School:
John Ordronaux Prize (graduated first in class), 1975; James Kent Scholar (highest academic honors), 1972-73, 1973-74, 1974-75; Lawrence S. Greenbaum Prize (winner, Harlan Fiske Stone moot court competition), 1974; prizes for best performance in torts, contracts, property and constitutional law.

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College:
Albert Asher Green Prize (valedictorian), 1972; David Truman Award (outstanding contribution to the academic life of the College), 1972; Earle Prize in Classics, 1972; Phi Beta Kappa, 1971; John Jay National Scholarship, 1968; National Merit Scholarship, 1968

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.

Association of the Bar of the City of New York
Committee on Federal Courts, 1993-1996
Committee on Criminal Advocacy, 1986-1989
Council on Criminal Justice, Subcommittee on Federal Sentencing Guidelines, 1986-1987
Committee on Legal Education and Admission to the Bar, 1978-1981, 1984-1986

New York State Bar Association
Committee on Civil Prosecution, 1992-1994

New York Council of Defense Lawyers
Member, Board of Directors, 2000

Second Circuit Library Committee, 2006-present

Advisory Committee to Second Circuit Rules Committee, 1999-present

Second Circuit Judicial Conference, Planning and Program Committee, 1989-1992

United States District Court for the Eastern District of New York, Committee on Revision of Local Criminal Rules, 1989-1992

American Law Institute, 1998-present
Board of Advisors, Model Penal Code Sentencing Revision Project, 1999-present

Advisory Board, Cologne School of International Doctoral Studies, Faculty of Law, University of Cologne, Germany, 2006-present

Consultant, MacArthur Foundation Law and Neuroscience Project, 2007-present

Civil Liberties Advisory Panel, White House Commission on Aviation Safety and Security, 1997

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00228 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.

New York, 1976

I have remained a member of the bar in good standing from that date to the present without lapses. However, as a federal judge I have been in retired/judicial status since 2000.

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 state courts (1976)
Supreme Court of the United States, 1985
United States Court of Appeals for the Second Circuit, 1979
United States Court of Appeals for the Fourth Circuit, 1989
United States Court of Appeals for the District of Columbia Circuit, 1989
United States District Court for the Southern District of New York, 1992
United States District Court for the Eastern District of New York, 1992

All dates are dates of first admission; in all cases I have remained a member of the bar in question in good standing from that date to the present without lapses.

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.

Other than the professional affiliations listed above, I have not been a member of clubs or organizations, with the exception of cultural, charitable or public interest organizations of which one becomes a "member" by making charitable contributions.

I do not recall the beginning date of current such memberships which include:
Metropolitan Museum of Art
Museum of Modern Art
New York City Ballet Guild
School of American Ballet

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00229 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Alvin Ailey American Dance Theater
Symphony Space
Wildlife Conservation Society (Bronx Zoo)
National Wildlife Federation
American Automobile Association
WNET-TV (New York public television)
WNYC (New York public radio)
WBGO (Newark public radio)

Prior such memberships (terminated in 2000):
American Civil Liberties Union (approximately 1975 - 2000)
New York Civil Liberties Union (approximately 1975 - 2000)

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 been, nor would I ever be, a member of any club or organization that discriminates on the basis of race, gender, religion, national origin, age, disability, or sexual orientation.

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.

Academic Publications:

Marvin Frankel: A Reformer Reassessed, ___ Federal Sentencing Reporter ___ (2009 forthcoming)

Letting Guidelines be Guidelines (and Judges be Judges), OSCJL Amici: Views from the Field, at http://osjcl.blogspot.com (January 2008), reprinted in 5(2) Ohio State Journal of Criminal Law 1 (supp.) (2008)

Why Not a Miranda for Searches?, 5 Ohio State Journal of Criminal Law 233 (2007)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00230 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Sentencing: Learning From, and Worrying About, the States, 105 Columbia Law Review 933 (2005)

Revising the Model Penal Code: Keeping It Real, 1 Ohio State Journal of Criminal Law 219 (2003)

Screening versus Plea Bargaining: What Are We Trading Off? 55 Stanford Law Review 1399 (2003)

Prosecution: Prosecutorial Discretion, in Dressler (ed.), 3 Encyclopedia of Crime & Justice 1246 (2d ed. 2002)

RICO (Racketeer Influenced and Corrupt Organizations Act), in Dressler (ed.), 3 Encyclopedia of Crime & Justice 1343 (2d ed. 2002)

Sentencing Eddie, 91 Journal of Criminal Law and Criminology 547 (2001), excerpted in Podgor, Henning, Garcia and Taslitz, Criminal Law: Concepts and Practice (2005)

Our Administrative System of Criminal Justice, 66 Fordham Law Review 2117 (1998), excerpted in O'Sullivan, Federal White Collar Crime (2001)

Toward a Model Penal Code, Second (Federal?): The Challenge of the Special Part, 2 Buffalo Criminal Law Review 295 (1998)

Plea Bargaining: El Sistema No Contradictorio de Justicia Penal en Estados Unidos, 1998/A Nueva Doctrina Penal 293 (Buenos Aires 1998)

The Role of Criminal Law in Policing Corporate Misconduct, 60 Law & Contemporary Problems 23 (1997)

William J. Brennan, Jr., American, 97 Columbia Law Review 1603 (1997)

The Sentencing Guidelines as a (Not-So-Model) Penal Code, 7 Federal Sentencing Reporter 112 (1994), reprinted in FSR Highlights from a Decade of Guideline Sentencing, 10 Federal Sentencing Reporter 25 (1997)

The Allocation of Discretion Under the Guidelines (Conference Proceedings), 101 Yale Law Journal 2066 (1992)

How Useful is Civil RICO in the Enforcement of Criminal Law? 35 Villanova Law Review 929 (1990)

A Conceptual, Practical and Political Guide to RICO Reform, 43 Vanderbilt Law Review 769 (1990)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00231 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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A Reply to Professor Goldsmith, 88 Columbia Law Review 802 (1988)

RICO: The Crime of Being a Criminal, Parts I & II, 87 Columbia Law Review 661 (1987); Parts III & IV, 87 Columbia Law Review 920 (1987), excerpted in Leonard Orland (ed.), Corporate and White Collar Crime: An Anthology (1995), and in numerous casebooks

The Lawyer as Informer, 1986 Duke Law Journal 491 (1986)

Constitutional Law as Moral Philosophy, 84 Columbia Law Review 537 (1984)

Review of Ely, Democracy and Distrust, 80 Columbia Law Review 857 (1980), reprinted in Michael J. Glennon (ed.), A Constitutional Law Anthology (1992)

Review of Berger, Government by Judiciary, 63 Cornell Law Review 1091 (1978)

Op-ed and Popular Publications:

The Problem Isn't in the Starrs but in a Misguided Law, The Washington Post, Feb. 22, 1998, at C3

Special Prosecutors: What's the Point? The Washington Post, May 28, 1995, at C7 (with Philip K. Howard)

IRS Can't Lasso Leona with a Loophole, New York Newsday, Aug. 25, 1989

RICO Law is Too Much of a Good Thing, New York Newsday, Jan. 11, 1989, at 55

Insult to Injury, The New Republic 198(14):17 (April 4, 1988)

Review of Woodward and Armstrong, The Brethren, Columbia College Today, March 1980, at 8

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 on Criminal Advocacy, Association of the Bar of the City of New York, Report on Megatrials, June 1988 (reprinted in White Collar Crime Reporter 2(6):1 (1988)).

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00232 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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I do not recall having been the principal author of any other bar association reports or the like, although it is possible that I was. I am sure that the various bar committees and the like listed above issued reports of various kinds during the period of my membership. Other than the report listed above, I do not have copies of any such reports and I have no specific recollection of their content.

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 July 17, 1998, I testified before the House Judiciary Committee with respect to the Racketeer-Influenced and Corrupt Organizations Act (RICO). I do not have a copy of the full testimony. However, a Lexis search produced a copy of the prepared statement that I submitted or read in connection with that testimony.

On or about April 27, 2000, I testified before this Committee in connection with my nomination as District Judge. I do not have a transcript of this testimony.

It is possible that I have testified on another occasion, but I have no specific recollection.

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 never given anything in the nature of a political speech before a public forum or any speech that was, to my knowledge, reported in the press. I have frequently spoken or lectured before bar or judicial groups, continuing legal education panels, alumni or student organizations, academic conferences and the like. I have not kept a listing of such occasions. A search of my electronic calendar (which extends back to 1999), and of my memory has yielded the events set forth below.

I have not made it a practice to keep copies of the remarks made or notes used on such occasions, but where I have retained such copies (or copies of notes from which I spoke) I attach them. I am not aware of any such events attracting any press coverage.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00233 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Feb. 6, 2009. Academic Conference on "Studying the Judiciary," Duke Law School. Audience of academics and judges. I was a member of a panel commenting on academic articles. My comments concerned a paper studying the work of Administrative Law Judges, and the substance of my remarks was to encourage academics to devote more study to the work of judges other than Supreme Court Justices or other appellate judges, since most of the work of the judiciary goes on in the trial courts.

Nov. 18, 2008. Award Luncheon, Columbia Law School, Rainbow Room, New York City. Audience of Columbia Law School Alumni. I received the Lawrence Wien Award for Social Responsibility. I accepted the award and made brief remarks on the importance of public service.

Aug. 8, 2008. American Bar Association Panel on White Collar Crime, Intercontinental Hotel, New York City. Audience of Lawyers. Panel Discussion on Recent Developments in White Collar Crime. I believe I provided practice tips on post-Booker sentencing advocacy, but the panel was quite informal and I don't recall much of the substance.

June 2 and 9, 2008. New York County Lawyers Association, New York City. Audience of lawyers. Moderated Continuing Legal Education Panel on Federal Civil Practice.

March 31, 2008. Continuing Legal Education Program, Cornell Club, New York City. Audience of Lawyers. Participated in judges' panel on Federal Civil Practice.

March 27, 2008. Columbia Law Review Banquet, Columbia Club, New York City. Audience of members and alumni of Columbia Law Review. Introductory/welcoming remarks praising the year's work of the Law Review.

Jan. 22, 2008. Federal Bar Council Second Circuit Courts Committee, US Courthouse, New York City. Audience of Committee members. I believe this was part of a "Meet the Judges"series where I made some remarks about what judges like to see in lawyers practicing before them and answered questions.

Oct. 27, 2007. New York Council of Defense Lawyers, Westchester, New York. Audience of criminal defense lawyers, prosecutors and judges. I believe that I participated as moderator of a panel, rather than as a speaker. Usually these programs are in the format of a legal problem in which a moderator calls upon prosecutors, defense lawyers and judges on the panel to explain how they would handle such a problem in actual practice. I do not think that I would have made any substantive remarks; my job at such panels is to be the Socratic questioner rather than speaker.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00234 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Oct. 10, 2007. Association of the Bar of the City of New York. Audience of lawyers. Moderated Continuing Legal Education Program: The ABC's of Federal Criminal Practice.

Sept. 20, 2007. American Judicature Society, Devitt Award Presentation, Houston, Texas. Audience of Judges and Lawyers. I was part of the Committee that voted to award the prize to Judge Carolyn Dineen King, and I believe I made some brief remarks on why we made the choice, but I was not the primary presenter and I don't recall for sure whether I was called upon to say something.

Aug. 14, 2007. Panel on the Legal Profession and Professional Responsibility. Audience of Columbia Law School First Year Students. General remarks on the significance of legal ethics in their education and future careers.

June 12, 2007. Presentation of the Stimson Medal for Outstanding Performances by Assistant United States Attorneys, Association of the Bar of the City of New York. Audience of prosecutors and other lawyers. General praise for the traditions of the Justice Department and specific praise for the recipients of the award.

June 11, 2007. Panel on cross-examination, United States Courthouse, New York City. Audience of Assistant United States Attorneys and summer interns. Participated in panel of judges discussing effective cross-examination techniques.

Nov. 4, 2006. Conference, Stanford Law School, Audience of law professors, students, and practitioners. I don't recall the substance of the conference, but I believe it had to do with white collar crime.

Oct. 28, 2006. Federal Bar Council, Lenox, Massachusetts. Continuing Legal Education Program. Audience of lawyers. I don't recall the subject of whatever panel I participated in.

Oct. 6, 2006. Conference on Miranda v. Arizona. An expanded version of the talk I gave was published as Why Not a Miranda for Searches?, 5 Ohio State Journal of Criminal Law 233 (2007), listed above among academic articles.

March 7, 2006. Judges' Panel at Fordham Law School on post-Booker sentencing. Audience of law students and practitioners. Discussion among several judges from around the country about the impact of United States v. Booker on sentencing practice.

Mar. 3, 2006. American Bar Association Conference on White Collar Crime, San Francisco, California. Audience of lawyers. Participated in panel discussion on post-Booker sentencing.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00235 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Jan. 11, 2006. New York County Lawyers Association, Federal Courts Committee, New York City, Audience of Committee Members. I believe this was part of a "Meet the Judges"series where I made some remarks about what judges like to see in lawyers practicing before them and answered questions.

Apr. 9, 2005. Institute for Law and Economic Policy, Naples, Florida. Audience of lawyers, mostly plaintiffs' lawyers in securities class action. Participated in panel on recent developments in securities law.

Mar. 10, 2005. Federal Bar Council, US Courthouse, New York City. Audience of lawyers. Part of panel in Continuing Legal Education program on sentencing practice after United States v. Booker.

Jan. 21-22, 2005. Symposium on State Sentencing Guidelines, Columbia Law School, New York. Audience of law professors. I was the general organizer and moderator of this conference, and I believe participated in several panels as speaker or moderator. The papers presented at the conference filled an entire issue of the Columbia Law Review. My principal contribution was the summary introduction to that issue, Sentencing: Learning From, and Worrying About, the States, 105 Columbia Law Review 933 (2005), listed above with academic articles.

Oct. 22, 2004. American Judicature Society, Devitt Award Presentation, New York City. Audience of Judges and Lawyers. Presentation of the Devitt Award to Judge Wilfred Feinberg. I made a principal speech in praise of Judge Feinberg.

Oct. 6, 2004. Association of the Bar of the City of New York. Moderated public discussion of the film, "Capturing the Friedmans." Audience of lawyers. Panel included prosecutors, defense lawyers, and psychological experts on child abuse.

Sept. 22, 2004. Association of the Bar of the City of New York. Audience of lawyers. Continuing Legal Education program on confusion in sentencing law and practice following Blakely v. Washington. Participated in panel.

May 17, 2004. Association of the Bar of the City of New York. Audience of lawyers. Continuing Legal Education program regarding federal tax investigations. I don't recall this panel. I must have been the moderator rather than a presenter because I don't know that much about the subject.

Feb. 19, 2004. Federal Bar Council. Continuing Legal Education Program. Manzanillo, Mexico. Audience of lawyers and judges. Participated in panels on the case of Korematsu v. United States and the legal response to terrorism.

Oct. 18, 2003. New York Council of Defense Lawyers, Westchester, New York. Audience of criminal defense lawyers, prosecutors and judges. This was a similar event to the one listed above for Oct. 27, 2007.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00236 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Sept. 17, 2003. New York State Bar Association, Commercial Litigation Section, New York City. Audience of Committee Members. I believe this was part of a "Meet the Judges"series where I made some remarks about what judges like to see in lawyers practicing before them and answered questions.

Feb. 21, 2003. Federal Bar Council, Continuing Legal Education Program, Kona, Hawaii. Audience of lawyers. I do not recall the subject of the panels in which I participated.

Jan. 4, 2003. Association of American Law Schools, Washington, D.C. Audience of law professors. Spoke on a panel on revision of the Model Penal Code. An expanded version of this talk was published as Revising the Model Penal Code: Keeping It Real, 1 Ohio State Journal of Criminal Law 219 (2003), listed above with academic articles.

Nov. 4, 2002. Association of the Bar of the City of New York. Audience of lawyers. Continuing Legal Education program regarding handling conflicts of interest in criminal cases.

June 3, 2002. Association of American Law Schools, Washington, D.C. Audience of law professors. Conference on the law of evidence. My calendar reflects that I spoke at this conference, but I do not recall the substance of my remarks.

Feb. 12-16, 2002. Aspen Institute, Aspen, Colorado. Co-moderated seminar in law and terrorism for business leaders.

Nov. 8, 2001. Columbia Law School Alumni of Philadelphia. Philadelphia, Pennsylvania. Audience of Columbia Law alumni. I don't recall the substance of the event.

Oct. 29, 2001. New York University School of Law, Colloquium on Criminal Law. Audience of law professors, students, judges, lawyers. Formal lecture on the then-recent decision of the Supreme Court in Apprendi v. New Jersey.

Oct. 20, 2001. New York Council of Defense Lawyers, Westchester, New York. Audience of criminal defense lawyers, prosecutors and judges. This was a similar event to the one listed above for Oct. 27, 2007.

Apr. 12, 2001. Federal Bar Council. New York City. Continuing Legal Education program on the ethical limits of criminal representation. Audience of lawyers. I have no recollection of the nature of my participation.

July 7, 2000. American Bar Association Panel. New York Hilton Hotel, New York City. Audience of lawyers. My recollection is that I spoke on Apprendi v.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00237 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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New Jersey as part of a panel addressing recent significant Supreme Court cases, but I do not have a clear recollection.

Nov. 4, 1999. Conference, American University School of Law, Washington, DC. This is reflected in my calendar, and I have a recollection of being there. I do not recall the subject of the conference or the nature of my participation.

Nov. 23, 1996. SUNY at Buffalo Conference on Rethinking Federal Criminal Law. Audience of law professors. An expanded version of the talk I gave was later published as Toward a Model Penal Code, Second (Federal?): The Challenge of the Special Part, 2 Buffalo Criminal Law Review 295 (1998), listed above among academic articles.

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 not given interviews or commented to the press on legal issues since becoming a judge in 2000. Before going on the bench, I was frequently asked by reporters to comment on legal issues of public interest. I have done my best to identify all items called for in this question, by searching electronic databases as well my personal files. What follows is a list of all occasions, to the best I have been able to recover them, on which I have been quoted in the press as the result of such an interview or inquiry.

"Court Looks Again at Race and Peremptory Challenges," Trial, Oct. 1, 2005, p. 68(3)
"Man in the News: James Brien Comey," New York Times, Dec. 2, 2001, p. 1A
"Gender Madness on Columbia's Campus," The Freeman, Mar. 2001, p. 40
[Note: This is not an interview, but appears to cite comments I made at some earlier time to the Columbia University Senate.]
"Due Process at Columbia," Wall Street Journal, Oct. 4, 2000, p. A26
"Starr Search," The New Republic, Apr. 3, 2000, p. 15
"Jurors' Trust in Police Erodes in Light of Diallo and Louima," New York Times, Mar. 9, 2000, p. B1.
"Columbia U. Prof Nominated for Seat in United States District Court," Columbia Daily Spectator, Mar. 6, 2000
"Men, Women: We're not *that* Different," USA Today, Mar. 3, 2000, p. 15A
"Columbia U. Senate Passes Sexual Misconduct Policy," Columbia Daily Spectator, Feb. 28, 2000
"In Diallo Trial, Best Option is Albany," New York Times, Dec. 23, 1999, p.B1
"An Aggressive Prosecutor Now Enters the Limelight as Starr's Successor," New York Times, Dec. 19, 1999, p. 48
"Letters Swamp Judge in Volpe Sentencing," New York Daily News, Dec. 12, 1999, p. 13

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00238 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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"Prosecutor Seeks Takeover of Boxing Group," New York Times, Nov. 23, 1999, p.1
"Judge Overturns Verdict in 1980 Murder," New York Times, Nov. 12, 1999, p. B4
"Robert Ray Pays Tribute to Kenneth Starr," National Public Radio, Oct. 18, 1999
"Judge Bars Hirschfeld from Paying Jurors Despite Dubious Legal Authority," AP, Sept. 14, 1999
"Accused Cops Split on Strategy in Brawl Trial," New York Post, Sept. 5, 1999, p. 22
"Plan to Hire Top Trooper Hits a Snag," Newark Star-Ledger, July 31, 1999, p. 1
"Fraud Conviction Reversed in Air Crash Insurance Case," New York Times, July 8, 1999, p. C19
"Court Reverses Fraud Convictions on General Re Unit, Ex-CEO Brennan," Dow Jones Business News, July 7, 1999
"Prosecutor Wins Bid to Get Tripp's Tapes," Augusta (Ga.) Chronicle, June 26, 1999, p. A8
"State to Get Tripp Tapes," Baltimore Sun, June 26, 1999, p. 1A
"State Ordered to Turn Over Tripp Tapes," AP, June 26, 1999
"Experts: Reactions Vary Depending on Where You Live," Norfolk (Va.) Virginian-Chronicle, June 26, 1999, p. A1
"Ouster of Jurors Derails '97 Case," Arizona Republic, June 23, 1999, p. 1A
"Fallout from Scandal Claims Two Top Lawyers at Morgan Stanley," New York Times, June 11, 1999, p. C1
"Police Officer Charles Schwarz Convicted," National Public Radio, June 9, 1999
"Prosecutors Face a Challenge," New York Newsday, May 27, 1999, p. A47
"Obstacles for Defense in Louima Brutality Trial," New York Daily News, May 9, 1999, p. 18
"Volatile Claims Launch NYPD Assault Trial," Los Angeles Times, May 5, 1999, p. A1
"Keeping a High Profile in Cases Against Police," New York Times, Apr. 29, 1999, p. B1
"Counsel Law Gets Bad Name," New York Newsday, Apr. 15, 1999, p. A8
"Libya Turns Over Pan Am Suspects," New York Daily News, Apr. 6, 1999, p. 28
"The Diallo Shooting: The Charges," New York Times, Apr. 1, 1999, p. B5
"In Court, Tricky Terrain," New York Newsday, Mar. 29, 1999, p. A7
"Grand Jury Hands Up Indictments," National Public Radio, Mar. 26, 1999
"McDougal Trial Raises Questions of Contempt," Washington Post, Mar. 22, 1999, p. A3
"3 Officers in Diallo Case Ask for Delay in Inquest," New York Times, Feb. 27, 1999, p. B3
"Pirro Indictment Similar to Helmsley Case," Westchester Journal News, Feb. 24, 1999, p. 5A
"An Indictment? No Need to Hurry," Chicago Sun-Times, Feb. 14, 1999, p. 3
"Indictment of President Appears More Unlikely," Washington Post, Feb. 12, 1999, p. A1

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00239 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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"No Legal Effect Seen in Censure," Baltimore Sun, Feb. 1, 1999, p. 6A
"Lewinsky Faces Her 23rd Round," Washington Post, Feb. 1, 1999, p. A1
"Senators Expanding their Roles in Trial," Baltimore Sun, Jan. 17, 1999, p. 1A
"With Witnesses, Risk Before Any Rewards," Washington Post, Jan. 8, 1999, p. A17
"Starr's Ethics Adviser Quits Over Testimony," Washington Post, Nov. 21, 1998, p. A1
"Focus Shifts to Starr's Conduct," Baltimore Sun, Oct. 19, 1998, p. 1A
"Clinton Case Hinges on Constitutional Phrase," USA Today, Oct. 9, 1998, p. 6A
"The Testing of a President: the Judge," New York Times, Oct. 4, 1998, p. 33
"Starr's Team Turning Focus From Lewinsky," Baltimore Sun, Oct. 2, 1998, p. 1A
"Law on Videotaping Favors Activist," Newark Star-Ledger, Sept. 30, 1998, p. 16
"Ex-Prosecutors Wary of Starr Case," New York Newsday, Sept. 28, 1998, p. A5
"Verdict from a Jury of Top Constitutional Law Professors," PR Newswire, Sept. 28, 1998
"Whose Best Witness?," New York Newsday, Sept. 27, 1998, p. A7
"Crisis Has its Roots in Jones Case Ruling," Boston Globe, Sept. 23, 1998, p. A1
"The Clinton Testimony," New York Newsday, Sept. 23, 1998, p. A54
"Perjury Defense is Plausible, While Narrow," Boston Globe, Sept. 22, 1998, p. A1
"Correction," Baltimore Sun, Sept. 19, 1998, p. 2A
"Setting the Stage for Clinton Videotape," Baltimore Sun, Sept. 18, 1998, p. 1A
"Kendall's Skill Doubted in Videotape Handling," Washington Post, Sept. 18, 1998, p. A19
"What's Next for Starr?," National Public Radio, Sept. 17, 1998
"Two Options, Both Unpleasant," USA Today, Sept. 16, 1998, p. 6A
"House Panel Weighs Release of More Details," Boston Globe, Sept. 15, 1998, p. A1
"Legally, Politically, President is Boxed In," Washington Post, Sept. 15, 1998, p. A1
"Legal Pros Divided on Case Against Bill," New York Daily News, Sept. 12, 1998, p. 10
"Congress Must View Facts Through Prism of the Constitution," Bergen (NJ) Record, Sept. 12, 1998, p. A1
"Report Gives the House Host of Difficult Issues," Washington Post, Sept. 12, 1998, p. A1
"Starr's Grand Juries Continue Their Work," Baltimore Sun, Sept. 11, 1998, p. 24A
"Anti-Mob Law is Versatile Tool," Richmond Times-Dispatch, Sept. 8, 1998, p. A-2
"In Real World, 'Obstruction' is a Legal Rarity," Los Angeles Times, Sept. 8, 1998, p. A1
"A Defense for Clinton Begins to Take Shape," Washington Post, Aug. 24, 1998, p. A1
"Louima Case Still Far From Trial," New York Daily News, Aug. 23, 1998, p. 28

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00240 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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"Mea Culpa Littered with Lawyerisms," New York Daily News, Aug. 18, 1998, p. 7
"The Legal Gamble is to Say Just Enough," Washington Post, Aug. 18, 1998, p. A1
"Unprecedented Telecast Beamed to a Limited Audience," Newark Star-Ledger, Aug. 16, 1998, p. 8
"Experts Scoff at Perjury Loophole Proposed for Clinton," Washington Post, Aug. 15, 1998, p. A6
"Obstruction is Key Accusation Against President," Austin American-Statesman, Aug. 13, 1998, p. A14
"The Three Little Words that Becloud a Presidency," New York Times, Aug. 13, 1998, p. A19
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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.

On May 25, 2000, after confirmation by the United States Senate, I was appointed by President Clinton to be a United States District Judge for the Southern District of New York. I entered duty on August 31, 2000 and have served to the present date.

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

I have presided over 94 trials, and have handled between 2000 and 3000 cases through judgment or other resolution.

1. Of these, approximately what percent were:

jury trials? 79%; bench trials 21%

civil proceedings? 70%; criminal proceedings? 30%

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

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VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00250 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00251 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00252 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00253 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00254 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00255 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00256 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00257 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00258 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00259 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00260 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00261 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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DeMarco v. Robertson Stephens Inc., 318 F. Supp.2d 110 (Jan. 9, 2004)
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VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00262 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00263 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00264 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00265 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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Bleecker Charles Co. v. 350 Bleecker St. Apt. Corp., 212 F. Supp.2d 226 (Apr. 10, 2002)
Rodriguez v. Greiner, 2002 WL 511555 (Apr. 3, 2002)
Cablevision Systems v. Rosa, 2002 WL 1446942 (Apr. 3, 2002)
McKee v Fischer, 2002 WL 472053 (Mar. 27, 2002)
Hall v. City of New York, 2002 WL 472057 (Mar. 27, 2002)
Marinis v. Village of Irvington, 212 F. Supp.2d 220 (Mar. 22, 2002)
Brown v. National Football League, 219 F. Supp.2d 372 (Mar. 18, 2002)
AG Worldwide v. Red Cube Mgmt. AG, 2002 WL 417251 (Mar. 15, 2002)
United Feature Syndicate, Inc. v. Miller Features Syndicate, Inc., 216 F. Supp.2d 198 (Mar. 11, 2002)
Mendez v. Artuz, 2002 WL 313796 (Feb. 27, 2002)
Board of Educ. v. Gustafson, 2002 WL 313798 (Feb. 27, 2002)
Fletcher v. Haase, 2002 WL 313799 (Feb. 27, 2002)
Young v. Rogers & Wells, LLP, 2002 WL 31496902 (Feb. 22, 2002)
United States v. Jimenez, 212 F. Supp.2d 214 (Feb. 20, 2002)
Young v. Starbucks Coffee Co., 2002 WL 221588 (Feb. 11, 2002)
Green Party of State of NY v. Weiner, 216 F. Supp.2d 176 (Feb. 11, 2002)
Bluight v. Consolidated Edison, 2002 WL 188349 (Feb. 6, 2002)
Graham v. Kimber Mfg., Inc., 2002 WL 181698 (Feb. 5, 2002)
In re Singer, 185 F. Supp.2d 313 (Feb. 4, 2002)
Flanagan v. Maly, 2002 WL 122921 (Jan. 29, 2002)
Steinway, Inc. v. Ashley, 2002 WL 122929 (Jan. 29, 2002)
Flors v. Massanari, 2002 WL 100631 (Jan. 25, 2002)
Rowe v. New York, 2002 WL 100633 (Jan. 25, 2002)
Rosenman & Colin LLP v. Sandler, 2002 WL 83657 (Jan. 18, 2002)
Astor Holdings, Inc. v. Roski, 2002 WL 72936 (Jan. 17, 2002)
Happy Kids, Inc. v. Glasgow, 2002 WL 72937 (Jan. 17, 2002)
Pugh v. Goord, 184 F. Supp.2d 326 (Jan. 3, 2002)
DiSanto v. INS, 2002 WL 10448 (Jan. 3, 2002)
United States v. Johnson, 212 F. Supp.2d 202 (Jan. 2, 2002)
ITT Industries, Inc. v. Werner Pump Co., 2001 WL 1658220 (Dec. 27, 2001)
Eng v. Battery City Car & Limo Service, Inc., 2001 WL 1622262 (Dec. 18, 2001)

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Uddin v. NYC Admin. for Children's Servs., 2001 WL 1512588 (Nov. 28, 2001)
Sully-Martinez v. Glover, 2001 WL 1491278 (Nov. 26, 2001)
Wilson v. Car Land Diagnostics Center, Inc., 2001 WL 1491280 (Nov. 26, 2001)
Leutwyler v. Royal Hashemite Court of Jordan, 184 F. Supp.2d 303 (Nov. 15, 2001)
Acevedo v. Greiner, 2001 WL 1382585 (Nov. 6, 2001)
Martinez v. Miller, 2001 WL 1382586 (Nov. 6, 2001)
Robinson v. Triarc Beverage Co., 2001 WL 36167598 (Nov. 6, 2001)
PA Holdings, Ltd. v. Arthur D. Little, Inc., 2001 WL 1335007 (Oct. 30, 2001)
Wheeler v. Couret, 182 F. Supp.2d 330 (Oct. 15, 2001)
Bleecker Charles Co. v. 350 Bleecker St. Apt. Corp., 181 F. Supp.2d 257 (Oct. 4, 2001)
Kaufman & Fisher Wish Co. v. F.A.O. Schwarz, 184 F. Supp.2d 311 (Oct. 3, 2001)
Arhontisa Maritime Ltd. v. Twinbrook Corp., 2001 WL 1142136 (Sept. 27, 2001)
Manuel v. Paramount Pictures, 2001 WL 1135917 (Sept. 26, 2001)
United States v. Correa, 182 F. Supp.2d 326 (Sept. 25, 2001)
Ba v. NYC Police Dept., 2001 WL 1098019 (Sept. 19, 2001)
Banez v. New York Foundling Hosp., 2001 WL 1035142 (Sept. 7, 2001)
Davila v. Duncan, 2001 WL 1029416 (Sept. 6, 2001)
Hall v. City of New York, 2001 WL 1029046 (Sept. 5, 2001)
Peguero v. Massanari, 2001 WL 1029048 (Sept. 5, 2001)
SMT Shipmanagement & Transport, Ltd. v. Maritima Ordaz, C.A., 2001 WL 930837 (Aug. 15, 2001)
Collings v. Industrial Acoustics Co., Inc., 2001 WL 913909 (Aug. 13, 2001)
United States v. Smirlock, 2001 WL 913911 (Aug. 13, 2001)
Leutwyler v. Office of Her Majesty Queen Rania Al-Abdullah, 184 F. Supp. 277 (Aug. 8, 2001)
Bu v. Benenson, 181 F. Supp.2d 247 (Aug. 7, 2001)
Thornton v. Reynolds, 2001 WL 845452 (July 26, 2001)
Tan v. Bennett, 2001 WL 823869 (July 20, 2001)
Santiago v. Massanari, 2001 WL 1946240 (July 16, 2001)
Newton v. Coombe, 2001 WL 799846 (July 13, 2001)
Rodriguez v. Ghoslaw, 2001 WL 755398 (July 5, 2001)
United States v. Jones, 154 F. Supp.2d 617 (June 29, 2001)
Katt v. City of New York, 151 F. Supp.2d 313 (June 21, 2001)
National Union Fire Ins. Co. of Pittsburgh v. Younger Bros., Inc., 2001 WL 669042 (June 13, 2001)
Klein v. Southgate Owners Corp., 2001 WL 630478 (June 7, 2001)
Sun Forest Corp. v. Shvili, 152 F. Supp.2d 367 (May 29, 2001)
Allred v. Brown, 2001 WL 575606 (May 25, 2001)
Shait v. The Millennium Broadway Hotel, 2001 WL 536996 (May 18, 2001)
Cardew v. Fleetwood, 2001 WL 533728 (May 17, 2001)
Santiago v. Bennet, 2001 WL 527474 (May 16, 2001)
Young v. Halle Housing Assocs., L.P., 152 F. Supp.2d 355 (May 7, 2001)
Sterling Nat'l Bank v. A-1 Hotels Int'l, Inc., 175 F. Supp.2d 573 (May 4, 2001)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00267 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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Davis & Assocs., Inc. v. Health Mgmt. Servs., Inc., 168 F. Supp.2d 109 (May 2, 2001)
2 Broadway LLC v. Credit Suisse First Boston Mortgage Capital L.L.C., 2001 WL 410074 (Apr. 23, 2001)
Pitts v. People, 2001 WL 410077 (Apr. 23, 2001)
Media Group, Inc. v. HSN Direct Int'l, Inc., 202 F.R.D. 110 (Mar. 28, 2001)
Sempra Energy Trading Corp. v. Algoma Steel, Inc., 2001 WL 282684 (Mar. 22, 2001)
Sterling Nat'l Bank v. A-1 Hotels Int'l, Inc., 2001 WL 282687 (Mar. 22, 2001)
Zen Continental Co., Inc. v. Intercargo Ins. Co., 151 F. Supp.2d 250 (Mar. 22, 2001)
BNY Capital Markets, Inc. v. Moltech Corp., 2001 WL 262675 (Mar. 14, 2001)
Powell v. Consolidated Edison, 2001 WL 262583 (Mar. 13, 2001)
Standley v. Lyder, 2001 WL 225035 (Mar. 7, 2001)
Rudman v. Weiss, 2001 WL 225244 (Mar. 6, 2001)
Moore v. City of New York, 2001 WL 225247 (Mar. 6, 2001)
Brice v. Security Operations Systems, Inc., 2001 WL 185136 (Feb. 26, 2001)
Collette v. St. Luke's Roosevelt Hosp., 132 F. Supp.2d 256 (Feb. 26, 2001)
Garrett v. Menefee, 2001 WL 170678 (Feb. 21, 2001)
Kelly v. Artuz, 2001 WL 88227 (Jan. 31, 2001)
Bloomer v. Costello, 2001 WL 62864 (Jan. 24, 2001)
SEC v. Softpoint, Inc., 2001 WL 43611 (Jan. 18, 2001)
Kreiss v. McCown De Leeuw & Co., 131 F. Supp.2d 428 (Jan. 18, 2001)
61 Jane Street Tenants Corp. v. Great American Ins. Co., 2001 WL 40774 (Jan. 17, 2001)
Rodriguez v. Circus Circus Casinos, Inc., 2001 WL 21244 (Jan. 9, 2001)
Uddin v. New York City, 2001 WL 15694 (Jan. 8, 2001)
Tech. Express, Inc. v. FTF Bus. Systems Corp., 2000 WL 1877020 (Dec. 26, 2000)
Auyeung v. David, 2000 WL 1877036 (Dec. 26, 2000)
Rodriguez v. American Friends of Hebrew Univ., Inc., 2000 WL 1877061 (Dec. 26, 2000)
World-Link, Inc. v. Citizens Telecom Co., 2000 WL 1877065 (Dec. 26, 2000)
Goldman v. MCL Companies of Chicago, 131 F. Supp.2d 425 (Dec. 26, 2000)
Soltero v. Kuhlmann, 2000 WL 1781657 (Dec. 4, 2000)
EEOC v. Morgan Stanley & Co., 132 F. Supp.2d 146 (Nov. 28, 2000)
Safadi v. Almanzar, 2000 WL 1738403 (Nov. 22, 2000)
Valentin v. Commissioner of Soc. Servs., 2000 WL 1727710 (Nov. 21, 2000)
In re Arbitration between Promotora de Navigacion, S.A. and Sea Containers, Ltd., 131 F. Supp.2d 412 (Nov. 16, 2000)
Licensed Practical Nurses v. Ulysses Cruises, Inc., 131 F. Supp.2d 292 (Nov. 15, 2000)
Lee v. United States, 2000 WL 1597852 (Oct. 26, 2000)
Strauss v. West Highland Capital, Inc., 2000 WL 1505957 (Oct. 6, 2000)
Solis v. Menefee, 2000 WL 1401633 (Sept. 25, 2000)
Cheong v. Okayama Enterprises, Inc., 2000 WL 1404379 (Sept. 25, 2000)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00268 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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Green Party of the State of New York v. Weiner, 2000 WL 1280913 (Sept. 8, 2000)

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).

Criminal:

1. United States v. Rosalie Garcia, Manuel Roman, and Ricardo Silva, 01 Cr. 1110, 10/31/05-12/6/05.

Three defendants charged with running a narcotics enterprise and multiple murders in furtherance of that enterprise. All defendants convicted on all counts and sentenced to life without parole.

All convictions and sentences affirmed, United States v. Garcia, 2008 WL 2229406 (2d Cir. May 29, 2008).

For the Government: AUSA David Rody, 212-637-2304

For Garcia: Avi Moskowitz, Moskowitz & Book, 1372 Broadway, NYC, 212-221-7999, and Bobbi Sternheim, Rochman Platzer Fallick Sternheim Luca & Pearl, 666 Third Avenue, NYC, 212-697-4090

For Roman: George Goltzer, Goltzer & Adler, 100 Church Street, NYC, 212-608-1260, and Jean Barrett, Ruhmke & Barrett, 47 Park Street, Montclair, NJ, 973-744-1000

For Silva: David Greenfield, 100 Lafayette Street, NYC, 212-481-9350, and Andrew Patel, 111 Broadway, NYC, 212-349-0230

2. United States v. Christian DelRosario and Gallipote Rivera, 03 Cr. 501, 6/6/05-7/5/05.

A drug boss and hired hitman charged with murder in aid of racketeering. Both defendants convicted and sentenced to life without parole.

All convictions and sentences affirmed, United States v. Rivera, 2008 WL 1711280 (2d Cir. Apr. 11, 2008).

For the Government: AUSA Christopher Conniff and AUSA Christopher Garcia, 212-637-1022

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00269 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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For DelRosario: Ivan Fisher, 2511 E.61st Street, NYC, 212-517-5000

For Rivera: Edward Wilford, 20 Vesey Street, NYC, 212-528-2741

3. United States v. Kimberly Jones and Monique Dopwell, 04 Cr. 340, 2/28/05-3/17/05.

The recording artist known as "Lil Kim" and an associate charged with conspiracy, obstruction of justice, and perjury during grand jury investigation into shooting incident. Both defendants convicted of conspiracy and all perjury counts. Jones sentenced to a year and a day, Dopwell to two months.

No appeals were taken. Opinions regarding pretrial motions in the case can be found at United States v. Butler, 351 F. Supp.2d 121 (S.D.N.Y. Nov. 4, 2004), and United States v. Butler, 2004 WL 2274751 (S.D.N.Y. Oct. 7, 2004).

For the Government: AUSAs Cathy Seibel and Daniel Gitner. AUSA Seibel is now Judge Seibel of the SDNY, 914-390-4271; AUSA Gitner is now with Lankler, Siffert & Wohl, 500 Fifth Avenue, NYC, 212-921-8399

For Jones: Mel A. Sachs (trial) (now deceased), and Paul Shechtman, Stillman Friedman & Shechtman (sentence), 425 Park Avenue, NYC, 212-223-0200

For Dopwell: Brian Kaplan, Goldberg & Kaplan, 55 Broad Street, NYC, 212-269-2363

4. United States v. Stephen Madori, 02 Cr. 274, 2/24/03-2/28/03.

Organized crime figure charged with loansharking. Defendant convicted on all counts and sentenced to 51 months in prison.

Conviction affirmed (but remanded for technical correction with respect to supervised release term), United States v. Madori, 419 F.3d 159 (2d Cir. 2005). Opinion rejecting new trial motion can be found at United States v. Madori, 2004 WL 2274756 (S.D.N.Y. Oct. 7, 2004)

For the Government: AUSA Adam Siegel and AUSA Diane Gujarati, 212-637-2507. AUSA Siegel is now with Freshfields Bruckhaus Deringer LLP, 520 Madison Avenue, NYC, 212-277-4000

For Madori: Edward Panzer, 75 Maiden Lane, NYC, 212-514-5335

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00270 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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5. United States v. Jorge Pabon Cruz, 01 Cr. 1187, 10/8/02-10/16/02.

Young defendant charged with transmission of child pornography. Defendant convicted and originally sentenced to 10 years in prison.

Conviction affirmed but imposition of 10-year sentence reversed on ground that sentence was not mandatory, United States v. Pabon-Cruz, 391 F.3d 86 (2d Cir. Dec. 3, 2004). Opinions denying motion to exclude evidence at sentencing and denying various post-trial motions can be found at United States v. Pabon Cruz, 321 F. Supp.2d 570 (S.D.N.Y. Mar. 10, 2003), and 255 F. Supp.2d 200 (S.D.N.Y. Feb. 4, 2003), respectively. Defendant ultimately sentenced to 4 years in prison.

For the Government: AUSA Alexander Southwell. AUSA Southwell is no longer with the US Attorney and I am not aware of his present contact information.

For Pabon Cruz: Jennifer Brown, Federal Defenders, 212-417-8700, and Deirdre von Dornum, Federal Defenders, 718-330-1208

Civil:

1. SEC v. James N. Stanard, 06 Civ. 7736, 9/8/08-9/17/08

Former chairman of reinsurance company charged with securities fraud in SEC civil enforcement action. Defendant found liable after bench trial.

Findings of fact and conclusions of law can be found at SEC v. Stanard, 2009 WL 196023 (S.D.N.Y. Jan. 27, 2009)

For the SEC: Preethi Krishnamurthy and Jack Kaufman, Securities and Exchange Commission, Three World Financial Center, NYC, 212-336-0116

For Stanard: James D. Mathias, DLA Piper LLP, Baltimore, MD, 410-580-4208, and Paul R. Grand, Morvillo, Abramowitz, Grand, Iason, Anello & Bohrer, PC, 565 Fifth Avenue, NYC, 212-880-9510

2. Browne Sanders v. Madison Square Garden, L.P. 06 Civ. 589, 9/10/07-10/2/07.

Plaintiff vice-president of Madison Square Garden sued her employer and then-New York Knicks coach Isiah Thomas for sexual harassment and retaliation. Jury returned a verdict for plaintiff for $11.7 million, and case subsequently settled.

An opinion denying defendants' motion for summary judgment can be found at 525 F. Supp.2d 364 (S.D.N.Y. Sept. 5, 2007).

For plaintiff: Anne C. Vladeck, Vladeck, Waldman, Elias & Engelhard, P.C., 1501 Broadway, NYC, 212-403-7327

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00271 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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For defendant MSG: Ronald M. Green, Epstein Becker & Green, P.C., 250 Park Avenue, NYC, 212-351-4500

For defendant Thomas: Kathleen L. Bogas, Eisenberg & Bogas, P.C., 33 Bloomfield Hills Parkway, Bloomfield Hills, MI, 248-258-6080

3. Eisai Co. v. Dr. Reddy's Laboratories, Ltd., 03 Civ. 9053, 3/5/07-3/14/07

Action for patent infringement under Hatch-Waxman Act, concerning validity of the patent for the compound rabeprazole, the active ingredient in the acid-reflux drug Aciphex. Patent was found valid.

The judgment was affirmed in all respects by Eisai Co. Ltd. v. Dr. Reddy's Laboratories, Ltd., 533 F.3d 1353 (Fed. Cir. July 21, 2008).

Findings of fact and conclusions of law can be found at Eisai Co., Ltd. v. Dr. Reddy's Laboratories, Ltd., 2007 WL 1437834 (S.D.N.Y. May 14, 2007). Opinions addressing summary judgment motions can be found at Eisai Co., Ltd. v. Dr. Reddy's Laboratories, Ltd., 472 F. Supp.2d 493 (S.D.N.Y. Oct. 6, 2006), and Eisai Co., Ltd. v. Teva Pharmaceuticals USA, Inc., 2006 WL 2872615 (S.D.N.Y. Oct. 6, 2006). An opinion resolving a discovery dispute can be found at Eisai Ltd. v. Dr. Reddy's Laboratories, Inc., 406 F. Supp.2d 341 (S.D.N.Y. Dec. 21, 2005).

For Eisai: Joseph M. O'Malley, Paul, Hastings, Janofsky & Walker, LLP, 75 E. 55th St., NYC, 212-318-6000

For Dr. Reddy's: Maurice B. Ross and Louis Weinstein, Budd Larner P.C., 150 John F. Kennedy Pkwy, Short Hills, NJ, 973-379-4800

For Teva: David M. Hashmall, Goodwin Proctor LLP, 599 Lexington Avenue, NYC, 212-813-8800

4. Astor Holdings, Inc. v. Roski, 01 Civ. 1905, 4/13/04-4/20/04

Plaintiff sued for tortious interference with contract in connection with a dispute over rights to stage and televise "robot wars" – combats between remote-controlled fighting machines. The jury returned a verdict for the defendant.

An appeal was filed but withdrawn. An opinion addressing defendant's motion for summary judgment can be found at Astor Holdings, Inc. v. Roski, 325 F. Supp.2d 251 (S.D.N.Y. Aug. 12, 2003). Opinions in connection with earlier motion practice can be found at Astor Holdings, Inc. v. Roski, 2002 WL 72936 (S.D.N.Y. Jan. 17, 2002), and Astor Holdings, Inc. v. Roski, 2002 WL 1058057 (S.D.N.Y. May 23, 2002).

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00272 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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For plaintiff: Fran M. Jacobs, Duane Morris LLP, 380 Lexington Ave., NYC, 212-692-1000

For defendants: Daniel Scott Schecter, Latham & Watkins, 633 West Fifth Street, Los Angeles, CA, (213) 485-1234

5. Recticel v. Bay Industries, 01 Civ. 6133, 9/8/03-9/19/03

Action for breach of contract in connection with sale of a business, in which defendant claimed that plaintiff had breached environmental warranties. After a bench trial with an advisory jury, plaintiff was awarded $5.77 million.

The judgment was affirmed in all respects by Recticel Foam Corp. v. Bay Industries, Inc., 2005 WL 807010 (2d Cir. Apr. 7, 2005).

Findings of fact and conclusions of law can be found at RUS, Inc. v. Bay Industries, Inc., 2004 WL 1240578 (S.D.N.Y. May 25, 2004). An opinion denying motions for summary judgment can be found at RUS, Inc. v. Bay Industries, Inc., 322 F. Supp.2d 302 (S.D.N.Y. Apr. 1, 2003).

For plaintiff: Richard A. DePalma, now of Baker & McKenzie, 1114 Avenue of the Americas, NYC, 212-626-4590

For defendant: Douglas J. Klingberg, Ruder Ware, 500 Third Street, Wausau, WI, 715-845-4336

Finally, although it did not proceed to verdict, I should note one other significant trial. In Disability Advocates Inc. v. NYS Office of Mental Health, 02 Civ. 4002, tried from 4/3/06-4/13/06, I conducted a bench trial on a challenge to the use of disciplinary confinement against mentally ill New York State prisoners. The case resulted in a settlement favorable to the prisoners that attracted considerable press attention. Counsel for plaintiffs: Sarah Kerr, Legal Aid Society, NYC, 212-577-3530, and James Benkard, Davis Polk & Wardwell, 450 Lexington Ave., NYC, 212-450-4000. Counsel for defendants: Lee Adlerstein, NYS Attorney General's Office, 120 Broadway, NYC, 212-416-8650.

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 Refco Capital Markets, Ltd. Brokerage Customer Securities Litigation, 586 F. Supp.2d 172 (2009). Numerous other published and unpublished opinions in this

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00273 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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and related matters in the complex Refco bankruptcy and securities multi-district litigation can easily be found via Westlaw.
Counsel: Scott Edelman, Milbank Tweed, 1 Chase Manhattan Plaza, NYC, 212-530-5149; Richard Rosen, Paul Weiss, 1285 Avenue of the Americas, NYC, 212-373-3305. Numerous other counsel are listed in the opinion.

2. SEC v. Universal Express, Inc. 546 F. Supp. 2d 132 (2008); 475 F. Supp.2d 412 (2007).
Counsel: Julie Lutz and Leslie Hughes, SEC, Denver, CO, 303-844-1056; Arthur W. Tifford, Tifford & Tifford, P.A., Miami, FL, 305-439-8230

3. Boyd v. AWB Ltd., 544 F. Supp.2d 236 (2008).
Counsel: Seth R. Gassman, Cohen Milstein Hausfeld & Toll, 150 E. 52d Street, NYC, 212-838-7797; Robert H. Baron, Cravath Swaine & Moore, 825 Eighth Avenue, NYC, 212-474-1000

4. Tse v. UBS Financial Services, 568 F. Supp.2d 274 (2008).
Counsel: John A. Beranbaum, Beranbaum Menken Ben-Asher & Bierman, LLP, 80 Pine Street, NYC, 212-509-1616; Mary Gambardella, Epstein Becker & Green, P.C., 250 Park Avenue, NYC, 212-351-4500

5. Global Gold Mining LLP v. Robinson, 533 F. Supp.2d 442 (2008).
Counsel: Edward G. Kehoe, King & Spalding, LLP, 1185 Avenue of the Americas, NYC, 212-556-2222; Dana Chandler McGrath, Allen & Overy, 1221 Avenue of the Americas, NYC, 212-610-6376

6. Arista Records v. Lime Group LLC, 532 F. Supp.2d 556 (2007).
Counsel: Katherine Forrest, Cravath Swaine & Moore, 825 Eighth Avenue, NYC, 212-474-1000; Charles Stewart Baker, 713-226-6676

7. Telenor Mobile Communications v. Storm LLC, 524 F. Supp. 2d 332 (2007).
Counsel: Robert Sills, Orrick Herrington & Sutcliffe, 666 Fifth Avenue, NYC, 212-506-3782; Pieter van Tol, Lovells, LLP, 590 Madison Avenue, NYC, 212-909-0661; Ronald S. Rolfe, Cravath Swaine & Moore, 825 Eighth Avenue, NYC, 212-474-1000

8. Johnson & Johnson v. Guidant Corp., 525 F. Supp.2d 336 (2007).
Counsel: Harold Weinberger, Kramer Levin Naftalis & Frankel, LLP, 1177 Avenue of the Americas, NYC, 212-715-9132; Stuart J. Baskin, Shearman & Sterling LLP, 599 Lexington Avenue, NYC, 212-848-4000

9. In re Global Crossing, Ltd. Securities Litigation, 471 F. Supp.2d 338 (2006). Numerous other published and unpublished opinions in connection with this complex securities and ERISA multidistrict litigation can easily be found via Westlaw.
Counsel: Jay W. Eisenhofer, Grant & Eisenhofer, Wilmington, DE, 302-662-7000; numerous other counsel are listed in the various opinions in the case.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00274 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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10. Jones v. Goord, 435 F. Supp.2d 221 (2006).
Counsel: Peter Simmons, Fried Frank Harris Shriver & Jacobson, One New York Plaza, NYC, 212-859-8419; Barbara Hathaway and Barbara Maddox, Office of the Attorney General, 120 Broadway, NYC, 212-416-8560

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

I don't believe that certiorari was ever sought directly from any decision of mine. The only case over which I presided that eventually was reviewed by the Supreme Court was Twombly v. Bell Atlantic Corp., ___ U.S. ___ (May 21, 2007), rev'g 425 F.3d 99 (2d Cir. 2005), rev'g 313 F. Supp.2d 174 (S.D.N.Y. 2003). In that case, the Supreme Court agreed with the decision I had reached and reversed the judgment of the Second Circuit that had reversed me.

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. Hardy v. Walsh Manning Securities LLC, 341F.3d 126 (2d Cir. Aug. 19, 2003), vacating in part 2002 WL 2031607 (S.D.N.Y. Sept. 5, 2002). I confirmed an arbitration award. The Court of Appeals reversed in part, by a 2-1 vote. I respectfully disagree with the majority.

2. Pugh v. Goord, 345 F.3d 121 (2d Cir. Sept. 22, 2003), vacating and remanding 184 F. Supp. 2d 326 (S.D.N.Y. Jan. 3, 2002). I granted summary judgment to the state in a lawsuit by Muslim inmates seeking various religious accommodations. They were right; I jumped the gun on summary judgment.

3. United States v. Reyes, 353F.3d 148 (2d Cir. Dec. 19, 2003), reversing 249 F. Supp. 2d 277 (S.D.N.Y. 2003). This was the only time in over eight years on the bench that I suppressed evidence. On reflection, I now think the Court of Appeals had the better of the argument.

4. Security Ins. Co. v. Old Dominion Freight Line, Inc., 391 F. 3d 77 (Dec. 2, 2004), reversing 2003 WL 22004895 (S.D.N.Y Aug. 22, 2003). I granted summary judgment in a case against a carrier, and the Court of Appeals found a material issue of fact.

5. United States v. Pabon-Cruz, 391 F.3d 86 (2d Cir. Dec. 3, 2004), affirming 255 F. Supp. 2d 200 (2003) but vacating sentence. I imposed a ten-year sentence on a defendant charged with advertising child pornography, believing that was a mandatory sentence. The Court of Appeals held that the statute provided for a 10-

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00275 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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year mandatory sentence *if* a jail sentence was imposed, but permitted a fine in lieu of any imprisonment at all, based on a literal reading of the statute.

6. Twombly v. Bell Atlantic Corp., ___ U.S. ___ (May 21, 2007), rev'g 425 F.3d 99 (2d Cir. 2005), rev'g 313 F. Supp.2d 174 (S.D.N.Y. 2003). I dismissed the complaint in an anti-trust case; the Second Circuit reversed; the Supreme Court reversed them and said I was right. I suppose I could have listed this as a "significant opinion," but it was the Supreme Court's opinion that was ultimately significant, not mine.

7. Century 21, Inc. v. Diamond State Ins. Co., 442 F.3d 79 (2d Cir. Mar. 21, 2006), rev'g 2004 WL 1117897 (S.D.N.Y. May 18, 2004). Insurance dispute. I interpreted the commercial liability policy not to require the insurer to defend a claim for selling infringing goods; the Court of Appeals ruled that it did.

8. Bernstein v. Pataki, 2007 WL 1113263 (2d Cir. Apr. 3, 2007), rev'g 409 F. Supp.2d 306 (S.D.N.Y. 2005). I dismissed a complaint by involuntarily committed psychiatric patients claiming that they were unconstitutionally placed in overly restrictive facilities. The Court of Appeals reversed. I must have been very wrong, because the state promptly settled the case on terms favorable to the plaintiffs.

9. Hudson v. Universal Studios, 2007 WL 1555755 (2d Cir. May 30, 2007), rev'g in part 2006 WL 1148695 (S.D.N.Y. Apr. 28, 2006). I held that a pro se plaintiff's copyright claim that an Eddie Murphy movie was stolen from plays he had written was precluded by res judicata. The Court of Appeals found that aspect portion of his claims had not been addressed by the prior court that had considered them.

10. Sarl Louis Feraud Intl. v. Viewfinder, Inc., 489 F.3d 474 (2d Cir. June 5, 2007), rev'g 406 F. Supp.2d 274 (S.D.N.Y. 2005). I declined to enforce a French judgment that an American photographer had violated the intellectual property rights of fashion designers by publishing pictures of their collections, finding that the French judgment was inconsistent with the First Amendment. The Court of Appeals held that further proceedings were necessary with respect to whether the fair use doctrine was applicable and whether French law provided an equivalent defense.

11. In re Salomon Analyst Metromedia Litig., 544 F.3d 474 (2d Cir. Sept. 30, 2008), rev'g 236 F.R.D. 208 (S.D.N.Y. 2006). I certified a class in a securities fraud lawsuit. The Court of Appeals, while praising my "valiant effort to reconcile the conflicting messages from our Court on class certification standards," id. at 484, applied a more restrictive standard that it had created in an opinion delivered after I had ruled. In that opinion as well, the Court of Appeals had singled out my opinion in this case as "a valiant effort by a conscientious district judge" to make sense of Second Circuit law on the subject. In re Initial Public Offering Securities Litigation, 471 F.3d 24, 40 n.11 (2d Cir. 2006).

12. Ramos v. City of New York, 2008 WL 4810545 (2d Cir. Nov. 4, 2008), vacating in part 2006 WL 2871969 (S.D.N.Y. Oct. 6, 2006). I granted judgment on the

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00276 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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pleadings dismissing a plaintiff's false arrest and malicious prosecution claims. The Court of Appeals affirmed in part, but found that the plaintiff had properly alleged malicious prosecution vacated the portion of the decision finding the false arrest claim time-barred, holding that the Supreme Court's decision in Wallace v. Kato, 549 U.S. 384 (2007), which came after my decision, delayed the time of accrual of the claim.

I cannot recall any case in which the Court of Appeals affirmed a judgment of mine but was critical of my handling of the case.

The only other matter that should be brought to the Committee's attention under this heading is that the Court of Appeals issued a writ of mandamus directing me not to inform a jury of the mandatory minimum penalty in a criminal case. The order is neither published nor electronically available, so far as I know, but the issue is discussed in my post-trial opinion in United States v. Pabon Cruz, 255 F. Supp.2d 200, 214-15 (2003), and the Second Circuit's opinion affirming the conviction, 391 F.3d 86, 90-91 (2004).

Putting all of this in context, it should be noted that through the end of 2008, I had issued over 750 opinions published on Westlaw, and tried 90 cases to verdict. The Court of Appeals has not reversed the result of a single trial over which I have presided.

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 decisions addressing significant motions and/or resolving cases on the merits are decided by opinion and order. All opinions and orders of this Court, so far as I am aware, are published electronically on Westlaw and/or Lexis. A very small number of substantive are decided by brief orders, with abbreviated stated reasons, or by oral opinions. Procedural issues, scheduling matters, discovery disputes and a host of similar administrative questions are resolved by unpublished orders, all of which are docketed and for the most part accessible to the public through the Electronic Case Filing system of the federal courts.

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.

Other than opinions cited above, the only case that I can recall in this category is Mental Hygiene Legal Service v. Spitzer, 2007 WL 4115936 (S.D.N.Y. Nov. 16, 2007), aff'd, 2009 WL 579445 (2d Cir. Mar. 4, 2009).

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00277 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.

Cases in which I sat by designation on the Second Circuit:

In re Venture Mortgage Fund, L.P., 282 F.3d 185 (2002)
Better TV, Inc. of Bennington v. Public Service Board, 42 Fed. Appx. 498 (2002)
United States v. Fernandez-Antonia, 278 F.3d 150 (2002)
Lambert v. New York State Office of Mental Health, 22 Fed. Appx. 71 (2001)
Grullon v. United States, 22 Fed. Appx. 70 (2001)
Morrissey v. General Motors, 21 Fed. Appx. 70 (2001)
United States v. Ierardi, Dkt. No. 01-1002*
United States v. Brunet, 275 F.3d 215 (2001)
Capicotto v. Puglisi, 25 Fed. Appx. 51 (2001)
Carvalho v. NYS Dept. of Taxation, 21 Fed. Appx. 71 (2001)
Sorri v. Bell Atlantic, 45 Fed. Appx. 80 (2002)
United States v. Pavlotskiy, 47 Fed. Appx. 590 (2002)
Coastal Aviation v. United States, Dkt. No. 02-6001*
Gonzalez v. Travis, 45 Fed. Appx. 83 (2002)
Shaffer v. Schenectady School District, Dkt. No. 01-9319*
United States v. Carneglia, 47 Fed. Appx. 27 (2002)
The Fonda Group v. Neptune Paper Enterprises, Inc., 45 Fed. Appx. 82 (2002)
Feeley v. New York City Police Dept., Dkt. No. 02-7148*
Ackoff-Ortega v. Windswept Pacific Entertainment Corp., 46 Fed. Appx. 663 (2002)
Drax v. Reno, 338 F.3d 98 (2003).
Dunham v. Travis, 313 F.3d 724 (2002).
Jenks v. DeMazza, Dkt. No. 02-7085*
Arculeo v. On-Site Sales & Marketing, LLC, 425 F.3d 193 (2005)
United States v. Robinson, 430 F.3d 537 (2005)
Yu v. INS, 128 Fed. Appx. 199 (2005)
Hailey v. New York City Transit Authority, 136 Fed. Appx. 406 (2005)
Grant v. Goord, 155 Fed. Appx. 551 (2005)
United States v. Gotti, 459 F.3d 296 (2006)
United States v. Castro, 175 Fed. Appx. 469 (2006)
United States v. Castillo, 2006 WL 1070904 (2006)
United States v. Castillo, 186 Fed. Appx. 25 (2006)
Gui Fang Chan v. Gonzales, 177 Fed. Appx. 172 (2006)
Filippov v. Gonzales, 177 Fed. Appx. 147 (2006)
Genao v. NYC Dept. of Parks and Recreation, 178 Fed. Appx. 142 (2006)
Filippelli v. United States, Dkt. No. 05-2976*
Deyo v. C.I.R., 180 Fed. Appx. 275 (2006)
Ling-Ling Zhu v. Dept. of Justice, 179 Fed. Appx. 785 (2006)
Osbourne v. Gonzales, 197 Fed. Appx. 783 (2006)
United States v. Villalona, 184 Fed. Appx. 23 (2006)
United States v. Day, 201 Fed. Appx. 27 (2006)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00278 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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Beskovic v. Gonzales, 467 F.3d 223 (2006)
Ti Wu Gao v. Gonzales, 200 Fed. Appx. 31 (2006)
Lewis v. City of Buffalo Police Dept., 2009 WL 424232 (2009)
Bader v. Goldman Sachs Group, Inc., 2009 WL 427323 (2009)
Pleener v. NYC Board of Education, 2009 WL 454011 (2009)
Abrahams v. Appellate Division, 2009 WL 454007 (2009)
Lavayen v. Duncan, 2009 WL 453252 (2009)
United States v. Navarro, 2009 WL 481616 (2009)
Smallwood v. Lupoli, 2009 WL 579419 (2009)
In re Delta Airlines, 2009 WL 577588 (2009)
Stokes v. Girdich, 2009 WL 579139 (2009)
Alzamora v. Village of Chester, 2009 WL 578630 (2009)
Portillo-Escamilla v. Holder, No. 08-2916 (2009)*
Ayazi v. New York City Board of Education, 2009 WL 648612 (2009)
Vaughn v. Leeds, Morelli & Brown, P.C., 2009 WL 690024 (2009)

*I have been unable to locate a citation for a published or unpublished opinion for these cases.

Second Circuit cases in which I wrote opinions:

Wynn v. AC Rochester, 273 F.3d 153 (2001) (per curiam opinion).
Asoma Corp. v. SK Shipping Co., 53 Fed. Appx. 581 (2002) (summary order).
Grochowski v. Phoenix, 318 F.3d 80, 89 (2003). (dissent). In Cox v. NAP Const. Co., 10 N.Y.3d 592 (2008), the New York Court of Appeals unanimously agreed with my dissent.
United States v. Crowley, 318 F.3d 401 (2003) (majority opinion).
Nicholas v. Goord, 430 F.3d 652, 677 (2005) (concurring opinion).
Royal and Sun Alliance Ins. Co. v. Century Intl. Arms, Inc., 466 F.3d 88 (2006) (majority opinion).
Shechet v. Favali, 2006 WL 1308656 (2006) (summary order).
Lucky Brand Dungarees, Inc. v. Ally Apparel Resources LLC, 206 Fed. Appx. 10 (2006) (summary order).
Triestman v. Federal Bureau of Prisons, 470 F.3d 471, 477 (2006) (dissenting opinion).

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:

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00279 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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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.

I have endeavored to comply with the command of 28 U.S.C. § 455(a), disqualifying myself in cases in which my impartiality might reasonably be questioned, as well as in the specific instances set forth in § 455(b). Toward that end, I have supplied our clerk's office with a list of litigants in which a financial interest requires disqualification, so that I am notified when those litigants appear in a case randomly assigned to me. In the interest of avoiding disqualification, I have divested myself of holdings of common stock, retaining investments only in bonds and mutual funds, which raise fewer issues of disqualification.

I have also disqualified myself from all cases involving Columbia University, both because I continue to teach part-time at Columbia Law School and because of my long and close association with that institution. For my first five years on the bench, I maintained a policy of recusing from any case in which the law firm of Covington & Burling, with which I had been associated before being appointed, represented any party. After eight years on the bench, I no longer apply that policy; however, so far as I am aware, that law firm has not appeared before me in any case.

I have a recollection of having recused myself in at least one or two matters in which federal prisoners challenged convictions that were obtained when I was Chief of the Criminal Division in the United States Attorney's Office for this District, and had actual or nominal supervisory responsibility over their cases. As that was long ago, the situation has not come up often. I cannot remember the specifics.

I have recused myself in two cases that I can recall in which I had personal association with the parties. One was legal malpractice case, First Trust v. Moses & Singer, 99 Civ. 1947, in which I had social friendship with the defendant; the other was an employment discrimination case, Hall v. Meridian Capital Group, 08 Civ. 9570, in which I had represented one of the defendants in an unrelated matter some years ago. In each case the recusal was sua sponte.

In SEC v. Universal Express, Inc., 2007 WL 2947431 (2007), counsel for one of the defendants moved for me to recuse myself based on a concern that threats addressed to the receiver I had appointed in the case might lead me to be prejudiced against the defendant. I denied the motion, noting that none of the threats were in any way

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00280 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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associated with the moving defendant, and that threats against a judge or court personnel are not generally a valid basis for recusal in any case. My reasoning is laid out in the cited opinion. (I later received threats directly against myself and my family in the same case. For the same reasons, I determined not to recuse myself. I disclosed these threats to the remaining parties in the case, none of whom, to my recollection, made a further motion.)
A similar situation arose in a criminal case, United States v. Reyes, 02 Cr. 1195. In that case, the defendant filed various meritless and vexatious liens against me. For similar reasons, but without a written opinion, I determined that recusal was neither required nor appropriate.

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 never been a candidate for elected public office.

The only public offices I have held have been the appointed positions in government service as a law clerk, prosecutor, and judge listed elsewhere in this questionnaire. I have had no 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.

I have never been an official of any political party or election committee, nor been a member of any political club. I have never held any position or served in any political 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;

1976-1977; I served as a law clerk to The Honorable William J. Brennan, Jr., Supreme Court of the United States

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00281 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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1975-1976; I served as a law clerk to The Honorable Wilfred Feinberg, United States Court of Appeals for the Second Circuit

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

I have never maintained an office for the practice of law. From 1977-1980, and from 1983-1989, while teaching at Columbia Law School, I handled occasional legal matters, mostly pro bono and on occasion for paying clients.

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.

2000-present
United States District Court, Southern District Of New York
500 Pearl Street
New York, NY 10007
United States District Judge

1992-2000
Covington & Burling, LLP
(formerly Howard Smith & Levin LLP; formerly Howard Darby & Levin)
1330 Avenue of the Americas
New York, NY 10019
(present address: 620 Eighth Avenue, New York, NY 10018)
Counsel

1990-1992
United States Department of Justice
Office of the United States Attorney, SDNY
One St. Andrew's Plaza
New York, NY 10007
Chief, Criminal Division

1988-1990
Office of Independent Counsel, Iran/Contra
555 Thirteenth Street NW
Washington, DC 20004
Associate Counsel (part time)

1980-1983
United States Department of Justice
Office of the United States Attorney, SDNY
One St. Andrew's Plaza

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00282 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

65688.258

New York, NY 10007
Assistant United States Attorney, Criminal Division
(Chief Appellate Attorney, 1983; Deputy Chief Appellate Attorney, 1982-83)

1974
Nickerson, Kramer, Lowenstein, Nessen, Kamin & Soll
919 Third Avenue
New York, NY 10022
(now known as Kramer, Levin, Naftalis & Frankel, LLP;
present address: 1177 Avenue of the Americas, New York, NY 10036)
Summer Associate

The activities listed above constitute either full-time or significant part-time commitments. In addition, I have had occasional short-term or less extensive part-time involvements in public service, as follows:

Special Counsel, Office of Independent Counsel Carol Elder Bruce (special prosecutor investigating allegations regarding Interior Secretary Bruce Babbitt), 1999-2000.

Associate Independent Counsel, Office of Independent Counsel James C. McKay (special prosecutor investigating Attorney General Edwin Meese's alleged involvement in Wedtech scandal), 1987-88.

Chief Counsel, New York State Commission on Government Integrity (Califano Commission), 1987

Special Counsel, City of New York Special Commission to Investigate City Contracts (Martin Commission), 1986

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.

To the best of my recollection, I have never served as an arbitrator or mediator.

b. Describe:

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

My primary activity between completing my judicial clerkships and becoming a judge was teaching law. Since 1977, I have been a member of the faculty of law of the Columbia University School of Law, engaging in

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00283 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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full-time teaching and research during most of that time. My primary specialization, both as a teacher and as a practicing lawyer, has been in criminal law. In addition to courses and seminars in the general field of criminal law, such as substantive criminal law, criminal procedure, sentencing, criminology, criminal litigation, and ethical issues in criminal practice, I have taught from time to time other subjects, including contracts, constitutional law, professional responsibility, legal education, immigration law and international human rights, in both classroom and clinical settings.

Apart from teaching and scholarship, I have had various administrative responsibilities at the law school, including service for five years as Vice Dean, with responsibility for curriculum, teaching assignments, and hiring of adjunct instructors; chairing the search committee for our present dean, chairing the curriculum and judicial clerkship committees at various times, and serving as a University Senator.

However, unlike many legal academics, I made it a point to acquire practical knowledge of the law. While a member of the Faculty, I twice took extended leaves to engage in public service, serving as a full-time federal prosecutor for a total of five years. In addition, after returning from the first of these stints in 1983 I made a practice of regularly taking legal assignments, including government service, pro bono, and paying matters, on a part-time basis, within the limits permitted by the Law School. These assignments include the following:

(1) 1980-1983. As an Assistant United States Attorney for the Southern District of New York, I investigated and tried criminal cases for the United States. Initially, I was assigned to the General Crimes Unit, working on matters that could be tried in less than a week. Subsequently, I was assigned to the Major Crimes Unit, working on white collar and political corruption cases, and to the Appeals Unit, where I was responsible for supervising the Office's criminal appellate litigation. When I left to return to full-time teaching, I was the Office's Chief Appellate Attorney.

(2) 1983-1988. After leaving the government and returning to Columbia, I occasionally handled matters, mostly but not exclusively on a pro bono basis, including cases in the Supreme Court and in the United States Court of Appeals for the Second Circuit, both as counsel of record to parties and representing various amici curiae, including the American Civil Liberties Union and the Association of the Bar of the City of New York. I also served as part-time associate counsel to Independent Counsel James C. McKay, in connection with his investigation into allegations against Attorney General Edwin Meese arising out of the so-called "Wedtech"

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00284 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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affair, and for brief periods as Counsel to New York City and State Commissions investigating corruption in city and state government.

(3) 1988-1990. As part-time Associate Counsel in the Office of Independent Counsel, Iran/Contra, I was responsible for briefing and arguing substantive motions in the case of United States v. Oliver North, as well as having primary responsibility for the Office's appellate litigation in the North and Fernandez cases. In these roles I supervised and coordinated a large team of lawyers, and had primary responsibility for arguing legal matters in the district court and in the courts of appeals.

(4) 1990-1992. As Chief of the Criminal Division in the United States Attorney's Office, SDNY, I was responsible for supervision and management of all the Office's criminal cases, and for the supervision of approximately 135 federal prosecutors. In this capacity I argued several appeals and appeared in district court as needed to express the position of the Office. I advised AUSAs on a daily basis in the conduct of trials and investigations, and regularly made decisions regarding those cases. I personally handled a small number of investigations and litigations, but did not personally try any cases.

(5) 1992-2000. After returning again to teaching, I became counsel to the firm of Howard Darby & Levin (later Howard Smith & Levin; now the New York office of Covington & Burling), primarily handling white collar criminal defense and regulatory matters. While I appeared in both the district court and in the court of appeals in a civil matter, and represented clients in regulatory investigations, the bulk of the practice involved white collar criminal work: conducting internal investigations, representing witnesses and subjects in grand jury investigations, and criminal appeals. I have argued several criminal appeals, and have advocated clients' interests before prosecutors and regulatory bodies. During this period, in addition to representing paying clients of the firm, I handled a number of pro bono matters and served as counsel to Independent Counsel Carol Bruce in connection with her investigation of Secretary Babbitt.

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

As noted above, my primary specialization has been in criminal law, with an emphasis on federal criminal law. My principal former client, by any measure, was the government of the United States of America, since my only periods of full-time law practice, and some of my most significant part-time assignments, have been as a federal prosecutor, either with the Department of Justice or with Independent Counsel. As a defense lawyer, my specialization was in white collar and regulatory matters. Typical clients included individual attorneys, business executives and

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00285 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

65688.261

entrepreneurs who were witnesses or subjects in grand jury investigations or defendants in criminal cases; occasionally I represented or advised business firms or corporations.

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.

During my periods of public service listed above (as an Assistant United States Attorney, 1980-1983 and 1990-1992, and as Associate Independent Counsel, 1988-1990), I appeared in court regularly – during my first tenure as an AUSA, on a daily basis, and regularly if somewhat less frequently in the other periods. From 1992-2000 I appeared in court occasionally in connection with my practice as Counsel to Covington & Burling and predecessor firms.

i. Indicate the percentage of your practice in:

(A)	federal courts;	90%
(B)	state courts of record;	5%
(C)	other courts;	0%
(D)	administrative agencies	5%

ii. Indicate the percentage of your practice in:

1.	civil proceedings;	5%
2.	criminal proceedings.	95%

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 10. Of those, all but two were as chief or sole counsel, and two were as associate counsel.

i. What percentage of these trials were:

1.	jury;	90%
2.	non-jury.	10%

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 argued one case in the Supreme Court, United States v. Koecher, 475 U.S. 133 (1986). The case was dismissed as moot. I do not have a copy of the transcript of the oral argument. The case is fully described in section 17, part G, below.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00286 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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I was also on the brief for the respondent in United States v. Albertini, 472 U.S. 675 (1985), in which I was primarily responsible for the statutory argument.

I was the principal author of amicus briefs for the American Civil Liberties Union in United States v. Ursery, 518 U.S. 267 (1996), Austin v. United States, 509 U.S. 602 (1993), and New York v. Burger, 482 U.S. 691 (1987).

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. United States v. Brennan. United States Court of Appeals for the Second Circuit, Dkt. Nos. 97-1440, 97-1441. Argued April 30, 1998, decided July 7, 1999. Reported at 183 F.3d 139.

I represented John V. Brennan, former president and CEO of United States Aviation Underwriters, Inc., the managing company of the largest aviation insurance consortium in the United States, in his appeal from his conviction, along with the company, of mail fraud in connection with the allocation of responsibility for an airline crash. Mr. Brennan was sentenced to nearly five years' imprisonment, and his company to fines and restitution of over $40 million. (I was not involved in the case until after the trial.) The case involved numerous complex issues including the fiduciary responsibilities of insurers, the proper scope of the mail fraud statute in application to non-disclosures by fiduciaries, the application of the McCarran-Ferguson Act, whether the alleged misrepresentations by the defendants were sufficient to support mail fraud liability, and the proper venue in mail fraud cases.

The Second Circuit reversed the conviction and ordered the indictment dismissed on grounds of improper venue (the issue I argued orally to the court), and in dictum suggested that there were serious difficulties with the legal theories underlying the government's case. The government did not seek further review of the case.

I was counsel of record for Mr. Brennan, and briefed and argued the case for him, with the assistance of Cindy Soohoo, an associate at Howard Smith & Levin (now at

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00287 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Covington & Burling, 1330 Avenue of the Americas, NYC, 212-841-1120) , and Edward A. McDonald, of Reboul, MacMurray, Hewitt, Maynard and Kristol (45 Rockefeller Plaza, NYC, 212-841-5700), who was also trial counsel. USAU was represented by Andrew L. Frey, of Mayer Brown & Platt (1675 Broadway, NYC, 212-506-2635), with the assistance of Julie E. Katzman, then an associate at Mayer Brown, later a member of the staff of the Senate Judiciary Committee (202-224-0957), and David M. Zornow, of Skadden, Arps, Slate, Meagher & Flom (919 Third Avenue, NYC, 212-735-3000), who was also trial counsel. (The briefs for the two appellants constituted an integrated whole, composed by both firms.) The Government was represented by AUSAs Alan B. Vickery and Lee G. Dunst, Assistant United States Attorneys for the Eastern District of New York. The panel consists of Judges Jon O. Newman, Pierre N. Leval and Aronld Wexler (of the EDNY, by designation).

B. United States v. Blarek, United States Court of Appeals for the Second Circuit, Dkt. Nos. 98-1291, 98-1292. Decided in unreported opinion December 23, 1998.

I represented on appeal Frank Pellecchia and Alexander Blarek, two decorators and interior designers who were convicted of money laundering offenses for decorating houses and apartments in Colombia for Jose Santacruz Londono, a major drug trafficker, and receiving payment from funds derived from Santacruz's drug trafficking activities. The case received significant publicity, because it involved the conviction of otherwise legitimate businessmen for money laundering offenses and RICO violations as a result of their acceptance of tainted funds. The conviction was affirmed, a petition for certiorari (filed on behalf of petitioners by Alan Dershowitz) was denied.

I was counsel of record for Mr. Blarek, and briefed and argued the appeal for both defendants, with the assistance of Theodore R. Posner, then an associate at Howard, Smith & Levin, later legislative counsel to Rep. Sander M. Levin, 2268 Rayburn House Office Building, Washington, DC 20515-2212, 202-225-4961. I am not aware of his present position. Co-Counsel, representing Mr. Pellecchia, who also was trial counsel, was Paul Shechtman, of Stillman Friedman & Shechtman, 425 Park Avenue, New York, 212-223-0200. The Government was represented by Mark Lerner and Richard Weber, Assistant United States Attorneys for the Eastern District of New York. The panel was composed of Judges Guido Calabresi, Thomas Meskill, and Milton Pollack (of the SDNY, by designation).

C. United States v. Pedro Lara, United States Court of Appeals for the Second Circuit, Docket Nos. 93-1750, 93-1773, 93-1780, 93-1794, 93-1795, 93-1837. Argued November 14, 1994, decided February 2, 1995. Reported at 47 F.3d 60.

I represented on appeal, pro bono by special appointment of the District Court, Pedro Lara, a young man who had been convicted of narcotics offenses. The most significant aspect of the appeal was that the Government was appealing a downward sentencing departure made by Judge John Martin of the Southern District, on the ground that the

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amount of narcotics attributed to Mr. Lara grossly overstated his culpability, because it represented an aggregate amount of narcotics distributed over a long period of time by a large organization of which he was accused of being only a minor part. We were unsuccessful in urging grounds for reversal of Mr. Lara's conviction, but successful in resisting the Government's appeal.

I briefed and argued the appeal for Mr. Lara, with the assistance of Stephen R. Peikin, then an associate of Howard Darby & Levin, later an AUSA in the Southern District of New York, now a partner in Sullivan & Cromwell (125 Broad Street, 212-558-7228). Two other appellants were represented by Martin G. Fogelson (470 Park Avenue South, 686-4262) and James C. Neville (20 Vesey Street, 233-0858). (Their appeals were largely independent of mine.) The government was represented by AUSA Michael S. Sommer of the SDNY, now a partner in McDermott, Will & Emery, 50 Rockefeller Center, NYC, 212-547-5400. The panel consisted of Judges Jon O. Newman and Pierre N. Leval, and the late Judge Francis X. Altimari.

D. Milbank, Tweed, Hadley & McCloy v. Chan Cher Boon. United States Court of Appeals for the Second Circuit, Docket No. 93-7418. Argued October 18, 1993, decided January 3, 1994. Reported at 13 F.3d 537.

I represented Carol Sui Han Leo, the plaintiff in a suit for violation of fiduciary duty against the law firm of Milbank, Tweed, Hadley & McCloy, on an appeal from a judgment in her favor for approximately two million dollars. Mrs. Leo, acting through an agent named Chan Cher Boon, had retained Milbank, Tweed to represent her in an effort to purchase a bankrupt Swiss bank. After Boon was fired as agent, he associated himself with a competing syndicate, and Milbank, Tweed undertook to represent that group in opposition to the interests of Mrs. Leo. The judgment was affirmed. The opinion of the Court of Appeals emphatically rejected the firm's claims that its conduct had been appropriate.

I argued the case in the Court of Appeals, and was primarily responsible for briefing the appeal, along with Sara E. Moss and Robert P. Haney, partners in Howard, Darby & Levin, and Nancy L. Kestenbaum, an associate of the firm, who were trial counsel. (Ms. Moss is now General Counsel of The Estee Lauder Companies, Inc., 767 Fifth Avenue, NYC, 212-572-4200) ; Mr. Haney and Ms. Kestenbaum are partners in Covington & Burling, New York, NY.) Opposing counsel was Harvey R. Miller of Weil, Gotshal & Manges, 767 Fifth Avenue, NYC, 212-310-8000. The panel consisted of Judges Joseph M. McLaughlin, Dennis G. Jacobs and Thomas M. Reavley (of the Fifth Circuit, by designation). (In addition to the appeal, I also had primary responsibility for oral argument of the defendants' motions for judgment notwithstanding the verdict and for a new trial before the District Court, Chief Judge Thomas P. Griesa, United States District Court for the Southern District of New York.)

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E. United States v. Oliver North, United States Court of Appeals, Docket No. 89-3118. Argued February 6, 1990, decided July 20, 1990. Reported at 910 F.2d 843 (as modified, 920 F.2d 940).

I was asked by Independent Counsel Lawrence E. Walsh to join the staff of the Office of Independent Counsel, Iran/Contra, to supervise the responses to substantive legal motions in the prosecution of Oliver North. The defendant made numerous pre-trial motions to dismiss the indictment and for other relief, and, with the assistance of a rather large team of lawyers, we succeeded in persuading the District Court to reject virtually all of them and to proceed to trial on the indictment. (Several counts were later dismissed on prosecution motion pursuant to the Classified Information Procedures Act because of the Government's refusal to declassify various documents material to the case.) After Mr. North was convicted on a few counts, I returned to supervise the briefing of the appeal, and to argue the case. The convictions were reversed.

I handled most of the briefing and argument of substantive pre-trial motions, with the assistance of Bruce Green (now a professor at Fordham University School of Law, 212-636-6851) and a number of other lawyers, before the late Judge Gerhard Gesell, and briefed and argued the appeal, with the help of a number of others. Barry S. Simon of Williams & Connolly, 725 12th Street N.W., Washington, D.C. 20005, 202-434-5000, argued on behalf of Mr. North. The appellate panel consisted of Judges Laurence H. Silberman, David B. Sentelle and Patricia Wald.

F. Appeal of the United States (United States v. Fernandez), United States Court of Appeals for the Fourth Circuit, Docket No. 89-5804. Argued August 23, 1989, decided September 29, 1989. Reported at 887 F.2d 465. (See also United States v. Fernandez, 913 F.2d 148 (4th Cir. 1990).)

This was another matter I handled for the Independent Counsel, Iran/Contra. The case involved important issues under the Independent Counsel Act and the Classified Information Procedures Act. The matters involved litigation between the United States (represented by the Justice Department) and itself (represented by the Independent Counsel). In essence, the Attorney General sought to take an interlocutory appeal from a ruling of the District Court, rejecting the Independent Counsel's proposal to substitute redacted versions of classified materials that the Court had ruled relevant to the case. Independent Counsel's position was that the decision to take such an appeal was confided to Independent Counsel, not to the Attorney General. (Although both halves of "the United States" agreed that the District Court should have allowed the substitution, the question was who would control the prosecution, including the tactical choice of when to attempt to accommodate the Court's rulings and when to appeal.) We were successful in having the Attorney General's appeal dismissed, but the victory was ultimately meaningless; the District Court eventually dismissed the case, ruling that the refusal to declassify documents would deprive the defendant of a fair trial. I also argued the Independent Counsel's later appeal of that order, but the decision was affirmed.

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I handled the briefing and argument of both appeals in the Fourth Circuit. The Attorney General's position was argued by then-Assistant Attorney General Edward S.G. Dennis, Jr., with the assistance of Ronald K. Noble (now a Professor of Law at NYU, 212-998-6702). Both appeals were heard by a panel consisting of Judges Robert F. Chapman, J. Harvie Wilkinson III and William W. Wilkins, Jr.

G. United States v. Hana Koecher, United States Supreme Court, Docket No. 84-1922. Decided February 25, 1986. Reported at 475 U.S. 133.

In this case, I represented Hana Koecher, the wife of an accused Czechoslovakian spy. Mrs. Koecher was subpoenaed to testify before a grand jury investigating her husband, and declined to testify on grounds of the spousal privilege. Her claim was upheld by the Second Circuit (755 F.2d 1022), in one of Judge Henry Friendly's last opinions, and the Government sought and received certiorari from the Supreme Court. The case was referred to me by the ACLU, and I took the case on a pro bono basis in the Supreme Court. The issue presented was whether there is a "co-conspirator exception" to the marital testimonial privilege. In the end, the case was dismissed as moot when my client and her husband were traded to the Russians in exchange for the freedom of the Soviet dissident and activist Natan Sharansky.

I briefed and argued the case in the Supreme Court, with the assistance of George Kannar of the ACLU (now a law professor at the State University at Buffalo (716-645-2400). The Government brief was signed by then-Solicitor General Charles Fried, then-Assistant Attorney General (now Judge) Stephen Trott, then-Deputy Solicitor General Andrew Frey (now a member of Mayer Brown & Platt, 1675 Broadway, New York, NY, 212-506-2635 in New York), then Assistant to the Solicitor General Andrew Pincus, and AUSA Barry Bohrer (now a member of Morvillo, Abramowitz, Grand, Iason & Silberberg, 565 Fifth Avenue, New York, NY 10017, 212-856-9600), but my recollection is that someone else from the Solicitor General's Office, whose name I cannot recall, argued the case. I was not involved in the case before it reached the Supreme Court. I did make a brief appearance in the District Court in connection with entering the agreements that mooted the case, before the Honorable Shirley Wohl Kram, United States District Court for the Southern District of New York. The United States was represented at that proceeding by then-AUSA Bruce Green (now a professor at Fordham University School of Law, 212-636-6851).

H. United States v. Andrea Aiello, United States Court of Appeals for the Second Circuit, Docket Nos. 84-1404, 84-1405 and 84-1413. Argued March 25, 1985, decided Aug. 7, 1985. Reported at 771 F.2d 621 (2d Cir. 1985).

This was the first case I ever handled as a defense lawyer after leaving the United States Attorney's Office in 1983. The defendant, a tile importer from Buffalo, was convicted of importing narcotics. The case involved a significant issue – whether the Government, in seeking a warrant for video surveillance without audio, was required to comply with

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00291 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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standards analogous to those required by statute for aural electronic surveillance. The Court of Appeals held that it was not, and affirmed the convictions.

I briefed and argued the case for Mr. Aiello with respect to the electronic surveillance issues. Co-counsel were Anne C. Feigus and Mark F. Pomerantz, then of Fischetti, Feigus & Pomerantz, now a member of Paul Weiss Rifkind Wharton & Garrison, 1285 Avenue of the Americas, 212-373-3010). The Government was represented by then-AUSA William J. Cunningham III of the Eastern District of New York. The panel consisted of Judge Ralph K. Winter, and the late Judgea Walter R. Mansfield and James L. Oakes.

I. United States v. Patrick J. Cunningham and John J. Sweeney, United States District Court for the Southern District of New York, Indictment No. 81 Cr. 458. Tried May 24, 1982 to June 18, 1982.
Appeal to United States Court of Appeals for the Second Circuit, Docket Nos. 83-1046, 83-1052, 82-1402. Argued September 28, 1983, decided November 28, 1983. Reported at 672 F.2d 217 (2d Cir. 1983).
(See also United States v. Cunningham, 672 F.2d 1064 (2d Cir. 1982).)

United States v. Marie Falco, United States District Court for the Southern District of New York, Indictment No. 81 Cr. 415. Tried December 14-23, 1981.
Appeal to United States Court of Appeals for the Second Circuit, Docket No. 82-1104 Decided August 10, 1982, in an unreported opinion.

These were the most significant cases I tried as a line prosecutor. Patrick Cunningham, a former New York State Democratic Chairman, was convicted of tax evasion, perjury and obstruction of justice, along with his brother-in-law John Sweeney, and, in a related case separately tried, his secretary, Marie Falco, was convicted of perjury. The defendant was a politically significant figure, and the case was sharply contested. The cases were tried personally by United States Attorney John S. Martin, Jr., who selected me to be co-counsel, with significant responsibility for witness preparation, briefing of legal issues (including an attorney disqualification motion that was granted, leading to an appeal to the Second Circuit and reversal of the District Court's order), and presentation of the cases in court, including delivering the main summations in both trials. All three defendants were convicted, and I had primary responsibility for briefing and arguing the appeals, in which all convictions were affirmed (and three counts on which the District Court had set aside the verdict were reinstated).

I was trial co-counsel, and briefed and argued the Government's position on appeal, with United States Attorney John S. Martin, Jr. (later United States District Judge, SDNY, now a member of Martin & Obermaier LLC, 565 Fifth Avenue, 883-0000). Mr. Cunningham was represented by Michael Tigar (now Professor of Law at American University, 202-274-4088), Mr. Sweeney by Michael Kennedy, and Ms. Falco by Gerald B. Lefcourt (148 E.78th Street, 737-0400). The Cunningham case was tried before the late Judge Charles L. Brieant; the panel on appeal consisted of Judges Amalya L. Kearse

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and Ralph K. Winter, and the late Judge Walter R. Mansfield; the panel on appeal of the disqualification motion consisted of Judge Amalya L. Kearse, the late Judge Thomas Meskill, and the late Judge Charles Metzner of the SDNY, sitting by designation. The Falco case was tried before the late Judge Vincent L. Broderick.

J. United States v. Steven Weil, United States District Court for the Southern District of New York, Indictment No. 81 Cr. 57. Tried June 25, 1981 to July 13, 1981. Appeal to the United States Court of Appeals for the Second Circuit, Docket No. 81-1374. Decided February 16, 1982 in an unreported opinion.

This was the most significant case I tried solo as a line prosecutor. Steven Weil was a stock manipulator who was convicted of multiple counts of perjury before the Securities and Exchange Commission. The trial lasted three weeks, and the defendant raised a defense of mental impairment as a result of injuries suffered in an air crash. The case involved the presentation of a number of kinds of complex evidence, including securities experts and deposition testimony of a Swiss investor, and the testimony of somewhat notorious co-operating witnesses Jerome Allen and Phillip Stoller. In addition, the defendant put on a substantial case, necessitating the cross-examination of witnesses including an expert neurologist, an expert psychiatrist, the defendant's wife, and a former prosecutor who had investigated the defendant in an earlier case. The defendant was convicted on all counts and the convictions were affirmed by the Second Circuit in an unreported opinion.

I was sole trial and appellate counsel for the United States. The defendant was represented by Paul Holian of Boston, Massachusetts. (There is no current listing for Mr. Holian in the Martindale-Hubbell on-line Lawyer Locator.) The trial judge was the Honorable Robert W. Sweet.

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.)

Before becoming a judge, my primary legal activities fell into three categories. First, and most significantly, I have been engaged in teaching law and legal scholarship. Since 1977, I have been a member of the faculty of the Columbia University School of Law. Since the spring of 1979, in my second year of teaching, when I was asked to take over a section of the first-year course in criminal law, my primary field of specialization has been criminal law and procedure. I have devoted more of my time to teaching itself than is perhaps common among faculty at major research universities, and I am proud to have received several awards in recognition of the quality of classroom teaching and

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devotion to the educational needs of my students. I have also written a number of articles, one of which, on the federal RICO statute, has been widely cited, and excerpted in casebooks and other works.

Second, I have engaged in significant public service. Beginning with my earliest jobs as a law clerk, I have devoted a significant part of my career to serving the public. The bulk of this experience has been in law enforcement. As a full-time federal prosecutor in the Southern District of New York, from 1980-1983, I investigated and tried criminal cases, and served as Deputy Chief and Chief Appellate Attorney, briefing or supervising the briefing of scores of appeals. I later returned to the United States Attorney's Office from 1990-1992, at the request of then-United States Attorney Otto Obermaier, to serve as Chief of the Criminal Division, with supervisory responsibility over the entire criminal docket of the Office. In addition to that, I have served on a part-time basis as associate or special counsel to three different independent prosecutors, James McKay, Lawrence Walsh, and Carol Elder Bruce. Since 2000, I have been a United States District Judge for the Southern District of New York.

Finally, after leaving government service in 1992, I served as a part-time counsel at the law firm of Howard, Darby & Levin and successor firms, now a part of Covington & Burling. This activity has enabled me to see the practice of law from the standpoint of the private sector, both in the criminal process, representing witnesses and subjects of investigations as well as engaging in the appellate litigation described above, and in occasional complex civil cases.

I have never engaged in lobbying activities.

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 been a member of the Faculty of Law at Columbia Law School since 1977.
In those years, I have taught the following courses:
Contracts: 1977-79
Criminal Law: 1979-80, 1984-89, 1992-95, 1997-2009
Constitutional Law: 1978-80, 1984-85, 1988
Criminal Procedure: 1986, 1993-94, 1996, 1998-2000
Professional Responsibility: 1984, 1993-96, 1998-2000

I have also taught seminars in the following subjects:
Legal Education: 1978
Human Rights: 1989
Criminology: 1991-92, 1995-96
Sentencing: 1993-94, 2002-08
Comparative Constitutionalism: 1994-96

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00294 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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White Collar Crime: 1993
Professional Responsibility in Criminal Practice: 1999

I have also taught clinical seminars in the following subjects:
Criminal Litigation: 1983-84, 1986, 1988-89
Immigration Law: 1987

I taught constitutional law for one semester at Cardozo Law School in the 1980s; I do not remember the precise year. I have also taught a course in American Criminal Procedure at Hebrew University in Jerusalem in spring 2000, various courses in American Law at the Universities of Leiden and Amsterdam in the Netherlands in the summers of 1979, 1984, 1986, 1988, and 1990, and a course dealing with American approaches to the investigation and prosecution of white collar and organized crime at the University of Tokyo in the fall of 1998. I have guest-lectured at various other universities, including Yale Law School and the University of Buenos Aires.

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 such expectations or agreements. As listed on the attached financial statement, I have accumulated a TIAA-CREF retirement account as a result of my employment at Columbia, which will be available to me as a retirement fund.

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.

While serving as a district judge, I have continued to teach one course and one seminar annually at Columbia Law School, with the permission of the Chief Judge of the Circuit, within the time and income limits permitted to judges. I would expect to continue that commitment in most years. Other than that I do not expect to pursue any other 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

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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.

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

I am not aware of any conflict of interest issues not already fully discussed above in section 14 (Recusal).

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.

Throughout my career, I have devoted my primary attention to legal scholarship, public service, and law reform activities, and never sought out the most lucrative opportunities available to me. Thus, my primary employment since graduation from law school has been in teaching and in government service, rather than in law firms or in the service of private clients.

Even while in law teaching, however, I have made it a point to engage in pro bono legal activities. For example, two of the most significant matters I have litigated (United States v. Koecher and United States v. Lara, both discussed above) were pro bono matters (and most of the others were prosecutions in which I represented the government). I have also written a number of amicus curiae briefs for the American Civil Liberties Union, all without compensation.

From 1992 to 2000, I devoted about one day per week to law practice, and I tried to devote some portion of that to pro bono activities. In the case of United States v. Lara, for example, I was appointed to handle an appeal on behalf of an indigent criminal defendant. The time devoted to that case without compensation ranked it as one of my largest time commitments during 1993 and 1994.

As noted above, I have devoted considerable time to bar association and other law-improvement activities throughout my career.

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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.

To this point, my involvement in the process has consisted exclusively of the following: I received a call from Senator Charles Schumer of New York, who advised me that the White House anticipated appointing me to the Second Circuit. I did not solicit such a nomination and I was not told what circumstances led to their interest. I briefly discussed with Senator Schumer's staff the procedures that would ensue. I have had numerous contacts with personnel of the White House Counsel's Office and the Justice Department regarding the paperwork required for their processes and for this Committee. My nomination was submitted to the Senate on April 2, 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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FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Lynch, Gerard E.	Second Circuit	04/02/2009
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type** (check appropriate type)	**6. Reporting Period**
Circuit Judge-nominee	☑ Nomination, Date 04/02/2009 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2008 to 03/31/2009
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
500 Pearl St. New York, NY 10007	Reviewing Officer_____ Date_____	

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

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

☐ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. Professor of Law	Columbia University
2.	
3.	
4.	
5.	

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

☑ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 9	Name of Person Reporting Lynch, Gerard E.	Date of Report 04/02/2009

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2007	Columbia University	$24,144
2.	2008	Columbia University	$24,495.00
3.	2009	Columbia University	$6,125.00
4.			

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

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

	DATE	SOURCE AND TYPE
1.	1/08-3/09	Flushing Hospital-salary
2.	1/08-3/09	Private practice of psychotherapy-earnings
3.		
4.		

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

☐ NONE *(No reportable reimbursements.)*

	SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.	EXEMPT				
2.					
3.					
4.					
5.					

FINANCIAL DISCLOSURE REPORT Page 3 of 9	Name of Person Reporting Lynch, Gerard E.	Date of Report 04/02/2009

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

☐ NONE *(No reportable gifts.)*

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

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☑ NONE *(No reportable liabilities.)*

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

FINANCIAL DISCLOSURE REPORT
Page 4 of 9

Name of Person Reporting	Date of Report
Lynch, Gerard E.	04/02/2009

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. Citibank accounts	A	Interest	L	T	Exempt				
2. Merrill Lynch Money Market	B	Dividend	M	T					
3. Ameriprise Money Market	A	Interest	J	T					
4. New York NY FSA-CR	A	Interest	K	T					
5. Blackrock NY Muni Inc. Tr.	A	Dividend	J	T					
6. Gabelli Utility Trust PFD	A	Dividend	J	T					
7. ING Savings Account	A	Interest	J	T					
8. Nicholas Applegate Con. Fd.	A	Dividend	J	T					
9. ING Global Equity Fund	A	Dividend	J	T					
10. PIMCO NY Muni Fnc Fd.	A	Dividend	J	T					
11. Blackrock Global Allocation B	A	Dividend	J	T					
12. Triborough BTA Bonds		None	L	T					
13. Alliance Bernstein Gr/Inc. Fund A&B	A	Dividend	J	T					
14. Eaton Vance Enhanced Equity Fd	A	Dividend	J	T					
15. Eaton Vance Tax Managed Global Fund	A	Dividend	J	T					
16. Nuveen Municipal Value	A	Dividend	K	T					
17. Oppenheimer Main St A	A	Dividend	K	T					

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

FINANCIAL DISCLOSURE REPORT
Page 5 of 9

Name of Person Reporting	Date of Report
Lynch, Gerard E.	04/02/2009

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. PIMCO Floating Rate Strategy FD	B	Dividend	J	T					
19. Growth Fund Amer. Inc.	A	Dividend	J	T					
20. Putnam Intl Gr Fund		None	J	T					
21. Alpine Total Dynamic Div. Fd.	A	Dividend	J	T					
22. AIM Tax Free Int Shares	A	Dividend	J	T					
23. Eaton Vance Floating Rate Inc. Tr.	A	Dividend	J	T					
24. Rochester Muni Fd Cl A	B	Dividend	K	T					
25. Templeton Dev. Mkt. Trust A	A	Dividend	J	T					
26. Rydex Ser Tr. Juno Fd.		None	J	T					
27. NYS Trasn Fin	B	Interest	K	T					
28. Franklin Utilities	A	Dividend	J	T					
29. SunAmerica New Century Fd. A		None	J	T					
30. TIAA-CREF		None	O	T					
31. Franklin Income Fd C	A	Dividend	J	T					
32. ING Risk Managed Nat. Res. Fd.	A	Dividend	J	T					
33. Nuveen Global Fd.	A	Dividend	J	T					
34. NYC Bonds	A	Interest	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
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FINANCIAL DISCLOSURE REPORT
Page 6 of 9

Name of Person Reporting	Date of Report
Lynch, Gerard E.	04/02/2009

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A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
35. Port Authority Bonds	A	Interest	J	T					
36. NYS Dorm Auth Bonds	B	Interest	K	T					
37. Hartford Cap. Apprec. Fd.	A	Dividend	J	T					
38. Fidelity Adv. Div. Intl.	A	Dividend	J	T					
39. Metro Trans Auth. NY	B	Interest	L	T					
40. Lord Abbett NY T/F	A	Interest	J	T					
41. PIMCO Long Term US Govt.	A	Interest	J	T					
42. Putnam American Govt Income FD.	A	Interest	J	T					
43. Seligman NY Muni FD	B	Interest	K	T					
44. JP Morgan Chase CD	A	Interest	K	T					
45. Fidelity Adv. Govt. Income FD	A	Interest	J	T					
46. Franklin US Govt Sec. FD	A	Dividend	K	T					
47. Lord Abbett Short Duration Inc. FD	A	Dividend	J	T					
48. Amer. Emp. Cent. Bk CD	A	Interest	K	T					
49. Hartford US Govt Sec FD	A	Dividend	J	T					
50. Rental Property, New York, NY (2002; $272,500)	C	Rent	N	R					
51. Advisors Disciplined Trust Unit 226	B	Dividend	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
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FINANCIAL DISCLOSURE REPORT Page 7 of 9	**Name of Person Reporting** **Lynch, Gerard E.**	**Date of Report** 04/02/2009

VII. INVESTMENTS and TRUSTS — *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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52. Bankcorp CD	A	Interest							
53. NY Power Authority Bond	A	Interest							
54. Putnam Health Science Fd	A	Dividend							
55. Alliance NFJ Dividend	A	Dividend							
56. Washington-Mutal Bank CD	A	Interest							
57. Nuveen Tax Free Unit Trust	A	Interest							
58. First Bank PR CD	A	Interest							

1. Income Gain Codes:	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
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FINANCIAL DISCLOSURE REPORT Page 8 of 9	Name of Person Reporting Lynch, Gerard E.	Date of Report 04/02/2009

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

Part IIIA: Additional non-investment income earned during reporting period as United States District Judge.

FINANCIAL DISCLOSURE REPORT Page 9 of 9	Name of Person Reporting Lynch, Gerard E.	Date of Report 04/02/2009

IX. CERTIFICATION.

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

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

Signature Gerard E. Lynch

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		219	424	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule	1	051	652	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned-add schedule		272	500	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		6	885				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities			0
				Net Worth	1	550	461
Total Assets	1	550	461	Total liabilities and net worth	1	550	461
CONTINGENT LIABILITIES			0	GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Mutual Funds:	
Alliance Bernstein Growth & Income Fund Class A	$ 2,602
Alpine Total Dynamic Dividend Fund	3,700
Blackrock New York Municipal Income Trust	11,500
Eaton Vance Enhanced Equity Income Fund II	4,539
Eaton Vance Floating Rate Income Trust	4,485
Eaton Vance Tax Managed Global Opp'ies Fund	4,980
Growth Fund Amer Inc	3,445
ING Risk Managed Natural Resources Fund	3,352
ING Global Equity Div. and Premium Opp'y Fund	4,850
Nicholas Applegate Convertible & Income Fund	3,776
Nuveen Global Govt Enhanced Income Fund	10,402
Nuveen Municipal Value Fund	18,900
Oppenheimer Main Street Fund Class A	11,165
Pimco New York Municipal Income Fund	3,655
Pimco Floating Rate Strategy Fund	3,350
Rydex Series Trust Govt Long Bond Fund	7,106
Sunamerica New Century Fund Class A	1,863
Templeton Developing Markets Trust Class A	3,610
AIM Tax Free	13,182
Franklin Utilities	4,304
Lord Abbett New York T/F	7,138
Pimco Long Term US Govt	8,996
Putnam International	6,230
Putnam American Govt Income Fund	6,955
Rochester Municipals Fd	23,930
Seligman New York	25,254
Fidelity Adv Diversified	3,003
Fidelity Advisor Govt Income Fund	4,141
Franklin Income	3,086
Franklin US Govt Securities Fund	16,853
Lord Abbett Short Duration Income Fund	4,347
Gabelli Utility Trust Sr A	3,530
Blackrock Global Allocation Fund	5,356
Hartford US Govt Securities Fund	4,058
Hartford Capital Appreciation Fund	1,836

Bonds:	
NY State Dorm. Auth. Rvs City Unv. Sys.Bond	$ 10,422
New York NY City Indl Dev Agy Civic Fac Rv	9,899
New York St Dorm. Auth. Rev Non Support Debt	20,096
New York St Dorm. Auth. Revs Supported Debt Mental Health Facs	21,277
New York NY FSA-CR	20,114
New York NYC Transn Fin	26,374
Metro Transn Auth NY Ded	54,399
Port Authority NY & NJ	10,048
Triborough Brdg & Tunnel Auth NY Rev Genl Purp. Bond	56,314
Unit Investment Trust:	
Advisors Disciplined Trust Unit 226	$ 11,399
CDs in Retirement Accounts:	
CDs JP Morgan Chase Bank	$ 21,095
CD Amer Express Bank	15,298
Retirement Account:	
TIAA-CREF Retirement Account	$525,438
Total Listed Securities	$ 1,051,652
Real Estate Owned	
Rental property	$ 272,500

AFFIDAVIT

I, GERARD E. LYNCH, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

April 1, 2009
(DATE)

Gerard E. Lynch
(NAME)

Ka Kin Cheng
(NOTARY)

KA KIN CHENG
Notary Public, State of New York
No. 01CH5053524
Qualified in New York County
Commission Expires December 18, 2009

Senator KAUFMAN. Great. Now, we will get to questioning. I am going to yield my first round of questioning to Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman. I thank you for doing that, because I do have to go soon.

Judge Black, as Senator Brown indicated, you have done significant work in the field of combating domestic violence and have also been involved with one of my favorite organizations, the Sheila Wellstone Institute.

Can you tell me how your work on domestic violence shaped your view of the judicial system?

Judge BLACK. Thank you for the opportunity to respond to that, Senator Franken. When I became a municipal court judge some 16 years ago and served in that position for 10 years, when I arrived in the busiest criminal court in Ohio, I didn't know anything about domestic violence. But a third of my docket dealt with it and I didn't understand.

I would see, typically, women on day one asking me to hold the accused, saying that they were scared to death, and then two or three weeks later, when they appeared before me for trial, they either were not there or they were there telling me the police got it all wrong.

It took me a long time to be fully educated as to the dynamics of domestic violence and family violence and over time, I came to understand that all of us have a responsibility to confront family violence when we have the opportunity.

As a judge, I was bound by impartiality, but I took the time to educate myself in the dynamics, became associated with extraordinary institutions, such as the Sheila Wellstone Institute, and the work I did in that busy criminal court in the area of family violence is something I'm very proud of.

Senator FRANKEN. Thank you.

Dr. Lynch, I want to talk to you about an issue that I have discussed with you in the past, crime reporting in Indian country. Right now, very few tribes report crime statistics directly to the Uniform Crime Reporting Program and part of this is due to lack of funding and the capacity problems.

Some of it is because some states, like Minnesota, actually prohibit tribal participation in state-sponsored incident-based crime reporting systems. What can you and will you do to address the lack of information of crimes in Indian country?

Mr. LYNCH. Thank you, Senator. This has been a longstanding issue. I think when I first came to Washington in 1978, several years later, there were a number of initiatives under the aegis of the FBI to improve the collecting of data on the crime among Native Americans and a number of other efforts have been undertaken since then and there are some currently underway, as you know.

As you say, collecting this information is complicated by issues of sovereignty and jurisdiction and at this point—it's a very complicated issue. At this point, all I can say is that, if I were fortunate enough to be confirmed as the head of the Bureau of Justice Statistics, I would work with other relevant agencies to see that we have an institutionalized, routinized set of data on crime among Native Americans.

Senator FRANKEN. Thank you.

I would like to go to Judge Pearson. As you may—at a luncheon in Mississippi this past month, Justice Scalia raised a concern that the Supreme Court jurists do not have enough diversity in their job experience, in their legal experience, that they all actually are judges.

Moreover, social science confirms that a judge's background does have an impact on how he or she judges, although not necessarily on a straightforward manner. A judge's age, for example, may have more impact on his or her ruling than race or gender.

So my question to you is this. How do you think that we should reconcile the fact that judges must follow the law and treat everyone who comes before them in the court absolutely equally and fairly, how do you reconcile that with the reality that experience matters and the diversity of experience can be a valuable thing on a court, like Justice Scalia?

Judge PEARSON. Thank you, Senator Franken, for the opportunity to speak to that important issue. Diversity matters, but it's also always important to remember that personal preferences and predilections have no role in judging.

When you merge those two concepts together, sir, what happens is you realize that the process changes. The process is enhanced if members of the bench have diverse backgrounds. Diverse backgrounds can mean varying genders, races, varying economic challenges and experiences, such as my accounting background before pursuing a legal background.

What that allows is for a judge with a diverse range of skills and background would be able to use a process that would be different in judging, but not necessarily dictate a different result; meaning all judges—my judging, in fact, is based upon an application of the law to the facts. But the experiences that I've had as an individual with diverse work and personal experiences allows me to see those facts through a lens that someone with other experiences may not see.

Therefore, my process may be different, but the result should always be one that results in an evenhanded application of the law. And I think by encouraging diversity on the bench, that can be what the public is guaranteed, sir.

Senator FRANKEN. Thank you. Thank you, Mr. Chairman. I am afraid I must go now. Also, I have run out of time. I am afraid I have run out of time, as well.

Senator KAUFMAN. Thank you.

Senator Sessions—before I introduce Senator Sessions—my chief of staff went to the university that is in Tuscaloosa and it would not be right for me not to do this and not congratulate you on your big win of the national championship.

Senator SESSIONS. (Off microphone.) As a matter of fact, the university is surging in its academic excellence and reaching new levels of prominence, I think, and a great president. Thank you.

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

Senator SESSIONS. We are glad to have each of you here. This is a process we just have to go through, you nominees for judge.

Ms. Freudenthal, you have got a lot better job security than your husband, if you get this job.

[Laughter.]

Senator SESSIONS. So this is the only time anybody ever gets to ask you questions to make sure that you have the qualities that are needed for the job, and I would say that to all of you.

But it is not as if this is the only time. Our staff has looked at your record. The Bar Association has reviewed your record. A lot of work has gone into making sure that when this hearing occurs, that you are asked relevant questions that are important.

I am not aware of any serious criticisms of any of these nominees for the bench, but that opportunity exists that somebody could come forward and then we will just do that and then we will have a vote.

We are moving the nominees, I think, faster than ever, but I do not feel any obligation to see how fast we can move nominees. I think it is a constitutional responsibility that we do it in the right way.

I guess I would ask each of you if you would share some thoughts about your mental approach to being a judge, how you intend to treat the parties and maybe what you think are the qualities a good judge should have.

I will just ask each one of you to share some thoughts, not long, but just some general thoughts about that.

Ms. Freudenthal.

Ms. FREUDENTHAL. Thank you, Senator. If I'm fortunate enough to be confirmed as a district court judge, the philosophy that I would bring to the bench is, first and foremost, an allegiance to the law. The qualities, I believe, that are important are integrity, respect and courtesy to all the participants in the process, an ethic of hard work, and impartiality.

The process that I would follow is a search for the law to determine what does the law mean and then apply the law to the established facts and reason to conclusions.

Thank you, sir.

Senator SESSIONS. I think that is a classical definition of what a judge does. We have had some dispute and discussion about your background and personalities and biases or whatever, but I think the commitment that you take as a judge is to, insofar as you are able, be objective and not be influenced by personal matters.

Mr. Marshall.

Judge MARSHALL. Thank you, Senator Sessions. I would echo what you just said, that the judge's first obligation is to be impartial, and what Ms. Freudenthal said, as well. That is, we have to work hard and go wherever the law and the facts take us.

I think it's very important that everyone who comes in contact with the court be treated fairly and with dignity and courtesy and good manners. I would add, too, that it's important, once a court reaches its decision, for the judge to express himself or herself clearly so that the parties, both those who won and the losing party, will understand that they have been heard, but will hear the reasons why they didn't prevail that day.

That's important, it seems to me, both for that day and those litigants, but also so that a judge's ruling can be reviewed on appeal and if it's wrong, it can be corrected.

Senator SESSIONS. Well, you had two years as law clerk to Judge Arnold. Did that warp your brain in any way?

Judge MARSHALL. It warped my brain in a very good way, Senator Sessions.

Senator SESSIONS. That is a good answer.

Judge MARSHALL. He's a fine man and a great judge and my judicial role model.

Senator SESSIONS. Thank you. Ms. Pearson, Judge?

Judge PEARSON. Thank you, Ranking Member Senator Sessions, for the opportunity. I agree with your statement that integrity is a key characteristic that judicial officers should have and, if approved by this Committee and confirmed by the Senate and ultimately appointed by the President, I would continue to exercise that integrity.

Sir, I also think judicial temperament is of the utmost importance and I think one of the measures of my judicial temperament is my past judicial experience; and, as important, knowledge of the law and a willingness to delve in and to become expert in, to the extent necessary, areas of the law one may not necessarily be as familiar with.

As my co-panelist, Judge Marshall, has just said, the ability and willingness to articulate your decision both orally and in writing, those are very important characteristics, sir.

Senator SESSIONS. Thank you. I think that is true and that means that you have got to work hard at your job. It is not an easy thing to summarize complexity in a fair way that every party can recognize that you considered the serious questions in the case and you addressed them effectively.

Judge Black.

Judge BLACK. Senator Sessions, thank you for the question. As to the mental approach one brings to judging and the qualities that are important, clearly, impartiality and integrity are the twin bulwarks. Intellectual competence is an absolute necessity. A commitment to hard work is critical. There is no place for a lazy judge.

I think the important personal quality a judge needs is patience, the ability to suspend judgment until you've heard all of the evidence and all of the facts from all of the parties.

Living in a home with my wife and two daughters, I've learned to exercise patience in that regard. In the final analysis, diligence; we are umpires, we call balls and strikes. There is a defined strike zone and that is our job as an impartial arbiter is to make a decision on this case on these facts and the law that applies to it.

So thank you for the opportunity to speak to that.

Senator SESSIONS. Thank you.

Senator KAUFMAN. Dr. Lynch, what do you see as the biggest challenges for the Bureau of Justice Statistics moving forward?

Mr. LYNCH. I think the biggest challenges for the Bureau of Justice Statistics moving forward are the perennial challenges to a statistical agency; that is to say, to maintain its credibility as an independent Federal statistical agency.

I think the way you do that is the same way you always do that, which is to provide accurate, timely and useful data at the same time that you're protecting the confidentiality and maintaining access to the data.

So I think those things have always been key for any statistical agency.

Senator KAUFMAN. Good. To follow-up on Senator Sessions, as I look at the kind of philosophy of judging, can you talk a little bit, each one of you, about your views on the role of the court interpreting laws written and passed by elected legislative bodies?

Why do we not start at the other end with Judge Black?

Judge BLACK. Thank you, Senator Sessions—excuse me—on behalf of Senator Sessions, following-up, Mr. Chairman.

The role of the court is to apply the rule of law, to apply evidence to the facts and the evidence to the law and make an impartial, neutral decision.

As to the role of the courts in interpreting statutes passed by Congress, both state and Federal, in the first instance, there is a presumption that the laws passed by the legislature are constitutional and if there is any interpretation of the statute that can be deemed constitutional, it is the court's role to enforce that statute.

Senator KAUFMAN. Thank you.

Judge Pearson.

Judge PEARSON. Thank you, Mr. Chairman. I agree with what Judge Black just said and to that, I would also add that the recognition of precedent is of the utmost importance. Stare decisis is a term frequently used. And in addition to the presumption of constitutionality of statutes, the Supreme Court has set out guidance in its case law that judges can look to in order to determine if there is a way to judge that a statute is constitutional and certain criteria that must be met before determining that unconstitutionality is the only result that can follow.

Senator KAUFMAN. Judge Marshall.

Judge MARSHALL. Thank you, Mr. Chairman. I think the judge's job in interpreting a statute is, first and foremost, to pay a lot of attention to the words, because this Congress and the General Assembly in Arkansas, legislatures generally, pay attention to the words and they are what are enacted into law, signed by the executive.

Often, that's the end of the matter. The words are often enough. Sometimes not the particular words, but the words within the entire section, looking at the whole of the statute and trying to figure out what the statute means. That's what I try to do.

Senator KAUFMAN. Judge Freudenthal.

Ms. FREUDENTHAL. Thank you. The overarching goal is to give effect to the legislative enactment. If the statute is clear, then you apply the law as written; and, if the statute is ambiguous, there are recognized rules for statutory construction and you would apply those rules consistent with the precedent that has been established.

I would be very reluctant to overturn a legislative enactment given the presumption of constitutionality and I think, as has been said previously, if there is a construction to give a statute that

would result in its constitutionality, then you would uphold that statute and apply it to the facts.

Senator KAUFMAN. Following on Judge Pearson's comment, how do you see precedent affecting your decisions as a judge?

Ms. FREUDENTHAL. Precedent plays a significant part in terms of stare decisis. It creates consistency and stability in the law and in the judicial process. So I would give effect a precedent.

Senator KAUFMAN. Judge Marshall.

Judge MARSHALL. Mr. President, on the precedent point?

Senator KAUFMAN. Yes.

Judge MARSHALL. Well, a judge must be bound by precedent. As a judge on the Arkansas Court of Appeals, for example, it's much of my work to follow what our Supreme Court says and what the United States Supreme Court says.

The system couldn't work if we reconsidered every rule of law in every case. It seems to me it's particularly important for a Federal district judge, a soldier in the trenches, responsible both to the Court of Appeals and to the United States Supreme Court to follow precedent, set his or her own views aside, of course, but to pay particular attention to precedent and be bound by it.

Senator KAUFMAN. Judge Pearson, is there anything you want to add? You pretty well covered it earlier.

Judge PEARSON. Thank you. I agree, sir. There is nothing I'd like to add. I pretty well covered it earlier.

Senator KAUFMAN. Judge Black.

Judge BLACK. Thank you, Mr. Chairman. If I were to be confirmed as a Federal district judge, I would continue what I do in my work as a judge and that is to uphold precedent. I'm bound, all judges are bound by the United States Supreme Court.

In my area, the Sixth Circuit Court of Appeals, they instruct us in how to apply the law and we are bound by it.

Senator KAUFMAN. Thank you.

Senator Coburn.

Senator COBURN. Thank you, Mr. Chairman. Welcome to you all.

Part of the purpose of our hearing is to make sure we have everything on the record that could be questioned. With the exception of Mr. Lynch, you all are all lifetime appointments. So I am going to go into some areas that may seem somewhat controversial. That is not my intention.

It is my intention to allow you to answer questions that may be raised so that nobody doubts that 10 years from now when you are sitting and have had a great career on the bench. So please take them in the spirit.

But, first, I will go to Mr. Lynch. The Bureau of Justice Statistics has a very important role as the Justice Department's primary statistical agency and its mission is to collect, analyze, publish and disseminate information on crime, criminal offenders, victims of crime, and the operation of the justice system at all levels of the Federal Government.

As I am sure you are aware, state statistics can be and often are manipulated to show what somebody wants those statistics to show. The credibility of your bureau is going to depend on the office being free from political influence to try to massage that in a direction, and I am going to go further on that.

If confirmed, will you commit to not let politics influence the data produced by the bureau?

Mr. LYNCH. If I am fortunate enough to be confirmed, I would do that.

Senator COBURN. What steps do you plan to ensure that?

Mr. LYNCH. I think there are some very clear guidelines set out in the principles and practices for Federal statistical agencies, especially point number two or practice number two, where it lists a series of authorities that an independent statistical agency should have in order to protect itself from interference.

I think if I were so fortunate as to be confirmed, I would pursue those authorities.

Senator COBURN. Last year, the National Resource Council on the National Academies produced a report entitled *Ensuring the Quality, Credibility and Relevance of U.S. Justice Statistics*. Are you familiar with that?

Mr. LYNCH. Yes, Senator, I am.

Senator COBURN. That report made several recommendations and I would like to get your reaction. The first notes that "The Bureau of Justice Statistics generally espouses the expected principles and practices of a Federal statistical agency, but it has sustained major challenges to its independence as a national statistical resource in recent years," and that is a quote.

One of those challenges even included attempts by the Department of Justice officials to alter the content of statistical press releases. What do you believe needs to be changed within BJS to ensure its independence as a purely statistical and analytical arm of the Office of Justice Programs?

Mr. LYNCH. Senator, I was on that National Academy panel and I think I—we were not privy, as a panel, to all the machinations around—I think you may be referring to the firing of Larry Greenfeld, the former director, allegedly because of a press release.

So we were not privy to all of that information about the specifics of what actually happened to Larry and why and what both sides were and so I can't speak to that.

I can speak to what I would do going forward and I think what I would do is exactly what the principles and practices tell us to do; and, that is to say, to have final authority over the content and form and timing of releases from a Federal statistical agency.

Senator COBURN. The report also stated that there are major gaps in the substantive coverage of BJS data, such as white collar crimes, civil justice, juvenile justice, and the interaction between drugs and crime.

I am particularly interested in the areas of juvenile justice and the drugs-crimes relationship. Do you believe that this recommendation of that panel is justified and if so, how do you propose to remedy those gaps?

Mr. LYNCH. Senator, again, panel members—being a panel member is quite different from being a director, I'd presume.

Senator COBURN. You are getting ready to find out.

Mr. LYNCH. Yes, Senator, if you concur. I think that the juvenile justice area is complicated, because there are a number of people involved, the Office of Juvenile Justice and Delinquency Prevention and other people have—so there is a type of ambiguous authority.

But I think whatever one would do to address that and other gaps in the statistical system, I really wouldn't want to answer on the fly right now. I think I would like to review the programs sitting as director as opposed to a panel member, because we can't do all of them. We will have to pick and choose and I would like to pick and choose those things, if I were confirmed, with the advice and expertise of the staff.

Senator COBURN. I will look forward to hearing from you about 3 months after you are into the job, then.

Mr. LYNCH. Thank you, Senator.

Senator COBURN. If I may, Mr. Chairman, continue, because I have similar questions for every—Ms. Pearson, I have only one question. I have no doubt that you are qualified for this position.

But as I was going through your information, I came to something that I cannot come to grips with and I just want to give you an opportunity to answer.

In your questionnaire, you noted that you are member of the Animal Legal Defense Fund and according to ALDF's website, it fights to advance the interests of animals through the legal system and advocates the adoption of an animal bill of rights, which provides that animals have the right to have their interests represented in court and safeguarded by the law of the land.

Do you adhere to what that group's message is and what is the precedent therefor?

Judge PEARSON. Thank you, Senator Coburn, for the opportunity to speak to this issue. I am a member of the Animal Legal Defense Fund. You may also note that my biography includes that I teach animal law. And what that allows, sir, is me to use animals and the intersection of animals and the law to teach a course to law school students.

This circles back to the Animal Legal Defense Fund in that the Animal Legal Defense Fund has a goal that is not my goal, but it certainly overlaps with what I teach, and that is broadening or creating animal rights.

Animal law, however, is much more expansive than that. It includes animal welfare, but, also, every place where animals intersect with the law. In estate planning, for instance, if one wants to make sure that animals are cared for; in tort situations, if an animal causes harm or if an animal is harmed; in criminal law, similarly.

Also, you heard Judge Black speak about his work in domestic relations. Well, there are other organizations that I'm also a member of, sir, that act especially to allow battered women a place to place their animals, because many battered women will not leave a home and leave a dog there.

In fact, there are examples where——

Senator COBURN. I understand that. My question is really do you really believe animals should have the right to have their interests represented in a court of law.

Judge PEARSON. In certain circumstances, sir, absolutely.

Senator COBURN. What would those be?

Judge PEARSON. For instance, and it already happens, this is not a new and novel idea. For example, in the industry of food, agriculture, the interests of the animal, which ostensibly is presented

as an interest in doing what is best and most healthy for individuals who eat animals, that is also a way in which animal interest is represented.

I don't want to mislead you into thinking that I'm an advocate for animal rights, because that is not the case. But I am an advocate for doing what is in the best interest of animals and, at times, that coincides with what is in the best interest of animals and humans, which is an example that agriculture and the representation of issues regarding agriculture and health—for instance, the H1N1 virus and things of that sort.

Senator COBURN. One final question on that and then I have no more questions for you. Is it in the best interest of a steer to be slaughtered?

Judge PEARSON. Probably not in the best interest of the steer, sir, but then you have to look beyond that. I mean, the steer is going to lose its life. It's a painful situation and steers, evidence has shown, through scientific testing, may have some idea or an apprehension about the slaughter that's impending.

But the next step is that is it necessary to slaughter the steer in order to provide food for those who would otherwise go hungry or perhaps be malnourished without the substance that this steer's flesh and hide could provide in terms of clothing and other matters necessary for the well being of animals.

Senator COBURN. I think I have a good understanding of what you are on that. Thank you.

Judge PEARSON. Thank you, Senator.

Senator COBURN. First Lady Freudenthal, thank you, number one, for being here. I had a couple of questions about the decision. In 2003, after your husband was elected Governor, you pledged not to appear before boards and commissions appointed by your husband and said you would build a Chinese wall between your law practice and state government.

Why did you later change that policy?

Ms. FREUDENTHAL. Thank you, Senator, for allowing me the opportunity to respond to that question. The position that was taken at that time was that I would move my practice away from appearance before governmental entities that my husband appointed. That was done in consultation with a professor at the law school who advised me that there was no ethical requirement to do so.

Over the course of his time in office, I concluded that that approach was not in the best interest of my clients; that the process of dealing with governmental agencies was not one that needed to be constrained in that fashion.

Most of my practice still remained in Federal court, as well as state court. But I did choose to move some of my matters and accept some practice areas dealing with government agencies.

Senator COBURN. You stated in your questionnaire that in 2001, you were hired by EchoStar Communications to review legislative activities, speak to legislators and testify before the House Revenue Committee on a bill under deliberation that would have changed the definition of telecommunication.

After your husband was elected Governor in 2003, you continued monitoring the legislation on behalf of EchoStar. Did you have any

ethical concerns about your work for them considering your husband was the chief executive of the state? Why or why not?

Ms. FREUDENTHAL. Thank you, Senator. The involvement that I chose to have at that time for that client was a monitoring one only. I did not testify before any legislative committees in, I believe it was 2006 or 2007, and I did not have any occasion to address the issue with the executive branch.

It was just a matter of following the legislation in that area so that were the law to be changed, my client would be fully informed of what the new requirements were.

Senator COBURN. Having been born in Wyoming, that is a very acceptable answer. Thank you.

Magistrate Black, a couple of questions. During your campaign for the Ohio Supreme Court in 2000, you stated that you view the law in the context of time and society. What did you mean by that statement?

Judge BLACK. Thank you, Senator, for the opportunity to respond to that. The law exists today and it existed in the past and in approaching any legal question, a judge is called upon typically to interpret the text of a statement and one does that in statutory construction.

But in society, different issues arise as futuristic developments occur that may never have been anticipated at the time the law was written, but the analysis is still the same. What does the law say? What does it mean?

What changes is merely the context and the time at which a judge is called upon to interpret the language.

Senator COBURN. So I have a better understanding, do you believe that judges should view the Constitution and the text in the context of time and society or what you just said, here is the application of the law, here is the written law, here is the background on the written law, and here are the facts?

Judge BLACK. The former, Senator, the text. But, for example, do you need a warrant to search somebody's cell phone? That was an issue that the founding fathers never addressed. But they wrote the law as to the protection against unreasonable searches and seizures. So one reads that text and applies it in a very different context than was originally written.

Senator COBURN. Thank you. This is a question for all of the judges and you can just "yes" or "no" it. I am a firm believer that the Constitution does not allow judges to use foreign law in the interpretation of our Constitution. Do you agree with that or disagree with that?

Judge BLACK. Which judge did you want to start with, Senator?

Senator COBURN. Whichever one wants to speak up first. See who the leaders are.

Judge BLACK. If you would be willing, I would like to respond to your inquiry at this time. And the question was whether we can use foreign law to interpret the Constitution. No.

Senator COBURN. Magistrate Pearson.

Judge PEARSON. Thank you, Senator. No.

Judge MARSHALL. I don't know. I have not thought about it, Senator Coburn.

Senator COBURN. Well, there is a document that puts out fairly clearly what our judges are to use, and it is the Constitution, the statutes and the treaties, and only the treaties when they are involved in foreign debate.

So you have a question on whether or not we should use that in that context?

Judge MARSHALL. Absolutely not. The Constitution is the supreme law of the land.

Senator COBURN. The Constitution does spell out the authority and role of judges and how they interpret law, would you agree to that?

Judge MARSHALL. Absolutely.

Senator COBURN. It does say what we are to use to do that, which is the statutes and the Constitution.

Judge MARSHALL. Absolutely, yes.

Senator COBURN. That is fine.

Judge MARSHALL. I'm sorry if I misunderstood.

Senator COBURN. That is fine.

Ms. FREUDENTHAL. Senator, if I have the privilege of being confirmed, I would look to the Constitution and the statutes and the precedent that has been set under those.

Senator COBURN. One final question, Mr. Chairman. You all have related, during your testimony today, the importance of stare decisis. Can I just have an affirmative that you believe that that is the ruling body of law that you will reference in terms of your position as Federal district judges in terms of the appellate division that you are in, as well as the Supreme Court?

Judge BLACK. Senator Coburn, my answer is yes.

Judge PEARSON. Senator Coburn, my answer is also yes.

Judge BLACK. Senator Coburn, my answer is also yes.

Ms. FREUDENTHAL. Yes, Senator.

Senator COBURN. All right. Thank you very much. Thanks for the indulgence.

Senator KAUFMAN. Senator Sessions.

Senator SESSIONS. Thank you. Ms. Freudenthal, with regard to your experience, I note that you do not have any experience litigating criminal cases and, actually, I think you have never tried a case before a jury.

One of the things you will be required to do as a Federal judge is to impose sentences. There is a congressionally-established sentencing guideline procured that is pretty complex. Actually, after a while, you can become real adept at it; but at first, it is a bit intimidating.

It used to be that that was mandatory and Congress having the power to set sentences, but somehow the Supreme Court felt they knew better and they have given a good bit of discretion now to the sentencing judge.

So I guess my question to you is do you understand that the sentencing guideline was designed, supported by Senator Kennedy and Senator Thurmond and Senator Biden and Senator Hatch, was designed to ameliorate against this idea that your sentence depended on what judge you were before; that similar crimes with similar backgrounds and nature should get——

So I guess my question is, will you express how committed you would be under the normal procedures to follow the guidelines even if they are advisory today?

Ms. FREUDENTHAL. Thank you, Senator, for the important question on sentencing. I appreciate that sentencing is a weighty matter that needs to be undertaken with careful and sober consideration and that there is significant value to consistency, as you've articulated that so well.

I want to assure you that I would give consideration to the sentencing guidelines.

Senator SESSIONS. Well, I suppose consideration is one thing, but can you tell us how much respect you would give to it? You do not have a background in this. Do you come at it with any views that you can express to us today?

Ms. FREUDENTHAL. Thank you, sir. As you've indicated, I definitely know that I have my work cut out for me. I plan on taking advantage of the resources that are available to judges and judicial education and, certainly, the knowledge and advice, through consultation with my colleagues.

In that context, I would give consideration to the sentencing guidelines. I do want to assure you that I appreciate that sentencing is done on a individual case-by-case basis.

So in the consideration of consistency, I feel reluctant to say that I would be committed to those, because I do believe sentencing is a weighty and individual matter.

Senator SESSIONS. Well, it is an individual matter and that is how we end up with two judges, one giving somebody probation and another one giving them 20 years for the same, because they think it is a dangerous philosophy.

I suggest, if you lack experience in sentencing, you scrupulously follow the guidelines, because they were established through a lot of hard work, how many convictions the individual has, whether there was violence in the case, how much was at stake and those kinds of things.

I think, essentially, they are very good. There are some cases perhaps that they are not appropriate or do not fit perfectly. But in the long run, I would be inclined to think we would be better following them than abandoning them.

Judge Marshall and Judge Pearson, you both dealt with the guidelines, at least to some degree. Could you express your basic philosophy and how you expect to handle or request from a defendant to depart from the guidelines perhaps and give a lesser sentence and maybe have their momma there and their preacher there, their children there? It can be a tough thing.

Judge MARSHALL. Thank you, Senator Sessions. I have not done anything like that in my judicial career and I echo what——

Senator SESSIONS. Well, you have handled plea bargains.

Judge MARSHALL. No, sir. On the court of appeals, all of that is done. My experience with the guidelines is soon after they were adopted, when I was a clerk with Judge Arnold, and we were struggling with implementing them.

I think there is great wisdom in those guidelines. I think that I would use the word respect, that they are entitled to respect from the district courts. There is, I understand, a long history on this

issue of Congress struggling with trying to achieve some uniformity on sentencing at the same time that, as Ms. Freudenthal said, we don't lose sight of the individual in a particular case.

I would not want to prejudge any particular case or issue and, as I have said before, I would follow the Supreme Court's precedent on the point, which, as I understand it, has the guidelines as important and entitled to respect, but advisory rather than mandatory. As their name implies, they are guidelines.

Senator SESSIONS. Judge Pearson.

Judge PEARSON. Thank you, Senator Sessions. You are correct, sir, when you say that sentencing is tough and, indeed, it should be. It's a very individual decision, but also one that's likely to have an impact beyond the individual defendant being sentenced and the advisory nature of the guidelines does not militate against the value the guidelines add in ensuring consistency in sentencing.

In fact, now we have two tools. Before there was the ability to depart upward or downward, which the guidelines itself permitted, but now we also have the opportunity for variance to employ that when the guidelines sentence, such as a probation, is not the appropriate sentence in this individual case, but perhaps a more lengthy term of incarceration is important.

So I can assure you that, if confirmed, in my judging, the sentencing guidelines would play a great and consistent role and allowing me to be sure that each individual defendant is given the most appropriate sentence, determined by the facts and the law.

There is also, as you well know, Senator Sessions, the codifications of the guidelines, to some extent, in the statute, 18 USC 3553, which I would also give consideration to.

Senator SESSIONS. Well, this is not a little matter. If we do not watch it, we are going to drift back into what courtroom you appear in and I have seen it in great judges, too, in my district. One could give probation for the same offense another would give 20 years for, just which court did you draw.

The sentencing guidelines consider so many things and it is a little bit complex and some people did not like it at first, but I think judges came to like it, because without it, you are faced with pleas on the prosecutor asking for a big sentence and the criminal and his family asking for leniency. Where do you go?

So I would just strongly urge you to——

Senator KAUFMAN. I just want to say this is one where Senator Sessions and I agree. When Senator Biden was first considering the sentencing guidelines, we got a letter in 1 day from a large prisoners group in Attica Prison in New York hoping that we were going to put sentencing guidelines, because all too often, to follow-up what Senator Sessions said, literally, there were two prisoners in the same cell for the same crime, one for 5 years and one for 15.

It is pretty compelling, the same time for the same crime is the most humane, fair, just way to go about doing it, again, taking into account individual judges faced with individual cases.

But I think Senator Sessions and I both say the guideline are put together, they have been in place for quite a while and what we are trying to do is have people feel that they are all treated uniformly before the law.

Senator SESSIONS. I believe you were here when all that occurred, working with Senator Biden.

Senator KAUFMAN. I was a staff person.

Senator SESSIONS. I am sure he did what you told him. We all do.

[Laughter.]

Senator SESSIONS. Judge Black, you were asked about the idea that you view the law in the context of time and society. Justice Scalia once pointed out that the problem with that is—now, you have got a good way, I think, going to the nub of it—is that there is an, quote, "impossibility of achieving any consensus on what precisely is to replace original meaning once that is abandoned."

So I think it is a dangerous thing and a serious matter, indeed, if you replace the original meaning by what a judge today might devine he or she thinks it ought to say today. Do you see that danger?

Judge BLACK. Thank you for the opportunity to comment on this, Senator. I see that danger and when I approach statutory construction or constitutional interpretation, first and foremost, I read the text, what does it say and what does it mean. And if it's clear and unambiguous, the analysis is over.

Senator SESSIONS. Well, unambiguous in terms of—all right. We could go round and round on this.

Judge BLACK. We could.

Senator SESSIONS. Scalia and others have for years and years.

Judge BLACK. Indeed. But if I'm confirmed as a district judge and have that high honor, great privilege, my work is not going to be extraordinarily lofty constitutional statutory interpretation, in large part. It's going to be the bread-and-butter of the Federal district courts doing things like applying the sentencing guideline.

Having been a sentencing judge for 16 years, I will afford the sentencing guidelines substantial deference and respect. I appreciate them. I'll tell you, in the Sixth Circuit, if you depart, you better have a specific, substantial, reasonable reason or you'll get reversed. So perhaps the Sixth Circuit's work may bring you some confidence.

Senator SESSIONS. Well, I think Judge Black, based on his experience, has given just good advice. I think, in the long run, unless you have come to know something special, you would be better off following the guidelines, because you can get off base.

Dr. Lynch, I think the Bureau of Justice Statistics is a very important office and I think it is very important that it preserve its, I think, pretty solid reputation as being independent and objective in its work.

I have never seen a President or an Attorney General yet that did not have beliefs and a philosophy about how they think the office should be conducted. If they did not have that, they are not fit for the job, in my opinion. It is a job that requires leadership and belief and conviction and a philosophy.

But you guys are supposed to give us the right data. If the Attorney General went out and made a big speech last week and your data does not support it, what is your view about how you should conduct your office?

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Mr. LYNCH. Senator, I think there is some very good guidance to be taken from the principles and practices of Federal statistical agencies and I think, if I were fortunate enough to be confirmed, it would be that guidance that I would adhere to in conducting myself in the office.

Senator SESSIONS. Well, Senator Coburn, I think, asked you some questions along that line, but I would just say that your group, when you were part of that study reviewing BJS programs, you recommended that BJS be moved out of Justice Programs and instead to report to the Attorney General and Deputy Attorney General directly, the idea that it would make it more prominent.

I am inclined to think that the more you get prominent, the more you get politicized and the danger that it is. When I was United States Attorney for 12 years, I always read those reports. I thought they were just full of insight, just so many things that actual objective data would convince you that your original thought was wrong, the facts do not bear it out.

So I would just say, first of all, I doubt that you should move the office. Second, I would charge you that you have got to protect the integrity of that office. You have said you will and I would have to take you at your word on that.

I know, in 2005, a dispute arose between the director of BJS and the Assistant Attorney General regarding the content of a press release. Did you talk about that with Senator Coburn?

Mr. LYNCH. Senator Coburn didn't bring it up. I referred to it indirectly.

Senator SESSIONS. Well, your panel recommended the Department of Justice not be permitted to make changes to the content or timing of the release of BJS work product, and I think that was probably a good approach. It is one that a good Attorney General should follow.

Senator Kennedy and I supported and were responsible for the passage of the Prison Rape Elimination Act of 2003. I understand you have criticized that or at least the part that required a review panel.

Mr. LYNCH. Are you referring to the panel report, Senator?

Senator SESSIONS. Right. The panel report, when you were part of that panel.

Mr. LYNCH. The panel did make comment on that, yes.

Senator SESSIONS. Do you recall what it is you did not like about that report?

Mr. LYNCH. When you're saying "you," again, it's the panel that you're referring to, Senator?

Senator SESSIONS. Well, you are stuck with it, unless you disavow it.

Mr. LYNCH. No. It's just I didn't write it. I didn't have authorship, but I was a panel member. I think that during—what the panel, I think, felt uneasy about with respect to PREA, I think, was the commingling of statistical functions with enforcement functions.

If you look at the principles and practices, they make a big point of that, that those should be kept distinct, if at all possible.

Senator SESSIONS. That has got some validity to it and I would agree.

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You have written a book about immigration and written an article for Casa de Maryland, which is a fairly controversial group, taking some pretty aggressive pro-immigration issues.

You wrote that "Empirical research generally does not support the allegation that immigrants are involved in criminal activity to a greater degree than the native population," close quote.

Well, we certainly—I totally agree that most immigrants of this country, even those that have entered unlawfully, abide by most of the laws of this country, except for immigration. So I do not dispute that.

But this was a serious argument you made. It is a matter of some national discussion and you make that fairly firm statement. But it has been estimated that illegal immigrants make up 27 percent of the Federal prison population, and that is a stunning number to me.

That is not people being held waiting to be deported. These are people who have been convicted of other crimes, such as assaults, thefts, drugs and that kind of thing.

Is that still your view on that subject?

Mr. LYNCH. Senator, let me correct one thing. You referred to a group, La Casa, I don't recall writing an article for them. I recall them taking excerpts from an article that I did or quoting it.

Senator SESSIONS. You are right. My staff just gave me a note. I did not understand it, but that is correcting me. You are correct. I apologize. It was they who quoted your article, which is quite different.

Mr. LYNCH. Trust me, Senator, every academic has cited every letter from his mother. So I remember that. So with respect to my—I did that research.

Interestingly enough, I started my interest in immigration with my interest in sentencing, comparative sentencing, and I was trying to figure out why the Germans could have such a low incarceration rate and I assumed what they were doing was deporting summarily foreigners who were engaging in crime, and that's how I started to tug at this particular thread.

So I had looked at it in a variety of contexts across national comparisons, as well as just domestically, and I stopped looking at it intently around 2003 or 2004. And I think, at that time, that's what the data led us to believe.

Senator SESSIONS. Well, thank you. I really feel like that Office of Justice Programs and BJS, OJP, all of these things have the potential, we have talked about this before, Senator Kaufman and I have, to really provide us some leadership in how to make criminal justice in America better; other parts, too, but particularly the criminal justice area.

That is a big job you have got. It requires independence and rigorous analysis. But if we can provide leadership and good data to states and localities who are wrestling with how to improve their law enforcement, I think we can reduce crime or reduce prison populations and make the system work better.

I do think we have an appointment to talk some more about that. But I would like to say I would be willing to hear from you if, in the course of your work, you conclude that, pretty clearly, if we did A and B instead of C and D, we would get a better result. I would

love to hear you come forward and say, "Senator, you ought to consider this policy change," and I would appreciate it if you would feel free to do that.

Thank you.

Senator KAUFMAN. I agree with Senator Sessions and I think when you look at the big change in terms of how we dealt with crime, positive things about how we dealt with crime the last 20-some years, it has been primarily around the use of statistics and new ways of doing it, using statistics in order to solve problems and deal with them. So I want to thank you for that.

If we do not have anymore questions, we will hold the record open for a week for members of the Committee who wish to submit questions.

Chairman Leahy has a letter, without objection, I would like to put into the record.

[The letter appears as a submission for the record.]

Senator KAUFMAN. Again, I want to thank the nominees for being here and I want to thank their families. It is a great sacrifice you are making, it is a great sacrifice your family is making. But I will tell you what. When you look back on life from where I am, the fact that you were there helping your country when your country needed it is something that just cannot be topped in terms of satisfaction.

So I want to thank you. You are qualified. We are grateful you are doing this service.

With that, we stand in recess.

[Whereupon, at 4 p.m., the hearing was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Responses of Timothy S. Black
Nominee to the U.S. District Court for the Southern District of Ohio
to the Written Questions of Senator Tom Coburn, M.D.

1. **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: In *Gonzales v. Raich*, the Supreme Court indicated that its *Lopez* and *Morrison* decisions are consistent with earlier Supreme Court Commerce Clause decisions.

2. **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.

3. **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 apply the analysis established by Supreme Court law.

4. **At your hearing, I asked you whether, in your view, it is ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution. You answered "no," for which I commend you. However, in a couple of cases including *Roper v. Simmons,* and *Lawrence v. Texas*, 539 U.S. 558 (2003), a majority of the Supreme Court considered and cited foreign law in its majority opinion. Do you believe the majority was incorrect in these cases? Please explain.**

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Response: I am bound by the Supreme Court's rulings and would apply Supreme Court law. I do not believe it is proper for judges to rely on contemporary foreign or international laws or decisions to determine the meaning of the U.S. Constitution.

a. Do you believe foreign law has any bearing on a court's interpretation of the Eighth Amendment? What about any other amendments?

Response: No, I do not believe that foreign law has any bearing on a court's interpretation of the Eighth Amendment or any other amendments.

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Responses of Timothy S. Black
Nominee to the U.S. District Court for the Southern District of Ohio
to the Written Questions of Senator Charles E. Grassley

1. **What is your view of the role of a judge?**

Response: The role of the judge is to decide each case with independence and impartiality, based solely on the evidence and the law.

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: None.

b. **Please provide an example of a case in which you have done so.**

Response: I have not 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 rule solely on the evidence and the law, without consideration of my own values.

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: None.

b. **Please provide an example of a case in which you have done so.**

Response: I have not 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.**

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Response: I rule solely on the evidence and the law, without consideration of my own policy preferences.

4. How do you define "judicial activism?"

Response: It is not a term I use, but I understand others to define it as conduct by a judge in deciding a case according to his or her own personal predilections and not based solely on the evidence and the law as required.

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Responses of Timothy S. Black
Nominee to the U.S. District Court for the Southern District of Ohio
to the Written Questions of Senator Jeff Sessions

1. **Prior to taking the bench, you were once a Director and President of Planned Parenthood Association of Cincinnati. Planned Parenthood has been very critical of the U.S. Supreme Court's opinion in *Gonzales v. Carhart*, which upheld as constitutional the Partial Birth Abortion Ban Act of 2003.**

   a. **Regardless of your personal *policy* preferences, do you believe that *Gonzales v. Carhart* was properly decided as a *constitutional* matter? Please explain your answer.**

      Response: Yes, *Gonzales v. Carhart* was properly decided as a constitutional matter because the role of the Supreme Court of the United States is to decide constitutional issues. If I have the privilege of being confirmed as a United States District Judge, I will be bound by the decisions of the Supreme Court and the United States Court of Appeals for the Sixth Circuit, as I am now.

   b. **If you are confirmed as a District Court judge, you will be bound by that precedent. Are you prepared to do so, despite the fact that you may personally disagree with the Supreme Court?**

      Response: Yes, I will be bound by the precedent of *Gonzales v. Carhart* and by all precedents of the Supreme Court and the United States Court of Appeals for the Sixth Circuit. I fully appreciate that my role as a trial court judge is to decide each case on the facts and law according to settled precedent.

2. **According to a press article, on at least one occasion you represented Planned Parenthood and advocated that five anti-abortion protesters be given substantial fines. In the course of doing so, you publicly stated that "if the protestors are fined substantially and often, and those fines are collected, it will help dissuade them. Incarceration makes them martyrs. Fine after fine after fine makes it tougher for them." I recognize that the protesters in that case were arrested for defying a judge's order and that you were advocating on behalf of a client.**

   a. **In your questionnaire, you stated that you were a Director of Planned Parenthood and also served as its President. The press article in which you were quoted identified you as Planned Parenthood's lawyer. Were you counsel for Planned Parenthood as well as a Director, or was the article inaccurate?**

      Response: The article was inaccurate. I was not Planned Parenthood's lawyer. Planned Parenthood had its own retained lawyer, Alphonse A. Gerhardstein. I was a Director of Planned Parenthood for three years, 20-plus years ago, and served as its President in one of those years. I did not represent the client Planned Parenthood as its lawyer.

b. Although I believe that we cannot tolerate people defying court orders, regardless of the seriousness of the political topic they wish to speak on, it is undeniable that orders and fines such as these have a chilling effect on free speech. Recently, in *G.B. v. Rogers*, you held that the manager of a store dealing in sexually-oriented materials could challenge the constitutionality of a law that required all people convicted of pandering obscenity to register as sex offenders. You based that holding on the "chilling effect" that the law might have on the traffic of sexually-oriented materials. How do you reconcile your concern for the chilling effect on free speech in *Rogers* with your statement regarding the abortion protesters?

Response: In *G.B. v. Rogers*, I decided only that plaintiff had stated a claim sufficient to survive a motion to dismiss. I ruled on a pre-trial question of law: did plaintiff have standing to bring the claim. In the protesters' case, they were violating a court order, and I believed that any chilling effect of prohibiting a person from acting in defiance of court orders was proper at law and required in an ordered democracy.

3. In *Kennedy v. City of Cincinnati* (Jan. 19, 2009), you held that the right to access public swimming pools was a property interest within the meaning of the Fourteenth Amendment because the pools were "open to all persons who [did] not possess a disqualifying condition, and plaintiff [sic] having been an approved purchaser of a pool pass, [thus] plaintiff had a legitimate claim of entitlement to access the pools [sic] and not merely a unilateral desire for access." The natural result is that, when a revocable license to enter property is granted by the government, it cannot be revoked without providing the licensee with notice and an opportunity to be heard. Do you believe that the Constitution requires notice and a hearing every time the government acts, according to its rights under a contract, in a way that deprives a party of a something he expected to gain from a contract? Please explain your answer.

Response: No. According to Supreme Court precedent, which I am required to and do apply, procedural due process, including notice and an opportunity to be heard, must be afforded only if the state's action will impinge upon a citizen's fundamental right (not simply upon a contract right).

4. During one of your campaigns for the Ohio Supreme Court, you referred to the seat held by the previous justice as "labor's seat." What did you mean by this statement?

Response: I said "this is labor's seat" while trying to motivate union members to work on my campaign. I meant that I wanted them to work on my campaign. I regret those four words, and I repudiated them promptly, because they did not reflect what I meant. I know that seats on courts do not belong to any special interest group.

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5. **You also contended that unless a "progressive majority" remained on the Ohio Supreme Court, "the lights go out at the Supreme Court" for "working men and women" and for "school kids."**

   a. **What did you mean by a "progressive majority"?**

      Response: I was endorsed by progressive groups and, in a heated, political campaign, my rhetoric was aimed to those supporters. By progressive majority, I meant a Democratic-endorsed majority.

   b. **Your comment seems to suggest that, as a judge, you would be an advocate for particular litigants, namely "working men and women" and "school kids." What is your view of the proper role of a judge?**

      Response: The role of a judge is to decide each case with independence and impartiality, based solely on the evidence and the law, and certainly not to act as an advocate for particular litigants.

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, do you believe that you fit President Obama's criteria for federal judges, as described in his quote?**

      Response: Yes, as I believe I am an understanding person. Yet I fully recognize that my role as a judge is to decide each case with independence and impartiality, based solely on the evidence and the law.

   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 Justice Sotomayor's statement.

   c. **What role do you believe empathy should play in a judge's consideration of a case?**

      Response: I do not believe that empathy should play any role in a judge's deciding of a case. Empathy is helpful to a judge only in communicating to all parties that their case will be decided impartially.

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d. 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 do not think it's ever proper for judges to indulge their own subjective sense of empathy in determining what the law means.

i. Please identify any cases in which you've done so.

Response: I have not done so.

ii. 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 have always ruled solely on the evidence and law and therefore I have never had to set aside my own subjective sense of empathy. In my 16 years as a trial court judge, I have felt sorry for some people against whom I have ruled, but I have ruled against them, whenever the evidence and law required it.

7. Please describe with particularity the process by which these questions were answered.

Response: I drafted my responses. I then finalized them, after discussing my drafts with representatives of the Department of Justice.

8. Do these answers reflect your true and personal views?

Response: Yes.

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Responses of Nancy D. Freudenthal
Nominee to the U.S. District Court for the District of Wyoming
to the Written Follow-up Questions of Senator Tom Coburn, M.D.

1. **On October 20, 2006, the Wyoming Tribune-Eagle published a recent letter to the editor, which quotes you as saying that you and your husband are "for a woman's right to choose, but are not pro-abortion."**

   a. **Please explain this statement, specifically how an individual can be for a "woman's right to choose" but not "pro-abortion."**

      Response: I believe a woman's right to choose relates to privacy and the woman's ability to make her own choice. I don't believe one can automatically conclude her personal choice will be for (pro) an abortion.

   b. **If confirmed, how would your belief in a "woman's right to choose" influence your decisions as a judge?**

      Response: If confirmed, my personal beliefs would not influence my decisions as a judge and I would strictly adhere to Supreme Court and Tenth Circuit precedent.

2. **In your questionnaire submitted to the Committee, you indicated that you have no experience litigating criminal cases. Criminal cases account for a substantial portion of the federal. You also indicated that you have never tried a case to a jury.**

   a. **How has your professional experience prepared you for the position to which you have been nominated?**

      Response: I have nearly thirty years experience working with statutes and constitutional provisions. I have six years of quasi-judicial experience as chairman of the Wyoming Board of Equalization, adjudicating tax disputes. I have fourteen years handling a primarily litigation-based practice. Criminal law, like tax law and other matters in litigation, is governed by the Constitution and statutes, with court interpretation. I believe this thirty-year professional experience has prepared me for the position to which I have been nominated.

   b. **If confirmed, how do you plan to educate yourself with respect to federal criminal law and the federal sentencing guidelines?**

      Response: If confirmed, I plan to study the criminal statutes, the case law, the Benchbook, and the numerous criminal publications issued by the Federal Judicial Center. I also plan to take advantage of the educational opportunities offered by the Federal Judicial Center. Finally, I plan to confer with the two active district court judges and the one senior district court judge for the District of Wyoming.

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3. **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: The Supreme Court said that *Lopez* and *Morrison* are consistent with earlier Commerce Clause decisions when it observed that both cases "preserved" "the larger context of modern-era Commerce Clause jurisprudence." *Gonzales v. Raich*, 545 U.S. 1 (2005). That jurisprudence historically recognized limits on Congress' power under the Commerce Clause. In *Lopez* and *Morrison*, the Supreme Court concluded that the two statutes in question had no logical connection to interstate commerce or any sort of economic enterprise, and were not related to a larger regulation of economic activity. Also, neither statute contained a jurisdictional element establishing that the federal cause of action is in pursuance of Congress' regulation of interstate commerce. This analytical approach is consistent with earlier Commerce Clause decisions.

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?**

   Response: No. Society does not interpret the Constitution. The Constitution is interpreted by the courts consistent with Supreme Court precedent. However, I do believe that constitutional principles established by precedent apply to new situations.

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 Supreme Court precedent.

   a. **How would you determine what the evolving standards of decency are?**

      Response: If required to determine the evolving standards of decency, I would follow the analysis established by Supreme Court precedent.

6. **At your hearing, I asked you whether, in your view, it is ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution. You answered "no," for which I commend you. However, in a couple of cases including *Roper v. Simmons*, and *Lawrence v. Texas*,**

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539 U.S. 558 (2003), a majority of the Supreme Court considered and cited foreign law in its majority opinion. Do you believe the majority was incorrect in these cases? Please explain.

Response: No. As I read *Lawrence v. Texas*, that decision relied on the U.S. Constitution. While foreign law was discussed, it was not the basis for the decision. In *Roper v. Simmons*, the Supreme Court discussed "international opinion" but expressly held that international opinion was not controlling.

a. Do you believe foreign law has any bearing on a court's interpretation of the Eighth Amendment? What about any other amendments?

Response: No.

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Responses of Nancy D. Freudenthal
Nominee to the U.S. District Court for the District of Wyoming
to the Written Follow-up Questions of Senator Grassley

1. **What is your view of the role of a judge?**

Response: The role of a judge in the U.S. District Court for the District of Wyoming is to follow the rule of law based on precedent from the United States Supreme Court and the Tenth Circuit, and to apply that law in an impartial manner to the established facts in the case at issue.

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 not 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 cannot recall 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 not 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.**

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Response: As chairman of the Wyoming State Board of Equalization, excise tax cases were considered by the Board wherein the taxpayer asserted a statute of limitations defense against the collection of unpaid taxes. Based solely on the law, I set aside my own policy preference and ruled that the unpaid taxes could not be collected.

4. How do you define "judicial activism?"

Response: I have no personal definition for this term. I understand the phrase to mean a philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usually with the suggestion that adherents of this philosophy are willing to ignore precedent.

Responses of Nancy D. Freudenthal
Nominee to the U.S. District Court for the District of Wyoming
to the Written Follow-up Questions of Senator Jeff Sessions

1. **Throughout your career, you have lobbied on behalf of approximately 12 businesses and organizations, which required you to advocate certain policy positions. Some have criticized you for continuing your lobbying efforts while your husband serves as Governor of Wyoming.**

   a. **How did you handle conflicts between your clients' positions and those positions advocated by your husband in his official capacity as governor?**

      Response: I declined representation if my clients' positions created a conflict with the positions advocated by my husband in his official capacity as governor.

   b. **Was there ever a time during your career when you advocated a policy position that was contrary to your own?**

      Response: Yes.

   c. **If confirmed, will you be able to put aside your policy beliefs and follow precedent?**

      Response: Yes.

2. **In your questionnaire, you indicated that you have no experience litigating criminal cases. Criminal cases account for a substantial portion of the docket you will handle if confirmed.**

   a. **How has your professional experience prepared you for the position to which you have been nominated?**

      Response: I have nearly thirty years experience working with statutes and constitutional provisions. I have six years of quasi-judicial experience as chairman of the Wyoming Board of Equalization, adjudicating tax disputes. I have fourteen years handling a primarily litigation-based practice. Criminal law, like tax law and other matters in litigation, is governed by the Constitution and statutes, with court interpretation. I believe this thirty-year professional experience has prepared me for the position to which I have been nominated.

   b. **If confirmed, how do you plan to educate yourself with respect to federal criminal law and procedure?**

      Response: If confirmed, I plan to study the criminal statutes, the case law, the Benchbook, and the numerous criminal publications issued by the Federal Judicial

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00339 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Center. I also plan to take advantage of the educational opportunities offered by the Federal Judicial Center. Finally, I plan to confer with the two active district court judges and the one senior district court judge for the District of Wyoming.

3. **As I mentioned during your hearing, I believe that the federal sentencing guidelines, although now advisory rather than mandatory, are an incredibly valuable tool for federal judges. 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 very little 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. **During your hearing, I was concerned by your responses to my questions regarding sentencing. You stated that you would give the guidelines "consideration" and that you "appreciate that sentencing is done on an individual case by case basis." But as I noted during the hearing, while it is true that sentences are meted out on a case by case basis, it is also true that Congress established the sentencing guidelines to reduce unwarranted sentencing disparity, which often occurred precisely because federal judges imposed sentences without considering the sentences other defendants received for the same crime. With this in mind, under what circumstances do you believe it appropriate for a district court judge to depart downward from the sentencing guidelines?**

      Response: I believe the sentencing calculation should begin with an accurate determination of the applicable sentencing range under the guidelines as the best compilation of consistent sentencing practices. The consideration of any departures or variances from the guidelines should be consistent with applicable guideline commentary and statutory factors. One example to depart downward might be a recommended plea agreement that includes specific justification for a departure, like substantial assistance to the government.

4. **You have been somewhat active in Wyoming politics throughout your career. If confirmed, how will your prior involvement in the political process influence your opinions as a judge?**

   Response: My prior involvement in the political process will not influence my opinions as a judge.

5. **Do you think it is ever proper for a judge to advocate or express his or her political beliefs or policy positions? If so, under what circumstances?**

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00340 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Response: A judge may only express his or her political beliefs privately. *See, Ethics Essentials*, Committee on Codes of Conduct, Judicial Conference of the United States, p.13. In my view a judge should avoid advocating or expressing policy positions because doing so would tend to undermine the public confidence in the integrity, impartiality, or independence of the judiciary.

6. **On October 20, 2006, the Wyoming Tribune-Eagle published a recent letter to the editor, which quotes you as saying that you and your husband are "for a woman's right to choose, but are not pro-abortion."**

   a. **Please explain this statement, specifically how an individual can be for a "woman's right to choose" but not "pro-abortion."**

      Response: I believe a woman's right to choose relates to privacy and the woman's ability to make her own choice. I don't believe one can automatically conclude her personal choice will be for (pro) an abortion.

   b. **If confirmed, how would your belief in a "woman's right to choose" influence your decisions as a judge?**

      Response: If confirmed, my personal beliefs would not influence my decisions as a judge and I would strictly adhere to Supreme Court and Tenth Circuit 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."

   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: I believe I am well qualified for nomination. Not knowing what the President meant by the quoted statement, I cannot speak to President Obama's selection criteria which are his own.

   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.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00341 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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c. What role do you believe empathy should play in a judge's consideration of a case?

Response: Empathy toward a person or a cause should not influence a judge's consideration of a case from the perspective of the application of the law to the facts, as such would be inconsistent with impartiality. I believe empathy only has a role in judicial temperament. Its presence influences the judge's treatment of participants with dignity, courtesy, patience and respect.

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 response above.

ii. Please identify any cases in which you've done so.

Response: I have not 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: In ad valorem tax matters, I was sympathetic to the situation of property taxpayers, particularly elderly taxpayers, who experienced steep increases in the assessed values of their homes based on the sale and development of surrounding properties. Notwithstanding my own subjective sense of empathy toward these taxpayers, I was required to rule based solely on Wyoming law which generally provides that property tax assessments for residential properties are based on comparable sales.

8. Supreme Court precedent is binding on all lower federal courts and Circuit Court precedent is 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?

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Response: I would rule based on established precedent.

9. Please describe with particularity the process by which these questions were answered.

Response: I read the questions and considered the issues raised in each question. I typed up my draft responses. I provided the draft responses to representatives from the Department of Justice and discussed the draft responses before they were finalized and submitted.

10. Do these answers reflect your true and personal views?

Response: Yes.

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James Patrick Lynch, to be Director, Bureau of Justice Statistics
United States Senate Committee on the Judiciary
January 27, 2010

1. **Mr. Lynch, at your hearing, you committed not to let politics influence the data produced by the Bureau of Justice Statistics and I commend you for that pledge. However, I am concerned that some of your statements relating to the crime statistics of illegal immigrants may suggest a lack of impartiality and an inability to set aside your personal biases and produce an unbiased analysis of statistics. I'd like to give you the opportunity to explain some of these statements. For example, you wrote that, "Almost everyone who has examined this issue and is not an ideologue has come to the same conclusion . . . In the United States, immigrants engage in common law crime at rates lower than the native population." Do you believe that anyone who examined crime statistics and reached a different conclusion is an "ideologue?" Please explain your statement.**

Politics should play no role in production of accurate, timely and useful data by the Bureau of Justice Statistics (BJS). If I am confirmed as the Director of BJS, I firmly commit to maintaining the agency's credibility as an independent federal statistical agency.

With regard to the above-referenced quote, my recollection is that this quote was not taken from something I wrote but from a phone interview with a Newsweek reporter. This sentence summarized a lengthy discussion of the data available at the time, which in my professional view as a criminologist and statistician strongly supported the conclusion that immigrants had lower rates of involvement in common law crimes than native born Americans. While I concluded that only those strongly committed to the opposite position would not be persuaded by these data, the use of the word "ideologue" carries a connotation that was unwarranted. In retrospect, it was inappropriate to use this word in summarizing my position.

   a. **Then, in another article you seem to contradict yourself stating: "The only prevalent type of crime for which the incarceration rate of immigrants exceeds that of citizens is drug offenses. Here, the incarceration rate of immigrants is about 237 percent higher than it is for citizens." You also state that: "Some data suggest that illegal immigrants have much higher rates of criminal involvement than legal immigrants. These same data indicate that rates of involvement in homicide and drug crimes are much higher for illegal immigrants than for citizens. But these data must be treated with some caution. . . . Some of the high rates of criminal involvement for illegal immigrants may be due to misidentifying legal immigrants and naturalized citizens as illegal immigrants. More importantly, the nature of drug enforcement may result in illegals being targeted for enforcement at much higher rates than other groups. Hence, the high rates of drug arrests and incarcerations for illegals may be due to enforcement policy rather than their disproportionate involvement in drug crimes." Can you please explain this seeming contradiction?**

      The seeming contradiction appears to involve one statement that immigrants have lower rates of involvement in common law crime and another that

65688.303

immigrants have high rates of drug crimes. I do not see this as a contradiction largely because drug offenses are not a common law crime. I refrained from making a definitive statement about drug offending because there was reason to believe that the drug incarceration rates for immigrants were artificially high and the extent of that overestimation could not be determined. I should note that these statements reflect my assessment and interpretation of data in my professional capacity as a criminologist and statistician, and are not influenced by my personal political positions or views.

i. Do you believe that the reason the "incarceration rate of immigrants is about 237 percent higher than it is for citizens" is merely due to enforcement policy and not because more illegal immigrants are committing crimes than citizens?

The quoted statement refers to the incarceration rate for drug crimes, not all crimes. No, I do not believe that the higher drug incarceration rates for immigrants are due merely, or even mainly, to drug enforcement policy.

ii. Do you think there is enough misidentification to skew the results to a point where the data is unreliable?

I do not know the precise volume of misidentification of immigration status that occurs in law enforcement generally.

iii. Do you believe that illegal immigrants are committing a crime when they enter the country illegally?

Yes.

b. Mr. Lynch, you also have stated that: "drug enforcement, unlike the policing of other crimes, is largely discretionary. . . . Police choose their targets. A great deal of drug enforcement takes place at the border. Citizens are not searched or otherwise inspected at the border of the United States unless there is good reason to do so. Immigrants, however, are subjected to more extensive inspections at the border. These inspections increase the likelihood of finding drugs and charging immigrants with drug crimes." Do you believe that it is unfair or unconstitutional to subject immigrants to more rigorous screening at the borders?

I do not believe it is unfair to subject non-citizens to greater scrutiny than citizens at the borders. I am not an attorney and would defer to the professional judgment of others as to the constitutionality of our government's border screening procedures.

c. In your book, *Immigration the World Over*, you wrote that data showing crimes rates for illegal immigrants as higher than for citizens may be due to misidentification of legal immigrants and naturalized citizens as illegals. Do

you think there is enough misidentification to skew the results to a point where the data is unreliable?

I do not know the precise extent of the misidentification of immigration status in law enforcement generally and specifically in the data that you refer to.

2. Last year, the National Resource Council of the National Academies produced a report entitled "Ensuring the Quality, Credibility, and Relevance of U.S. Justice Statistics,"[1] and that report mentions, particularly in reference to the National Crime Victimization Survey (NCVS) conducted by BJS, that BJS has a "problem of lengthy lag times between data collection and the release of results."[2]

a. How often does the Bureau of Justice Statistics (BJS) issue reports?

I have not done a systematic assessment of the frequency with which BJS releases reports in a given year. From a quick examination of the website it appears that in a typical year BJS issues about 30 formal reports. The agency also releases data in a variety of other formats including spreadsheets, on-line analysis websites and archived data sets as well as memoranda and telephone responses to queries.

b. While some topics on which BJS writes are up to date, many are several years old. Congress relies on many types of information, including BJS reports. Do you believe current BJS publications are timely? Why or why not?

I have not systematically analyzed the currency with which BJS data are available. I presume that the timeliness of these data is affected by resources, the cooperation of respondents and the speed with which data can be processed, verified and disseminated. While lags due to these factors are often difficult to reduce, if I am confirmed as Director of BJS, I will work to make BJS reports and other statistical products more timely.

c. How does BJS choose what specific issues within its eight general topic areas on which to write?

I do not know how BJS has in the past determined the specific issues to report on. If I am confirmed as Director of BJS, I would strive to issue routine statistics for most major data series on a fixed schedule. Reporting on other subjects would be determined by the availability of the data, staff resources and the need of various constituencies, including Congress, to have this information.

d. Will your views expressed in past research and writing influence the topics on which you direct BJS to write? Why or why not?

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[1] Robert M. Groves and Daniel L. Cork, ed., *Ensuring the Quality, Credibility, and Relevance of U.S. Justice Statistics*, National Resource Council of the National Academies, Washington, DC, 2009.
[2] *Id.* at 2.

If I am confirmed as the Director of BJS, the substantive views expressed in my past research and writing will not influence the topics addressed by the agency. As an academic researcher, I was free to write on topics of my choosing. As a federal statistical agency, BJS is required to report on topics defined by its mission statement. It also has the obligation to provide information on issues relevant to their various constituencies including Congress and the Department of Justice. This leaves very little room for the personal preferences of the agency director or staff to influence the choice of topics to be addressed.

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, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government."[3]

a. 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 BJS?

Yes. If confirmed, I will be committed to upholding the level of openness that President Obama advocated. As a federal statistical agency, BJS is transparent in that it provides detailed documentation of the methods used to collect the data it reports. The data are made available in public archives so that other persons and groups can analyze these data to replicate and elaborate upon the analyses done by the agency. If confirmed I would continue these practices and explore other ways of increasing the transparency of BJS and its products.

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.

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.

4. Since 2000, the Office of the Inspector General (OIG) has continuously ranked grant management as one of the DOJ's top management challenges every year. In

[3] *Transparency and Open Government*, Presidential Memorandum, January 21, 2009.

fact, at Attorney General Holder's confirmation hearing, he recognized that this must be treated as a "consistent priority" to prevent problems.

a. BJS oversees several grant programs within two major issue areas: criminal justice statistics and state, local and tribal assistance programs. What specific steps do you plan to take to improve grant management within BJS?

While I am familiar with BJS' grant programs, I am not privy to the detailed information required to identify problems and to suggest solutions at this time. If I am confirmed as the Director of BJS, I will be able to access the appropriate information on this issue and to respond to this question.

b. I assume you have spent some time reviewing the grant programs you will oversee at BJS. Can you give me some specific examples of waste at BJS that you intend to clean up (i.e., any egregious grants or bad agency practices about which you have read, etc.)?

While I am familiar with BJS' grant programs, I do not have the detailed information required to identify egregious grants or bad practices at this time. If I am confirmed as the Director of BJS, I will be able to access the appropriate information on this issue and to respond to this question.

c. If confirmed, will you commit to review all BJS grants for such examples, and get back to me as soon as possible with your results?

Yes.

5. 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."[4]

a. What changes, if any, do you plan to make to BJS grant oversight process and/or BJS staff assigned to review grant applications?

I am not aware of any specific criticisms of BJS' oversight procedures, but if I am fortunate enough to be confirmed and the review described in response to 4.c. above identifies problems requiring changes in oversight, I will make appropriate changes at that time.

b. Do you believe BJS 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?

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[4] *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.

Yes.

i. Should that include a requirement that grantees report on how they use federal funds in order to receive a grant?

Yes. In BJS' grant making process, grantees should report on how they used prior funds received from BJS.

ii. What role, if any, do you believe these results should play in making future grant awards?

Past performance on prior grants should be considered in making subsequent grant awards. All other things being equal, poor performance on prior awards should reduce the chance of receiving subsequent awards.

Senator Jeff Sessions
Questions for Professor James Lynch, Nominee,
Director, Bureau of Justice Statistics

1. **The National Academy Panel to Review BJS' programs, on which you served, recommended that BJS be moved out of the Office of Justice Programs and instead report to the Attorney General or Deputy Attorney General. Do you stand by that recommendation?**

   What matters most is that the credibility of the Bureau of Justice Statistics (BJS) as an independent federal statistical agency is maintained. To whom BJS reports, or where it is located, is secondary to that important goal. Politics should play no role in the agency's production of accurate, timely and useful data. If I am confirmed as the Director of BJS, I firmly commit to maintaining the agency's credibility and independence.

   In response to your specific question, this recommendation has engendered a great deal of debate around the issue of ensuring the independence of BJS as a federal statistical agency. In that debate, a number of knowledgeable people have noted several potential disadvantages of this particular strategy for promoting independence. I think that this discussion should continue until there is broad consensus on the wisdom of this change. In the meantime, there are a number of non-controversial steps that can be taken to bolster the independence of BJS. The *Principles and Practices for a Federal Statistical Agency* (2009), particularly Principle 4, provide useful guidance in this area.[1]

2. **Your panel seemed dismissive of the possibility that attaching BJS to the Attorney General or the Deputy Attorney General could politicize BJS, and argued that this concern was outweighed by the increased prominence BJS would receive if moved. Do you agree with that conclusion?**

   I do not believe that the Panel meant to appear dismissive of the danger of moving the agency closer to a cabinet officer. They weighed this danger against the problems that come from obscurity within a large department and an even larger government. Structural changes of this type would be less attractive if Congress and the Justice Department affirmed, as you did several times in the hearing, the importance of BJS as a valuable and independent statistical agency. Again, the *Principles and Practices for Federal Statistical Agencies*, especially Principle 4, provide useful guidance on this subject.

3. **As you know, the Attorney General and the Deputy Attorney General are the primary policy makers for the Justice Department. If BJS were required to answer to the Attorney General or his Deputy, do you agree this would render BJS more political, not less?**

[1] Constance Citro, Margaret Martin and Miron Straf (eds.), *Principles and Practices for a Federal Statistical Agency, Fourth Edition*, Washington, DC, National Academies Press (2009).

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00350 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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It is a legitimate concern that moving BJS closer to the Attorney General could politicize the agency. This relocation and the risks that it entails may not be necessary if other, less controversial steps were taken to ensure the independence and stability of BJS.

4. **Do you agree with your Panel's conclusion that the requirements of PREA compromised BJS' independence?**

PREA has, thanks to the skill and diligence of BJS staff, provided high quality information about a very important problem. At the same time, the comingling of enforcement and statistical functions does not so much threaten the independence of the agency as it does the cooperation of respondents that BJS needs to provide the routine statistics that you and others have come to rely on. If respondents in the correctional community perceive that their cooperation will result in negative consequences, then they will stop cooperating and the quality of our statistics will suffer in the long run. In addition, the sheer burden of the PREA data collection can sap the resources of the correction community to the point where they are not just unwilling but also unable to host our routine data collections.

The PREA data are too important not to have. We would welcome discussions with Congress to modify data collections so that they provide this important information while minimizing damage to our ongoing statistical series.

5. **During your hearing, in response to one of my questions, you said you believed your Panel was uncomfortable with the "commingling of statistical functions with enforcement functions." If PREA had not created a Review Panel with subpoena power, and had not required the Review Panel to hold public hearings, do you believe PREA would still have compromised BJS' independence?**

Taking the steps that you have described would substantially reduce any negative consequences on cooperation that result from the comingling of law enforcement and statistical functions. The burden issues referred to in question 4 would still need to be addressed.

6. **Do you think it is inappropriate for Congress to ask BJS to collect a particular set of data?**

Congress is a very important consumer of BJS data and it is entirely appropriate for Congress to ask BJS to collect specific information. When such requests are made, BJS, as an independent statistical agency, should be free to determine the methodology appropriate for collecting that information.

7. **Your Panel also recommended that the Director of BJS be confirmed to a fixed term (6 years), rather than an indefinite term, serving at the pleasure of the President. Do you agree with this recommendation?**

This type of appointment is employed in agencies, like the Bureau of Labor Statistics, where undue political influence could negatively affect the organization's functioning. The risk in

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00351 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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this method for ensuring independence is the inability to remove promptly a director who is clearly incompetent. I believe that this strategy will be effective in the case of BJS only if the appointment process places a very strong emphasis on technical competence and a career marked by scientific objectivity.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00352 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Responses of Denzil Price Marshall Jr.
Nominee to the U.S. District Court for the Eastern District of Arkansas
To the Written Questions of Senator Tom Coburn, M.D.

1. **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: *Lopez* and *Morrison* are consistent with the Supreme Court's earlier Commerce Clause decisions because the Court so held in *Gonzales v. Raich*, 545 U.S. 1, 23-25 (2005). Moreover, *Lopez* and *Morrison* reflect the settled law that the Congress' power under the Commerce Clause is not unlimited.

2. **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.

3. **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: My personal agreement or disagreement with Justice Kennedy's analysis for the Supreme Court in *Roper*, or the Supreme Court's analysis in any case, should not, does not, and will not have any effect on my decisions as a judge sworn to uphold the Constitution. I am duty-bound to follow the supreme law of the land and the binding precedent interpreting it.

   a. **How would you determine what the evolving standards of decency are?**

      Response: I would set aside my personal views. And I would follow binding precedent from the Supreme Court and the Court of Appeals for the Eighth Circuit.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00353 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

65688.312

4. **At your hearing, I asked you whether, in your view, it is ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution. After some clarification, you answered "no," for which I commend you. However, in a couple of cases including *Roper v. Simmons*, and *Lawrence v. Texas*, 539 U.S. 558 (2003), a majority of the Supreme Court considered and cited foreign law in its majority opinion. Do you believe the majority was incorrect in these cases? Please explain.**

Response: As a judge on the Arkansas Court of Appeals, I am bound to uphold our Constitution as interpreted by binding precedent from the Court of Appeals, the Arkansas Supreme Court, and the United States Supreme Court. If I am fortunate enough to be confirmed as U.S. District Judge for the Eastern District of Arkansas, I will be similarly bound to follow binding precedent from the Court of Appeals for the Eighth Circuit and the Supreme Court. The decisions in *Roper* and *Lawrence* are binding precedent, which I will follow until the Supreme Court overrules them. My personal view about the correctness or incorrectness of the Supreme Court's analysis in any binding precedent must not and will not make any difference in my work as a judge.

   a. **Do you believe foreign law has any bearing on a court's interpretation of the Eighth Amendment? What about any other amendments?**

      Response: A court's job is to interpret and apply the laws of the United States---including the Constitution, the supreme law of the land---insofar as necessary to decide cases. When a case requires a court to interpret the Eighth Amendment, any other amendment, or any part of the Constitution, the court must uphold our nation's fundamental law. That means enforcing the Constitution's text and following binding precedent about that text.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00354 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Responses of Denzil Price Marshall Jr.
Nominee to the U.S. District Court for the Eastern District of Arkansas
To the Written Questions of Senator Charles E. Grassley

1. **What is your view of the role of a judge?**

   Response: A judge decides cases according to the governing law. He or she puts personal views aside, follows precedent, treats everyone in the judicial process respectfully, acts impartially, and works hard to do equal justice under law.

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: None.

   b. **Please provide an example of a case in which you have done so.**

      Response: I have done my best not to do so and know of no such case.

   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: Grandparents and grandchildren have a natural and special relationship that, I believe, should be fostered. Arkansas has a statute governing grandparent visitation in the event of divorce. The statute establishes a rebuttable presumption that the custodial parent's decision denying or limiting grandparent visitation is in the child's best interest. I followed the statute and precedent in an opinion reversing a trial court's order that had approved grandparent/grandchild visitation. I did so even though, as a matter of my own values, I would have preferred that the law incline toward encouraging this relationship. A judge must strive to leave his or her personal views out of every case and follow the governing law wherever it leads.

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: None.

b. Please provide an example of a case in which you have done so.

Response: I have done my best not to do so and know of no such case.

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 my view, some errors of law are so egregious that---in extraordinary and limited circumstances---an appellate court may consider them even though the appealing party did not object in the trial court. This plain-error doctrine is a settled aspect of federal law. But Arkansas law is equally clear that (with a handful of narrow exceptions) there is no such thing as a plain error. I have followed the governing Arkansas precedent even though I do not believe it embodies the best policy of judicial administration.

4. How do you define "judicial activism?"

Response: "Judicial activism" is a much-contested term, which I do not generally use. A judge who decides cases based on his or her own views instead of the governing law, does not respect jurisdictional limits, or ignores binding precedent would, in my view, be exceeding the proper judicial role.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00356 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Responses of Denzil Price Marshall Jr.
Nominee to the U.S. District Court for the Eastern District of Arkansas
To the Written Questions of Senator Jeff Sessions

1. **In a 1990 law review article, you wrote:**

   "changes to our Constitutional structure—the New Deal and its commerce clause jurisprudence, the Warren Court's federalization and expansion of individual rights and the erosion of state sovereignty—have all occurred without taking the constitutional road to the decision of the people mapped out in Article V."

   a. **Do you believe that the Constitution should be altered without a duly ratified amendment? Please explain your answer.**

      Response: No. In this quotation I was describing part of our nation's constitutional history and some scholars' interpretation of that history. I do not believe that the Constitution should be altered without a duly ratified amendment. Article V prescribes the two ways of amending the Constitution. And because the Constitution is the supreme law of the land, those two ways are exclusive.

   b. **Do you believe that the Constitution has a fixed meaning, set out by the framers and embodied within the text of the document, or do you believe that there is a "living constitution?" Please explain your answer.**

      Response: I believe that the Constitution has a fixed meaning, set out by the framers and ratifiers and embodied within the text of the document. The meaning embodied in the Constitution's text does not change, but applies to modern situations unforeseen by those who wrote and adopted the text. I do not believe that the Constitution is a "living," ever-changing reflection of citizens' or judges' views at any particular moment.

   c. **Regardless of your personal views on a particular issue, if confirmed to the district court, you will be bound by Supreme Court and Circuit Court precedent. Are you prepared to follow that precedent, even though you may not believe that precedent reflects the current desires of the American people?**

      Response: Yes. One of a judge's most important obligations is to follow the law---including precedent---without regard to what the polls, the newspapers, or the neighbors say.

2. **In some of your published writings, you cited Professor Cass Sunstein. Professor Sunstein has argued that "[t]he Constitution does not set out the instructions for its own interpretation. A theory of interpretation has to be defended, rather than**

65688.316

asserted, and the defense must speak candidly in terms of the system of Constitutional law that it will yield." In other words, Professor Sunstein believes that a judge must defend his method of constitutional interpretation based on the results that will be reached by that method, not based on whether his methods represent the proper role of a judge. Do you agree with Professor Sunstein? Please explain your answer.

Response: I disagree with a results-oriented standard for evaluating methods of constitutional interpretation. Instead of focusing on results, a judge must set aside personal opinions, follow precedent, stay within jurisdictional lines, respect other branches of government directly accountable to the people, reason to a decision and explain that reasoning, and uphold the Constitution.

3. **In *Bedsole v. State*, 290 S.W.3d 607 (Ark. Ct. App. 2009), you held that an illegal seizure occurred where a police officer asked a driver – who he had pulled over and issued a warning citation – whether there were any drugs or weapons in the car. In that case, you were primarily applying the Arkansas Rules of Criminal Procedure and Arkansas state precedent. You reasoned that, because the police officer asked his question immediately after handing the driver the citation but before telling the driver he was free to go, a reasonable person would not feel free to ignore the question.**

   a. **Please explain why you determined the trial court's conclusion about whether a reasonable person would have felt free to ignore the question was a finding of law, which your court could review *de novo*, rather than a question of fact, which your court could only review for clear error.**

      Response: The Court of Appeals panel for which I wrote in the *Bedsole* case followed the closest Arkansas precedent governing the standard of review for the issue presented. The panel reviewed the trial court's decision on the motion to suppress *de novo* based on the totality of the circumstances, while deferring to the trial court's findings of fact and credibility determinations. *Lilley v. State*, 362 Ark. 436, 440, 208 S.W. 3d 785, 788 (2005); *Bumgardner v. State*, 98 Ark. App. 156, 158-59, 253 S.W. 3d 1, 3 (2007).

   b. **How does this holding reflect your view of the respective roles of trial and appellate courts and the restraint to be exercised by judges in each?**

      Response: The opinion that I wrote for the Court of Appeals panel in *Bedsole* reflects in several ways my views of the respective roles of trial and appellate judges and the restraint that judges in each court should exercise. First, the panel---as part of an intermediate appellate court bound by prior decisions of the Arkansas Supreme Court and the Arkansas Court of Appeals---followed binding precedent. Every judge, trial and appellate, must do this. Second, the panel's decision resolved a disputed question of law that the appellant had preserved in the trial court and argued on appeal. This is the usual and proper role of an

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00358 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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appellate court. Third, the panel deferred to the trial court's findings of fact and credibility determinations. Those decisions are best made by the fact-finder (often the trial judge) who saw and heard the witnesses.

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, do you believe that you fit President Obama's criteria for federal judges, as described in his quote?

Response: I believe that empathy---in the sense of being able to put yourself in another person's shoes---is an admirable personal quality, one that I strive for without complete success.

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 empathy should play in a judge's consideration of a case? Please explain your answer.

Response: As I understand the meaning of empathy, it has no role to play in a judge's consideration of a case. The judge must impartially apply the governing law to the facts.

d. 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: None.

ii. Please identify any cases in which you've done so.

Response: None insofar as I know.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00359 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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: The Arkansas Court of Appeals considers many cases in which the trial court has terminated parental rights and the parent has appealed. All these cases are heartrending in one way or another. But my job in them is to put my emotions aside and evaluate the trial court's decision for reversible error pursuant to the governing statutes and precedent.

5. **Please describe with particularity the process by which these questions were answered.**

Response: The Department of Justice e-mailed me these questions. I reviewed them, reflected on them, did some legal research, and drafted my answers. I conferred with DOJ lawyers about my drafts. I continued to think about my responses and tinker with my drafts. I sent my final responses to DOJ for forwarding to the Committee on the Judiciary.

6. **Do these answers reflect your true and personal views?**

Response: Yes.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00360 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Responses of Benita Y. Pearson
Nominee to the U.S. District Court for the Northern District of Ohio
to the Written Questions of Senator Tom Coburn, M.D.

1. **In your testimony last week in response to one of my questions, you stated that "the Animal Defense Fund has a goal that is not my goal." Does that mean you oppose the Animal Legal Defense Fund's goal of creating an Animal Bill of Rights?**

   Response: I am not familiar with the Animal Legal Defense Fund's goal of creating an Animal Bill of Rights or the text of any such document. Therefore, I have no view on that matter.

   a. **Do you believe animals should have standing in court?**

      Response: Existing law does not confer standing upon animals.

   b. **If so, to what extent?**

      Response: Animals do not have standing under existing law. On a case by case basis, however, courts have addressed whether standing should be conferred upon the legal representative of an animal. *See, e.g., Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) (finding that respondent lacked standing); *Animal Legal Defense Fund v. Glickman*, 154 F.3d 426 (D.C. Cir. 1998) (*en banc*) (finding ALDF had standing to challenge treatment of primates). If confirmed as a United States District Judge, I will apply the applicable legal precedent.

2. **You also stated that you are "not an advocate for animal rights" but that you are "an advocate for doing what is in the best interest of animals." Can you explain that distinction?**

   Response: Animal rights is not a term I use. Based upon your use of that term at the hearing and in these questions, I think it refers to abstract entitlements not necessarily based upon or attached to existing law. My understanding is that the law is intended to do what is in the best interest of animals and humans. If confirmed as a United States District Judge, I will apply existing law to the facts in a fair and impartial manner.

3. **ALDF's animal bill of rights advocates for the "right of farm animals to an environment that satisfies their basic physical and psychological needs" and "the right of wildlife to a natural habitat, ecologically sufficient to a normal existence and self-sustaining species population." Do you agree with these rights for animals?**

   Response: I am not familiar with the text of the ALDF's Bill of Rights beyond your quoted language above. Unless the ALDF's Animal Bill of Rights is enacted by Congress and made law, I would not apply it. If confirmed, I will apply existing law.

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a. If this bill of rights were enacted, who would determine what a farm animal's "basic psychological needs" are?

Response: I am not familiar with the text of the ALDF's Bill of Rights beyond your quoted language above. If ALDF's Animal Bill of Rights is enacted by Congress and I am confirmed and called upon to interpret it, I would do so as I would any other statute.

b. Would the "right of wildlife to a natural habitat, ecologically sufficient to a normal existence and self-sustaining species population" trump a business' right to develop land?

Response: I am not familiar with the text of the ALDF's Bill of Rights beyond your quoted language above. If ALDF's Animal Bill of Rights is enacted by Congress and I am confirmed and called upon to interpret it, I would do so as I would any other statute.

c. Would it trump the government's right to patrol the borders of our country if such patrol might interfere with local wildlife?

Response: I am not familiar with the ALDF's Bill of Rights and, therefore, cannot speak to who would make these determinations. If ALDF's Animal Bill of Rights is enacted by Congress and I were confirmed and called upon to interpret it, I would do so as I would any other statute.

d. How do you balance those interests?

Response: If confirmed as a United States District Judge, I would consider the facts and apply the applicable law.

4. Professor Cass Sunstein has written the following:

[A]nimals should be permitted to bring suit, with human beings as their representatives, to prevent violations of current law ... Any animals that are entitled to bring suit would be represented by (human) counsel, who would owe guardian like obligations and make decisions, subject to those obligations, on their clients' behalf.

a. Do you agree with Professor Sunstein?

Response: I do not know the context of this quoted language. Animals do not have standing under existing law. However, courts have ruled that, to the extent an animal has a legal interest that is justiciable, then that legal issue should be presented *via* competent legal representation, as is the case for other non-human litigants such as corporations.

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b. Do you believe an animal should be classified as "property" in our legal system?

Response: Animals are classified as property. *See, e.g.,* Sentell v. New Orleans, 166 U.S. 698 (1897) (addressing the property status of dogs). If confirmed as a United States District Judge, I will follow this and all other applicable precedent.

5. In your testimony you mentioned that you are "an advocate for what is in the best interest of animals and, at times, that coincides with doing what is in the best interests of animals and humans." How you do think we should handle animal rights when they *conflict*, rather than coincide, with the best interests of humans?

Response: If confirmed as a United States District Judge, I would follow existing precedent and applicable law, in determining how to handle animal rights when they conflict, rather than coincide, with the best interests of humans.

a. Must those rights be balanced or does the interest of humans always supersede the interests of animals?

Response: Like all conflicting interests wherein the law is implicated, the matter would have to be decided based upon its facts and the applicable law. If confirmed as a United States District Judge, I would follow existing precedent and applicable law.

6. In response to my final question, you suggested that the determination as to whether slaughtering a steer infringes upon the rights of that steer depends upon whether the slaughter is "necessary ... in order to provide food for those who would otherwise go hungry." Is it your belief, then, that a slaughter is inappropriate unless it is *necessary* to prevent human starvation?

Response: No.

a. What if the meat from the steer will be used to feed humans who could otherwise subsist on a strictly vegetarian diet without any threat of starvation?

Response: To my knowledge there is no prohibition against using meat from a steer in that fashion. If confirmed as a United States District Judge, I would follow existing precedent and applicable law.

7. Do you believe that trophy hunting should be illegal since it is not necessary for human subsistence?

Response: No. Hunting, within the parameters permitted by law, is legal. If confirmed as a United States District Judge, I would follow existing precedent and applicable law.

8. 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.

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a. Generally speaking, are *Lopez* and *Morrison* consistent with the Supreme Court's earlier Commerce Clause decisions?

Response: In *Gonzales v. Raich*, 545 U.S. 1, 23 (2005), the Supreme Court indicated that its *Lopez* and *Morrison* decisions are consistent with prior 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." *Id.*

9. 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 interprets it. 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.

10. 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, if confirmed as a United States District Judge, I would apply Supreme Court precedent.

11. At your hearing, I asked you whether, in your view, it is ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution. You answered "no," for which I commend you. However, in a couple of cases including *Roper v. Simmons*, and *Lawrence v. Texas*, 539 U.S. 558 (2003), a majority of the Supreme Court considered and cited foreign law in its majority opinion. Do you believe the majority was incorrect in these cases? Please explain

Response: The decisions in *Roper* and *Lawrence* were ultimately decided based upon United States law. The mention of foreign law does not change that. I fully accept that as precedent to be followed, and will do so if confirmed as a United States District Judge. A decision by the Supreme Court should help to develop, clarify or harmonize the law. To that end, some

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Justices have found it useful, for purposes of comparison, to explore 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, though always relying on American law. Beyond this, 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 state any viewpoint regarding the correctness of the majority's dicta.

a. Do you believe foreign law has any bearing on a court's interpretation of the Eighth Amendment?

Response: If confirmed as a United States District Judge, I would not interpret the Constitution or its amendments based upon foreign law.

b. What about any other amendments?

Response: If confirmed as a United States District Judge, I would not interpret the Constitution or its amendments based upon foreign law.

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Responses of Benita Y. Pearson
Nominee to the U.S. District Court for the Northern District of Ohio
to the Written Questions of Senator Charles E. Grassley

1. **What is your view of the role of a judge?**

Response: A judge plays the key role in dispute resolution. In 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 meaning of legal text and applicable legal precedent.

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: None.

b. **Please provide an example of a case in which you have done so.**

Response: None.

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: None.

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: None.

b. **Please provide an example of a case in which you have done so.**

Response: None.

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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.

4. How do you define "judicial activism?"

Response: I define judicial activism as judicial action designed to achieve a predetermined goal, despite the applicable law and facts. I believe in judicial restraint. Congress writes the law. Judges apply the law to the facts. If confirmed, that is what I intend to do.

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Responses of Benita Y. Pearson
Nominee to the U.S. District Court for the Northern District of Ohio
to the Written Questions of Senator Sessions

1. **In question number 18 of your questionnaire, you were asked to describe the most significant legal activities you have pursued, including significant litigation. You have had a diverse legal career and your response did not describe past legal activities.**

   a. **Please describe, in detail, the most significant legal activities you have pursued, including cases and individuals you have prosecuted or represented.**

   Response: Of the 15 years since I became an attorney, I spent eight as an Assistant United States Attorney, three in private litigation practice and two as a law clerk to a United States District Judge. Since 2008, I have served as a United States Magistrate Judge.

   As an Assistant United States Attorney (AUSA) for the Northern District of Ohio, I served my entire eight-year tenure investigating and prosecuting cases in the Organized Crime and Public Corruption Strike Force Unit of the criminal division. My activities included working with Federal and State law enforcement officers to investigate matters and to prepare them for presentation to grand juries and for trial in District Court. As is typical for Federal prosecutions, I resolved many cases by plea agreement, after significant negotiation. Several of the cases listed in my questionnaire as among the most significant litigated matters that I personally handled are also representative of my legal activity as an AUSA. For example, in *United States v. Onunwor*, I was co-counsel in the trial of a sitting mayor, who a jury then convicted of bribery and bankruptcy fraud. The *Onunwor* investigation also led to the conviction of three additional public officials, among others. In *United States v. Lay*, I was lead trial counsel in a major securities fraud case that presented many novel issues of first impression for the Sixth Circuit. I was assisted in the investigation of the charges against *Lay* and the preparation for trial by a multi-jurisdiction task force of approximately 25 persons whose daily activities I supervised. In addition to winning a conviction of Lay, the investigation led to the conviction of the Chief Financial Officer of the Ohio Bureau of Workers' Compensation and a guilty plea to ethics violations by the then Governor of Ohio.

   As a litigation associate at Jones Day (1998-2000) and McDonald Hopkins Burke and Haber (1995-1996), I participated in pretrial motion practice and trials in both in State and Federal courts. These trials included a complex contract dispute, in which we represented a hospital suing one of its medical groups in State court, and a two-month antitrust trial in the United States District Court, in which we represented a real estate company claiming anticompetitive behavior by the then leaders in the market.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00368 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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From 1996 to 1998, I served as a law clerk to United States District Judge John M. Manos. I assisted Judge Manos with legal research and writing. I have aspired to adhere to Judge Manos' unwavering dedication to the law during my service as a United States Magistrate Judge and would continue to do so if confirmed as a United States District Judge.

2. **In your questionnaire, you described a speech you gave to the Advent Lutheran Church during Women's Day 2009. Even though you did not have a copy of the speech, you described a situation where you exercised leniency in a case in which a man had violated the terms of his supervised released. Please describe this situation in detail, including your reasons for exercising leniency.**

Response: In this presentation, I discussed an offender serving a term of supervised release, who had violated the release conditions by repeated failure to report to his probation officer. I issued a warrant for the offender's arrest and ordered him to appear in my Court. After the offender admitted to the reported violations, I engaged him in a colloquy and learned that his income was extremely limited and that he had been prescribed a number of medications for serious medical conditions, including a heart condition, that he had not taken in several weeks because he had run out of both his prescription medications and money. Rather than impose a sanction such as re-incarceration, I ordered the offender to go from the courthouse to the pharmacy and commit to keeping current with his prescription medications and his probation office appointments. To my knowledge, the offender has complied with both my orders.

   a. **Do you think it is proper for a judge to rely on his or her personal beliefs when issuing an opinion or ruling on a case? Please explain why or why not.**

   Response: No. Personal preferences have no role in judging and certainly no role in my judging. If confirmed as a United States District Court Judge, I will apply the law the facts, not feelings or personal preferences to the facts.

   b. **As an Assistant U.S. Attorney, what factors did you consider to determine whether leniency should be exercised?**

   Response: Exercising leniency is not the role of an Assistant United States Attorney. I charged appropriately and prosecuted robustly.

3. **In your questionnaire, you noted that you are a member of the Animal Legal Defense Fund ("ALDF"). As you noted during your hearing, you also teach Animal Law at Cleveland-Marshall College of Law. According to the syllabus you provided, your course includes a section devoted to constitutional standing. The ALDF advocates that animals should be considered "legal persons" and have "standing" in court. Do you believe that animals should be conferred legal standing to bring a lawsuit?**

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00369 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Response: Existing laws do not confer standing upon animals. On a case by case basis, however, courts have addressed whether standing should be conferred upon the legal representative of an animal. *See, e.g., Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) (finding that respondent lacked standing); *Animal Legal Defense Fund v. Glickman*, 154 F.3d 426 (D.C. Cir. 1998) (*en banc*) (finding ALDF had standing to challenge the treatment of primates). If confirmed as a United States District Judge, I will enforce applicable legal precedent.

4. **Professor Cass Sunstein has written the following:**

"[A]nimals should be permitted to bring suit, with human beings as their representatives, to prevent violations of current law … Any animals that are entitled to bring suit would be represented by (human) counsel, who would owe guardian like obligations and make decisions, subject to those obligations, on their clients' behalf."

   a. **Do you agree with Professor Sunstein? Please explain why or why not.**

      Response: I do not know the context of this quoted language. Animals do not have standing under existing law. However, courts have ruled that, to the extent an animal has a legal interest that is justiciable, then the legal issue should be presented *via* competent legal representation, as is the case for other nonhuman litigants such as corporations.

   b. **Do you believe an animal should be classified as "property" in our legal system?**

      Response: Animals are classified as property. *See, e.g., Sentell v. New Orleans*, 166 U.S. 698 (1897) (addressing the property status of dogs). If confirmed as a United States District Judge, I will follow this and all other applicable precedent.

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, do you believe that you fit President Obama's criteria for federal judges, as described in his quote?**

      Response: Given that President Obama nominated me, I can only assume that I fit the criteria the President has established for nomination to the Federal bench.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00370 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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 empathy should play in a judge's consideration of a case?

Response: None. Empathy should play no role in deciding the law.

d. 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: None.

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: None. My subjective sense of empathy does not enter my mind so I do not have to set it aside.

6. Supreme Court precedent is binding on all lower federal courts and Circuit Court precedent is 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 apply the precedent of the Supreme Court and the Court of Appeals for the Sixth Circuit.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00371 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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7. **Please describe with particularity the process by which these questions were answered.**

Response: I read the questions, drafted responses, discussed my draft responses with attorneys for the Department of Justice, finalized my responses, and forwarded my responses to the Department of Justice for submission to the Committee on the Judiciary.

8. **Do these answers reflect your true and personal views?**

Response: Yes

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SUBMISSIONS FOR THE RECORD

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

November 12, 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. James P. Lynch to serve as the next Director of the Bureau of Justice Statistics (BJS) at the Department of Justice. We hope that the Senate Judiciary Committee will move swiftly in confirming his nomination.

We believe Dr. Lynch is an outstanding candidate, who will bring with him experience in survey design, an understanding of criminal justice issues broadly, and a working understanding of the Bureau and its needs. Dr. Lynch currently serves as a Distinguished Professor at John Jay College in New York. He spent the previous nineteen years as a faculty member in the Department of Justice, Law and Society (JLS) at American University, ultimately serving as chair of the department before joining John Jay in 2005. Over the course of his career, he has been elected to serve on the Executive Board of the *American Society of Criminology,* the editorial boards of *Criminology* and the *Journal of Quantitative Criminology,* and as Deputy Editor of *Justice Quarterly.*

The Bureau of Justice Statistics is responsible for collecting, analyzing, and disseminating data on crime, criminal offenders, and victims of crime. The information that the Bureau collects is critical to Federal, State, and local policymakers, and plays a key role in developing effective responses to combating crime. BJS conducts the National Crime Victimization Survey, and is our nation's source for demographic statistics about all aspects of the justice system: including the processing of people accused of crime, the management and administration of justice, and even some aspects of the impact of the justice system on families and communities. Reports

from BJS are relied upon to compare states' sentencing practices, learn about the fast-evolving drug problem in the nation, measure correctional growth and costs, and estimate cost-savings of alternative criminal justice strategies. There is no other source for data and reports such as these, and the independence of this office makes its findings of inestimable importance for planning and evaluation of criminal justice policies and practices.

Experience has shown that for a successful Director, BJS requires a person knowledgeable in the scientific aspects of demography, the mechanical particulars of gathering and preparing survey data for public use, and the protocols for scientifically acceptable sampling and statistical estimation. The nation can ill afford weak leadership of this crucial source for data on which policy makers and scientists alike rely. Dr. Lynch's years of experience as a researcher and leader in our field have prepared him to excel in this role. In 1980 he joined the Bureau of Social Science Research and over the next six years served as the manager of the National Crime Survey Redesign. He has also chaired the American Statistical Association's Committee on Law and Justice Statistics, and served as a member of the National Academies of Science panel reviewing BJS programs. We are confident that Dr. Lynch will bring to this position his sophisticated understanding of survey research and design, and his knowledge of the application of public justice data to criminal justice planning and management.

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. On behalf of our more than 6,000 members, we urge you to support the nomination of Dr. Lynch to serve as the next Director of BJS.

Sincerely yours,

Richard Rosenfeld
President, 2009-2010
American Society of Criminology
Curators Professor
Department of Criminology and Criminal Justice
University of Missouri - St. Louis

Janice Joseph
President, 2009-2010
Academy of Criminal Justice Sciences
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Opening Statement of Senator Ted Kaufman (D-DE)
Senate Judiciary Committee Nominations Hearing

I am pleased to call this nominations hearing of the Senate Committee on the Judiciary to order. And I thank Chairman Leahy for permitting me to chair this hearing.

I'd like to welcome each of the nominees, their families, and friends to the United States Senate, and congratulate them on their nominations.

I would also like to welcome those of my colleagues who are here to introduce the nominees. I'm pleased to note that Republican and Democrat Senators have worked together to bring us these well-qualified individuals today.

Today we welcome first the First Lady of Wyoming, Nancy Freudenthal, nominated to be a Judge in the District of Wyoming. If confirmed, Ms. Freudenthal will be Wyoming's first female federal judge. Wyoming has a history of promoting equal rights for women. It first gave women the right to vote in 1869, 21 years before achieving statehood and 51 years before the ratification of the 19th Amendment. She will be introduced by her home state Senators, Senator Michael Enzi and Senator John Barrasso.

We would also like to welcome The Honorable Denzill Price Marshall, Jr., nominated to be a Judge in the Eastern District of Arkansas. Judge Marshall is currently a judge on the Arkansas Court of Appeals.

He will be introduced by his home state Senators, Senator Blanche Lincoln and Senator Mark Pryor.

We further welcome The Honorable Benita Pearson, nominated to be a Judge in the Northern District of Ohio. If confirmed, Judge Pearson will be Ohio's first African-American female federal judge. She will be introduced by her home state Senator, Senator Sherrod Brown.

Welcome also to The Honorable Timothy Black, nominated to be a Judge in the Southern District of Ohio. Judge Black currently serves the Southern District as a magistrate judge and previously was a municipal court judge in Hamilton County, Ohio. He will also be introduced by Senator Brown.

Finally, we welcome Dr. James Patrick Lynch, nominated to be Director for the Bureau of Justice Statistics at the U.S. Department of Justice.

Over the last 30 years, Dr. Lynch has been involved in major efforts to build and improve our crime and criminal justice statistics systems. I look forward to introducing him.

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On Executive And Judicial Nominations
January 20, 2010

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. The nomination of Nancy D. Freudenthal to a seat on the the District of Wyoming has the support of both of Wyoming's Republican Senators, Senator Enzi and Senator Barrasso. The nomination of Judge D. Price Marshall, Jr., to fill a vacancy on the Eastern District of Arkansas has the support of Senators Lincoln and Pryor. The nominations of Judge Benita Pearson and Judge Timothy Black to fill Ohio vacancies on Federal district courts have the support of Senator Voinovich, a Republican, and Senator Brown, a Democrat. I trust that these nominees will be treated well by the Committee, and will receive the prompt consideration they deserve.

With the cooperation of Senator Sessions, the Judiciary Committee considered nominations in regular order during the first session of this Congress, and I expect that we will continue on that path during the second session. I wish I could say the same for the Senate's consideration of nominations reported by this Committee.

The Senate this morning at last considered the long-stalled nomination of Judge Beverly Martin of Georgia to the U.S. Court of Appeals for the Eleventh Circuit. Even though Judge Martin is a well-respected district court judge with the strong support of both of her home state Republican Senators, and even though this Committee reported her nomination promptly and without a single dissenting vote, her nomination was stalled on the Senate Executive Calendar for over four months. After four months of delay, Senate Republicans today spoke in glowing terms about her, and she was confirmed unanimously. No Republican accounted for the delay.

The delays in considering Judge Martin's nomination, along with delays for seven other judicial nominations currently on the Senate's Executive Calendar, are the result of a Republican strategy to stall, delay, and obstruct that began last year and led to the lowest number of judicial confirmations in more than 50 years. Despite the fact that President Obama began sending judicial nominees to the Senate two months earlier than President Bush, only 12 of his judicial nominations to Federal circuit and district courts were confirmed last year. Not since 1953—a year in which President Eisenhower only made nine nominations, all of which were confirmed—have fewer judicial nominees been confirmed in the first year of a Presidency. The number of confirmations last year fell below even the 17 confirmations the Senate Republican majority allowed during the 1996 session.

We confirmed more than twice as many judges during President Bush's first tumultuous year. In the second half of 2001, a Democratic Senate majority proceeded to confirm 28 judges. In the 17 months

that I chaired the Senate Judiciary Committee during President Bush's first term, the Senate confirmed 100 of his judicial nominees. Yet Republicans have refused to agree to the consideration of President Obama's qualified, noncontroversial nominees for weeks and months. This has led to an historic backlog on the Senate Executive Calendar.

At the end of President Bush's first year in office, only four judicial nominations were left on the Senate Executive Calendar, all of which were confirmed soon after the Senate returned in 2002. At the end of President Clinton's first year, just one judicial nominee was left on the Senate Executive Calendar. At the end of President George H.W. Bush's first year, a Democratic Senate Majority left just two judicial nominations pending on the Senate Executive Calendar. At the end of the first year of President Reagan's first term—a year in which the Senate confirmed 41 of his Federal circuit and district court nominees—not a single judicial nomination was left on the Senate Executive Calendar. This past December, Senate Republicans left 10 of President Obama's judicial nominees without Senate action, and insisted on returning two of them to the President so that they would have to be renominated.

Judicial vacancies have now skyrocketed to over 100, undoing years of hard work. 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 Federal circuits. As matters stand today, judicial vacancies have spiked and are being left unfilled. We started 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. That is the true measure of how far behind we have fallen. This is wrong. The American people deserve better. The cost of Republican Senators' obstruction will be felt by ordinary Americans seeking justice in our overburdened Federal courts.

While President Obama has moved beyond the judicial nominations battles of the past and reached out to work with Republicans and make mainstream nominations, Senate Republicans continue their tactics of delay. The lack of Senate action last year is attributable to Senate Republicans and no one else. President Obama has reached across the aisle to consult with Republican Senators. He has made quality nominations. The nominations before the Committee today are another example of that.

Nancy D. Freudenthal is nominated to be a U.S. District Judge for the District of Wyoming. She is a litigation partner at the law firm of Davis & Cannon in Cheyenne, Wyoming, where she has practiced for nearly 15 years. She also worked for nearly a decade as an intergovernmental affairs attorney in the Wyoming Governor's office, and she has chaired both the Wyoming Tax Commission and the Wyoming Board of Equalization. Ms. Freudenthal is currently the First Lady of Wyoming. In that capacity, she leads a nationwide collaboration of gubernatorial spouses who are working together in a nonpartisan effort to stop underage drinking. She received both her B.A., Phi Beta Kappa, and her J.D., Order of the Coif, from the University of Wyoming. If confirmed, Ms. Freudenthal will be the first woman to serve as a Federal judge in Wyoming.

President Obama has nominated Judge D. Price Marshall, Jr. to serve on the U.S. District Court for the

Eastern District of Arkansas. He has served as a judge on the Arkansas Court of Appeals for three years, and before that he practiced law for 15 years at the Jonesboro, Arkansas firm of Barrett & Deacon. Judge Marshall received his B.A., cum laude, from Arkansas State University, where he is currently an adjunct professor. He received his M.S. from the London School of Economics and his J.D., cum laude, from Harvard Law School.

Judge Benita Pearson has been nominated to sit on the U.S. District Court for the Northern District of Ohio. Currently a magistrate judge on that court, she formerly spent eight years as a federal prosecutor in Cleveland. She also worked for three years as a lawyer in private practice at two Cleveland law firms. She earned her B.S. from Georgetown University and her J.D. from Cleveland State University's Cleveland-Marshall College of Law, where she is currently an adjunct professor. If confirmed, Judge Pearson will be the first African American woman to serve as a Federal judge in Ohio.

Judge Timothy Black is nominated to be a U.S. District Judge for the Southern District of Ohio. He has served that district as a magistrate judge for nearly six years. Previously, he was a municipal court judge in Hamilton County, Ohio, and before that he was a civil litigator with the firm of Graydon Head & Ritchey in Cincinnati. Before and during law school, Judge Black worked as an English teacher. He received his B.A., cum laude, from Harvard University and his J.D. from the Salmon P. Chase College of Law at Northern Kentucky University, where he was an editor of the law review.

President Obama has nominated Dr. James Lynch to be the Director for the Bureau of Justice Statistics within the U.S. Department of Justice. Currently a professor at John Jay College of Criminal Justice of the City University of New York, Dr. Lynch has been involved in most of the major efforts to build and improve our national statistics on crime and criminal justice systems over the past three decades. Previously, he was a professor at American University and a research associate with the now-defunct Bureau of Social Science Research, Inc. He earned his B.A., Phi Beta Kappa, from Wesleyan University, and his M.A. and Ph.D. from the University of Chicago.

I welcome all of the nominees and their families to the Committee today, and I hope they will receive prompt and fair consideration.

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University of Missouri St. Louis

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November 10, 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 James P. Lynch for the position of Director of the Bureau of Justice Statistics in the Office of Justice Programs, U.S. Department of Justice. The Bureau of Justice Statistics (BJS) is a small but absolutely critical agency charged with developing, gathering, and maintaining the Nation's statistics on crime and justice. The Director of the agency must be someone who is highly skilled, knowledgeable about the value of crime and justice statistics, and committed to the principals and practices of a federal statistical agency as stated by the National Research Council. Dr. Lynch possesses all of these qualities and more. He is also widely respected by his peers, as evidenced by his elections to various offices of the American Society of Criminology, his prestigious academic appointments, and his position as editor of the Journal of Quantitative Criminology. He has also served on the American Statistical Association advisory committee to BJS and as a research fellow to the agency. There is no other criminologist who possesses this range of expertise and experience with crime and justice statistics.

I have known Dr. Lynch for many years, most recently through our service on the National Academy of Sciences Committee on National Statistics, which was charged with assessing the full range of statistical programs at BJS. It was evident throughout our numerous meetings that Dr. Lynch is the preeminent expert on the data collections of BJS, and that he has a clear and objective eye for assessing the quality and usefulness of these statistical systems. I believe he will be dedicated servant to both the public and to government officials who depend on unbiased data for informing policy decisions about crime and justice in the United States.

I believe that the Nation would be fortunate to have Dr. Lynch serve as Director of the Bureau of Justice Statistics and I very strongly urge the Senate to confirm his nomination.

Respectfully,

Janet L Lauritsen

Janet L. Lauritsen
Professor

an equal opportunity institution

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Testimony of Senator Mark Pryor
Before the Senate Judiciary Committee
On the Nomination of Price Marshall Jr.

I would like to thank Chairman Leahy, Ranking Member Sessions and members of the Committee for allowing me to introduce Judge Price Marshall Jr.

I am honored to sit before you today and recommend Price Marshall Jr. for confirmation as a federal judge for the Eastern District of Arkansas. Throughout the confirmation process, I believe this Committee will come to understand why Judge Marshall has earned a reputation in legal circles and around the state of Arkansas as a qualified and fair judge. He has big shoes to fill following the service of Judge Bill Wilson. I am confident, however, these shoes will fit Judge Marshall well.

While this Committee has seen more than its share of polarizing nominees, you will find Judge Marshall the exception. He is well respected in Arkansas' legal circles and brought integrity and impartiality to the bench while serving on the Arkansas Court of Appeals.

Before practicing law in private practice for 15 years, Judge Marshall earned his law degree from Harvard Law School. He received his B.A. from Arkansas State University-Joneboro in 1985

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and his M.S. from the London School of Economics and Political Science in 1986.

As you know, my background is rooted in the Arkansas Bar and legal community. As such, I have many friends and acquaintances – both personal and professional—who do not hesitate to give me advice and counsel regarding legal issues, especially concerning Federal Judgeships. When Judge Marshall's name began to circulate for this nomination, I only received praise from his colleagues. In fact, it is one of the few occasions when I did not hear a single person criticize his possible nomination. Let me tell you, although I never had the occasion to observe Judge Marshall while I practiced, the outpouring of support from the Arkansas legal community was validation enough for me.

Since that initial observation, I have reviewed his work and have been impressed with his record. His breadth of experience in civil and criminal matters representing both sides of the law is extraordinary, and I know will serve him well on the Federal Bench.

In my mind, Judge Marshall has all the tools to be a great judge, and I believe members of this committee will also find this candidate exemplifies the proper credentials and temperament to do so.

Michael J. Sullivan
Attorney at Law
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January 8, 2010

Senator Patrick Leahy
433 Russell Senate Office Building
United States Senate
Washington, D.C. 20510

Re: Federal Court Nomination – Nancy Freudenthal

Dear Pat:

Happy New Year to you and your family. I write you to support the nomination of Nancy Freudenthal to the Federal Court for the District of Wyoming. I understand a hearing is tentatively set before your committee and am always anxious to find an excuse to write you. This occasion is, however, of particular interest to me as Nancy Freudenthal was my first and best legal counsel while I was Governor, not to mention that her husband Dave, our current Governor, was the individual largely responsible for convincing me that politics was an acceptable alternative to trial practice.

Nancy is a brilliant woman, an accomplished lawyer and an individual of impeccable integrity. During my tenure I appointed Nancy to the State Board of Equalization, an important administrative judicial position in which she served with distinction. She has now been in private practice with a Cheyenne/Sheridan law firm and has developed the reputation of a smart, hard-working and talented lawyer while in the last seven years acting as our much respected and highly engaged first lady.

It is with much pleasure and some substantial pride that I write this letter of unconditional support for Nancy and ask your favorable consideration. She is and will be a credit to the bench and bar.

Jane joins me in sending our very best to you and Marcelle and hope our paths will cross again one of these days.

Very truly yours,

Rothgerber Johnson & Lyons LLP

Michael J. Sullivan

cc: Jim Lyons

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APPROPRIATIONS
RANKING MEMBER, SUBCOMMITTEE ON HOMELAND SECURITY
ENVIRONMENT AND PUBLIC WORKS
RANKING MEMBER, SUBCOMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
RANKING MEMBER, SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA

January 19, 2010

Chairman Patrick Leahy
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Ranking Member Jeff Sessions
Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, DC 20510

Chairman Leahy and Ranking Member Sessions:

I write to urge an expeditious confirmation process for both Judge Timothy Black who is nominated for a Judgeship in the Southern District of Ohio and Benita Pearson who is nominated for a Judgeship in the Northern District of Ohio.

Judge Black has been a Magistrate Judge in the United States Courthouse in Cincinnati since 2004 and was previously a Hamilton County Judge for over ten years. Judge Pearson is currently a Magistrate Judge in the United States Courthouse in Akron and plans to join the Federal Courthouse in Youngstown if confirmed. Previously, Judge Pearson had served as an Assistant United States Attorney in the Northern District of Ohio.

Both Judges Black and Pearson were recommended for their nominations by the Judicial Advisory Committee Senator Brown and I created to vet judicial recommendations, and I support these recommendations. I hope that the Judiciary Committee will share my opinion of the nominees, and I look forward to the speedy consideration of both nominees.

If you have any questions or concerns, please contact me.

Sincerely,

George V. Voinovich
United States Senator

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PRINTED ON RECYCLED PAPER

THE NOMINATIONS OF GLORIA M. NAVARRO, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF NEVADA; AUDREY G. FLEISSIG, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MISSOURI; LUCY H. KOH, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA; JON E. DEGUILIO, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF INDIANA; TANYA WALTON PRATT, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF INDIANA; JANE E. MAGNUS-STINSON, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF INDIANA

THURSDAY, FEBRUARY 11, 2010

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 11:28 a.m., Room SD–226, Dirksen Senate Office Building, Hon. Amy Klobuchar, presiding.

Present: Senator Sessions.

OPENING STATEMENT OF HON. AMY KLOBUCHAR, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator KLOBUCHAR. I am pleased to call the nominations hearing of the Senate Judiciary Committee to order.

Senator Sessions and myself are here. We are even starting a few minutes early, in light of how many days our nominees have been waiting. We are very sorry about this, and I know you had your families in, you dealt with canceled flights and blizzard conditions. Of course, in Minnesota, we call this weather "fair to partly cloudy".

[Laughter.]

Senator KLOBUCHAR. We do welcome your friends and family. I know we're considering six distinguished nominees today from Indiana and Missouri, Nevada and California. I can tell you, I've had

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all week to prepare for this hearing, so I know all your biographies in great detail.

We're also excited to welcome several home State Senators to introduce our compelling nominees, including our distinguished Majority Leader, Senator Harry Reid. I would say more about them, but Senator Reid has a very busy schedule today. I know that he is here to introduce Gloria Navarro, and I understand that, if she is confirmed, she will be the only woman and the only Latina on the Federal District Court in Nevada.

Before I begin, Senator Sessions, before Senator Reid begins, would you like to say a few words?

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

Senator SESSIONS. Well, I look forward to a good hearing. We are having hearings, I believe, on six today. That is a good case. I am glad to have the Majority Leader here. I know he has an incredible burden of people like yourself, who are always trying to get him to do things.

[Laughter.]

Senator SESSIONS. So, Senator Reid, we would be glad to hear from you at this time.

Senator KLOBUCHAR. Senator Reid. Senator Reid, want to turn on your microphone there.

PRESENTATION OF GLORIA M. NAVARRO, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF NEVADA BY HON. HARRY REID, A U.S. SENATOR FROM THE STATE OF NEVADA, SENATE MAJORITY LEADER

Senator REID. First, I want to read a statement by Senator Ensign. He asked me to do this:

"The snow in Washington, DC has canceled yet another flight so I am unable to appear before the Judiciary Committee today to join Senator Reid in introducing a distinguished Nevadan. I wish I could be there in person to tell you that I believe Gloria Navarro has the relevant experience and qualifications and respect for the law that is required of a District Court judge.

Gloria has been a dedicated public servant, and Nevadans should be proud to have this honorable individual on the bench. As a first-generation Cuban-American, Gloria embodies the spirit of America. I am glad for this opportunity to introduce the proud mother, wife, and public servant to my Senate colleagues. Thank you, John Ensign."

Let me say to this distinguished Judiciary Committee, I am terribly impressed with this Nevadan's professional record and commitment to public service in virtually every area of her life. Getting to know her has been a good experience for me. She is very personable and professional and is devoted to justice and the rule of law.

We have talked about our families, shared respect for the law, and our experience growing up in Nevada. She is yet another example of the American story. As Senator Ensign mentioned, daughter of an immigrant family from Cuba, and of course she speaks Spanish fluently. She's learned English and her ABC's watching

"Sesame Street". Today, she is an outstanding attorney who chose to serve her community.

She will be the first Hispanic, as Senator Klobuchar mentioned, to sit on the bench in the District of Nevada, the first Hispanic woman. It is clear that she is well—prepared to do this job. She is currently the Chief Deputy District Attorney in the Office of County Counsel, Clark County, Nevada, the Las Vegas area.

You have her résumé; it speaks for itself. But I want to just say this: I have the ability to appear before different groups, and a lot of times I speak to entities that I have to kind of get a good background first before I speak to them because I think sometimes they know more than I know.

In this instance, I feel very comfortable talking about a trial and what they mean. I've had the good fortune to try over 100 cases to juries, and I know how important a judge is in the judicial system we have in America today.

Gloria is not rated as high as she should be rated. Why? The ABA says she hasn't had judicial experience. That is upsetting to me. If they based their ratings on people having judicial experience, that would mean that, according to them, every person that seeks a seat on the bench has to have judicial experience, maybe a municipal court judge, maybe a justice of the peace.

I just cannot accept that and I think the ABA should get a new life and start looking at people for how they're qualified and not whether they've had judicial experience. I think one of the problems we have in our Federal judiciary, is we have too many people who have never seen the outside world.

I think the present make-up of our Supreme Court speaks of that. I asked President Obama, let's get somebody on the court that has not been a judge. They need to do more than think of themselves as these people that walk around in these robes, with these fancy chambers they have.

I think we need people on the bench who have been out there, like Gloria, who has had to go to court to get a corrupt public official removed from office. She did that. Somebody who has defended somebody who has been convicted of murder and was sentenced to death; she's done that. Somebody who's been in the private practice of law and had to ask somebody for money for their fees, to pay their bills.

So, this woman will be a terrific judge. She has had experience in the real world of government, the real world of the law. Again, I hope the ABA stops rating people based on whether or not they've had judicial experience. I think that's fine if they have that part of it, but don't rate somebody not as qualified because they haven't been a judge before.

Senator KLOBUCHAR. Thank you very much, Senator Reid. And thank you for those thoughtful comments. Certainly, you would be someone who would know what it's like to come somewhere with different experience, as you started your career in the Capitol working as a police officer right in this building. So, thank you very much. We are excited to hear from your nominee.

Senator Bayh is here from Indiana, and I know that you have three excellent nominees to introduce. I will tell you, my favorite one was the woman judge, Tanya Walton Pratt, who is currently

in a private law firm with her father, husband, and brother. Is that correct? No, it's not? It was correct. You were at a private law firm with your husband, father and brother. So, I thought that would be very good evidence of a patient temperament. So, very good.

Senator Bayh, to introduce the three nominees.

Senator BAYH. We not only talk about family values in Indiana, we practice them, Senator.

Senator KLOBUCHAR. Very good.

PRESENTATION OF TANYA WALTON PRATT, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF INDIANA; JON E. DEGUILIO, NOMINEE TO BE DISTRICT JUDGE FOR THE NOTHERN DISTRICT OF INDIANA, AND JANE E. MAGNUS-STINSON, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF INDIANA BY HON. EVAN BAYH, A U.S. SENATOR FROM THE STATE OF INDIANA

Senator BAYH. Thank you very much, both Senator Sessions, Senator Klobuchar. I appreciate this opportunity. I also want to thank our nominees for their perseverance here in the face of Snowapalooza, or Snowmaggedon, whatever we're calling it these days.

Senator KLOBUCHAR. We are calling it the Snowmination here.

[Laughter.]

Senator BAYH. I thought this was just weather as usual in Minnesota. But in any event, we're a hardy breed in Indiana, just as you are. I'm grateful to them for sticking it out here, because they were scheduled to go forward yesterday.

So, Senator Klobuchar, Ranking Member Sessions and other distinguished members of the Committee who could not be with us but are represented by their able staff here today, I want to thank you for the opportunity today to introduce three outstanding Hoosiers who have been nominated to serve as U.S. District judges.

I was proud to join with Senator Lugar to recommend these exemplary individuals to the White House and I am confident that each will be an excellent addition to the Federal bench.

Before I introduce these three nominees, I would like to comment briefly on the state of the judicial confirmation process, generally. In my view, this process has too often been consumed by ideological conflict and partisan acrimony. This is not, I believe, how the framers intended us to exercise our responsibility to advise and consent.

During the last Congress, I was proud to work with Senator Lugar to recommend Judge John Tinder as a bipartisan consensus nominee for the Seventh Circuit Court of Appeals. Judge Tinder was nominated by President Bush and unanimously confirmed by the U.S. Senate by a vote of 93:0. It was my hope that Judge Tinder's confirmation would serve as an example of the benefits of nominating qualified, non-ideological jurists to the Federal bench.

In selecting the three qualified individuals sitting before you today, President Obama has demonstrated that he also appreciates the benefits of this approach. I was proud to once again join with Senator Lugar to recommend these nominees to President Obama, and I hope that, going forward, other Senators will adopt what I call "the Hoosier approach" of working across party lines to select consensus nominees.

I would also like to personally thank Senator Lugar for his extraordinary leadership and for the consultative and cooperative approach he has taken to judicial nominations. During my time in Congress, it has been my privilege to forge a close working relationship with Senator Lugar on many issues. This has been especially true on the issue of nominations.

When a judicial nominee from Indiana comes before this Committee, our colleagues can be confident that the name being put forward enjoys bipartisan support, regardless of which political party is in the White House or controls a majority in the U.S. Senate.

I also want to briefly note the historic nature of the nominees seated before you today. In particular, if confirmed, Judge Tanya Walton Pratt would be our State's first African-American Federal judge. If Judge Jane Magnus-Stinson were to join her on the Federal bench, it would double the number of female Federal judges in the State of Indiana.

I hope that both will be confirmed and that their appointments as Federal judges will inspire Hoosier children of all backgrounds to pursue their dreams and will show them that, in America, anything is possible if you study hard and play by the rules.

On the merits, these three talented nominees share many common attributes that make them well-qualified for lifetime appointments to the Federal judiciary. All three have been recognized as leaders in the Indiana legal community and all have the experience, insight, background, and temperament that Hoosiers expect and deserve from their judges.

These nominees have shown themselves to be deserving of the public trust. They have demonstrated the highest ethical standards and a firm commitment to applying our country's laws fairly and faithfully. In so doing, they have earned the respect and support of Indiana's judges, lawyers, elected officials, and community leaders.

In addition to their good judgment and impressive knowledge of the law, I am confident that each of the nominees appreciates the limited role of the Federal judiciary. They understand that in our constitutional system of government, the appropriate role for the judge, is to interpret our laws, not to write them.

Along with being accomplished attorneys, all of these nominees are outstanding citizens. They are role models in their respective communities, not only because of their considerable professional accomplishments, but because of their civic involvement and their commitment to improving the lives of their fellow Hoosiers.

Most importantly, in their professional and civic work, each of these nominees has shown themselves to be dedicated to the pursuit of the bedrock ideal of our American judicial system: equal justice under the law.

I am confident that this group of nominees will serve the people of Indiana and the United States with great distinction and will help ensure the speedy and efficient administration of justice for all of our citizens.

I would like to, first, introduce Jon DeGuilio, who has been nominated to serve in the Northern District of our State. If confirmed, Mr. DeGuilio would fill the seat once held by Hon. Judge Allen

Sharp, who passed away last year after a long and distinguished career serving our State.

Mr. DeGuilio has extensive experience in Federal court and has earned a well-deserved reputation as a tough prosecutor. From 1993 to 1999, he served as the U.S. Attorney for the Northern District of Indiana, during which time he led efforts to aggressively crack down on crime and drugs and to make our streets safer.

Prior to his service as U.S. Attorney, Mr. DeGuilio served as the prosecuting attorney for Lake County, as well as the public defender in that county. He is the former president of the Hammond City Council and a former legal advisor to the Lake County Sheriff's Office. A graduate of Notre Dame and Valparaiso University School of Law, next year Jon will celebrate his 30th wedding anniversary with his wonderful wife, Barbara. Together, they have two children, Suzanne and Christopher.

I would next like to introduce Judge Jane Magnus-Stinson, who has been nominated to fill one of two vacancies in our Southern District. The Southern District has a special place in my heart because I once clerked there shortly after graduating from law school, so I saw the internal workings of our court system in that district firsthand; it was a formative experience for me.

Judge Jane Magnus-Stinson is extremely well-qualified to serve on the Federal bench. She has extensive trial experience, having served as a judge on the Mirren County Superior Court from 1995 to 2007. During this time, she was recognized as a leader among Indiana jurists, serving on the board of directors of the Indiana Judicial Conference and the Board of Managers of the Indiana Judges Association.

Judge Magnus-Stinson also has valuable experience presiding in Federal court, having served as a Federal magistrate judge in the Southern District since 2007. Judge Magnus-Stinson's devotion to the fair and efficient administration of justice has been recognized by her fellow Hoosiers. She has been honored as the "Judge of the Year" by the Indiana Coalition Against Sexual Assault, and as an "Outstanding Judge" by the Indiana Coalition Against Domestic Violence.

In recommending Judge Magnus-Stinson, I have the benefit of being able to speak from personal experience, as she served as my counsel while I was Governor of the State of Indiana. She is a cum laude graduate of Butler University and Indiana University School of Law.

Judge Magnus-Stinson is married to Bill Stinson, and they have two wonderful daughters, Jill and Grace.

The final nominee I would like to introduce today is Judge Tanya Walton Pratt, who has also been nominated to serve in the Southern District of our State. Judge Walton Pratt is highly qualified to serve as a U.S. District Judge. She has extensive trial experience, having served as a judge in the Marion Superior Court since January 1997. For the vast majority of this time, she presided over Major Felonies in the Criminal Division and was responsible for managing dozens of jury trials every year.

Judge Walton Pratt has been recognized as a leader among Indiana jurists and currently serves on the Executive Committee of the Marion Superior Court system, and as supervising judge of the

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Marion County Juvenile Detention Center, and on the board of directors of the Marion County Bar Association.

In addition to her work as a judge, Tanya Walton Pratt has also been recognized as a leader in her community. She has also been honored with numerous awards, including the Career Achievement Award from the Indianapolis Archdiocese, and the Key to the City of Muncie. She is a graduate of Spelman College and Howard University School of Law.

I also understand, Judge Pratt, that back in the day—my colleagues might be interested in this. Back in the day, my father and her father served in the Indiana General Assembly together. There are some wonderful black-and-white photographs in the State legislature commemorating their service together.

It is my pleasure to introduce her today as a worthy and historic nominee to the Federal bench.

In closing, I would like to emphasize my personal belief that each of these nominees before you today possesses the temperament, intellect, and even-handedness necessary to serve as a Federal judge. I have high confidence that, if confirmed, they will be superb additions to the Federal bench, and I am pleased to give each of them my highest recommendation.

Madam Chairman, Ranking Member Sessions, it is my distinct pleasure to present to this Committee for your consideration Jon DeGuilio, Judge Jane Magnus-Stinson, and Judge Tanya Walton Pratt.

Thank you for your courtesy today. It's always good to come before this Committee. My father served on this Committee for years, his entire tenure in the Senate, so the Judiciary Committee has a fond spot in the Bayh family heart.

Senator SESSIONS. Thank you.

Senator KLOBUCHAR. Thank you very much, Senator Bayh. We really appreciate it.

And now we have Senator Boxer. Before that, I just wanted to put, Senator Bayh, the statement from Senator Lugar in support of these nominees in the record. Thank you.

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

Senator KLOBUCHAR. Senator Boxer is going to be introducing Judge Lucy Koh. If she's confirmed, she will be the first Korean-American woman to be a Federal judge in the entire country.

Senator Boxer.

PRESENTATION OF LUCY H. KOH, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA BY HON. BARBARA BOXER, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator BOXER. That's right, Senator.

Senator Klobuchar, Senator Sessions, I just personally want to thank you so much for not allowing the weather to interfere with your work and ours in filling these crucial posts. I know it was very special to my particular nominee here today that I'm going to introduce, Judge Lucy Koh, who came here with a large contingent of her family, through the snows, and 3,000 miles traveled. So, it meant quite a bit.

I would ask if Judge Lucy Koh, who has been nominated to the Northern District Court, would stand at this time. I would ask if she would have her family stand so we could see who came with her. It's quite a contingent. Well, we're just so happy that they were all here. I want to congratulate all of you on this very important day.

Lucy Koh is very well-respected by her colleagues in the California legal community and she'll make an outstanding addition to the Federal bench. Judge Koh is the daughter of two proud parents who risked much to come to America and provide for their families. Her mother escaped from North Korea at the age of 10 by walking for two weeks into South Korea, a dangerous trek that required her to hide from North Korean soldiers along the way. Her father fought against the Communists in the Korean War, and later emigrated to the United States. He worked as a busboy and a waiter in Maryland while attending Johns Hopkins University, later bringing the rest of the family here.

Judge Koh is the first member of her family to be born in the United States of America. Then her family moved to Mississippi, where her mother taught at Alcorn State University, the Nation's first historically African-American land grant college. During this time, Judge Koh was bussed to a predominantly African-American public school, where many of her classmates lived in poverty. Her childhood experiences provided inspiration for her to pursue a career in the law and work for the NAACP Legal Defense Fund during law school.

Judge Koh attended Harvard Ratcliffe Colleges as a Harry S. Truman Scholar, graduating magna cum laude. After college, she attended Harvard Law School, where she was awarded "Best Brief" in the school's Moot Court competition.

Judge Koh has had a diverse career in the practice of law that makes her uniquely qualified to serve as a Federal judge. She has worked in policy, serving as a fellow for a Subcommittee of the Senate Judiciary Committee and in policy positions at the Justice Department. She served as a Federal prosecutor in Los Angeles, where she handled financial fraud, narcotics, public corruption, and violent crime cases.

She has received awards and recognition for her work as a prosecutor, including a sustained "Superior Performance" award and an award from then-FBI Director Louis Freeh for her prosecution of the $54 million securities fraud case. She was a litigator in private practice prior to becoming a State court judge.

During her time in private practice, Judge Koh worked on complex litigation matters involving security and intellectual property, primarily appearing in Federal court. She led the trial and the appellate team in the landmark patent case, *In Re: Seagate*, where a new standard for wilful patent infringement was established for the first time in years.

With these credentials, it is easy to see why Governor Arnold Schwarzenegger appointed her to the California Superior Court in 2008, where she once again excelled as a judge, handling a docket of both criminal and civil cases. Governor Schwarzenegger said, "Simply put, Judge Koh exemplifies the very best of the legal profession and will be an excellent Federal judge". Here are the words

of Judge Katherine Gallagher, who was the presiding judge of the Santa Clara County Superior Court when Judge Koh was appointed: "Judge Koh is universally held in high esteem, and well-liked. She has a reputation for being prepared, thoughtful, intellectually honest, and fair. She has demonstrated exemplary judicial temperament."

And here are the words of Santa Clara District Attorney Delores Carr: "Prosecutors appear regularly before Judge Koh. Judge Koh has an excellent reputation for being fair and impartial to both sides. She is respectful to victims of crime, defendants, witnesses, and lawyers, and is careful and deliberate in her decisions.

Like her career, the support for Judge Koh is diverse. I already mentioned the bipartisan support she has. In addition, she is endorsed by a wide group of supporters, such as former Massachusetts Republican Governor William Weld, Santa Clara County Sheriff Laurie Smith, former Bush Office of Legal Policy Director Via Dinn, the National Asian-Pacific Bar Association, and the Asian-American Justice Center.

I would like to submit a group of the letters of recommendation we have received in support of Judge Koh for the record, if I might. May I introduce those letters for the record?

Senator KLOBUCHAR. Yes, you may.

[The letters appear as a submission for the record.]

Senator BOXER. So, in conclusion, as Senator Klobuchar has stated, Judge Koh's nomination is historic. If confirmed, she would be the first Korean-American in United States history to serve as a Federal District Court Judge.

I am so proud to be here today with Judge Koh, her family, and also the other outstanding nominees that will appear before you. I close by congratulating Judge Koh and the other nominees and their families, and I urge my colleagues in the Senate to move swiftly to confirm these nominees to the Federal bench. I thank you so very much for your indulgence.

Senator KLOBUCHAR. Thank you very much, Senator Boxer. We look forward to hearing from the nominee. Now we have Senator McCaskill, who I know is going to introduce Judge Audrey Fleissig, who is obviously a very qualified nominee, Senator McCaskill, because she attended Carlton College in Minnesota, which you should know, Senator Sessions, in Northfield, Minnesota, is called the "hometown of cows, colleges, and contentment". True story.

Senator McCaskill.

PRESENTATION OF AUDREY G. FLEISSIG, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MISSOURI HON. CLAIRE MCCASKILL, A U.S. SENATOR FROM THE STATE OF MISSOURI

Senator MCCASKILL. Well, I was going to thank you, Madam Chairwoman and Senator Sessions, for continuing to have this hearing today. I think it would have been easy to say, well, let's just wait. I appreciate the fact that you all are making this happen.

There are a lot of people who came to Washington for their hearing and they have had an unexpected several-day vacation in Washington. I'm glad that we're going to be able to get this done, especially for Judge Fleissig, who has a lot of work back in St.

Louis she continues to do, and needs to continue to do, as a magistrate of the Federal court there.

Yes, she graduated from Carlton College magna cum laude and Order of the Coif at Washington University Law School. Clearly, this woman has the brains. Really, what we're looking for here is intellect, attitude, and character. Those are the three legs of the stool for a lifetime appointment to the Federal bench.

The brains. There is not a problem here. This is a very smart woman who respects the law and has the right attitude about the law because she continues to teach. Even though she runs an incredibly busy docket as a magistrate, she has continued to teach, especially in the area of trial practice, as an adjunct professor during her time on the bench.

Now, attitude. Audrey Fleissig has a very simple idea, that she owes the litigants her hard work and her respect. That's what you want. I know both of you have been in front of many judges, trial judges, in your careers, as have I. Really, at the end of the day, you just want a judge that is working as hard at it as you are and is respectful, not just to the lawyers, but importantly, to the clients. That is the kind of reputation Judge Fleissig has, incredibly hard-working, very fair, and very respectful of the litigants in her court.

Character. You know, it's so easy once you get a black robe to focus on your family and your work, judge. You've got a great excuse to do nothing else. No one would ever think you were a slacker. As a mother of two children and being active in her children's schools and being on the bench, no one would ever really raise an eyebrow that you weren't out there doing things in the community. So when you have a judge that not only takes off the robe for her family, but takes off the robe for her community, it should tell you a lot about her character. It should tell you about the kind of person she is.

Even though her children are grown now, she continues to work in a community program, helping young children get excited about reading, three- to-five-year-olds that need role models, that need that extra spark. She continues to work in a not-for-profit capacity in a charitable capacity for these young people so that they can have the advantages she had, after going to public school, of getting a first-rate higher education and a career that is full of the challenges and rewards of public service.

I think she's going to be an excellent Federal judge. When I first realized I was going to have some kind of role in this, I remembered all the times I looked down my nose about Federal judges: lifetime appointments, they aren't accountable to anybody, they think they know everything, they think the people that work in the State system are stupid. I really have had some comments in my career that were not kind to Federal judges.

So this is my first time to have a role in trying to help select a Federal judge, and my biggest concern was that I find a person who would never take that lifetime appointment as anything other than a challenge to do the very best for the public. I am confident we found that person in Audrey Fleissig and I'm proud to have a chance to introduce her this morning. I thank the Chair and the Ranking Member for their indulgence and their time this morning.

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Senator KLOBUCHAR. Thank you very much, Senator McCaskill. The nominees can now come up. We're looking forward to hearing from you.

Okay. Will you raise your right hand?

[Whereupon, the witnesses were duly sworn.]

Senator KLOBUCHAR. All right. We are looking forward to meeting your families. I was thinking, as Senator Boxer introduced you, Judge Koh, of having those two little kids in a hotel room for 4 days. If that's what happened, that must have been a lot of fun. So, I think it would be very fitting that you introduce your family, and friends or family that are here, as well as we'd like to hear from all of you. So, maybe we'll start with Ms. Navarro. Thank you.

STATEMENT OF GLORIA M. NAVARRO, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF NEVADA

Ms. NAVARRO. Thank you very much, Madam Chair and Ranking Member. I'd like to begin, first, by thanking the Lord my God for the opportunity to be here today. Unfortunately, my family and friends could not be here. They had many flights canceled, rescheduled, and canceled.

Senator KLOBUCHAR. Well, we'll send them a DVD.

Ms. NAVARRO. Yes. I know that they are here in spirit with me, and I would like to take a moment to acknowledge them and their attempts to be here: my husband, Chief Deputy District Attorney Brian Rutledge; my oldest son, Scott Joseph Rutledge, who is 11; my middle son, Matthew Ryan Rutledge, who is 9; and my youngest son, Wyatt Luke Rutledge, who is 6; my mother, Gloria Dee Navarro, who has always been the wind beneath my wings; and my friends who could not be here today but who had planned to be here, including Nahed Nabih Abdou, Shauna Brandt, Kathy Jo-Anne Kelly, and her daughter Erin Thompson and her husband Bobby Thompson.

Also, my father could not be here. He has passed away. But it is important for me to take a moment to acknowledge him because he dropped out of school in sixth grade so that he would be able to provide for his family financially, and he never forgot the value of the education that he lost. He sacrificed his life so that I would be able to enjoy that education that he did not, and that is very special to me.

I also would like to thank Senator Ensign, who I know was trying to be here today and did attempt to be here. I'd also like to thank Senator Harry Reid, the Majority Leader, for very generous words and for his recommendation and support in this process.

Most importantly, I'd like to thank President Obama for nominating me to a position that is very meaningful to me because it is a nomination to the same Federal bench where my own parents, my grandparents, and family members were naturalized and became proud American citizens. It's quite an honor. Thank you.

Senator KLOBUCHAR. Thank you very much.

Judge Fleissig.

[The biographical information follows.]

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00395 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Gloria Maria Navarro

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

   United States District Judge for the District of Nevada

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 of the Clark County District Attorney
   500 South Grand Central Parkway
   Las Vegas, Nevada 89155

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

   1967; Las Vegas, Nevada

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.

   1989-1992, Arizona State University College of Law (renamed Sandra Day O'Connor College of Law in 2006); J.D., 1992

   1986-1989, University of Nevada Las Vegas; B.A., 1989

   1985-1986, University of Southern California; 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.

2005-Present
Office of the Clark County District Attorney
500 South Grand Central Parkway
Las Vegas, Nevada 89155
Chief Deputy District Attorney (Civil Division)

2001-2004
Office of the Clark County Special Public Defender
330 South Third Street, Suite 800
Las Vegas, Nevada 89155
Deputy Special Public Defender

1996-2001
Gloria M. Navarro, Attorney at Law
320 South Third Street
Las Vegas, Nevada 89101
Sole Practitioner

1994-1996
Kelly & Sullivan, Ltd.
330 South Third Street, Suite 990
Las Vegas, Nevada 89101
Associate Attorney

1993-1994 and 1991
Office of the Federal Public Defender
411 East Bonneville Avenue, Suite 250
Las Vegas, Nevada 89101
Research and Writing Specialist (Law Clerk) (1993-1994)
Summer Law Clerk (1991)

1993
Law Offices of Scott Bindrup
330 South Third Street, Suite 800 (Current Address)
Las Vegas, Nevada 89155
Contract Law Clerk (Part-time)

1993
Nevada Appellate and Post-Conviction Project
330 South Third Street
Las Vegas, Nevada 89101
Contract Law Clerk (Part-time)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00397 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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1993
Fitzsimmons Law Offices
3216 West Charleston Boulevard, Suite A
Las Vegas, Nevada 89102
Mitigation Investigator (Part-time)

1992
Office of the Attorney General
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Law Clerk, Consumer Affairs Division (Part-time)

1991
Office of the Federal Public Defender
411 East Bonneville, Suite 250
Las Vegas, NV 89101
Summer Law Clerk

1991
Chambers of Hon. Philip M. Pro
United States District Court for the District of Nevada
333 South Las Vegas Boulevard
Las Vegas, Nevada 89101
Legal Extern (Full-time / earned law school credits)

1990
Excalibur Hotel and Casino
3850 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Roundtable Buffet Hostess (Full-time)

1988-1989
Ujena Swimwear (no longer in business)
4550 South Maryland Parkway
Las Vegas, Nevada 89119
Sales Clerk (Part-time)

2005-Present
DJs for PJs
8367 West Flamingo Road, Suite 101
Las Vegas, Nevada 89147
Secretary and Member, Board of Directors (unpaid)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00398 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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2005
Desert Willow Treatment Center
6171 West Charleston Boulevard, Building 17
Las Vegas, Nevada 89146
Member, Governing Board (unpaid)

1991
Las Vegas Jaycees
1812 Eastern Avenue
Las Vegas, Nevada 89104
Member, Executive Board (unpaid)

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. 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.

Access to Justice Award (2002), State Bar of Nevada
Louis Weiner Pro Bono Service Award (2001), Nevada Legal Services
Academic Scholarship (1989-1992), Arizona State University (ASU) College of Law
Thurgood Marshall Fellow (1989-1992), Council on Legal Education Opportunity
Academic Scholarship (1989), Western Interstate Commission for Higher Education
(declined in favor of ASU Scholarship)
Academic Scholarship (1986), University of Nevada Las Vegas
Academic Scholarship (1985), University of Southern California

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.

Nevada State Bar Association (1994-Present)
Clark County Bar Association (1994-Present)
Latino Bar Association (approximately 2000-Present)
Past-President (2009-2010), President (2008-2009), President-Elect (2007-2008),
Vice President (2005-2007), Board Member (2002-2005)

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.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00399 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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Nevada, 1994

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.

United States Court of Appeals for the Ninth Circuit, 1997
United States District Court for the District of Nevada, 1994
Supreme Court of Nevada, 1994
Eighth Judicial District Court of Nevada, 1994

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.

Youth Advocate Programs, Inc., Advisory Board Member (2007-Present)
DJs for PJs, Secretary and Member, Board of Directors (2005-Present)
Desert Willow Treatment Center, Member, Board of Governors (2005)
Las Vegas Jaycees, Member, Executive Board (1991)

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 currently discriminates 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.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00400 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.

Criminal Defense and the Consequences of Immigration Law, COMMUNIQUÉ (published by Clark County Bar Association), Nov. 1997

Cultural Factors and the Voluntariness of Statements, LA LUCHA (newsletter for Criminal Justice Act panel attorneys published by the Office of the Federal Defender for the District of Nevada), Oct. 1994

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 presented to multiple leadership programs run by the Las Vegas Chamber of Commerce. From 2007 to 2009, I co-chaired Criminal Justice Day for the Leadership Las Vegas Program, a full-year course for 40 leaders selected competitively from the community. In other years, I have presented at the Criminal Justice Day. In 2005 and 2006, I also presented as part of a Criminal

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00401 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Justice Panel at the Chamber's shorter Focus Program. I made the following presentations of which I have no transcripts, recordings, or notes:

February 2009, introductory and other remarks as co-chair
May 2008, introductory and other remarks as co-chair
May 2007, introductory and other remarks as co-chair
October 2006, explained the role of the Public Defender (Focus)
May 2006, explained the role of the Office of the Special Public Defender
October 2005, explained the role of the Public Defender (Focus)
May 2005, moderated panel on law enforcement

Since 2002, I have spoken annually at the Career Day of the University of Nevada Las Vegas, representing the Latino Bar Association. I typically explain that I am a native Las Vegan, bilingual of Cuban descent, who took advantage of opportunities for educational and personal growth to achieve success. I have no transcripts, recordings, or notes of these presentations.

Since 2002, I have moderated many monthly luncheons of the Latino Bar Association in my capacity as board member or officer. As moderator, I called on members for reports. I have no transcripts, recordings, or notes.

In 2004, I was a guest speaker to a social work graduate class at the University of Nevada Las Vegas taught by Soyoung Crabb. I explained the importance of an accurate and complete Life History Chronology and how it is used by the criminal defense team in death penalty cases. I have no transcripts, recordings, or notes.

In 1998, I was a guest speaker to a Business Management 101 class at the Community College of Southern Nevada (now called the College of Southern Nevada). I described my experiences as a small business owner and sole practitioner. I have no transcripts, recordings, or notes.

In 1994, I presented to federal Criminal Justice Act panel attorneys for the District of Nevada (once each in Las Vegas and in Reno). My talk was entitled "How to Effectively Represent Non-English Speaking Clients and/or Clients with a Different Cultural Background."

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.

Paul Harasim, *Gloria Navarro, Chief Deputy D.A., Tapped For Federal Bench*, LAS VEGAS REVIEW-JOURNAL, Dec. 25, 2009

Carri Geer Thevenot, *U.S. District Judge: Reid List Could be Diverse*, LAS VEGAS REVIEW-JOURNAL, Nov. 28, 2009

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00402 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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One morning in April of each year since 2005, I have appeared on local television and radio news programs in my capacity as an officer of DJs for PJs, describing and inviting participation in the organization's drives to provide pajamas to needy children in Las Vegas. I have no clips or transcripts.

Glenn Puit, *Convicted Killer Turned Down Plea Deal*, LAS VEGAS REVIEW-JOURNAL, May 29, 2002

On January 14, 2000, I gave an interview to Robert Aalberts and Lorne Seidman for a legal academic paper. I have no transcript. The paper was published in 2002. Robert J. Aalberts et al., *Do Race / Ethnicity and Gender Influence Criminal Defendants' Satisfaction with their Lawyers' Services? An Empirical Study of Nevada Inmates*, 2 Nev. L.J. 72 (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.

I have not held 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

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00403 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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 you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00404 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.

I have not been a member or officer, or rendered services to, any political party or election committee.

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;

1996-2001
320 South Third Street
Las Vegas, Nevada 89101

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.

2005-Present
Office of the Clark County District Attorney
500 South Grand Central Parkway
Las Vegas, Nevada 89155
Chief Deputy District Attorney (Civil Division)

2001-2004
Office of the Clark County Special Public Defender
330 South Third Street, Suite 800
Las Vegas, Nevada 89155
Deputy Special Public Defender

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00405 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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1996-2001
Gloria M. Navarro, Attorney at Law
320 South Third Street
Las Vegas, Nevada 89101
Sole Practitioner

1994-1996
Kelly & Sullivan, Ltd.
330 South Third Street, Suite 990
Las Vegas, Nevada 89101
Associate Attorney

1993-1994 and 1991
Office of the Federal Public Defender
411 East Bonneville Avenue, Suite 250
Las Vegas, Nevada 89101
Research and Writing Specialist (Law Clerk) (1993-1994)
Summer Law Clerk (1991)

1993
Law Offices of Scott Bindrup
330 South Third Street, Suite 800 (Current Address)
Las Vegas, Nevada 89155
Contract Law Clerk (Part-time)

1993
Nevada Appellate and Post-Conviction Project
330 South Third Street
Las Vegas, Nevada 89101
Contract Law Clerk (Part-time)

1993
Fitzsimmons Law Offices
3216 West Charleston Boulevard, Suite A
Las Vegas, Nevada 89102
Mitigation Investigator for Death Penalty case (Part-time)

1992
Office of the Attorney General
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Law Clerk, Consumer Affairs Division (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.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00406 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.

I am presently a civil practitioner representing Clark County in a wide range of areas of law including employment law and civil rights law. In my present position since 2005, I have generally served as defense counsel but have had to initiate civil suits as well. As a Chief Deputy District Attorney in the Civil Division, a substantial majority of my civil cases are litigated in the United States District Court for the District of Nevada and the United States Court of Appeals for the Ninth Circuit. I also have defended state tort claims filed against Clark County in state court.

Prior to joining the Office of the District Attorney, I litigated murder and death penalty cases exclusively as a Deputy Special Public Defender from 2001 to 2004. Before I was recruited to join the Office of the Special Public Defender, I had managed a successful solo practice as a full-time litigator from 1996 through 2001. During that time I was awarded both federal and county contracts to provide criminal defense legal representation services. My experience in private practice, both as a sole practitioner and as an Associate with Kelly & Sullivan, Ltd., from 1994 through 1996, included some other general practice litigation such as personal injury suits and divorce petitions. I made daily court appearances on both criminal and civil matters in state and federal court. I litigated several criminal trials.

From 1992 through 1994, I was a Law Clerk providing criminal defense research and writing services, drafting motions and appeals.

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

In my current position as a Chief Deputy District Attorney, I am a full-time litigator for Clark County. I primarily represent and defend the County in civil lawsuit filed in federal courts and, less frequently, in state courts. I also occasionally initiate civil litigation on behalf of Clark County.

As a Deputy Special Public Defender, all of my clients were indigent persons charged with murder. Some also were charged with other state crimes. I have represented six clients facing the death penalty.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00407 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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As a sole practitioner, most of my clients were individuals who had been charged with federal or state crimes. I also represented both plaintiffs and defendants in state court divorces, child custody disputes and personal injury lawsuits. When I was an Associate, my clients were individual civil litigants or criminal defendants. Most of my civil litigation was in the areas of Family Law and Personal Injury. As a Law Clerk, my clients were typically indigent defendants facing federal criminal charges or appealing criminal convictions.

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 entire practice has been in litigation as both a criminal and civil litigator. I appeared in court daily from 1994 through 2001 and I continue to appear in court frequently.

i. Indicate the percentage of your practice in:
   1. federal courts: 45%
   2. state courts of record: 55%
   3. other courts:
   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 tried 13 cases to verdict (nine as sole counsel, one as chief counsel, and three as associate counsel).

i. What percentage of these trials were:
   1. jury: 77%
   2. non-jury: 23%

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.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00408 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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. *Lobato v. State*, 96 P.3d 765 (Nev. 2004).

    As a Deputy Special Public Defender, I represented a defendant charged with murder and other crimes as both her trial and appellate counsel from 2001 through 2004. At trial, the prosecutors objected to the admissibility of evidence of a jailhouse informant's bias. With that evidence excluded under the then-current interpretation of Nevada law, my client was convicted of first degree murder. The Supreme Court of Nevada granted my appeal and held that, unlike an inquiry into a witness' prior bad acts, evidence concerning a witness' bias or interest is admissible in Nevada. This ruling brought the Nevada Rules of Evidence into conformance with the Federal Rules of Evidence on this issue. On retrial, the defendant was convicted of voluntary manslaughter.

    Judge Valerie Vega presided over the trial in the Eighth Judicial District Court. Chief Justice Shearing and Justices Rose and Maupin decided the appeal.

    My co-counsel was Philip Kohn, 309 South Third Street, Las Vegas, Nevada 89115, Tel 702-455-4583.

    Principal counsel for the State were Chief District Attorney William Kephart and Deputy District Attorney Sandy DiGiacomo, 200 Lewis Avenue, Las Vegas, Nevada 98115, Tel 702-671-2501.

    2. *Reddick v. Clark County*, No. 2:05-CV-0021 (D. Nev. Dismissed Mar. 31, 2006).

    As a Chief Deputy District Attorney, I represented defendant Clark County in this matter from 2005 to 2006. After plaintiff's employment by the County was terminated for misconduct, she filed this suit alleging she actually had been terminated because she had breast cancer, in violation of the Family Medical

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00409 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Leave Act (FMLA) and other federal laws. As defense counsel for Clark County, I obtained the plaintiff's original copies of her medical tests, which demonstrated that she had fraudulently altered the word "benign" to "malignant," thus revealing that she had neither had breast cancer nor received the treatments she claimed. Ultimately, Plaintiff voluntarily dismissed her claims.

District Judge Lloyd George and Magistrate Judge Robert Johnston presided over the case.

Plaintiff's counsel was Sharon Nelson, 401 North Buffalo Drive, Suite 210, Las Vegas, Nevada 89145, Tel 702-247-4529.

3. *Cabrera v. Clark County*, No. 2:06-CV-1285 (D. Nev. dismissed October 2009).

As a Chief Deputy District Attorney, I represented defendant Clark County in this matter from 2006 to 2009. A minor two-year-old had been placed in foster care through Clark County on finding by a family court that her natural parents were incapable of caring for her, primarily due to their narcotics addiction. In June 2006, a month after her foster placement, her foster parents reported her missing to police. When the child was not found by the police search, her natural parents filed this federal lawsuit against the County and other defendants, raising Section 1983 and other claims. The natural parents filed an offer of judgment for $2.3 million dollars against the County and sought to represent the interests of their daughter. I asked the court to appoint an independent guardian ad litem to represent the interests of the missing child because the natural parents' claims presented conflicts with those available to the child. The federal court agreed and appointed a guardian ad litem. I then negotiated a settlement that provided funds for a private investigator to search for plaintiff, nominal amounts for her parents, fees for parents' attorneys, a scholarship fund named for plaintiff to provide for the educational needs of foster children, funds for her surviving brother, funds for plaintiff's attorneys and funds to be paid to the child only if she is found alive before her 25th birthday.

District Judge James Mahan and Magistrate Judge Lawrence Leavitt presided over the case.

Plaintiffs' counsel were J.D. Evans, 3550 West Cheyenne Avenue, Building F, Suite 120, North Las Vegas, Nevada, 89103, Tel 702-880-1211; Eric Dobberstein, 1399 Galleria Drive, Suite 201, Henderson, Nevada 89014, Tel 702-382-4002; Marjorie Hauf, 8950 West Tropicana Avenue, Suite 1, Las Vegas, Nevada 89147, Tel 702-598-4529; and Gregory Mills, 502 South Ninth Street, Las Vegas, Nevada 89101, Tel 702-386-0030.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00410 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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4. *State v. Paite*, 99-C-161229-C (Nev. Jud. Dist. 1999).

As a sole practitioner, I represented the defendant at trial in 1999. My client was charged with high level drug trafficking and faced a sentence of life in prison. He maintained that the drugs found in his home belonged to his roommates and that he was the one who had called the police to evict them. I was assigned his case shortly before trial because his original counsel withdrew and the defendant refused to continue his trial. The jury found my client Not Guilty. This verdict was instrumental in raising the proof threshold required by the Clark County District Attorney from police investigators before approving prosecutions of drug possession cases involving multiple residents in a shared home.

Judge Jack Lehman presided over the case in the Eighth Judicial District Court.

Principal counsel for the State were Deputy District Attorney Pam Weckerly, 200 Lewis, Las Vegas, Nevada 89155, Tel 702-671-2501; and Deputy District Attorney Liz Bauer (current address unknown).

5. *District Attorney v. Deane*, 06-A-526648-C (Nev. Jud. Dist. 2007).

As a Chief Deputy District Attorney, I prosecuted a civil action from 2006 to 2007 against Frances Deane, the elected Recorder of Clark County, seeking her removal on the basis of criminal misconduct connected with her office. Despite overwhelming evidence against her, Deane had refused to resign. I filed this complaint, premised on 18 different corruption allegations, under the rarely-used Nevada statute for removal public officers. Defense counsel filed counterclaims, including a claim to remove from office the elected District Attorney, and also sought an emergency writ from the Supreme Court of Nevada. I successfully opposed both the counterclaims and the writ. Following a highly-publicized trial that I litigated, Deane was removed from her elected office. Deane appealed to the Supreme Court of Nevada, but later voluntarily withdrew the appeal after her term of office expired. Deane pled guilty to several crimes related to her time in office in January 2009.

Judge Douglas Herndon presided over the case in the Eighth Judicial District Court.

The defendant was represented by C. Conrad Claus, 816 Ogden Avenue, Las Vegas, Nevada 89101, Tel 702-384-4927.

6. *State v. Marroquin-Valle*, C173520 (Nev. Jud. Dist. 2004).

As a Deputy Special Public Defender, I represented this defendant from 2002 to 2004. My client faced the death penalty for murder, sexual assault, and kidnapping. Several circumstances made the collection of evidence particularly challenging. For example, a co-defendant, who was the lesbian ex-girlfriend of

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00411 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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the victim, was captured in Mexico, where authorities refused to allow her extradition and she refused to provide information to assist my client. I litigated multiple legal issues pretrial, particularly regarding the State's forensic sexual assault evidence. Prior to trial we negotiated a plea agreement for my client that spared him the death penalty and provided for the possibility of parole.

Judge Nancy Saitta presided over the case in the Eighth Judicial District Court.

My co-counsel was Assistant Public Defender Daren Richards, 309 South Third Street, Las Vegas, Nevada 89115, Tel 702-455-4561.

Primary counsel for the State was Chief Deputy District Attorney Frank Coumou, 200 Lewis Avenue, Las Vegas, Nevada 89155, Tel 702-671-2501.

7. *State v. Ocanas*, C181465 (Nev. Jud. Dist. 2003).

As a Deputy Special Public Defender, I represented the defendant from 2002 to 2003. My client was charged with first degree murder with use of a deadly weapon and other crimes. I investigated a defense theory that my client's gun had been fired accidentally when he removed it from his backpack, and therefore that he was guilty only of the lesser charge of voluntary manslaughter with use of a deadly weapon. Based on my investigation and my trial preparation, I was able to get the State to permit my client to plea to a single reduced charge, voluntary manslaughter with use of a deadly weapon.

Judge Nancy Saitta presided over the case in the Eighth Judicial District Court.

Primary counsel for the State was Chief Deputy District Attorney Michael O'Callaghan, 601 North Pecos Road, Suite 470, Las Vegas, Nevada 89101, Tel 702-455-2501.

8. *Robichaud v. Clark County,* 310 Fed. Appx. 153 (9th Cir. 2009).

As a Chief Deputy District Attorney, I represented defendant Clark County from 2005 to 2009 in *Robichaud* and a related case, *Hansen v. Clark County*, 310 Fed. Appx. 158 (9th Cir. 2009). Two co-workers filed separate lawsuits in federal court against the County claiming they were not chosen for a particular promotion due to their age and gender in violation of Title VII of the Civil Rights Act of 1964 and other federal and state laws. Plaintiffs challenged essentially every step of the County's competitive promotion process as well as the qualifications of the applicant who was awarded the promotion. I demonstrated in each case that the County's process was not flawed, that Clark County had legitimate nondiscriminatory reasons for not promoting the plaintiffs and that the promoted employee possessed the requisite skills. I won summary judgment in each case. Both plaintiffs appealed and I briefed the appeals. The United States Court of Appeals for the Ninth Circuit affirmed both grants of summary judgment.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00412 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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District Judge Edward C. Reed, Jr. presided over the *Robichaud* case and District Judge Brian Sandoval presided over the *Hansen* case. Circuit Judges Bright, Hug and Reinhardt decided both appeals.

Opposing counsel was Kirk Kennedy, 815 South Casino Center Boulevard, Las Vegas, Nevada 89101, Tel 702-385-5534.

9. *State v. Goodman*, 00-C-170364-C (Nev. Jud. Dist. 2004).

As a Deputy Special Public Defender, I represented the defendant from 2001 to 2004. My client and his co-defendant were charged with the murder of two men during the commission of a drug deal. The State sought the death penalty for each of the two murders. Upon my filing a successful motion to suppress my client's statement to police on the basis that it was obtained by deceptive practices, the elected District Attorney himself undertook the prosecution of the case. By carefully documenting the defendant's tragic childhood, which included abandonment by his mother, physical child abuse, learning disabilities, and the defendant's own drug addiction, we convinced the District Attorney to withdraw the filed notice of intent to seek the death penalty. I represented the defendant at trial where he was found guilty and sentenced to life imprisonment.

Chief Judge Kathy Hardcastle presided over the case in the Eighth Judicial District Court.

My co-counsel were Deputy Special Public Defender Dayvid Figler, 626 South Third Street, Las Vegas, Nevada 89101, Tel 702-386-0333; and Deputy Special Public Defender Ivette Maningo, 330 South Third Street, 8th Floor, Las Vegas, Nevada 89155, Tel 702-455-6265.

Primary counsel for the State was District Attorney David Roger, 200 Lewis Avenue, Las Vegas, Nevada 89155, Tel 702- 671-2501; Deputy District Attorney Mark DiGiacomo, 200 Lewis Avenue, Las Vegas, Nevada 89155, Tel 702-671-2501; and Chief Deputy District Attorney Pam Weckerly, 200 Lewis Avenue, Las Vegas, Nevada 89155, Tel. 702-671-2501.

10. *Valerio v. Valerio*, No. 01-D263390, 105 P.3d 822 (Nev. 2001 Table).

As a sole practitioner, I represented the plaintiff from 2001 to 2002. My client was an elderly victim of spousal abuse for several years who was living in a women's shelter when I took on her representation pro bono. I filed for her divorce and obtained for her a temporary spousal support order. The court granted the divorce and ordered the immediate sale of the parties' home and the allocation of their property. The husband-defendant refused to provide the court-ordered financial support, removed the realtor's lockbox to prevent the house sale and rejected my client's request for her pet beagle. On my motion, the defendant

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00413 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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was jailed for contempt. On sale of the house, I arranged for the plaintiff to receive her portion of the sale as well as all the money the defendant had refused to pay. I also established a qualified domestic relation order so that my client could receive her share of her ex-husband's pension directly. The defendant retained counsel for the purpose of filing an appeal, which I successfully opposed when the trial court's decision was affirmed by the Supreme Court of Nevada. I received the Louis Weiner Pro Bono Service Award for my work on this case.

Judge Robert Lueck presided over the case in the Eighth Judicial District Court.

The defendant initially proceeded pro se. On appeal, opposing counsel was Diana D. Hampton (currently Henderson Municipal Court Judge), 243 Water Street, Henderson, Nevada 89015, Tel 702-267-3352.

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.)

As legal counsel to Clark County agencies, I sometimes am called upon for policy advice and have occasionally reviewed proposed legislation. Throughout my career, I have been actively involved in bar activities, including by serving on the CLE committee and providing instruction to students in the Trial By Peers program of the Clark County Bar Association. I have served as a mentor to young lawyers and law students for the Latino Bar Association and provided job shadowing opportunities to high school students interested in the legal field. I have served as a panel speaker numerous times explaining the role of a public defender within the justice system during Chamber of Commerce programs and have chaired criminal justice programming for annual leadership classes. Recently, through the State of Nevada Office of the Attorney General, I instructed prosecutors from Mexico in a mock trial setting to provide them insight into our adversarial system.

I have not 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 was a volunteer instructor in 2002-2003 for low income, fourth grade minority students for Junior Achievement. I followed the curriculum provided, which equipped the students with a fundamental understanding of business, transportation and the community services funded by taxes. I have not retained the syllabus.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00414 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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 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.

        My husband is a Chief Deputy District Attorney for Clark County. Although he does not practice in federal court, individuals who he has prosecuted or may in the future prosecute may be or become party or petitioner in a federal court case. If I am confirmed as a judge, I expect to recuse from any case where my husband has prosecuted a party or petitioner.

        As a Chief Deputy District Attorney, I presently defend Clark County and the Board of County Commissioners in lawsuits brought against them. If I am confirmed as a judge, I will recuse for at least two years from any case in which Clark County is an interested party. Following that period, I would continue to

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00415 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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recuse from any Clark County case involving matters I personally litigated or in which I was otherwise involved.

If I am confirmed as a judge, I will recuse from any case where I represented a party in criminal proceedings. Given that I have not handled criminal matters since 2005, I do not anticipate frequent conflicts of interest on this basis.

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

If confirmed as a judge, I will handle all matters involving actual or potential conflicts of interest through the careful and diligent application of the Code of Conduct for United States Judges as well as other relevant Canons and statutory provisions.

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.

Throughout my years in private practice, I regularly and frequently performed legal services at no charge or on a reduced fee basis for financially disadvantaged clients. Forms of representation included negotiating disputes without litigation and undertaking representation in simple and complex criminal and civil litigation. I have provided pro bono or reduced fee representation for clients in both federal and state courts.

I also have engaged in pro bono work in areas beyond litigation to benefit disadvantaged people or to educate the community about the legal justice system. Since 2005, I have helped organize an annual event to collect pajamas for children in need as an Executive Board Member of DJs for PJs. Our events are heavily supported by media and corporate sponsors. In 2008 alone, we collected more than 13,000 pajamas and distributed them to Child Haven, Boy's and Girl's Town, Nevada Childhood Cancer Foundation, S.A.F.E. House, Safe Nest, The Shade Tree Shelter, Variety Early Learning Center and Women's Development Center.

I have served on the Executive Board of the Latino Bar Association since 2002 in numerous positions including President. Last year, we collaborated with *La Voz*, the Boyd School of Law Hispanic Law Student Association to launch a mentorship program, called *Huellas* ("footprints" in Spanish). In 2008, this program received the Hispanic National Bar Association (HNBA) Law Student Organization of the Year Award. I also have been an Advisory Board Member of the Nevada branch of the national non-profit Youth Advocacy Program, (YAP, Inc.) since 2007.

I view helping the disadvantaged as an obligation that I have sought to meet through these and other service opportunities, particularly through programs that mentor or assist

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00416 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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young people. I have been honored to receive several awards recognizing my pro bono and community work, including the Access to Justice Public Lawyer Award (2002) and the Louis Wiener Pro Bono Service Award (2001). In December 2001, I received a "100 Hour Club" certificate acknowledging my pro bono service on a case referred by the Nevada Legal Services Pro Bono Project.

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.

Nevada does not have a selection commission to recommend candidates for nomination to the federal courts.

Senator Harry Reid contacted me by telephone on September 11, 2009, to ask if I was interested in serving on the federal bench. I told him I would be honored to be considered. I provided materials by e-mail to Senator Reid's staff and subsequently participated in a video conference interview with the Senator himself on September 18, 2009. On September 22, 2009, Senator Reid telephoned me to tell me he was recommending me to President Obama for consideration for the position to which I am now nominated.

Since late September 2009, I have been in contact with pre-nomination officials at the Department of Justice. On October 26, 2009, I was interviewed in Washington, D.C., by attorneys from the Department of Justice and the White House Counsel's Office. My nomination was submitted to the Senate on December 24, 2009, and Senator Reid telephoned me that morning to notify me.

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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FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Navarro, Gloria M.	U.S. District Court, Nevada	12/27/2009
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) Nominee for U.S. District Court Judge	**5a. Report Type** (check appropriate type) ☑ Nomination, Date 12/24/2009 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	**6. Reporting Period** 1/1/2008 to 11/30/2009
7. Chambers or Office Address Office of the District Attorney 500 Grand Central Parkway Las Vegas NV 89155	**8.** On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer_____ Date_____	

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

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

☐ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. Board Member (unpaid position)	DJs for PJs (non-profit charitible organization)
2. Advisory Board Member (unpaid position)	Youth Advocate Program (non-profit organization)
3. Chief Deputy District Attorney	Clark County District Attorney
4.	
5.	

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

☐ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1. 2009	Public Employees' Retirement System of Nevada; pension upon retirement age 65
2.	
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 11	Name of Person Reporting Navarro, Gloria M.	Date of Report 12/27/2009

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2007	Clark County NV - salary	$125,125.00
2.	2008	Clark County NV - salary	$138,992.00
3.	2009	Clark County NV - salary (Jan 1 to Nov 27)	$142,806.00
4.			

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

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

	DATE	SOURCE AND TYPE
1.	2007-2009	Clark County, Nevada - Salary
2.		
3.		
4.		

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

☐ NONE *(No reportable reimbursements.)*

	SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.	EXEMPT				
2.					
3.					
4.					
5.					

FINANCIAL DISCLOSURE REPORT Page 3 of 11	Name of Person Reporting Navarro, Gloria M.	Date of Report 12/27/2009

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

☐ NONE *(No reportable gifts.)*

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

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☑ NONE *(No reportable liabilities.)*

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

FINANCIAL DISCLOSURE REPORT
Page 4 of 11

Name of Person Reporting	Date of Report
Navarro, Gloria M.	12/27/2009

VII. INVESTMENTS and TRUSTS — *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. 457 Deferred Compensation Plan #1		None	M	T	Exempt				
2. -AF New Perspective fund									
3. -Janus Overseas fund									
4. -Hartford MidCap HLS fund									
5. -Munder MC Core Growth fund									
6. -Hartford Capp App HLS fund									
7. -SSgA S&P 500 Flagship fund									
8. -Vanguard 500 Index fund									
9. 457 Deferred Compensation Plan #2		None	L	T	Exempt				
10. -AIM Leasure fund									
11. -AF New Perspective fund									
12. -Janus Overseas fund									
13. -Allian NFJ SC Val fund									
14. -Lord Abbett SCap Val fund									
15. -Vanguard SC Index fund									
16. -Artisan MidCap Value fund									
17. -Hartford MidCap HLS fund									

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

FINANCIAL DISCLOSURE REPORT
Page 5 of 11

Name of Person Reporting	Date of Report
Navarro, Gloria M.	12/27/2009

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
18. -Munder MC COre Grw fund									
19. -Vanguard MC Index fund									
20. -AmCent Value fund									
21. -AF Growth Fund Amer fund									
22. -Hartford Cap App HLS fund									
23. -Hartford Div & Growth HLS fund									
24. -Vanguard 500 Index fund									
25. IRA #1		None	J	T	Exempt				
26. -T.Rowe Price Equity Income fund									
27. IRA #2		None	J	T	Exempt				
28. -T.Rowe Price Equity Index 500 fund									
29. IRA #3		None	K	T	Exempt				
30. -T.Rowe Price Equity Index 500 fund									
31. IRA #4		None	K	T	Exempt				
32. -T.Rowe Price Total Equity Market Index fund									
33. IRA #5		None	J	T	Exempt				
34. -T.Rowe Price Mid-Cap Growth fund									

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

FINANCIAL DISCLOSURE REPORT
Page 6 of 11

Name of Person Reporting	Date of Report
Navarro, Gloria M.	12/27/2009

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
35. IRA #6		None	K	T	Exempt				
36. -T.Rowe Price Total Equity Market Index									
37. Education Savings Account #1		None	K	T	Exempt				
38. -T.Rowe Price Equity Index 500 fund									
39. Education Savings Account #2		None	K	T	Exempt				
40. -T.Rowe Price Equity Index 500 fund									
41. Education Savings Account #3		None	J	T	Exempt				
42. -T. Rowe Price Equity Index 500 fund									
43. College Savings Iowa Plan #1		None	J	T	Exempt				
44. College Savings Iowa Plan #2		None	J	T	Exempt				
45. College Savings Iowa Plan #3		None	J	T	Exempt				
46. College Savings Plan-T.Rowe Price #1		None	J	T	Exempt				
47. College Savings Plan-T.Rowe Price #2		None	J	T	Exempt				
48. College Savings Plan-T.Rowe Price #3		None	J	T	Exempt				
49. AFLAC common stock	A	Dividend	J	T	Exempt				
50. Abbott Labs common stock	A	Dividend	J	T	Exempt				
51. Apple common stock		None	J	T	Exempt				

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

FINANCIAL DISCLOSURE REPORT Page 7 of 11	Name of Person Reporting Navarro, Gloria M.	Date of Report 12/27/2009

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
52. Aqua America Corp Common stock	A	Dividend	J	T	Exempt				
53. Atmos Energy common stock	A	Dividend	J	T	Exempt				
54. BP common stock	A	Dividend	J	T	Exempt				
55. Becton Dickenson common stock	A	Dividend	J	T	Exempt				
56. Black and Decker common stock	A	Dividend	J	T	Exempt				
57. Bristol-Meyers common stock	A	Dividend	J	T	Exempt				
58. CSX common stock	A	Dividend	J	T	Exempt				
59. Carlisle Co. common stock	A	Dividend	J	T	Exempt				
60. Carnaval Corp common stock	A	Dividend	J	T	Exempt				
61. Clorox common stock	A	Dividend	J	T	Exempt				
62. Coca Cola common stock	A	Dividend	J	T	Exempt				
63. Colgate-Palmolive common stock	A	Dividend	J	T	Exempt				
64. ConAgra Foods	A	Dividend	J	T	Exempt				
65. Costco common stock	A	Dividend	J	T	Exempt				
66. Duke Energy common stock	A	Dividend	J	T	Exempt				
67. ExxonMobile common stock	A	Dividend	J	T	Exempt				
68. First American common stock	A	Dividend	J	T	Exempt				

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

FINANCIAL DISCLOSURE REPORT Page 8 of 11	Name of Person Reporting Navarro, Gloria M.	Date of Report 12/27/2009

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
69. GE common stock	A	Dividend	J	T	Exempt				
70. General Mills common stock	A	Dividend	J	T	Exempt				
71. Genuine Parts common stock	A	Dividend	J	T	Exempt				
72. Gorman-Rupp common stock	A	Dividend	J	T	Exempt				
73. Hasbro common stock	A	Dividend	J	T	Exempt				
74. Heinz common stock	A	Dividend	J	T	Exempt				
75. Home Depot common stock	A	Dividend	J	T	Exempt				
76. Hormel common stock	A	Dividend	J	T	Exempt				
77. Intel common stock	A	Dividend	J	T	Exempt				
78. IFF common stock	A	Dividend	J	T	Exempt				
79. International Paper common stock	A	Dividend	J	T	Exempt				
80. Johnson and Johnson common stock	A	Dividend	J	T	Exempt				
81. Johnson Controls common stock	A	Dividend	J	T	Exempt				
82. Kimberly-Clark common stock	A	Dividend	J	T	Exempt				
83. McGraw-Hill common stock	A	Dividend	J	T	Exempt				
84. Medtronic common stock	A	Dividend	J	T	Exempt				
85. Merck common stock	A	Dividend	J	T	Exempt				

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

FINANCIAL DISCLOSURE REPORT
Page 9 of 11

Name of Person Reporting	Date of Report
Navarro, Gloria M.	12/27/2009

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
86. MMM common stock	A	Dividend	J	T	Exempt				
87. Paychex common stock	A	Dividend	J	T	Exempt				
88. Pepsi common stock	A	Dividend	J	T	Exempt				
89. Pfizer common stock	A	Dividend	J	T	Exempt				
90. RPM common stock	A	Dividend	J	T	Exempt				
91. Schwab common stock	A	Dividend	J	T	Exempt				
92. Shering-Plough common stock	A	Dividend	J	T	Exempt				
93. Southern Co common stock	A	Dividend	J	T	Exempt				
94. Spectra Energy common stock	A	Dividend	J	T	Exempt				
95. TECO Energy common stock	A	Dividend	J	T	Exempt				
96. Twin Disk common stock	A	Dividend	J	T	Exempt				
97. Walgreen common stock	A	Dividend	J	T	Exempt				
98. T.Rowe Price Total Equity Market Index fund		None	J	T	Exempt				
99. GE Interest Plus Account	A	Interest	K	T	Exempt				
100. Wells Fargo Account		None	J	T	Exempt				
101. Bank of America Account		None	J	T	Exempt				
102. Clark County Credit Union Account		None	J	T	Exempt				

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
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FINANCIAL DISCLOSURE REPORT Page 10 of 11	Name of Person Reporting Navarro, Gloria M.	Date of Report 12/27/2009

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

FINANCIAL DISCLOSURE REPORT Page 11 of 11	Name of Person Reporting Navarro, Gloria M.	Date of Report

IX. CERTIFICATION.

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

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

Signature

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		55	000	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		201	230	Notes payable to relatives			
Unlisted securities--add schedule		11	870	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		198	440
Real estate owned-add schedule		559	500	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		75	000				
Cash value-life insurance							
Other assets itemize:							
See attached Schedule		428	335				
				Total liabilities		198	440
				Net Worth	1	132	495
Total Assets	1	330	935	Total liabilities and net worth	1	330	935
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you a defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
AFLAC	$ 7,450
Abbott Labs	1,580
Apple Inc	5,480
Aqua America Corp	1,220
Atmos Energy	5,130
BP	4,370
Becton Dickenson	11,240
Black and Decker	1,450
Bristol-Myers	1,670
CSX	10,320
Carlisle Co.	1,710
Carnaval Corp	990
Clorox	1,700
Coca Cola	4,780
Colgate-Palmolive	7,080
ConAgra Foods	1,670
Costco wholesale	2,220
Duke Energy	1,960
ExxonMobile	7,520
First American Corp	1,980
GE	11,030
General Mills	5,850
Genuine Parts Inc.	1,800
Gorman-Rupp	2,220
Hasbro	6,550
Heinz	3,060
Home Depot	3,580
Hormel	2,450
Intel	2,590
International Flav & Frag	2,320
International Paper	5,100
Johnson & Johnson	7,550
Johnson Controls	4,010
Kimberly-Clark	1,850
McGraw-Hill Corp	2,330
Medtronic	1,020
Merck	4,100
Minnesota Mining and Mfg.	5,700
Paychex	1,930
Pepsi Co.	8,140
Pfizer	5,740

RPM Inc	6,190
Schwab (Charles) Co.	5,540
Shering-Plough	3,840
Southern Company	3,250
Spectra Energy	1,290
TECO Energy	1,260
Twin Disk	3,500
Walgreen Co	4,020
T. Rowe Price Total Equity fund	1,900
Total Listed Securities	$ 201,230
Unlisted Securities	
Securities with value under $1000	$ 11,870
Real Estate Owned	
Primary Personal residence	$ 417,000
Secondary Personal residence	142,500
Total Real Estate Owned	$ 559,500
Other Assets	
IRA#1	10,360
IRA#2	4,620
IRA#3	37,660
IRA#4	19,020
IRA#5	9,290
IRA#6	18,260
457 Deferred Compensation Plan #1	134,780
457 Deferred Compensation Plan #2	96,580
College Savings Iowa Plan #1	8,540
College Savings Iowa Plan #2	5,030
College Savings Iowa Plan #3	14,755
College Savings Plan T.Rowe Price #1	7,600
College Savings Plan T.Rowe Price #2	7,600
College Savings Plan T. Rowe Price #3	6,860
Education Savings Account #1	17,620
Education Savings Account #2	16,370
Education Savings Account #3	13,390
Total Other Assets	$ 428,335
Real Estate Mortgages Payable	
Primary Personal residence	$ 86,140
Secondary Personal residence	112,300
Total Real Estate Mortgages Payable	$ 198, 440

AFFIDAVIT

I, ___Gloria M. Navarro___, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

12/28/09
(DATE)

(NAME)

STATE OF NEVADA)
(ss.
COUNTY OF CLARK)

Subscribed and sworn to before me
this 28th day of December 2009.

(NOTARY)

P. C. ELLISON
Notary Public State of Nevada
No. 94-1340-1
My appt. exp. Apr. 17, 2013

STATEMENT OF AUDREY G. FLEISSIG, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MISSOURI

Judge FLEISSIG. I would like to thank Senator McCaskill for coming here today and for the faith that she has placed in me in recommending me to the President, and of course to the President for this honor that he has given me in nominating me for this position. I especially want to thank the Committee and the Chair and Ranking Member Sessions for holding this hearing here today. It is something that is very special to all of us, but it is also special to our family members and friends, some of whom were able to be here today and some are not. But I do have my husband here of 31 years, my husband Bruce.

Senator KLOBUCHAR. Where is he? There he is. Very good.

Judge FLEISSIG. And my son, Matthew, is also here today. They have both come here from St. Louis and were able to get out on one of the last flights that made it out. My daughter, Rachel Fleissig, had to return to college and was not able to be here today, but she is very sorry that she could not attend.

My mother is not well enough to travel and my sisters are home with her. My mother-in-law, unfortunately, broke her pelvis just about a week ago and Bruce's family is home with her. But they are very, very special people to me as well.

I am very graced to have two other friends here with me today. My dear friend Sedgwick Mead, Jr. has come here from St. Louis, and also Professor Jane Aiken, who is now a professor at Georgetown Law School, who previously was a professor at Washington University. I am so pleased that she was able to come here today. Two other dear friends, Professor Karen Tokarz and Judge Susan Block, were to come here with me today, but their flights were canceled and they were unable to be here. But I do want to thank you.

My Father passed away the year after I graduated from law school, but he was certainly my inspiration to head in this direction. Although he was not a lawyer himself, he did love and debate the law and he would have been very, very proud here today.

Senator KLOBUCHAR. Thank you very much, Judge.

Judge Koh.

[The biographical information follows.]

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00432 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Audrey Goldstein Fleissig (formerly, Audrey Ellen Goldstein)

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

   United States District Judge for the Eastern District of Missouri

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.

   Thomas F. Eagleton United States Courthouse
   111 South 10th Street
   St. Louis, Missouri 63102

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

   1955; St. Louis, Missouri

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.

   1977 to 1980, Washington University School of Law; J.D., 1980
   1972 to 1976, Carleton College; B.A. (*magna cum laude*), 1976
   1975 (summer), University of Toronto; 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 2001 to present
   United States District Court for the Eastern District of Missouri
   111 South 10th Street
   St. Louis, Missouri 63102
   United States Magistrate Judge

1978, 1981 to 1982 and 1991 to present
Washington University School of Law
One Brookings Drive
St. Louis, Missouri 63130
Adjunct Faculty (1991 to present)
Legal Writing Instructor (1981 to 1982)
Research Assistant to Professor Michael Greenfield (1978)

1991 to 2001
Office of the United States Attorney
Eastern District of Missouri
111 South 10th Street
St. Louis, Missouri 63102
Assistant United States Attorney (2001)
United States Attorney (2000 to 2001)
Assistant United States Attorney (1991 to 2000)

1980 to 1991
Peper, Martin, Jensen, Maichel and Hetlage (now Husch Blackwell Sanders LLP)
190 Carondelet Plaza, Suite 600 (current address)
St. Louis, Missouri 63105
Partner (1989 to 1991)
Associate (1980 to1989)

1979
Thompson & Mitchell (now Thompson Coburn LLP)
One US Bank Plaza
St. Louis, Missouri 63101
Summer Associate

1976 to 1978 (intermittent)
Missouri Machinery & Engineering Co., Inc.
1228 South 8th Street (current address)
St. Louis, Missouri 63104
Clerk

1977
Georgia Department of Labor
148 International Boulevard
Atlanta, Georgia 30303
Research Assistant

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1976 to 1977
Washington University School of Medicine
660 South Euclid Avenue
St. Louis, Missouri 63110
Administrative Assistant

1976
Delmar-Harvard Elementary School
711 Kingsland Avenue
St. Louis, Missouri 63130
Teacher Aide

Other Affiliations

2003 to 2009
Ready Readers (uncompensated)
10270 Bach Boulevard
St. Louis, Missouri 63132
Director

1998 to 1999
St. Louis Gymnastics Center and Foundation (uncompensated)
315 West Pacific
St. Louis, Missouri 63119
Director and Secretary

1994 to 1996
Bar Association of Metropolitan St. Louis (uncompensated)
720 Olive Street, Suite 2900
St. Louis, Missouri 63101
Member, Board of Governors

1989 to 1995
Women Lawyers' Association of Greater St. Louis (uncompensated)
P.O. Box 1428
St. Louis, Missouri 63188
Past-President (1994 to 1995)
President (1993 to 1994)
President Elect (1992 to 1993)
Director (1989 to 1995)

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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 have not served in the military. I have not registered for selective service, as I was not eligible to do so.

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 Young Alumni Award, 2001, Washington University School of Law
President's Outstanding Service Award, 2001, Bar Association of Metropolitan St. Louis
President's Award, 2000, Women Lawyers' Association of Greater St. Louis
International Women's Day Inaugural Award, 2000, Washington University Women's Law Caucus
Performance Award, 1995, 1997, 1998, 1999, Office of the United States Attorney for the Eastern District of Missouri
Special Services Award, 1997, 1999, Office of the United States Attorney for the Eastern District of Missouri
Order of the Coif, 1980, Washington University School of Law
Dean's Honor Scholar, 1978, 1979, Washington University School of Law

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
Missouri Bar Association
Bar Association of Metropolitan St. Louis
- Co-Chair of Planning Committee, Conference on Government and Public Sector Lawyers, 2000
- Steering Committee, Federal Litigation & Practice Committee, 1998 to 1999
- Board of Governors, 1994 to 1996
- Task Force on Family Issues Affecting Lawyers, 1990
- Chairperson, Women in the Profession Committee, 1985 to 1986

Women Lawyers' Association of Greater St. Louis
- Past-President, 1994 to 1995
- President, 1993 to 1994
- President-Elect, 1992 to 1993
- Director, 1989 to 1995

Gender and Justice Implementation Committee (created jointly by the Supreme Court of Missouri and the Missouri Bar Association), 1994 to 1996
American Judicature Society

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Federal Magistrate Judges Association
National Association of Women Judges
Washington University School of Law Alumni Executive Committee

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.

Missouri, 1980
Illinois, 1981

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 Court of Appeals for the Fourth Circuit, 1986
United States Court of Appeals for the Fifth Circuit, 1988
United States Court of Appeals for the Eighth Circuit, 1983
United States Court of Appeals for the Eleventh Circuit, 1986
United States District Court for the Eastern District of Missouri, 1980

I allowed my admissions to the Court of Appeals for the Fifth and Eleventh Circuits to lapse in approximately 1991 and in 1999, respectively. I did not renew these admissions because I no longer practice before these circuits. I have had no other lapse in 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.

Ready Readers, 2000 to present
Director, 2003 to 2009
Bradley University Parent Advisory Board, 2007 to present
Ladue Horton Watkins High School Parent Teacher Organization, 2001 to 2007
Ladue Junior High Parent Teacher Organization, 1998 to 2003
McKnight Woods Subdivision, Trustee, 1999 to 2000

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00437 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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Reed School Parent Teacher Organization, 1992 to 2000
Jewish Community Center Association, 1998
Mid-County YMCA, approximately 1995 to 1998
Legal Advocates for Abused Women, 1994 to 1995
Advisory Board/Development Committee, 1994 to 1995
Payback, Inc., 1993 to 1995
National Council of Jewish Women, 1991 to 1992
The Media Club, approximately 1989 to 1991

I made charitable contributions to organizations that may or may not have considered me a member based solely on those contributions. Those organizations and the dates of contributions, to the best of my recollection, are:

Jewish Federation of Greater St. Louis
KETC Channel 9 Public Television
KWMU Public Radio
St. Louis Art Museum Foundation
St. Louis Science Center
St. Louis Zoo Friends
The City Museum
Missouri Public Interest Research Group (intermittently until 1996)
Sierra Club (1995 to 1996)
Common Cause (1990 to 1996)
American Civil Liberties Union (intermittently until 1995)

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 discriminates or, to the best of my knowledge, has ever 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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Many Hands Make Light Work - A Bankruptcy Fraud Concealment Case, 47 U.S. ATTY'S BULL. 33 (August 1999).

Not in Our Court - New Tools to Combat Bankruptcy Crime, 42 ST. LOUIS B.J. 10 (Fall 1996).

Note, *Unconscionability: A New Helping Hand to Residential Tenants*, 1979 WASH. U.L.Q. 993 (Fall 1979).

Case Note, *Missouri Allows Punitive Damages in Product Liability Action*, 1979 WASH. U.L.Q. 298 (Winter 1979).

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.

While I was United States Attorney for the Eastern District of Missouri from 2000 to 2001, the Office may have provided communications relating to legal interpretation to various law enforcement organizations. I do not have records of such communications. The only instance I recall specifically was in 2000, when the Sheriff's office in one Missouri county was advised that a recent Supreme Court opinion limiting the use of drug checkpoints did not necessarily prohibit its practice of operating a ruse drug checkpoint. If the communication was in writing, I do not have a copy.

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.

As United States Attorney from 2000 to 2001, I frequently gave speeches and presentations on a variety of issues. The subjects included problems posed by methamphetamine, the danger to children posed by the Internet, hate crimes, and

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00439 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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other issues. Since 2000, I also have spoken to students at the local law schools on subjects such as practice tips, new student orientation, how to balance family and practice, and engaging in public service. I do not have the text or notes from those speeches.

In addition, after a search of my records, I have identified the following speeches and presentations I gave:

8/85 The Attorney/Client Privilege, sponsored by the Bankruptcy Committee of the Bar Association of Metropolitan St. Louis (no notes)

2/88 Securities Fraud, sponsored by The Corporate Counsel Institute, St. Louis, Missouri (no notes)

3/90 "Bankruptcy," sponsored by The Missouri Bar Association of Tax Planners, St. Louis, Missouri (no notes)

10/90 The Part-Time Option, at the Annual Meeting of the Missouri Bar Association (no notes)

3/91 Organizer and Moderator: The Small and Sole Practitioner, sponsored by the Women Lawyers' Association of Greater St. Louis (no notes)

2/92 Panel Speaker, "Litigation vs. Arbitration: Which is Best for You?" at a business roundtable sponsored by the American Association of Industrial Managers

3/93 "Bankruptcy Crimes, The Fifth Amendment, Etc.," sponsored by the Bankruptcy Committee of the Bar Association of Metropolitan St. Louis (no notes)

2/94 Criminal Bankruptcy Fraud, at the Annual Bankruptcy Institute, sponsored by the Missouri Bar

4/94 Organizer and Moderator, "Fairness on the Home Court: Dealing with Diversity in the Legal System," sponsored by the Bar Association of Metropolitan St. Louis and the Women Lawyers' Association of Greater St. Louis (no notes)

2/96 Bankruptcy and Bank Crimes, sponsored by the Bar Association of Metropolitan St. Louis (no notes)

10/96 Criminal Bankruptcy Fraud and Criminal Referrals, presented to the Office of the United States Bankruptcy Trustees for the Eastern District of Missouri (no notes)

1/97 Speaker and Demonstrator on Appellate Oral Argument and the Appellate Process, at the program, "Objections at Trial and Winning on Appeal," sponsored by the Missouri Bar and the National Practice Institute (NPI). I believe a video tape was made of the program by NPI.

6/98 Use of Technology in the Courtroom, presented at the Federal Practice Potpourri, sponsored by the Bar Association of Metropolitan St. Louis

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00440 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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6/99 "The Mechanics of Voir Dire," presented at the program, "Anatomy of a Federal Civil Lawsuit," sponsored by the Bar Association of Metropolitan St. Louis

1/00 Panel Member: "Is 'Relevant Conduct' Relevant? Reconsidering the Guidelines' Approach to Real Offense Sentencing," presented at a program on the Sentencing Guidelines, sponsored by St. Louis University School of Law (no notes)

2/00 Panel Member, "Finding the Evidence" workshop; Speaker, "Effective Investigative, Charging and Trial Strategies," at the Bankruptcy Fraud Seminar, sponsored by the Office of Legal Education, Executive Office for United States Attorneys

2/00 Speaker on Ethics Issues, at Annual Bankruptcy Institute, sponsored by The Missouri Bar (no notes)

3/00 Address at International Women's Day Award Ceremony, sponsored by Washington University Women's Law Caucus

8/00 Address at my Swearing-In Ceremony as United States Attorney

10/00 Panelist, Program on Hate Crimes and Hate Speech, sponsored by FOCUS St. Louis (no notes)

11/00 Address at 31st Annual Medal of Valor Awards Dinner, St. Louis, Missouri (no notes)

12/00 Co-chair and speaker at the Conference on Government & Public Sector Lawyers & the Organized Bar, sponsored by the Bar Association of Metropolitan St. Louis; "Economics of the Practice of Public Sector Law" (no notes)

3/01 Speaker, "Tips on Making Federal Practice Easier," sponsored by the Bar Association of Metropolitan St. Louis (no notes)

2/02 "Meet the New Judge – Top 10 List – Things You May Want to Know," sponsored by the Bar Association of Metropolitan St. Louis

4/02 Introduction of the Honorable Jean C. Hamilton as recipient of award for International Women's Day

4/02 Address at Investiture Ceremony as United States Magistrate Judge

5/02 "Arthur Miller Unravels Ethical Dilemmas for Today's Lawyer," sponsored by the National Practice Institute (no notes)

5/02 Guest speaker, St. Louis Police Officer Graduation Ceremony

8/02 Speaker at Swearing-In Ceremony of United States Attorney

2/03 "Practice of Employment Law Before Federal Courts," sponsored by the Bar Association of Metropolitan St. Louis

4/03 Presentation of St. Louis Daily Record Justice Award to Karen Tokarz

5/03 Law Day Program for High School Students at Federal Courthouse

6/03 "Electronic Filing in the Eastern District," and "Ask the Judge" Panel Member, sponsored by the Bar Association of Metropolitan St. Louis, Annual Bench and Bar Conference (no notes)

8/03 Panel Member, speaking on Professionalism, at New Student Orientation, Washington University School of Law

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00441 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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9/03 "The Practice of Employment Law Before the District Courts," sponsored by The Missouri Bar

1/04 "The Politics of Creating Alternative Work Arrangements," sponsored by the Bar Association of Metropolitan St. Louis

4/04 "Evidence Jeopardy," sponsored by the National Employment Lawyers Association

5/04 Panel Member, Mental Competency Proceedings, Annual CJA Seminar, sponsored by the United States District Court and the Federal Public Defender for the Eastern District of Missouri

10/04 Judges' Roundtable Program, New Challenges for Federal Practitioners, sponsored by the Bar Association of Metropolitan St. Louis and the Federal Practice Committee

4/05 Criminal Case Management Program: Managing the Complex Criminal Case; Managing Death Penalty Cases, Workshop for U.S. Magistrate Judges I, sponsored by the Federal Judicial Center

7/05 Criminal Case Management Program: Managing the Complex Criminal Case; Managing Death Penalty Cases, Workshop for U.S. Magistrate Judges II, sponsored by the Federal Judicial Center

10/05 Organizer and speaker, "How We Do What We Do," Magistrate Judges' session at the Eighth Circuit Judicial Conference (no notes)

10/05 Speaker, "Requests for Electronic Information," Magistrate Judges' session at the Eighth Circuit Judicial Conference

3/07 Introduction of Honorees, International Women's Day, Washington University Women's Law Caucus

4/07 "Criminal Duty Practices and Logistics," sponsored by the Federal Judicial Center

4/07 Speaker, "Getting to the Top: Career Path of 3 Powerful Leaders in Missouri," sponsored by St. Louis University Women's Law Student Association (no notes)

7/07 "Criminal Duty Practices and Logistics," sponsored by the Federal Judicial Center

9/07 Panel Member, Courtroom Technology Roundtable, at Federal Practice Fundamentals program, sponsored by the United States District Court

4/08 Speaker at Program Installing Professor Karen Tokarz with the Public Interest Chair, Washington University School of Law

4/08 "Enhancing Chamber's Efficiency Through Technology," sponsored by the Federal Judicial Center

7/08 "Using Basic Technology in Three Work Areas," sponsored by the Federal Judicial Center

9/08 Panel Member, Federal Practice Fundamentals and Judges' Roundtable, sponsored by the United States District Court

11/08 Panel Member: "New Trends and Challenges in ADR; Here and Around the World," sponsored by United States Arbitration & Mediation Midwest, Inc. and Washington University School of Law

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00442 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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3/09 Organizer and Speaker at "In or Out? Evolving Evidence Issues in the Eighth Circuit," sponsored by the Bar Association of Metropolitan St. Louis and the Federal Practice Committee

4/09 Panel Member, "Emerging Uses of Technology to Aid the Administration of Justice," sponsored by the National Association of Women Judges

5/09 Speaker, Women Lawyers' Association of Greater St. Louis, Scholarship Reception

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 for available news accounts of interviews and speeches. There are many news accounts related to my position as United States Attorney in 2000 and 2001. Very few reference interviews or speeches I gave and, instead, most are based on press releases or otherwise merely reference me or actions taken by the Office. After careful review, I have identified the following news accounts that quote me or comment on a speech, interview, or remark that I made or that was attributed to me or to the Office:

Donna Walter, *Women Lawyers Brainstorm on Attaining Leadership Roles*, DAILY (Kansas City), Oct. 6, 2004.

Michael Shaw, *Miquelon's Induction is More of a Roast; Family, Friends, FBI Salute U.S. Attorney on Winning Nomination Battle*, ST. LOUIS POST-DISPATCH, Aug. 28, 2002, at B1.

Bill Smith, *For Newest Citizens, Feelings of Grief Mar Joy of Special Day, "We Are All Patriots,"* ST. LOUIS POST-DISPATCH, Sept. 18, 2001, at D1.

Jo Mannies, *U.S. Attorney Fleissig is Leaving Office; Some had Speculated that She Would Stay for Vote-Fraud Inquiry; Republican Gets Interim Job*, ST. LOUIS POST-DISPATCH, Apr. 19, 2001, at B1.

Carolyn Tuft, *Grand Jury Looks at Voter Registration*, ST. LOUIS POST-DISPATCH, Feb. 14, 2001, at A1.

I-44 Drug Checkpoints will Continue, Despite High Court Ruling, Sheriff Says, ST. LOUIS POST-DISPATCH, Dec. 5, 2000, at D7.

Man is Charged in Fatal Stabbing Outside Tavern, ST. LOUIS POST-DISPATCH, Nov. 28, 2000, at B2.

Jerry Berger, *Who Needs Frustration of Waiting? How about Letting Bush, Gore Share White House?*, ST. LOUIS POST-DISPATCH, Nov. 12, 2000, at A2.

Bill Bryan, *Society is Lucky to Have People Brave Enough and Willing to be Police, U.S. Prosecutor Says*, ST. LOUIS POST-DISPATCH, Nov. 2, 2000, at A5.

Man in Investment Scam Gets Term of 51 Months, ST. LOUIS POST-DISPATCH, Oct. 18, 2000, at B2.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00443 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Display Notes Casualties of Gun Violence, ST. LOUIS POST-DISPATCH, Sept. 6, 2000, at B2.

Tim Bryant, *Abbott Ambulance Settles Medicare Fraud Case for $5.4 Million*, ST. LOUIS POST-DISPATCH, Aug. 19, 2000, at 8.

William C. Lhotka, *U.S. Attorney is Taking Office with Sights Set on Cybercrime; She Wants a Partnership Between Law Enforcement and Private Industry*, ST. LOUIS POST-DISPATCH, Aug. 6, 2000, at C1.

Editorial, *Mess at Thompson Coburn*, ST. LOUIS POST-DISPATCH, June 25, 2000, at B2.

Tim Bryant, *Lawyer Will Repay His Firm $678,417 for Irregularities: Lazaroff Pleads Guilty of Fraud, May Face 27-33 Months in Prison*, ST. LOUIS POST-DISPATCH, June 14, 2000, at A1.

Newsmakers, MODERN HEALTHCARE, May 29, 2000, at 16.

Tim Bryant, *Ashcroft Would Boost Efforts Here to Fight Illegal Guns*, ST. LOUIS POST-DISPATCH, Mar. 4, 2000, at 8.

Tim Bryant, *Lieberman Fought Extradition to the End; He Leaps to His Death from Balcony in Chile; Whereabouts of Cash is Mystery*, ST. LOUIS POST-DISPATCH, Feb. 24, 1998, at A1.

Mid-America, KANSAS CITY STAR, Feb. 10, 1998, at B3.

Dan Mihalopoulos, *Lieberman Appeals Order Kicking Him Out of Chile; Supreme Court Will Decide Fugitive's Case This Week,* ST. LOUIS POST-DISPATCH, Feb. 10, 1998, at A1.

Bill McClellan, *Aging Hipster's Not "Overly Upset" with Lieberman*, ST. LOUIS POST-DISPATCH, June 15, 1997, at 01C.

Tim Bryant, *Delay in Dealing Costs Lieberman Some Free Time; Ex-Builder Must Serve 10 Years; May Have to Make Restitution*, ST. LOUIS POST-DISPATCH, June 4, 1997, at 01A.

Tim Bryant, *Lieberman Admits to Defrauding Home Buyers*, ST. LOUIS POST-DISPATCH, Mar. 15, 1997, at 3.

Tim Bryant, *Alan Lieberman Returns to U.S.; Ex-Home Builder Back in St. Louis to Face Federal Fraud Charges*, ST. LOUIS POST-DISPATCH, Feb. 27, 1997, at 01A.

Tim Bryant, *Liebermans Stashed Cash at Local Bank*, ST. LOUIS POST-DISPATCH, Feb. 19, 1997, at 01B.

Tim Bryant, *Woman Who Lost Money Hails Scrutiny of Liebermans; Meanwhile, Wife of 1 of the Brothers Faces Hearing Today*, ST. LOUIS POST-DISPATCH, Feb. 5, 1997, at 02B.

Tim Bryant, *Visitor Describes Crime in Lithuania; Journalist Meets U.S. Prosecutor Here, Explores Differences in 2 Nations' Justice Systems*, ST. LOUIS POST-DISPATCH, Mar. 26, 1995, at 04D.

Tim Bryant, *Money Keeps Fugitives in Luxury in Chile*, ST. LOUIS POST-DISPATCH, June 5, 1993, at 01A.

Claudia MacLachlan, *Apex Might Object to Fee for Report*, ST. LOUIS POST-DISPATCH, Oct. 13, 1989, at 1C.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00444 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Claudia MacLachlan, *Examiner Seeks Tax Returns of Apex's Officers*, ST. LOUIS POST-DISPATCH, Jan. 20, 1989, at 7D.

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 United States Magistrate Judge for the Eastern District of Missouri in 2001 and reappointed in 2009. I preside over cases on reference from the district judges and, where all parties consent, preside in full over civil cases in this Federal trial court.

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

I have presided over approximately 20 cases to verdict or judgment, excluding cases in which I entered judgment based upon a stipulation, motion, or default.

i. Of these, approximately what percent were:

jury trials:	55%
bench trials:	45%
civil proceedings:	100%
criminal proceedings:	0%

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

See attached list of cases.

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) United States v. Civey, No. S1-4:08CR0288 CAS (E.D. Mo.)
I presided over all pretrial proceedings in this 2008 criminal case in which the defendant was charged with the production of child pornography. I issued a key ruling that the attorney-client privilege did not protect the attorney who represented the defendant in a parallel state criminal proceeding from being required to give testimony regarding the chain of custody of pornographic photographs implicating the defendant that the attorney had received from a third party. I also determined that the state and federal search warrants and statements of the defendant were not subject to suppression under the Fourth or Fifth

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00445 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Amendments; that the child pornography statute was constitutional; that the indictment was not subject to dismissal on constitutional and statutory grounds; and that memory problems caused by a previous stroke did not render the defendant incompetent to stand trial. The District Judge adopted my Report and Recommendation. Following a jury trial before the District Judge, the defendant was convicted, and the case is currently on appeal to the United States Court of Appeals for the Eighth Circuit.

Counsel for the United States were Assistant U.S. Attorneys Carrie Costantin and Robert Livergood, 111 South 10th Street, 20th Floor, St. Louis, Missouri 63102, Tel (314) 539-2200.

Counsel for the Defendant was William James O'Herin, 1050 Rue Ste. Francois, Suite A, Florissant, Missouri 63031, Tel (314) 814-5951.

Counsel for Sara Rittman, Legal Ethics Counsel, was Jane E. Fedder, Husch Blackwell Sanders LLP, 190 Carondelet Plaza, Suite 600, St. Louis, Missouri 63105, Tel (314) 480-1500.

Counsel for Tim Braun, the defendant's attorney in the state case, was John C. Maxwell, 1112-B First Capital Drive, St. Charles, Missouri 63301, Tel (636) 947-4888.

(2) United States v. Sehjpal, No. 4:05CR0074 RWS (E.D. Mo.)
I presided over all pretrial proceedings in this 2005 criminal case in which the defendant was charged with possession of child pornography and other crimes. Police had searched the defendant's computer after a repair service employee found and reported pornographic images on it. After evidentiary hearings, I determined that neither this search nor the consent search of the defendant's residence and computer violated the Fourth Amendment. I also established procedures for the defendant and his expert to view and use the seized computer images for preparation of a defense, consistent with the limitations imposed by the Adam Walsh Act. Separately, I rejected defendant's argument that the child pornography statute was unconstitutionally vague and overbroad based on the argument that one cannot know, from viewing an image, whether it is of an actual child or is a virtual image. The District Judge adopted my Reports and Recommendations. The defendant thereafter entered a guilty plea and was sentenced to 30 months in prison.

Counsel for the United States were Assistant U.S. Attorneys Carrie Costantin and Hal Goldsmith, 111 South 10th Street, 20th Floor, St. Louis, Missouri 63102, Tel (314) 539-2200.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00446 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Counsel for the Defendant were Bret M. Rich, 225 South Meramec, Suite 532T, Clayton, Missouri 63105, Tel (314) 721-4472; and Dean Maynard Boland, 18123 Sloan Avenue, Lakewood, Ohio 44107, Tel (216) 529-9371.

(3) United States v. Gillis, No. 4:04CR0199 RWS (E.D. Mo.)
In 2003, the defendant, who had a history of harassing the officials of a church, was charged by criminal complaint when police searched his residence and found a pipe bomb and other bomb-making materials. I had to determine whether the defendant should be forcibly medicated in order to be rendered competent to stand trial. Applying the then-recent decision by the Supreme Court in Sell v. United States, 539 U.S. 166 (2003), I granted the government's request to forcibly medicate the defendant. The parties and I also worked with the medical facility to design proper orders to address the new standards mandated by Sell. After forced medication, the defendant was restored to competency. He thereafter entered a plea of guilty and was placed in a community corrections center.

Counsel for the United States was Assistant U.S. Attorney Patrick T. Judge, Sr., 111 South 10th Street, 20th Floor, St. Louis, Missouri 63102, Tel (314) 539-2200.

Counsel for the Defendant was Assistant Federal Public Defender Michael Dwyer, 1010 Market Street, Suite 200, St. Louis, Missouri 63101, Tel (314) 241-1255.

(4) Ekstam v. Ekstam, No. 4:04CV0187 AGF, 2006 WL 568352 (E.D. Mo. March 7, 2006); 2007 WL 2571968 (E.D. Mo. Aug. 31, 2007), aff'd, 284 F. App'x 808 (Fed. Cir. 2008)
I presided in full over this patent case by consent of the parties. The case involved claims of infringement and invalidity related to a patent for a fuel delivery system for removing air from fuel delivered to an engine. Following a Markman hearing that included the receipt of expert testimony, I construed numerous claims and terms in the patent. The parties filed cross-motions for summary judgment, and I granted summary judgment to the defendants based on non-infringement. The case was affirmed by the United States Court of Appeals for the Federal Circuit.

Counsel for the Plaintiffs was Anthony G. Simon, Simon Law Firm, P.C., 701 Market Street, Suite 1450, St. Louis, Missouri 63101, Tel (314) 241-2929.

Counsel for the Defendants were John T. Walsh, Lathrop and Gage, LLP, 10 South Broadway, Suite 1300, St. Louis, Missouri 63102-1708, Tel (314) 613-2500; and James J. Kernell, Chase Law Firm, L.C., 4400 College Boulevard, Suite 1300, Overland Park, Kansas 66211, Tel (913) 339-6061.

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(5) City of St. Louis v. AT&T Wireless Servs., Inc., 4:04CV0002 AGF (E.D. Mo.); Telecorp Commc'ns, Inc. v. City of St. Louis, 4:04CV1766 AGF (E.D. Mo.)
I presided in full over these related cases by consent of the parties, after the initial case was removed to federal court in 2004. The City of St. Louis had filed suit against numerous commercial wireless services companies seeking a declaration that they were subject to the City's Telephone Company Alternative Tax, and two of the companies filed counterclaims seeking a declaration that imposition of the tax would violate the Missouri constitution. After resolving complex issues of proper joinder and jurisdiction, the City dismissed its claims, and I then abstained from adjudicating the counterclaims in accordance with the Tax Injunction Act, 28 U.S.C. § 1341, and Jefferson County v. Acker, 527 U.S. 423 (1999). The parties pursued their claims in state court, and a settlement agreement was reached between the wireless services companies and the City of St. Louis and several other cities in Missouri.

Counsel for the Plaintiff was Mark Lawson, St. Louis City Counselor, 1200 Market Street, 314 City Hall, St. Louis, Missouri 63103, Tel (314) 622-3361.

Counsel for the Defendants were Juan D. Keller, 12512 Glencroft Drive, Sunset Hills, Missouri 63128, Tel (314) 849-7083; Mark B. Leadlove, Bryan Cave LLP, 211 North Broadway, Suite 3600, St. Louis, Missouri 63102, Tel (314) 259-2000; and Gilbert C. Sison, Rosenblum Schwartz Rogers & Glass, 120 South Central Avenue, Suite 130, Clayton, Missouri 63105, Tel (314) 862-4332.

(6) Nationwide Life Ins. Co. v. St. Claire Mobile Park Homes, LLC, 4:04CV1746 AGF, 2005 WL 1668252 (E.D. Mo. July 13, 2005); 2006 WL 2228988 (E.D. Mo. Aug. 3, 2006); 2006 WL 2252754 (E.D. Mo. Aug. 4, 2006); 2006 WL 2546815 (E.D. Mo. Aug. 31, 2006); 2006 WL 3313786 (E.D. Mo. Nov. 14, 2006)
I presided in full over this case with consent of the parties, in which a commercial lender sued a borrower, in 2005, for breach of contract due to the borrower's failure to close on a $13,000,000 commercial mortgage loan. The borrower filed a counterclaim for rescission and claims against the mortgage broker for damages and misrepresentation. In bifurcated proceedings, I granted summary judgment to the lender on liability, and determined at a bench trial that the lender, which packaged and sold its loans as commercial mortgage-backed securities, was not entitled to "hedge losses," which were in excess of $950,000. The remaining parties settled their claims.

Counsel for the Plaintiff were Thomas Cummings, Brent M. Covington and Jacqueline Ulin Levey, Armstrong Teasdale, LLP, One Metropolitan Square, Suite 2600, St. Louis, Missouri 63102, Tel (314) 621-5070; and Michael H. Kauffman, 3M Company Office of General Counsel, Office 220-10-E, 3M Center, St. Paul, Minnesota 55144, Tel (651) 733-0874.

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Counsel for the Defendants were Hon. Kurt S. Odenwald, Missouri Court of Appeals, One Post Office Square, St. Louis, Missouri 63101, Tel (314) 539-4300; Linda K. Behrmann, St. Louis Development Corporation, 1015 Locust Street, Suite 1200, St. Louis, Missouri 63101, Tel (314) 622-3400; and Kirk T. May, Gaddy and Geiger, P.C., 2345 Grand Boulevard, Suite 675, Kansas City, Missouri 64108, Tel (816) 221-8988.

(7) Behrendt v. Mo. Dev. Fin. Bd., No. 4:03CV0699 AGF (E.D. Mo.); Behrendt v. Desco Group, Inc., 4:04CV0877 AGF (E.D. Mo.); Landmarks Ass'n of St. Louis, Inc., v. Mo. Dev. Fin. Bd., No. 4:04CV1442 AGF ("Landmarks") (E.D. Mo.) I presided in full over these related cases with consent of the parties. The cases arose out of a joint federal, state, and local development project in downtown St. Louis, Missouri, to renovate the United States Custom House and Post Office building ("Old Post Office"), a National Landmark. The plan called for the demolition of the adjacent Century Building, also an historic building, for which demolition as a public nuisance had previously been ordered by a state court. A nearby property owner and the Landmarks Association filed suit in 2003 and 2004 to prevent the demolition of the Century Building.

I addressed standing and other issues under the National Historic Preservation Act and the National Environmental Protection Act and, among other rulings, determined that the plaintiff's request that I find that the state court had exceeded its authority in ordering the demolition of the building was barred by the Rooker-Feldman doctrine. After the property owner dismissed her remaining claims, I denied Landmarks Association's request for a temporary restraining order to prevent the demolition. Demolition of the Century Building was thereafter completed, as was renovation of the Old Post Office.

Counsel for the Plaintiff was Matthew J. Ghio, Law Offices of Matthew J. Ghio, P.O. Box 16201, St. Louis, Missouri 63105, Tel (314) 496-8420.

Counsel for the Defendants were Edward M. Goldenhersh and Dawn Morville Johnson, Greensfelder and Hemker, PC, 2000 Equitable Building, 10 South Broadway, St. Louis, Missouri 63102, Tel (314) 345-4734; Edward L. Dowd, Jr. and James F. Bennett, Dowd Bennett, LLP, 7733 Forsyth, Suite 1410, Clayton, Missouri 63105, Tel (314) 889-7306; Assistant U.S. Attorney Jane Rund, 111 South 10th Street, 20th Floor, St. Louis, Missouri 63102, Tel (314) 539-2200; Michael A. Garvin, Carnahan and Garvin, 211 North Broadway, Suite 2980, St. Louis, Missouri 63102, Tel (314) 436-1223; and Mark Lawson, St. Louis City Counselor, 1200 Market Street, 314 City Hall, St. Louis, Missouri 63103, Tel (314) 622-3361.

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(8) United States v. Bolden, 4:02CR0557 CEJ (AGF) (E.D. Mo. Sept. 2, 2004), adopted in large part, 2005 WL 2874711 (E.D. Mo. Oct. 31, 2005) and Order dated Nov. 2, 2005, aff'd in large part, 545 F.3d 609 (8th Cir. 2008), cert. denied, 2009 WL 2494691 (2009).

I presided over all pretrial proceedings in this 2002 criminal case, arising out of the shooting death of a bank guard during an attempted bank robbery, in which the United States was seeking the death penalty under the Federal Death Penalty Act (FDPA), 18 U.S.C. §§ 3591-98. I rejected the defendant's numerous arguments that the FDPA was unconstitutional, on its face and as applied. Following evidentiary hearings, I denied the defendant's motions to suppress, including that the lineup identifications did not violate due process. I also found that defendant's consents to search were voluntarily given, that his statements were not subject to suppression under the Fifth Amendment, and that the warrantless seizure of the firearm used in the offense did not violate the Fourth Amendment. Separately, I determined the procedures for any mental health examination of the defendant, and the timing and extent of the disclosure of expert reports regarding the defendant's mental health, for possible use at the penalty phase. The District Judge substantially affirmed and adopted all of the rulings I recommended. In a jury trial before the District Judge, the defendant was found guilty and the death sentence was imposed. The judgment and sentence were affirmed on appeal, and the Supreme Court denied certiorari.

Counsel for the United States were Assistant U.S. Attorneys Michael A. Reilly and Steven E. Holtshouser, 111 South 10th Street, 20th Floor, St. Louis, Missouri 63102, Tel (314) 539-2200.

Counsel for the Defendant were Christopher E. McGraugh, Leritz and Plunkert, P.C., 555 Washington Avenue, Suite 600, St. Louis, Missouri 63101, Tel (314) 231-9600; and Assistant Federal Public Defenders Kevin Curran and Caterina M. DiTraglia, 1010 Market Street, Suite 200, St. Louis, Missouri 63101, Tel (314) 241-1255.

(9) Burlington N. & Santa Fe Ry. Co. v. Bellefontaine Quarry, 4:00CV1697 AGF (E.D. Mo.)
I presided in full with consent of the parties over this suit by a railroad company to recover damages resulting from a train derailment that occurred on tracks running adjacent to the defendant's property. A slope had failed on the defendant's property, causing earth and other debris to fall and obstruct the tracks. The defendant filed a counterclaim alleging that the plaintiff was negligent in failing to provide lateral support. There were significant discovery disputes and several Daubert motions were filed in the areas of accounting, locomotive engineering, railroad operations, and slope management. After I denied the plaintiff's motion for summary judgment on the counterclaim, the case proceeded to a jury trial in 2002. After five days of trial, the parties settled.

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Counsel for the Plaintiff were Paul Littleton, Brasher Law Firm, L.C., 211 North Broadway, One Metropolitan Square, Suite 2300, St. Louis, Missouri 63102, Tel (314) 621-7700; and William A. Brasher, Boyle Brasher LC, 211 North Broadway, One Metropolitan Square, Suite 2300, St. Louis, Missouri 63102, Tel (314) 621-7700.

Counsel for the Defendants were Lawrence B. Grebel and B. Michael Easley, Brown and James, P.C., 1010 Market Street, 20th Floor, St. Louis, Missouri 63101, Tel (314) 421-3400.

(10) Sexton v. Martin, No. 4:95CV2026 AGF (E.D. Mo.)
Six police/firefighters and their wives sued the city and several public officials, alleging that the defendants illegally recorded the plaintiffs' private telephone calls, in violation of the Federal Wiretap Act and their right to privacy under the Fourth and Fourteenth Amendments. Two plaintiffs also claimed that the defendants wrongfully terminated their employment in retaliation for publicly disclosing the illegal wiretap and engaging in union activities, in violation of their First Amendment free speech rights.

In 2001, after the appellate court affirmed the denial of qualified immunity, Sexton v. Martin, 210 F.3d 905 (8th Cir. 2000), and the previous trial judge retired, the case was assigned to me and I presided over the remaining proceedings with consent of the parties. I rejected the defendants' arguments that municipalities could not be liable under the Wiretap Act and that there had been no "interception" within the meaning of the statute, and denied qualified immunity. After several plaintiffs settled, a five-day trial was held following which the jury found for the plaintiffs on their claims under the Wiretap Act and awarded punitive damages, but found for the defendants on the claim of wrongful termination. I awarded statutory damages under the Wiretap Act, and attorneys' fees. No appeal was filed.

Counsel for the Plaintiffs were Jerome J. Dobson and Gregory A. Rich, Dobson and Goldberg, 5017 Washington Place, Third Floor, St. Louis, Missouri 63108, Tel (314) 621-8363; and Michael J. Shaller, Pleban and Associates, LLC, 2010 South Big Bend, St. Louis, Missouri 63117, Tel (314) 645-6666.

Counsel for the Defendants were Lawrence B. Grebel and B. Michael Easley, Brown and James, P.C., 1010 Market Street, 20th Floor, St. Louis, Missouri 63101, Tel (314) 421-3400.

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) Wright v. City of Salisbury, No. 2:07CV0056 AGF, 2009 WL 2957918 (E.D. Mo. Sept. 10, 2009).

Counsel for the Plaintiff was Carla G. Holste, Carson and Coil, 515 East High Street, P.O. Box 28, Jefferson City, Missouri 65102, Tel (573) 636-2177.

Counsel for the Defendants was Michael G. Berry, Michael G. Berry, L.L.C., 211 Bolivar Street, Suite 100, Jefferson City, Missouri 65101, Tel (573) 638-7272.

(2) United States v. Huggans, No. 4:07CR0541 CDP (AGF) (E.D. Mo. May 2, 2008), 2008 WL 4066398 (E.D. Mo. Aug. 27, 2008).

Counsel for the United States were Assistant U.S. Attorneys Dean R. Hoag and James C. Delworth, 111 South 10th Street, 20th Floor, St. Louis, Missouri 63102, Tel (314) 539-2200.

Counsel for the Defendant were Michael A. Gross, 34 North Brentwood Boulevard, Suite 207, St. Louis, Missouri 63105, Tel (314) 727-4910; and Nick A. Zotos, Fabbri and Zotos, 4235 Lindell Boulevard, St. Louis, Missouri 63108, Tel (314) 534-1797.

(3) McDonald v. NextStudent, Inc., 542 F. Supp. 2d 956 (E.D. Mo. 2008).

Counsel for the Plaintiff were David T. Butsch and James J. Simeri, Butsch Simeri Fields, LLC, 231 South Bemiston, Suite 260, Clayton, Missouri 63105, Tel (314) 863-5700; and Martin M. Green, Green Jacobson, P.C., 7733 Forsyth Boulevard, Suite 700, St. Louis, Missouri 63105, Tel (314) 862-6800.
Counsel for the Defendant were John C. Grellner, Stinson and Morrison, 168 North Meramec, Suite 400, St. Louis, Missouri 63105, Tel (314) 863-0800; and John J. Witmeyer, III, Jon Ryan Grabowski and Kyle M. Medley, Ford and Marrin, LLP, Wall Street Plaza, New York, New York 10005, Tel (212) 269-4900.

(4) United States v. Mitchell, 4:07CR0184 ERW (AGF), 2007 WL 3022210 (E.D. Mo. Oct. 12, 2007).

Counsel for the United States were Assistant U.S. Attorneys Dean R. Hoag and James C. Delworth, 111 South 10th Street, 20th Floor, St. Louis, Missouri 63102, Tel (314) 539-2200.

Counsel for the Defendant was Patrick S. Kilgore, Ferguson and Kilgore, LLC, 200 South Bemiston, Suite 310, Clayton, Missouri 63105, Tel (314) 421-6900.

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(5) United States v. Lewis, No. 4:06CR0149 ERW (AGF) (E.D. Mo. July 10, 2006), adopted, 2006 WL 2513996 (E.D. Mo. Aug. 29, 2006).

Counsel for the United States were Assistant U.S. Attorneys Frederick J. Dana and Julia M. Wright, 111 South 10th Street, 20th Floor, St. Louis, Missouri 63102, Tel (314) 539-2200.

Counsel for the Defendant was Robert T. Haar, Haar and Woods, LLP, 1010 Market Street, Suite 1620, St. Louis, Missouri 63101, Tel (314) 241-2224.

(6) Marcrum v. Luebbers, No. 4:02CV1167 AGF (E.D. Mo. Sept. 30, 2005), rev'd, 509 F.3d 489 (8th Cir. 2007), cert. denied, 129 S. Ct. 754 (2008).

Counsel for the Petitioner was K. Lee Marshall, Bryan Cave LLP, 211 North Broadway, Suite 3600, St. Louis, Missouri 63102, Tel (314) 259-2000.

Counsel for the Respondent were Assistant Attorney General Stephen D. Hawke, 221 West High Street, P.O. Box 899, Jefferson City, Missouri 65102, Tel (573) 751-3321; and Lisa J. Berry-Tayman, Shook Hardy, L.L.P., 2555 Grand Boulevard, Kansas City, Missouri 64108, Tel (816) 474-6550.

(7) United States v. Sehjpal, No. 4:05CR0074 RWS (AGF) (E.D. Mo. March 30, 2005; Sept. 14, 2006).

Counsel for the United States were Assistant U.S. Attorneys Carrie Costantin and Hal Goldsmith, 111 South 10th Street, 20th Floor, St. Louis, Missouri 63102, Tel (314) 539-2200.

Counsel for the Defendant were Bret M. Rich, 225 South Meramec, Suite 532T, Clayton, Missouri 63105, Tel (314) 721-4472; and Dean Maynard Boland, 18123 Sloan Avenue, Lakewood, Ohio 44107, Tel (216) 529-9371.

(8) Sexton v. Martin, No. 4:95CV2026 AGF (E.D. Mo. Jan. 31, 2002; June 5, 2003).

Counsel for the Plaintiffs were Jerome J. Dobson and Gregory A. Rich, Dobson and Goldberg, 5017 Washington Place, Third Floor, St. Louis, Missouri 63108, Tel (314) 621-8363; and C. John Pleban and Michael J. Shaller, Pleban and Associates, LLC, 2010 South Big Bend, St. Louis, Missouri 63117, Tel (314) 645-6666.

Counsel for the Defendants were Lawrence B. Grebel and B. Michael Easley, Brown and James, P.C., 1010 Market Street, 20th Floor, St. Louis, Missouri 63101, Tel (314) 421-3400.

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(9) United States v. Bolden, No. 4:02CR0557CEJ (AGF) (E.D. Mo. Sept. 2, 2004).

Counsel for the United States were Assistant U.S. Attorneys Michael A. Reilly and Steven E. Holtshouser, 111 South Tenth Street, 20th Floor, St. Louis, Missouri 63102, Tel (314) 539-2200.

Counsel for the Defendant were Christopher E. McGraugh, Leritz and Plunkert, P.C., 555 Washington Avenue, Suite 600, St. Louis, Missouri 63101, Tel (314) 231-9600; and Assistant Federal Public Defenders Kevin Curran and Caterina M. DiTraglia, 1010 Market Street, Suite 200, St. Louis, Missouri 63101, Tel (314) 241-1255.

(10) Bell v. Imperial Palace Hotel/Casino, Inc., 200 F. Supp. 2d 1082 (E.D. Mo. 2001).

Counsel for the Plaintiffs was Donna M. Anderson, 7335 Compas, Grand Prairie, Texas 75054, Tel (314) 568-8181.

Counsel for the Defendant was Daniel T. Rabbitt, Rabbitt and Pitzer, 100 South Fourth Street, Suite 400, St. Louis, Missouri 63102, Tel (314) 421-5545.

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

Spencer v. Kemna, No. 4:01CV0884 AGF (E. D. Mo. 2004), appeal dismissed (application for certificate of appealability denied), No. 04-3800 (8th Cir. 2005), cert. denied, 547 U.S. 1081 (2006).

Marcrum v. Luebbers, No. 4:02CV1167 AGF (E.D. Mo. Sept. 30, 2005), rev'd, 509 F.3d 489 (8th Cir. 2007), cert. denied, 129 S. Ct. 754 (2008).

McClaskey v. La Plata R-II School Dist., 364 F. Supp. 2d 1041 (E.D. Mo. 2006), aff'd, 256 F. App'x 867 (8th Cir. 2007), cert. denied, 129 S. Ct. 80 (2008).

Knieriem v. Group Health Plan, Inc., No. 4:04CV0415 AGF (E.D. Mo. 2004), aff'd, 434 F.3d 1058 (8th Cir.), cert. denied, 548 U.S. 905 (2006).

Bahktiari v. Lutz, 2006 WL 2664383 (E.D. Mo. Sept. 15, 2006), aff'd, 507 F.3d 1132 (8th Cir. 2007), cert. denied, 128 S. Ct. 2442 (2008).

United States v. Bolden, No. 4:02CR0557 CEJ (AGF) (E.D. Mo. Sept. 2, 2004), adopted in large part, 2005 WL 2874711 (E.D. Mo. Oct. 31, 2005) and Order dated Nov. 2, 2005, aff'd in large part, 545 F.3d 609 (8th Cir. 2008), cert. denied, 2009 WL 2494691 (2009).

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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) Clark v. Astrue, No. 4:06CV0984 ERW/AGF (E.D. Mo. June 22, 2007). In a Report and Recommendation, I concluded that the decision of the Commissioner of Social Security to deny the plaintiff's application for disability benefits was supported by substantial evidence. The District Judge reversed and remanded the case, finding that the Commissioner erred in not specifically considering whether the combination of the plaintiff's impairments was disabling.

(2) McAuley v. Fed. Ins. Co., No. 4:05CV1826 AGF, 2006 WL 2795376 (E.D. Mo. Sept. 27, 2006), after remand, 2009 WL 913510 (E.D. Mo. Mar. 31, 2009). On cross motions to dismiss, I denied the plaintiffs' request for benefits in this ERISA case, finding there was no accidental death under the language of the insurance policies. On appeal, a divided panel of the Court of Appeals determined the issue should have been decided on summary judgment, with reference to the administrative record. McAuley v. Fed. Ins. Co., 500 F.3d 784 (8th Cir. 2007). On remand, I concluded that the defendants were entitled to summary judgment, consistent with the legal conclusions I had reached in my prior opinion. The case settled while on appeal.

(3) Marcrum v. Luebbers, No. 4:02CV1167 AGF (E.D. Mo. Sept. 30, 2005). I granted habeas corpus relief to an individual convicted in state court based on ineffective assistance of counsel. The Court of Appeals reversed. Marcrum v. Luebbers, 509 F.3d 489 (8th Cir. 2007), cert. denied, 128 S. Ct. 754 (2008) (finding that "while . . . the district court's analysis was thorough and thoughtful, we must ultimately conclude that [Petitioner] was not denied the right to effective assistance of counsel at trial").

(4) PepsiCo, Inc. v. Baird, Kurtz & Dobson, L.L.P., No. 4:02MC0036 AGF (E.D. Mo. Feb. 11, 2002). My opinion decided a discovery dispute regarding whether internal audit reports were privileged. The District Judge adopted my determination on the choice of law but set aside my determination that the reports were not privileged. 206 F.R.D. 646 (E.D. Mo. 2002). On appeal, the Court of Appeals held that the audit reports were not privileged and substantially reinstated my prior order. 305 F.3d 813 (8th Cir. 2002).

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.

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I do not designate my decisions for publication in any reporter system. I file all of my opinions with our court's Electronic Case Filing system. Most of my substantive decisions since 2005 are also available through Westlaw and LexisNexis.

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) Wright v. City of Salisbury, Mo., No. 2:07CV0056 AGF, 2009 WL 2957918 (E.D. Mo. Sept. 10, 2009) (claim that speech of terminated employee was protected by First Amendment).

(2) United States v. Sehjpal, No. 4:05CR0074 RWS (AGF) (E.D. Mo. Sept. 14, 2006) (constitutionality of federal child pornography statute).

(3) Marcrum v. Luebbers, No. 4:02CV1167 AGF, 2005 WL 3333266 (E.D. Mo. Dec. 7, 2005) (claim of ineffective assistance of counsel for failing to introduce evidence of psychiatric problems), rev'd, 509 F.3d 489 (8th Cir. 2007), cert. denied, 129 S. Ct. 754 (2008).

(4) Kramer v. City of Bridgeton, No. 4:02CV1502 AGF (E.D. Mo. Sept. 19, 2005) (claims of excessive use of force, in violation of substantive due process, and of invasion of right to privacy).

(5) United States v. Worley, No. 4:05CR0309 CAS (AGF) (E.D. Mo. Aug. 17, 2005) (Fourth and Fifth Amendment challenges to search warrants and statements).

(6) United States v. Bolden, 4:02CR0557 CEJ (AGF) (E.D. Mo. Sept. 2, 2004), (constitutionality of Federal Death Penalty Act and Fourth, Fifth, and Sixth Amendment challenges to searches, seizures, and statements), adopted in large part, 2005 WL 2874711 (E.D. Mo. Oct. 31, 2005) and Order dated Nov. 2, 2005, aff'd in large part, 545 F.3d 609 (8th Cir. 2008), cert. denied, 2009 WL 2494691 (2009).

(7) Rex Temple, Inc. v. City of Hazelwood, No. 4:01CV0488 AGF (E.D. Mo. May 23, 2002) (constitutionality of city zoning ordinances challenged as prior restraint of speech), vacated as moot, Order dated Aug. 6, 2002.

(8) Bell v. Imperial Palace Hotel/Casino, Inc., 200 F. Supp. 2d 1082 (E.D. Mo. 2001) (constitutional "minimum contacts" jurisdiction in Internet context).

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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 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 compliance with the Code of Conduct for United States Judges, each of the judges in our district maintains with the Clerk's Office a standing recusal list of individuals, entities, and law firms, which is reviewed and updated on a regular basis. If a case is assigned to a judge involving a party or lawyer on the recusal list, it is automatically reassigned to another judge. In addition, the prosecutors in criminal cases are required to file a notice disclosing any entities with a financial interest in the case, such as the victims of a financial fraud, and we review the cases for potential conflicts with these entities when they are filed. As each new case is assigned to me, I also review the parties and the counsel to make sure that I do not have a conflict with them, a close relationship that might impair my ability to remain impartial, or a relationship that might give rise to an appearance of impropriety.

Special issues arise by virtue of my having served as United States Attorney for the district in which I now sit as Magistrate Judge. I received guidance from both the Administrative Office of the United States Courts and the Executive Office for United States Attorneys regarding criminal cases from which I must be recused. The Clerk of Court has implemented procedures that enable me to comply with that advice.

I recused myself in the following cases:

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00457 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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1. I recused myself sua sponte upon determining that I could not handle the case due to my prior position as United States Attorney in the following cases:

   United States v. Park, No. 4:02CR0096 CAS.
   United States v. Curtis, No. 4:02CR0117 CDP.
   United States v. Schwalbert, No. 4:02CR0140 DJS.
   United States v. Sampler, No. 4:02CR0212 JCH.
   United States v. Johnson, 4:02CR0629 CDP.
   United States v. Jacobs, No. 4:03CR0203 CAS.
   United States v. Walker, No. 4:03CR0481 DJS.
   United States v. Duvall, No. 4:03CR0731 CEJ.
   United States v. Arthur, No. 4:07CR0240 RWS.
   United States v. Coleman, No. 4:08CR0701 CAS.

2. United States v. Cunningham, No. 4:01CR0528 SNL. A criminal defendant requested my recusal in challenging a drug interdiction method for which news accounts had attributed my approval when I served as United States Attorney. To avoid the appearance of impropriety, I recused.

3. Clayborne Suttles v. Health Mark, Inc., No. 4:01CV1727 AGF. I recused myself sua sponte because my law clerk, while previously employed in private practice, had worked on litigation related to the case.

4. United States v. Brown, No. 4:03CR0171 CEJ. I recused myself sua sponte because I had prosecuted the defendant on similar charges while I was an Assistant U.S. Attorney.
5. United States v. Scott, No. 4:08CR0401 CEJ. I recused myself sua sponte because I owned publicly traded stock in an interested party.

6. United States v. Ohlsen, No. 4:09CR0114 RWS. I recused myself sua sponte because I owned publicly traded stock in an interested party.

7. United States v. Clifford, No. 4:09CR0483 CEJ. I recused myself sua sponte because I owned publicly traded stock in an interested party.

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 served as United States Attorney for the Eastern District of Missouri from January 2000 to April 2001. I initially was appointed by the United States

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00458 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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District Court for the Eastern District of Missouri, and was subsequently nominated by President William Jefferson Clinton and confirmed by the United States Senate. I was appointed by President Clinton on May 31, 2000.

I have not had any 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.

I have not participated in any political campaigns, been a member of any political party or election committee, or held a position therein.

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 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.

August 2001 to present
United States District Court for the Eastern District of Missouri
111 South 10th Street
St. Louis, Missouri 63102
United States Magistrate Judge

1991 to 2001
Office of the United States Attorney for the Eastern District of Missouri
111 South 10th Street
St. Louis, Missouri 63102
Assistant United States Attorney (2001, 1991 to 2000)
United States Attorney (2000 to 2001)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00459 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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1980 to 1991
Peper, Martin, Jensen, Maichel and Hetlage (now Husch Blackwell Sanders LLP)
190 Carondelet Plaza, Suite 600 (current address)
St. Louis, Missouri 63105
Partner (1989 to 1991)
Associate (1980 to1989)

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.

From 1988 to 1991, I was authorized to serve as an arbitrator with the National Association of Securities Dealers and the American Arbitration Association. I sat as one of three arbitrators on two cases, but do not remember the names of the cases or the dates.

b. Describe:

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

From 1980 to 1991, I was a civil litigation attorney, in general business litigation. From 1991 to 2001, I was a federal prosecutor, including service as United States Attorney from 2000 to 2001. Since August 2001, I have served as United States Magistrate Judge in the Eastern District of Missouri.

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

While an attorney in private practice, from 1980 to 1991, my areas of specialty included securities and commodities litigation, commercial litigation, class action litigation, and appellate practice. In the last five years of my private practice, I added concentrations in the areas of school law litigation and business bankruptcy litigation. I primarily represented business clients of all sizes, some individuals as plaintiffs and defendants in business-related matters, and school districts.

As an Assistant U.S. Attorney from 1991 to 2000, I represented the United States and specialized in financial institution fraud and bankruptcy fraud prosecutions in which the victims included banks, individuals, and the bankruptcy court. I was a member of the Financial Institution Fraud Unit,

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Coordinator of Bankruptcy Fraud cases, and a member of the Department of Justice National Bankruptcy Fraud Working Group.

As United States Attorney in 2000 and 2001, I supervised approximately 100 attorneys and staff, representing the United States in all criminal prosecutions and in civil litigation in the eastern half of the state.

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 entire practice has been in litigation as a prosecutor and civil litigator. In private practice, I appeared regularly in court. As an Assistant United States Attorney, I appeared almost daily in court. As United States Attorney, I appeared occasionally in court.

i. Indicate the percentage of your practice in:
   1. federal courts: 97%
   2. state courts of record: 2%
   3. other courts: 1%
   4. administrative agencies:

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 50%
   2. criminal proceedings: 50%

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 tried approximately 17 cases to verdict or judgment. I was sole counsel on ten; chief counsel on six; and associate counsel on one.

i. What percentage of these trials were:
   1. jury: 35%
   2. non-jury: 65%

e. Describe your practice, if any, before the Supreme Court of the United States. 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) United States v. Blumeyer, 62 F.3d 1013 (8th Cir. 1995) ("Blumeyer I"); United States v. Blumeyer, 114 F.3d 758 (8th Cir. 1997) ("Blumeyer II"). United States District Court for the Eastern District of Missouri, Hon. Jean C. Hamilton. Appeal to United States Court of Appeals for the Eighth Circuit.

As an Assistant United States Attorney, I handled the appeal of a district judge's order setting aside a jury conviction based on allegations of juror misconduct. My involvement with the case began on the appeal; it was assigned to me because the Assistants who had tried the case in a four-week jury trial had left the Office. At issue was the jury foreperson's receipt of extrinsic information during the trial. I successfully argued that it was not the type of extrinsic information that should result in setting aside the verdict, and the Court of Appeals reinstated the conviction.

At sentencing, my co-counsel and I proved losses of $40 to $80 million, and the defendant executive of an insurance company was sentenced to 262 months in prison. I thereafter served as lead counsel on the appeal on the merits, in which the Court of Appeals affirmed in full.

My co-counsel was Patricia A. McGarry, 1320 City Center Drive, Suite 300, Carmel, Indiana 46032, Tel (317) 358-6667.

Counsel for Defendant Blumeyer at various stages were Robert H. Wendt, 1010 Market Street, Suite 1440, St. Louis, Missouri 63101, Tel (314) 621-1775; Jane C. Hogan, 4940 Sutherland Avenue, St. Louis, Missouri 63109, (phone unlisted); M. Stephen Marshall, 2525 Hampton Avenue, St. Louis, Missouri 63139, Tel (314) 404-5931; Burton H. Shostak, Shostak & Shostak, 8015 Forsyth Boulevard, Clayton, Missouri 63105, Tel (314) 725-3200; and Anthony J. Sestric, 3967 Holly Hills Boulevard, St. Louis, Missouri 63116, Tel (314) 351-2512. Counsel for Defendant Peckham was Lee Lawless, Federal Public Defender, 1010 Market Street, Suite 200, St. Louis, Missouri 63101, Tel (314) 241-1255.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00462 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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(2) United States v. Lieberman, Case No. S1-4:92CR0143 JCH, Hon. Jean C. Hamilton. Companion cases: United States v. Gomez, Case No. 4:97CR0036 GFG, Hon. George F. Gunn; United States v. Gadarian, Case No. 4:97CR0043 DJS, Hon. Donald J. Stohr; United States v. Kerr, Case No. 4:93CR0160 GFG, Hon. George F. Gunn. All in the United States District Court for the Eastern District of Missouri.

Beginning in 1991, I was co-counsel in the investigation and prosecution for fraud and money laundering of the owners and key employees of the Lieberman Corporation (once one of the top fifty home builders in the nation) following its collapse. The employees entered guilty pleas and were sentenced but the Lieberman brothers, who owned the company, fled to Chile on the eve of the indictment. We attempted, unsuccessfully, to extradite for five years. One of the brothers later began to negotiate a return and plea. After we determined that he was in fact attempting to transfer and hide his assets in violation of the proposed agreement, we conducted an undercover operation that led to the prosecution and conviction of his wife, her drug supplier, and a Chilean attorney on currency violations and other charges. In 1997, that brother voluntarily returned to the United States and pled guilty. He was sentenced to 120 months in prison and the forfeiture of substantially all of his assets. The Republic of Chile thereafter denied the other brother's visa and directed him to leave the country. After Israel and Cuba refused to accept him, he committed suicide. All the funds and property located were returned as restitution.

My co-counsel was Assistant U.S. Attorney Michael W. Reap, 111 South 10th Street, St. Louis, Missouri 63102, Tel (314) 539-2200.

Counsel for Defendant Harold Lieberman was Robert T. Haar, Haar & Woods, 1010 Market Street, St. Louis, Missouri 63101, Tel (314) 241-2224. Counsel for Defendant Alan Lieberman at various stages were Edward L. Dowd, Jr., Dowd Bennett, LLP, 7733 Forsyth, Suite 1410, St. Louis, Missouri 63105, Tel (314) 889-7301; Burton H. Shostak, Shostak & Shostak, 8015 Forsyth Boulevard, Clayton, Missouri 63105, Tel (314) 725-3200; Federal Public Defenders Norman London and Lee Lawless, 1010 Market Street, Suite 200, St. Louis, Missouri 63101, Tel (314) 241-1255. Counsel for Defendant Phyllis Lieberman was Arthur S. Margulis, Margulis & Grant, 11 South Meramec, St. Louis, Missouri 63105, Tel (314) 721-6677. Counsel for other defendants were Larry Fleming, Herzog Crebs LLP, 100 North Broadway, 14th Floor, St. Louis, Missouri 63102, Tel (314) 231-6700; N. Scott Rosenblum, 120 South Central Avenue, Suite 130, St. Louis, Missouri 63105, Tel (314) 862-4332; and Ronald E. Jenkins, Jenkins & Kling, P.C., 10 South Brentwood, Suite 200, St. Louis, Missouri 63105, Tel (314) 721-2525.

(3) United States v. Johnson, Case No. 4:98CR0126 JCH, Hon. Jean C. Hamilton. Related cases: United States v. Givens, Case No. 4:98CR0291 RWS, Hon. Rodney W. Sippel; United States v. Elam, Case No. 4:99CR0414 SNL, Hon. Stephen N. Limbaugh, Sr. All in the United States District Court for the Eastern District of Missouri.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00463 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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I was sole counsel for the United States in these related cases that resulted in the successful prosecution, in 1998 and 1999, of three overlapping counterfeit check-cashing rings operating in Missouri and several other states from 1997 through 1999. The Johnson case involved 18 defendants; approximately 25 defendants were charged in total. All participants, including one defendant who had fled while awaiting sentencing on unrelated charges in another district, were located, pled guilty, and were sentenced.

Principal Defense Counsel were Eric W. Butts, 720 Olive Street, St. Louis, Missouri 63101, Tel (314) 621-1617; Hon. Mike Mullen, Circuit Judge, Circuit Court of the City of St. Louis, 10 North Tucker Boulevard, St. Louis, Missouri 63101, Tel (314) 622-4363; Bruce S. Harvey, 146 Nassau Street, NW, Atlanta, Georgia 30303, Tel (404) 659-4678; Peter Cohen, 2734 Lafayette Avenue, St. Louis, Missouri 63104, Tel (314) 772-9494; and Gregory Nat Wittner, Wittner & Poger, 7733 Forsyth, Suite 2000, St. Louis, Missouri 63105, Tel (314) 862-3535.

(4) United States v. Freeman, No. S1-4:95CR0186 JCH. United States District Court for the Eastern District of Missouri, Hon. Jean C. Hamilton.

This prosecution shut down a $25 million Ponzi scheme that involved the sale of "prime bank notes" by Freeman's life insurance company to more than 500 primarily elderly individuals through a nationwide network of life insurance salesmen. I was brought into the case shortly before the 1995 indictment of the eight principal participants on multiple counts of wire fraud and money-laundering. I served as co-counsel for the United States in all further proceedings. Just prior to the trial, which was estimated to take at least four weeks, all of the defendants pled guilty and agreed to forfeit the funds we had located and frozen. We thereafter convinced the German government to return $8 million that had been transferred to one of Freeman's European co-conspirators. We had a special master appointed and were able to return more than $15 million to the investors, with a minimum of administrative expenses.

My co-counsel was Jonathan Goldstein, McCormack Baron Salazar, 1415 Olive Street, St. Louis, Missouri 63103, Tel (314) 621-3400.

Counsel for the Defendants were Doron Weinberg, Weinberg & Wilder, 523 Octavia Street, San Francisco, California 94102, Tel (415) 431-3472; Jeffrey T. Demerath, Armstrong Teasdale, LLP, One Metropolitan Square, Suite 2600, St. Louis, Missouri 63102, Tel (314) 342-4103; N. Patrick Flanagan, Beckley, Singleton, Jemison & List, 100 W. Liberty, Suite 700, Reno, Nevada 89501, Tel (702) 323-8866; Arthur Margulis, Margulis & Grant, 11 South Meramec Avenue, Clayton, Missouri 63105, Tel (314) 721-6677; Arthur K. Wachtel, 170 Columbus Avenue #100, San Francisco, California 94133, Tel (415) 248-1000; Harold J. Rosenthal, 803 Hearst Avenue, Berkeley, California 94710, Tel (510) 981-1800; David B. B. Helfrey, Helfrey & Neiers, P.C., 120 South Central Avenue, Suite 1500, St. Louis, Missouri 63105, Tel (314) 725-9100; and Burton H. Shostak, Shostak & Shostak, 8015 Forsyth Boulevard, St. Louis, Missouri 63105, Tel (314) 725-3200.

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(5) United States v. Rimell, 21 F.3d 281 (8th Cir. 1994). United States District Court for the Eastern District of Missouri, Hon. Stephen N. Limbaugh, Sr. Appeal to United States Court of Appeals for the Eighth Circuit.

This case, filed in 1992, involved a scheme through which defendant Rimell, who was a director of one of the victim banks, and two of his employees, fraudulently obtained bank financing for apartment complexes Rimell owned and operated. After the loans defaulted and the banks filed an involuntary bankruptcy proceeding against Rimell and his wife, the Rimells committed bankruptcy fraud, including the fraudulent transfer of assets. I was brought into the case after the indictment, and served as co-counsel for the United States in connection with the trial and all subsequent proceedings. The employees pled guilty and, after a three-week jury trial, the Rimells were convicted of all counts. Their convictions were affirmed by the United States Court of Appeals for the Eighth Circuit.

Co-counsel for the United States was Assistant U.S. Attorney Rosemary C. Meyers, 111 South 10th Street, St. Louis, Missouri 63102, Tel (314) 539-2200.

Counsel for Defendant Albert Rimell at different stages were Bradford J. Kessler, 8000 Bonhomme, Suite 217, St. Louis, Missouri 63105, Tel (314) 863-6363, and Robert B. Ramsey, 104 Magnolia Drive, Suite B, Glen Carbon, Illinois 62034, Tel (618) 288-6784. Counsel for Defendant Harriet Rimell at different stages were Assistant Federal Public Defender Michael Dwyer, 1010 Market Street, Suite 200, St. Louis, Missouri 63101, Tel (314) 241-1255, and Richard J. Burke, Jr., 1010 Market Street, Suite 660, St. Louis, Missouri 63101, Tel (314) 880-7000. Counsel for the other defendants were Irl Baris, 1221 Locust, 10th Floor, St. Louis, Missouri 63103, Tel (314) 421-6644; and Barry Short, Lewis & Rice, 500 North Broadway, Suite 2000, St. Louis, Missouri 63102, Tel (314) 444-7600.

(6) United States v. Lurie, No. 4:94CR0167 DJS. United States District Court for the Eastern District of Missouri, Hon. Donald J. Stohr. Appeal to the United States Court of Appeals for the Eighth Circuit.

This case arose out of the 1992 involuntary bankruptcy of a large and prominent business law firm in St. Louis. Defendant, who had been the firm's managing partner, fraudulently transferred his home, valued at more than $1,000,000, in violation of the liquidating plan of reorganization. At an emergency hearing called when the sale was discovered, Lurie, representing himself and his wife, made false statements to the bankruptcy court. I was sole counsel for the United States. The defendant pled guilty to a charge of perjury, was sentenced to 18 months in prison, and agreed to surrender his law license. His sentence was enhanced based on evidence we developed showing that he continued to engage in fraudulent conduct following his plea. Defendant's post-conviction motion was denied, and the denial was affirmed on appeal. United States v. Lurie, 207 F.3d 1075 (8th Cir. 2000). The creditors were able to obtain repayment through the bankruptcy court.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00465 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Counsel for the Defendant at different stages were Donald L. Wolff, 1108 Olive Street, 5th Floor, St. Louis, Missouri 63101, Tel (314) 621-1701; and Sean D. O'Brien, 305 East 63rd Street, Kansas City, Missouri 64113, Tel (816) 363-2795.

(7) Bd. of Educ. of St. Louis v. Mo., 758 F. Supp. 499 (E.D. Mo.), aff'd, 936 F.2d 993 (8th Cir. 1991) (subsequent history omitted). Part of the St. Louis School Desegregation Case (Liddell v. Bd. of Educ.). United States District Court for the Eastern District of Missouri, Hon. Stephen N. Limbaugh, Sr. Appeal to the United States Court of Appeals for the Eighth Circuit.

I was involved in two separate proceedings that took place during the course of the St. Louis School Desegregation Case, which involved a voluntary inter-district desegregation plan supervised by a District Judge. In the first proceeding, I was co-counsel for the Special School District, an entity which provided vocational and special education in St. Louis County. After the District Judge determined that the School Board of the City of St. Louis could not adequately provide vocational education to City students in an integrated environment, we were successful in having our client selected by the District Judge as the provider of those services. I argued the case on appeal to the United States Court of Appeals, which affirmed the District Court's Order, with some modification.

In a separate matter in the St. Louis Desegregtion Case, I served as lead counsel for the Rockwood School District, one of the parties to the voluntary plan, on various voluntary plan issues. We successfully resolved the issues and negotiated a formula for funding from the State of Missouri through the end of the plan.

My co-counsel was Thomas E. Tueth, Tueth and Keeney, 34 North Meramec Avenue, Suite 600, St. Louis, Missouri 63105, Tel (314) 880-3600.

Counsel for the Board of Education of St. Louis was Kenneth C. Brostron, Lashly Baer, 714 Locust Street, St. Louis, Missouri 63101, Tel (314) 621-2939. Counsel for Plaintiff Liddell was William P. Russell, 515 Olive Street, St. Louis, Missouri 63101. Counsel for Plaintiff Caldwell/NAACP was Michael A. Middleton, Deputy Chancellor and Professor, University of Missouri School of Law, 203 Hulston Hall, Columbia, Missouri 65211, Tel (573) 882-6487. Counsel for St. Louis Teachers' Union were Louis Gilden (deceased) and Charles R. Oldham, 317 North 10th Street, St. Louis, Missouri 63101, Tel (314) 241-6608. Counsel for the United States was Marie McElderry, Department of Justice, P.O. Box 66078, Washington, D.C. 20035, Tel (202) 514-3068. Counsel for the State of Missouri was Assistant Attorney General John J. Lynch, 222 South Meramec, Suite 300, Clayton, Missouri 63105, Tel (314)726-9999.

(8) Merry v. Parkway Sch. Dist., No. 88-2189-C-4. The United States District Court for the Eastern District of Missouri, Hon. Jean C. Hamilton.

This case involved a class action filed in 1988 by students and parents of students with special needs residing in St. Louis County, against the Special School District (SSD), an

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00466 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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independent, umbrella school district formed to provide special education services for students with disabilities and special needs, and against the Parkway School District, one of the County's largest school districts, as a representative school district. The suit challenged the manner in which special services were provided, including the degree to which the individual school districts assumed responsibility for the students and the degree to which students with special needs were educated in the same classroom as other students (i.e., the degree of inclusion).

I was lead counsel for Parkway. After issues of class certification were resolved and discovery was conducted, the parties engaged in settlement discussions, during which I left my firm to become an Assistant U.S. Attorney. A settlement was reached that devised a new plan for providing services to students with special needs in the St. Louis County schools served by SSD.

My co-counsel were Richard J. Pautler, Thompson Coburn LLP, One US Bank Plaza, St. Louis, Missouri 63101, Tel (314) 552-6000; and Thomas E. Tueth, Tueth and Keeney, 34 North Meramec Avenue, Suite 600, St. Louis, Missouri 63105, Tel (314) 880-3600.

Lead counsel for the Plaintiffs was Kenneth M. Chackes, 230 South Bemiston, Suite 800, St. Louis, Missouri 63105, Tel (314) 872-8420; and counsel for the Special School District was Richard H. Ulrich, Summers Compton Wells, P.C., 8909 Ladue Road, St. Louis, Missouri 63124, Tel (314) 991-4999.

(9) Int'l Ins. Co. v. Johns, 685 F. Supp. 1230 (S.D. Fla. 1988), aff'd, 874 F.2d 1447 (11th Cir. 1989). United States District Court for the Southern District of Florida, Hon. Stanley Marcus.

This case arose out of a shareholder derivative suit challenging $4 million in change-of-control payments made to officers and directors in connection with the merger of two Florida banks, which suit was settled by the repayment of $600,000 and a reduction in the term of the Chairman's consulting agreement. I served as co-counsel for the officers and directors. When the officers and directors sought reimbursement under their Director's and Officer's liability policy for the attorneys' fees they had incurred, the insurer filed suit seeking a declaration that it had no obligation under the policy, and my clients filed a counterclaim for reimbursement of the settlement payments and attorneys' fees incurred in the derivative suit. I was lead counsel at the bench trial. In a case of first impression, we obtained a verdict of $1.7 million, and the verdict was affirmed by the United States Court of Appeals for the Eleventh Circuit.

My co-counsel was Lewis R. Mills, Jr., Thompson Coburn LLP, One US Bank Plaza, St. Louis, Missouri 63101, Tel (314) 552-6000.
Counsel for International Insurance Company was Bruce G. Hermelee, Hermelee & Geffin, LLC, Ingraham Building, Suite 1135, 25 S.E. 2nd Avenue, Miami, Florida 33131, Tel (305) 373-5444.

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(10) Amey, Inc. v. Gulf Abstract & Title, Inc., 564 F. Supp. 1121 (M.D. Fla. 1983), aff'd, 758 F.2d 1486 (11th Cir. 1985). United Stated District Court for the Middle District of Florida, Hon. Ben Krentzman. Appeal to the United States Court of Appeals for the Eleventh Circuit.

This case involved an antitrust action by a real estate developer against the four main banks in Southwest Florida and their attorneys, asserting that the practice of requiring borrowers to pay for title services and title opinions provided by the banks' law firms violated the antitrust laws in various respects, including illegal tying, price-fixing, and restraint of trade. I was co-counsel for the defendants, First National Bank of Ft. Myers and the law firm Alderman & Taminosian, and lead counsel on court proceedings. We were successful in obtaining summary judgment for our clients, and the order was affirmed by the United States Court of Appeals for the Eleventh Circuit.

My co-counsel was Lewis R. Mills, Jr., Thompson Coburn LLP, One US Bank Plaza, St. Louis, Missouri 63101, Tel (314) 552-6000.

Counsel for the Plaintiffs was Britt Whitaker, 11420 W. Club View Drive, Homosassa, Florida, no known phone listing.

Counsel for the other defendants were Charles W. Pittman, One Tampa City Center, Suite 2000, 201 North Franklin Street, Tampa, Florida 33602, Tel (813) 273-4200; Marilyn Holifield, Holland & Knight LLP, 701 Brickell Avenue, Suite 3000, Miami, Florida 33131, Tel (305) 374-8500; Richard E. Wolverton, 3214 9th Street North, St. Petersburg, Florida 33704, Tel (727) 823-1399; Sharyn B. Zuch, One CityPlace, Hartford, Connecticut 06103, Tel (860) 297-3700; Gregory W. Hootman, P.O. Box 1778, Sarasota, Florida 34230, Tel (941) 952-1035; and William H. Adams, III (current address unknown), McGuire, Woods, Battle & Boothe, 50 North Laura Street, Jacksonville, Florida 32202, Tel (904) 798-2609.

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 not performed any lobbying activities on behalf of any clients or organizations.

While I was in private practice, I was involved in handling several nationwide class action securities suits, and other matters that had a significant impact on the business community, including actions arising out of the merger or takeover of companies, most of which settled prior to trial. I also handled several bankruptcy matters, both large and small.

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As Assistant U.S. Attorney, I was a member of the financial institution fraud unit. I also served as Coordinator of the Bankruptcy Fraud Unit, helped develop cooperative efforts with the U.S. Bankruptcy Trustee, and served as a member of the Department of Justice National Bankruptcy Fraud Working Group and its legislative committee.

As United States Attorney, in addition to being in charge of policy and administrative matters, I oversaw decision-making on the most significant cases handled by the Office. I also was involved intimately in the many community-based initiatives such as the Weed & Seed program, which worked to decrease crime in designated geographic areas and supported crime prevention programs; the Ceasefire program, directed at reducing gun violence; and the Hate Crimes Task Force. I made the prosecution of computer crimes a priority. Recognizing the degree to which computers were being used for crimes such as identity fraud, financial fraud, large-scale narcotics conspiracies, child pornography, and the luring of young children to commit sexual offenses, I formed a computer crimes task force to develop the computer expertise necessary to obtain and use computer evidence in a lawful and effective manner.

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 intermittently as an Adjunct Faculty member at Washington University School of Law, St. Louis, Missouri, since 1981:

1981 to 1982:	Legal Writing (no syllabus retained)
1992 to 1996:	Pretrial Practice and Procedure (no syllabus retained)
1997 to 2006:	Trial Advocacy
2006 to present:	Evidence

For the past several years I have participated as a speaker at education programs for United States Magistrate Judges through the Federal Judicial Center and the Eighth Circuit Judicial Conference.

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.

Although I have no commitment beyond the end of the current semester in May 2010, I hope to continue to teach at Washington University School of Law, so long as I can do so consistent with my judicial obligations. I have no other plans, commitments, or agreements to pursue outside employment, with or without compensation, if I am confirmed to be a United States District Judge.

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.

Since becoming a United States Magistrate Judge in 2001, I have followed the federal recusal statutes and the Code of Judicial Conduct. Conflicts-of-interest arise due to the fact that I served as United States Attorney for the same district in which I have been nominated, as I cannot handle any case that was prosecuted or under investigation while I was United States Attorney. In addition, I own some publicly traded stocks, which give rise to a conflict should any of those entities have an interest in any cases over which I preside. If I continue to teach at Washington University School of Law, any case where the University has an interest would present a conflict. If I am confirmed, I anticipate continuing to have these conflicts and will monitor cases and recuse 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.

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As required by the Code of Judicial Conduct, I maintain a recusal list reflecting entities in which I hold a financial interest as well as individuals with a sufficiently close connection, social or business-related, that would preclude any participation in cases involving them. I further review the counsel, parties, victims, and known potential witnesses, in cases assigned to me to make sure my involvement in the case would not violate conflict-of-interest rules or raise any appearance of impropriety. The Clerk of Court has also implemented a system to identify cases that pose a conflict due to my prior service as United States Attorney. If confirmed, I will continue to follow these procedures and recuse from any such cases.

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 lawyer in private practice, I agreed to handle both civil and criminal appointments, as requested by the courts. I tried one criminal appointment to verdict. I also worked with Legal Advocates for Abused Women to help design a program to provide assistance to those in need of orders of protection. In addition, I have participated in several mentoring programs sponsored by the local bar associations and the law schools. To avoid possible conflicts-of-interest while serving as United States Attorney or United States Magistrate Judge, I limited my activities to teaching and to non-law related charitable endeavors. Since 2000, I have been actively involved, first as a volunteer reader, and thereafter as an organizing board member, with Ready Readers, which organized volunteers to read aloud weekly to at-risk preschool children in the St. Louis area, and provides the children with free, quality children's books.

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.

No judicial selection commission was established in Missouri. Persons interested in the appointment were directed to provide a resume to Senator Claire McCaskill's office. In February 2009, I submitted my resume to the staff member designated by Senator McCaskill. On April 21, 2009, I met with the Senator's

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Regional Director in St. Louis. On August 27, 2009, I was personally interviewed by Senator McCaskill, who also interviewed numerous other candidates before recommending three names to the President. I was first contacted by the Department of Justice regarding my consideration as a candidate on September 30, 2009, and thereafter had a number of conversations with Department of Justice officials regarding the preparation of the required pre-nomination forms. On November 10, 2009, I had an interview with Department of Justice and White House personnel in Washington, D.C. My nomination was submitted to the United States Senate on January 20, 2010.

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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FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
FLEISSIG, AUDREY G.	EASTERN DISTRICT OF MISSOURI	01/20/2010
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type** (check appropriate type)	**6. Reporting Period**
DISTRICT JUDGE - NOMINEE	☑ Nomination, Date 01/20/2010 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	1/1/2009 to 12/31/2009
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
111 S. 10TH STREET: 9N ST. LOUIS, MO 63102	Reviewing Officer_____ Date_____	

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

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

☐ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. CO-TRUSTEE (NO FEE)	LIVING TRUST CREATED UNDER AGREEMENT 8/31/84 - MOTHER'S BENEFIT
2.	
3.	
4.	
5.	

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

☑ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 8	Name of Person Reporting FLEISSIG, AUDREY G.	Date of Report 01/20/2010

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2008	WASHINGTON UNIVERSITY SCHOOL OF LAW - ADJUNCT IN STRUCTOR	$20,000
2.			
3.			
4.			

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

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

	DATE	SOURCE AND TYPE
1.	2009	MISSOURI MACHINERY & ENGINEERING COMPANY (SALARY)
2.		
3.		
4.		

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

☐ NONE *(No reportable reimbursements.)*

	SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.	EXEMPT				
2.					
3.					
4.					
5.					

FINANCIAL DISCLOSURE REPORT Page 3 of 8	Name of Person Reporting FLEISSIG, AUDREY G.	Date of Report 01/20/2010

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

☐ NONE *(No reportable gifts.)*

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

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☐ NONE *(No reportable liabilities.)*

CREDITOR	DESCRIPTION	VALUE CODE
1. UMB BANK	MORTGAGE ON COMMERCIAL REAL ESTATE	O
2. ST. LOUIS DEVELOPMENT CORP.	MORTGAGE ON COMMERCIAL REAL ESTATE	L
3.		
4.		
5.		

FINANCIAL DISCLOSURE REPORT
Page 4 of 8

Name of Person Reporting	Date of Report
FLEISSIG, AUDREY G.	01/20/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. IRA - BANK OF AMERICA CORP	A	Dividend	J	T	Exempt				
2. IRA - BERKSHIRE HATHAWAY		None	J	T					
3. IRA - ZOLTEK		None	J	T					
4. IRA - WELLS FARGO (formerly known as AG Edwards)	A	Interest	J	T					
5. IRA - COLUMBIA FUNDS TR - GLOBAL VALUE INV	C	Dividend	L	T					
6. IRA - BANK OF AMERICA	A	Dividend	K	T					
7. IRA - ZOLTEK		None	K	T					
8. IRA - WELLS FARGO (formerly known as AG Edwards)	A	Interest	J	T					
9. IRA - COLUMBIA FUNDS TR - GLOBAL VALUE INV	B	Dividend	L	T					
10. IRA - WELLS FARGO (formerly known as AG Edwards)	A	Interest	J	T					
11. IRA - BANK OF AMERICA	A	Dividend	J	T					
12. IRA - BERKSHIRE HATHAWAY		None	J	T					
13. IRA - ZOLTEK		None	J	T					
14. IRA - COLUMBIA FUNDS TR - GLOBAL VALUE INV	C	Dividend	L	T					
15. WELLS FARGO - M/M (formerly known as AG Edwards)		None							
16. WELLS FARGO - M/M (formerly known as AG Edwards)	A	Interest	J	T					
17. AMER FUND - CAPITAL INCOME BUILDER	C	Dividend	L	T					

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

FINANCIAL DISCLOSURE REPORT
Page 5 of 8

Name of Person Reporting	Date of Report
FLEISSIG, AUDREY G.	01/20/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
18. WELLS FARGO - M/M (formerly known as AG Edwards)	A	Interest	J	T					
19. AMER FUND - CAPITAL INCOME BUILDER	C	Dividend	L	T					
20. WELLS FARGO - M/M (formerly known as AG Edwards)	A	Interest	J	T					
21. AMER FUND - CAPITAL INCOME BUILDER	C	Dividend	L	T					
22. MISSOURI MACHINERY & ENGINEERING 50% PRIVATELY HELD		None	O	U					
23. BKF LLC 50% PRIVATELY HELD RE, ST. LOUIS MO	D	Rent	J	U					
24. US SAVINGS BONDS		None	K	T					
25. RE - CONDO, ST. LOUIS, MO	D	Rent	M	W					
26. COMMERCE GROWTH FUND 401(K)		None	M	T					
27. BANK OF AMERICA	A	Interest	J	T					
28. MOST - MISSOURI'S 529 COLLEGE SAVINGS PLAN (X)	A	Int./Div.	K	T					
29. BENEFICIARY OF TRUST OF FATHER'S ESTATE	D	Int./Div.	M	W					
30. - TD MONEY MARKET PORTFOLIO INVESTOR CLASS									
31. - AMERICAN FUNDS CAPITAL WORLD BOND FUND-SBI CLASS A									
32. - INTERMEDIATE BOND FUND OF AMERICA SBI CLASS A									
33. - AMERICAN FUNDS NEW PERSPECTIVE FUND INC CL A									
34. - HARBOR FD BD FD INSTL									

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

FINANCIAL DISCLOSURE REPORT
Page 6 of 8

Name of Person Reporting	Date of Report
FLEISSIG, AUDREY G.	01/20/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. Income during reporting period (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. Gross value at end of reporting period (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
35. - HARBOR FD CAP APPRECIATION									
36. - HARBOR FD INTL FD									
37. -MSIF FDS INC US REAL ESTATE FD CL A									
38. - ROWE T PRICE EQUITY INCOME F SH BEN INT									
39. - ROYCE FD PREMIER INVESTMENT CL									
40. - ISHARES RUSSELL 1000 INDEX FUND									

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

FINANCIAL DISCLOSURE REPORT Page 7 of 8	Name of Person Reporting FLEISSIG, AUDREY G.	Date of Report 01/20/2010

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

Part III.A. - Filer's Non-Investment Income:

Additional income was received during the reporting period as salary from the U.S. Government as a United States Magistrate Judge.

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting FLEISSIG, AUDREY G.	Date of Report 01/20/2010

IX. CERTIFICATION.

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

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

Signature Audrey J. Fleissig

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		16	673	Notes payable to banks-secured			
U.S. Government securities-add schedule		31	677	Notes payable to banks-unsecured			
Listed securities-add schedule	1	032	495	Notes payable to relatives			
Unlisted securities--add schedule		830	823	Notes payable to others		17	091
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		426	959
Real estate owned-add schedule		960	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		77	000				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		465	841
				Net Worth	2	482	827
Total Assets	2	948	668	Total liabilities and net worth	2	948	668
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts		21	791	Are you a defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

U.S. Government Securities	
U.S. Savings Bonds	$ 25,158
U.S. Savings Bonds	6,519
Total U.S. Government Securities	$ 31,677
Listed Securities	
Berkshire Hathaway Class B	$ 3,286
Columbia Global Value Fund A	62,774
Bank Of America	14,558
Zoltek Co. Common Stock	5,605
Bank Of America	18,072
Columbia Global Value Fund A	52,337
Zoltek Co. Common Stock	38,000
FERS G Fund	85,823
FERS C Fund	258,912
Bank Of America	14,558
Berkshire Hathaway Class B	3,286
Columbia Global Value Fund A	62,959
Zoltek Co. Common	5,605
American Fund - Growth Fund Of America	141,163
American Funds - Capital Inc. Builder	246,817
529 Plan Vanguard Conservative Income Fund	18,740
Total Listed Securities	$ 1,032,495
Unlisted Securities	
Missouri Machinery And Engineering	$ 830,823
Real Estate Owned	
Personal residence	$ 650,000
Rental property 1	210,000
Rental property 2 (50% interest)	100,000
Total Real Estate Owned	$ 960,000
Real Estate Mortgages Payable	
Personal residence	$ 426,959

AFFIDAVIT

I, Audrey G. Fleissig, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

January 18, 2010
January 18, 2010

Audrey G. Fleissig
Audrey G. Fleissig

Joseph A. Jordan
(NOTARY)

JOSEPH A. JORDAN
Notary Public, State of Missouri
Jefferson County
Commission # 06418030
My Commission Expires March 27, 2010

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

Marino v. Astrue, 2009 U.S. Dist. LEXIS 90347 (E.D. Mo. Sept. 29, 2009)
TechGuard Sec., L.L.C. v. Joyce, 2009 U.S. Dist. LEXIS 85396 (E.D. Mo. Sept. 18, 2009)
Byas v. Astrue, 2009 U.S. Dist. LEXIS 84501 (E.D. Mo. Sept. 16, 2009)
Radica v. Astrue, 2009 U.S. Dist. LEXIS 83493 (E.D. Mo. Sept. 14, 2009)
Auto Owners Ins. Co. v. Biegel Refrigeration & Elec. Co., 2009 U.S. Dist. LEXIS 82930 (E.D. Mo. Sept. 11, 2009)
Wright v. City of Salisbury, 2009 U.S. Dist. LEXIS 82352 (E.D. Mo. Sept. 10, 2009)
Dunivan-Bennett v. Astrue, 2009 U.S. Dist. LEXIS 83222 (E.D. Mo. Sept. 10, 2009)
Valentino v. Astrue, 2009 U.S. Dist. LEXIS 81707 (E.D. Mo. Sept. 9, 2009)
Schmieder v. Astrue, 2009 U.S. Dist. LEXIS 79292 (E.D. Mo. Sept. 3, 2009)
Flygare v. Astrue, 2009 U.S. Dist. LEXIS 79531 (E.D. Mo. Sept. 3, 2009)
Bewley v. Prudden, 2009 U.S. Dist. LEXIS 79539 (E.D. Mo. Sept. 3, 2009)
United States v. Thomas, 2009 U.S. Dist. LEXIS 83939 (E.D. Mo. Aug. 31, 2009)
Anderson v. Astrue, 2009 U.S. Dist. LEXIS 86635 (E.D. Mo. Aug. 26, 2009)
Whitehead v. Baxter Healthcare Corp., 2009 U.S. Dist. LEXIS 70643 (E.D. Mo. Aug. 12, 2009)
Skyles v. Astrue, 2009 U.S. Dist. LEXIS 66310 (E.D. Mo. July 30, 2009)
Moore v. Beauvais Manor on the Park, 2009 U.S. Dist. LEXIS 64225 (E.D. Mo. July 27, 2009)
Williams v. Astrue, 2009 U.S. Dist. LEXIS 79529 (E.D. Mo. July 24, 2009)
Klein v. Astrue, 2009 U.S. Dist. LEXIS 75198 (E.D. Mo. July 23, 2009)
Everett v. Purkett, 2009 U.S. Dist. LEXIS 70644 (E.D. Mo. July 20, 2009)
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VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00486 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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Painters Dist. Council No. 2 v. Capital Restoration & Painting Co., 2009 WL 2901873 (E.D. Mo. Sept. 10, 2009)

U.S. v. Jackson, 2009 WL 2208301 (E.D. Mo. July 23, 2009)

Laws v. Moore, 2009 WL 2071031 (E.D. Mo. July 13, 2009)

Lawson ex rel. D.D.L. v. Astrue, 2009 WL 2143754 (E.D. Mo. July 13, 2009)

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U.S. v. Beard, 2009 WL 1940451 (E.D. Mo. July 02, 2009)
U.S. v. White, 2009 WL 1531876 (E.D. Mo. June 01, 2009)
Dooley v. Astrue, 2009 WL 1444215 (E.D. Mo. May 21, 2009)
U.S. v. Walker, 2009 WL 1543810 (E.D. Mo. May 15, 2009)
Meyer v. Roper, 2009 WL 863832 (E.D. Mo. Mar. 26, 2009)
Battle v. Roper, 2009 WL 799604 (E.D. Mo. Mar. 24, 2009)
Edwards v. Luebbers, 2009 WL 606231 (E.D. Mo. Mar. 05, 2009)
Spiller v. Astrue, 2009 WL 294292 (E.D. Mo. Feb. 06, 2009)
Palmer v. Astrue, 2009 WL 36402 (E.D. Mo. Jan. 06, 2009)
U.S. v. Rose, 2008 WL 4941207 (E.D. Mo. Nov. 17, 2008)
U.S. v. Turrentine, 2008 WL 5274441 (E.D. Mo. Nov. 12, 2008)
Geasling v. Astrue, 2008 WL 4844748 (E.D. Mo. Nov. 04, 2008)
U.S. v. Swopes, 2008 WL 4642862 (E.D. Mo. Oct. 17, 2008)
Winters v. Astrue, 2008 WL 4423622 (E.D. Mo. Sept. 25, 2008)
Graddy v. Astrue, 2008 WL 4279613 (E.D. Mo. Sept. 12, 2008)
U.S. v. Huggans, 2008 WL 4066398 (E.D. Mo. Aug. 27, 2008)
U.S. v. Jones, 2008 WL 3538972 (E.D. Mo. Aug. 11, 2008)
Murphy v. Thompson, 2008 WL 2859144 (E.D. Mo. July 23, 2008)
Thomas-Ellis v. Astrue, 2008 WL 2813334 (E.D. Mo. July 18, 2008)
Montgomery v. Purkett, 2008 WL 2789214 (E.D. Mo. July 17, 2008)
U.S. v. McKinney, 2008 WL 2774533 (E.D. Mo. July 14, 2008)
Cunningham v. Roper, 2008 WL 2775859 (E.D. Mo. July 14, 2008)
U.S. v. Smith, 2008 WL 2224782 (E.D. Mo. May 27, 2008)
Reece v. Jackson, 2008 WL 2206420 (E.D. Mo. May 23, 2008)
Bishop v. Astrue, 2008 WL 748325 (E.D. Mo. Mar. 18, 2008)
Bostic v. Astrue, 2008 WL 536643 (E.D. Mo. Feb. 22, 2008)
Lukens v. Roper, 2008 WL 480178 (E.D. Mo. Feb. 19, 2008)
Shelton v. Purkett, 2008 WL 833513 (E.D. Mo. Jan. 25, 2008)
Thomas v. Purkett, 2008 WL 205268 (E.D. Mo. Jan. 23, 2008)
U.S. v. Costello, 2008 WL 53249 (E.D. Mo. Jan. 02, 2008)
Carlisle v. City of O'Fallon, 2007 WL 3120027 (E.D. Mo. Oct. 23, 2007)
U.S. v. Smith, 2007 WL 3046651 (E.D. Mo. Oct. 17, 2007)
Golliday v. Steele, 2007 WL 2873644 (E.D. Mo. Sept. 26, 2007)
Brandon v. Roper, 2007 WL 2811083 (E.D. Mo. Sept. 24, 2007)
Dickson v. Nixon, 2007 WL 2159447 (E.D. Mo. July 25, 2007)
Derby v. Worsham, 2006 WL 3257538 (E.D. Mo. Nov. 09, 2006)
Turner v. Gammon, 2006 WL 2376229 (E.D. Mo. Aug. 16, 2006)
Horton v. St. Charles County, 2006 WL 2884446 (E.D. Mo. Oct. 05, 2006)
Toney v. Rowley, 2006 WL 2850544 (E.D. Mo. Sept. 29, 2006)
Watts v. Roper, 2006 WL 2708630 (E.D. Mo. Sept. 20, 2006)
U.S. v. Harmon, 2006 WL 1515671 (E.D. Mo. May 24, 2006)
Brown v. Dormire, 2005 WL 2371959 (E.D. Mo. Sept. 27, 2005)
Roy v. Luebbers, 2005 WL 2211149 (E.D. Mo. Sept. 09, 2005)
Popular Leasing USA, Inc. v. National Restoration Systems, Inc.,2005 WL 2033423 (E.D. Mo. Aug. 23, 2005)
Harris v. Moore, 2005 WL 1876126 (E.D. Mo. Aug. 08, 2005)

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Price v. Jackson, 2005 WL 1661515 (E.D. Mo. July 06, 2005)
Burlington Northern and Santa Fe Ry. Co. v. Bellefontaine Quarry, Inc., 2002 WL 34365846 (E.D. Mo. Aug. 30, 2002)
Burlington Northern and Santa Fe Ry. Co. v. Bellefontaine Quarry, Inc., 2002 WL 34365850 (E.D. Mo. Aug. 30, 2002)
Burlington Northern and Santa Fe Ry. Co. v. Bellefontaine Quarry, Inc., 2002 WL 34365844 (E.D. Mo. Aug. 20, 2002)
Burlington Northern and Santa Fe Ry. Co. v. Bellefontaine Quarry, Inc., 2002 WL 34365847 (E.D. Mo. Aug. 20, 2002)
Burlington Northern and Santa Fe Ry. Co. v. Bellefontaine Quarry, Inc., 2002 WL 34354484 (E.D. Mo. July 01, 2002)
In re Mers, Inc., 2002 WL 32317681 (E.D. Mo. Mar. 01, 2002)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00496 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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STATEMENT OF LUCY H. KOH, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA

Judge KOH. Thank you very much, Madam Chairwoman and Ranking Member Sessions, for holding this hearing, despite the inclement weather. It's truly an honor to be here. I would also like to thank the Committee for considering my nomination, and thank Senator Boxer for her very kind introduction, as well as thank my other home State Senator, Senator Feinstein, for her support. I also would like to thank President Obama for nominating me.

Today, I am very happy to have with my husband—if they would please stand—Mariano-Florentino Cuellar, and our two children, Ria, who is almost six, and Mateo, who is three. We have an evacuation plan in place in case there are disturbances.

[Laughter.]

Senator KLOBUCHAR. There have been a lot of evacuation plans this week, but this is the first one I've heard at our hearing. So, thank you.

Judge KOH. We have already had to execute it briefly at the beginning of the hearing. I also have my parents; Jay and Eunsook Koh are here. I'm sorry that Senator Coburn is not here, because my mother was a professor at the University of Oklahoma for 20 years, 12 of which she was at the Health Sciences Center.

I also have my brother, Kyung, here, and my nephew, Kyle. My husband's cousin and his wife, Surya and Melissa Sen are here. People who have been sort of mentors for me since my freshman year of college are Charles and Cynthia Field. They are also here as well.

I have many other family members who had intended to come today, and friends, but unfortunately were not able to make it here. But I thank them for their support as well.

Senator KLOBUCHAR. Thank you very much.

Mr. DeGuilio.

[The biographical information follows.]

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00497 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Lucy Haeran Koh
   (middle name also has been spelled as Haerun)

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

   United States District Judge for the Northern District of California

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: Superior Court of California, County of Santa Clara
   191 North First Street
   San Jose, California 95113

   Residence: Stanford, California

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

   1968; 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.

   1990-1993, Harvard Law School; J.D., 1993
   1986-1990, Harvard University; B.A. (*magna cum laude*), 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.

2008-Present
Superior Court of California, County of Santa Clara
191 North First Street
San Jose, California 95113
Judge

2002-2008
McDermott Will & Emery LLP
275 Middlefield Road, Suite 100 (Current address)
Menlo Park, California 94025
Partner

2000-2002
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, California 94304
Senior Associate

1997-2000
Office of the United States Attorney, Central District of California
312 North Spring Street, Suite 1200
Los Angeles, California 90012
Assistant United States Attorney

1994-1997
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Special Assistant to the Deputy Attorney General (1996-1997)
Special Counsel, Office of Legislative Affairs (1994-1996)

1993-1994
United States Senate, Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510
Women's Law and Public Policy Fellow

1991-1993
Harvard Law School
1525 Massachusetts Avenue
Cambridge, Massachusetts 02138
Research Assistant to Professor Charles Haar (1993)
Research Assistant to Professor Christopher Edley, Jr. (1991-1993)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00499 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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1992
NAACP Legal Defense & Educational Fund, Inc.
99 Judson Street, Suite 1600
New York, New York 10013
Summer Intern

1992
Dewey Ballantine
1301 Avenue of the Americas
New York, New York 10019
Summer Associate

1991
American Civil Liberties Union, Immigrants' Rights Project
125 Broad Street
New York, New York 10004
Summer Intern

1991
Natural Resources Defense Council
40 West 20th Street
New York, New York 10011
Summer Intern

Other Affiliations

2006-2008
Asian Pacific Bar Association of Silicon Valley
3000 El Camino Real
5 Palo Alto Square, 9th Floor
Palo Alto, California 94306
Director (uncompensated)

2003-2004
Korean American Coalition, San Francisco Chapter
3695 Stevenson Boulevard, Unit 225
Fremont, California 94538
Director (uncompensated)

2001-2003
Korean American Bar Association of Northern California
575 Market Street, Suite 3700
San Francisco, California 94105
Director (uncompensated)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00500 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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2000
Korean American Bar Association of Southern California
9107 Wilshire Boulevard, Suite 450
Beverly Hills, California 90210
Director (uncompensated)

2000
Harvard-Radcliffe Club of Southern California
627 Aviation Way
Manhattan Beach, California 90266
Director (uncompensated)

1999-2000
Asian Pacific American Bar Association of Los Angeles
1145 Wilshire Blvd, 2nd Floor
Los Angeles, California 90017
Governor (uncompensated)

1999-2000
Korean American Coalition, Los Angeles Chapter
3540 Wilshire, Boulevard, Suite 911
Los Angeles, California 90010
Director (uncompensated)

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 and 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.

Professional
Silicon Valley/San Jose Business Journal, *Women of Influence in Silicon Valley*, 2008
McDermott Will & Emery LLP, Client Service Award for *Seagate Tech.* case, 2007
Silicon Valley/San Jose Business Journal, *40 Under 40*, 2007
Federal Bureau of Investigation, Director Louis J. Freeh Award for demonstrated excellence in prosecuting a major criminal case, 2000
Federal Bureau of Investigation Award for prosecution of *United States v. Stapleton*, 2000
United States Postal Inspection Service, Certificate of Appreciation, 2000
United States Secret Service, Letter of Recognition, 1999
United States Attorney's Office, Sustained Superior Performance Award, 1998

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00501 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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Community
National Asian Pacific American Bar Association, Trailblazer Award, 2009
National Association of Professional Asian American Women, Asian American Woman of Achievement Award, 2009
Korean American Bar Association of San Diego and Korean American Coalition of San Diego, Mugunghwa Award for achievements in law and community service, 2008

Education
Women's Law and Public Policy Fellowship, 1993
Harvard Law School Irving R. Kaufman Public Service Fellowship, 1993
Harvard Law School Ames Moot Court, Semi-Final Round, Best Brief Award, 1992
Harry S. Truman Scholarship, 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.

Judicial Associations
Bench-Bar Coalition
Bench Bar Media Police Committee
California Asian-American Judges Association
California Judges Association
National Association of Women Judges
2010 Annual Convention Education Committee Member, 2009-Present
Santa Clara County Superior Court
Amicus Committee Chair, 2010; Criminal Courts, Civil Courts, Domestic Violence Coordinating, Self-Represented Litigants, Education, Legislative and Executive Branch Outreach, and Law Books Committees
William A. Ingram Inn of Court
Executive Committee Member, Team Leader, and Outreach Committee Chairperson, 2009-Present; Mentor Judge, 2008-2009

Bar Associations
Asian American Bar Association of the Greater Bay Area
Mentor Judge, 2009-Present
Asian Pacific American Bar Association of the Greater Washington, D.C. Area
Asian Pacific American Bar Association of Los Angeles
Governor, 1999-2000
Asian Pacific Bar Association of Silicon Valley,
Director, 2006-2008; Civil Rights Committee Co-Chair, 2005-2008
Harvard Law School Association of Southern California
Hispanic National Bar Association
Korean American Bar Association of Northern California
Director, 2001-2003; Mentorship Program Group Leader, 2008-Present
Korean American Bar Association of Southern California
Director, 2000

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00502 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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La Raza Lawyers Association of Santa Clara County
Los Angeles County Bar Association
National Association of Women Lawyers
Amicus Committee
Santa Clara County Bar Association,
Federal Courts Committee and Judiciary Committee
South Asian Bar Association of Northern California
Women Lawyers Association of Los Angeles

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.

California, 1997
Massachusetts, 1994

There have been no lapses in membership. In California a person serving as a judge is not considered a member of the State Bar. Similarly, my Massachusetts bar membership became inactive when I began service as a judge.

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 Ninth Circuit, 1997
United States Court of Appeals for the Federal Circuit, 2006
United States District Court for the Central District of California, 1997
United States District Court for the Eastern District of California, 2000
United States District Court for the Northern District of California, 2000
United States District Court for the Southern District of California, 2000
United States District Court for the Northern District of Illinois, 2002

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.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00503 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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Asian Pacific American Leadership Institute, 2008-Present
Senior Fellow, 2008-Present
Center for Asian American Media, 2004-2008
Conference on Asian Pacific American Leadership, 1993-1997
Dinner Committee Member, 1993-1995
Harvard-Radcliffe Club of Southern California, 1997-2000
Director, 2000
Korean American Alliance, D.C. Area, 1995-1997
Task Force for the Preservation of Immigrant Rights, 1995-1996
Korean American Coalition, approximately 1997-2000 and 2003-2004
San Francisco Chapter Director, 2003-2004
Los Angeles Chapter Director, 1999-2000
Korean Americans for Political Empowerment, 2000-2001
Korean American Professional Society, 2000-2002
Silicon Valley Asian Pacific American Democratic Club, 2002-2007
St. Thomas More Society, 2008-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 in response to 11a above currently discriminates 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.

Litigating Doctrine of Equivalents Cases in the Age of Festo, IP Review (Spring 2004) (co-authored with Brian E. Ferguson)
Combatting Inequality, *in* PUBLIC INTEREST JOB SEARCH GUIDE (Harvard Law School 6th ed. 1995)
CCR Debunks Wareings's Myths, HARV. L. REC., Mar. 12, 1993, at 10 (co-authored with Julie Su)
bell hooks' Yearning: Race, Gender, and Cultural Politics, 14 HARV. WOMEN'S L. J. 255 (1991) (book review) (multiple co-authors)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00504 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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Letter to the Editors, HARV. CRIMSON, Nov. 18, 1989, at 2
Mexico Memoir, IV HARV. DEV. F. 11 (1989)

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.

The following list of speeches includes those I was able to locate after a diligent review of my records. It is possible that there are additional speeches to which I no longer have access or for which I did not prepare formal remarks or notes.

National Asian Pacific American Bar Assoc. National Convention, Trailblazer Award Ceremony (Nov. 20, 2009)
Santa Clara Univ. Law School Black Law Students Assoc., Judicial externship panel (Nov. 18, 2009)
Chiefs of Intellectual Property (ChIPs), Silicon Valley, Judges panel on courtroom presentation, (Nov. 17, 2009)
Asian Pacific Bar Assoc. of Silicon Valley, Judges panel on evidentiary objections (Nov. 6, 2009)
Santa Clara County Bar Assoc., Judges panel on state judicial appointment process (Sept. 24, 2009)
Bar Assoc. of San Francisco and Orrick Herrington and Sutcliffe, Diversity career fair panel (Aug. 8, 2009)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00505 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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Asian Pacific American Leadership Institute, Youth Leadership Academy, De Anza Community College, Discussion of law school application process and legal careers (Aug. 4, 2009) (no notes)
Santa Clara County Superior Court, Pre-Law Diversity Day career panel (July 10, 2009) (no notes)
California Women Lawyers' Conference, Panel on oral advocacy (June 5, 2009)
San Jose/Evergreen Community College District, Brief remarks after administering oath of office to Trustees (Nov. 11, 2008)
Santa Clara County Superior Court and After-School All-Stars, Law Day middle school panel on legal careers (May 9, 2008) (no notes)
Korean Community Center of the East Bay, Dinner keynote speech (Apr. 30, 2009)
National Assoc. of Professional Asian American Women and Center for Medicare & Medicaid Services/Health and Human Services, National Training Conference & Small Business Exposition, Keynote speech (Apr. 14, 2009)
Bay Area Asian Pacific American Law Students Assoc., Judges panel on legal careers (Feb. 22, 2009)
Asian American Bar Assoc. of the Greater Bay Area, Judges panel on judicial careers (Nov. 12, 2008) (no notes)
Asian Pacific Bar Assoc. of Silicon Valley, Judges panel on oral advocacy (Nov. 7, 2008)
Korean American Bar Association of Northern California and Hastings' Korean-American Law Students' Assoc., Career panel (Oct. 23, 2008)
Harvard Law School Women's Leadership Summit, Panel on oral presentation skills (Sept. 20, 2008)
Korean American Bar Assoc. of San Diego & Korean American Coalition of San Diego, Mugunghwa Award Ceremony (Sept. 19, 2008)
International Assoc. of Korean Lawyers Annual Conference in Philadelphia, Judges panel on judicial careers and trial skills (Sept. 13, 2008)
University of San Francisco Korean American Law Students Assoc., Career panel (Nov. 8, 2007)
Asian Pacific Bar Assoc. of Silicon Valley, Scholarship Reception, Introduction of award recipient and keynote speaker (Sept. 27, 2007)
North American South Asian Law Student Assoc. Conference, Women lawyers' career panel (Feb. 17, 2007) (no notes)
McDermott Will & Emery LLP Women's Leadership & Mentoring Luncheon, Career panel (Mar. 9, 2006) (no notes)
Santa Clara Univ. Asian Pacific American Law Students Assoc., Career panel (Oct. 27, 2005)
Bay Area Asian Pacific American Law Students Assoc., Career panel (Feb. 10, 2001) (no notes)
Public Leadership Education Network, Women and the Law Conference, Career panel (Nov. 2, 1996) (no notes)
Korean American Students Conference, Univ. of Texas, Panel on immigration legislation (Mar. 30, 1996)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00506 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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Organization of Chinese Americans and Japanese American Citizens League Leadership Conference, Panel on issues affecting Asian Pacific Americans (Mar. 3, 1996) (no notes)
Public Leadership Education Network, Women and the Law Conference, Career panel (Nov. 4, 1995) (no notes)
Korean Assoc. of Harvard Law School, Career panel (Oct. 18, 1995) (no notes)
Harvard Law School Alumni Reunion, Panel on diversity (Oct. 23, 1992)

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.

2008 Women of Influence in Silicon Valley, SILICON VALLEY/SAN JOSE BUSINESS JOURNAL, Special Supplement, Feb. 29, 2008, at 20.
Evan Hill, *Bench Pick Limits S.C. Race*, THE RECORDER, Jan. 28, 2008, at 1.
President's Profiles, ASIAN AMERICAN BAR ASSOCIATION OF THE GREATER BAY AREA NEWSLETTER, Nov. 2007, at 10-11.
Zanto Peabody, *Agoura Hills Man Pleads Guilty in Federal Court in Stock Fraud Case*, L.A. TIMES, Aug. 8, 2000.
Woman Charged with Fraud in Equity-Skimming Case, L.A. TIMES, Aug. 5, 2000, at B4.
ELEANOR KERLOW, POISONED IVY: HOW EGOS, IDEOLOGY, AND POWER POLITICS ALMOST RUINED HARVARD LAW SCHOOL 281-282 & 290 (1994).
Harvard: The Flames of Student Protest Still Flicker, N.Y. TIMES, Mar. 19, 1989, at 43.
Helen Verongos, *Five kid-size stars are born*, THE CLARION-LEDGER (Jackson, Mississippi), Mar. 16, 1980, at 1E & 12E.

I have been interviewed on several occasions by Korean language media for human interest stories about my appointment to the bench and my public service as a federal prosecutor:

THE KOREA DAILY (Los Angeles) (Apr. 15, 2009)
THE KOREA TIMES (Mar. 22, 2008)
THE KOREA DAILY (Mar. 22, 2008)
THE KOREA DAILY (Feb. 14, 2008)
THE KOREA DAILY (San Francisco) (Feb. 1, 2008)
THE KOREA TIMES (Los Angeles) (Jan. 30, 2008)
THE KOREA DAILY (Los Angeles) (Jan. 30, 2008)
THE KOREA DAILY (San Francisco) (Jan. 28, 2008)
THE KOREA TIMES (San Francisco) (Jan. 28, 2008)
THE KOREA DAILY (Los Angeles) (Jan. 26, 2008)
News Interview: Prosecution of Tax Fraud Case (FM Seoul radio broadcast Apr. 15, 1999) (no transcripts)
THE KOREA TIMES (Los Angeles) (Jan. 26, 1999)

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While at college and law school, I was occasionally interviewed by campus publications. After a review of my files and available online archives, I have identified the following interviews:

Law Faculty Gives Tenure to Ogletree, HARVARD CRIMSON, June 7, 1993
Law School Graffiti Addresses Diversity, HARVARD CRIMSON, Mar. 5, 1993
Law Students Hold Vigil for MacKinnon, HARVARD CRIMSON, Feb. 27, 1993
Law School Will Hire Woman Prof, HARVARD CRIMSON, Feb. 6, 1993
CCR Holds Discussion with Rudenstine, HARVARD LAW RECORD, Nov. 20, 1992
CCR Holds Meeting with HLS Alumni, HARVARD LAW RECORD, Oct. 30, 1992
Ad Board Votes to Warn Law School Protesters, HARVARD CRIMSON, May 11, 1992
Law Students Picket Interviews, HARVARD CRIMSON, Oct. 10, 1990
Seniors Give More to E4D, Less to Class Gift, HARVARD CRIMSON, June 6, 1990
Council Avoids a Sticky Constitutional Debate: Alternative Parents Weekend, HARVARD CRIMSON, Mar. 3, 1990
Council Elections Begin, HARVARD CRIMSON, Oct. 5, 1989
Evolution to Activism Falls Short in the End: The Undergraduate Council, HARVARD CRIMSON, June 8, 1989
Protesters Court Faculty, HARVARD CRIMSON, May 3, 1989
The Benefit of Scholarship Aid: Students Report the Ways Scholarships Have Helped Them, HARVARD COLLEGE FUND REPORT, Spring 1989
Report Urges Hiring Reform, HARVARD INDEPENDENT, Mar. 9, 1989
'No Room for Student Input,' Activists Say, HARVARD CRIMSON, Mar. 4, 1989
Committee Debates Hiring of Women, Minority Profs, HARVARD CRIMSON, Dec. 8, 1988
UC Enters Minority Hiring Debate, HARVARD INDEPENDENT, Dec. 1988
College to Pay Student For Collecting Papers, HARVARD CRIMSON, Dec. 7, 1988
Council Calls for More Minority, Women Faculty, HARVARD CRIMSON, Dec. 5, 1988
Council Joins Debate on Faculty Diversity, HARVARD CRIMSON, Dec. 1, 1988
Council to Increase Divestment Pressure, HARVARD CRIMSON, Nov. 21, 1988
Council Asks Harvard To Recognize Union, HARVARD CRIMSON, Oct. 31, 1988
Council Asks University to Drop Union Challenge, HARVARD INDEPENDENT, Oct. 27, 1988
What UC Is What U Got, Fall 1988. I do not know whether this article is from the Harvard Crimson or the Harvard Independent.

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.

Since January 2008, I have served as a judge of the Superior Court of California for the County of Santa Clara. I was appointed by Governor Arnold Schwarzenegger. Our court has unlimited jurisdiction in criminal, civil, juvenile delinquency, juvenile dependency, and family law matters.

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

I have presided over 19 cases to verdict or judgment.

i. Of these, approximately what percent were:

jury trials:	79 %
bench trials:	21%
civil proceedings:	5%
criminal proceedings:	95%

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

People v. Lee, No. BB836331, slip op. (Cal. Super. Ct. Aug. 14, 2009)
People v. Frost, No. BB834193, slip op. (Cal. Super. Ct. Mar. 27, 2009)
People v. Augustine, No. CC788504, slip op. (Cal. Super. Ct. Nov. 14, 2008)
People v. Augustine, No. 3-07-TR-244725 and 3-07-TR-245432, slip op. (Cal. Super. Ct. July 7, 2008)

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. *People v. Valdovinos*, No. CC805147 (Cal. Super. Ct. 2008)
The criminal defendant in this jury trial was charged with one count of molesting a child and four counts of indecent exposure. The case involved a ten-year-old child witness. I denied a motion to sever the charges and ruled on numerous evidentiary motions, including as to the cross-admissibility of sex crimes evidence. I also ruled that the jury must be instructed on and deliberate on lesser charges. The jury found the defendant guilty of molesting a child, two counts of indecent exposure, and two counts of the lesser charge of lewd conduct in public.

The prosecutor was Stephen Poolos, District Attorney's Office, Santa Clara County, 70 West Hedding Street, West Wing, San Jose, CA 95110, (408) 299-7400. Counsel for Defendant was Anthony Flemmer, Public Defender's Office, Santa Clara County, 120 West Mission Street, San Jose, CA 95110, (408) 299-7700.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00509 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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2. *People v. Rodriguez*, No. CC808876 (Cal. Super. Ct. 2009)
This was a criminal jury trial on charges of violating a criminal protective order and obscene or threatening electronic communications with intent to annoy. Issues included whether prior domestic violence convictions could be used as domestic violence propensity evidence, the admissibility of late-produced discovery, and a potential juror's outbursts during jury selection. The jury hung on the first count and acquitted the defendant on the second count.

The prosecutor was Alaleh Kianerci, District Attorney's Office, Santa Clara County, 70 West Hedding Street, West Wing, San Jose, CA 95110, (408) 299-7400. Counsel for Defendant was Anthony Flemmer, Public Defender's Office, Santa Clara County, 120 West Mission Street, San Jose, CA 95110, (408) 299-7700.

3. *People v. Jimenez*, No. CC785345 (Cal. Super. Ct. 2008)
The criminal defendant in this jury trial was charged with simple battery and with obscene or threatening electronic communications with intent to annoy. Issues included the fact that a witness had an outstanding bench warrant for his arrest, allegations of witness intimidation, heated words exchanged between the families of the defendant and the complaining witness at the courthouse, the admissibility of prior convictions for impeachment, a motion for judgment of acquittal, an error in the complaint, a motion to amend the complaint at the close of evidence, reopening of evidence, and limiting jury instructions. The jury found the defendant not guilty of battery and guilty of obscene or threatening electronic communications with intent to annoy.

The prosecutor was Alaleh Kianerci, District Attorney's Office, Santa Clara County, 70 West Hedding Street, West Wing, San Jose, CA 95110, (408) 299-7400. Counsel for Defendant was Steven M. Ahlers, Public Defender's Office, Santa Clara County, 120 West Mission Street, San Jose, CA 95110, (408) 299-7700.

4. *People v. Melendez*, No. CC582098 (Cal. Super. Ct. 2008)
This was a criminal jury trial involving charges of indecent exposure and using or being under the influence of a controlled substance. The case involved a child witness. I ruled on many evidentiary motions, including as to the admissibility of character evidence. I also ruled that the jury must be instructed on and deliberate on a lesser charge. The jury found the defendant not guilty of indecent exposure, guilty of the lesser charge of lewd conduct in public, and guilty of using or being under the influence of a controlled substance.

The prosecutor was Don Shearer Jr., District Attorney's Office, Santa Clara County, 70 West Hedding Street, West Wing, San Jose, CA 95110,(408) 299-7400. Counsel for Defendant was Nan L. Bucknell, Law Offices of Nan L. Bucknell, 1010 W. Taylor Street, San Jose, CA 95126, (408) 286-9210.

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5. *People v. Caulder*, No. BB730273 (Cal. Super. Ct. 2009)
The criminal defendant in this jury trial was charged with two driving under the influence counts. I ruled on several contested evidence issues including the admissibility of character evidence and scientific evidence related to blood alcohol level conversions. I denied a motion for judgment of acquittal. The jury found the defendant guilty of one count and not guilty of the other.

The prosecutor was Anne Seery, District Attorney's Office, Santa Clara County, 70 West Hedding Street, West Wing, San Jose, CA 95110, (408) 299-7400. Counsel for Defendant was Jesse Hoberman-Kelly, Kapsack & Bair, LLP, 1440 Broadway, Suite 902, Oakland, CA 94612, (510) 645-0027.

6. *People v. Adib*, No. CC785625 (Cal. Super. Ct. 2008)
This was a criminal jury trial on a petty theft charge. I ruled on numerous evidentiary issues, including on the admissibility of uncharged conduct and character evidence. The jury was polled twice regarding its inability to reach a verdict. The jury hung, and the prosecution dismissed the case.

The prosecutor was Alaleh Kianerci, District Attorney's Office, Santa Clara County, 70 West Hedding Street, West Wing, San Jose, CA 95110, (408) 299-7400. Counsel for Defendant was Mark Arnold, Arnold & Barna Law Firm, 45 E. Julian Street, San Jose, CA 95112, (408) 286-6320.

7. *People v. Sproule*, No. CC892726 (Cal. Super. Ct. 2008)
This was a criminal jury trial involving a charge of driving under the influence of alcohol with an allegation of refusal to submit to a chemical test. Issues included the admissibility of evidence of a prior injury and a variance in the jury instructions. The jury found the refusal allegation to be not true and found the defendant guilty of driving under the influence.

The prosecutor was Alaleh Kianerci, District Attorney's Office, Santa Clara County, 70 West Hedding Street, West Wing, San Jose, CA 95110, (408) 299-7400. Counsel for Defendant was Anthony Flemmer, Public Defender's Office, Santa Clara County, 120 West Mission Street, San Jose, CA 95110, (408) 299-7700.

8. *People v. Salvatore*, No. CC808702 (Cal. Super. Ct. 2008)
The criminal defendant in this jury trial was charged with petty theft. Issues included the use of prior convictions for impeachment. The jury found the defendant guilty.

The prosecutor was Stephen Poolos, District Attorney's Office, Santa Clara County, 70 West Hedding Street, West Wing, San Jose, CA 95110, (408) 299-7400. Counsel for Defendant was Cuong Nguyen, 412 Greenwood Drive, Santa Clara, CA 95054, (408) 859-7062.

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9. *People v. Sarabandi*, No. BB938735 (Cal. Super. Ct. 2009)
This was a criminal jury trial on a petty theft charge. Issues involved the inadmissibility of psychological expert evidence, the untimely discovery of impeachment evidence, and disputed pinpoint jury instructions. The jury acquitted the defendant.

The prosecutor was Michael Vidmar, District Attorney's Office, Santa Clara County, 70 West Hedding Street, West Wing, San Jose, CA 95110, (408) 299-7400. Counsel for Defendant was Frank E. Mayo, Law Office of Frank E. Mayo, 5050 El Camino Real, Suite 228, Los Altos, CA 94022, (650) 964-8901.

10. *People v. Weese*, No. CC785008 (Cal. Super. Ct. 2008)
This was a criminal jury trial on two charges of driving under the influence of alcohol and a charge of driving without a license. Issues included the late identification of a witness, prior convictions for impeachment, late discovery of evidence, admissibility of scientific evidence, disputed pinpoint jury instructions, the defendant's outbursts in the presence of the jury, polling of jurors regarding what they observed or discussed, and a motion for mistrial. The jurors found the defendant guilty as charged.

The prosecutor was Alaleh Kianerci, District Attorney's Office, Santa Clara County, 70 West Hedding Street, West Wing, San Jose, CA 95110, (408) 299-7400. Counsel for Defendant was Anthony Flemmer, Public Defender's Office, Santa Clara County, 120 West Mission Street, San Jose, CA 95110, (408) 299-7700.

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.

Rulings in our Court typically are made orally on the record. During my time as a judge I have issued four written opinions.

1. *People v. Lee*, No. BB836331, slip op. (Cal. Super. Ct. Aug. 14, 2009)
The prosecutor was Anne Seery, District Attorney's Office, Santa Clara County, 70 West Hedding Street, West Wing, San Jose, CA 95110, (408) 299-7400. Counsel for Defendant was Peter F. Goldscheider, Law Offices of Peter F. Goldscheider, 438 Cambridge Avenue, Suite 250, Palo Alto, CA 94306, (650) 323-8296.

2. *People v. Frost*, No. BB834193, slip op. (Cal. Super. Ct. Mar. 27, 2009)
The prosecutor was Donald Larkin, Office of the City Attorney, City of Palo Alto, City Hall, 8th Floor, 250 Hamilton Avenue, Palo Alto, CA 94301, (650) 329-2171. Counsel for Defendant was Susan Shores, Public Defender's Office, Santa Clara County, 120 West Mission Street, San Jose, CA 95110, (408) 299-7700.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00512 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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3. *People v. Augustine,* No. CC788504, slip op. (Cal. Super. Ct. Nov. 14, 2008)
The prosecutor was Daisy Nishigaya, Office of the City Attorney, City of San Jose, 200 E. Santa Clara Street, 16th Floor, San Jose, CA 95113, (408) 535-1900. Counsel for Defendants was David Durchfort, Kosnett & Durchfort, 11355 W. Olympic Boulevard, #300, Los Angeles, CA 90064, (310) 444-8898.

4. *People v. Augustine,* Nos. 3-07-TR-244725 and 3-07-TR-245432, slip op. (Cal. Super. Ct. July 7, 2008)
The prosecutor was Daisy Nishigaya, Office of the City Attorney, City of San Jose, 200 E. Santa Clara Street, 16th Floor, San Jose, CA 95113, (408) 535-1900. Counsel for Defendant Augustine was James McManis, Michael Reedy, and Ruby H. Kazi of McManis Faulkner, 50 W. San Fernando Street, 10th Floor, San Jose, CA 95113, (408) 279-8700. Counsel for Defendant Wilkins was Steven Manchester, 10 Almaden Boulevard, Suite 1250, San Jose, CA 95113, (408) 293-5400.

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.

People v. Gautam, No. CC785322, (Cal. Super. Ct. Dec. 16, 2008), *rev'd*, No. 1-09-AP-000670 (Cal. App. Dep't Super. Ct. Oct. 13, 2009)
The jury acquitted the defendant of two charges. I denied the defendant's motion for a finding of factual innocence and a sealing of arrest records. The Appellate Division of the Superior Court affirmed my denial of defendant's motion for a finding of factual innocence and a sealing of arrest records as to the two tried charges, but reversed my finding as to a third charge that was dismissed before arraignment.

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 four opinions, all of which were unpublished in accordance with Superior Court practice. These opinions are part of the case file that is publicly available in the Clerk's Office.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00513 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.

People v. Frost, No. BB834193, slip op. (Cal. Super. Ct. Mar. 27, 2009)
People v. Augustine, No. CC788504, slip op. (Cal. Super. Ct. Nov. 14, 2008)
People v. Augustine, Nos. 3-07-TR-244725 and 3-07-TR-245432, slip op. (Cal. Super. Ct. July 7, 2008)

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:

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 recused myself sua sponte in three cases where there was an appearance by an attorney who had previously represented a relative of mine in 2002:
People v. Rimola, No. CC789359 (Cal. Super. Ct. Feb. 26, 2008)
People v. Atwal, No. CC778468 (Cal. Super. Ct. Mar. 24, 2008)
People v. Garcia, No. CC772756 (Cal. Super. Ct. Apr. 14, 2008)

I recused myself sua sponte in the following case where the prosecutor was a close friend of mine:
People v. Barajas, No. CC772683 (Cal. Super. Ct. May 13, 2008)

Having searched my files, as well as our Court's Criminal Justice Information Control Database, I have not identified further specific instances in which I

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00514 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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recused myself sua sponte. However, I recall sua sponte recusing myself in a few additional cases where there was an appearance by an attorney who had previously represented another relative of mine.

In addition to these recusals, California Code of Civil Procedure ("CCCP") 170.6 gives litigants a process by which they may disqualify a judge without any showing of cause. Such disqualifications are fairly routine in our Court. Defense counsel filed CCP170.6 motions in the following cases, which, except for one, were therefore automatically reassigned.

People v. Williams, No. CC806274 (Cal. Super. Ct. July 28, 2008).
People v. McAvoy, No. CC812306 (Cal. Super. Ct. July 28, 2008)
People v. Woo, No. CC817370 (Cal. Super. Ct. Sept. 16, 2008)
People v. Moreno, No. BB411706 (Cal. Super. Ct. Mar. 13, 2009)
People v. Macareno, No. BB942323(Cal. Super. Ct. Sept. 28, 2009)
People v. Duffy, No. BB940994 (Cal. Super. Ct. Nov. 2, 2009) (I denied the 170.6 motion as untimely, and the case was not automatically reassigned.)

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. 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.

Women for Obama, Northern California, Summer and Fall 2007, Volunteer.
Kerry-Edwards Presidential Campaign, Las Vegas, Nevada, October 2004, Volunteer.
John Chiang for California State Controller, March 2006, Volunteer. Hosted a fundraiser at my home.
Margaret Abe-Koga for City Council of Mountain View, California, Fall 2004, Volunteer. Hosted a meet and greet/fundraiser at my home.
Democratic National Convention, Los Angeles, August 2000, Volunteer.
Barbara Boxer Senatorial Re-Election Campaign, Los Angeles, 1998, Volunteer.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00515 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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Dukakis Presidential Campaign 1987-1988, Boston and New Hampshire, Volunteer.
Dukakis Gubernatorial Re-Election Campaign, Cambridge and Boston, 1986, Volunteer.
James R. Jones Senatorial Campaign, Oklahoma, 1986, Volunteer.
Cleveland County Democratic Party Headquarters, Norman, Oklahoma 1986, Volunteer.

16. **Legal Career:** Answer each part separately.

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

I developed a broad set of legal experiences in the private and public sectors. As an Assistant United States Attorney, I represented the United States in criminal trials and appeals involving bank robberies, narcotics, immigration, fraud, and other major crimes. As a law firm partner, I represented individuals and multi-billion dollar companies in patent infringement and commercial lawsuits.

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.

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.

2002-2008
McDermott Will & Emery LLP
275 Middlefield Road, Suite 100 (Current address)
Menlo Park, California 94025
Partner

2000-2002
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, California 94304
Senior Associate

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00516 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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1997-2000
Office of the United States Attorney, Central District of California
312 North Spring Street, Suite 1200
Los Angeles, California 90012
Assistant United States Attorney

1994-1997
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Special Assistant to the Deputy Attorney General (1996-1997)
Special Counsel, Office of Legislative Affairs (1994-1996)

1993-1994
United States Senate, Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510
Women's Law and Public Policy Fellow

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 mediated cases outside of my role as a judge.

b. Describe:

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

Following my graduation from law school in 1993 until 1997, I worked on federal legislation and the implementation and enforcement of federal laws on a fellowship with a United States Senate Committee staff and as an attorney with the United States Department of Justice. From 1997 to 2000, I was a federal criminal prosecutor. From 2000 to 2008, I was in private practice as a civil litigator. Since 2008, I have served as a Judge of the Superior Court of California.

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

As an Assistant United States Attorney, I prosecuted a wide range of crimes including bank robberies, narcotics trafficking, securities and tax fraud, and immigration. In the private sector, I specialized in intellectual property and business litigation. I represented individuals as well as big

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00517 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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and small high technology and biotech companies, as both plaintiffs and 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.

As an Assistant United States Attorney from 1997 through 2000, my practice was exclusively criminal prosecution, and I appeared in court frequently. While in private practice from 2000 through 2008, my practice was exclusively civil litigation, and I appeared in court occasionally.

i. Indicate the percentage of your practice in:
   1. federal courts: 90%
   2. state courts of record: 5%
   3. other courts:
   4. administrative agencies: 5%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 66%
   2. criminal proceedings: 34%

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 tried seven cases as counsel (three as sole counsel and four as co-counsel).

i. What percentage of these trials were:
   1. jury: 43%
   2. non-jury: 57%

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:

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00518 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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. *In re Seagate Technology LLC*
I was a managing counsel for defendant Seagate Technology in this patent infringement case involving disk drive technology. I reviewed and revised pleadings in the case and drafted some summary judgment motions. After discovery, the plaintiffs dropped one of the three asserted patents and 10 of the 25 alleged trade secrets. The District Court also granted our summary judgment motion eliminating tort and punitive damages. *Convolve, Inc. v. Compaq Computer Corp.*, No. OOCV5141 (GBD), 2006 U.S. Dist. LEXIS 13848 (S.D.N.Y. Mar. 29, 2006). In 2006, we successfully petitioned the Court of Appeals for the Federal Circuit for a writ of mandamus. The Federal Circuit's landmark *en banc* ruling overturned the 24-year-old standard for willful patent infringement by shifting the burden of proof regarding willful infringement from the defendant back to the patent owner. *In re Seagate Technology, LLC*, 497 F.3d 1360 (Fed. Cir. 2007).

I was counsel in this case from May 2003-January 2008. The Federal Circuit opinion was *en banc*. The District Judge was Hon. George B. Daniels. My principal co-counsel were Terry McMahon, McDermott Will & Emery LLP, 275 Middlefield Road, Suite 100, Menlo Park, CA 94025, (650) 815-7400, and Stephen J. Akerley, O'Melveny and Myers LLP, 2765 Sand Hill Road, Menlo Park, CA 94025, (650) 473-2612. Principal opposing counsel was Debra Brown Steinberg, Cadwalader, Wickersham & Taft LLP, One World Financial Center, New York, NY 10281, (212) 504-6000. Principal counsel for Co-Defendant Compaq was Robert Goldman, Ropes & Gray LLP (formerly Fish & Neave), 1900 University Avenue, 6th Floor, East Palo Alto, CA 94303, (650) 617-4035.

2. *United States v. Stapleton*, SA CR 99-47(A)-GLT (C.D. Cal.)
I represented the United States in this criminal jury trial charging four defendants with telemarketing fraud that resulted in a $5 million loss to victims. The jury found all four defendants guilty as charged. I drafted the jury instruction for this trial, which was adopted as Ninth Circuit Model Criminal Jury Instruction 8.101A (Scheme to Defraud—Vicarious Liability).

I was counsel in this case in 2000. The District Judge was Hon. Gary L. Taylor. My co-counsel was Assistant United States Attorney Ellyn M. Lindsay, 312 N. Spring Street, Suite 1200, Los Angeles, CA 90012, (213) 894-2041. Counsel for Defendant Stapleton was William G. Morrissey, 17541 Irvine Boulevard, Suite D, Tustin, CA 92780, (714) 547-3122. Counsel for Defendant Klatter was Michael Meza, 333 City Boulevard W, Orange, CA 92868, (714) 564-2501. Counsel for Defendant Long was Donald L. Herzstein, 444 W. Ocean Boulevard, #400, Long Beach, CA 90802, (562) 435-7469.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00519 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Counsel for Defendant Perkins was Randolph K. Driggs, Law Office of Randolph K. Driggs, P.O. Box 17069, Anaheim Hills, CA 92817, (714) 748-0430.

3. *United States v. Mohammad,* CR97-750-R (C.D. Cal. 1997)
I represented the United States in this three defendant case charging possession of a methamphetamine precursor. Defendant Mohammad pled guilty prior to trial but appealed his sentence, which the Court of Appeals affirmed. 172 F.3d 60 (9th Cir. 1999). Defendant Mustafa pled guilty during trial, but appealed his conviction and sentence. The Court of Appeals affirmed the conviction but vacated his sentence and remanded for him to obtain substitute sentencing counsel. 172 F.3d 60 (9th Cir. 1999). After trial, the jury found Defendant Talliti guilty as charged. Defendant Talliti appealed his conviction and sentence, which the Court of Appeals affirmed. 221 F.3d 1349 (9th Cir. 2000). I was the sole prosecutor at trial and on appeal. I wrote all appellate briefs and made oral argument before the Court of Appeals in Defendant Talliti's case.

I was counsel in this case from 1997-2000. The District Judge was Hon. Manuel L. Real. The Court of Appeals panel for Defendants Mohammad and Mustafa was composed of Circuit Judges Brunetti, McKeown, and Magill. The Court of Appeals panel for Defendant Talliti was composed of Circuit Judges Fernandez and Wardlaw and District Judge Weiner. Counsel for Defendant Mohammad was Richard M. Steingard, Sheppard Mullin Richter & Hampton LLP, 333 S. Hope Street, 43rd Floor, Los Angeles, CA 90071, (213) 620-1780. Counsel for Defendant Mustafa was Alan R. Chappell, Helphand & Rich, 535 N. Brand Boulevard, Suite 1000, Glendale, CA 91203, (818) 240-1974. Counsel for Defendant Talliti was Lawrence R. Young, 9530 E. Imperial Hwy #K, Downey, CA 90242, (562) 803-4240.

4. *United States v. Johnson,* CR96-567-ABC (C.D. Cal. 1997)
I represented the United States in this criminal jury trial against four defendants charged with conspiracy to distribute cocaine. The jury convicted all four defendants. Defendant Robert Johnson appealed his conviction and sentence, which the Court of Appeals affirmed. 176 F.3d 485 (9th Cir. 1999). Defendant Agapito Cortez appealed his conviction and sentence. The Court of Appeals affirmed the conviction, but vacated the sentence, so that the court could make the proper advisement and inquiry regarding the defendant's prior conviction. 17 Fed. Appx. 521 (9th Cir. 2001). My co-counsel and I jointly drafted the appellate briefs for both defendants' appeals.

I was counsel in this case from 1997-2000. The District Judge was Hon. Audrey B. Collins. The Court of Appeals panel for Defendant Johnson was composed of Circuit Judges Nelson, Fernandez, and W. Fletcher. The Court of Appeals panel for Defendant Cortez was composed of Circuit Judges O'Scannlain, Silverman, and Gould. My co-counsel was Lee Arian, Wellpoint, 21555 Oxnard Street M/S Ac 7a, Woodland Hills, CA 91367, (818) 234-8617. Counsel for Defendant Robert Johnson was Judith Rochlin, Law Office of Judith Rochlin, 10801 National Boulevard, Suite 601, Los Angeles, CA 90064, (310) 473-6208. Counsel for Defendant Agapito Cortez was William S. Pitman, Law Offices of William S. Pitman, 624 South Grand Avenue, Suite 2200, Los Angeles, CA 90017, (213) 629-0272. Counsel for Defendant Tony Johnson was Dean Gits, Office of

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the Federal Public Defender, 321 E. 2nd Street, Los Angeles, CA 90012, (213) 894-7867. Counsel for Defendant Oscar Whitfield was Michael J. Treman, 30 N. Santa Ynez #B, P.O. Box 42059, Santa Barbara, CA 93140, (805) 962-6544.

5. *Creative Technology Ltd. v. Apple Computer, Inc.*, No. C06-03218 SBA (N.D. Cal.) I represented Creative Technology in this suit against Apple Computer in the Northern District of California (No. C06-03218 SBA). Creative claimed patent infringement in connection with the user interface of the iPod. Apple then sued Creative in three separate cases in the Eastern District of Texas (Nos. 9:06-CV-114, 9:06CV-149, and 9:06-CV-150) and in one case in the Western District of Wisconsin (No. 06-C-0263-C). I was a managing counsel for these five district court cases and in two related complaints before the United States International Trade Commission. Ultimately, the parties reached a settlement in which Apple agreed to pay Creative $100 million to license the relevant patent.

I was counsel in these cases in 2006. The District Judges were Hon. Saundra Brown Armstrong (N.D. Cal.), Hon. Barbara B. Crabb (W.D. Wisc.), and Hon. Ron Clark (E.D. Tex.). My principal co-counsel were Terrence P. McMahon, McDermott Will & Emery LLP, 275 Middlefield Road, Suite 100, Menlo Park, CA 94025, (650) 815-7400, and Mark Davis, Weil Gotshal LLP, 1300 Eye Street, NW, Suite 900, Washington, DC 20005, (202) 682-7000. Principal opposing counsel was Robert G. Krupka, Kirkland & Ellis LLP, 777 South Figueroa Street, #3700, Los Angeles, CA 90017, (213) 680-8400.

6. *Audio MPEG, Inc. v. Creative Labs, Inc.*, No. 2:05 cv 185 JBF/FBS (E.D. Va.) Audio MPEG sued my client, Creative, for alleged patent infringement. I led the litigation team for Creative and drafted a motion to dismiss on grounds that the foreign owners of the patents were not party to the case. The Court ruled that joinder of the patent owners was required. On subsequent reference to a Magistrate Judge for settlement, I prepared Creative's presentation and engaged in several days of negotiations. The parties settled, and the case was dismissed.

I was counsel in this case from 2005-2006. The District Judge was Hon. Jerome B. Friedman. The Magistrate Judge was Hon. F. Bradford Stillman. My principal co-counsel were Terrence P. McMahon, McDermott Will & Emery LLP, 275 Middlefield Road, Suite 100, Menlo Park, CA 94025, (650) 815-7400, and Dana J. Finberg, LeClair, Ryan, 44 Montgomery Street, 18th Floor, San Francisco, CA 94104, (804) 916-7109. Principal opposing counsel was Laura P. Masurovsky, Finnegan, Henderson, Farabow, Garrett & Dunner LLP, 901 New York Avenue, N.W., Washington, D.C. 20001, (202) 408-4000.

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7. *Freedom Wave LLC v. Logitech, Inc.*, No. CV04-9862 JFW (MANx) (C.D. Cal.)
Freedom Wave sued my client, Logitech, for alleged patent infringement. I was primary counsel. At an early stage, I persuaded Freedom Wave to dismiss its complaint against Logitech's parent company. During the litigation, the U.S. Patent and Trademark Office agreed to reexamine the validity of the contested patent, triggering a second lawsuit against Logitech for alleged infringement of another patent. We settled the case.

I was counsel in this case from 2004-2005. The District Judge was Hon. John F. Walter. My principal co-counsel was Peter Chen, Latham & Watkins LLP, 140 Scott Drive, Menlo Park, CA 94025, (650) 328-4600. Principal opposing counsel was Marc A. Fenster, Russ, August & Kabat, 12424 Wilshire Boulevard, 12th Floor, Los Angeles, CA 90025, (310) 826-7474.

8. *Gart v. Micro Innovations Corp.*, No. CV 03-4320 CBM (Mcx) (C.D. Cal.)
Plaintiff Gart sued my client, Micro Innovations, for alleged patent infringement. As primary counsel, I drafted the claim construction briefs. I coordinated litigation strategy with Co-Defendants International Business Machines Corp. and Microsoft Corp. Plaintiff opposed a *Markman* hearing on the theory that some claims had been construed previously in another case on which I had also worked. I successfully briefed and argued this issue. The parties then settled.

I was counsel in this case from 2003-2004. The District Judge was Hon. Consuelo B. Marshall. My principal co-counsel was Robert Blanch, McDermott Will & Emery LLP, 275 Middlefield Road, Suite 100, Menlo Park, CA 94025, (650) 815-7400. Principal opposing counsel was John B. Sganga, Jr., Knobbe, Martens, Olson & Bear, LLP, 2040 Main Street, Fourteenth Floor, Irvine, CA 92614, (949) 760-0404. Counsel for Co-Defendant International Business Machines was Robert W. Stone, Quinn Emanuel Urquhart Oliver & Hedges, 555 Twin Dolphin Drive, Suite 560, Redwood Shores, CA 94065, (650) 620-4500. Counsel for Co-Defendant Microsoft was James S. Blackburn, Arnold & Porter LLP, 777 South Figueroa Street, 44th Floor, Los Angeles, CA 90017, (213) 243-4000.

9. *United States v. Mitchell*, CR99-31-RAP (C.D. Cal. 1999)
I represented the United States in this criminal jury trial regarding possession of counterfeit currency with intent to defraud. The defendant represented himself, raising special challenges for me as prosecutor and for the Court to ensure the defendant a full and fair trial. The jury found the defendant guilty.

I was counsel in this case in 1999. The District Judge was Hon. Richard A. Paez. I was the United States' sole trial counsel. Defendant was pro se.

10. *United States v. Zapata*, CR89-107-TJH (C.D. Cal. 1998)
I represented the United States in this criminal bench trial for conspiracy to distribute and possess cocaine. This case was particularly challenging because the evidence was nearly a decade old. The defendant had fled the cocaine bust by seizing the car of an elderly man and had successfully eluded authorities for nine years. The Court convicted the

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defendant, who appealed his sentence. The Court of Appeals affirmed. 185 F.3d 872 (9th Cir. 1999). My co-counsel and I jointly drafted the appellate brief.

I was co-counsel in this case from 1998-1999. The District Judge was Hon. Terry J. Hatter Jr. The Court of Appeals panel was composed of Circuit Judges O'Scannlain, Rymer, and Silverman. My co-counsel was Pamela Johnston, Foley & Lardner LLP, 555 South Flower Street, Suite 3500, Los Angeles, CA 90071, (213) 972-4632. Counsel for Defendant Zapata was Joseph F. Walsh, 316 West Second Street, Suite 1200, Los Angeles, CA 90012, (213) 627-1793.

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.)

As a Fellow with the United States Senate Judiciary Committee staff, I identified and interviewed hearing witnesses, worked on the passage of legislation, and researched nominees referred to the Committee. As an attorney with the United States Department of Justice, I advised and briefed the Attorney General and Deputy Attorney General. As a federal prosecutor, I worked with federal agents in investigating criminal activity. In the private sector, I advised clients on a variety of business and intellectual property matters. I also have engaged in a wide range of public service activities, including presiding over homeless courts for veterans and mentoring high school, college, and law school students.

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 sessions at the Stanford Law School Trial Advocacy Workshop on closing arguments (Nov. 3, 2008) and on evidence (Oct. 1, 2009).

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.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00523 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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 have no 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.

       If confirmed, I initially will recuse myself from cases involving McDermott Will & Emery LLP, at which I was a partner until January 2008; Stanford University, where my husband is a member of the faculty; and companies that manage the diversified mutual funds in which my husband and I invest. Moreover, I would be vigilant about avoiding any conflict or appearance of conflict.

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

       If confirmed, I will follow the federal recusal statutes and the Code of Conduct for United States Judges. When appropriate, I would seek advice from my colleagues and the Code of Conduct Committee of the Judicial Conference.

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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I consider pro bono activities and mentoring to be an important part of my commitment to the legal profession. Since law school, I have participated in pro bono, mentoring, and community activities in Massachusetts, Washington, D.C., and California. For example, as a law student, I represented Central American asylum seekers and low-income tenants before local housing authorities. Later, while working in Washington, D.C., I was involved in a variety of pro bono activities. I worked with the Korean American Alliance to organize citizenship drives providing assistance to lawful permanent residents completing naturalization applications. I also tutored Vietnamese elementary school students. After moving to Los Angeles, I participated in a local bar association's effort to provide free legal advice for people who could not afford a lawyer.

More recently, since being appointed to the Superior Court, I served on multiple occasions as a volunteer judge for special court sessions organized for the homeless, and specifically for homeless veterans. I have frequently volunteered to judge mock trials, including among others the 2008 and 2009 Santa Clara County High School Mock Trial Tournaments; the 2008 and 2009 Santa Clara University Trial Techniques class; 2006, 2008, and 2009 National Asian Pacific American Bar Association's Regional and/or National Moot Court Competitions; and the 2008 and 2009 Stanford Law School Kirkwood Moot Court Competitions. To support the Court's continuing community outreach efforts, I have hosted elementary, junior high, and high school students in my courtroom. In addition, I work to mentor local high school and college students through the Asian Pacific American Leadership Institute. I also have volunteered with St. Vincent de Paul's Food Pantry, Habitat for Humanity, and through the St. Thomas More Society, the Loaves & Fishes Family Kitchen.

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.

Senator Boxer has established a bipartisan Judicial Advisory Committee for screening, interviewing and recommending candidates to the United States District Court, Northern District of California. This Committee is comprised of prominent local attorneys and former judges. In March 2009, I submitted an application to Senator Boxer's Office. On May 6, 2009, Senator Boxer's Judicial Advisory Committee interviewed me. Since July 23, 2009, I have been in contact with the United States Department of Justice pre-nominations officials. On September 23, 2009, I interviewed with attorneys from the United States Department of Justice and the White House Counsel's Office. I had subsequent

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communication with the White House Counsel's Office on September 26, 2009. The President submitted my nomination to the Senate on January 20, 2010.

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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Rev. 1/2008

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Koh, Lucy H.	U.S. District Court for the Northern District of California	1/20/2010
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type** (check appropriate type)	**6. Reporting Period**
District Judge – Nominee	☑ Nomination, Date 1/20/2010 ☐ Initial ☐ Annual ☐ Final **5b.** ☐ Amended Report	01/01/2009 to 1/15/2010
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
Superior Court of California County of Santa Clara 191 North First Street San Jose, CA 95113	**Reviewing Officer**_____ **Date**_____	

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

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

☑ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.		
2.		
3.		
4.		
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting Koh, Lucy H.	Date of Report 1/20/2010

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

A. Filer's Non-Investment Income

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

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2009	State of California	$168,215.68
2. 2009	County of Santa Clara	$7,924.12
3. 2010	State of California	$4,656.67
4. 2010	County of Santa Clara	$291.58

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

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

DATE	SOURCE AND TYPE
1. 2009	Stanford University -- salary
2. 2009	Executive Office of the President -- salary
3. 2010	Executive Office of the President -- salary
4.	

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

☐ NONE *(No reportable reimbursements.)*

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. Exempt				
2.				
3.				
4.				
5.				

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting	Date of Report
	Koh, Lucy H.	1/20/2010

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

☐ NONE *(No reportable gifts.)*

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

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☐ NONE *(No reportable liabilities.)*

CREDITOR	DESCRIPTION	VALUE CODE
1. U.S. Department of Education	Direct Student Loan	K
2. Fidelity Investments	Loan against retirement accounts	K
3.		
4.		
5.		

FINANCIAL DISCLOSURE REPORT Page 4 of 6	Name of Person Reporting	Date of Report
	Koh, Lucy H.	1/20/2010

VII. INVESTMENTS and TRUSTS — *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Wells Fargo Accounts	A	Interest	L	T	Exempt				
2. Stanford Federal Credit Union	A	Interest	L	T					
3. State of California Savings Plus Program		None	J	T					
4. American Funds Washington Mutual A M utual Funds		None	K	T					
5. Frontegra IronBridge Small Cap		None	K	T					
6. PIMCO Total Return Instl		None	K	T					
7. Dodge & Cox Balanced		None	K	T					
8. Vanguard 2035 Target Retirement		None	K	T					
9. PIMCO Total Return Admin		None	J	T					
10. Vanguard 2035 Target Retirement		None	M	T					
11.									
12.									
13.									
14.									
15.									
16.									
17.									

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

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting Koh, Lucy H.	Date of Report 1/20/2010

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

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Koh, Lucy H.	Date of Report 1/20/2010

IX. CERTIFICATION.

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

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

Signature Lucy H. Koh

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		107	373	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		365	662	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule	1	641	204
Real estate owned-add schedule	2	227	224	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		13	950	Student Loans		15	358
Cash value-life insurance				Loan against Retirement Account		42	386
Other assets itemize:							
Education Savings Accounts		44	030				
FERS Account (TSP)		20	905				
				Total liabilities	1	698	948
				Net Worth	1	080	196
Total Assets	2	779	144	Total liabilities and net worth	2	779	144
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you a defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
State of California Savings Plus Program	$ 7,300.38
American Funds Washington Mutual A	$31,530.57
Frontegra IronBridge Small Cap	$35,087.19
PIMCO Total Return Instl	$45,402.28
PIMCO Total Return Admin	$33.48
Dodge & Cox Balanced	$33,244.01
Vanguard 2035 Target Retirement (Koh)	$30,798.97
Vanguard 2035 Target Retirement (Cuellar)	$182,264.46
Total	$365,661.34
Real Estate Owned	
Personal residence	$2,227,223.58
Real Estate Mortgages Payable	
Personal residence	$1,641,203.80

AFFIDAVIT

I, LUCY HAERAN KOH, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

January 18, 2010
(DATE)

Lucy Haeran Koh
(NAME)

Kyle C Johnson
(NOTARY)

KYLE C. JOHNSON
Commission # 1767023
Notary Public - California
Santa Clara County
My Comm. Expires Sep 11, 2011

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Santa Clara

On 1/18/10 (Date) before me, Kyle C. Johnson, Notary Public (Here insert Name and Title of the Officer)

personally appeared Lucy Koh (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(~~ies~~), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Kyle C. Johnson (Signature of Notary Public)

KYLE C. JOHNSON
Commission # 1767023
Notary Public - California
Santa Clara County
My Comm. Expires Sep 11, 2011

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

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STATEMENT OF JON E. DEGUILIO, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA

Mr. DEGUILIO. Thank you, Chairwoman Klobuchar, Ranking Member Sessions. I am honored and humbled to be here today. I want to thank you and your staffs for conducting this hearing so promptly after my nomination and for having this hearing, despite the weather challenges that we faced in the last week.

Senator KLOBUCHAR. Well, they get a lot of snow in Alabama. I know he's used to this.

[Laughter.]

Mr. DEGUILIO. I do want to thank the President for his nomination of myself. I also would like to thank Senator Bayh and Senator Lugar for their support of my nomination. Unfortunately, I'm not joined today by family; they could not make it out of Chicago because of flight cancellations.

But I would like to acknowledge my wife, Barb. Senator Bayh indicated, we've been married many, many years, and she's been one of the greatest things in my life. I'd also like to acknowledge my children, Suzanne, who is 27, and a lawyer, and my son Christopher, who is 20, and a junior at Valparaiso University, studying political science.

I look forward to this hearing. Thank you, Madam Chairwoman.

Senator KLOBUCHAR. Thank you very much.

Judge Pratt.

[The biographical information follows.]

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00535 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Jon Ernest DeGuilio

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

   United States District Judge for the Northern District of Indiana

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: Peoples Bank
   9204 Columbia Avenue
   Munster, IN 46321

   Residence: Highland, IN

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

   1955; Hammond, Indiana

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.

   1978 – 1981, Valparaiso University School of Law; Juris Doctor, May 1981

   Summer 1979, DePaul University School of Law; No Degree

   1975 – 1977, University of Notre Dame; Bachelor of Arts, May 1977

   1973 – 1975, Purdue University; 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.

December 1999 – present
Peoples Bank SB/NorthWest Indiana Bancorp
9204 Columbia Avenue
Munster, IN 46321
Executive Vice President, General Counsel & Corporate Secretary (2001 – present)
Senior Vice President and Trust Officer (1999 – 2001)

June 1999 – December 1999
Barnes & Thornburg LLP
600 1st Source Bank Center
100 North Michigan
South Bend, IN
Partner

November 1993 – June 1999
U.S. Department of Justice
Office of the United States Attorney for the Northern District of Indiana
5400 Federal Plaza Street
Hammond, IN 46320
United States Attorney

June 1989 – November 1993
Office of the Lake County Prosecutor
2293 North Main Street
Crown Point, IN 46307
Prosecuting Attorney

1988 – June 1989
Office of the Lake County Prosecutor
2293 North Main Street
Crown Point, IN 46307
Deputy Prosecutor (part-time)

1987 –1989
Highland Police Commission and Water Board
Town of Highland
3333 Ridge Road
Highland, IN 46322
Attorney (part-time)

1987
Office of the Lake County Sheriff
2293 North Main Street
Crown Point, IN 46307
Legal Advisor (part-time)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00537 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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1984 –1987
Office of the Hammond City Council
5925 Calumet Avenue
Hammond, IN 46322
City Councilman (part-time)

1984 – 1986
Lake County Court, Division II
2293 North Main Street
Crown Point, IN 46307
Public Defender (part-time)

June 1981 – December 1983
Office of the Lake County Prosecutor
2293 North Main Street
Crown Point, IN 46307
Deputy Prosecutor (part-time)

June 1981 – June 1989
Law Offices of James L. Wieser (now Wieser & Wyllie LLP)
425 W. Lincoln Hwy.
Schererville, IN 46375
Associate

January 1979 – June 1981 (excluding summer of 1980)
Office of the Lake County Prosecutor
2293 North Main Street
Crown Point, IN 46307
Law Clerk

Summer 1980
U.S. Department of Justice
Office of the United States Attorney for the Northern District of Indiana
5400 Federal Plaza Street
Hammond, IN 46302
Legal Extern

1978
Hammond City Court
5925 Calumet Avenue
Hammond, IN 46302
Clerk

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00538 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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1977
United States Steel
Gary Works
1 North Broadway Avenue
Gary, IN 46302
Laborer

Other Affiliations
2009
South Shore Promotions, Inc.
7770 Corinne Drive
Hammond, IN 46323
Director/Treasurer

1997 – Present
Friends of the Lake County CASA (Court Appointed Special Advocates)
Office of the Lake County Juvenile Court
3000 93rd Avenue
Crown Point, IN 46307
Director/Treasurer and Volunteer

1999 – Present
Lake County Drug Free Alliance
(formerly Partnership For A Drug Free Lake County)
Office of the Lake County Sheriff
2293 North Main Street
Crown Point, IN 46307
Director

1991 – 1993
Lake County Alliance Against Domestic Violence
Office of the Lake County Prosecutor
2293 North Main Street
Crown Point, IN 46307
Founder and Chair

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. I registered for the Selective Service upon turning 18.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00539 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.

Person of the Year Award, Notre Dame Club of Northwest Indiana (1998)

Guardian Angel Award, Lake County Child Abuse Prevention Council (1993)

Service Award, Lake County Alliance Against Domestic Violence (1993)

Public Service Award, U.S. Department of Justice and the Law Enforcement Coordinating Committee (N.D. Ind.) (1993 and 1992)

Selected by the F.B.I. as a Prosecuting Attorney in the State of Indiana to attend the National Law Institute at the F.B.I. Academy, Quantico, Virginia (1991)

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.

Federal Bar Association

American Trial Lawyers Association

National District Attorneys Association

Indiana State Bar Association

Indiana Bar Foundation (Life Fellow)

Lake County Bar Association (Board of Managers, 1987 - 1989)

Member, United States Attorney General's Advisory Subcommittees (Office Management and Budget, Investigative Agencies and the Racial Disparity Working Group) (1993-1999)

Calumet American Inn of Court (Founding Member and Master, 1995 – 1997)

Governor's Juvenile Code and Youth Gang Commission (Chairman, 1992 – 1993)

Governor's Criminal Law Study Commission (1989 – 1993)

Board of Directors of the Indiana Prosecuting Attorneys' Council (President-Elect, 1993)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00540 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.

Indiana, 1981

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.

United States Court of Appeals for the Seventh Circuit, 1993
United States District Court for the Southern District of Indiana, 1981
United States District Court for the Northern District of Indiana, 1981
Indiana Supreme Court, 1981

There have been no lapses in admissions to any court.

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.

2008 – present: Member, Our Lady of Grace School Board

2008 – present: Member, Juvenile Diabetes Research Foundation (JDRF) Advisory Board

2007 – present: Member, Carnegie Performing Arts Center Board of Directors (East Chicago, Indiana).

1991 – 2006: Member, The Northwest Indiana Times (newspaper) Editorial Advisory Board

1989 –1993: Founding Member, Partners For Prevention

1991 - 1993: Founding Member and Chairman, Lake County Alliance Against Domestic Violence

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00541 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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1992 – 1993: Chairman, Governor Bayh's Juvenile Code and Youth Gang Commission

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 been a member of any organization that currently discriminates 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.

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

"Enron - Why you should care," *The NWI Times*, July 16, 2002.

"Free Trade Must Be Fair Trade," *The NWI Times*, April 16, 2002.

"Property Tax Reform," *The NWI Times*, November 8, 2001.

"Financial Privacy," *The NWI Times*, May 22, 2000.

"If It Sounds To Good To Be True, Then It Probably Is," *The NWI Times*, March 14, 1999.

"Support Region's GRIT In Fight," *The NWI Times*, June 29, 1997.

"Lawyers Relearning Civility," *The NWI Times*, January 28, 1996.

"Justice In The Search For...," *The NWI Times*, January 15, 1995.

"Fighting Crime Takes All Of Us," *The NWI Times*, June 19, 1994.

"Lake County Child Advocacy Center," *The NWI Times*, 1993;

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00542 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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"Legalization Of Drugs Would Be A Threat To Our Society," *The NWI Times*, 1990.

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.

As Chair of Governor Bayh's Juvenile Code and Youth Gang Study Commission, I contributed to a report released in 1993 that proposed revisions to the Indiana Juvenile Code and the Indiana juvenile justice system. A copy of the report is not available.

As a member of Governor Bayh's Criminal Law Study Commission, I contributed on an annual basis to a report that proposed revisions of the Indiana Criminal Code and the Indiana Traffic Code. A copy of those proposals is not available.

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.

Remarks to the U.S. Conference of Mayors Task Force on Drug Control, September 26, 1996. No notes or transcript is available. The event was summarized in "Mayors' Task Force Meeting Alerted to 'Meth' Increase, U.S. Conference of Mayors publication, September 30, 1996.

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.

1997 - Indiana State Bar Association Conclave On Legal Education discussing potential improvements to legal education and the development of young lawyers. Indiana State Bar Association, One Indiana Square, Suite 530, Indianapolis, IN 46204. No notes or transcript is available.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00543 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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1997 - "Teenage Violence and Drug Use In America," Valparaiso University School of Law, 656 S. Greenwich Street, Valparaiso, IN 46383-4945. No notes or transcript is available.

1996 - "Plea Agreements," 46th Annual Meeting of the Seventh Circuit Bar Association and Judicial Conference, Seventh Circuit Bar Association, 53 W. Jackson Blvd., Suite 1050, Chicago, IL 60604. No notes or transcript is available.

1996 - "Everything You'd Better Know About Civil Law," Indiana Continuing Legal Education Foundation Conference, Indiana Commission for Continuing Legal Education, 230 East Ohio Street, Suite 300, Indianapolis, IN 46204. No notes or transcript is available.

1994 –Indiana Juvenile Judges Association (overview of the report of Governor Bayh's Juvenile Code and Youth Gang Commission), 115 West Washington Street, Indianapolis, IN 46204. No notes or transcript is 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.

As United States Attorney I periodically commented to the media on matters pertaining to the office. These were not formal interviews. I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

No-nonsense jurist known as fair, patient, *Chicago Tribune*, March 3, 2005

Operation Bullseye targets felons, guns, *South Bend Tribune*, June 27, 1999.

3 R's are not enough, *South Bend Tribune*, May 29, 1999.

DeGuilio resigns to join Indiana law firm, Associated Press, May 28, 1999.

Two former Lake County officials charged, Associated Press, May 19, 1999.

East Chicago absentee ballots will be counted after the primary, Associated Press, May 1, 1999.

Gang convictions a good start, *South Bend Tribune*, April 27, 1999.

U.S. attorney says investigation unlikely before election, Associated Press, April 24, 1999.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00544 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Outcome 'sends message' to gang, *South Bend Tribune*, April 16, 1999.

Authorities investigating missing brochures in mayor's race, Associated Press, April 11, 1999.

Freed suspect calls for more cooperation from prosecutors, Associated Press, February 23, 1999.

Officers charged in death, *South Bend Tribune*, February 13, 1999.

Neighborhood Gets Designation, Associated Press, February 11, 1999.

Chiropractor pleads guilty in fraud investigation, Associated Press, January 7, 1999.

Death Penalty Sought, Associated Press, December 14, 1998.

Gang indictments a good beginning, *South Bend Tribune*, November 22, 1998.

Ending reign of terror, *South Bend Tribune*, November 18, 1998.

Federal prosecutor's workload has jumped, *The NWI Times,* November 2, 1998.

Firearms Initiative Started, Associated Press, October 28, 1998.

Attorney confirms gang probe, *South Bend Tribune*, October 20, 1998.

House approves $3 million for local anti-drug agency, *The NWI Times,* October 9, 1998

KKK Members Sentenced, Associated Press, September 3, 1998.

Portage hate crime sends two to federal prison, *The NWI Times,* September 3, 1998.

Feds take over task force probe, *The NWI Times*, May 5, 1998.

Feds to oversee local drug fight, *The NWI Times,* April 25, 1998.

Cop-drug corruption reviewed, *The NWI Times*, April 23, 1998.

Mid-American Won't Fight Charges, *The Columbus Dispatch*, April 30, 1996.

Chicago cops plead guilty to extortion, *The NWI Times,* June 16, 1995.

Two Chicago cops accused of extortion, *The NWI Times*, June 13, 1995.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00545 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Obscure US Law May Throw Wrench Into Indiana's Plan For Floating Casinos, *Journal of Commerce*, December 19, 1994.

Great Lakes gaming illegal? Department of Justice memo cites, *The NWI Times,* December 11, 1994.

2 Officers Charged In Drug Extortion, *Chicago Tribune*, November 8, 1994.

Feds will go after deadbeat parents, *The NWI Times,* October 1, 1994.

News in brief, *The NWI Times,* August 30, 1994.

Indiana May Make Public Juvenile Offenders' Names, *Chicago Tribune*, August 29, 1994.

DeGuilio says region needs crime bill, *The NWI Times,* August 25, 1994.

Local Officials Prepare For Operation Rescue, *South Bend Tribune*, August 4, 1994.

Complicated Issues Cloud Joyner Case, *South Bend Tribune*, May 22, 1994.

U.S. attorney says prevention, education solve juvenile ..., *The NWI Times,* April 19, 1994.

As U.S. attorney, DeGuilio continues push for ..., *The NWI Times,* March 6, 1994.

DeGuilio wants to strengthen teamwork among agencies, *The NWI Times,* September 21, 1993.

IDEM needed to speak up. DeGuilio upset by poor... *The NWI Times,* June 30, 1993.

DeGuilio to lead panel, *The NWI Times,* October 15, 1992.

For starters, some in Indiana will need a breath of fresh air, *Chicago Tribune*, April 30, 1992.

Indiana driver charged in 7 Cedar Lake deaths, *Chicago Tribune*, September 19, 1991.

Hitman strikes deal to testify against Munster victim's brother, *Chicago Tribune*, March 12, 1991.

ID mixup in shotgun case told, *Chicago Tribune*, March 2, 1991.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00546 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Pollution strike force urged in northwest Indiana, *Chicago Tribune*, February 22, 1991.

Questions in shotgun case arrest, *Chicago Tribune*, February 5, 1991.

Alton Coleman ally sought by Indiana, *Chicago Tribune*, January 12, 1991.

Doctor, wife held in starvation death of 5-year old, *Chicago Tribune*, November 10, 1990.

Plot in Munster deaths probed, *Chicago Tribune*, December 29, 1989.

201 seized in Indiana drug raids, *Chicago Tribune*, October 21, 1989.

10 nabbed for support payments, *Chicago Tribune*, August 9, 1989.

Florida waits as killer again condemned, *St. Petersburg Times*, July 20, 1989.

Grand jury to target drug trade, *Chicago Tribune*, July 19, 1989.

Charges filed in Indiana girl's death, *Chicago Tribune*, July 14, 1989.

Woman unlikely to be executed for crime at 15, lawyer contends, *Chicago Tribune*, June 27, 1989.

Group Protests Good Friday Concert by Black Sabbath, Associated Press, March 27, 1986.

People in the News, Associated Press, March 26, 1986.

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.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00547 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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).

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;

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00548 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.

After Senate confirmation, I was appointed United States Attorney for the Northern District of Indiana by President Clinton on November 12, 1993. I served until June 27, 1999.

I was appointed Prosecuting Attorney for Lake County, Indiana by Governor Evan Bayh on June 23, 1989. Thereafter, I was elected to a four-year term in November 1990, and served until November 1993.

I was elected Councilman, Hammond City Council, in November 1983 and served until December 31, 1988.

I was an applicant for appointment to the Indiana Court of Appeals in 1998. I was not nominated.

I have had no unsuccessful candidacies for 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.

November 2008 - Lake County Deputy Election Commissioner

Approximately June 1992 - Delegate to the Indiana Democratic State Convention

I have served as a volunteer in several campaigns without an official title: Jill Long for Governor (2008); Vi Simpson for Governor (2004); Bill Clinton for

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00549 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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President (1992); Evan Bayh for Governor (1988 and 1992); Joe Hogsett for United States Senate (1992) and Joe Hogsett for Indiana Secretary of State (1990).

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 have not served as a clerk to a judge.

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

I have never 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.

June 1981 – June 1989
Law Offices of James L. Wieser (now Wieser & Wyllie LLP)
425 W. Lincoln Hwy.
Schererville, IN 46375
Associate

June 1981 – December 1983
Office of the Lake County Prosecutor
2293 North Main Street
Crown Point, IN 46307
Deputy Prosecutor (part-time)

1984 – 1986
Lake County Court, Division II
2293 North Main Street
Crown Point, IN 46307
Public Defender (part-time)

1987
Office of the Lake County Sheriff
2293 North Main Street
Crown Point, IN 46307
Legal Advisor (part-time)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00550 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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1987 –1989
Highland Police Commission and Water Board
Town of Highland
3333 Ridge Road
Highland, IN 46322
Attorney (part-time)

1988 – June 1989
Office of the Lake County Prosecutor
2293 North Main Street
Crown Point, IN 46307
Deputy Prosecutor (part-time)

June 1989 – November 1993
Office of the Lake County Prosecutor
2293 North Main Street
Crown Point, IN 46307
Prosecuting Attorney

November 1993 – June 1999
U.S. Department of Justice
Office of the United States Attorney for the Northern District of Indiana
5400 Federal Plaza Street
Hammond, IN 46320
United States Attorney

June 1999 – December 1999
Barnes & Thornburg LLP
600 1st Source Bank Center
100 North Michigan
South Bend, IN
Partner

December 1999 – present
Peoples Bank SB/NorthWest Indiana Bancorp
9204 Columbia Avenue
Munster, IN 46321
Executive Vice President, General Counsel
& Corporate Secretary (2001 – present)
Senior Vice President and Trust Officer (1999 – 2001)

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.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00551 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.

From 1981 through 1989, I was an associate in the Law Offices of James L. Wieser. My practice, of both federal and state cases, focused on civil litigation, and I primarily represented plaintiffs in personal injury, wrongful death, products liability and medical malpractice cases. During much of this time I also represented three teacher unions, and several governmental units, as well as provided services in the areas of probate and estate.

While in private practice, I served part-time as a Deputy Prosecutor in the Office of the Lake County Prosecutor (1981 to 1983, and 1988 to 1989), handling cases in virtually all sections of the office. From 1984 to 1986, also while in private practice, I was a Public Defender for the Lake County Superior Court, representing indigent defendants in Class D felony and misdemeanor cases. In 1987, I was a Legal Advisor to the Office of the Lake County Sheriff, providing legal counsel to the sheriff's office on matters dealing primarily with criminal law and employment law. I was an elected member of the Hammond (Indiana) City Council from 1984 through 1987.

From June 1989 through November 1993, I was the Prosecuting Attorney for Lake County, Indiana, the second largest prosecutor's office in Indiana. I was responsible for the oversight of approximately 54 deputy prosecutors and approximately 3,000 felony cases annually. During my tenure, I took one case to jury trial, and was involved in several other cases in which pleas were entered prior to trial. I was significantly involved in the investigation and prosecution of numerous death penalty-eligible matters. I served on two state commissions (Governor Bayh's Juvenile Code and Youth Gang Commission and Governor Bayh's Criminal Law Study Commission), and founded or served in numerous community oriented initiatives, including Partners For Prevention, the Lake County Alliance Against Domestic Violence and spearheaded the creation of the Lake County Child Advocacy Center.

From November 1993 until June 1999, I was the United States Attorney for the Northern District of Indiana. I supervised approximately 30 Assistant United States Attorneys and coordinated many public safety-related initiatives. I took three cases to jury trial and argued five matters before the U.S. Circuit Court of Appeals for the Seventh Circuit. I served on several subcommittees of the Attorney General's Advisory Committee. I was also instrumental in the creation and oversight of the Gary Response Investigative Team (GRIT), which prosecuted street crimes resulting in a

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dramatic reduction in Gary's homicide rate, and oversaw the Lake County, Indiana High Intensity Drug Trafficking Area (HIDTA), as well as several Weed & Seed sites throughout the district.

Immediately after my tenure as United States Attorney for the Northern District of Indiana, I was a partner at the law firm of Barnes & Thornburg for six months. I served in the Labor & Employment Law section, typically representing management/employer related clients in a number of labor and employment issues. I also served in the Governmental Services section of the firm, handling primarily governmental financing issues.

In December 1999, I went to Peoples Bank SB as Senior Vice President and Trust Officer. I became General Counsel in 2001. As such, I have primary responsibility for handling all legal matters in which the bank is a plaintiff, typically involving commercial and consumer litigation, and employment matters. I also handle federal and state banking regulatory and compliance matters, bankruptcy, and Security and Exchange Commission-related issues. Matters in which the bank is a defendant are typically handled by outside counsel, in which case I provide oversight on behalf of the bank.

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

As an associate in private practice, I primarily represented plaintiffs in personal injury, wrongful death, products liability and medical malpractice cases. I also represented three teacher unions, governmental units and provided services in probate and estate. During that time, I served as a Deputy Prosecutor, representing the State of Indiana. I also served as a Public Defender, representing indigent defendants.

As Lake County Prosecutor, I represented the State of Indiana in criminal matters.

As U.S. Attorney, I represented the United States of America in criminal and civil matters.

As a partner at Barnes & Thornburg, I represented defendants in labor and employment matters as well as governmental units in finance matters.

Since 1999, I have represented my current employer, Peoples Bank.

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.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00553 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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During the first eight years of my legal career, approximately 50% to 75% of my practice was devoted to litigation. I was a civil litigator in private practice, and also served as a deputy prosecutor or public defender working on criminal matters. I was in court frequently.

As Lake County Prosecutor and United States Attorney, approximately 50% of my time involved litigation. I infrequently appeared in court. I tried one case as Lake County Prosecutor and three cases as U.S. Attorney.

As General Counsel for Peoples Bank, approximately 25% to 50% of my time has been devoted to litigation. I appear in court infrequently.

i. Indicate the percentage of your practice in:
   1. federal courts: 35%
   2. state courts of record: 63%
   3. other courts:
   4. administrative agencies: 2%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 50%
   2. criminal proceedings: 50%

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 at least 12 jury cases to verdict or judgment, 50% of which I appeared as co-counsel and the remainder as sole counsel. I have also tried approximately 100 cases to verdict or judgment before a judge (bench trial) or ALJ and served as sole counsel in 95% of those.

i. What percentage of these trials were:
   1. jury: 12%
   2. non-jury: 88%

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 appeared before the Supreme Court of the United States as counsel to a litigant or amicus.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00554 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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. *State of Indiana v. Levell Williams*, Cause No. 45G03-9103-CF-00056 (Lake County Superior Court, 1991). I was the sole prosecutor in a murder prosecution of a defendant who had stabbed his father multiple times. The trial was conducted over four days and involved issues pertaining to the insanity defense and self-defense. The jury rejected the defendant's insanity defense and convicted him of murder. Defendant was sentenced to 40 years in prison. The conviction was upheld by the Indiana Court of Appeals in a non-published opinion in 1992, Case No. 45A03-9204-CR-101.

   The trial was presided over by Judge Richard Conroy of the Lake Superior Court, Criminal Division. Judge Conroy is retired. The defendant was represented by David Olson (now Assistant Chief Public Defender), 765 Princeston Court, Crown Point, IN 46307, (219) 663-8413.

2. *United States of America v. Lloyd Roe and Tyrone Stevenson*, Case No. 2:94-cr-00113-RL (U.S. District Court, N.D. Indiana, 1995). I served as co-counsel on behalf of the United States of America in the prosecution of two Chicago police officers who were engaged in the theft of money and drugs from a drug dealer in violation of 18 U.S.C. §§1951, 1952. The trial commenced in June 1995 and, four days into the proceeding, both defendants plead guilty and were sentenced to 27 months in prison.

   Judge Rudy T. Lozano, United States District Court for the Northern District of Indiana, Hammond Division, 5400 Federal Plaza Street, Hammond, IN 46320, (219) 852-3600, presided over the trial. My co-counsel was Assistant United States Attorney Michael Thill, deceased. Counsel for defendants were James B. Koch, Gardiner Koch Weisberg & Wrona, 53 W. Jackson Blvd., Suite 950, Chicago, IL 60604, (312) 362-0000 and Standish E. Willis, 407 S. Dearborn Street, Suite 1395, Chicago, IL 60605, (312) 554-0005.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00555 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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3. *Suzanne and Spencer Geary v. Tampax, Inc.*, Case No. H84-413 (U.S. District Court, N.D. Indiana, 1986). I served as sole counsel on behalf of plaintiffs in a lawsuit involving a woman who was hospitalized for several days after suffering "toxic shock syndrome," allegedly the result of her use of a Tampax product. The case required the preparation of scientific and medical evidence, aggressively contested at that time, to prove causation. The case settled approximately one week before trial in April 1986.

   Judge James T. Moody, United States District Court for the Northern District of Indiana, Hammond Division, 5400 Federal Plaza Street, Hammond, IN 46320, (219) 852-3460, presided over the trial. Counsel for defendant was Roderick A. Palmore, currently Executive Vice President and General Counsel for General Mills, 1 General Mills Blvd., W05-A5, Minneapolis, MN 55426, (763) 764-3863.

4. *In Re Freyco Equipment, Inc. v. Gariup Construction, et al*, Adversary Proceeding, Case No. 02-6097 (U.S. Bankruptcy Court for the Northern District of Indiana). This adversary proceeding involved construction litigation related to the valuation of the construction services provided by the Debtor (Freyco) and the contractor (Gariup Construction). I worked for Peoples Bank SB, a secured creditor, overseeing outside counsel in the construction litigation. I participated in two days of mediation in March 2005 and February 2006, which resulted in a $300,000 settlement for the bank.

   Judge J. Phillip Klingeberger, United States Bankruptcy Court for the Northern District of Indiana, Hammond, Division, 5400 Federal Plaza, Hammond, IN 46320, (219) 852-3575, presided over the litigation. The mediation was conducted by Gerald M. Bishop, Bishop & Associates, 2115 West Lincoln Hwy., Merrillville, IN 46410, (219) 738-2400. Counsel for Freyco was Stephen M. Maish, Maish & Mysliwy, 53 Muenich Court, Hammond, IN 46320, (219) 931-4477. Counsel for Gariup Construction was David Buls, Casale, Woodward & Buls, LLP, 9223 Broadway Avenue, Suite A, Merrillville, IN 46410, (219) 736-9990.

5. *Elizabeth Harwood for the Estate of Richard Harwood v. Fischbach and Moore Electric Co.* Cause No. OD2640 (Industrial Board of Indiana) and *Elizabeth Harwood for the Estate of Richard Harwood v. Johns-Mansville Corporation* Case No. 82B11656 (United States Bankruptcy Court for the Southern District of New York). I served as sole counsel for plaintiff, an electrician who died of mesothelioma, in a workers compensation action against his employers, Fischbach and Moore Electric Co., for wrongful death caused by exposure to asbestos. The matter settled in approximately 1988 for the maximum allowable judgment amount under the Indiana Workmen's Compensation guidelines. I also provided oversight for counsel in a subsequent wrongful death action against asbestos product manufacturer Johns-Manville from 1985 to 1989.

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A panel of the Industrial Board of Indiana presided over the workers compensation matter involving the plaintiff's employers. Co-counsel in the claim against Johns-Manville was Douglas Nichol, Gillenwater Nichol & Ames, 6401 Baum Drive, Knoxville, TN 37919-6092, (615) 588-7465. Counsel for Fischbach and Moore Electric Co. was Edwin Bunny, 6435 Castle Way Drive, Indianapolis, IN 46250, (317) 842-2112.

6. *Estate of Michael Planer v. Cynthia Archie*, Cause No. 81-PSC-104 (Porter County Superior Court, 1983). I served as associate counsel on behalf of plaintiff who died in a motorcycle accident as the result of being struck by the defendant. The case was tried over three days in May 1983 and the jury returned a verdict in favor of the defendant.

   The case was tried before the Judge Roger V. Bradford, Porter Superior Court, Room One, 16 Lincolnway #338, Valparaiso, IN 46383, (219) 465-3410. Lead plaintiffs counsel was James L. Wieser, 429 W. Lincoln Hwy., Schererville, IN 46375, (219) 865-7404. Counsel for defendant was Tim Kelly, Kelly Law Offices, 5521 Lincoln Hwy., Suite 101, Crown Point, IN 46307, (219) 791-0606.

7. *United States of America v. Bernard S. Palomares*, Case No. 2:96-cr-00003-JTM (U.S. District Court, N.D. Indiana, 1996): I served as co-counsel for the United States of America in the prosecution of an auxiliary police officer for the Gary Police Department who sold a firearm to a known convicted felon in violation of 18 U.S.C. §§ 922(d) and 924(a)(2). The defendant was convicted following a two-day jury trial in 1996, and was sentenced to twelve months in prison.

   Judge James T. Moody, United States District Court for the Northern District of Indiana, Hammond Division, 5400 Federal Plaza Street, Hammond, IN 46320, (219) 852-3460, presided over the case. Co-counsel was Assistant United States Attorney Michael Thill, deceased. Counsel for the defendant was Gary T. Bell, currently serving as an Assistant United States Attorney for the Northern District of Indiana, 5400 Federal Plaza Street, Suite 1500, Hammond, IN 46320, (219) 937-5500.

8. *Hammond Teachers Federation v. Goodson, et al*, (Lake County Superior Court, 1986). I was sole counsel for the local teachers union in a bench trial in 1986 and subsequent arbitration hearings before the American Arbitration Association to collect a representation fee from non-union teachers who were part of the bargaining unit. The case represented only the second time in Indiana that a union was successful in collecting a representation fee from non-union members.

   The trial was conducted before the Honorable Judge James Krajewski, deceased, Lake County Superior Court, Division III, 2293 North Main Street, Crown Point, IN 46307. Counsel for the defendant was Brian Burchett, Sullivan Hill Lewin Rez and Engel, 550 West C Street, Suite 1500, San Diego, CA 92101, (619) 233-4100.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00557 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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9. *United States of America v. Alex A. Maldonado*, Case No. 95-1920 (United States Court of Appeals for the Seventh Circuit, 1995). I served as sole appellate counsel in this matter, preparing the government's brief and presenting oral argument. The case involved a defendant convicted of carjacking who challenged his conviction on two grounds. The defendant challenged the admission of his false exculpatory statement and the sufficiency of evidence on the element of "force and violence, or intimidation." The United States Court of Appeals for the Seventh Circuit upheld the conviction for the United States of America.

   Oral argument was held before the United States Court of Appeals for the Seventh Circuit, 219 S. Dearborn Street, Chicago, IL 60604. Counsel for appellant was Scott L. King, Scott King Group, 5816 East 7th Avenue, Gary, IN 46403, (219) 939-3073.

10. *Michael E. Bajza, et al v. Peoples Bank SB*, Cause No. 45D01-0211-CT-00268 (Lake County Superior Court, 2004). I assisted retained outside counsel in the defense of an action alleging that the bank had converted funds deposited in a money market account. I attended several depositions, assisted in the drafting of discovery responses, and a motion for summary judgment. In June 2004, the court granted the bank's motion for summary judgment.

    The matter was conducted before Judge Diane Kavadias Schneider, Lake Superior Court, Room One, 232 Russell Street, Hammond, IN 46320, (219) 933-2890. Counsel for plaintiff was C. Anthony Ashford, 516 East 86th Avenue, Merrillville, IN 46410, (219) 791-1520. Counsel for the bank was Lewis C. Laderer, Laderer & Fischer, P.C., 112 West Jefferson Blvd., Suite 310, South Bend, IN 46601, (574) 284-2354.

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.)

    One of my greatest challenges as United States Attorney was to implement a Violent Crime Initiative (VCI) in Gary, Indiana from approximately 1995 to 1999 at the specific direction of Attorney General Janet Reno. Together with FBI Resident Agent in Charge Lou Caprino, I developed the Gary Response Investigative Team (GRIT), which focused on street level crimes, targeting gangs and other violent organizations responsible for most of the violent crime. Working with officers of the Gary Police Department, along with federal, state and local law enforcement agencies, we focused on the prosecution of federal drug and firearm offenses, utilizing federal pre-trial detention. Within six months, and as a direct result of this initiative, criminal cases in the district increased dramatically. Over approximately two years pre-trial detentions increased about 300%

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00558 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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and the homicide rate in Gary declined by about 50%. For the first time in many years, residents of certain neighborhoods in Gary were free from the crack houses and nightly shootings that compromised their safety and made them prisoners of their own homes.

I have not provided lobbying activities on behalf of a 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 any 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.

I have the following vested stock options for the acquisition of NorthWest Indiana Bancorp (NWIN) stock awarded from my present employer:
1,000 shares at $19.50 per share expiring 1/15/11;
1,250 shares at $22.15 per share expiring 2/4/12;
1,750 shares at $25.25 per share expiring 2/19/13;
800 shares at $30.00 per share expiring 1/21/14.
NWIN stock is currently trading at approximately $16.75.

I have no other deferred income arrangements or future benefits.

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.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00559 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.

       If confirmed, I will carefully review and address any real or potential conflicts in accordance with the Code of Conduct for United States Judges and all laws, rules, and practices governing such circumstances. For a significant period of time, I anticipate recusing myself from all cases involving my current employer, Peoples Bank and its holding company. I also anticipate recusing myself in any cases in which my brother in-law, attorney James L. Wieser, or any other family member represents a party.

    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 apply all relevant guidelines, including the Code of Conduct for United States Judges and applicable statutes, sensitive to the need to avoid not only a conflict of interest but also the appearance of a conflict. I would also seek advice as necessary from available resources, including the Codes of Conduct Committee of the Judicial Conference. Additionally, I would attempt to ascertain if any defendant appearing before me had been the subject of a criminal prosecution during my tenure as United States Attorney to determine the need for my recusal.

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.

    Throughout my legal career I have dedicated time to others in need through various charitable and public service activities. As an example, since 1997 I have supported the Lake County Juvenile Court's CASA (Court Appointed Special Advocate) program. As a CASA volunteer, I have served as an advocate for many neglected and abused children who were the subjects of CHINS (Children In Need Of Services) cases in the Juvenile Court. During that time it was not uncommon to spend 50 to 75 hours per year on behalf of these children. Over the last several yeas I have served on the Board of Directors for the Friends of the Lake County CASA.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00560 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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For the last seven years I have served as the Co-Chairman of our bank's Community First Committee, raising funds in support of the Boys & Girls Club of Northwest Indiana as well as Habitat For Humanity. Throughout my career I have volunteered time to several Habitat builds. I have volunteered approximately 50 hours per year in this regard. Additionally, since 2007 I have served on the Carnegie Performing Arts Center Board. The Board oversees the renovation of the Carnegie Library in East Chicago, Indiana and the development of a performing arts center for East Chicago children, many of who are disadvantaged. This initiative is especially important as the East Chicago schools do not currently provide any programs in the arts.

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 January 2009, I expressed my interest in a letter and resume that I sent to Senator Evan Bayh's staff. I was told by Senator Bayh's office in July that my name would be forwarded to the White House for consideration. Since September 3, 2009, I have been in contact with pre-nomination officials at the Department of Justice. On November 13, 2009 I was interviewed by representatives of the Justice Department and the Office of the White House Counsel. On January 15, 2010, Senator Bayh called to tell me that he intended to publicly announce his recommendation of me to the President for nomination to the district court, which he did on January 18. The President submitted my nomination to the Senate on January 20, 2010.

Indiana does not have a selection commission to recommend candidates for nomination to the federal courts.

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.

I have had no such communications.

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FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
DeGuilio, Jon E.	US District Court Northern District of Indiana	01/20/2010
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge - Nominee	**5a. Report Type** (check appropriate type) ☑ Nomination, Date 01/20/2010 ☐ Initial ☐ Annual ☐ Final **5b.** ☐ Amended Report	**6. Reporting Period** 01/01/2009 to 12/31/2009
7. Chambers or Office Address Peoples Bank 9204 Columbia Avenue Munster, IN 46321	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.** Reviewing Officer_____ Date_____	

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

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

☐ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. Executive Vice President, General Counsel and Corporate Secretary	Peoples Bank SB/ NorthWest Indiana Bancorp
2. Director / Treasurer	South Shore Promotions, Inc.
3. Director	Lake County Drug Free Alliance
4.	
5.	

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

☑ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting DeGuillo, Jon E.	Date of Report 01/20/2010

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2009	Peoples Bank SB, salary	$150,312.00
2.	2008	Peoples Bank SB, salary	$145,934.00
3.			
4.			

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

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

	DATE	SOURCE AND TYPE
1.	2009	School Town of Higland, salary
2.		
3.		
4.		

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

☐ NONE *(No reportable reimbursements.)*

	SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.	Exempt				
2.					
3.					
4.					
5.					

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting DeGuilio, Jon E.	Date of Report 01/20/2010

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

☐ NONE *(No reportable gifts.)*

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

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☐ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.	Capital One Bank	Credit Card	J
2.	Citibank	Student Loan, Co-Signer	L
3.	Citibank	Student Loan, Co-Signer	K
4.	U.S. Department of Education	Dependent Child's Student Loan	J
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting	Date of Report
DeGuilio, Jon E.	01/20/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. NW Indiana Bancorp Common Stock	A	Dividend	J	T	Exempt				
2. Peoples Bank Profit Sharing Plan									
3. -NW Indiana Bancorp Common Stock	D	Dividend	L	T					
4. IRA Self Directed									
5. -NW Indiana Bancorp Common Stock	A	Dividend	J	T					
6. -Marathon Oil Corp. Common Stock	A	Dividend	J	T					
7. -American Funds Smallcap World Fund	C	Dividend	K	T					
8. -Peoples Bank Money Market	A	Interest	M	T					
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

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

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting DeGuillo, Jon E.	Date of Report 01/20/2010

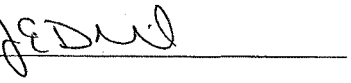
VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting DeGuillo, Jon E.	Date of Report 01/20/2010

IX. CERTIFICATION.

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

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

Signature 

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks				Notes payable to banks-secured		33	500
U.S. Government securities-add schedule				Notes payable to banks-unsecured		8	000
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule		224	953	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		117	000
Real estate owned-add schedule		270	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		35	000				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		267	500
				Net Worth		262	453
Total Assets		529	953	Total liabilities and net worth		529	953
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		109	000	Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you a defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Marathon	$ 12,656
NorthWest Indiana Bancorp (NWIN)	8,375
American Funds Smallcap World Fund	35,663
Peoples Bank Money Market	101,426
NorthWest Indiana Bancorp (NWIN)	65,459
NorthWest Indiana Bancorp (NWIN)	1,374
Total Listed Securities	$ 224,953
Real Estate Owned	
Personal residence	$ 270,000
Real Estate Mortgages Payable	
Personal residence (Home Equity Line of Credit)	$ 117,000
Contingent Liabilities:	
Student Loans	$ 109,000

AFFIDAVIT

I, Jon Ernest DeGuilio, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

January 20, 2010
DATE

Jon Ernest DeGuilio

Michelle Manchak
(NOTARY) Michelle Manchak

My Commission Expires: 6/13/2015

STATEMENT OF TANYA WALTON PRATT, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF INDIANA

Judge PRATT. Thank you. Senator Klobuchar, Madam Chair, thank you very much for the hearing today. I'd like to also thank Ranking Senator Sessions for being here today.

I would like to thank President Obama for the nomination, my Senators, Evan Bayh and Senator Richard Lugar for recommending me to the President. I'd like to thank my husband of 25 years, Marcel Pratt, who flew out with me to Washington, DC in the storm on Monday night; my daughter, Lena Pratt, who luckily is here in Washington, DC. She's a freshman at Howard University. My mother, Joan Walton, was snowed in and did not get to make it in from Indianapolis. She's been crying all week, but I told her, thank God we have been told that it is being broadcast on webcast today.

My very good friend from law school, Robert Warren, and another friend, George Williams, who live in the Maryland area, but unfortunately they're snowed in their subdivisions. My brother, Charles Walton, Jr., who is an attorney practicing in Atlanta, Georgia, was not able to make it in, and my father, Charles Walton, who passed away in 1996.

Senator KLOBUCHAR. Thank you very much, Judge. And Judge Magnus-Stinson.

[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).

   Tanya Marie Walton
   Tanya Marie Walton Pratt

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

   United States District Judge for the Southern District of Indiana

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: Marion Superior Court
   Probate Division T1721
   200 East Washington Street
   Indianapolis, IN 46204-3307

   Residence: Indianapolis, IN

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

   1959; Indianapolis, Indiana

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.

   1981 - 1984, Howard University School of Law, J.D. 1984

   1977 - 1981, Spelman College, B.A. 1981

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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Full-time Positions:
1997 - present
Marion County, Indiana, Marion Superior Court
200 E. Washington Street
Indianapolis, IN 46204
Judge, Probate Division (2009 - present)
Judge, Criminal Division (1997 – 2008)

1992 - 1996
Walton & Pratt
155 E. Market Street, Suite 714
Indianapolis, IN 46204
Attorney

1984 - 1992
Moss & Walton
156 E. Market Street, suite 900
Indianapolis, IN 46204
Associate Attorney

1983 - 1984
Neighborhood Legal Service Program
680 Rhode Island Ave., NE
Washington, DC 20002
Law Clerk (full-time summer and part-time during 1983-84 academic year)

1982
Center Township Assessor's Office
200 E. Washington Street
Room #1360
Indianapolis, IN 46204
Summer intern

Summer 1981
Brink's Security
Atlanta, GA
Security guard

Part-time Positions:
1993 - 1996
Marion County, Indiana, Marion Superior Court
Criminal Division, Room One
200 E. Washington Street
Indianapolis, IN 46204
Master Commissioner (Pro Tempore Judge)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00571 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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1986 - 1991
Marion County, Indiana, Marion Superior Court
Criminal Division, Room Two
200 E. Washington Street
Indianapolis, IN 46204
Deputy Public Defender

Other Affiliations (no compensation):
2007 - present
Marion County Juvenile Detention Center
2451 N. Keystone Ave.
Indianapolis, IN 46218
Supervising Judge

2007 - present
Indiana Conference on Legal Education Opportunity
Indiana Supreme Court
Division of State Court Administration
30 South Meridian Street, Suite 500
Indianapolis, IN 46204
Member, Indiana CLEO Advisory Board

2007 - present
Indiana Lawyer
41 E. Washington Street, suite 200
Indianapolis, IN 46204
Advisory Panel Member

2005 - present
Cathedral High School
5225 E. 56th Street
Indianapolis, IN 46226
Trustee and Member, Board of Directors

2001 - present
Indiana Dr. Martin Luther King Holiday Commission
Chair (2001-2008)
Member (2008 – present)

2000 - present
United Negro College Fund, Inc., Indianapolis affiliate
3737 N Meridian Street # 203
Indianapolis, IN 46208
Advisory Board Member

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00572 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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2005 - 2008
Watson-McCord Park Neighborhood Association
P.O. Box 20790
Indianapolis, Indiana 46220
Board Member

2004 - 2008
Marion Superior Court Magistrate & Commissioner Taskforce
Co-chair

2003 - 2004
Indiana Sentencing Policy Study Commission
Member

1998 - 2007
Indiana Supreme Court Judicial Administration
Committee Member

1998 - 2000
Chair of Criminal Term Division of Marion Superior Court

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. I was not eligible 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.

   2007 - Career Achievement Award, Cathedral High School Alumni Association
   2007 - Key to the City of Muncie, Indiana
   2006 - Career Achievement Award, Indianapolis Archdiocese
   2002 - Pioneers in Faith and Family Award, Ministerial Alliances of Indianapolis
   2002 - Graduate; Indiana Graduate Program for Judges
   2002 - Outstanding Judge of the Year, Indiana Coalition Against Sexual Assault, Inc.
   2001 - Community Leadership Award, Greater Harvest Church of God in Christ

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.

   Executive Committee of the Marion Superior Court, Marion Superior Court
   Associate Presiding Judge (2006 - present)

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Marion Superior Court Juvenile Justice Planning Committee
Chair (2005 – 2006)

American Bar Association
Member (2009 - present)

Judicial Conference of Indiana
Probate Committee Member (2009 - present); Judicial Administration Committee Member (1997 - 2008)

Indiana State Bar Association
Secretary (2009 - present); Delegate (2007 - present); Member (1999 - present); Co-Chair of Summit on Assessing Racial Disparities in the Juvenile Justice System (2009)

Indianapolis Bar Foundation
Fellow (1999 - present)

Indianapolis American Inns of Court
Master (1999 - present)

Indianapolis Bar Association
Member (1997 - present); Vice-President (2005 - 2006); Board of Managers (1998 - 2000); IBA Women Lawyers Division Steering Committee (2000 Convention)

Marion County Bar Association
Life Member (1997 - present); Board of Directors (2000 - 2009); Board Chair (2005 - 2008)

National Bar Association
Member Judicial Council (1997 - present)

National Association of Women Judges
Member (1997 - 2008)

At various times over the last 10 years, I also have been involved in the following bar organizations:

Indiana Judges Association, District 11 Representative
American Judges Association, Member

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00574 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.

Indiana, 1984

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.

U.S. District Court for the Southern District Indiana, 1984
U.S. District Court for the Northern District Indiana, 1984
Indiana Supreme Court, 1984

There have been no lapses in admission to any court.

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.

Lawyers Club of Indianapolis, member (2009 - present)

Delta Sigma Theta Sorority, Inc., life member (1979 - present)

St. Joan of Arc, Catholic Church, Indianapolis, IN (1970 - present)

NAACP, life member (1977 - 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.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00575 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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The Indianapolis Lawyers Club is a social club of lawyers and judges that holds quarterly dinner meetings. The club membership was all-male until the late 1980's. I am a female member of the organization.

Delta Sigma Theta Sorority, Inc is an all female, predominately African-American sorority that engages in social service activities.

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.

I have attempted to identify all items requested by searching my personal files and publicly available databases. I have located the following:

Press Release: Governor Appoints Judge Chair of the Indiana Dr. Martin Luther King, Jr. Holiday Commission, March 13, 2001.

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 attempted to identify all items requested by searching my personal files and publicly available databases. I have located the following:

The Role of Lawyers and the Rule of Law, practice skill summit of the Indiana Continuing Legal Education Forum, January 2008.

The Role of Lawyers and the Rule of Law, practice skill summit of the Indiana Continuing Legal Education Forum, January 2007.

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 attempted to identify all items requested by searching my personal files and publicly available databases. I have located the following:

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00576 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Testimony before the Public Safety Committee, Indianapolis City Council concerning the 2010 budget, and the progress of the juvenile detention center and Juvenile Detention Alternatives Initiative, August 18, 2009.

Testimony before the Public Safety Committee, Indianapolis City Council concerning the 2009 budget, the status of juvenile detention center, and the success of the Juvenile Detention Alternatives Initiative program, August 21, 2008.

Symposium on Juvenile Alternatives to Incarceration and Welfare for Neglected Children sponsored by the Criminal Justice Planning Council and Marion Superior Court, Opening Remarks and proposed solutions for juvenile detention reform, November 12, 2005.

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 attempted to identify all items requested by searching my personal files and publicly available databases. I have located the following:

Speaker and panelist, Indiana State Bar Association "Summit on Racial Disparities in the Juvenile Justice System: A Statewide Dialogue," August 27, 2009.

Panelist, Indiana Continuing Legal Education Forum, Guardianship litigation "Ethics roundtable with the judges," August 18, 1999.

Speaker, Indianapolis Bar Association Bench/Bar Conference "Proposed Amendments to Marion County Probate Local Rules," June 19, 2009.

Speaker, Powertalk International, Regional Conference, "Turn Your Lemons into Lemonade," June 13, 2009.

Speaker, Indianapolis Bar Association, "Information Regarding Foreign Adoptions," June 11, 2009.

Speaker, American Inn of Court, "Supreme Court Nominations," May 21, 2009

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00577 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Panelist, Indiana Continuing Legal Education Forum, "An Evening with the Judges," January 29, 2009.

Speaker, Indiana Judicial Center, "New Judges Seminar: Civility and Courtroom Decorum," January 26, 2009.

Remarks, Greater St. Mark Church, first annual youth summit 2008 (spoke to youth about responsibility, making good choices and education), July 12, 2008.

Panelist, Indianapolis Bar Association, "Unlocking the Mysteries of the DOC," June 20, 2008.

Commencement speaker, St. Vincent Star Program, May 23, 2008.

Commencement speaker, Lynhurst Middle School Graduation, May 9, 2008.

So You Want To Be a Judge," 7th Annual Indiana State Bar Association Women in the Law Bench/Bar Conference, March 6, 2008.

Speaker, Cathedral High School Dr. Martin Luther King, Jr. Program, "Where is the Legacy Today," January 22, 2008.

Career Day speaker, Providence Cristo Rey High School, January 16, 2008.

Officiate at elected officials' swearing-in ceremony, Town of Cumberland, IN, January 2, 2008.

Opening Remarks, State of Indiana Holocaust Memorial Observance, April 16, 2007.

Speaker, Black Expo Luncheon, Muncie IN, "Pass the Torch," May 24, 2007.

Speaker, EEOC Employees Black History Month Program, "A History of Black Achievement," February 21, 2007.

Presenter, Indiana Judicial Conference, New Judges Seminar "Courtroom Control: Demeanor/Civility and Contempt of Court Procedures," January 24, 2007.

Mistress of ceremony, Indiana Dr. Martin Luther King Jr. Annual Celebration, "Civil Rights Voices of Indiana: Passing the Torch," January 11, 2007.

Remarks, St. Luke Missionary Baptist Church, Youth Day Program, July 2006.

Speaker, Indianapolis Professional Association, "The Level of your Self-Esteem," May 2006.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00578 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Speaker, Martin University, Strengthening Family Ties: Father's in the Justice System," May 4, 2006.

Remarks, Indiana Dr. Martin Luther King Jr. Annual Celebration, "Educating our Youth so We May Live Together," January 12, 2006.

Presenter, Delta Sigma Theta, "Teen Career workshop," May 2, 2005.

Career Day Speaker, Cathedral High School, April 1, 2005.

Welcome remarks, Indiana Dr. Martin Luther King Jr. Annual Celebration, "The King Legacy: Still Alive in 2005, The Civil Rights Movement in America," January 5, 2005.

Presenter, Indianapolis Inn of Court, "The Trial of D.C. Stephenson," November 18, 2004.

Panelist, Westside Weed and Seed Conference on Addressing Re-Entry, "When is the Debt Paid?" October 28, 2004.

Welcome remarks, Indiana Dr. Martin Luther King Jr. Annual Celebration, "Dr. Martin Luther King Jr., Through the Eyes of Indiana State Employees," January 16, 2004.

Presiding, Indiana State Holocaust Memorial Observance, "Remembering the Holocaust," April 29, 2003.

Welcome remarks, Indiana Dr. Martin Luther King Jr. Annual Celebration, "The Right to Dream, America's Struggles for Justice," January 14, 2003.

Speaker, Delta Sigma Theta Founder's Day Program, Ball State University, Muncie IN, "Sisterhood," January 13, 2003.

Speaker, Indiana Coalition Against Violence, "Stop the Violence," July 2002.

Welcome remarks, Indiana Dr. Martin Luther King Jr. Annual Celebration, "Remember, Celebrate, Act: A Day On...Not a Day Off," January 18, 2002.

Welcome remarks, Indiana Dr. Martin Luther King Jr. Annual Celebration. "Honoring Indiana's Civil Rights Leaders," January 12, 2001.

Panelist, Indianapolis Bar Association, "Top Ten Mistakes New Lawyers Make," 2000.

Panelist, Marion Superior Court Training Seminars, "Alternative Sentencing Options," 2000.

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Presenter, Marion Superior Court Training Seminar, "Scheduling and Case Management," 1999.

There have been a number of occasions at which I have spoken briefly to school age children and high school students who visit the courthouse, and I have been a presenter at CLE sessions on the topic of criminal law and juvenile detention reform. I have not been able to locate my notes from those events.

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 attempted to identify all items requested by searching my personal files and publicly available databases. I have located the following:

"58 children join new families in pre-holiday adoption blitz," *Indianapolis Star*, December 18, 2009.

"Superintendent with experience will oversee young offenders," *Indianapolis Star*, January 6, 2009.

"Quarrel erupts over MLK celebration," *Indianpolis Star*, February 25, 2007.

"Criminal Court Judge Sets Example," Interview with WTHR television reporter Angela Cain, February 21, 2007.

"Catholic School Values make a Difference," *The Criterion Local News*, October 20, 2006.

In 2005 I did an interview for the United Negro College Fund's national publication regarding my education at historically black college; however I have been unable to locate a copy of the publication.

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 June 1993, I was hired by Marion Superior Court Judge Paula Lopossa to serve as a part-time Master Commissioner (judge pro-tempore) for Marion County Superior Court, Criminal Division, Court One. I worked as a Master Commission until 1996 when I was elected Judge of the Marion Superior Court, a state trial court. I began my first six-year term January 1, 1997, serving in the Criminal Division with jurisdiction over major felony cases. I was re-elected in November 2002 and November 2008. On January 1, 2009, due to my seniority, I was able to transfer to the Probate Division where I have presided over adoptions, adult and child guardianships, wills, trusts and estate matters.

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

I have presided over approximately 2000 cases.

i. Of these, approximately what percent were:

jury trials:	40%
bench trials:	60%
civil proceedings:	10%
criminal proceedings:	90%

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

I did not write opinions while serving in the Criminal Division. The opinions I have written while in the Probate Division are unpublished and include:

In the Matter of the Dotlich Living Trust, Marion Superior Court, Probate Division, Cause No. 49D08-TR-24023.

Carlton-Campbell Adoption, Marion Superior Court, Probate Division, Cause No. 49D08-0502-AD-007131.

Estate of John Buford Marsee, et.al, v. Indiana Patients Compensation Fund, Marion Superior Court, Probate Division, Cause No. 49D08-0805-ES-022125.

The Emerson Neighborhood Trust: A Public Charitable Trust, Marion Superior Court, Probate Division, Cause No. 49D08-0901-TR-000110.

Estate of Dale Edward Yeley, Marion Superior Court, Probate Division, Cause No. 49D08-0904-ES-18003

Estate of K.L. Bergdoll and Estate of J.F. Bergdoll, Marion Superior Court, Probate Division; Cause No. 49D08-0705-ES-021123 and 49D08-0705-ES-021132

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. Lowrimore v State, 728 N.E.2d 860 (Ind. 2000). Defendant Lowrimore was convicted of murder, felony murder, robbery and criminal confinement. He was sentenced to life imprisonment without parole for the murder conviction. In this direct appeal, he contended that his right to a speedy trial under Indiana Criminal Rule 4 was violated when, after the prosecution filed an information seeking the death penalty after an initial trial date had been set, his trial date was vacated because his existing appointed public defender was not qualified counsel under Indiana Criminal Rule 24 and because two qualified attorneys were required to represent him. Defendant Lowrimore objected to the continuance and later moved for discharge. The Indiana Supreme Court affirmed, finding the trial court's interpretation of the capital counsel rules was correct, and that a defendant accepting appointed counsel had no right to opt out of Criminal Rule 24.

   Trial counsel for defendant Lowrimore: Mark Inman of Indianapolis (317) 924-3545 and William Drew Dickerson (812) 352-3041.

   Trial counsel for the State of Indiana: Barbara Trathen, Marion County Deputy Prosecutor, (317) 327- 6943 and Mark Massa, currently Chief Counsel for Governor Mitch Daniels, (317) 233-5764.

2. West v. State, 755 N.E.2d 173 (Ind. 2001). Defendant Michael West appealed his conviction for felony murder and robbery, and his sentence of life imprisonment without parole, arguing that the trial court erred in not suppressing certain evidence that the defendant asserted was obtained during an illegal search and seizure. The Indiana Supreme Court affirmed, holding that the warrantless search of defendant's vehicle was voluntary and that there was sufficient evidence to convict the defendant of the murder. The sentence was proper in that intentionally killing the victim during a robbery was an aggravating factor and proof that the defendant intentionally killed in the course of a felony was among the ways in which felony murder may be proven, but not the only way.

   Trial counsel for the defendant: Jack Crawford, 1050 N. College Ave, Indianapolis, IN 46202, (317) 262-1052.

   Trial counsel for the State of Indiana: Barbara Trathen, Marion County Deputy Prosecutor, (317) 327-3522.

3. Hannoy v. State, 789 N.E. 2d 977 (Ind. Ct. App. 2003) rehearing granted 793 N.E.2d 1109, (Ind. Ct. App. 2003), transfer denied 804 N.E.2d 753 (Ind. 2003). Defendant Hannoy appealed his conviction on two counts of operating a motor vehicle with a blood alcohol content of .10 percent or greater and causing death. He challenged the admissibility of blood alcohol evidence gathered in two different tests, one ordered by police and

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the other performed after hospital admission. The first sample was taken without the defendant's consent. The appellate court reversed, concluding that the relevant statute did not authorize the police to take the first blood sample without obtaining a driver's consent. The results of that first test were relied on to the exclusion of the results of the second test, taken by the hospital for diagnostic purposes after defendant's admission, so their admission was not harmless error. The court reversed the conviction and remanded the matter for re-trial, holding, for the trial court's guidance, that results of the second blood test, which the defendant had consented to, would be admissible at the second trial. The case is significant as it ended a long standing policy of the Indianapolis Police Department.

Trial counsel for the defendant: Jesse J. Paul III, Indianapolis, IN, (317) 632-4463.

Trial counsel for the State of Indiana: Barbara Trathen, Marion County Deputy Prosecutor, (317) 327-3522.

4. Glover v State, 760 N.E.2d 1120 (Ind. Ct. App. 2002). A jury convicted the defendant of rape. The victim had passed out while drinking, and while she was unconscious, defendant had sex with her. Defendant argued before trial that he was entitled to dismissal because the statute under which he was charged was unconstitutionally vague in that the term "unaware" was undefined. The appellate court affirmed the conviction, holding that the definition of the term "unaware" was not aware or unconscious, and that the language of the statute was adequate to inform an individual of ordinary intelligence that sexual intercourse with an individual who had lost consciousness due to inebriation was proscribed.

Trial counsel for the defendant: Chad Buell, Indianapolis, IN, (317) 845-2789.

Trial counsel for the State of Indiana: Maureen Devlin, Marion County Deputy Prosecutor, (317) 915-5304 and Cynthia Ridgeway, Marion County Deputy Prosecutor, who is currently an Assistant U.S. Attorney, Indianapolis, IN, (317) 229- 2461.

5. Allen v. State, 893 N.E.2d 1092 (Ind. Ct. App. 2008.). The defendant, charged with robbery and murder, challenged the denial of his motion to suppress evidence of three bodies found in the basement of his grandparents' home. As his challenge was based solely on his asserted interest in the house, the Indiana Court of Appeals affirmed the trial court, finding that the defendant was a trespasser at his grandparents' home and had not established that he had a legitimate right to control and possess the house or have an objective expectation of privacy. The court concluded

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00583 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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that there was no error in finding that defendant lacked standing to challenge the searches of the house.

Trial counsel for the defendant: Monica Foster, Indianapolis, IN, (317) 916-8210 and Eric Koselke, Indianapolis, IN, (317) 722-2591.

Trial counsel for the State of Indiana: David Wyser, Marion County Deputy Prosecutor, (317) 327-5284 and Richard Kiefner, Marion County Deputy Prosecutor, (317) 635-8900.

6. Edwards v. State, 862 N.E.2d 1254 (Ind. Ct. App. 2007), transfer denied 869 N.E.2d 457 (Ind. 2007). After a jury trial, the defendant was convicted of murder and conspiracy to commit murder. The defendant appealed, arguing that the interception of his telephone calls from jail was a violation of the Indiana Wiretap Act. The appellate court affirmed the conviction, finding that defendant had notice that calls could be recorded and, therefore, he consented.

Trial counsel for the defense: Jack Crawford, Indianapolis, IN, (317) 262-1052.

Trial counsel for the State of Indiana: Michelle Sharpe, Marion County Deputy Prosecutor, Indianapolis, IN (317) 327-3510.

7. Habibzadah v. State, 904 N.E.2d 367 (Ind. Ct. App. 2009). Defendant sought review of a decision denying his motion to dismiss criminal charges of attempted murder and felony aggravated battery. The charges arose from an incident in 2005 in which the defendant stabbed his wife in the chest and head and then stabbed himself in the stomach and sliced his neck, which rendered him essentially deaf and suffering from cognitive impairment as a result of the traumatic brain injury. In 2007, defendant was committed to the state department of mental health after he was determined to be incompetent to stand trial as he did not have sufficient comprehension to understand the nature of the criminal action against him and to make his defense. Because defendant had not attained competency by 2008, civil commitment proceedings were initiated. On appeal, the court affirmed the denial of the motion to dismiss, finding that defendant's constitutional due process rights had not been violated because no determination had been made that defendant would never be restored competency.

Trial counsel for the defense: Melissa (Campbell) Perez, Marion County Public Defender, Indianapolis, IN (317) 327- 4100.

Trial counsel for the State of Indiana: Michelle Sharpe, Deputy Prosecuting Attorney, Indianapolis, IN (317) 327-3510.

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8. Owens v. State, 754 N.E.2d 927 (Ind. 2001). A jury found the defendant guilty of murder. On appeal, the defendant challenged the trial court's denial of his motion to suppress his confession during police questioning to murdering his former girlfriend. Defendant claimed that he had been under the influence of drugs that rendered his statement involuntary. The appellate court reviewed the videotape of the confession and found that the videotape did not show that defendant was impaired at all, and there was no particular claim of compulsion. The appellate court affirmed the conviction.

   Trial counsel for the defense: Steven Poore, Indianapolis, IN (317) 635-1020.

   Trial counsel for the State of Indiana: Barbara Crawford, Deputy Prosecuting Attorney, Indianapolis, IN (317) 327-4497.

9. Johnson v. State, 722 N.E.2d 382 (Ind. Ct. App. 2000). The defendant was convicted of rape of a minor. He appealed, claiming trial court error in admitting evidence regarding a prior attempted rape for which he was not charged. The appellate court affirmed, holding the trial court did not err, because the state offered the prior misconduct evidence to prove defendant's intent, a proper purpose under Ind. R. Evid. 404(b) and the evidence's probative value outweighed the danger of unfair prejudice.

   Defense trial counsel was Carolyn Rader, Indianapolis, (317) 636-7703.

   Trial counsel for the State of Indiana was Deputy Prosecutor Toby Gill, Indianapolis, who is now an attorney for "Kids Voice" (317) 840-1872.

10. Hall v. State, 870 N.E.2d 449 (Ind. Ct. App. 2007). A jury convicted Hall, a juvenile being tried in an adult court, of murder, robbery, criminal confinement, burglary, and theft. Defendant appealed. In response to defendant's assignments of error, the appellate court affirmed the conviction, concluding that the juvenile court's waiver of jurisdiction was supported by the violent and unprovoked circumstances of the crimes, as well as defendant's juvenile record. The denial of defendant's motion to suppress statements to police also was upheld, as defendant and his mother were advised of defendant's rights, had time to discuss them, and agreed that defendant waive those rights and talk to police; there was no evidence of force, threats, or inducement used to persuade defendant and his mother to waive defendant's rights. .

    Trial counsel for the defense: Raymond Casanova, Indianapolis, IN, (317) 327-3715.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00585 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Trial counsel for the State of Indiana: Janna Skelton, Deputy Prosecuting Attorney, Indianapolis, (317) 327-5311.

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.

During my tenure in the Criminal Division, I did not write opinions. Since moving to the Probate Division of Marion Superior Court on January 1, 2009, I have written six significant opinions on summary judgment and other issues. These opinions are unpublished.

1. In the Matter of the Dotlich Living Trust, Marion Superior Court, Probate Division, Cause No. 49D08-TR-24023. Petitioner counsel, E. Scott Treadway, Stewart & Irwin, L.P., 251 E. Ohio Street, #1100, Indianapolis, IN 46204 (317) 632-1319. Respondent counsel, Gregory Padgett, Padgett Law, 9000 Keystone Crossing, #230, Indianapolis, IN 46240 (317) 218-0316.

2. Carlton-Campbell Adoption, Marion Superior Court, Probate Division, Cause No. 49D08-0502-AD-007131. Petitioner Counsel, Audrey K. Grossman, 500 E. 96th Street, Suite 100, Indianapolis, IN 46240 (317) 846-5393. Respondent counsel, Ryan H. Cassman, Hollingsworth Sever Storey & Zivitz, PC; 9650 N. Augusta Drive, Suite 532, Carmel, IN 46032 (317) 569-2200.

3. Estate of John Buford Marsee, et.al, v. Indiana Patients Compensation Fund, Marion Superior Court, Probate Division, Cause No. 49D08-0805-ES-022125. Petitioner Counsel, David W. Stewart, 931 S. Rangeline Road, Carmel, IN 46032 (317)846-8999. Respondent counsel, Matthew Conner, One Indiana Square, Suite 1900, Tabbert, Hahn, Earnest & Weddle, LLP, Indianapolis, IN 46204 (317) 639-5444.

4. The Emerson Neighborhood Trust: A Public Charitable Trust, Marion Superior Court, Probate Division, Cause No. 49D08-0901-TR-000110. Petitioner Counsel, Justin G. Hazlett, Deputy Attorney General, Office of the Indiana Attorney General, Indiana Government Center South, 5th Floor, 302 W. Washington Street Indianapolis, IN 46204 (317) 232-0167. Respondent Counsel, Karen Freeman-Wilson, 700 Jackson Street, Gary, IN 46402 (219) 881-9484.

5. Estate of Dale Edward Yeley, Marion Superior Court, Probate Division, Cause No. 49D08-0904-ES-18003. Petitioner counsel, William S. Cohen 50 S. Meridian Street, suite 505, Indianapolis, IN 46204 (317) 639-1326 Respondent counsel, Richard Clem, 110 N. Delaware Street, Indianapolis,

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00586 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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IN 46204 (317) 634-9800.

6. Estate of K.L. Bergdoll and Estate of J.F. Bergdoll, Marion Superior Court, Probate Division; Cause No. 49D08-0705-ES-021123 and 49D08-0705-ES-021132. Petitioner counsel, Joseph K. Markel, 136 S. Main Street, P.O. Box 121, Brownstown, IN 47220 (812) 358-3200. John Green, Hume Smith Geddes Green & Simmons, LLP, 54 Monument Circle, Suite 400, Indianapolis, IN 46204 (317) 632-4402.

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.

1. Drummond v. State, 831 N.E.2d 781 (Ind. Ct. App. 2005). The appellate court reversed, finding that the trial court erred in denying defendant's motion to suppress a statement made to an officer who failed to advise defendant of his *Miranda* rights.

2. Smith v. State, 777 N.E.2d 32 (Ind. Ct. App. 2002). The appellate court reversed defendant's murder conviction, holding that trial court committed reversible error in instructing the jury regarding the unavailability of an argument of self-defense.

3. Bailey v. State, 669 N.E.2d 972 (Ind. 1996). On appeal, the court reversed and remanded defendant's conviction, holding that the proper procedure in a criminal trial when the jury was apparently deadlocked was for the trial court to call the jurors back into open court in the presence of all parties and their counsel and re-read all instructions given to the jurors prior to their deliberations, without emphasis on any of the instructions and without further comment.

4. Kibbey v. State, 733 N.E.2d 991 (Ind. Ct. App. 2000). The State of Indiana both sought interlocutory review of an order that granted defendant's motion to dismiss theft and corrupt business influence charges. The Court of Appeals reversed in part, to reinstate the dismissed charges, and affirmed in part, leaving all charges in place, because the statutes under which defendants were charged could be harmonized so that prosecutors had discretion to charge all of them.

5. Salter v. State, 906 N.E.2d 212 (Ind. Ct. App. 2009). Indiana police received information from Delaware authorities that defendant, an Indiana

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00587 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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resident, was charged with child exploitation for communicating in a sexual way with a girl in Delaware who was 16-years-old and for possessing digital images of naked minors. The Court of Appeals found that the child exploitation convictions could not stand because the relevant statute concerned creation of the material, and not the downloading of images from a computer and saving copies of them to a CD, as defendant had done. The appellate court also found that the dissemination convictions had to be reversed because he did not have fair notice that pictures of his genitals were patently offensive to prevailing standards in the adult community as a whole, especially since minors in Indiana could consent to sex at the age of 16.

6. Miller v. State, 726 N.E.2d 349 (Ind. Ct. App. 2000). The defendant was convicted of criminal recklessness, robbery, criminal confinement, auto theft; resisting law enforcement. The Court of Appeals reversed appellant's convictions for resisting law enforcement and criminal recklessness, and remanded two of those counts. The other convictions were affirmed.

7. State v. Holmes, 728 N.E.2d 164 (Ind. 2000). The appellate court reversed and vacated my order setting aside death sentence and ordering new penalty phase and sentencing hearing, and affirmed remainder.

8. Hood v. State, 877 N.E.2d 492 (Ind. Ct. App. 2007). Defendant appealed his conviction and sentence for voluntary manslaughter. The Court of Appeals held that a witness's testimony that he thought the victim was reaching for a gun was improperly excluded. Defendant's conviction for voluntary manslaughter was reversed and a retrial was ordered.

9. Eichelberger v. State of Indiana, 852 N.E.2d 631 (Ind. Ct. App. 2006). Court of Appeals reversed trial court's denial of habeas petition based on ineffective assistance of counsel.

10. Johnson v. State, 2008 WL 3983265 (Ind. Ct. App. 2008). The Court of Appeals affirmed defendant's murder conviction, reversed a robbery conviction, and remanded to the trial court with instructions to instructions to vacate the concurrent twenty-year sentence for robbery.

11. Morgan v. State, 2006 WL 3734585 (Ind. Ct. App. 2006). Defendant appealed trial court's denial of his Motion to Compel Attorney to Deliver Over Money. The Indiana Court of Appeals reversed and remanded for a hearing to determine the necessity of delivering the amount of unearned fees, if any.

12. Buggs v. State, 844 N.E.2d 195 (Ind. Ct. App. 2006). Following acquittals on felony murder and conspiracy to commit robbery, the defendant was

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00588 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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retried and convicted of murder and attempted robbery. The defendant appealed arguing, inter alia, that double jeopardy principles barred his retrial. The Indiana Court of Appeals found that, although principles of double jeopardy did not bar the defendant's retrial, the evidence does not support his conviction for attempted robbery. The trial court was affirmed in all other respects.

13. Johnson v. State, 835 N.E.2d 492 (Ind. 2005). After convictions and sentences for misdemeanor handgun charge, resisting arrest, and possession of controlled substance were affirmed on direct appeal, defendant filed petition for post-conviction relief, challenging double-enhancement of handgun sentence under both handgun statute and habitual offender statute. Post-conviction court denied the petition. The Indiana Supreme Court reversed, in part, and vacated the double-enhancement based on an intervening change in the law that the Supreme Court applied retroactively.

14. Jacobs v. State, 835 N.E.2d 485 (Ind. 2005). Defendant petitioned for post-conviction relief from his conviction for carrying a handgun without a license and his sentence enhancement for being a habitual offender. The post-conviction court denied the petition, and the Court of Appeals affirmed the post-conviction court's ruling. *Jacobs v. State,* 799 N.E.2d 1161, 1167 (Ind. Ct. App. 2003). The Indiana Supreme Court affirmed in part, and vacated in part.

15. Williams v. State, 827 N.E.2d 1127 (Ind. 2005). Defendant was convicted of aggravated battery and criminal confinement. Defendant appealed and the Indiana Court of Appeals affirmed. On a petition to transfer, the Indiana Supreme Court affirmed in part and vacated in part, holding that the enhanced sentences that were imposed violated defendant's right to a jury trial under the Sixth Amendment.

16. Hannoy v. State, 789 N.E.2d 977 (Ind. Ct. App. 2003), rehearing granted and original opinion affirmed 793 N.E.2d 1109 (Ind. Ct. App. 2003). Defendant convicted of operating a motor vehicle with a blood alcohol content of .10 percent or greater and causing death challenged the admissibility of blood alcohol evidence gathered in two different tests, one ordered by police and the other performed after hospital admission. The Court of Appeals reversed the conviction, concluding that the relevant statute did not authorize the police to take the first blood sample without obtaining a driver's consent. The court remanded the matter for re-trial, holding, for the trial court's guidance, that results of the second blood test, which the defendant had consented to, would be admissible at the second trial.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00589 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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17. Griffith v. State, 791 N.E.2d 235 (Ind. Ct. App. 2003). Defendant was convicted of felony murder, theft, carrying a handgun without a license, and criminal confinement. On appeal, the Indiana Court of Appeals affirmed in part, reversed in part, holding as a matter of first impression that the trial court lacked jurisdiction to decide charges of theft, carrying a handgun without a license, and criminal confinement.

18. Francis v. State, 758 N.E.2d 528 (Ind. 2001). Defendant was convicted of robbery and murder. The Indiana Supreme Court affirmed in part and vacated in part, finding that convictions for robbery while armed with a deadly weapon could not stand due to defective charging information.

19. Robinson v. State, 730 N.E.2d 185 (Ind. Ct. App. 2000). Defendant was convicted of attempted murder, possession of a handgun with an obliterated serial number, possession of cocaine, and criminal gang activity. The Court of Appeals affirmed in part, and reversed only the criminal gang activity based on insufficient evidence.

20. Martin v. State, 714 N.E.2d 1140 (Ind. Ct. App. 1999). Defendant was convicted of two counts of attempted battery with deadly weapon. Defendant appealed his sentences and the Indiana Court of Appeals affirmed in part, reversed in part and remanded for resentencing.

In addition, a number of decisions made by a Master Commissioner under my statutory authority were reversed, and those include:

Harris v. State, 2008 WL 3497440 (Ind. Ct. App. 2008)
Hackett v. State, 2007 WL 2332503 (Ind. Ct. App. 2007)
Blake v. State, 860 N.E.2d 625 (Ind. Ct. App. 2007)
Reed v. State, 856 N.E.2d 1189 (Ind. 2006)
King v. State, 844 N.E.2d 92 (Ind.Ct. App. 2005)
Alexander v. State, 772 N.E.2d 476 (Ind. App. 2002)
Woodson v. State, 778 N.E.2d 475 (Ind. Ct. App. 2002)
Boyd v. State, 766 N.E.2d 396 (Ind. Ct. App. 2002)
Boykin v. State, 702 N.E.2d 1105 (Ind. App. 1998)

g. 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.

h. 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.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00590 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.

The Marion Superior Court does not have an automatic recusal system.

My husband practices criminal law in Marion County. On those occasions when he accepted representation of a criminal defendant whose case was assigned to my previous court, I would sua sponte issue an automatic recusal and the case would go back to the court clerk for re-assignment.

My Probate Division Commissioner has a spouse who on occasion accepts representation in probate matter. As presiding judge of the Probate Court, I have recused myself sua sponte from cases in which she appears and her cases are sent to the court clerk for re-assignment.

During my first few years as a judge, I would occasionally have to recuse myself if I had previously represented a criminal defendant during the period I worked as a public defender.

I do not recall any cases where recusal was requested by an attorney.

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.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00591 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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 am a member of various Democratic Clubs, all located in Marion County, Indiana, including the Marion County Democratic Chairmen's Club, Indiana Democratic Club, Lawrence Township Democratic Club, Southside Democrats, Pike Township Democrat Club, Decatur Township Democrat Club, Washington Township Democrat Club and the 4th Ward Democratic Club. I do not hold any offices or render any services to any of the clubs.

I played a role in my own judicial campaign and established the Committee to Re-Elect Judge Tanya Walton Pratt.

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 clerk to a judge.

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

I have never practiced alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1997 - present
Marion County, Indiana, Marion Superior Court
200 E. Washington Street
Indianapolis, IN 46204
Judge, Probate Division (2009 - present); Criminal Division (1997 – 2008)

1993 - 1996
Marion County, Indiana, Marion Superior Court
Criminal Division, Room One
200 E. Washington Street
Indianapolis, IN 46204
Master Commissioner (Pro Tempore Judge) (part-time)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00592 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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1992 - 1996
Walton & Pratt
155 E. Market Street, Suite 714
Indianapolis, IN 46204
Attorney

1986 - 1991
Marion County, Indiana, Marion Superior Court
Criminal Division, Room Two
200 E. Washington Street
Indianapolis, IN 46204
Deputy Public Defender (part-time)

1984 - 1992
Moss & Walton
156 E. Market Street, suite 900
Indianapolis, IN 46204
Associate Attorney

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.

Immediately after I graduated from law school in 1984, and through 1993, I practiced law with my father, Charles A. Walton, my husband Marcel A. Pratt, Jr. and my brother, Charles A. Walton Jr. The general character of my law practice consisted of criminal law, family law, personal injury, bankruptcy, wills and probate, Social Security and civil rights discrimination. My practice changed in 1993 when I began to serve part-time as a Master Commissioner (pro-tempore judge) for a judge in the Marion Superior Court Criminal Division. I was not allowed to defend criminal cases as part of my private practice so my law firm practice became concentrated on family law, probate law and bankruptcy until I was elected judge in 1996.

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

While in private practice, my typical clients were individuals in need of

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00593 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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criminal defense representation, bankruptcy relief, family law or probate 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.

i. Indicate the percentage of your practice in:
1. federal courts: 10%
2. state courts of record: 80%
3. other courts: 2%
4. administrative agencies: 8%

ii. Indicate the percentage of your practice in:
1. civil proceedings: 50%
2. criminal proceedings: 50%

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 100 cases to verdict or judgment, and I was sole counsel on approximately 60 of those cases.

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 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;

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00594 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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. State v. Fraizer (Marion Superior Court, Criminal Division 2, Case No. 92178414) (1992). My client was an elderly gentleman who was charged with murder of his landlord. He claimed self-defense. After a one-week jury trial, he was convicted. There were extensive pre-trial motions on competency to stand trial due to dementia, and suppression of statements. The case was tried before Marion Superior Court Webster Brewer, retired. Opposing counsel was Deputy Prosecuting Attorney Philip Blowers, 251 E. Ohio Street, Indianapolis, IN 46204 (317) 327-3255.

2. In the Matter of Taylor Children (Marion Superior Court, Juvenile Division, Case No. 49D09-9112-JC-63840) (1991). This case was initiated by the Indiana Department of Child Services, which filed a petition alleging children-in-need of services, based in part upon allegations that the working mother and father were too busy to take care of the three children. I represented the parents. The case was ultimately resolved by a dismissal of the petition. The proceedings included substantial pre-trial motions, and discovery hearings. The case was presided over by Judge James Payne, now Director Indiana Department of Child Services, Room W392 - MS03, 402 W. Washington Street, Indianapolis, Indiana 46204-2739, (317) 232-4705. Opposing counsel was Mary Jane Norman, Marion County Department of Public Welfare, now 4911 East 56th Street, Indianapolis, IN 46220-5719 (317) 254-1443.

3. Lloyd v. Columbus Lloyd (Marion County Circuit Court, Case No. 49C01-9009-DR-3459) (1990). After the wife filed a Petition for Dissolution of Marriage and the parties entered into a property settlement agreement, my client, Columbus Lloyd, won the lottery. His wife sought to set aside the property settlement agreement. Following extensive discovery and substantial pre-trial motions, the husband prevailed on summary judgment. The case was presided over by Judge John M. Ryan, deceased. Opposing counsel was Lorine Regalus, 155 E. Market Street, Indianapolis, IN 46204 (317) 636-4722.

4. State v. Reed (Marion Superior Court, Criminal Division 3, Case No. 88116212) (1988). My client, Gerald Reed, a prominent businessman, was charged with forgery following theft of credit cards from lockers at the YMCA where he was a member. Mr. Reed was acquitted by a jury, which agreed with his defense based on misidentification. The case was tried before Judge Jack Barney, deceased. Opposing counsel was Deputy Prosecuting Attorney Richard Plath, 251 E. Ohio Street, Indianapolis, IN 46204 (317) 327-3255.

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5. State v. Rayford (Marion Superior Court, Criminal Division 3, Case No. 91080706) (1991). My client was charged with robbery of multiple persons in a fast food restaurant. After a one-week trial, my client was acquitted. I served as co-counsel at all stages of the proceedings, which included substantial discovery and other pre-trial motions. The trial was presided over by Judge Jack Barney, deceased. Co-counsel was Marcel A. Pratt, 155 E. Market Street, Indianapolis, IN 46204 (317) 686-2244. Opposing counsel was Deputy Prosecutor Richard Plath, 251 E. Ohio Street, Indianapolis, IN 46204 (317) 327-3255.

6. State v. Nixon, 593 E. 2d 1210 (Ind. App. 1992). The trial court granted my motion to suppress marijuana found during a warrantless search and seizure of the passenger's purse during a traffic stop. The State prevailed on appeal. The trial was presided over by Marion Superior Court Judge William Mercuri, deceased. Opposing counsel was Deputy Prosecutor Carol Johnson, deceased.

7. State v. Prater (Marion Superior Court, Criminal Division 2, Case No. 89066097) (1989). Represented defendant charged with child molestation. The case involving substantial pre-trial motions on DNA and other identification issues. Case resulted in acquittal following jury trial. The trial judge was Judge Webster Brewer, retired. Opposing counsel was Deputy Prosecutor Lisa Judd, now Judge Lisa Borges, 200 E. Washington Street, Indianapolis, IN 46204 (317) 327-4525.

8. State v. Rich (Marion Superior Court, Criminal Division 2, Case No. 90053714) (1990). Represented woman charged with child molestation and neglect of a dependent for failure to report allegations of child molestation. This case was tried by jury and resulted in an acquittal for my client on the defense that she suffered from a form of battered spouse syndrome. The trial was conducted by Judge Webster Brewer, retired. The co-defendant was represented by Mark Inman; 141 E. Washington Street, #200 Indianapolis IN, 46204 (317) 924-3545. Opposing counsel was Deputy Prosecutor Lisa Judd, now Judge Lisa Borges, 200 E. Washington Street, Indianapolis, IN 46204 (317) 327-4525.

9. State v. Schroeder (Marion Superior Court, Criminal Division 2, Case No. 89122812) (1989). I represented a mildly mentally disabled client who was charged with attempted rape and burglary. A jury trial resulted in an acquittal following a judgment on the evidence. There were extensive pre-trial motions on competency to stand trial and line-up identification. The trial was presided over by Judge Webster Brewer, retired. Opposing counsel was Deputy Prosecutor Jane Conley, P.O. Box 20543, Indianapolis, IN 46205 (317) 921-0106.

10. State v Caston (Marion Superior Court, Criminal Division 2, Case No. 89086358) (1989). Represented individual who was charged with rape, criminal deviate conduct and criminal confinement. After extensive pre-trial hearings on discovery violations, the State dismissed the two lead charges. Defendant was acquitted following jury trial of the criminal confinement charge. The case was tried before Temporary Judge Andrew Fogle, Indianapolis IN, 46240. Co-counsel

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was Carolyn Rader, 129 E. Market Street, #1100, Indianapolis, IN 4204 (317) 636-7703. Opposing counsel was Deputy Prosecutor Jane Conley, P.O. Box 20543, Indianapolis, IN 46205 (317) 921-0106.

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 activities I have pursued, apart from my duties on the bench and my work in private practice, involve reform of the Marion County Juvenile Detention Center (JDC). The JDC was at one time in crisis; the facility was overcrowded and unsafe. Reform efforts with the Annie Casey Foundation and JDAI (Juvenile Detention Alternatives to Incarceration) have allowed us to reduce overcrowding in our juvenile detention center, thus saving considerable sums in overtime and additional staff. Reducing overcrowding has greatly improved conditions, both for the youngsters who remained confined and those who stayed in the community; without jeopardizing public safety or court appearance rates.

I also have been involved in the Indiana Conference on Legal Education Opportunity (CLEO) since 2007 as a member of the Advisory Board. I work on recruitment efforts for CLEO programs, including a summer mentoring program.

I have performed no 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 any courses other than continuing legal education 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.

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.

    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.

       None.

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

       If confirmed, I will follow recusal statutes and the Code of Conduct for United States Judge. If any issue of potential conflict arises, I would consult the applicable statutes and cannons, and seek advice from the Codes of Conduct Committee of the Judicial Conference.

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 private practice, I served on the Marion County Bar Association's Pro Bono panel and spent more than 300 hours each year on pro-bono work, mostly in the area of family law, land-lord tenant and other small claims issues.

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As a judge, I am not allowed to practice law, however I continue to serve the indigent by doing community service work.

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.

Indiana does not have a selection commission to recommend candidates for nomination to the federal courts.

In March 2009, I expressed my interest in the district court to Senator Bayh's staff. In early May 2009, I met in person with one of Senator Bayh's staff members and, a few days later, I met with Senator Evan Bayh to discuss the position. I was contacted by the White House Counsel's Office on August 19, 2009. Since August 2009, I have been in contact with pre-nomination officials at the Department of Justice. On November 19, 2009 I was interviewed by representatives of the Justice Department and the Office of the White House Counsel. On January 15, 2010, Senator Bayh called to tell me that he intended to publicly announce his recommendation of me to the President for nomination to the district court, which he did on January 18. The President submitted my nomination to the Senate on January 20, 2010.

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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Rev. 1/2008

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Walton Pratt, Tanya M.	U.S. District Court, Southern District of Indiana	01/20/2010
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type** (check appropriate type)	**6. Reporting Period**
District Judge-Nominee	☑ Nomination, Date 1/20/2010 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	1/1/2009 to 12/31/2009
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
Marion Superior Court T1721 200 East Washington Street Indianapolis, IN 46204	Reviewing Officer_____ Date_____	

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

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

☐ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. Trustee, Board of Director	Cathedral High School
2. Member	American Inn of Court, Indianapolis
3. Advisory Board	United Negro College Fund
4. Judge, Marion Superior Court	Marion Superior Court
5. Secretary	Indiana State Bar Association

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

☐ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1. 2009	Indiana Judges Pension Fund; pension upon retirement at age 65
2. 1997	PERF (Public Employees Reitrement Fund), payable upon retirement
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting	Date of Report
	Walton Pratt, Tanya M.	01/20/2010

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2008	State of Indiana	$130,000.00
2.	2009	State of Indiana	$130,000.00
3.			
4.			

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

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

	DATE	SOURCE AND TYPE
1.	2009	Self employed, Attorney
2.	2010	Self-employed, Attorney
3.		
4.		

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

☐ NONE *(No reportable reimbursements.)*

	SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.	Exempt				
2.					
3.					
4.					
5.					

FINANCIAL DISCLOSURE REPORT Page 3 of 7	Name of Person Reporting	Date of Report
	Walton Pratt, Tanya M.	01/20/2010

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

☐ NONE *(No reportable gifts.)*

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

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☐ NONE *(No reportable liabilities.)*

CREDITOR	DESCRIPTION	VALUE CODE
1. Bank of America	credit card	J
2.		
3.		
4.		
5.		

FINANCIAL DISCLOSURE REPORT
Page 4 of 7

Name of Person Reporting	Date of Report
Walton Pratt, Tanya M.	01/20/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. series EE bonds	A	Interest	J	T	Exempt				
2. series I bonds	A	Interest	J	T	Exempt				
3. CHASE Bank	A	Interest	J	T	Exempt				
4. National City Bank (CD, checking)	A	Interest	K	T	Exempt				
5. APPL (Apple) stock	A	Dividend	J	T	Exempt				
6. ARBA (Ariba Inc.) stock		None	J	T	Exempt				
7. CBMC (Calypte biomed) stock		None	J	T	Exempt				
8. CHK (Chesapeake energy) stock		None	J	T	Exempt				
9. ERIC (Erricsson) stock		None	J	T	Exempt				
10. MSTR (microstrategy inc.) stock	A	Dividend	J	T	Exempt				
11. Fidelity Diversified International Fund		None	K	T	Exempt				
12. Fiedlity Low-Priced Stock		None	K	T	Exempt				
13. Vanguard Capitol Opportunity		None	K	T	Exempt				
14. BlackRock Large cap Value Retirement K		None	K	T	Exempt				
15. Wells Fargo Capital Growth I		None	J	T	Exempt				
16. WBMD (Web M.D..)		None	J	T	Exempt				
17. PIMCO		None	L	T	Exempt				

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

FINANCIAL DISCLOSURE REPORT
Page 5 of 7

Name of Person Reporting	Date of Report
Walton Pratt, Tanya M.	01/20/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period: (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period: (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period: (1) Type (e.g., buy, sell, redemption)	D. (2) Date Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
18. Indiana Stable Value Fund		None	J	T	Exempt				
19. Allianz IRA's	A	Interest	L	T	Exempt				
20. Western National IRA	A	Interest	K	T	Exempt				
21. Indiana 529 Plan	A	Interest	K	T	Exempt				
22. Vanguard Institutional Index Fund		None	K	T	Exempt				
23. Artio International Equity Fund		None	J	T	Exempt				

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

FINANCIAL DISCLOSURE REPORT Page 6 of 7	Name of Person Reporting Walton Pratt, Tanya M.	Date of Report 01/20/2010

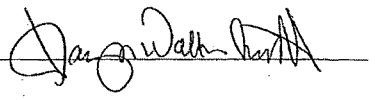
VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Walton Pratt, Tanya M.	Date of Report 01/20/2010

IX. CERTIFICATION.

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

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

Signature 

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		30	000	Notes payable to banks-secured			
U.S. Government securities-add schedule		19	980	Notes payable to banks-unsecured			
Listed securities-add schedule		290	520	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned-add schedule		250	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		60	000	Home equity loan		33	000
Cash value-life insurance				Credit Cards		3	000
Other assets itemize:							
529 College Fund		23	000				
				Total liabilities		36	000
				Net Worth		637	500
Total Assets		673	500	Total liabilities and net worth		673	500
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you a defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

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FINANCIAL STATEMENT

NET WORTH SCHEDULES

U.S. Government Securities	
Series EE Bonds	$ 12,730
Series I Bonds	7,250
Total U.S. Government Securities	$ 19,980
Listed Securities	
AAPL	$ 2,059
ARBA	201
CMBC	1
CHK	837
ERIC	202
WBMD	1,742
MSTR	6,215
Fidelity Diversified International Fund	31,071
Fidelity Low-Priced Stock	25,061
Vanguard Capitol Opportunity	16,758
Vanguard Institutional Index Fund	20,856
BlackRock Large Cap Value Retirement k.	19,898
Wells Fargo Capital Growth I	14,889
PIMCO	51,505
Indiana Stable Value Fund	2,088
Artio International Equity II Fund	5,017
P.E.R.F	3,000
Allianz IRA #1	26,562
Allianz IRA #2	46,208
Western National IRA	16,350
Total Listed Securities	$ 290,520
Real Estate Owned	
Personal residence	$ 250,000

AFFIDAVIT

I, Tanya Walton Pratt, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

January 19, 2010
(DATE)

(NAME)

(NOTARY)

Kathy I. Williams
Resident Of
Marion County
My Commission Expires:
11/15/2015

STATEMENT OF JANE F. MAGNUS-STINSON, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF INDIANA

Judge MAGNUS-STINSON. Thank you, Madam Chairwoman. Thank you, Ranking Member Sessions. My extreme gratitude to the Committee for conducting this hearing today, such that we could have our families in attendance for the hearing.

I would like to thank President Obama for the nomination. I would like to thank Senators Bayh and Lugar for their bipartisan recommendation of myself and my colleagues who are here today. I also want to, as Judge Pratt and I were texting this morning, thank God that our families were able to leapfrog the storm and get here on the last flights out of Indianapolis and Chicago, and I would like to introduce them now.

With me today is my husband of 16 years, Bill Stinson, who represents the best decision I ever made; and our daughters, Jill and Grace Stinson, who are the best work we've ever done.

[Laughter.]

Judge MAGNUS-STINSON. Also with me is my father, Bob Magnus, who came from Chicago. My mom got the stomach flu and missed the last flight, and like Judge Pratt, we had a tearful conversation this morning. So to my mom, Holly Magnus, I gave her the link on the web and I hope she's watching.

I'd like to acknowledge my siblings who could not be here today: my sister Carrie Magnus, who lives in Barrington Hills, Illinois, outside of Chicago, and my brothers, Bob Magnus and his wife Cathy, who are in California—wisely choosing to stay in Southern California—and my brother John, who was going to make it, but made the executive decision not to try to risk the storm. John is the business manager at the Marine Corps base in Camp Pendleton in Southern California, and made a good choice, I think, to stay where he is.

I'd also like to introduce my baby brother, who is here, Mike Magnus, and his and our dear friend, Darin Greenwalt, who made the trip from Chicago. Also, to introduce Tim Tutton. Tim works for the Department of Education here in Washington, and his wife Katie has been my neighbor since I was probably about eight. Katie was intending to come, but couldn't make it because of the weather as well.

I'd also like to thank my staff, who have been a great support, and my Federal family in Indianapolis.

If I might just say, it's a particular pleasure for me to be here with an old friend such as Jon DeGuilio, a dear friend such as Tanya Pratt, with whom I served for 12 years in Marion County, and thanks to our close quarters in the hotel over the weekend, some new friends—or during the week, Judge Koh, Ms. Navarro, and Judge Fleissig. Thank you very much.

[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).

   Jane Elizabeth Magnus-Stinson
   Former Names: Jane Elizabeth Magnus, Jane Elizabeth Magnus D'Alesandro

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

   United States District Judge for the Southern District of Indiana

3. **Address**: List current office address. If city and state of residence differs from your place of employment, list the city and state where you currently reside.

   United States District Court for the Southern District of Indiana
   361 Birch Bayh Federal Building & United States Courthouse
   46 East Ohio Street
   Indianapolis, Indiana 46204

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

   1958; La Crosse, 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.

   1980-1983, Indiana University School of Law (Indianapolis); J.D. (*cum laude*), 1983

   1976-1979, Butler University; B.A. (*cum laude*), 1979

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.

2007-Present
United States District Court for the Southern District of Indiana
361 Birch Bayh Federal Building & United States Courthouse
46 East Ohio Street
Indianapolis, Indiana 46204
United States Magistrate Judge

1995-2007
Marion Superior Court
Criminal Division, Room 6
W 306 City-County Building
Indianapolis, Indiana 46204
Superior Court Judge

1988-1995 & 2000
Indiana University School of Law (Indianapolis)
520 West New York Street
Indianapolis, Indiana 46202
Adjunct Faculty

1991-1995
Office of Governor Evan Bayh
State of Indiana
Room 206 State House
Indianapolis, Indiana 46204
Deputy Chief of Staff (1994-1995)
Counsel to the Governor (1991-1995)
Executive Assistant (1991)

1983-1990
Lewis, Bowman, St. Clair and Wagner
(now Lewis Wagner)
501 Indiana Avenue, Suite 200
Indianapolis, Indiana 46202
Associate (1983-1990)
Law Clerk (1982-1983)

1981
Dann, Pecar, Newman, Talesnick, and Kleiman
(now Dann, Pecar, Newman, and Kleiman)
One American Square, Suite 2300
Indianapolis, Indiana 46204
Law Clerk

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1980-1981
Indiana University School of Law (Indianapolis)
520 West New York Street
Indianapolis, Indiana 46202
Law Library Student Assistant

1980
Ewing Nursery & Landscaping, Inc. (now Bruce Ewing Landscaping, Inc.)
124 North Thomas Road
Fort Wayne, Indiana 46808
Summer Landscape Crew Member

1979-1980
National Underwriters (no longer in business)
1742 North Meridian Street
Indianapolis, Indiana 46202
Account Representative

Other Affiliations

1997-2003 & 2005-2006
Indiana Judges Association
30 South Meridian Street, Suite 900
Indianapolis, Indiana 46204
At-Large Director (1997-2002 & 2005-2006) (uncompensated)
Secretary-Treasurer (2003) (uncompensated)

1994-2005
Wishard Memorial Foundation (now Wishard Foundation)
1001 West Tenth Street
Indianapolis, Indiana 46202
Director (1994-2005) (uncompensated)
Vice Chair (2004) (uncompensated)

1997-2004
Indiana Judicial Conference
30 South Meridian Street, Suite 900
Indianapolis, Indiana 46204
Director (uncompensated)

1993-1999
Big Sisters of Indiana
2960 North Meridian Street, Suite 150
Indianapolis, Indiana 46208
President (1998-1999)
Director (1993-1999)

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1987-1989 (approximate)
Broad Ripple Village Association
6311 Westfield Boulevard, Suite 101
Indianapolis, Indiana 46220
Director & Counsel

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 and 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.

Indiana State Bar Association Women in Law Committee, Achievement Award, 2007
Governor Mitch Daniels, Governor's Award for Excellence in Service, 2007
Mayor of the City of Indianapolis, "Judge Jane Elizabeth Magnus-Stinson Day," 2007
Indianapolis Bar Association, President's Award for Service to the Profession, 2006
Lawdragon.com, Lawdragon 500 Leading Judges in America, 2006
Indianapolis Bar Association, Board of Managers Award, 2005
Indiana Coalition Against Domestic Violence, Outstanding Judge, 2005
Butler University Alumni Association, Fifty Under 50, 2004
National Association of Probation Executives, Arthur Neu Award for Exceptional Policy Development, 2003
Indianapolis Bar Association, Antoinette Dakin Leach Award (Outstanding Woman Legal Professional), 2002
Indiana Coalition Against Sexual Assault, Outstanding Service Award, 2002
Indiana Judicial Conference, Decade of Teaching Award, 2000
Indiana Judicial Nominating Commission, Finalist for Appointment to Indiana Court of Appeals, 1998
Governor Evan Bayh, Sagamore of the Wabash (Governor's high honor), 1995
Indianapolis Bar Foundation, Distinguished Fellow, 1995
Indiana State Bar Association, Women in the Law Honoree, 1993
American Jurisprudence, Book Award for Top Paper in Labor Law, 1983
American Jurisprudence, Book Award for Top Paper in Civil Procedure I, 1981
Butler University, Full Tuition Academic Scholarship, 1976-1979
Kappa Kappa Gamma, Academic Scholarship, 1976

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.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00613 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Federal Magistrate Judges Association
Indiana Judicial Conference
Chair, Judicial Education Committee (2006)
Appointed Director (by Chief Justice) (1997-1999)
Elected Director (2000-2002)
Indiana Judges Association
At-Large Director (1997-2003 & 2005-2006)
Secretary-Treasurer (2003)
Chair, Criminal Jury Instructions Committee (1998-2003)
Indiana State Bar Association
Chair, Federal Judiciary Committee (2007-2009)
Indianapolis Bar Association
Vice President, Board of Managers (2003-2004)
At-Large Member, Board of Managers (2000-2002)
Moderator, Bar Leader Series (2008-2009)
Chair, Professionalism Committee (2007)
Chair, Pro Bono Standing Committee (2004-2006)
Member, Justice Center Task Force (approximately 1998-2003)
Marion County Bar Association
Sagamore American Inn of Court
Bencher / Master (1998-2004, 2007-08)
Seventh Circuit 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. Explain the reason for any lapse in membership.

Indiana, 1983

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. 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 Southern District of Indiana, 1983
Indiana Supreme Court, 1983

There has been no lapse in any membership.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00614 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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 10 or 11 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.

Big Sisters of Central Indiana
Member, Community Advisory Council (2000-2002)
President (1998-1999)
Director (1993-1999)
Board of Visitors, Indiana University Law School (Indianapolis) (1995-Present)
Chair (2007-2009)
Member, ABA Accreditation Self-Study Committee (2008-2009)
Vice-Chair (2007)
Secretary (2005-2006)
Indiana Lawyer Reader Advisory Panel (2007-Present)
Lawyer's Club of Indianapolis (1998-2001)
Riviera Swim Club (1997-2002 & 2008-present)
Jewish Community Center (approximately 2002-2006)
Jordan YMCA (approximately 1996-2003)
Phi Kappa Delta Scholastic Honorary Society (1978-1979)
Kappa Kappa Gamma (1976-1979)

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, 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.

As a college student, I was a member of Kappa Kappa Gamma, a women's fraternity that did not (and still does not) admit men. I have not had any association with that organization or any related alumni entity since I graduated from college in 1979. No other organization listed above currently discriminates on the basis of race, sex, religion, or national origin by any means. I understand that the Riviera Swim Club, my neighborhood pool, had a regrettable history of racial discrimination ending in the 1960s or 1970s; today, it has a racially diverse membership. The Lawyers Club of Indianapolis, a quarterly dinner club of which I was previously a member, once was men-only; by the time I became a member in 1988, women already had joined. I am not aware of any other former discrimination by the organizations listed above.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00615 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.

Best Settlement Practices Through the Eyes of a New Magistrate Judge, NEWSLETTER OF THE INDIANAPOLIS CHAPTER, SEVENTH CIRCUIT BAR ASSOCIATION (June 2008)

Sidebar Column: *Top Ten Tips for Young Lawyers*, YLS NETWORK (published by Young Lawyers Section, Indiana State Bar Association) (Winter 2008)

Letter to the Editor, *County Needs Fair Deal for Court Officers*, INDIANAPOLIS STAR (Oct. 4, 2005)

Blakely *in Indiana: Is* Smylie *the Beginning or the End?* INDIANA STATE BAR ASSOCIATION CRIMINAL JUSTICE SECTION NEWSLETTER (May 2005)

Note, *The Continuing Vitality of* Louisville Joint Stock Land Bank v. Radford, *Persuasive Authority for Cases Declaring Retroactive Application of the Bankruptcy Code Unconstitutional*, 15 Ind. L. Rev. 593 (1982)

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.

Standards of Professionalism, Indianapolis Bar Association, (Oct. 2007)

In addition, I served from 1998-2002 as chair of the Criminal Jury Instructions Committee of the Indiana Judges Association. During that time, the Committee rewrote the Indiana Criminal Pattern Jury Instructions in full—and in plain English to make them readily understandable for jurors. The Criminal Pattern Jury Instructions are available as a source on Lexis and other legal research tools.

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.

Marion County Criminal Justice Planning Council (Jan. 23, 2006) (testified on status of an outside study of the county's juvenile detention center) (no text or notes)

Indiana Commission on Courts (Oct. 3, 2005) (requested additional state funding for judicial officers on behalf of Marion Superior Court)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00616 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Public Safety and Criminal Justice Committee of the City of Indianapolis and Marion County City-County Council (Aug. 31, 2005) (provided budget testimony on behalf of Marion Superior Court)
Indiana Supreme Court (July 21, 2005) (submission by request of the Court concerning whether state or county public defender was best suited to represent a defendant in a particular appeal)
Administration and Finance Committee of the City of Indianapolis and Marion County City-County Council (Feb. 16, 2005) (testified in support of new public safety initiative funding mechanism)
Indiana House Judiciary Committee (Feb. 7, 2005 & Jan. 27, 2005) (testified against HB 1703, modifying judicial selection for Marion County)
Letter to Indiana Senators (Feb. 11, 2004) (supporting HB 1410, modifying compensation for state elected officials)
Indiana House Judiciary Committee (spring 2001) (testified on SB 506, increasing user fee to fund additional probation services)
City of Indianapolis and Marion County City-County Council (Aug. 1998) (request for funding for additional probation officers on behalf of Marion Superior Court Probation Department)

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.

Naturalization Ceremony, U.S. District Court (S.D. Ind.) (Jan. 14, 2010)
Trial Skills Workshop, National Institute for Trial Advocacy (Oct. 11-16, 2009)
"Pro Bono Opportunities," U.S. District Court (S.D. Ind.) (Sept. 18, 2009)
Naturalization Ceremony, U.S. District Court (S.D. Ind.) (Sept. 17, 2009)
"What to Expect When Practicing in Federal Court," Indianapolis Bar Association Bench/Bar Conference (June 19, 2009)
"Law as a Career" (remarks to pre-law students), Butler University (Apr. 11, 2009)
"Brilliance and Blunders in the Courtroom," Indiana University Law School (Indianapolis) (Mar. 27, 2009)
"Work-Life Balance" (Women in Law Month), Federal Bureau of Investigation Indianapolis Office (Mar. 17, 2009)
Presentation on Mediation in Federal Court to Public Policy Mediation Class, Indiana University Law School (Indianapolis) (Feb. 10, 2009)
"Electronic Discovery from the Court's Point of View," Indiana Trial Lawyers Association (Jan. 30, 2009)
Trial Skills Workshop, National Institute for Trial Advocacy (Oct. 13-17, 2008)

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"Discovery in Employment Cases: A View from the Bench," Indiana Employment Lawyers Association (Sept. 25, 2008)
Leadership Speech, Indianapolis Bar Association (Sept. 19, 2008)
Alternative Dispute Resolution Panel, Advanced Science and Technology Adjudication Resource Center, Inc. (May 30, 2008) (no text or notes)
Presentation on Mediation in Federal Court to Public Policy Mediation Class, Indiana University Law School (Indianapolis) (Feb. 12, 2008) (no text or notes)
"Top Ten Litigation Tips," Indianapolis Bar Association (Dec. 4, 2007)
"Criminal Law and Procedure," Indiana Judicial Center (Sept. 20, 2007)
"Top Ten Practice Tips," Federal Bar Association Young Lawyers Division (July 26, 2007)
"Ginsburg Moments," IBA/Women in Law Division Summer Reception (June 20, 2007)
State of Jury System in Civil Practice Panel, Indiana Continuing Legal Education Foundation (May 17, 2007) (no text or notes)
Investiture Speech, U.S. District Court (S.D. Ind.) (Mar. 2, 2007)
"Work-Life Balance," Zionsville Community Christian Church (Oct. 12, 2006)
"Review of 2005-06 Employment-Related Decisions from the U.S. Supreme Court," Indianapolis Bar Association Employment Law Section (July 20, 2006)
"Ethical Ex Parte Discovery" (group presentation), Sagamore American Inn of Court (Mar. 8, 2006) (no text or notes)
"Indiana Judges on Evidence: The Tough Issues Argued" (panel), Indiana Continuing Legal Education Foundation (Dec. 8, 2005)
Indiana Evidence Workshop, Professional Education Systems Institute (Nov. 10, 2005)
"Sentencing Issues," Indianapolis Bar Association Criminal Law Section (Nov. 8, 2005)
"Practicing Law in Indiana: The New Indiana Rules on Professional Conduct" (panel) Indiana Lawyer (Sept. 22, 2005) (no text or notes)
"SB 96 and *Blakely*: Update on Sentencing Decisions," Indiana Judicial Center (Sept. 14, 2005)
"SB 96: A Farewell to *Blakely*," Indiana Prosecuting Attorneys Council (June 19, 2005)
"You Make the Call" (panel on evidentiary objections in mock trial setting), Indianapolis Bar Association (June 17, 2005)
"SB 96: A Farewell to *Blakely*," Indiana Judicial Center (Apr. 20, 2005)
"Final Arguments" (at Howrey Simon LLP Trial Skills Workshop), National Institute for Trial Advocacy (no text or notes)
"Criminal Sentencing Decisions," Indiana Judicial Center (Apr. 20, 2005)
Mid-Central Regional Trial Skills Workshop, National Institute for Trial Advocacy (Mar. 13-17, 2005)
Evidence Workshop, Professional Education Systems Institute (Nov. 5, 2004)
Pro Bono & Community Leadership Discussion, Indianapolis Bar Association (Oct. 19, 2004) (no text or notes)

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"An Evening with the Judges," Indiana Continuing Legal Education Foundation (Sept. 30, 2004)
"*Blakely v. Washington:* Sentences and Sentence Reductions," Indiana Judicial Center (Sept. 22, 2004)
"Brilliance and Blunders in the Courtroom from the Eyes of the Bench," Indiana University Law School (Indianapolis) (Aug. 24, 2004)
Colorado Teacher Training Program, National Institute for Trial Advocacy (June 27, 2004) (no text or notes)
"Child Hearsay Law & Other Out of Court Statements – *Crawford v. Washington*," Marion Superior Court CLE Program (May 11, 2004)
"Evidence Rulings in Civil Litigation" (panel), Indiana Judicial Center (Apr. 23, 2004) (no text or notes)
"Ethics and Evidence: Ever the Twain Shall Meet" (group presentation), Sagamore American Inn of Court (Apr. 14, 204) (no text or notes)
Mid-Central Regional Trial Skills Workshop, National Institute for Trial Advocacy (Mar. 14, 2004) (no text or notes)
Indiana Evidence Workshop, Professional Education Systems Institute (Nov. 6, 2003)
"Brilliance and Blunders in the Courtroom," Indianapolis Bar Association (Sept. 26, 2003 & June 20, 2003)
"And the Final Double Jeopardy Answer Is . . .," Indiana Judicial Center (Apr. 25, 2003)
Mid-Central Regional Trial Skills Workshop, National Institute for Trial Advocacy (Mar. 16, 2003)
"Art of Negotiations" (group presentation) Sagamore American Inn of Court (Mar. 12, 2003)
General Jurisdiction New Judge Orientation Program, "Criminal Caseload Management," Indiana Judicial Center (Jan. 14, 2003)
"Pre-Bench Orientation: Guilty Plea Skills," Indiana Judicial Center (Dec. 11, 2002)
Indiana Evidence Workshop, Professional Education Systems Institute (Nov. 15, 2002)
"Brilliance and Blunders in the Courtroom," Indiana Lawyer – Women In Law Conference (Oct. 17, 2002) (no text or notes)
Pro Bono Protective Order Program, Indianapolis Bar Association (Sept. 28, 202) (no text or notes)
"Recent Developments in Criminal Law and Procedure," Indiana Judicial Center (Sept. 13, 2002)
"Domestic Violence: What's a Lawyer to Do?" Indiana Continuing Legal Education Foundation (July 25, 2002)
"Criminal Sentencing Decisions," Indiana Judicial Center (Apr. 17, 2002)
"Ex Parte Communications: Dangerous Liaisons" (group presentation) Sagamore American Inn of Court (Mar. 13, 2002) (no text or notes)
Mid-Central Regional Trial Skills Workshop, National Institute for Trial Advocacy (Mar. 10, 2002) (no text or notes)

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Indiana Evidence Workshop, Professional Education Systems Institute (Nov. 11, 2001)
"Recent Decisions in Criminal Law and Procedure," Indiana Judicial Center (Sept. 12, 2001)
"Advanced Evidence," Indiana Continuing Legal Education Foundation (Aug. 24, 2001)
"Planning Your First Criminal Case," Indiana Continuing Legal Education Foundation (July 27, 2001)
"Bench Skills Workshop – Guilty Plea," Indiana Judicial Center (Apr. 19, 2001)
"Criminal Sentencing Decisions," Indiana Judicial Center (Apr. 19, 2001)
Mid-Central Regional Trial Skills Workshop, National Institute for Trial Advocacy (Mar. 11-16, 2001)
General Jurisdiction New Judge Orientation Program, "Guilty Plea," Indiana Judicial Center (Jan. 23, 2001) (no text or notes)
"Indiana Judges on Evidence: The Tough Issues Argued" (panel), Indiana Continuing Legal Education Foundation (Dec. 6, 2000) (no text or notes)
Keynote Address, Indiana Correctional Association Annual Dinner (Oct. 2000) (no text or notes)
"Recent Decisions in Criminal Law," Indiana Judicial Center (Sept. 20, 2000)
Discussion on Cases of Sexual Abuse and Assault (Panel), Indiana Coalition Against Sexual Assault Annual Conference (July 2000) (no text or notes)
"Criminal Sentencing Decisions," Indiana Judicial Center (May 10, 2000)
"Final Argument," National Institute for Trial Advocacy Mid-Central Regional Program (Mar. 12, 2000) (no text or notes)
"Hearsay and Its Exceptions," Indiana Continuing Legal Education Foundation (Feb. 24, 2000)
"Brilliance and Blunders from the Eyes of the Bench," Indianapolis Bar Association (Feb. 17, 2000) (no text or notes)
"Double Jeopardy in Indiana," Indiana Judicial Center (Dec. 9, 1999)
"Plain Language Revisions to the Indiana Criminal Pattern Jury Instructions," Bench Bar Summit Indiana Judicial Center / Indiana State Bar Association (Sept. 28, 1999)
Remarks on behalf of Marion Superior Court and Probation Department, Opening of Goodwill Industries' Blue Triangle Center (June 1999)
"Adult Educational Issues in the Correctional Setting" (panel), Association of Adult Education Providers in Indianapolis (June 1999)
"Recent Legislation," Indiana Judicial Center (May 27, 1999)
"Jury Trial Management Issues" (panel), Indiana Judicial Center (Mar. 11, 1999) (no text or notes)
Indiana Trial Advocacy College, Indiana Continuing Legal Education Foundation (Mar. 16, 1999) (no text or notes)
"Legislative Overview," Probation Officers Statewide Conference (Nov. 11, 1998) (no text or notes)
"Indiana Rules of Evidence," Professional Education Systems Institute (Nov. 6, 1998)

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"Civil Discovery—Tough Issues Argued" (panel), Indiana Continuing Legal Education Foundation (May 6, 1998) (no text or notes)
"Use of Mentoring to Assist At-Risk Youth," Forest Manor United Methodist Church (Nov. 9, 1997) (no text or notes)
"The Criminal Justice System and the Function of the Criminal Division of Marion Superior Court," Guest Lecture to Public Policy Course at Indiana University / Purdue University at Indianapolis (Nov. 6, 1997) (no text or notes)
"Status of Women in the Law," Indianapolis Soroptomists Club (Sept. 10, 1997) (no text or notes)
"Preparing Findings of Fact, Conclusions of Law" (panel), Indiana Judicial Center (Sept. 17, 1997) (no text or notes)
"Examining a Child Witness," Indiana Continuing Legal Education Foundation (Aug. 28, 1997) (no text or notes)
"Crime in Indianapolis" (panel), Forest Manor Community Development Council (July 21, 1997) (no text or note)
"Ethical Violations and Reporting" (June 27, 1997) Bench/Bar Conference Indianapolis Bar Association
"Work / Life Balance," Women's Caucus of the Indiana University School of Law (Indianapolis) (Apr. 1, 1997) (no text or notes)
"Appeal Proof Sentencing Orders" (panel), Indiana Judicial Center (Sept. 1996) (no text or notes)
Trial Advocacy Training Program, Indiana Attorney General's Office (Aug. 11, 1996) (no text or notes)
Trial Skills Spring Workshop, Indiana Continuing Legal Education Foundation (Mar. 10, 1996) (no text or notes)

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.

"Advice for Young Practitioners," Webcast Interview, Seventh Circuit Mentoring Program, Seventh Circuit Bar Association, Apr. 9, 2009 (no transcript)
Michael W. Hoskins, "Justice Rule on Retroactivity," INDIANA LAWYER, June 27, 2007, at 1
"Off the Bench," Channel 16, May 30, 2007 (no transcript)
Kevin Corcoran, "Public Defender Pleads for Space," INDIANAPOLIS STAR, Dec. 5, 2006, at 1
Jon Murray, "Marion Superior Court is Set for '07," INDIANAPOLIS STAR, Nov. 3, 2006, at 1
Vic Ryckaert, "Remember that ticket in '88? Pay Up!," INDIANAPOLIS STAR, Oct. 14, 2006
Rebecca Berfanger, "Ready for the Challenge," INDIANA LAWYER, Sept. 20, 2006, at 1

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Vic Ryckaert, "Get Out of Jail Early: Not Now," INDIANAPOLIS STAR, Aug. 25, 2006, at 1
Abigail Johnson, "Bail Matrix a Factor?," INDIANAPOLIS BUSINESS JOURNAL, Aug. 23, 2006, at 1
Editorial, "Closed Court Quandary," INDIANA LAWYER, July 26, 2006, at 1
Abigail Johnson, "Judge Closes Court," INDIANA LAWYER, July 26, 2006, at 1
Richard Walton and Tim Evans, "Audit Finds Disorder in Payne Court," INDIANAPOLIS STAR, July 16, 2006, at 1
Will Higgins, "Brizzi Offers Plan," July 15, 2006, INDIANAPOLIS STAR, at 1
Kate Holloway, "Out of Jail Early, Now Accused of Molestation," INDIANAPOLIS STAR, July 13, 2006, at 1
"Candidate Sought for Addition to Ballot," INDIANA LAWYER, June 14, 2006, at 18
Terry Sowka, "What's in Your Fridge?" INDIANAPOLIS STAR, Apr. 26, 2006, at T5
Brendan O'Shaughnessy, "Many Suspects Violate Home Detention," INDIANAPOLIS STAR, March 24, 2006, at A1
J. Sanders, FINANCIAL AID AND ASSISTANCE FOR EX-OFFENDERS: A COMPREHENSIVE DIRECTORY 106 (2006) ("Goodwill Success Story")
Abigail Johnson, "Judges Build Case for More Funding," INDIANA LAWYER, Oct. 19, 2005, at 1
Kevin Corcoran, "Court Records Sent Abroad," INDIANAPOLIS STAR, Aug. 24, 2005, at B6
Charles Wilson, "Court Rulings, New Law Trigger Wave of Appeals," ASSOC. PRESS, July 5, 2005, July 4, 2005
Vic Ryckaert, "Brizzi Questions Judge's Impartiality," INDIANAPOLIS STAR, Mar. 24, 2005, at B1
Tom Spalding, "Triple Killing Suspects Return; Siblings to Appear in Court Monday," INDIANAPOLIS STAR, Feb. 12, 2005, at B1
Editorial, "An Unfair Burden on Traffic Violators," INDIANAPOLIS STAR, Oct. 10, 2003, at A14
John Strauss, "Higher Traffic Ticket Fee Taxes Those Who Can't Complain," INDIANAPOLIS STAR, Oct. 10, 2003, at B1
Vic Ryckaert, "County Judges Increase Fines on Traffic Tickets," INDIANAPOLIS STAR, Oct. 7, 2003, at B1
Vic Ryckaert, "Crime Lab to Retest DNA in 64 Cases," INDIANAPOLIS STAR, July 18, 2003, at A1
Wire Story, "Man Sentenced to 115 Years Accidentally Released", ASSOC. PRESS, Apr. 17, 2003
Terry Horne & Kevin O'Neal, "Clerk's Error Sets Gunman Free," INDIANAPOLIS STAR, Apr. 17, 2003, at A1
Kevin Corcoran, "Judges Will Lobby for 17-21% Pay Raise," INDIANAPOLIS STAR, Jan. 4, 2003, at A1
John Strauss, "Judge Jimison's Poor Rating May Not Matter to Voters," INDIANAPOLIS STAR, Nov. 4, 2002, at B1
"Special Prosecutors Assigned to Schneider Probe" (WRTV Indy Channel.com Oct. 18, 2002)

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Jennifer Wagner, "Judges Want to End Inmate Releases," INDIANAPOLIS STAR, Sept. 25, 2002, at A1
Jennifer Wagner, "Jail Crowding Crisis Builds," INDIANAPOLIS STAR, Aug. 25, 2002, at A1
John Fritze, "'City Boy' Turned State Fair Around," INDIANAPOLIS STAR, Aug. 25, 2002, at A1
R. Joseph Gelarden, "Judge Questions Release of Inmates by Colleague," INDIANAPOLIS STAR, July 28, 2002, at B1
Vic Ryckaert, "Traffic Court Official Demoted with Pay Cut," INDIANAPOLIS STAR, June 5, 2002, at B1
Denise G. Callahan, "Difficult Clients Test Legal Relationship," INDIANA LAWYER, Mar. 27, 2002, at 5
Vic Ryckaert, "Judges Won't Sue Over Pay Raise," INDIANAPOLIS STAR, Mar. 8, 2002, at B1
Denise G. Callahan, "Pay Lawsuit Might Not Play Out," INDIANA LAWYER, Feb. 27, 2002, at 1
Wire Story, "The Day at the Indiana Statehouse", ASSOC. PRESS, Feb. 20, 2002
Michele McNeil Solida & Vic Ryckaert, "Vetoed Bills Could Become Law Without Override," INDIANAPOLIS STAR, Feb. 16, 2002, at A1
Mike Smith, "Questions Raised Over Legality of Pay Raise Veto," ASSOC. PRESS, Feb. 14, 2002
Denise G. Callahan, "Federal Judge Foments Fusion; Courts Statewide Seek Ways to Help in Jail Crowding," INDIANA LAWYER, Nov. 21, 2001, at 1
Vic Ryckaert, "Judges Say They Won't Let Inmates Go Early," INDIANAPOLIS STAR, Oct. 16, 2001, at A1
Denise G. Callahan, "Crowded Courts, Crowded Jails," INDIANA LAWYER, June 6, 2001 at 1
Vic Ryckaert, "As Lockup's Population Problems Grow, So Does the Finger-Pointing," INDIANAPOLIS STAR, May 23, 2001, at 1
Denise Callahan, "Marion County Prosecutor, Judge Honored," INDIANA LAWYER, Mar. 14, 2001, at 2
"Officials Honored for Aiding Victims," INDIANAPOLIS STAR, Mar. 12, 2001, B3
John Fritze, "Council and Judges Agree to Settlement," INDIANAPOLIS STAR, Feb, 27, 2001, at B1
Bettie Cadou, "Revved Up," INDIANAPOLIS MONTHLY, Feb. 2001, at 109
Vic Ryckaert, "Judges Taking Council to Court," INDIANAPOLIS STAR, Nov. 29, 2000, at A1
"Hearing Will Examine Restitution Woes," INDIANAPOLIS STAR , Nov. 22, 2000, at B3
"Twice Taken" (WTHR-13 Nov. 13-14, 2000)
Frederick Merkers, "Probation Mentor Program Expanding, INDIANAPOLIS RECORDER, Aug. 4, 2000, at 1
John Strauss, "Colleagues Say They'll Miss Outgoing Chief of Probation," INDIANAPOLIS STAR, Aug. 4, 2000, at C3
"New Drug-testing Lab to Have Results Ready for Courts in Hours," INDIANAPOLIS STAR, July 17, 2000, at B3

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00623 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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Jennifer L. Seward, "Walker's Departure Will Create Void," INDIANA LAWYER, Mar. 15, 2000, at 18
Lisa Renze-Rhodes, "From the Jail House to the Job Corps," INDIANA LAWYER, Nov. 10, 1999, at 5
Lisa Renze-Rhodes, "Judicial Changes Affect Funding and Roles of Employees," INDIANA LAWYER, Oct.13, 1999, at 16
Lisa Renze-Rhodes, "Breaking the Cycle," INDIANA LAWYER, Aug. 18, 1999, at 6
Lisa Renze-Rhodes, "Mentoring the Troubled," INDIANA LAWYER, June 9, 1999, at 1
Cary Solida, "Next year's Court Budget Irks Judges," INDIANA LAWYER, Nov. 11, 1998
Cary Solida, "Code Revisions Drain Powers of Marion Court Commissioners," INDIANA LAWYER, May 13, 1998, at 1
Emily Swiatek, "Commission Narrows 5th District Nominees to Three Women," INDIANA LAWYER, May13, 1998, at 3
Mike Magan, "Putting the Money Where the Gap Is," INDIANA LAWYER, April 16, 1997, at 8
Jon Newberry, "Bench Marks," ABA JOURNAL, Nov. 1996
Barbara Brotman, "Ladies' Man," CHICAGO TRIBUNE, Mar. 17, 1996, at 1
Dick Cady, "Large Expanse of Gray Spans Distance Between Right and Wrong," INDIANAPOLIS STAR, Sept. 11, 1994, at B1
David Remondini, Janet E. Williams, "Top Municipal Judges New Term Limited," INDIANAPOLIS STAR, Dec. 31, 1993, at C1
Nancy J. Winkley, "Wanted: Women to Support Sullivan for Court Seat," INDIANAPOLIS STAR, Sept. 4, 1993, at A1
Nancy J. Winkley, "Chaos Possible as Budget Runs Out," INDIANAPOLIS STAR, May 23, 1993, at B1
Kyle Niederpruem, "Lawyers Who Won Trash Case Want Fees Paid by State," INDIANAPOLIS STAR, Oct. 30, 1992, at E1
Barb Albert, "Superintendents Agree to Drop Lawsuit Over State Funding Formula," INDIANAPOLIS STAR, Aug. 1, 1992, at B5
Susan Hanafee, "Refunds Scheduled for Some Hoosiers Who Filed Suit Against Intangibles Tax," INDIANAPOLIS STAR, Feb. 11, 1992, at B14
William J. Booher, "Bayh Defends Big Legal Fee," INDIANAPOLIS STAR, Oct. 18, 1991, at B1

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.

Since 2007, I have served as a United States Magistrate Judge appointed by the United States District Court for the Southern District of Indiana. Our court is a Federal trial court of general jurisdiction. In most cases, I manage pre-trial proceedings on reference from the district judge. From 1995 to 2007, I served as a judge of the Marion Superior Court, Criminal Court Six, major felony division. I initially was appointed by Governor

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00624 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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Evan Bayh on February 29, 1995, and subsequently was elected in 1996 and again in 2002.

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

6,000

i. Of these, approximately what percent were:

jury trials:	65%
bench trials:	35%
civil proceedings:	20%
criminal proceedings:	80%

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

See attached list of opinions.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of 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 (if not reported).

1. *State Farm Mut. Auto. Ins. Co. v. Buchanan*, No, 1:08-cv-100, 2009 WL 4728019 (S.D. Ind. Dec. 03, 2009). State Farm filed this declaratory judgment action seeking to avoid coverage for an accident in which defendant was driving a car that belonged to his estranged girlfriend. The parties consented to final adjudication of the case by me. I presided over a two-day bench trial, in which testimony established that defendant was in a delusional and psychotic state at the time of the accident, having failed to take his prescribed medication for more than one month. I concluded the defendant did not have actual or implied permission to drive the vehicle at the time of the accident. Therefore, I issued judgment declaring State Farm had no obligation to defend or indemnify him.

State Farm's lawyer was James Goodin, Jr., Goodin & Abernathy LLP, 8900 Keystone Crossing, Suite 1100, Indianapolis, IN 46240; 317-843-2606. The lawyer for the individuals hurt in the accident was John Tousley, 156 E. Market Street, Suite 900, Indianapolis, IN 46204; 317-636-5305.

2. *Ogden v. Cutter*, 1:08-cv-00369, 2009 WL 2413806 (S.D. Ind. Aug. 04, 2009). Plaintiff brought this action asserting various Federal constitutional and state claims against his former employer, the Indiana Department of Insurance. The parties consented to final adjudication of the case by me. Plaintiff had submitted to Department management a 35-point memorandum insisting on management

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00625 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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changes. The Department determined not to comply with plaintiff's requests and gave plaintiff the opportunity to resign. I granted summary judgment for defendant on the First Amendment claim, finding that the memo was not protected speech, and on his Due Process claim, finding that he had no property interest in his job, and even if he did that the state's process was adequate. I remanded the state law claims. Plaintiff's appeal is pending before the United States Court of Appeals for the Seventh Circuit.

Plaintiff's attorney was Adam Lenkowsky, Roberts & Bishop, 118 North Delaware Street, Indianapolis, IN 46204; 317- 631-0172. Defense counsel was David A. Arthur, Indiana Office of the Attorney General, 302 West Washington Street, IGCS - 5th Floor, Indianapolis, IN 46204; 317-232-6286.

3. *Sanyo N.A. Corp. v. L3 Commc'ns*, 1:06-cv-00405 (S.D. Ind. 2009). Multiple parties with claims and cross-claims disputed liability for remediation of significant environmental contamination and response costs under both state and Federal law. The plaintiff was a former owner of the site and the defendants were former owner/operators (and their insurers). Several factors complicated the case, including the nature of the contamination, insurance coverage issues, similar uses of the property, and its sale to a third-party. As a result of an all-day mediation over which I presided, the parties settled.

Plaintiff's counsel was Peter M. Racher, Plews Shadley Racher & Braun, 1346 N. Delaware St., Indianapolis, IN 46202; 317-637-0700. Defense counsel were Andrew M. McNeil, Bose McKinney & Evans, 111 Monument Circle, Suite 2700, Indianapolis, IN 46204; 317-684-5000; and Frank J. Deveau, Taft Stettinius & Hollister, One Indiana Square, Suite 3500, Indianapolis, IN 46204; 317-713-3500.

4. *Phillips v. Indianapolis Life Ins. Co.*, 1:06-cv-1544 (S.D. Ind. 2009). The eighteen plaintiffs in this case were medical professionals who purchased a tax shelter plan from defendant. They sued, on racketeering and other theories, when the Internal Revenue Service began questioning the shelter plan. The case was referred to me for pretrial management by the district judge and I ruled on several contested discovery issues. I also denied plaintiffs' motion to amend the complaint, more than two years after it was filed, on grounds of failure to show diligence and prejudice to the defendants. After multiple settlement conferences, formal and informal, I helped all but one set of plaintiffs settle with the defendants. The district judge subsequently granted summary judgment on Federal claims against the remaining plaintiffs and the case was remanded to state court for a determination of state law claims.

Plaintiffs' counsel was Eric D. Madden, Diamond McCarthy, 1201 Elm. St., 34th Floor, Dallas, TX 75270; 214-389-5306. Defense counsel was J. Michael Vaughn, Walters Bender Strohbehn & Vaughn, 2500 City Center Square, 1100 Main St., P.O. Box 26188, Kansas City, MO 64196; 816-421-6620.

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5. *Murray v. Conseco, Inc.*, 1:03-cv-1701 (S.D. Ind. 2009). Plaintiff, a former director and audit committee member of defendant insurance company, brought this fraud suit when the company encountered financial difficulty and called in $90 million in loan guarantees it had extended to him. He alleged questionable accounting practices. The insurance company counterclaimed for the money it had paid the lenders. The district judge called upon me to resolve frequent and hotly-contested discovery disputes over a multi-year period. In one key ruling, I recommended, and the district judge imposed, sanctions against plaintiff in light of evidence he had engaged in fraudulent conveyances to hide assets in the event of an adverse judgment. As trial neared, I brought the parties together during an intense and extended conference (that extended by telephone into early morning hours) by which the parties reached a settlement.

Plaintiffs' counsel was Ron Waicukauski, Price Waicukauski & Riley, 301 Massachusetts Ave., Indianapolis, IN 46204; 317- 633-8787. Defense counsel was Justin Barker, Kirkland & Ellis, 300 N. LaSalle St., Chicago, IL 60654; 312-862-7110.

6. *State v. Halcomb*, No. 49G06-0308-MR-136653 (Marion Super. Ct. 2004). I presided over this ten-day trial in which the defendant was charged with murdering his wife, whose body was never found. I made multiple important evidentiary rulings, including admitting letters the defendant wrote to his wife prior to her disappearance stating that his "research" showed a murder suspect could not be arrested or convicted when a victim's body was not found. I also allowed evidence of the stormy relationship between the defendant and the victim. A jury convicted the defendant and I imposed the maximum sentence. The Court of Appeals affirmed. 846 N.E.2d 372 (Table) (Ind. Ct. App. 2006).

The prosecutor was Ellen Corcella, 155 E. Market St. Suite 800, Indianapolis, IN 46204-0000; 317-634-0700. Defense counsel was Diane Black (formerly Abel), 151 N. Delaware Street, Suite 200, Indianapolis, IN 46220; 317-327-2867.

7. *State v. Payne*, 49G06-0207-FA-199217, (Marion Super. Ct. 2003). The defendant in this case was charged with multiple counts of child molesting after abusing his daughter when she was 6-8 years old. He threatened his wife during an unrelated court proceeding and made a threat to court staff, so I ordered extra security measures during the course of the trial. I admitted out-of-court statements made by the victim; she and her mother also testified against defendant. The jury convicted him, and I sentenced him to 168 years. The Court of Appeals affirmed. 817 N.E.2d 701 (Table) (Ind. Ct. App. 2004).

The prosecutor was Adrienne Meiring, Division of State Court Administration, 30 S. Meridian St., Suite 500, Indianapolis, IN 46204; 317-232-4706. Defense counsel was Laura Pitts, 151 N. Delaware Street, Suite 200, Indianapolis, IN 46220; 317-327-5811.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00627 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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8. *State v. Wise*, 49G06-9403-CF-023557 (Marion Super. Ct. 1998). I presided over this two-week jury trial where defendant was charged with murder and Class A felony arson (resulting in death) for setting fire to his infant son's bedroom. The admission of expert testimony was hotly contested and I excluded certain evidence offered by the defense as double hearsay. The jury convicted and I imposed the maximum sentence. On appeal, the Indiana Supreme Court reduced the arson conviction to a B felony and reduced the sentence accordingly. 719 N.E.2d 1192 (Ind. 1999).

The prosecutor was Dianne Marger Moore, 44 N. Main Street, Jasper, GA 30143; 706-253-3060. Defense counsel was Jennifer Lukemeyer, Voyles Zahn Paul Hogan & Merriman,141 East Washington Street, Suite 300, Indianapolis, IN 46204; 317-632-4463.

9. *State v. Albrecht*, 49G06-9706-MR-80729 (Marion Super. Ct. 1998). Defendant in this two-week jury trial was charged with murdering his estranged wife. Although there was no physical evidence linking defendant to the crime, prosecutors presented substantial circumstantial evidence, including multiple witnesses who testified about defendant's inquiries into murder-for-hire. In addition, defendant originally claimed an alibi, but the alibi witness changed his story and I allowed him to so testify over defendant's objections. Early in the case defendant sought bail, which is granted in murder cases in Indiana only where the evidence is weak; I denied it. Among other key evidentiary rulings, I allowed an FBI agent to testify about a statement he took from defendant's ex-wife even though the agent had lost his notes. The jury convicted and I imposed the maximum sentence. The conviction was affirmed by the Indiana Supreme Court, 737 N.E.2d 719 (Ind. 2000).

The prosecutor was Larry Sells, retired from practice, 317-669-7029. Defense counsel was Richard Kammen, Gilroy Kammen & Hill, One Indiana Square, Suite 150, Indianapolis, IN 46204; 317- 236-0400.

10. *State v. Walton*, 49G06-9508-CF-112808 (Marion Super. Ct. 1996). Defendant was an Indianapolis police officer charged with rape. I made multiple important evidentiary rulings including admitting two prior false accusations of rape made by the alleged victim, finding their admission was required by the Sixth Amendment of the United States Constitution. I also excluded evidence of several specific instances of the alleged victim's dishonesty. Defendant was acquitted. Pre- and post-trial publicity was significant and the elected prosecutor publicly criticized the evidentiary ruling. The State appealed the ruling as a reserved question of law. The Indiana Supreme Court affirmed my ruling that the Sixth Amendment's confrontation clause compelled admission of the evidence. 715 N.E.2d 824 (Ind. 1999).

The prosecutor was Lisa Borges, (now judge) Marion Superior Court, 200 E. Washington St., Suite E-450, Indianapolis, IN 46204; 317-327-3229. Defense

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00628 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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counsel was David R. Hennessy, 424 East Wabash Street, Indianapolis, IN 46204; 317-636-6160.

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. *Nixon v. Haag*, 1:08-cv-648, 2009 WL 2026343 (S.D. Ind. July 7, 2009).

Plaintiff's counsel was Jeffrey T. Oberman, Levin & Oberman, 361 North Canon Dr., Beverly Hills, CA 90210-4704; 310-241-4590. Defendants' counsel were Matthew D. Bruno, Kightlinger & Gray, 151 N. Delaware St., #600, Indianapolis, IN 46204; 317-638-4521; Raymond T. Seach, Riley Bennett & Egloff, 141 E. Washington St., #400, Indianapolis, IN 46204; 317-636-8000; and Mark S. Fryman, Starr Austen & Miller, 201 S. Third St., Logansport, IN 46947; 574-722-6676.

2. *Flomo v. Bridgestone Americas Holding, Inc.*, 1:06-cv-00627, 2009 WL 1456736 (S.D. Ind. May 20, 2009).

Plaintiffs' counsel was Terrence P. Collingsworth, Conrad & Sherer, 731 8th St. SE, Washington, DC, 20003; 202-543-4001. Defendants' counsel was Robert A. Mittlestaedt, Jones Day, 555 California St., 26th Floor, San Francisco, CA 94104; 415-875-5710.

3. *Hughes v. CUNA Mutual Group*, 1:08-cv-101, 257 F.R.D. 176 (S.D. Ind. 2009).

Plaintiff's counsel was Bridget L. O'Ryan, O'Ryan Law Firm, 8900 Keystone Crossing, #520, Indianapolis, IN 46240; 317-705-9955. Defendant's counsel was Daniel Keenan Ryan, Hinshaw & Culbertson, 222 N. LaSalle St., #300, Chicago, IL 60601; 312-704-3248.

4. *Allstate Ins. Co. v. Landon*, 1:08-cv-22, 2009 WL 899663 (S.D. Ind. Mar. 30, 2009).

Plaintiff's counsel was Patrick J. Dietrick, Collignon Dietrick, 310 North Alabama St., #250, Indianapolis, IN 46204; 317-637-1000. Defendants' counsel was Anthony W. Patterson, Parr Richey Obremskey Frandsen & Patterson, 225 West Main St., P.O. Box 668, Lebanon, IN 46052; 765-482-0110.

5. *1100 West, LLC v. Red Spot Paint & Varnish Co.*, 1:05-cv-1670 (S.D. Ind. Apr. 22, 2009).

Plaintiff's counsel was Thomas Barnard, Taft Stettinius & Hollister, One Indiana Square, #3500, Indianapolis, IN 46204; 317-713-3500. Defendant's counsel was

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00629 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Adam Arceneaux, Ice Miller, One America Square, P.O. Box 82001, Indianapolis, IN 46204; 317-236-2137.

6. *Murray v. Conseco, Inc.*, 1:03-cv-1701, 2008 WL 5635955 (S.D. Ind. Nov. 5, 2008), *objections sustained in part by* 2009 WL 363803 (S.D. Ind. Feb. 6, 2009).

Plaintiffs' counsel was Ron Waicukauski, Price Waicukauski & Riley, 301 Massachusetts Ave., Indianapolis, IN 46204; 317- 633-8787. Defendant's counsel was Justin Barker, Kirkland & Ellis, 300 N. LaSalle, Chicago, IL 60654; 312-861-2166.

7. *G4S Justice Services, Inc. v. Correctional Program Services, Inc.*, 1:07-cv-0945 (S.D. Ind. July 16, 2008), *adopted by* 2008 WL 4099013 (Aug. 21, 2008).

Plaintiff's counsel was Richard Darke, Duane Morris, 190 South LaSalle Street, #3700, Chicago, IL 60603; 317-499-6743. Defendants' counsel was John J. Tanner, Baker & Daniels, 300 N. Meridian St., #2700, Indianapolis, IN 46204; 317-237-1251.

8. *Lineback v. Frye Electronic, Inc.*, 1:07-cv-00984 (S.D. Ind. Nov. 19, 2007), *adopted by* 539 F. Supp. 2d 1111 (S.D. Ind. 2008).

Plaintiffs' counsel was Kimberly R. Sorg-Graves, National Labor Relations Board, 575 N. Pennsylvania St., #238, Indianapolis, IN 46204; 317-226-7546. Defendant's counsel was Michael Einterz, Einterz & Einterz, 5455 West 86th Street, #215, Indianapolis, IN 46268; 317-337-2021.

9. *State v. Reeves*, 49G06-0312-FB-222807 (Marion Super. Ct. May 25, 2005).

The prosecutor was Noah Schafer, 251 E. Ohio Suite 160, Indianapolis, IN 46204; 317-327-5367. Defendant's counsel was Jeffrey Baldwin, Baldwin, Dakich & Maxwell, 151 N. Delaware St., Suite 1950, Indianapolis, IN 46204; 317-636-4529.

10. *State v. Albrecht*, 49G06-9706-CF-080729 (Marion Super. Ct. Dec. 30, 1998).

The prosecutor was Larry Sells, now retired from service, 317-669-7029. Defendant's counsel was Richard Kammen, Gilroy Kammen & Hill, One Indiana Square, Suite 150, Indianapolis, IN 46204; 317-236-0400.

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

None to my knowledge.

f. Provide a brief summary of and citations for all opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00630 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

Murray v. Conseco, Inc., No. 1:03-cv-1701, 2009 U.S. Dist. LEXIS 9030 (S.D. Ind. Feb. 9, 2009). The district court adopted my report and recommendations on a sanctions motion, though terming it a partial adoption because it supplemented the report by reducing attorneys' fees sought by the prevailing party.

Tom Wood Pontiac-GMS, Inc. v. Shepard, 1:06-CV-01682, slip op. (S.D. Ind. April 4, 2007). I declined to quash a state court interrogatory by which the Clerk of the District Court would have reported whether our Court was holding any money belonging to the state court defendant that could have been used to satisfy a judgment. The district judge reversed on federal sovereign immunity grounds.

Smith v. State, No. 49A02-0612-CR-1111, slip op. (Ind. Ct. App. Nov. 20, 2007). Following a bench trial, I entered a conviction on auto theft and other charges. The Court of Appeals reversed finding insufficient evidence on the issue of whether defendant's exercise of control of the stolen vehicle was authorized.

Hill v. State, 875 N.E.2d 825 (table), 2007 WL 3072426 (Ind. Ct. App. 2007). I presided over a jury trial in which defendant was convicted of attempted sexual misconduct with a minor. The Court of Appeals reversed because the statute required the victim to be between 14 and 16 years old and, even though the case was an attempt crime, the Court found that it was impossible for the defendant to commit the crime because the victim was actually only 13.

Darst v. State, 861 N.E.2d 389 (table), 2007 WL 403896 (Ind. Ct. App. 2007). I granted permission for a belated appeal of a sentence by a criminal defendant. In so doing, I relied on his uncontested representation as to the advice of rights given at his guilty plea. The Court of Appeals reversed on review of the transcript, finding that the defendant had been properly advised of his rights.

Dixson v. State, 860 N.E.2d 930 (table), 2007 WL 188975 (Ind. Ct. App. 2007). The Court of Appeals remanded this criminal case for clarification of the judgment based on problems with how it had been entered in the case management system.

Gardner v. State, 859 N.E.2d 393 (table), 2006 WL 3803375 (Ind. Ct. App. 2006). After a bench trial, I convicted a woman for child neglect and aiding in child molesting and exploitation. Although she knew he had previously molested her six-year-old daughter, defendant left her husband alone with that victim and two other children. His abuse continued. The Court of Appeals reversed the aiding convictions, finding that the evidence was insufficient.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00631 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Ransom v. State, 850 N.E.2d 491, (Ind. Ct. App. 2006).
I presided over a jury trial in which defendant was convicted of battery and criminal confinement. A divided panel of the Court of Appeals reversed the lesser charge of battery under Indiana's unique Double Jeopardy rule requiring a separate act of force for each conviction.

Biddinger v. State, 846 N.E.2d 271 (Ind. 2007), *affirming in part and vacating in part* 868 N.E.2d 407 (Ind. Ct. App. 2006). Following defendant's guilty plea to aggravated battery and consistent with settled law, I denied him permission to make a sentencing allocution without cross-examination. On appeal, the Indiana Supreme Court overruled its existing precedent, creating a right to such a statement following a guilty plea. In this case, the Court found my denial was harmless error. The Indiana Supreme Court also affirmed an intermediate appellate holding that it was error to find defendant's use of a large caliber weapon and hollow-point bullets as an aggravating factor. Nevertheless, my sentence was affirmed.

Wilson v. State, 865 N.E.2d 1024 (Ind. Ct. App. 2007). When defendant, following conviction, refused to cooperate with pre-sentence investigation, I precluded testimony about matters covered by such reports to prevent unfair surprise to the State. The Court of Appeals reversed on Due Process grounds.

Cooper v. State, No. 49A02-0504-CR-367, slip op. (Ind. Ct. App. June 15, 2006). I granted defendant leave to file a belated appeal. The Court of Appeals reversed finding the defendant failed to show the requisite diligence.

Young v. State, 834 N.E.2d 1015 (Ind. 2005). Defendant's sentence was revised based on *Blakely v. Washington,* 542 U.S. 296 (2004), which was decided while the case was pending on appeal.

Purvis v. State, 829 N.E.2d 572 (Ind. Ct. App. 2005). In this child molest case, I admitted out-of-court statements made by the child victim. The Court of Appeals found error consistent with *Crawford v. Washington*, recently decided by the Supreme Court of the United States. It found the error harmless, however, as the victim's statements were cumulative with other admissible evidence.

Marks v. State, No. 49A02-0310-CR-908, slip op. (Ind. Ct. App. June 21, 2005). This case was remanded for resentencing in light of *Blakely*.

Hairston v. State, No. 49A04-0405-PC-280, slip op. (Ind. Ct. App. Jan. 26, 2005). Defendant pled guilty to multiple counts, which implicated the sentencing limits of Indiana's unique "criminal episode" statute. My sentence found five episodes of criminal conduct, permitting consecutive sentences. The Court of Appeals remanded for resentencing finding only three episodes.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00632 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Aguilar v. State, 827 N.E.2d 31, (Ind. 2005), *reinstating* 811 N.E.2d. 476 (Ind. Ct. App. 2004). After the sentence I imposed was reversed on rehearing by the Court of Appeals pursuant to *Blakely*, the Indiana Supreme Court found that defendant had waived any *Blakely* objection and affirmed my sentence.

Morrison v. State, 824 N.E.2d 734 (Ind. Ct. App. 2005). Following a jury verdict, I entered convictions against defendant on four separate counts, but sentenced on only two. Under Indiana's unique Double Jeopardy rule, the Court of Appeals required that the record show no conviction for merged offenses, even where no additional sentence had been imposed. It remanded on this basis without changing the sentence.

Berry v. State, 819 N.E.2d 443 (Ind. Ct. App. 2004). In light of *Blakely* having been decided after sentencing, the Court of Appeals revisited the aggravating factors I found but arrived at the same sentence I originally imposed.

Collins v. State, 817 N.E.2d 230 (Ind. 2004), *vacating* 800 N.E.2d 609, 2003 WL 22966199 (Ind. Ct. App. 2003). I denied defendant post-conviction relief on the basis that his initial sentence was appropriate. I was affirmed by the Court of Appeals. The Indiana Supreme Court announced a new rule that the proper procedural vehicle for challenging a sentence after a plea was either a direct appeal or a belated appeal, but not a post-conviction petition.

Hatchett v. State, 794 N.E.2d 544 (Ind. Ct. App. 2003). Following sentencing for possession of a firearm as a serious violent felon, I denied defendant's motion to change his judgment to reflect double the actual days he spent in jail. The Court of Appeals held that the Department of Corrections should give him double credit time, but found the motion he filed procedurally improper and affirmed.

Rodriguez v. State, 785 N.E.2d 1169 (Ind. Ct. App. 2003). The defendant was convicted of operating a motor vehicle while intoxicated causing death. I imposed the maximum sentence of eight years. The Court of Appeals found error in several aggravating factors and reduced his sentence to three-and-a-half years.

Healthscript, Inc. v. State, 770 N.E.2d 810 (Ind. 2002), *vacating in part* 740 N.E.2d 562 (Ind. Ct. App. 2000). Following the denial of a motion to suppress and motion to dismiss in this Medicaid fraud case, the Court of Appeals affirmed. On transfer, the Indiana Supreme Court held that the statute with which the defendant was charged was unconstitutionally vague. It remanded for dismissal without prejudice.

Jones v. State, No. 49A04-0201-PC-7, slip op. (Ind. Ct. App. Aug. 14, 2002). I revoked defendant's probation for repeated violations. The Court of Appeals reversed with instructions to set the reasons for revocation in writing.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00633 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Crenshaw v. State, No. 49A02-0111-CR-756, slip op. (Ind. Ct. App. July 25, 2002). The abstract of judgment incorrectly described one of defendant's multiple convictions. The Court of Appeals remanded to correct the abstract without requiring re-sentencing.

Holland v. State, No. 49A04-0010-CR-429, slip op. (Ind. Ct. App. March 12, 2001). I denied defendant's suppression motion, finding a lawful *Terry*-stop, but permitted an interlocutory appeal. The Court of Appeals reversed.

Webber v. State, No. 49A02-009-CR-613, slip op. (Ind. Ct. App. Sept. 12, 2001). A jury convicted the defendant of reckless homicide. The Court of Appeals reversed, finding error in my jury instructions and in the admission of a crime scene photograph. Following remand, the defendant pled guilty as charged.

Ransom v. State, 741 N.E.2d 419 (Ind. Ct. App. 2000). I denied defendant's suppression motion in this handgun possession case, finding that an initial traffic stop was proper and that defendant's consent to vehicle search was voluntary. The Court of Appeals reversed, finding the initial stop unreasonable.

Creager v. State, 737 N.E.2d 771 (Ind. Ct. App. 2000). Defendant was convicted of involuntary manslaughter of a noncustodial divorced parent. As restitution, I ordered the defendant to make payments replacing the victim's child support obligations until the victim's children reached age of majority. The Court of Appeals partially reversed, limiting the restitution to lost child support payments only between the victim's death and the date of sentencing.

Vanzandt v. State, 731 N.E.2d 450 (Ind. Ct. App. 2000). I presided over a jury trial in which defendant was convicted on multiple counts including robbery and criminal confinement. The Court of Appeals reversed a confinement conviction under Indiana's unique Double Jeopardy rule requiring a separate act of force for each conviction.

Ruffin v. State, 725 N.E.2d 412 (Ind. 2000). I imposed concurrent sentences following defendant's conviction for felony-murder and reckless homicide. The Court of Appeals reversed the reckless homicide conviction under Indiana's unique Double Jeopardy rule. The sentence was not affected.

Snyder v. State, No. 49A02-9904-CR-239, slip op. (Ind. Ct. App. Apr. 26, 2000). At defendant's jury trial, I admitted photos that were redacted mug shots. The Court of Appeals found the admission to be error, but harmless.

Balls v. State, 725 N.E.2d 450 (Ind. Ct. App. 2000). After a bench trial, I found defendant guilty of welfare fraud and theft. Under Indiana's unique Double Jeopardy rule, the Court of Appeals required that the record show no conviction for merged offenses, even where no additional sentence had been imposed. It remanded for this purpose without any change to the sentence.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00634 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Wise v. State, 719 N.E.2d 1192 (Ind. 1999). The Indiana Supreme Court reduced a Class A felony conviction to a Class B based on a new Indiana Double Jeopardy rule announced while the appeal was pending.

Williams v. State, 714 N.E.2d 644 (Ind. 1999). Defendant appealed my denial of permission to call a surprise witness on the second-to-last-day of a jury trial. I found the addition would trigger need for a continuance and compromise a juror's travel plans. The Indiana Supreme Court held that a continuance should have been granted and an alternate juror seated if necessary. Nonetheless, because of DNA and other evidence, it held that any error was harmless.

Russell v. State, 711 N.E.2d 545 (Ind. Ct. App. 1999). A divided panel of the Court of Appeals vacated a Class C felony, letting stand a Class A felony, based on an evolving reading of the State's Double Jeopardy Clause by which it was deemed impermissible to apply the same element (death) to two counts.

State v. Winters, 678 N.E.2d 405 (Ind. Ct. App. 1997). I granted post-conviction relief because of an improper response by a court bailiff to a jury question. The Court of Appeals reversed, finding the error was not fundamental.

McClain v. State, 678 N.E.2d 104 (Ind. 1997). As a matter of first impression, the Indiana Supreme Court held that a defendant could raise a claim of sleep deprivation as a defense without invoking the procedures required under Indiana's "mental disease or defect" statute.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the matter in which those unpublished opinions are filed and/or stored.

I have never designated opinions as published or unpublished. As a United States Magistrate Judge, all of my orders and opinions are entered and accessible to the public by the Court's CM/ECF system. When I sat as a judge of the Marion Superior Court, most of my rulings were issued orally from the bench. On the occasions I did write opinions, they were distributed to the parties and placed in the court file, which is a public record.

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.

Ogden v. Cutter, 2009 WL 2413806, (S.D. Ind. 2009) (on appeal)
Turner v. Lamar, 1:08-cv-63, slip op. (S.D. Ind. May 29, 2009)
State v. Reeves, 49G06-0312-FB-222807, slip op. (Marion Super. Ct. May 25, 2005)
State v. Arnold, 49G06-0306-FB-107349, slip op. (Marion Super. Ct., Apr. 7, 2004)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00635 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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, 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; and

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.

Our court does have an automatic recusal system. I have provided the District Court Clerk's office a list of parties or attorneys from whose cases I will recuse. Those cases are not assigned to me. My list includes any entity that is reflected on my financial disclosure form, my husband's employer, my siblings' and father's employers and close personal friends. During the first few years of my tenure as a magistrate judge I have also recused from cases where a colleague from the Marion Superior Court or the Court itself is sued. Consistent with federal recusal statutes and the Code of Conduct for United States Judges, I recuse in any case where my impartiality can reasonably be questioned. I have declined recusal where a defendant has claimed merely that prior adverse judicial rulings amount to prejudice against the defendant.

I recused sua sponte in the following cases:

Erie Ins. Co. v. Assurant Specialty Prop., No. 1:09-cv-1163 (S.D. Ind. 2009) (counsel was former member of my former firm)
Gamble v. Wright, No. 1:09-cv-306 (S. D. Ind. 2009) (plaintiff had been a defendant in my former court and my former court reporter was a possible witness)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00636 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Coleman v. Cumberland Police Dep't, No. 1:09-CV-734 (S.D. Ind. 2009) (a party was a relative of a member of my chambers staff)
Treacy v. Indiana, No. 1:09-cv-516 (S.D. Ind. 2009) (former judicial colleague was a named defendant)
Sherman & Reilly, Inc. v. Accu-Grade, Inc., No. 1:09-cv-449 (S.D. Ind. 2009) (my husband banks with one of the defendants)
Marion County Superior Court v. Kareem Ibn Mikael-El, No. 1:08-cv-1403 (S.D. Ind. 2009) (my former court was named as defendant captions filed in error by pro se plaintiff)
Morris v. Hertz Corp, No. 1:07-cv-1064 (S.D. Ind. 2008) (my father works for the defendant)
Dellantonio v. City of Indianapolis, No. 1:08-cv-780 (S.D. Ind. 2008) (I am personally acquainted with one of the plaintiffs)
Flick v. Gonzales, No. 1:08-cv-461 (S.D. Ind. 2008) (a former judicial colleague was named as a defendant)
Dean v. Indiana Risk Mgmt. Div., No. 1:08-cv-165 (S.D. Ind. 2008) (former judicial colleagues were named as defendants)
Kamau v. Pratt, No. 1:07-cv-1400 (S.D. Ind. 2007) (a former judicial colleague was named as a defendant)
Muzquiz v. Hanks, No. 1:07-cv-1080 (S.D. Ind. 2007) (I served as judge for the underlying state criminal case)
United States v. City of Indianapolis, No. 1:78-cv-388 (S.D. Ind. 2007) (a close personal friend was named as a defendant)
Paulet v. Superintendent, No. 1:07-cv-782 (S.D. Ind. 2007) (I served as judge for the underlying state criminal case)
Guyinn v. Wynkoop, No. 1:07-cv-541 (S.D. Ind. 2007) (former judicial colleagues were named as defendants)
Wyser v. Merck & Co., No. 1:07-cv-359 (S.D. Ind. 2007) (I am personally acquainted with the plaintiff)
State v. Huett, No. 06216569 (Marion Super. Ct. 2006) (I was personally acquainted with the victim)
State v. Clayton, No. 06072474 (Marion Super. Ct. 2006) (as a member of the court's executive committee, I had been involved in the investigation leading to charges against this former juvenile detention center employee)
State v. Campbell, No. 05072973 (Marion Super. Ct. 2006) (a bailiff in my court had worked with defendant and may have had personal knowledge of case)
State v. Allen, No. 05020627 (Marion Super. Ct. 2005) (a close personal friend was representing the defendant)
State v. Albrecht, No. 97080729 (Marion Super. Ct. 2004) (a close personal friend was representing the defendant on post-conviction relief)
State v. Hill, No. 0123282 (Marion Super .Ct. 2004) (I recused after referring the prosecutor's office to the Indiana Disciplinary Commission for failing to disclose DNA lab irregularities)
State v. Clanton, No. 01235161 (Marion Super. Ct. 2004) (I recused after referring the prosecutor's office to the Indiana Disciplinary Commission for failing to disclose DNA lab irregularities)

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State v. Johnsonbaugh, No. 03161380 (Marion Super. Ct. 2003) (defendant was the son of a lawyer with whom I had practiced)
State v. Schroeder, No. 02189466 (Marion Super. Ct. 2003) (I recused after the defendant charged the bench, threatening me)
State v. O'Bryant, No. 02141469 (Marion Super. Ct. 2003) (I recused after I requested personal protection from the Sheriff's Department following the defendant's erroneous release from jail)
State v. Ford, No. 9514699 (Marion Super. Ct. 2003) (a close personal friend was designated as an expert witness in post-conviction hearing)
State v. Howard, No. 02145570 (Marion Super. Ct. 2002) (victim's mother was a personal acquaintance)
State v. Ross, No. 02241065 (Marion Super. Ct. 2002) (I was professionally acquainted with the brother of the victims)
State v. Veal, No. 98078282 (Marion Super. Ct. 1999) (the presiding judge of our court transferred this case as part of a docket reassignment at my request)
State v. Powell, No. 97183028 (Marion Super. Ct. 1999) (the presiding judge of our court transferred this case as part of a docket reassignment at my request)
State v. Highbaugh, No. 98183229 (Marion Super. Ct. 1999) (the presiding judge of our court transferred this case as part of a docket reassignment at my request)

A party moved for my recusal in the following cases, which I granted except in one instance noted:

Roach v. Buss, No. 1:05-cv-1810 (S.D. Ind. 2007) (I served as judge on the underlying state criminal case of this habeas petition)
Kirk v. Gregory, No. 1:05-cv-1681 (S.D. Ind. 2007) (I served as judge on the underlying state criminal case of this habeas petition)
State v. Long, No. 05028171 (Marion Super. Ct. 2006) (I recused from post-conviction review of my own sentence pursuant to Ind. Rule PC-1 § 4(b))
State v. Carbonaro, No. 0311717 (Marion Super. Ct. 2005) (I had found defendant guilty after a bench trial; when I granted her pre-sentencing challenge to effectiveness of jury waiver, I recused)
State v. Wakefield, No. 04161906 (Marion Super. Ct. 2005) (I recused from post-conviction review of my own sentence pursuant to Ind. Rule PC-1 § 4(b))
State v. Hull, No. 00193048 (Marion Super. Ct. 2002) (I recused based on having commented on evidence in a co-defendant's sentencing; although recusal was not required under *Sturgeon*, see below, I granted the transfer when the State withdrew initial opposition to defendant's motion)
State v. Sturgeon, No. 950315113 (Marion Super. Ct. 1998) (motion denied) (defendant sought a change of judge based on my having presided over the jury trial of a co-defendant and commented on the evidence at her sentencing; the Indiana Supreme Court affirmed my decision not to recuse)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00638 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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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, 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 public office other than judicial offices. I have not had unsuccessful candidacies for elective office. I was among three finalists formally nominated by the Indiana Judicial Nominating Commission for a vacancy on the Indiana Court of Appeals in 1998, but was not selected by the Governor. I have had no other unsuccessful nominations.

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.

Magnus-Stinson for Judge Committee, Candidate, 1995-96 and 2001-2002. The committee supported my candidacy Marion Superior Court Judge in 1996 and 2002. I was responsible for all aspects of the campaigns except fundraising. The Committee was dissolved prior to my becoming a Federal Magistrate Judge.

Evan Bayh for Governor, Volunteer (research), 1991-1992

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;

I have not served as 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; and

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00639 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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1991-1995
Office of Governor Evan Bayh
State of Indiana
Room 206 State House
Indianapolis, Indiana 46204
Deputy Chief of Staff (1994-1995)
Counsel to Governor (1991-1995)
Executive Assistant (1991)

1983-1990
Lewis, Bowman, St. Clair and Wagner
(now Lewis Wagner)
501 Indiana Avenue, Suite 200
Indianapolis, Indiana 46202
Associate (1983-1990)

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 while practicing law.

b. Describe:

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

I was in private practice as a civil litigator from 1983 through 1990. Subsequently, from 1991 until my initial appointment to the bench in 1995, I provided counsel to Governor Bayh and state agency heads on interpretations of the Indiana legislative and administrative codes and other issues. I also managed major litigation for the Governor, the State and its agencies.

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

The focus of my private practice was insurance defense work and my typical clients were insurance companies' insureds and agents. I engaged in a range of other representations from commercial litigation to domestic relations. Subsequently, I was counsel to Governor Evan Bayh, who was my primary client in that capacity.

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

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00640 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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frequency of your appearances in court varied, describe such variance, providing dates.

My private practice (1983-1990) was almost exclusively in litigation and I appeared in court frequently. As counsel to Governor Bayh, I supervised litigation but did not myself appear in court.

i. Indicate the percentage of your practice in:
   1. federal courts: 5%
   2. state courts of record: 95%
   3. other courts:
   4. administrative agencies:

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.

I tried approximately 30 cases to verdict, judgment, or final decision (approximately 15 as sole counsel, 5 as chief counsel, and 10 as associate counsel).

i. What percentage of these trials were:
   1. jury: 65%
   2. non-jury: 35%

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;

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00641 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual names, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *Gov't Suppliers Consolidating Services, Inc. v. Bayh*, IP91-C-0899-M/G, Southern District of Indiana 1991-1992, Hon. Larry J. McKinney. As counsel to the Governor, I worked closely with outside trial counsel to develop litigation strategy in defense of Governor Bayh and Indiana laws regulating the importing of out-of-state trash and the back-hauling of goods other than municipal waste in the same vehicles. Plaintiffs asserted a dormant Commerce Clause challenge and sought a preliminary injunction against enforcement of the laws. Judge McKinney denied the injunction and, after a bench trial, ruled the laws were not unconstitutional. The Court of Appeals eventually reversed most of his decision. 975 F.2d 1267 (7th Cir. 1992).

The State's lead counsel was (now Judge) David F. Hamilton, U.S. Court of Appeals for the Seventh Circuit, 46 E. Ohio St., Indianapolis, IN 46204; 317-229-3640. Opposing counsel was Ron Waicukauski, Price & Waicukauski, 301 Massachusetts Ave., Indianapolis, IN 46204; 317-633-8787.

2. *Lake Central School Corp. v. State*, Newton (Indiana) Circuit Court 1991-93, Cause No. 56C018703CP801, Hon. Paul Mathias (special judge). A coalition of more than 50 Indiana school districts filed this class action challenge to Indiana's school funding formula. Outside counsel defended the case, working closely with me as counsel to the Governor on trial and defense strategy. After two years of litigation, the Governor forged a settlement and the case was dismissed.

The state's lead counsel was Rob MacGill, 11 South Meridian Street, Indianapolis, IN 46204; 317-638-1313. Class counsel was Steven Crist, 9245 Calumet Avenue, Suite 200, Munster, IN 46321; 219-836-0200.

3. *Tioga Pines Living Ctr. v. State Bd. of Public Welfare*, Cause No. 30C01-9002-CP-00125, Hancock (Indiana) Circuit Court 1991-95, Hon. Ronald L. Gottschalk. This case was a class action lawsuit filed against the State welfare department by the nursing home industry. Plaintiffs challenged the reimbursement rates for nursing home care provided to indigent Medicaid recipients. Governor Bayh entrusted me with primary supervision of outside counsel, whose trial and appellate work I reviewed and approved before submission. Although a judgment in excess of $100 million was entered against the State at the trial level, the Indiana Supreme Court reversed. 622 N.E.2d 935 (Ind. 1993).

State's lead counsel was Mark H. Lynch, Covington & Burling LLP, 1201 Pennsylvania Avenue, NW, Washington, DC 20004; 202-662-5544. The State was also represented by Deputy Attorney General Gordon White, 219 Statehouse,

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00642 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Indianapolis, IN 46204; 317-232-6307. Plaintiffs' counsel was David McNamar, 2780 Waterfront Parkway, East Drive, Indianapolis, IN 46214; 317-299-0160.

4. *Ferguson v. Modern Farm Sys.*, Clinton (Indiana) Circuit Court 1985-90, Cause No. 85-160, Hon. Jack O'Neill. As associate counsel, I represented one of several co-defendants sued in a negligence and products liability action. The plaintiff fell from a ladder affixed to a grain bin and was rendered a quadriplegic. Plaintiff's deposition established the obvious risks—and plaintiff's awareness of them—of the circumstances of his climb. In addition to the complexities of any serious bodily injury case, this suit raised a novel legal question about the applicable statute of limitations. I had primary responsibility for drafting the summary judgment motion, which the trial court granted, and for defending that decision on appeal. The Court of Appeals affirmed. 555 N.E.2d 1379 (Ind. Ct. App. 1990).

Opposing counsel Jeffrey A. Boyll, 333 Ohio Street, PO Box 800, Terre Haute, IN 47808-0800; 812-232-4311.

5. *Hill v. R.L. Longardner and Assocs.*, Marion (Indiana) Superior Court during the mid 1980's, Hon Betty J. Barteau. I was lead counsel in this personal injury case, representing the plaintiff, who was seriously injured in an automobile accident. The defendant's employee negligently caused the accident, but had the minimal allowable insurance, which did not even cover my client's medical expenses. Thus, we sued the driver's employer, which denied any responsibility, claiming the employee had been acting outside the scope of her employment at the time of the accident. The case presented several interesting issues. It settled favorably for my client just prior to trial.

Opposing counsel was Harvey McDonald, 9311 Muir Lane, Fishers, IN 47037-7960.

6. *Buchanan v. Grand Central Art Galleries, Inc.*, IP82-c-2296-D, Southern District of Indiana 1983-86, Hon. S. Hugh Dillin. Judge Buchanan (a then-sitting judge of the Indiana Court of Appeals) sued my client, an art gallery operated by the brother-in-law of another then-sitting judge on the Indiana Court of Appeals. Judge Buchanan purchased a painting from my client, which he sought to return several months later. My client refused, but as a courtesy attempted to resell it. That endeavor was unsuccessful in the midst of a collapse in the art market. Upset, the judge sued, claiming that my client had fraudulently misrepresented the value of the painting to him. The case was resolved on the morning of trial in a confidential settlement.

Opposing counsel was James (Jay) H. Ham, 300 N. Meridian Street, Suite 2700 Indianapolis, IN 46204; 317-237-1256

7. *Guffy v. Clinton Prairie School Corp.* (1983-84) Tippecanoe Circuit Court, Hon. Warren Thompson. A student sued my clients, the school corporation and

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00643 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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teacher, over injuries sustained while on a field trip. I prepared a proposed jury instruction based on an Indiana legal doctrine with scant case authority: the equal knowledge doctrine. The instruction was issued, we won a defense verdict, and successfully defended the instruction and verdict on appeal. 478 N.E.2d 1258 (Ind. Ct. App. 1985).

Opposing counsel Peter Obremskey, 225 West Main Street, PO Box 668, Lebanon, IN 46052; 765-482-0110, 317-269-2509.

8. *Ax v. Culley*, (mid-1980's) Marion (Indiana) Municipal Court, Hon. Richard Huston. Plaintiff was an attorney who sued my clients for fraud after they mistakenly stated that they owned the alarm system in the home she was purchasing from them. Although the home was equipped with an alarm system, the system was in fact owned by an alarm monitoring company. The defendant, an important client of our firm, felt his reputation for honesty was at stake in this case. The jury awarded verdict in our favor.

Opposing counsel was Janice Kreuscher, Chief Counsel, IndyGo Company 1501 W. Washington Street, Indianapolis, IN 46222; 317-635-2100.

9. *Erie Ins. v Relford* (1983), Hamilton Superior Court 1, Cause No. 1S83-158, Hon. Donald Foulke. I represented Erie Insurance in this declaratory judgment action against an insured plaintiff who alleged her home had been burglarized and filed a significant theft loss claim. Based on the results of a police investigation, Erie denied coverage and brought this action. The insured counterclaimed for coverage and bad faith. The jury found for our client.

Opposing counsel was Charles Gleason, 114 Delespine St., Melborne Beach, FL 32951; 407-676-2399.

10. *Woodall v. Citizens Banking Co.*, Tipton (Indiana) Circuit Court Cause No. 80-C-279,1985-87, Hon. Richard Pearce, Hon. Dane Nash. Plaintiffs obtained a construction loan from my client bank. The bank disbursed funds on certification of completion of work. After disputes arose during construction, plaintiffs refused to endorse checks payable to the contractor and architect. Mechanics liens were filed against the property and plaintiffs sued the bank asserting it owed them a duty to prevent the liens from being filed. As associate counsel for the bank, I was charged with writing several summary judgment motions, which the trial court granted and I successfully defended on appeal. 503 N.E.2d 427 (Ind. Ct. App.), *aff'd on reh'g*, 507 N.E.2d 999 (Ind. Ct. App. 1987).

Opposing counsel James E. Freeman Jr., 1001 Jackson, Anderson, IN 46016; 765-643-5441.

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

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00644 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.)

As counsel to the Governor, my legal practice was as varied as the number of agencies in state government. I provided direct legal advice to Governor Evan Bayh and his staff, primarily in areas of legislative and administrative code interpretation. I managed major litigation against the Governor, the State or its agencies, particularly in cases where private counsel was representing the state instead of or in addition to the Attorney General's office. This function included consultation with lead counsel on trial strategy, review of draft pleadings and briefs, and provision of settlement authority. As the Governor's designee for authorizing tort claim settlements negotiated by the Attorney General, I collaborated with the Attorney General's staff to determine the appropriate settlement value, if any, of claims against State entities. I conducted the preliminary screening process to assist the Governor in making appointments to fill judicial vacancies, and more than 40 State judges were appointed during my tenure as counsel. I was also asked by Governor Bayh to manage the negotiation of the first collective bargaining agreements with state employee unions in the history of state government. During the legislative session, I coordinated review of all enacted legislation by the Budget Agency, volunteer outside counsel, and the Governor's staff, with ultimate responsibility for recommending whether the Governor sign the legislation. I served as the Governor's liaison to the Judiciary, the State Ethics Commission, the Office of the Attorney General, the Department of Insurance, the Alcoholic Beverage Commission, and the Hoosier Lottery. I also served as the Governor's designee to the Indiana Code Revision Commission, the Indiana Women's Commission, and the Indiana Sexual Harassment Task Force.

While on the Marion Superior Court as supervising judge of adult probation, I oversaw the creation of programming in the areas of education and employment designed to assist offenders with their re-entry into society. Knowing the value of mentoring from my tenure with the Big Sisters program, I encouraged the creation of a mentoring program for young offenders who often have no positive role models. This program is now more than eight years old and is operated out of several faith-based locations throughout the city.

As Chair of the Indiana Judges Association Criminal Pattern Jury Instructions Committee, I led a group of dedicated judges from throughout Indiana in a complete revision of the Indiana Criminal Pattern Jury Instructions. After discussing the idea of a "plain language" rewrite of the pattern instructions with Indiana Chief Justice Randall Shepard, and with his support, our committee worked for more than three years to simplify and clarify the language in the pattern instructions. The revised instructions were first published in 2003.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00645 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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As chair of the Pro Bono Standing Committee of the Indianapolis Bar Association (IBA) from 2004 to 2006, I sought to expand the Committee's already-successful pro bono offerings to include new practice areas, such as legal assistance to criminal case witnesses, guardians, hospice patients, and the indigent elderly.

As co-chair of the Indianapolis Bar Association's Professionalism Committee, I worked with a dedicated group of lawyers and judges to rewrite the IBA's Tenets of Professionalism, which had not been revised since the 1980s. We drafted new Standards of Professionalism, which were approved by the IBA Board in 2007. The Standards reflect the need for maintaining the highest ethical conduct, civility in the practice of law and community involvement by the practicing bar.

Although I have testified and liaised with the Indiana General Assembly in my official government capacities, I have never performed lobbying activities for any private client.

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 was adjunct faculty at the Indiana University School of Law (Indianapolis) for its Trial Practice Course from 1988-1995 and 1999-2000. I was a small-group instructor as part of a larger course. I have not retained a syllabus.

I taught criminal procedure at bar review courses from 1995 to 2001. Throughout my legal career, and especially since becoming a judge, I have frequently lectured at continuing education seminars for lawyers and judges and at trial advocacy trainings.

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 a vested defined benefit pension in the Indiana Judges Retirement Fund, with an earliest possible pay date of 2020, at which time the annual benefit would be $56,000.

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 if I am confirmed to be a district judge. While I would always put court work first, I hope to continue to teach legal courses and seminars, as appropriate, from time to time.

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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.

       If confirmed, I would recuse from any petition for review of a conviction for which I entered judgment while serving on the Marion Superior Court. In addition, there are a handful of attorneys who practice before the District Court who are close personal friends. I would address cases where those attorneys appeared by disclosing such relationships at a minimum and, where appropriate, through recusal. I would continue to carefully monitor ordinary conflicts, such as those arising from mutual fund investments, as I have throughout my service as United States Magistrate Judge.

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

       If confirmed, as throughout my service as United States Magistrate Judge, I would consult the Federal recusal statutes and the Code of Conduct for United States Judges to assist me in identifying and, where necessary, resolving or avoiding, any conflicts. I also would seek the advice of my colleagues and of the Judicial Conference as needed.

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 United States Magistrate Judge, I am not permitted to represent clients, pro bono or otherwise. I have, however, taken leadership roles such as in the IBA Pro Bono Standing

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00647 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Committee and as sponsor of our District Court's new pro bono/pro se mediation initiative. While in private practice, I represented several indigent clients for a reduced fee or no fee, depending on need.

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.

There is no selection committee in Indiana at present. In November 2008, I contacted Senator Evan Bayh to express my interest in the vacancy arising from Judge Larry J. McKinney's announced assumption of senior status. Senator Bayh called me on April 29, 2009, to advise that he planned to forward my name to the White House for consideration. Since August 2009, I have been in contact with pre-nomination officials from the Department of Justice. On October 6, 2009, I interviewed at the Department of Justice with attorneys from the Department and from the Office of White House Counsel. My nomination was submitted to the United States Senate on January 20, 2010.

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.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00648 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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FINANCIAL STATEMENT

Jane Magnus-Stinson

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		86	796	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		118	372
Real estate owned-add schedule		279	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		100	000				
Cash value-life insurance							
Other assets itemize:							
See attached Schedule		460	961				
				Total liabilities		118	372
				Net Worth		808	385
Total Assets		926	757	Total liabilities and net worth		926	757
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you a defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Other Assets	
The State of Indiana Public Employee Deferred Compensation Plan 1	
-457 Plan Indiana Stable Value Fund	$ 83,910
-401(a) Plan Indiana Stable Value Fund	3,789
Vanguard 500 Index Fund	5,120
Settlers Life IRA	66,378
Regions Bank IRA	21,447
The State of Indiana Public Employee Deferred Compensation Plan 2	
-457 Plan Indiana Stable Value Fund	75,077
-401(a) Plan Indiana Stable Value Fund	2,609
Indiana Public Employees Retirement Fund	
-Guaranteed Fund	50,186
-Barclays Capital Aggregate Bond Fund	19,526
Paul I. Cripe Deferred Compensation Alliance Benefit Group	
-Rainier Balanced Portfolio	7,188
-PIMCO Total Return Fund	7,271
Van Kampen Equity IRA 1	9,375
Van Kampen Equity IRA 2	9,345
College Choice 529 Savings Plans	
- PIMCO Total Return Fund	10,653
- Black Rock Large Cap Value Fund	4,284
- T Rowe Price Large Cap Growth Portfolio Class C	2,374
- Columbia Acorn Portfolio Class C	5,301
CERES California Unified School Dist. Bond	15,708
IN Fin. Authority Health Sys, Rev. Sisters St. Francis Health	9,805
Thrift Savings Plan	
-L 2020	30,542
-G Fund	21,073
Total Other Assets	$ 460,961
Real Estate Owned	
Personal residence	$ 279,000
Real Estate Mortgages Payable	
Personal residence	$ 118,372

AFFIDAVIT

I, Jane E. Magnus-Stinson, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

1-18-10
(DATE)

Jane E Magnus-Stinson
(NAME)

Kari L Lukasik
Notary Public Seal State of Indiana
Marion County
My Commission Expires 01/25/2013

Kari L. Lukasik
(NOTARY)

Senator KLOBUCHAR. Very good. So, that's how we build relations on the Federal bench. Very good. I thought I'd start out by asking the four of you who have served as judges just if you could comment about how your judicial experience has changed your view of the role of a judge and what you expect, really, to be the biggest difference between your role as a judge now and being elevated to the Federal District Court.

Maybe we'll start with you, Judge Magnus-Stinson.

Judge MAGNUS-STINSON. Thank you, Senator. I believe that the experience I've had, nearly 15 years now as a judge, has prepared me to understand that the role of a judge is one of a learning process. You learn something new every day, not only about the law, but about the excellent preparation of cases, about witnesses, about credibility, and about the hard work that goes into being a judge.

I consider the position of being a judge to be one of absolute public trust. Since I'm fortunate enough to serve as a magistrate judge at this time, I know I could continue in public service, at least for the next five years during my term. It is my commitment to public service that brings me here and I look forward, if confirmed, to continuing, perhaps in a more full role, of public service as an Article 3 judge.

Thank you.

Judge PRATT. Thank you, Senator. I believe the main thing I've learned from my 13 years as a trial judge is the fact that we do make very difficult decisions that have a huge impact, not only on the litigants, but also the entire community. I believe that it is important to prepare in advance for your cases, to listen carefully and clearly to the arguments of counsel, to research before you make decisions, to make sure that your decisions follow precedent and respect the doctrine of stare decisis.

I think one of the biggest transitions from State court to Federal court will be that I will have the benefit of law clerks. In the State court, we don't have law clerks. We do all of our own research. It's very important to be fair, impartial, and patient.

Senator KLOBUCHAR. Very good. I've never heard that answer before about the law clerks, but I think that's a very honest one. So, thank you.

Judge Koh.

Judge KOH. I believe the role of a judge is to be open-minded, not to prejudge any case, to apply the law fairly, to be prepared, to let people have their day in court, let them be heard, to treat them with respect and dignity.

One of the bigger differences that I think I'll see between being a State court judge and a Federal judge, if confirmed, is that as an Assistant U.S. Attorney I engaged in plea negotiations directly with counsel for the defendant and there was no involvement by the judge until we submitted the plea agreement to the court, whereas, in my current role as a State court judge, we have a very high volume, often over 500 cases a week.

The judge has a slightly different role. The ethical roles of judges are slightly different in that the parties often, in criminal cases, in State court will ask the judge to get involved in plea negotiations. So, that's a very different role in Federal court than in State court.

Senator KLOBUCHAR. Very good. Thank you.

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Judge Fleissig.

Judge FLEISSIG. Thank you, Madam Chairwoman.

I think the biggest surprise to me on taking the bench was what a tremendous challenge it is to do the job well every single day. It's a very, very difficult job, and you never know where the challenges are going to come from. They may come from procedural issues, they may come from encountering a substantive area that I've never dealt with before, or the lawyers sometimes present unique challenges for us as well.

It's also been a tremendous surprise to me how weighty the job has felt. It is a very awesome responsibility and it humbles me every single day, and every day I wake up and just hope that I am equal to the task that is expected of me. I didn't expect to feel that so intensely every day, even though that has been happening now. I've been honored to be a member of a—a working member of our Federal bench as a Federal magistrate judge for eight and a half years now. It is a tremendous, intelligent, hard-working, and dedicated bench and, if I am given the honor of being confirmed by the Senate, I would look forward to being able to play a more significant role on that bench and to help our court handle its caseload by playing my role.

Thank you.

Senator KLOBUCHAR. Thank you very much.

Ms. Navarro, you had a background that I think a lot about as being a former county attorney in Minnesota. You're the chief deputy district attorney for the Civil Division. I think not everyone realizes how much civil work goes on in the county attorney's office, that has both jurisdiction over criminal and civil, and you also have served as a public defender. Could you talk about how those experiences, you think, will make you a good judge and how they've shaped the work that you plan to do as a judge?

Ms. NAVARRO. I believe I do have a broad range of experience that I can bring to the bench. I have practiced both in criminal law and in civil law, both in State court and in Federal court, both representing plaintiffs and representing defendants, and both as a private practitioner, as well as a public servant.

Those experiences have given me the opportunity to appear in front of many different judges, with many different styles. I have also had an opportunity to become familiar with many different rules and procedures in different courts.

I am already familiar with the Federal rules of evidence, with the rules of criminal procedure in Federal court, the Federal rules of civil procedure, the sentencing guidelines, as well as the local rules. I think that having that broad range of experience definitely will build a solid foundation for a successful judicial career.

Senator KLOBUCHAR. Thank you very much. Appreciate that.

And then Mr. DeGuilio, our only man.

[Laughter.]

Senator KLOBUCHAR. You've broken the gender ceiling.

[Laughter.]

Senator KLOBUCHAR. Could you talk a little bit about your experience as a Federal prosecutor, is that correct?

Mr. DEGUILIO. Yes. Yes.

Senator KLOBUCHAR. And how you think that's going to shape your judicial philosophy or the work that you do on the bench.

Mr. DEGUILIO. Thank you, Madam Chairwoman. In the five and a half years that I was a U.S. Attorney, I believe I gained a greater respect for the rule of law and the importance of law in our society. Being a public servant carries with it great responsibility and I am continually honored and humbled and understand the great important of having that responsibility. I have come to cherish fairness and justice in our system.

As a prosecutor, I strived every day to try to do the right thing, mindful of the victims who we represented, mindful of the rights of defendants, mindful, as the often-quoted opinion from Justice Sutherland, "to strike hard blows, but to strike fair blows". I've always tried to treat people with respect and courtesy, and to demonstrate the kind of temperament that brings respect to the position that I've held. I hope to bring all those qualities, if confirmed, to the District Court bench.

Thank you.

Senator KLOBUCHAR. Thank you very much.

Senator Sessions.

Senator SESSIONS. Thank you, Madam Chairman. It is quite a ladies' day.

[Laughter.]

Senator SESSIONS. If we've got some activists out there, maybe they don't like being called ladies. I suspect that's all right, at least in Alabama, still.

Senator KLOBUCHAR. It's a Southern phrase.

Senator SESSIONS. It's a Southern thing.

You know, I was just thinking, under President Bush, all three U.S. Attorneys in Alabama were women, and four of the first five, I believe—maybe four of the first six—Federal judge nominations that Senator Shelby and I recommended, of course, all of those were women. They're doing fabulous jobs on the bench. I think it is a good thing to see women take a larger role in the Federal judiciary.

Senator Leahy wanted to have this hearing, and he called me about it. You've come from out of town, and we're glad to do that. I know some of our members might have been here if they could have been, but are not able to. But it's not difficult for me, I'm nearby. So, we're glad to have the hearing and go forward with it.

This is our only opportunity, really the only opportunity the American people have, even, to see the nominees and ask questions of them. Of course, what a lot of people don't know, is you filled out quite a lot of written questions and provided answers. The FBI has done background work on your nominations and you've passed that. The American Bar Association has made their reports to us. All those are helpful as we analyze who should be confirmed. That is a Senate responsibility.

So this moment, I guess, is the only time publicly you can be held accountable. For the rest of your time, if you are confirmed, you will not have to answer to any politicians. You get to follow the law.

I hope you have that firmly in your mind, that great power, that great independence that we bestow on the Federal bench, which I

support—my experience says that we have had—I've practiced before great Federal judges. Some not so great, but I had great Federal judges to practice before. I hope that you will understand, as Judge Fleissig said, the awesome responsibility that you have, and you will work very hard to be worthy of the trust that would be given to you if you hold that office.

First, I would note that another thing that you go through, and was evidenced by the Senators who spoke on your behalf today, is that it is important that your home State Senators review your nomination and that they affirm your nomination. That has been done in each of your cases and it means much to us. In fact, if they do not, you are not likely to be moving forward. So, you've had a good report on that.

Let me ask two U.S. magistrate judges, having been a U.S. Attorney for a long time and observed our courtrooms and how they operate, I'm very impressed with the trust and responsibility provided and given to the magistrates in our districts. I understand some districts do not give as much trust and responsibility to the magistrate. What's your philosophy about that, and what might you share to your other judges who never had the experience in Federal court that you've had as a magistrate judge?

Judge FLEISSIG. Well, thank you for that question, Senator Sessions. I think a lot of the country doesn't know what a magistrate judge does in our system and what an important role that they fill in every district. Every district uses their magistrate judges differently, and sometimes it is a function of what their caseload looks like, which, as you know, can vary tremendously from district to district.

The caseload in a border State certainly looks very, very different from the caseload that we would have in the Eastern district of Missouri. I've been very blessed, in the Eastern district of Missouri, that our district judges determined very early on to give to magistrate judges as much responsibility as the Federal law really allows magistrate judges to have.

Senator SESSIONS. Do you believe that's a good philosophy?

Judge FLEISSIG. Well, it works well in our district. It was the result of a study that was done on the efficient use of how we could more efficiently move our cases for the members of the public in our district. In our district, magistrate judges are on the wheel. Cases—direct civil cases—are directly assigned to us and we handle those cases from beginning to end, but only with the consent of the parties.

So, any party who wishes to have their case heard before an Article judge may do so without any aspersions being cast on their choice. Yet, those who do consent to have a magistrate judge hear their case, we will handle their case from beginning to end. We also handle all of the pre-trial phase of criminal cases, including the suppression motions.

So, I've been blessed with a very rich and diverse experience in my district. It was part of the attraction of the position for me when I left the position of being U.S. Attorney. So, our district judges believe that it helps them move our caseload most efficiently. We have found the legal community to be very supportive

of that role and we as magistrate judges welcome it because it gets us such a diverse experience.

Senator SESSIONS. Judge Magnus-Stinson, what are your thoughts on that?

Judge MAGNUS-STINSON. Thank you, Ranking Member Sessions.

Senator SESSIONS. What advice would you give to your colleagues-to-be?

Judge MAGNUS-STINSON. I give lawyers advice always to respect staff, and I think I would tell district judges to always respect the magistrate judges, Senator. Our district operates a little bit differently than the district in which Judge Fleissig is located.

In our district, the magistrate judges are assigned the responsibility for managing the discovery process, and through that process then our goal is to provide the lawyers and parties enough information so that they can fairly evaluate their cases and civil cases. It's then our responsibility to serve as facilitators in settlement conferences, and we do them in virtually every case that comes before our district. That is a very successful program. We resolve probably 60 to 70 percent of our cases at the settlement conference.

Our district judges are completely grateful for our work and treat us with the ultimate respect, and as colleagues, really. I would, if fortunate enough to be confirmed, so collaborate with the magistrate judges in our district who are my friends right now and my colleagues.

I have had the good fortune of having the parties' consent in my jurisdiction in a variety of cases, including insurance disputes, contract disputes, personal injury cases, employment law cases, and Social Security cases.

Senator SESSIONS. And you've presided over those trials all the way to verdict?

Judge MAGNUS-STINSON. That's correct.

Senator SESSIONS. Jury and non-jury?

Judge MAGNUS-STINSON. Yes. This year, I've had two trials. I miss trial work, having been on a major felony court for a long time. But I had a trial in an insurance coverage dispute, and then just 3 weeks ago our chief judge had a scheduling conflict and the parties consented and I presided over a jury trial in a Copyright Lanham Act, Digital Millennium Copyright Act, and then a State Computer Trespass, and one other cause of action I can't remember. But we had a 2-day jury trial, and probably the biggest challenge was the jury instructions.

Senator SESSIONS. I suspect he was glad you took that case, knowing how——

Judge MAGNUS-STINSON. We reached a verdict, and that was——

Senator SESSIONS. Well, I would say that I do think that the magistrate judges in general should be given full responsibility and utilized fully. Some have gifts that are different: some may be better at research, and some better at courtroom work. I guess the ultimate responsibility falls on the Article judge to decide that. But I suspect both of you have an interest in doing the right thing with your magistrates, having had that experience.

Let me run a few questions. I believe people can have different personal views about the death penalty. I do not believe that's something we all have to agree on. I believe it's an effective pen-

alty, and most Americans do. Most jurisdictions have it, and the Federal court system has it.

Ms. Navarro, you worked on the Nevada Appellate and would keep you from fairly deciding cases, even if it resulted, through the proper legal process, in a judgment of death on the defendant before you?

Ms. NAVARRO. Thank you, Senator Sessions, for the opportunity to address that question. I am aware that the U.S. Supreme Court has held that the death penalty is a constitutional punishment, and I am prepared to apply and follow that law.

During the time that I worked on both death penalty appeals and at the Special Public Defender's Office on murder cases and other cases that also had issues that were before the court, I learned that there is a wide array of personalities and, as you said, a lot of different views on the death penalty. But at the end of the day, the most important thing was that it is a punishment that is available that the courts can use, and that the juries are the individuals who have to decide and pass judgment.

Senator SESSIONS. Do you have a view that the death penalty violates the Constitution as being "cruel and unusual"? Have you ever expressed an opinion on that?

Ms. NAVARRO. I have not expressed an opinion on that. I'm not sure that I have a particular opinion on that. There's a case-by-case basis that, in my personal view, if I was sitting on a jury, I would have to decide.

However, I have sat on a jury. Not a death penalty case jury, but I have sat on a jury before and I have litigated many cases and have observed juries, and can see the tension and the pain that it causes to them to sit through one of these cases. I would not set aside a jury verdict lightly unless there was an error that was not harmless, but rather significant enough and important enough that the law would require the death penalty.

Senator SESSIONS. Do you think that a juror should sit on a case if they express the view that they oppose the death penalty and will not impose it?

Ms. NAVARRO. In my jurisdiction, that is not allowed. It is called the Death Qualified Panel. The individuals who sit on the jury must attest that they will be fair and open-minded, and are willing and able to pass a verdict of a death penalty if necessary.

Senator SESSIONS. You would affirm that law, if you were a judge? You would follow that?

Ms. NAVARRO. Yes, I would follow that law, of course.

Senator SESSIONS. I want to ask a little something of everybody, you know.

Judge Fleissig, according to your questionnaire, you've been a member of Common Cause, which is a respected organization and you certainly have every right to participate in it. But it does take some positions on issues that, I think, raise questions, and I'd just like to ask you about it and see what your personal views are.

Common Cause called for the appointment of a special prosecutor to investigate members of our intelligence community for their efforts to obtain intelligence vital to the security of the Nation. They also call for the impeachment of Ninth Circuit Judge Jay Bybee for his actions when he was at Office of Legal Counsel, advocating for

the creation of a Federal rule, a burdensome rule of net neutrality, and criticizing the recent decision of the *United States* v. *Citizens United*, and called that "putting our democracy up for sale to the highest bidder".

I know you're not a member of that now. How do you feel about those issues? Do you think the Supreme Court decision—I think—followed the First Amendment in the *Citizen United* case. I predicted, on the floor of the Senate, that much of that legislation that passed was not going to withstand constitutional muster, and I think it didn't. But how do you feel about, let's say, *Citizens United*? Is that "putting democracy up for sale to the highest bidder"?

Judge FLEISSIG. Thank you, Senator, for the opportunity to address that. I have not, I admit, read the *Citizens United* case. So, I have not read it. I have only read some of the press summaries of that case. It is the law of the land, and I would certainly follow it. I have to say that I have not paid the small amount of dues that I ever paid to Common Cause in, oh, goodness, probably 15 years. At that time, I had been interested in it because of the position that it took on consumer protection issues.

Senator SESSIONS. That was its original intent, you're right.

Judge FLEISSIG. And I honestly, Senator, have not followed the organization since that time. When I had paid dues for several years to Common Cause, its focus was on consumer protection, things like the Truth in Lending law and issues of that sort. I was interested in those issues at that time and supportive of what the organization was doing. I have not followed it in 15 years, if I even followed it back then.

Senator SESSIONS. Judge Koh, you have written and expressed opinion about the need for diversity on the bench and advocated for those ideas. Do you think that a lack of proportionality or diversity on the bench that may occur is in itself evidence of an invidious discrimination? How should we think about that?

Judge KOH. I do believe, Senator Sessions, that diversity on the bench is important. I think it helps instill confidence in the justice system. I believe it also reaffirms that this is the land of opportunity; anyone can grow up and become a judge. So, I think to that extent it is important. I have not ever written that I believe there should be proportionality on the bench, so I'm not sure what you were referring to, sir.

Senator SESSIONS. Well, it's just an issue. We talk about the importance of diversity. At some point does that mean that we should have some sort of balance, and have a balance affecting all the different backgrounds and genders? Is that, in itself, proof that discrimination is occurring?

Judge KOH. Let me preface my statement, first of all, by saying there could be issues regarding whether that's disparate impact, discrimination cases that come before me. So if I were confirmed, it would be not proper for me to comment on that issue now and sort of hypothetically say how I would rule on some type of disparate treatment or disparate impact case.

Other than saying that I do believe that diversity on the bench is a good thing, I certainly have not advocated for proportionality in any of my writings or anything I've done or said.

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Having said that, I do want to emphasize, Senator Sessions, that if you look at my record as a judge and as a lawyer, that I have faithfully followed the law and do not believe that there should be any kind of prejudice or bias in judicial decision making.

Senator SESSIONS. Well, I think that kind of gets to the core of the matter. I was going to ask you, do you think you can give fair justice to an Irish-Catholic man? I hope that you can; I expect that you will. Likewise, an Irish-Catholic male judge can do justice to a Korean, or a minority. We've got to be careful as we make comments.

You said in an article, "Even when there is more diversity on the bench, minority judges still need to maintain the disguise of objectivity or else face challenges to their decisions". Well, I remember Justice Sotomayer, in something that was troubling to me, quoted favorably a comment that said, "There is no objectivity, just a series of perspectives". That still makes the hair stand up on my neck. I think that's a dangerous philosophy.

What did you mean, that minority judges need to "maintain a disguise of objectivity or else face challenges to their decisions"?

Judge KOH. Senator, thank you for giving me the opportunity to address that. I participated in that discussion review of a book journal two decades ago as a student, and I frankly had not even read that in the last two decades. In preparing for this process, I became reacquainted with things I had done as a student and I was frankly quite amazed that I had even made that statement.

I completely disagree that there is no objectivity. Absolutely, our system of justice requires it. Litigants, parties, counsel are entitled to objectivity, and I think our rule of law would simply break down if everyone were to just insert their own personal biases. I mean, our system of justice, and this great country exists, because there is a rule of law which we all respect.

And I can assure you, Senator Sessions, that in what I've done as an officer of the court, as a corporate litigator, and what I've done as an Assistant U.S. Attorney, as a Department of Justice attorney, and as a judge, I have faithfully followed the rule of law and I would not let bias or prejudice in any way influence my decisions.

Senator SESSIONS. Well, I think some of these speeches we have, and I think the zeal to have more diversity on the bench, has led to some rhetoric from a lot of our nominees. I've seen a lot of it, actually, that I think go beyond what is contemplated in the American system of justice, which is that a judge takes that oath not to be a respecter of persons and to impartially follow the law and the facts of the case. That's the oath that they take, and it's a deep thing.

If a person appearing before the bench feels that the judge's personal experiences, their ethnic background, their religion, or their political philosophy causes them to not listen fairly to their case, not to fairly find the facts in their case, wouldn't you agree that the whole system is in jeopardy? Actually, you just said the system would be in jeopardy.

Judge KOH. I agree with you.

Senator SESSIONS. Thank you. The whole American legal system—I guess, Judge Pratt, the whole cross examination idea,

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things we were taught in law school, is to me based on a belief that truth is ascertainable, there is some objectivity, and the process is to try to bring the truth out, and judges rule to allow this process to occur in a fair and objective way, and then to honestly and objectively apply those truthfully found facts to the law. Would you agree with that?

Judge PRATT. Yes, Senator Sessions, I agree wholeheartedly, 100 percent, with that.

Senator SESSIONS. In a 2007 speech, you talked about probation and you were encouraged when you can discharge an offender from probation or modify a sentence to allow a defendant to pursue education. In one case, you approved the transfer of a convict from prison to a low-security program, over the prosecutor's objection on the grounds that the convict continued to pose a threat to the community. That's what the prosecutor said, and that transferring him would diminish the seriousness of his crime.

You, I guess, allowed that to happen and the convict escaped from the low-security program and went on to be an accomplice in the murder of a 68-year-old man. He was later convicted of felony murder. Would you share with us your thinking on that case, and what you've learned from it?

Judge PRATT. Yes, Senator Sessions. Thank you for the opportunity to speak on this—on this matter. It was a huge learning experience for me as a State court judge and an example of the difficult decisions that we have to make as judges. We have a statute in Indiana that was enacted by our State legislature for a community transition program.

This is a program where the department—the Indiana Department of Corrections would make a recommendation to the State court judges as to those inmates who they believed, in the last 60 days of their sentence in prison, would be good candidates to go into a lower security program.

While in the community transition program, the idea is that these persons would participate in work-release programs and be allowed to make an easier transition back into the community. This particular defendant was convicted of a burglary.

There was a recommendation from the Department of Corrections to allow him into the lower security program. I also had a recommendation from the program itself, who screens each of the applicants in our court system, and recommended to the judge whether or not this person would be a good prospect for this—this legal opportunity. Unfortunately—Mr. Price was the gentleman's name—he absconded from the program. He did participate in a murder as an accomplice to someone who actually killed someone.

It was a heart-breaking, horrible experience and I just—and I think it just goes to show the huge impact that the decisions we make have on the community and the very difficult decisions that we make, and I do regret-in this particular case I could not predict, but I do regret that Mr. Price was released into that program.

Senator SESSIONS. I think I heard, it was on NPR—as I went by a radio was playing this morning—about an individual that was released, and the same day he was released committed a rape as part of a California program to reduce prison population in California.

Having been a prosecutor, and I know Senator Klobuchar has, some people don't realize that a lot of the individuals that are prosecuted are dangerous people. The number of people who commit murders is small. The number of people who would ever commit a murder is very, very small, or a serious violent crime, or some other serious crimes.

When you capture one of them, you have to see that this is not the same kind of person; if they've committed one crime, there is a much higher mathematical percentage that they'll commit another crime. We just have to be careful about that. You will all be faced with the sentencing guidelines, and the sentencing guidelines have been adjudicated, I guess, as more advisory than they were, although I think most judges pretty faithfully follow them.

I will ask magistrate judges, since you're familiar with that, first. Do you feel that the sentencing guidelines should be given respect and deference as you decide the appropriate sentence of a person appearing before you? Maybe, what deference should it be given?

Judge FLEISSIG. As a magistrate judge, I actually don't have much occasion to use the sentencing guidelines because we are not involved in giving sentences on felony cases. But I was very familiar with the sentencing guidelines in my 10 years as an Assistant U.S. Attorney and as U.S. Attorney in my district.

Now, at that time the guidelines were mandatory, and I am aware that the Supreme Court has held otherwise since that time. However, I gained great respect for the sentencing guidelines when I was serving as a prosecutor. I think they perform an important function in assuring that the sentences nationwide have some amount of uniformity. I think, from participating in plea negotiations for many years, I think the predictability that it afforded to defendants was also very important as well in terms of their decisionmaking.

Senator SESSIONS. I know that many of our Senators—Leahy, Senator Biden, Senator Kennedy—all worked with Republican members, Senator Hatch, Thurmond, and others, and they reached an agreement about this because there were too many examples of people going before one judge and committing the same crime and getting long sentences and this one getting probation. Dramatic differences. It was an equal justice approach. I think it has worked. I support the guidelines. I am working, and I have offered for some time, to reduce the sentencing guidelines' mandatories for crack cocaine. Maybe we can get that done before long. I proposed significant change in that, and I think we should do it.

But Judge Magnus-Stinson, what do you think is an appropriate role for a Federal judge to take with regard to the deference given to the sentencing guidelines?

Judge MAGNUS-STINSON. Thank you, Senator. In the Seventh Circuit, which is the circuit that governs our district, a guidelines sentence enjoys a presumption of reasonableness. It has always been my goal in sentencing. I have not sentenced anyone in Federal court, but in State court, certainly, to impose only reasonable sentences.

I would give both great respect to the guidelines as a means of guiding the discretion that I have, as well as the sentencing statute itself, which I think affords the opportunity for the court to con-

sider some of the disparities that you've just addressed to ensure that there's no sentence that's being imposed disparately on one individual versus another.

Senator SESSIONS. It's a remarkable system. Everybody had doubts about it. They thought people would not plead guilty to the rather severe sentences, but the guilty pleas continue to increase. I think we're at, 99 percent of criminal cases are disposed of with some sort of guilty plea.

Judge Navarro, what respect would you give to the sentencing guidelines?

Ms. NAVARRO. Senator, I did have an opportunity to work with the sentencing guidelines, like my colleague, when they were mandatory, before they became discretionary. I was an attorney under the Criminal Justice Act, so I was in court representing defendants. Most of the time that we spent with the guidelines was in reading the Committee notes and trying to figure out how to apply them. I grew to be very comfortable with them.

I am aware of the collective wisdom of the individuals that came together, and appreciate the intention of trying to make sure that there's conformity and consistency in the sentencing procedure. I agree with you, it was easier to negotiate a plea agreement when there was a sentencing guideline that we could all rely upon and be comfortable with that was going to be applied.

I believe that great deference should be given to the sentencing guidelines and I believe that I would probably only depart from them on very rare occasions when the facts required that to be the case.

Senator SESSIONS. It is a challenging thing at first. It's kind of intimidating. When you see those charts and numbers, we think, this is a computer process and not a human process. But they do a nice job, the commission does, of how many prior convictions, and how much drugs were involved, or did they carry a gun, or did they assault the person in the course of the crime. It has enhancements and reductions based on all that.

I think it does have, as you said, quite a bit of logic. Maybe the ranges were too tight. If you like the defendant you'd give him 8 years, if you didn't like him he got nine and a half; that's about all the range the judge had. So, maybe a little bigger range would have been helpful. But I think they followed a pattern of sentencing that most judges consider to be the gold standard of sentencing.

Judge Koh.

Judge KOH. Senator Sessions, the sentencing guidelines were mandatory when I was an Assistant U.S. Attorney, and I would give them great deference.

Senator SESSIONS. Mr. DeGuilio.

Mr. DEGUILIO. Thank you for that question, Senator. I did become very familiar with the guidelines during my tenure as U.S. Attorney, and actually briefed and argued several cases through the Seventh Circuit Court of Appeals on guidelines issues. I would also give them great deference, should I be fortunate enough to be confirmed as a District Court judge.

I do believe they provide a comprehensive framework by which all relevant factors can be taken into consideration and do help to ensure consistency in sentencing.

Senator SESSIONS. Judge Pratt.

Judge PRATT. Thank you,

Senator SESSIONS. I'm aware of the history of the sentencing guidelines and the hard work and wisdom that went into creating the guidelines. I also would give substantial deference and great respect to the guidelines.

Senator SESSIONS. Judge Magnus-Stinson, you asked, at some point in your career, I understand, not to be assigned cases where the death penalty was involved. Would you share with us your thought about the death penalty and why you made that request, and the impact of it, and the situation?

Judge MAGNUS-STINSON. Thank you, Senator. At the time that issue arose, I sought counsel from the counsel to the Indiana Commission on Judicial Qualifications, which is the disciplinary entity that regulates judicial behavior, and at that time was advised to make no public statement about the issue, as to do so would implicate the Code of Judicial Conduct.

I continue to believe that the Code of Conduct that applies to my work now precludes me from making a public statement, but I can say, Senator, that the issue that arose in that circumstance would not prevent me from enforcing Federal law, including the death penalty, if I am fortunate enough to be confirmed.

Senator SESSIONS. Well, that's an important matter. For a while, at the apex of judicial activism, we had two judges on the Supreme Court who dissented in every death penalty case, saying that they thought it was a violation of the "cruel and unusual" provision, whereas, in truth, there are, I think, six specific references in the Constitution for capital crimes, taking a life with due process.

Every State, colony, had death penalties, including the Federal Government. It's inconceivable that they could have interpreted the Constitution in that fashion, in my view. It was an arrogant personal effort to abrogate the subtle law of the American people and the history of the Constitution. Forgive me. I feel strongly about that. But I want to know, did that have anything to do with your approach to it and your unwillingness to participate in these cases?

Judge MAGNUS-STINSON. Senator, I will answer it this way: I am fully cognizant that the death penalty is the law of the land. I am under oath to uphold it at this time, as well as uphold the United States Constitution as it's been interpreted by a majority of our Supreme Court, which has held that the death penalty is constitutional in our country.

Senator SESSIONS. Well, it's more than a majority now. I don't think a single member of the court would adhere to that extreme view that two members adhered to. But do you personally think—and I've already tipped my hand to my philosophy. But do you personally agree with the view that the Constitution, fairly interpreted, would inhibit the imposition of the death penalty? Have you ever expressed such a view?

Judge MAGNUS-STINSON. I have never expressed such a view, Senator, and will continue to refrain from expressing views on the issue, as it may be an issue that appears before me. I do under-

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stand, as a trial judge, my role is to enforce existing law and follow it.

Senator SESSIONS. All right. Well, this is a big deal. Some States have added the death penalty in recent years, some States have taken it away. We've got a Federal death penalty and we've upheld it in recent statutes in recent years. It may not be the rule in France, but I suspect it probably is there. But somehow there's this impression that only the enlightened world favors the death penalty, and I don't think that's accurate.

Madam Chairman, we may submit some written questions. I enjoyed this. I feel like, since I'm the lone member in the Minority Party present, that I should ask these questions. It's the one and only opportunity that we have to see you in person and to ask questions, and therefore have a record on which we can make a decision about your confirmation. I hear good things about all of you. You will certainly get a fair hearing.

I responded a few days ago to a complaint from two of our Senators who said their nominee didn't move forward fast enough. Madam Chairman, one of them waited, I think, 4 months before sending the blue slip back and the nominee moved right through the Committee as soon as Chairman Leahy called it up and nobody objected to the nominee moving on the floor of the Senate.

But they contended that, I guess, the Republicans were surreptitiously blocking the nominees. I believe good nominees ought to move forward. We need to do our homework, do our background, see what the Bar Association says, see what the FBI says, see what your answers to the questionnaires are, see how you handle yourself today, and at some point, without any rush or panic, we ought to move you forward and give you an up-or-down vote, unless there's a controversy, unless there's some serious problem.

I think I voted for 90 percent-plus of Presiden Clinton's nominees, and hope to be able to do the same with President Obama's. I think the system is working pretty well, and I would just note that you should be glad that the situation we face is not the one President Bush's nominees faced when the Democrats had a majority in Congress and the Senate, since many of those nominees took years to move, and some never moved. We're doing a lot better and going a lot faster now.

Thank you, Madam Chairman.

Senator KLOBUCHAR. Well, thank you very much, Senator Sessions. Thank you for taking that opportunity to ask some important questions to clarify things. I think you all did a good job of answering them. I just wanted, just to clarify again with you, Judge Magnus-Stinson, that you would in fact enforce the laws and apply the laws fairly, including the laws about the death penalty?

Judge MAGNUS-STINSON. Yes, Senator, I would.

Senator KLOBUCHAR. Okay.

Judge MAGNUS-STINSON. I'm currently under oath to do that and I take that oath very seriously.

Senator KLOBUCHAR. Thank you. I had the same—we didn't have the death penalty. We don't have the death penalty in Minnesota, but I was asked this a lot as a prosecutor. You have to think about that and answer those questions and apply the laws and enforce them, which I always believed I would have, and said I would.

The same with you, Ms. Navarro. Is that correct?

Ms. NAVARRO. Yes.

Senator KLOBUCHAR. Okay. Very good.

And then Ms. Fleissig, just one follow-up. So you were a member of Common Cause, or paid dues to it, the last time, I think, was in 1996, is that right?

Judge FLEISSIG. Somewhere—somewhere in the mid-90s.

Senator KLOBUCHAR. Okay.

And then, Ms. Koh, I just wanted to follow up on one thing with you, and that is I know Senator Sessions was right to ask questions about some of your prior speeches and statements. I think everything should be open when you are, as you noted, up for such an important job as a Federal judge. But those things were written when you were a law student, is that correct?

Judge KOH. That's correct.

Senator KLOBUCHAR. And since then, I just was noting that Governor Schwarzenegger, in his letter for you, said, in fact, "I appointed Judge Koh to the Superior Court of Santa Clara County 2 years ago, and since that time have never had cause to regret my decision. Her approach has always been careful and balanced". It sounds like the Fox News thing.

[Laughter.]

Senator KLOBUCHAR. Of "fine and fair". Very nice and poetic from Governor Schwarzenegger. "In fact, she had presided over thousands of criminal and civil matters and has seen only one partial reversal in all those cases. Her career as a judge builds on the reputation for talent and integrity she rightfully earned as a Federal prosecutor and intellectual property litigator after several positions in the U.S. Department of Justice." So, I just thought I'd include that for the record, as well as we have statements for the record from Senator Leahy on these nominees, and we also have a statement from Senator Feinstein on your nomination, Judge Koh.

[The prepared statements of Senator Leahy and Senator Feinstein appear as a submission for the record.]

Senator KLOBUCHAR. Are there any other statements that we are forgetting here? The record is going to remain open for 7 days for any of my colleagues that wish to submit questions that were not as hardy as the Senator from Alabama and were unable or held back because of planes or anything else. I just wanted to thank all of you. I think this has been a very good hearing.

Do you want to add anything, Senator?

Senator SESSIONS. Just to thank you for allowing me to spend more time than normal asking questions, and you and Senator Leahy have been good on that and allowed the questioning to go as long as appropriate. Thank you for that.

Senator KLOBUCHAR. Well, that's very good because I have the Norwegian ambassador out in the hallway and we are doing a call-in to Minnesota because we couldn't make it there for an event for Vice President Mondale. I will tell you, we believe there are more Norwegians in Minnesota than there are in Norway.

[Laughter.]

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Senator KLOBUCHAR. I'm sure he's going to disagree with me on that fact. So, I'm not going to be able to meet all your families, but I want to thank you very much for the time you spent today.

The hearing is adjourned.

[Whereupon, at p.m. the Committee was adjourned.]

[Questions and answers and submission follow.]

QUESTIONS AND ANSWERS

Responses of Jon E. DeGuilio
Nominee to the U.S. District Court for the Northern District of Indiana
to the Written Questions of Senator Tom Coburn, M.D.

1. **While you were serving as U.S. Attorney for the Northern District of Indiana, an article in the North West Indiana Times remarked that "DeGuilio, a former Hammond city councilman, has been criticized for his close ties to the powerful Lake County Democratic Organization. He acknowledged seeking support from Gov. Evan Bayh, former state Democratic Chairman Michael Pannos, and East Chicago Mayor Robert Pastrick, the influential Lake County Democratic boss, to beat out the other top contender." The same article stated that, as Lake County Prosecutor, "DeGuilio was chided for failing to bring charges against former Lake County Commissioner Steven Corey and for offering a lenient plea agreement to former Juvenile Court Judge Darlene Wanda Mears."**

   During the 110th Congress, this Committee spent significant time and resources investigating whether politics had influenced the dismissal and selection of certain U.S. Attorneys by the previous administration. While we all did not agree with some aspects of those investigations, I believe we all agree that the influence of politics on U.S. Attorneys is a serious concern. Given that concern, would you care to respond to the aforementioned statements and explain why they should not be cause for concern?

   Response: I categorically reject any suggestion that I allowed politics to influence my conduct as United States Attorney or as Lake County Prosecutor. As United States Attorney I avoided political activity and political relationships of any kind, consistent with Department of Justice policies. Moreover, during my tenure as United States Attorney, and despite the unprecedented deployment of federal resources to street crime prosecutions conducted at the personal directive of Attorney General Reno, my office prosecuted several public corruption cases involving Democratic officials.

   I believe that the comments in the article were borne out of misunderstanding. For example, during the time that I was Lake County Prosecutor and criticized by this reporter I was well aware that County Commissioner Corey was under investigation by a federal grand jury. I had been informed of the same by the then United States Attorney. Therefore, it would have been inappropriate for me to interfere with a pending federal investigation by taking action in my capacity as Lake County Prosecutor or to publicly disclose the reason for my inaction. County Commissioner Corey was ultimately indicted and convicted by federal authorities.

   I believe strongly that politics must have no role in the decision-making process of law enforcement officials or members of the judiciary. As such, and if confirmed, I pledge to follow the law without personal bias or other improper influence and mindful of the need to avoid even the appearance of impropriety.

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2. 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, I do not believe that the Constitution is a living document that is constantly evolving as society interprets it.

3. 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: The United States Supreme Court concluded in Gonzalez v. Raich that its decisions in Lopez and Morrison were consistent with previous Commerce Clause rulings and that Congress has certain limitations in the enactment and enforcement of laws under that authority.

4. 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: As a United States District Court Judge I would be bound to follow and apply the law as established by the United States Supreme Court regardless of my personal or professional views.

a. How would you determine what the evolving standards of decency are?

Response: To whatever extent I might be required by precedent to determine "evolving standards of decency" I would be bound to apply the analysis established by the United States Supreme Court and the Seventh Circuit Court of Appeals.

b. Do you think that a judge could ever find that the "evolving standards of decency" dictated that the death penalty is unconstitutional in all cases?

Response: No. The United States Supreme Court has ruled to uphold the constitutionality of the death penalty. As a United States District Court Judge it

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00668 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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would not be permissible for me to rule inconsistent with the precedent of the Supreme Court.

c. What factors do you believe would be relevant to the judge's analysis?

Response: I believe that the factors that would be relevant to such an analysis would be limited to those delineated by the United Stated Supreme Court in Roper and subsequent cases, as well as any Seventh Circuit Court of Appeals cases on the subject, including "pertinent legislative enactments and state practices" and "respective determinations" made by the Court.

5. 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: I would not rely on foreign or international laws or decisions to interpret the Constitution except to that extent required to do so by the United States Supreme Court or the Seventh Circuit Court of Appeals.

a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: Consistent with my above response, I would only do so as required by precedent.

b. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: I would consider foreign law for this purpose only to the extent required by the precedent of the United States Supreme Court or the Seventh Circuit Court of Appeals. As a United States District Court Judge I would be bound to apply the standards established by these courts. Otherwise, I would not consider foreign law to interpret provisions of the Constitution.

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Responses of Jon E. DeGuilio
Nominee to the U.S. District Court for the Northern District of Indiana
to the Written Questions of Senator Jeff Sessions

1. **What in your view is the role of a judge?**

   Response: In my view the role of a judge is to respect the "rule of law" and to interpret and apply the law consistent with the plain meaning of a statute and precedent, irrespective of personal beliefs or philosophies. I believe that a judge is a public servant who must act with integrity and impartiality, someone who must work hard to meet the great responsibilities of the position and be respectful of the parties and issues before the court.

2. **What is your definition of "judicial activism?"**

   Response: I would characterize "judicial activism" as judicial decisions made contrary to precedent and/or the plain meaning of a statute, motivated by personal beliefs and philosophies. It might also be characterized by decisions or actions that go beyond the limited issues of a case or other instances in which decisions are made contrary to applicable legal standards in an effort to promote a particular personal view.

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: 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 to the facts presented before you?**

      Response: I would be bound to apply the law to the facts of the case consistent with the legal standards established by the United States Supreme Court or the Seventh Circuit Court of Appeals and regardless of my personal views.

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. While I understand that you cannot know 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: Yes, I believe that I possess empathy and respect for all people.

b. What role do you believe that empathy should play in a judge's consideration of a case?

Response: In this context, I believe that empathy speaks to the ability of a judge to understand the interests and motivations of the parties. Empathy may then be a valuable tool to aide in a better understanding of the facts of a case and to assess the credibility of witnesses. Having said that, empathy should not play a role in the analysis and interpretation of the law nor the application of the law to the facts of a case.

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?

Response: None

5. 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?

Response: No. The law must be analyzed, interpreted and applied consistent with its plain meaning, precedent and the well-established rules of statutory construction, free from the consideration of personal beliefs. I believe to do less would be contrary to the oath of office, the Code of Conduct for United States Judges and the best traditions of our judiciary.

6. 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: No, I do not believe it is ever proper for judges to indulge their own policy preferences in determining what the law means.

7. Please describe with particularity the process by which these questions were answered.

Response: After receiving these questions I independently prepared a draft of my responses. I discussed my draft responses with representatives of the Department of Justice. I then made minor revisions. Upon completion of the responses I forwarded same to the Department of Justice for submission to the Senate Judiciary Committee.

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8. Do these answers reflect your true and personal views?

Response: Yes.

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Responses of Audrey Goldstein Fleissig
Nominee to the U.S. District Court for the Eastern District of Missouri
to the Written Questions of Senator Tom Coburn, M.D.

1. **You are currently a U.S. Magistrate Judge and, when asked about your current position, you testified that the biggest surprise to you on taking the bench was "what a tremendous challenge it is to do the job well every single day." You further stated that judging is a "very, very difficult job," that it has been a "tremendous surprise ... how weighty the job has felt, and that "every day [you] wake up and just hope that [you are] equal to the task that is expected of [you]." Do you have similar concerns about the job requirements if you are confirmed as a federal district court judge?**

   Response: I do not have any reservations about my ability to meet the job requirements if I am fortunate enough to be confirmed as a federal district judge. Being a judge is an enormous responsibility, which requires the highest level of commitment. I make that commitment daily in my current position, and would continue to do so if confirmed.

   a. **How will you prepare yourself to meet these challenges?**

      Response: As I now do as a Magistrate Judge, I would need to continually keep abreast of legal developments and educate myself as I encounter new substantive areas of the law. I believe that my previous professional experience has prepared me well to meet the challenges of the position of a federal district judge. Prior to my appointment to the bench, I had more than ten years of experience as a civil litigator in the federal courts, and ten years of experience as a federal prosecutor, including service as the United States Attorney for the Eastern District of Missouri. I have served as a United States Magistrate Judge for more than eight years and was recently reappointed to a second term. I believe that my record as a United States Magistrate Judge demonstrates my ability to meet the challenges posed by the position for which I have been nominated.

2. **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. I believe that the Constitution has a fixed meaning as expressed by the Framers in the language of the document, and that it sets forth fundamental principles that do not change with the times.

3. **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.**

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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: In *Gonzales v. Raich*, 545 U.S. 1, 23-25 (2005), the Supreme Court harmonized these decisions and expressed its determination that *Lopez* and *Morrison* are consistent with the Supreme Court's earlier Commerce Clause decisions.

4. 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 would follow its rulings and any binding precedent interpreting those rulings.

a. How would you determine what the evolving standards of decency are?

Response: If called upon to make that determination, I would follow the Supreme Court rulings and analysis and other controlling precedent.

b. Do you think that a judge could ever find that the "evolving standards of decency" dictated that the death penalty is unconstitutional in all cases?

Response: I was called upon to address this issue in one case, in which the defendant asserted an Eighth Amendment challenge to the federal death penalty statute based, in part, on the assertion that the statute was inconsistent with evolving standards of decency. I rejected the argument, finding that it was foreclosed by Supreme Court case law. A lower court judge must be bound by the Supreme Court case law.

c. What factors do you believe would be relevant to the judge's analysis?

Response: A judge would be required to apply the analysis established by Supreme Court case law and any binding Circuit precedent interpreting that case law.

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5. 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: I am unaware of any case law that would permit such reliance.

a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: Although the Supreme Court has at times cited to or discussed foreign or international law, I am unaware of any Supreme Court cases in which the Court has actually relied on foreign or international law to determine the meaning of the Constitution. I would continue to be bound by and follow Supreme Court precedent.

b. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: This issue under the Eighth Amendment has been presented to me only one time, and in that case I determined that certain international treaties could not serve as the basis to invalidate the federal death penalty act. I am unaware of any Supreme Court cases in which the Court has actually relied on foreign or international law to determine the meaning of the Eighth Amendment or other Amendments to the Constitution, and I would continue to be bound by and follow Supreme Court precedent.

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Responses of Audrey Goldstein Fleissig
Nominee to the U.S. District Court for the Eastern District of Missouri
to the Written Questions of Senator Jeff Sessions

1. **According to your questionnaire, you were a member of the ACLU until 1995. According to the ACLU's website, the ACLU believes that the death penalty inherently violates the constitutional ban on cruel and unusual punishment and the guarantees of due process and equal protection.**

   a. **Do you agree with the ACLU's position on the death penalty, as set forth on its website? Please explain your answer.**

      Response: I have not paid dues to the ACLU in many years, and have not followed what position the organization takes regarding the death penalty. The Supreme Court has rejected arguments that the death penalty inherently violates the constitutional ban on cruel and unusual punishment and the guarantees of due process and equal protection. I have handled one case involving the federal death penalty statute as a judge, and I followed the Supreme Court precedent and rejected the defendant's challenges to the constitutionality of the statute on each of these grounds. If confirmed, I would continue to follow the Supreme Court case law and any binding precedent interpreting that case law.

   b. **The ACLU Capital Punishment Project, which "challenges the unfairness and arbitrariness of capital punishment while working towards its ultimate repeal," filed an *amicus* brief in the Supreme Court case *Kennedy v. Louisiana*, arguing that the Eighth Amendment's rule against cruel and unusual punishment prohibited application of the death penalty for child rapists under "evolving standards of decency." The Supreme Court held that the death penalty for the crime of child rape always violates the Eighth Amendment. Writing for a five-justice majority, Justice Kennedy based his opinion partly on the fact that 37 jurisdictions (36 states and the federal government) did not allow for capital punishment in child rape cases. In reality, however, Congress and the President specifically authorized the use of capital punishment in cases of child rape under the Uniform Code of Military Justice (UCMJ) in the National Defense Authorization Act of 2006, as reported first by Col. Dwight H. Sullivan in his blog and later by the *New York Times*.**

      i. **Given the heinousness of the crime, as well as the new information on the federal government's codification of capital punishment in child rape cases under the UCMJ, do you believe *Kennedy v. Louisiana* was wrongly decided? If not, why?**

         Response: I do not have an opinion on whether *Kennedy v. Louisiana* was wrongly decided. I am bound by the Supreme Court's rulings and would follow its rulings and any binding precedent interpreting those rulings.

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ii. **Following the Supreme Court's decision, President Obama announced at a press conference: "I think that the death penalty should be applied in very narrow circumstances for the most egregious of crimes. I think that the rape of a small child, 6 or 8 years old, is a heinous crime." Do you agree with that statement? Please explain your answer.**

Response: I agree that the rape of a small child is a heinous crime. I have not formulated any personal opinion on the types of crimes for which the death penalty should be applied, and any personal opinion I may formulate must have no effect on my rulings as a judge. I am duty bound to follow the Supreme Court's rulings and any binding precedent interpreting those rulings, and if confirmed would continue to do so.

c. **Do you believe that the death penalty is an acceptable form of punishment? Please explain your answer.**

Response: As a sitting judge who may be called upon to address these issues, any expression of my personal beliefs regarding the acceptability of the death penalty as a form of punishment would be inappropriate, and any such beliefs must have no bearing on my decisions. In the one death penalty case assigned to me, I followed Supreme Court precedent and upheld the constitutionality of the federal death penalty act.

2. **In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on "evolving standards of decency" in holding that capital punishment for any murderer under the age of 18 was unconstitutional.**

a. **Do you agree with Justice Kennedy's analysis?**

Response: I am bound by the Supreme Court's rulings and would follow its rulings and any binding precedent interpreting those rulings.

b. **How would you determine what constitutes "evolving standards of decency"? What factors would you consider?**

Response: If called upon to make that determination, I would follow the Supreme Court rulings and analysis and other controlling precedent.

c. **Do you think that a judge could conclude that "evolving standards of decency" dictate that the death penalty is unconstitutional in all cases? Please discuss what factors you believe would be relevant to the judge's analysis.**

Response: I was called upon to address this issue in one case, in which the defendant asserted an Eighth Amendment challenge to the federal death penalty

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00677 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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statute based, in part, on the assertion that the statute was inconsistent with evolving standards of decency. I rejected the argument, finding that it was foreclosed by Supreme Court case law. A lower court judge must be bound by the Supreme Court case law.

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. **While I understand that you cannot know 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: I believe I am a person who has empathy, or sensitivity to the feelings and experiences of others. However, my sensitivity to the situation and experiences of others does not interfere with my obligation to determine cases in a fair and impartial manner, and I believe that my record as a United States Magistrate Judge reflects that impartiality and allegiance to the rule of law.

b. **What role do you believe that empathy should play in a judge's consideration of a case?**

Response: I believe that a judge must set aside any sense of empathy in interpreting the law. A sense of empathy nonetheless can and should perform an important role in performing judicial functions. For example, a sense of empathy may assist a judge in understanding the arguments that a party is attempting to make, especially when dealing with unrepresented parties who are not skilled in expressing legal concepts. Maintaining a sense of empathy also reminds a judge that treating all persons associated with the court process with dignity and respect -- be they attorneys, litigants, criminal defendants, or jurors -- is critical to maintaining the integrity of our judicial system. Thus, a judge should display empathy in the manner in which he or she deals with those who come before or perform a function of the court, but must set aside any such empathy in rendering a decision.

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?**

Response: Not applicable.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00678 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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 subjective sense of empathy and rule based solely on the law.

Response: I must often set aside my own sense of empathy. For example, I have at times had sympathy for a social security claimant, but have nonetheless upheld the decision denying benefits because the law and case precedent required that I uphold the Commissioner's decision.

4. Please describe with particularity the process by which these questions were answered.

Response: On February 18, 2010, I received these questions from the Justice Department and drafted my answers. After discussing the questions with representatives from the Justice Department, I finalized my answers and forwarded my final responses to the Justice Department for transmission to the Committee.

5. Do these answers reflect your true and personal views?

Response: Yes

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00679 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Responses of Lucy H. Koh
Nominee to the U.S. District Court for the Northern District of California
to the Written Questions of Senator Tom Coburn, M.D.

1. **In 1996, you made a speech regarding proposed efforts to reform our nation's immigration laws. You said:**

   "[t]he progression, or more accurately the regression, of the immigration debate nationwide is very disturbing. The immigration debate is a perfect example of the slippery slope – targeting illegal immigrants at first, then moving to legal immigrants, then moving to legal permanent residents, then moving to naturalized citizens, and now to birthright citizens."

   What did you mean by that comment?

   Response: I was noting the expansion of the scope of immigration legislation in 1996. Since that time I have worked on the enforcement of our immigration laws. As an Assistant United States Attorney, I prosecuted immigration cases. As a Special Assistant to the United States Deputy Attorney General, I worked on strengthening enforcement of our nation's borders and on implementing the restrictions on benefits for aliens set forth in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. If confirmed, I would faithfully enforce our immigration laws.

   a. **Do you believe the national immigration debate is regressing? Please explain your answer.**

      Response: For nearly a decade and a half I have not kept abreast of the debates on immigration policy. Therefore, I cannot comment on the state of the national immigration debate. My last involvement with immigration issues consisted of my efforts to enforce our immigration laws as an Assistant United States Attorney and as a Special Assistant to the United States Deputy Attorney General.

   b. **I do not believe there is an automatic right to citizenship for children born to illegal immigrants residing in our country because I believe that the intent of the authors of the Fourteenth Amendment, and records from the Congressional Globe of May 30, 1866, indicate that the citizenship clause was never meant to be applied to children of non-citizens. Further, there are public policy concerns with allowing birthright citizenship to continue. Today, expectant mothers often put themselves in danger crossing our border to ensure their children are born in America. These babies can then act as anchors to eventually pull a large number of extended family members into the country legally.**

      i) **Do you believe children born to illegal immigrants residing in our nation should receive automatic citizenship? Why or why not?**

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Response: Under existing Supreme Court precedent the United States-born children of certain aliens temporarily present in the United States are automatically United States citizens. If confirmed, I would follow existing and future Supreme Court precedent on this and related issues.

ii) Did you consider the original intent of our Founders when reaching your conclusion? Why or why not?

Response: No, I was relying on existing Supreme Court precedent. If confirmed, I would follow existing and future Supreme Court precedent on this and related issues.

c. In the same speech, you also remarked that "[a]nother way to attack legal and illegal immigrants is to attack their languages. The anti-immigrant sentiment is certainly related to the push for English Only."

i) Why do you believe English only laws are anti-immigrant?

Response: I do not believe that English Only laws are anti-immigrant. I was merely referring to the tenor of the debate as expressed by some people at the time.

ii) If confirmed, you may be asked to rule on whether English Only laws are constitutional. Are you prepared to apply the law to the facts before you, despite your own personal feelings about these laws??

Response: Yes.

2. 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 Constitution does not change unless amended.

3. 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.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00681 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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b. Why or why not?

Response: In *Gonzalez v. Raich*, 545 U.S. 1, 23 (2005), the Supreme Court held that *Lopez* and *Morrison* preserved the "larger context of modern-era Commerce Clause jurisprudence."

4. 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: Justice Kennedy's analysis is controlling precedent, which I am bound to follow as a Superior Court judge and, if confirmed, as a federal district judge.

a. How would you determine what the evolving standards of decency are?

Response: I would apply the analysis of controlling Supreme Court precedent.

b. Do you think that a judge could ever find that the "evolving standards of decency" dictated that the death penalty is unconstitutional in *all* cases?

Response: The Supreme Court has found that capital punishment is constitutionally permissible. As a Superior Court judge, I am bound to follow Supreme Court precedent when interpreting the U.S. Constitution, and if confirmed, I would do the same.

c. What factors do you believe would be relevant to the judge's analysis?

Response: The factors identified by the Supreme Court in its controlling precedent would be relevant to a judge's analysis.

5. 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 United States Supreme Court has never relied on foreign or international laws or decisions in determining the meaning of the United States Constitution. All judges must follow the United States Supreme Court in determining the meaning of the United States Constitution.

a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: The Supreme Court has never relied on foreign law. If this issue arises, I would follow Supreme Court precedent.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00682 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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b. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: No, unless the Supreme Court directs otherwise.

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Responses of Lucy H. Koh
Nominee to the U.S. District Court for the Northern District of California
to the Written Questions of Senator Jeff Sessions

1. **In several speeches in 2008 and 2009, you mentioned that there was a lack of Korean-American representation on juries and that it was a significant problem in the California judicial system. Do you believe a litigant is entitled to have a member of his or her ethnic group on the jury, even if the lack of a minority juror occurs by mere chance or without racial discrimination? Please explain your answer.**

   Response: No. What has been disheartening to me as a judge is to see citizens of all races and ethnicities, but especially many Asian Americans, unwilling to serve on juries. As part of my outreach efforts on behalf of the Court, whenever I am asked to speak, I urge everyone to do their civic duty by serving on juries, and I try to explain why their jury service is important. The problem about which I try to raise awareness in my speeches is citizens' unwillingness to do their civic duty.

2. **Do you think 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: No circumstances.

   b. **Please identify any cases in which you have done so.**

      Response: There are no cases in which I have done so.

   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: Personal policy preferences play no role in my judicial decision making process. I decide every case based solely on the law and the facts.

3. **When you were an undergraduate at Harvard, you sought to force Harvard to drop its challenge to a union election that the University claimed did not comply with all applicable rules. While at Harvard Law School, you were among students who protested a law firm's participation in on-campus interviews because of allegations that the firm had been involved in "union-busting" activities. If confirmed, you may have to preside over cases involving unionization efforts. Are you prepared to set aside any personal beliefs regarding unionization efforts and consider each party's case impartially?**

   Response: Yes.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00684 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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4. I understand that as a judge on the Superior Court in California you handle a rather busy docket. As you know, federal district court judges are required to handle significant caseloads spanning a range of complex issues. If confirmed, how do you plan to prepare yourself for that transition?

Response: If confirmed, I would review all the Federal Judicial Center publications for district court judges and avail myself of all the training and other resources available to district court judges. I would also ask colleagues for their advice as to how to best prepare myself and how best to manage the complex and wide-ranging caseloads. I would also draw upon my experience prosecuting federal criminal cases as an Assistant United States Attorney and litigating complex civil, and particularly intellectual property, cases in federal court.

5. While at Harvard, you were a member of the Harvard Coalition for Civil Rights and one of the "Griswold Nine," which, according to published reports, was a group of students who staged a "sit-in" outside a faculty office in 1990 to protest a perceived lack of female and minority faculty at Harvard Law School.

a. I understand this protest was a violation of student conduct rules and led to a formal disciplinary hearing and a formal warning to the participants. Is that correct?

Response: That is correct. An Administrative Board hearing was held, and a warning was placed in our student files. This warning was removed from our student files upon graduation.

b. After the protests failed to resolve the policy dispute about what affirmative action plans were appropriate, the Coalition filed suit in state court challenging the University's hiring practices, which was apparently dismissed for lack of standing.[1] It appears there were also twelve named plaintiffs who were members of the Coalition.

i. Were you aware of this lawsuit during your time at Harvard Law School?

Response: Yes.

ii. Were you involved in this lawsuit? If so, how?

Response: Pursuant to agreement between the Republican staff of the Senate Judiciary Committee and representatives of the Department of Justice, I understand that this question has been withdrawn.

[1] *Harvard Law School Coalition for Civil Rights v. President and Fellows of Harvard College*, 595 N.E.2d 316 (Mass. 1992).

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00685 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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. **While I recognize that you cannot know 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: Based on the fact that President Obama nominated me, I can only presume that I fit his criteria for selecting federal judges.

b. **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 outcome of a case. A judge must decide cases based on the law and the facts alone. However, judges should treat parties and counsel with dignity and respect.

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?**

Response: No 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 subjective sense of empathy and rule based solely on the law.**

Response: I decide every case based solely on the law and the facts. Therefore, I have not had to set aside my own subjective sense of empathy in deciding a case.

7. **Please describe with particularity the process by which these questions were answered.**

Response: I received these questions from the Justice Department and drafted my responses. I discussed the responses with representatives of the Justice Department before finalizing them.

8. **Do these answers reflect your true and personal views?**

Response: Yes.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00686 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Responses of Jane E. Magnus-Stinson
Nominee to the U.S. District Court for the Southern District of Indiana
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, I do not agree with the reference to the Constitution as a living document that is constantly evolving as society interprets it. The Constitution is the permanent framework for our democracy.

2. **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: Perhaps the most accurate answer can come from the Supreme Court itself: "As charted in considerable detail in *United States v. Lopez*, our understanding of the reach of the Commerce Clause, as well as Congress' assertion of authority thereunder, has evolved over time." *Gonzales v. Raich*, 545 U.S. 1, 15-16 (U.S. 2005). *Lopez* and *Morrison* can perhaps be read as a further step in that evolution. Yet the Supreme Court has made clear that those decisions remain rooted in, and are therefore consistent with, earlier precedent.

   b. **Why or why not?**

      Response: As the *Raich* Court further noted: "[T]he larger context of modern-era Commerce Clause jurisprudence [was] preserved by those cases." *Id.* at 23.

3. **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: Justice Kennedy's analysis constitutes the majority opinion of the United States Supreme Court, is controlling precedent, and I will follow it.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00687 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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a. How would you determine what the evolving standards of decency are?

Response: I would follow the analytical framework established by the United States Supreme Court. In *Roper*, the Court stated:

> "The beginning point is a review of objective indicia of consensus, as expressed in particular by the enactments of legislatures that have addressed the question. These data give us essential instruction. We then must determine, in the exercise of our own independent judgment, whether the death penalty is a disproportionate punishment …."
> *Roper v. Simmons*, 543 U.S. 551, 564 (2005).

b. Do you think that a judge could ever find that the "evolving standards of decency" dictated that the death penalty is unconstitutional in *all* cases?

Response: I do not think any district judge following current controlling precedent could find that "evolving standards of decency" dictate that the death penalty is unconstitutional in all cases. The United States Supreme Court has consistently held otherwise.

c. What factors do you believe would be relevant to the judge's analysis?

Response: The factors quoted from *Roper* in response to question 3a, as well as any factors contained in subsequent United States Supreme Court or Circuit precedent, would be relevant to the district judge's analysis.

4. 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: No.

a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: See above.

b. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: In interpreting the Eighth or any other amendment I would rely exclusively on United States law and controlling precedent.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00688 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Responses of Jane E. Magnus-Stinson
Nominee to the U.S. District Court for the Southern District of Indiana
to the Written Questions of Senator Jeff Sessions

1. **During your hearing, I asked you to explain your reasons for your request to be removed from capital cases while a judge on the Marion Superior Court. You testified as follows: "At the time that issue arose, I sought counsel from the Counsel for the Indiana Commission on Judicial Qualifications, which is the disciplinary entity that regulates judicial behavior, and at that time was advised to make no public statement on the issue, as to do so would implicate the code of judicial conduct. I continue to believe that the Code of Conduct that applies to my work now precludes me from making a public statement."**

   a. **What specific provision of the Code of Judicial Conduct prohibits you from explaining to this Committee the reasons for your request?**

   Response: At the time in question, I was relying upon the advice of Counsel for the Indiana Commission on Judicial Qualifications, who advised me not to comment, and relying on the then-existing version of Canon 2.10(A) of the Indiana Code of Judicial Conduct, which currently reads:

   > (A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

   At the hearing I was also referring to Canon 3A(6) of the Code of Conduct for United States Judges:

   > (6) A judge should not make public comment on the merits of a matter pending or impending in any court...."

   The commentary to that Canon further provides:

   > Canon 3A(6). The admonition against public comment about the merits of a pending or impending matter continues until the appellate process is complete. If the public comment involves a case from the judge's own court, the judge should take particular care so that the comment does not denigrate public confidence in the judiciary's integrity and impartiality, which would violate Canon 2A.

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I would reaffirm that the circumstances that prompted the transfer will not prevent me from fairly applying federal law and precedent, including enforcement of the death penalty, in the event I am confirmed.

b. Did your request relate in any way to a personally held objection to the imposition of the death penalty? Please explain your answer.

Response: As explained in response to question 1.a. above and the canons and commentary cited therein, I must respectfully decline further explanation.

2. Do you believe that the death penalty constitutes cruel and unusual punishment under the Constitution? Please explain your answer.

Response: No, the United States Supreme Court has affirmed the death penalty as a constitutional form of punishment, and I will follow controlling precedent.

3. Do you believe that the death penalty is an acceptable form of punishment? Please explain your answer.

Response: Yes, the United States Supreme Court has affirmed the death penalty as a constitutional form of punishment, and I will follow controlling precedent.

4. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on "evolving standards of decency" in holding that capital punishment for any murderer under the age of 18 was unconstitutional.

a. Do you agree with Justice Kennedy's analysis?

Response: Justice Kennedy's analysis constitutes the majority opinion of the United States Supreme Court, is controlling precedent, and I will follow it.

b. How would you determine what constitutes "evolving standards of decency"? What factors would you consider?

Response: I would follow the analytical framework established by the United States Supreme Court. In *Roper,* the Court stated:

> "The beginning point is a review of objective indicia of consensus, as expressed in particular by the enactments of legislatures that have addressed the question. These data give us essential instruction. We then must determine, in the exercise of our own independent judgment, whether the death penalty is a disproportionate punishment …."
> *Roper v. Simmons*, 543 U.S. 551, 564 (2005).

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00690 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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c. Do you think that a judge could conclude that "evolving standards of decency" dictate that the death penalty is unconstitutional in all cases? Please discuss what factors you believe would be relevant to the judge's analysis.

Response: No, I do not think any district judge following current controlling precedent could find that "evolving standards of decency" dictate that the death penalty is unconstitutional in all cases. The United States Supreme Court has consistently held otherwise. The factors quoted from *Roper* in response to question 4b, as well as any factors contained in subsequent United States Supreme Court or Circuit precedent, would be relevant to the district judge's analysis.

5. In *Kennedy v. Louisiana*, 129 S. Ct. 1 (2008), the Supreme Court held that the death penalty for the crime of child rape always violates the Eighth Amendment. The majority opinion was based, in part, on the fact that 37 jurisdictions (36 states and the federal government) did not allow for capital punishment in child rape cases. In reality, however, Congress and the President specifically authorized the use of capital punishment in cases of child rape under the Uniform Code of Military Justice (UCMJ) in the National Defense Authorization Act of 2006, as reported first by Col. Dwight H. Sullivan in his blog and later by the *New York Times*.

a. Given the heinousness of the crime, as well as the information on the federal government's codification of capital punishment in child rape cases under the UCMJ, is it your opinion that *Kennedy v. Louisiana* was wrongly decided? If not, why?

Response: The United States Supreme Court addressed the significance of the military code's provisions in its decision on petition for rehearing cited in the question. It also addressed the undisputed heinousness of the crime in its original opinion. *Kennedy v. Louisiana*, 128 S. Ct. 2641, 2647 (2008). I am bound to follow its decisions.

b. Following the Supreme Court's decision, President Obama announced at a press conference: "I think that the death penalty should be applied in very narrow circumstances for the most egregious of crimes. I think that the rape of a small child, 6 or 8 years old, is a heinous crime." Do you agree with that statement? Why or why not?

Response: I agree with both statements. The United States Supreme Court has determined that the death penalty "must be limited to those offenders who commit a narrow category of the most serious crimes and whose extreme culpability makes them the most deserving of execution." *Kennedy v. Louisiana*, 128 S. Ct. 2641 (2008) (internal quotation marks omitted). And the *Kennedy* Court further recognized "rape has a permanent psychological, emotional, and sometimes physical impact on the child… [resulting in] years of long anguish that must be endured by the victim" *Id. at* 2658.

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6. **In 2005, you commented on a bill that was proposed in the Indiana Legislature that would have required Superior Court judges be appointed rather than elected. Your particular concern was the lack of a provision for racial, gender, or political diversity with regard to such appointments.**

   a. **What were your reasons for your concern?**

      Response: My comments were in response to assertions made by the bill's proponents that the proposed bill would improve diversity on the court. The experience in our county showed that elections produced a more diverse bench than a prior selection commission had. As for political diversity, the bill in question sought to eliminate a decades old statutory election scheme that provided for a nearly bi-partisan court, whose goal was neutralizing politics in the county's judicial branch.

   b. **Do you believe that an individual's race, gender or political persuasion influences his or her judicial decisionmaking? Please explain your answer.**

      Response: No, a judge's race, gender or political persuasion should not influence judicial decisionmaking, which should be based on both a fair and objective determination of the facts, and adherence to controlling legal precedent.

      i. **If so, please provide an example of a case in which your race, gender or political persuasion influenced your judicial decisionmaking.**

         Response: See above.

   c. **Do you believe that an individual's race, gender or political persuasion affects the quality of his or her judicial decisionmaking? Please explain your answer.**

      Response: No, the quality of judicial decisionmaking is determined by hard work, fair treatment to all litigants, and adherence to precedent and law.

7. **During your time as Deputy Chief of Staff and Counsel to then-Governor Bayh, you worked on a half million dollar settlement of a federal lawsuit against your husband, who was sued in his official capacity as deputy commissioner of the Bureau of Motor Vehicles and his individual capacity by the Indiana Civil Liberties Union for alleged political firings. According to press reports, you and your husband were married during the course of the litigation. Although you did not litigate the suit, you acted as the Governor's liaison and monitored developments in the litigation. And, although you reportedly told the Governor's Chief of Staff that you did not believe you should participate in the settlement negotiations alone because you believed it to be an improper conflict of interest, you were the only representative of the Governor at the settlement conference.**

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00692 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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a. What factors led to your decision that it was no longer a conflict of interest for you to represent the Governor in the settlement negotiations?

Response: After I raised my concerns about a potential conflict to the Chief of Staff, we agreed that while I would attend the conference in person, he would be available by phone. I attended the conference, lead counsel negotiated the settlement, the Chief of Staff was consulted by phone, and he approved the final settlement.

b. If confirmed, what process will you employ to determine whether you have a conflict of interest?

Response: If confirmed, as throughout my service as United States Magistrate Judge, I would consult the Federal recusal statutes and the Code of Conduct for United States Judges to assist me in identifying and, where necessary, resolving or avoiding any conflicts. I also would seek the advice of my colleagues and of the Judicial Conference as needed. I would continue to carefully monitor ordinary conflicts, such as those arising from mutual fund investments, any entity listed on my financial disclosure form, and relatives' employers.

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. While I understand that you cannot know 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: Yes, in certain respects. Through the work I have done as a federal magistrate judge facilitating settlement conferences, I have learned the impact of litigation on plaintiffs and defendants, and used the knowledge gained to help the parties work toward crafting mutually acceptable resolutions. The success of this process requires a significant level of understanding of all parties' points of view.

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 Justice Sotomayor's statement.

c. What role do you believe empathy should play in a judge's consideration of a case?

Response: Unlike the unique role of settlement facilitator described above, in a more traditional judicial role, the bounds of "empathy" are limited to the role of judge as

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00693 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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one who "should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity" and who "should accord to every person who has a legal interest in a proceeding, and that person's lawyer, the full right to be heard according to law." Code of Conduct for United States Judges, Canon 3(A)(3),(4).

d. 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: See above.

ii. Please identify any cases in which you have done so.

Response: See above.

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 Social Security disability appeals, I often serve by consent of the parties as the reviewing judge. A petitioner in such a case almost always suffers from a severe medical impairment, but the case is before me because an administrative law judge has determined the petitioner is not disabled. The standard of review is very deferential, and even in cases where another ALJ (or I) might have found differently, I uphold the ALJ's decision where required by law.

9. Please describe with particularity the process by which these questions were answered.

Response: The questions were forwarded to me by the Department of Justice. I considered them, conducted research, and prepared answers. I discussed my answers with representatives of the Department of Justice, finalized them, and forwarded them for submission to the Committee.

10. Do these answers reflect your true and personal views?

Response: Yes.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00694 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Senator Jeff Sessions
Supplemental Questions for Magistrate Jane Magnus-Stinson
Nominee, U.S. District Court, Southern District of Indiana

1. **In my written questions to you, I asked you to identify the specific provision of the Code of Judicial Conduct that prohibits you from explaining the reasons for your request to be removed from capital cases while a judge on the Marion Superior Court. You cited Canon 2.10(A) of the Indiana Code of Judicial Conduct, which reads:**

> **A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.**

You also stated that Canon 3A(6) of the Code of Conduct for United States Judges precludes you from explaining the reasons for your request. Canon 3A(6) provides:

> **A judge should not make public comment on the merits of a matter pending or impending in any court…**

As you noted, the commentary to that Canon provides:

> **The admonition against public comment about the merits of a pending or impending matter continues until the appellate process is complete. If the public comment involves a case from the judge's own court, the judge should take particular care so that the comment does not denigrate public confidence in the judiciary's integrity and impartiality, which would violate Canon 2A.**

   a. **Do any of the capital cases to which you were assigned when you asked to be removed remain pending?**

   b. **Regarding those same cases, is the appellate process complete for each of them?**

      i. **The commentary to Canon 3A(6) provides that the admonition against making public comment continues "until the appellate process is complete." If the appellate process for each case that was pending when you made your request is complete, please explain how Canon 3A(6) bars you from explaining the reasons for your request.**

   c. **According to the Indiana Code of Judicial Conduct, an "impending matter" is "a matter that is imminent or expected to occur in the near future."**

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i. Do you believe that Indiana's Code of Judicial Conduct Canon 2.10(A)'s admonition against making any public statement regarding an "impending" matter precludes you from commenting? If so, why?

ii. Do you consider all future Indiana capital cases to be "impending" matters for purposes of Canon 2.10(A)?

iii. Do you consider all future Indiana capital cases to be "impending matters" for the purposes of Canon 3A(6) of the Code of Conduct for United States Judges?

d. Given that you are no longer a judge on the Marion Superior Court, please explain how providing the reasons for your request at present could affect the "outcome or impair the fairness of a matter pending or impending."

e. Given that you are no longer a judge on the Marion Superior Court, please explain whether your request related in any way to a personally held objection to the imposition of the death penalty.

Response: In my prior testimony and written submissions regarding the three capital cases assigned to me in 1999 while I was a judge of the Marion Superior Court, I relied on ethics advice I received at the time of the reassignments not to publicly discuss the specific circumstances that led to them. Trial proceedings and direct appeal of those cases are completed.

I understood that the advice I received at the time of the reassignments continued to apply even after I no longer served as a judge of the Marion Superior Court and after all appeals were complete. In light of these supplemental questions, I sought new ethics advice today from the current counsel of the Indiana Judicial Qualifications Commission and the office of the general counsel to the Codes of Conduct Committee of the Administrative Office of the United States Courts, which governs my conduct as a magistrate judge. Neither entity now interprets the canons to preclude my public comment about the cases.

At the time the three capital cases were assigned to me in 1999, Indiana law provided for the capital sentencing decision to be made by the judge, rather than the jury. Ind. Code § 35-30-2-9 (1999) ("the Court shall make the final determination of the sentence"), *amended by* Ind. P.L. 117-2002 § 2 (2002). I fully respected and continue to respect the prerogative of the legislature to determine the mechanism for capital sentencing determination, as well as to determine the circumstances in which capital punishment is appropriate. In fact, while serving as Counsel to the Governor, I advised Governor Evan Bayh during clemency proceedings that resulted in the denial of clemency and the carrying out of the death penalty.

Despite my legal comfort with the death penalty, I was uncomfortable about personally, on my own, choosing between life and death (in light of the jury providing a mere non-binding recommendation). I had then and have now no reservation about my ability to

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impose the death penalty or uphold a capital sentence properly found by a jury (as is done in the federal system and under today's Indiana law) or by another judge (as was the case under Indiana law until 2002.) At the time, I consulted with our Presiding Judge and together we agreed that a reassignment of cases was the best way to give the full effect to both the state law and the court's interest in efficient docket management. To account for the cases being transferred, I took on 50 major felony drug cases.

2. **During the course of the vetting process, have you contacted the Counsel for the Indiana Commission on Judicial Qualifications and inquired as to whether disclosing your reasons for your request to the Judiciary Committee would violate the Code of Judicial Conduct? If so, precisely state the question you posed and precisely what they advised.**

Response: Prior to this week, I relied on the advice I received concurrent to the case reassignments that I should, without limit, avoid public statements about those reassignments. In responding to prior Questions for the Record, I contacted the counsel for the Indiana Judicial Qualifications Commission solely to confirm a citation, as I understood that the canons had been re-codified subsequent to my state judicial service. In response to these supplemental questions, I have sought new counsel today, from both the counsel to the Indiana Judicial Qualifications Commission and the office of the general counsel to the Codes of Conduct Committee of the Administrative Office of the United States Courts. I received new advice that neither entity now interprets the applicable canons to preclude my public comment.

3. **If confirmed as a United States District Court Judge, you will be required to hear and decide collateral attacks on Indiana death penalty cases, such as motions filed under 28 U.S.C. 2254.**

   a. **Do you intend to recuse yourself from these matters?**

   b. **If you intend to preside over these cases, why are you able to do so now, when you were not able to do so as a judge on the Marion Superior Court?**

   c. **What opinions have you expressed concerning the death penalty in general and its constitutionality?**

Response: As with any recusal question, I would follow the applicable statutes, canons, and practices of the Court. Because I do not have any reservation about my ability to uphold a death penalty properly decided by a jury and/or imposed by another judge, I would not state a blanket policy of recusal from collateral attacks on Indiana death penalty cases, or on death penalty cases generally. In *Gregg v. Georgia*, the Supreme Court of the United States held that the death penalty is permissible under the constitution. 428 U.S. 153 (1976). If confirmed as a district judge, I would apply this and all other law concerning the death penalty with the diligence and efficiency I pledge to every case.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00697 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Similarly, because I have no problem in upholding a capital sentence properly decided by a jury or imposed by another judge, I would have no problem reviewing death penalty cases from Indiana state court. In addition, I understand the strictly limited avenue for relief provided by the habeas statutes. If confirmed as a United States District Judge, I would follow the law, including applicable Supreme Court precedent, in evaluating any collateral attack on a capital case.

4. If confirmed as a United States District Court Judge, you will be required to hear and decide capital cases under federal law.

a. Do you intend to continue your policy of recusal from such cases?

b. If not, why do you feel that you can now rule impartially in such cases?

Response: As with any recusal question, I would follow the applicable statutes, canons, and practices of the Court. Because I do not have any reservation about my ability to impose the death penalty properly decided by a jury, I would not state a blanket policy of recusal on capital cases under federal law. I fully respect the determination of the Congress about the circumstances in which the death penalty may be imposed, subject only to the limits of the Constitution as determined by the Supreme Court of the United States and the United States Court of Appeals for the Seventh Circuit. I appreciate the special gravity of any question about capital cases, and I represent without reservation that I can rule impartially and follow the law in these cases.

5. Have you disclosed to anyone at the White House and/or the Department of Justice the reasons for your request to be removed from capital cases while on the Marion Superior Court? If so, please explain why disclosing that information to the White House and/or Department of Justice does not violate the Canons you cite, but disclosing that information to the Committee would violate those same Canons.

Response: I shared privately with attorneys from the White House and Department of Justice the same information about the reassigned cases contained in these answers. As private conversations, they were consistent with the advice I previously had received to avoid public statements on these cases.

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Responses of Gloria M. Navarro
Nominee to the U.S. District Court for the District of Nevada
to the Written Questions of Senator Tom Coburn, M.D.

1. **In your lecture notes for a talk entitled, "Effective Communication with the Non-English Speaking Client: Cultural Issues," you described ways to use cultural factors to a defendant's benefit in criminal cases. Specifically, you made the following points:**

   - The burden to show voluntary consent is heavier when the defendant does not speak English.
   - Cultural factors can be used to invalidate a defendant's voluntary consent to a search.
   - Un-*Mirandized* statements taken during routine questioning and interviewing are involuntary and must be suppressed where defendant's subjective belief that he/she is not free to leave is reinforced by cultural factors.
   - *Mirandized* statements and consents to searches can be deemed involuntary where the defendant is not fluent in English.

   a. Can you explain why the burden to show voluntary consent is heavier when the defendant does not speak English?

   Response: The statement referred to above was a verbatim recitation of the language used by the Sixth Circuit court in *Kovach v. U.S.*, 53 F.2d 639 (6th Cir. 1931) which stated "[t]his burden is of course heavier where it appears that the owner is illiterate or a foreigner who does not readily speak and understand the English language." *Id.* at 639. During the same lecture, I also noted the Ninth Circuit Court's decision in *U.S. v. Moreno*, 742 F.2d 532 (9th Cir. 1984) which held that the defendant's "lack of familiarity with police procedures in this country, his alienage and his limited ability to speak and understand English contributed significantly to the quantum of coercion present." *Id.* at 536.

   b. Why do you believe the government should be tasked with this additional burden when someone does not speak English?

   Response: The statement referred to above was not a personal statement of my belief. This lecture was a discussion of relevant case law and the purpose was to educate the CJA lawyers of the status of the available existing case law to enable them to provide effective representation to their clients.

   c. Don't you agree that the imposition of these additional burdens on the government will result in criminals not being convicted?

   Response: The U.S. Supreme Court's decision in *Schneckloth v. Bustamonte*, recognized that "[t]wo competing concerns must be accommodated in determining the meaning of a "voluntary" consent to search: the legitimate need for such searches and the equally important requirement of assuring the absence of coercion." 412 U.S.

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218, 227, 93 S.Ct. 2041, 2048 (1973). Even if the enforcement of constitutional requirements may occasionally result in fewer convictions, if confirmed, the doctrine of *stare decisis* requires that I follow precedent regardless of its possible effect.

2. **In a 1997 article for *Communiqué* magazine, you urged criminal defense lawyers to understand the immigration law consequences of criminal convictions for illegal immigrants. You stated:**

   "[t]he immigration laws show very little spirit of pity. Proof or mere addiction to a narcotic is ground for deportation or exclusion with one exception."

   a. **Do you think it is appropriate for a judge to add his or her own "spirit of pity" to laws that, in your view, lack such spirit?**

      Response: No.

3. **The American Bar Association's Standing Committee on the Judiciary rated your nomination "Substantial Majority Qualified, Minority Not Qualified." In his statement recommending your nomination, Majority Leader Reid said that your rating was "upsetting" to him and that you were "not rated as high as [you] should be rated."**

   a. **Were you satisfied with the ABA's review of your record?**

      Response: I do not know the methodology used by the ABA Committee; therefore I am unable to comment upon the process used to review my record.

   b. **Do you believe you deserved the rating you received?**

      Response: I do agree with the substantial majority that determined I am qualified to serve as a United States District Court Judge if confirmed.

   c. **Did the ABA explain why you received the "Not Qualified" rating?**

      Response: My understanding is that I did not receive a not qualified rating but rather that the ABA rated me "Substantial Majority Qualified, Minority Not Qualified." However, the ABA did not explain why this rating was given.

   d. **Did you agree with their analysis of the factors that resulted in the "Not Qualified" rating?**

      Response: My understanding is that I did not receive a not qualified rating but rather that the ABA rated me "Substantial Majority Qualified, Minority Not Qualified." Nevertheless, I am unaware of which factors resulted in the minority's rating, nor what analysis of the factors was applied; therefore I cannot determine whether I am in agreement or not.

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e. Did you have an opportunity to provide contrary evidence prior to the Committee's vote to counter the findings that resulted in the "Not Qualified" rating?

Response: My understanding is that I did not receive a not qualified rating but rather that the ABA rated me "Substantial Majority Qualified, Minority Not Qualified." However, I was not specifically provided a prior opportunity to submit any contrary evidence because I have never been advised of the particular findings that resulted in the minority's rating.

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?

Response: No.

5. 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 U.S. 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 U.S. Supreme Court deferred collectively to "the larger context of modern-era Commerce Clause Jurisprudence" and explained that an exclusive reliance upon only *Lopez* and *Morrison* provided an inappropriate "myopic focus."

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 age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy's analysis?

a. How would you determine what the evolving standards of decency are?

Response: After the *Roper* decision, the U.S. Supreme Court in *Kennedy v. Louisiana*, explained that the determination is guided by "objective indicia of society's standards, as expressed in legislative enactments and state practice with respect to executions. Consensus is not dispositive, however. Whether the death

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00701 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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penalty is disproportionate to the crime also depends on the standards elaborated by controlling precedents and on the Court's own understanding and interpretation of the Eighth Amendment's text, history, meaning, and purpose." 128 S.Ct 2641, 2649 – 2651 (2008). If confirmed, I would follow Supreme Court precedent as required by the doctrine of *stare decisis* and apply the Court's analysis.

b. Do you think that a judge could ever find that the "evolving standards of decency" dictated that the death penalty is unconstitutional in *all* cases?

Response: No. The U.S. Supreme Court has held that the death penalty is a constitutional punishment. Therefore, it would not be appropriate for a District Court judge to utilize the "evolving standards of decency" analysis or any other analysis to overrule a decision made by the U.S. Supreme Court. If confirmed, I would accept and follow Supreme Court precedent.

c. What factors do you believe would be relevant to the judge's analysis?

Response: See Response above.

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: No.

a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: See Response above.

b. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: If confirmed and called upon to interpret the Eighth Amendment or any other Amendment, I would follow the analysis proscribed by the U. S. Supreme Court in each area as required by the doctrine of *stare decisis*.

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Responses of Gloria M. Navarro
Nominee to the U.S. District Court for the District of Nevada
to the Written Questions of Senator Jeff Sessions

1. **At your hearing, I asked you whether you believed that the death penalty violates the Constitution as being "cruel and unusual." You testified that you had "not expressed an opinion on that," but then stated "I'm not sure that I have a particular opinion on that. There's a case-by-case basis that, in my personal view, if I was sitting on a jury, I would have to decide."**

   a. **Do you believe that the death penalty constitutes cruel and unusual punishment under the Constitution?**

   Response: The U.S. Supreme Court has upheld the constitutionality of the death penalty except in specific limited circumstances and if confirmed, I would follow the Court's precedent and apply the law as required by the doctrine of *stare decisis*.

   b. **Please explain what you meant by "case-by-case basis."**

   Response: Section 3593(e) of the Federal Death Penalty Act requires that a judge must impose a sentence of death when it is recommended by the jury; that is why I stated that, "at the end of the day… the juries are the individuals who have to decide and pass judgment." If confirmed as a judge, I would of course follow this law. In response to the question about my personal belief, if I were a member of a jury, I would likewise follow the law and not impose the death penalty automatically but rather review the existence of the aggravating/mitigating factors presented to me and determine the appropriateness of the death penalty for each of the defendants on a "case-by-case basis."

   c. **Justice Marshall maintained that the death penalty was always unconstitutional. Do you agree or disagree? Please explain your answer.**

   Response: The U.S. Supreme Court has upheld the constitutionality of the death penalty and if confirmed, I would follow the Court's precedent as required by the doctrine of *stare decisis*.

   d. **Do you believe that the death penalty is an acceptable form of punishment? Please explain your answer.**

   Response: The U.S. Supreme Court has upheld the constitutionality of the death penalty as an acceptable form of punishment except in certain limited circumstances and if confirmed, I would follow the Court's precedent and apply the law as required by the doctrine of *stare decisis*.

2. **In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on "evolving standards of decency" in holding that capital punishment for any murderer under the age of 18 was unconstitutional.**

   a. **Do you agree with Justice Kennedy's analysis?**

   Response: Whether or not I agree with Justice Kennedy's analysis, the doctrine of *stare decisis* requires that I accept the U.S. Supreme Court's decision and if I were to be confirmed, I would apply its analysis.

   b. **How would you determine what constitutes "evolving standards of decency"? What factors would you consider?**

   Response: After the *Roper* decision, the U.S. Supreme Court in *Kennedy v. Louisiana*, explained that the determination is guided by "objective indicia of society's standards, as expressed in legislative enactments and state practice with respect to executions. Consensus is not dispositive, however. Whether the death penalty is disproportionate to the crime also depends on the standards elaborated by controlling precedents and on the Court's own understanding and interpretation of the Eighth Amendment's text, history, meaning, and purpose." 128 S.Ct 2641, 2649 – 2651 (2008). If confirmed, I would follow Supreme Court precedent as required by the doctrine of *stare decisis* and apply the Court's analysis.

   c. **Do you think that a judge could conclude that "evolving standards of decency" dictate that the death penalty is unconstitutional in all cases? Please discuss what factors you believe would be relevant to the judge's analysis.**

   Response: No. The U.S. Supreme Court has held that the death penalty is a constitutional punishment. Therefore, it would not be appropriate for a District Court judge to utilize the "evolving standards of decency" analysis or any other analysis to overrule a decision made by the U.S. Supreme Court. If confirmed, I would accept and follow Supreme Court precedent.

3. **In *Kennedy v. Louisiana*, 129 S. Ct. 1 (2008), the Supreme Court held that the death penalty for the crime of child rape always violates the Eighth Amendment. The majority opinion was based, in part, on the fact that 37 jurisdictions (36 states and the federal government) did not allow for capital punishment in child rape cases. In reality, however, Congress and the President specifically authorized the use of capital punishment in cases of child rape under the Uniform Code of Military Justice (UCMJ) in the National Defense Authorization Act of 2006, as reported first by Col. Dwight H. Sullivan in his blog and later by the *New York Times*.**

   a. **Given the heinousness of the crime, as well as the information on the federal government's codification of capital punishment in child rape cases under**

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00704 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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the UCMJ, is it your opinion that *Kennedy v. Louisiana* was wrongly decided? If not, why?

Response: Regardless of my own personal opinion, the doctrine of *stare decisis* requires that I accept this U.S. Supreme Court decision and if I were to be confirmed, I would follow and apply the Court's decision.

b. Following the Supreme Court's decision, President Obama announced at a press conference: "I think that the death penalty should be applied in very narrow circumstances for the most egregious of crimes. I think that the rape of a small child, 6 or 8 years old, is a heinous crime." Do you agree with that statement? Why or why not?

Response: I do agree that the rape of a small child is a heinous crime, however, the doctrine of *stare decisis* requires that I accept the U.S. Supreme Court's decision and if I were to be confirmed, I would follow and apply this decision.

4. In a 1994 newsletter published by the Office of the Federal Defender for the District of Nevada, you encouraged attorneys representing non-English speaking defendants to "[a]lways remember that the cultural and historical background of these defendants, not just the language barriers, leave them more vulnerable to police pressures than the average individual."

a. Please explain what you meant by this statement.

Response: The purpose of the newsletter was to educate Criminal Justice Act lawyers of the status of the law and the article was a summary of relevant case law provided to assist them to effectively represent clients with a different cultural or historical background. The statement referenced above was a reminder to attorneys that in addition to language barriers, courts had recognized other vulnerabilities of this particular class of defendants.

b. Do you believe that the law should be applied differently to people based on their "cultural and historical background"? Please explain your answer.

Response: No. The law should be applied consistently to provide equal justice for all people.

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?

Response: See Response above.

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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. **While I understand that you cannot know 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? Why?**

Response: If empathy is defined as not just the willingness but also the ability to understand and consider several points of view and keep an open mind, then I believe I do fit President Obama's criteria.

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: I agree with Justice Sotomayor's statement.

c. **What role do you believe empathy should play in a judge's consideration of a case?**

Response: A judge should be able to understand and consider the views presented, keeping an open mind before applying the law to the facts of the case.

d. **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: See Response above.

6. **Please describe with particularity the process by which these questions were answered.**

Response: I received these written questions from the Department of Justice (DOJ). I reviewed my materials referenced in the questions, drafted my responses, discussed the answers with representatives of the DOJ and then finalized my responses.

7. **Do these answers reflect your true and personal views?**

Response: Yes.

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Responses of Judge Tanya Walton Pratt
Nominee to the U.S. District Court for the Southern District of Indiana
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. I do not agree with the perspective that the Constitution is a "living" document.

2. **Since at least the 1930s, the Supreme Court has expansively interpreted Congress' power under the Commerce Clause. Recently, however, in the cases of *United State 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: In Gonzales v. Raich, 545 U.S. 1, 23 (2005), the Supreme Court indicated that the Lopez and Morrison decisions are consistent with prior Supreme Court Commerce Clause decisions.

3. **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 age18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy's analysis**?

   Response: The decision in *Roper v. Simmons* is the law of the land. I will follow the Supreme Court's ruling and apply the applicable law as dictated by the doctrine of *stare decisis*.

   a. **How would you determine what the evolving standards of decency are?**

      Response: I would apply the analysis established by Supreme Court law.

   b. **Do you think that a judge could ever find that the "evolving standards of decency" dictated that the death penalty is unconstitutional in *all* cases?**

      Response: No, a District Court Judge is bound by Supreme Court rulings and could never find that the "evolving standards of decency" dictated that the death penalty is unconstitutional in *all* cases.

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c. What factors do you believe would be relevant to the judge's analysis?

Response: If confirmed by the Senate to serve as a District Court Judge for the Southern District of Indiana my role would be to follow legal precedent, and to respect the doctrine of *stare decisis*. The factors relevant to judicial analysis would be those set out by the Supreme Court and the 7th Circuit.

4. 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: No, The Supreme Court has not said that Federal Courts should rely on contemporary foreign or international law or decisions in determining the meaning of the Constitution.

a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: Not applicable.

b. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: No, the Supreme Court has not found that Federal judges should consider foreign law when interpreting the Eighth Amendment or any other amendments of the U.S. Constitution.

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Responses of Judge Tanya Walton Pratt
Nominee to the U.S. District Court for the Southern District of Indiana
To the Written Questions of Senator Jeff Sessions

1. **In February 2007, you stated that there should be more rehabilitation programs in prison, more programs to help prisoners re-enter society, and more educational programs for convicts. You also hinted that the rising crime rate is a call to action for the courts. In your view, what role do judges have in rehabilitating criminal offenders?**

Response: I do not believe Federal judges have a direct role in rehabilitating criminal offenders. However, Indiana trial court judges may order an offender to participate in reformation programs. Article 1, section 18 of the Indiana Constitution provides: "The penal code shall be founded on the principles of reformation and not of vindictive justice." In following my State Constitution, an Indiana trial court judge may fashion a sentence which orders certain offenders to participate in reformation programs such as substance abuse treatment, anger control, and sex offender treatment; while in prison, on probation or during parole. If I am so fortunate to be confirmed by the Senate, the provisions of the Indiana State Constitution would not apply.

2. **In November 2006, you were honored by the Archdiocese of Indianapolis. An article describing the event reported that when deciding cases, you "try to balance the demands for justice with the concern for others that you view as one of the hallmarks of your faith."**

   a. **If this is an accurate description of your statement, what did you mean by it?**

   Response: The above statement is not a quote of mine and is not an accurate description of any statement made by me. The statement was made by a news reporter.

   b. **Do you believe that judges should rule based on anything other than the law and the facts before them?**

   Response: No. I believe judges should rule based only on the law and facts before them.

   c. **Please provide an example of a case in which you balanced the "demands of justice with the concern for others."**

   Response: I have not balanced the "demands of justice with the concern for others" in any of my cases.

3. **As you may know, President Obama has described the types of judges that he will nominate to the federal bench as follows:**

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"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. While I understand that you cannot know 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: I do not know if I fit the criteria described by President in the above quote. However, when nominated, President Obama stated he believed I represented "some of the best in American jurisprudence" and that I would "serve the American people with integrity." If confirmed, I will strive be fair and impartial and to treat all litigants with respect and dignity, regardless of their background or station in life.

b. What role do you believe that empathy should play in a judge's consideration of a case?

Response: Empathy should not play a role in a judge's consideration of a case.

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. It is never proper for judges to indulge their own subjective sense of empathy in determining what the law means. In determining what the law means, a judge must look to precedent cases and applicable statutes and apply the law to the facts.

i. If so, under what circumstances?

Response: No circumstances.

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 subjective sense of empathy and rule based solely on the law.

Response: In contested adoption cases and termination of parental rights matters, I have had to set aside my subjective sense of empathy for parents who may be struggling to care for their children, but are unable to do so; and rule based solely on the law. In each case in which I participate, I

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provide the parties with a neutral and impartial decision and empathy plays no role.

4. Please describe with particularity the process by which these questions were answered.

Response: Department of Justice representatives forwarded the questions to me; I then conducted research, reviewed documents and drafted responses to the questions. I discussed my answers with representatives of the Department of Justice and then submitted my finalized responses.

5. Do these answers reflect your true and personal views?

Response: Yes

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SUBMISSIONS FOR THE RECORD

ASIAN AMERICAN JUSTICE CENTER

January 29, 2010

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
United States Senate
152 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Letter of Support for Lucy H. Koh, Nominee for the United States District Court for the Northern District of California

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 carries out its mission by operating closely with its three affiliates: the Asian Pacific American Legal Center, the Asian Law Caucus, and the Asian American Institute. The organization also has a network of nearly 100 community-based organizations in 25 states and the District of Columbia. AAJC recognizes a critical need for greater participation by Asian Americans in the federal courts. Of the approximately 875 federal Article III judges, only ten are Asian Americans. This distressing underrepresentation of Asian Americans in the federal judicial system deprives our courts of unique perspectives that are essential to resolving the complex issues before our courts today.

AAJC urges the timely confirmation of Judge Lucy H. Koh for the United States District Court for the Northern District of California. Judge Koh is superbly qualified and would faithfully and skillfully serve on the United States District Court. She currently serves as a California Superior Court Judge for Santa Clara County, where she handles an extensive civil docket. Last year, she presided over a busy criminal calendar of over 500 cases per week. The fact that she was reversed only once—partially—is testimony to her skill and capability as a jurist. Before being appointed to the bench by Governor Arnold Schwarzenegger, Judge Koh was an Assistant U.S. Attorney, a partner with a prominent private law firm, a U.S. Department of Justice attorney, and a Senate Judiciary Committee staff member. Additionally, she brings to the federal bench an extensive background in intellectual property, which is exceptionally well-suited for a federal

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judgeship in Silicon Valley. A distinguished graduate of Harvard Law School and Harvard-Radcliffe Colleges, Judge Koh's confirmation would elevate a qualified, respected jurist to the federal bench.

Judge Koh's background is a uniquely American success story. Born in Washington, D.C. to Korean parents who escaped war and dictatorship to pursue a better life in the United States, Judge Koh was raised in Lorman, Mississippi and in Norman, Oklahoma, attending public school throughout her primary schooling. Her nomination is historic for the Asian Pacific American community in several respects: she would be the first female Korean American Article III judge, the first Korean American federal district court judge, and only the second Korean American Article III judge in U.S. history. Judge Koh has been active in the Asian American community throughout her career, and has received awards from the National Asian Pacific American Bar Association, National Association of Profession Asian American Women, and the Korean American Bar Association of San Diego. She has served on the Board of Directors of the Asian Pacific Bar Association of Silicon Valley, the Korean American Bar Association of Northern California, and on the Board of Governors of the Asian Pacific American Bar Association of Los Angeles. In addition, she is active in numerous other community and law-related organizations, and is truly dedicated to public service.

Asian Americans are woefully underrepresented on the federal bench. Indeed, there has never been an Asian Pacific American Article III judge in the 160-year history of the Northern District of California, where nearly 1/3 of the population is Asian Pacific American. Given her exceptional qualifications and background, commitment to professional excellence and community service, and her integrity and character, Judge Koh's confirmation will enrich our judicial system. Accordingly, the Asian American Justice Center urges for the speedy confirmation of Judge Lucy H. Koh for the United States District Court for the Northern District of California.

Sincerely,

Karen K. Narasaki
President and Executive Director

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McDermott
Will&Emery

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Munich New York Orange County Rome San Diego Silicon Valley Washington, D.C.
Strategic alliance with MWE China Law Offices (Shanghai)

Bobby R. Burchfield
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February 9, 2010

VIA FACSIMILE

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
United States Senate
152 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Lucy Koh

Dear Chairman Leahy and Ranking Member Sessions:

I am honored to write in support of the nomination of Judge Lucy Koh for the United States District Court for the Northern District of California in San Jose.

After obtaining both her undergraduate and law school degrees from Harvard, Judge Koh served with distinction in the United States Attorney's Office in Los Angeles and at the Department of Justice in Washington, D.C. Judge Koh was a partner at McDermott Will & Emery focusing on intellectual property litigation from 2002 until appointed to the State Court bench by Governor Arnold Schwarzenegger in 2008. Her work and temperament at McDermott earned her both a strong reputation as a practicing lawyer and the respect and friendship of her colleagues.

Judge Koh brings to the bench a breadth of both civil and criminal litigation experience in both public service and in private practice. This diversity of experience will serve her and the federal judicial system well upon her confirmation as a United States District Judge.

Based on her background and reputation among her colleagues at McDermott, I enthusiastically support Judge Koh's nomination to the United States District Court for the Northern District of California.

Sincerely,

Bobby R. Burchfield

DOLORES A. CARR
DISTRICT ATTORNEY
COUNTY OF SANTA CLARA

COUNTY GOVERNMENT CENTER
70 WEST HEDDING ST., WEST WING
SAN JOSE, CA 95110
(408) 792-2855

February 1, 2010

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 Senators Leahy and Sessions,

I write in strong support of Santa Clara County Superior Court Judge Lucy H. Koh's confirmation to the federal bench. Judge Koh has the temperament, legal, and law enforcement experience to be an excellent addition to the United States District Court.

My perspective on Judge Koh's candidacy is based on having served Santa Clara County residents as a Superior Court Judge for six years, as a Deputy District Attorney for fifteen years, as an attorney in private practice, and currently as the first woman to serve as Santa Clara County District Attorney.

I first met Judge Koh through the Asian Pacific Bar Association of the Silicon Valley and have come to know her through various community events and through the courts. My Office's prosecutors appear regularly before Judge Koh. Judge Koh has an excellent reputation for being fair and impartial to both sides. She is reasonable and efficient in settling and sentencing cases at pretrial conferences and presiding over trials. Judge Koh is respectful to victims of crime, jurors, defendants, witnesses and lawyers, and is careful and deliberate in her decisions.

Judge Koh also brings to the bench a wealth of relevant experience, particularly in the areas of criminal justice and law enforcement. As a federal prosecutor in Los Angeles, Judge Koh represented the United States in trials involving major fraud and narcotics. In the U.S. Senate, she was involved in criminal law provisions of federal legislation. Later, while working for the U.S. Deputy Attorney General, she gained valuable experience in how the federal government executes its law enforcement responsibilities. These experiences are invaluable to someone joining the federal bench, and complement her experience in intellectual property and civil litigation.

I strongly support Judge Koh's confirmation to the federal bench. I am confident she will skillfully address the complex cases and challenges of the U.S. District Court.

Very Truly Yours

Dolores A. Carr

Dolores A. Carr

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San Jose, CA 95134-1706
Phone: 408.526.4000
http://www.cisco.com

February 5, 2010

Honorable Patrick Leahy
Chairman, Committee on the Judiciary
Honorable Jeff Sessions,
Ranking Member, Committee on the Judiciary
United States Senate
Washington, D.C.

Dear Chairman Leahy and Ranking Member Sessions:

I write to recommend strongly your support of Santa Clara County Superior Court Judge Lucy Haeran Koh's confirmation as a Judge of the United States District Court, sitting in San Jose.

Judge Koh has a remarkably diverse record, each element of which, by itself, would warrant her appointment. Taken as a whole, that record suggests that she will be a truly extraordinary district court judge. She has experience in all three branches of our system: she has demonstrated an ability as a Department of Justice official to set and implement executive policy and as a prosecutor to enforce our laws; to work within the legislative branch with the complexities and compromises that requires; and to act as a judge with both strength and compassion.

In Silicon Valley, business litigation tends to focus on complex matters involving difficult and often abstruse intellectual property issues. For many judges around the country, these cases, although of paramount importance to the future of innovation in our country, often cannot get the attention they need and deserve. Judge Koh's seven years of experience as a litigator in these complex matters, representing parties large and small, both plaintiffs and defendants, provides an ideal preparation for leadership in a court that can and will make rulings of national significance.

Her engagement with the community, strikes me as exactly what we need more of in our federal judiciary. In addition, she has a warm and open manner, and an ability to listen that has won her the confidence and support of a wide circle of diverse colleagues and friends in this area.

Judge Lucy Koh is a great exemplar of what we need to build an ever-stronger federal judiciary, and I urge her prompt confirmation.

Sincerely yours,

Mark Chandler
Senior Vice President, General Counsel and Secretary

02/05/2010 6:30PM

GEORGETOWN UNIVERSITY LAW CENTER

Viet D. Dinh
Professor of Law

February 9, 2010

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
United States Senate
152 Dirksen Senate Office Building
Washington, D.C. 20510

Re: *Letter of Recommendation in Support of Judge Lucy Koh's Nomination to the U.S. District Court for the Northern District of California*

Dear Chairman Leahy and Ranking Member Sessions:

I write enthusiastically in support of California Superior Court Judge Lucy Koh's nomination to the U.S. District Court for the Northern District of California. I have known Judge Koh since law school where we were classmates, and have tremendous respect for her work as an attorney and judge.

Appointed by Governor Arnold Schwarzenegger, Judge Koh has served for more than two years as a California Superior Court Judge for Santa Clara County where she has presided over thousands of cases with a record of just one reversal and that was only a partial reversal. In addition to her judicial experience, Judge Koh has significant experience working for the U.S. Department of Justice and with this Committee. For three years, Judge Koh served as an Assistant U.S. Attorney for the U.S. Attorney's Office for the Central District of California, where she prosecuted crimes involving financial fraud, narcotics, public corruption, immigration, and theft and violent crimes. Prior to working at the U.S. Attorney's Office, Judge Koh was a Special Assistant to the Deputy Attorney General and Legislative Affairs Special Counsel at the Department of Justice. She started her career after law school with the Senate Judiciary Committee, working for the late Senator Edward M. Kennedy as a Women's Law & Public Policy Fellow.

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In the private bar, Judge Koh developed a strong intellectual property background, an experience which will serve her well given the high number of intellectual property cases handled by the Northern District of California. Judge Koh was a partner for six years at McDermott Will & Emery LLP, where she litigated complex civil cases involving patent, trade secret, copyright, contract, fraud, and commercial disputes. She litigated several precedent-setting intellectual property cases, including *In re Seagate Technology*, 497 F.3d 1360 (Fed. Cir. 2007), which overturned a 24-year-old standard for willful patent infringement.

Judge Koh's record as a California Superior Court judge is impeccable and her experience in intellectual property and criminal law makes her an ideal candidate for the U.S. District Court for the Northern District of California. I recommend Judge Koh without reservation and respectfully urge her confirmation.

Sincerely,

Viet D. Dinh

U.S. Senator Dianne Feinstein
February 11, 2010

Statement
Nomination of Lucy Koh for the U.S. District Court for the Northern District of California

Mr. Chairman, I would like to express my support for the nomination of Superior Court Judge Lucy Koh to sit on the Federal District Court in Santa Clara, California.

Judge Koh has a strong legal background. She has been a Superior Court Judge in Santa Clara County, an intellectual property litigator in Silicon Valley, a federal prosecutor in Los Angeles, and a counsel for the U.S. Department of Justice in Washington, D.C.

In Judge Koh's time as a trial court judge, she has performed admirably, handling a wide variety of civil cases, criminal proceedings, and family law matters.

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Governor Schwarzenegger, who appointed her to this position, says she is, "an exemplary jurist with an unparalleled track record," and described her approach as "careful and balanced."

Prior to her appointment to the bench, Judge Koh worked as an attorney in private practice, specializing in intellectual property and business litigation.

During this time, she represented individuals and biotechnology companies as both plaintiffs and defendants and served as managing counsel in a major patent infringement case (*In re Seagate Technology LLC*).

In 2007, the *Silicon Valley / San Jose Business Journal* named her one of the "Top 40 lawyers under 40."

From 1997 through 2000, Judge Koh served as an Assistant United States Attorney in the Major Frauds Section of the U.S. Attorney's office in Los Angeles.

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Judge Koh had a distinguished record as a federal prosecutor – bringing charges against criminals for bank robberies, narcotics trafficking, securities and tax fraud, and immigration offenses.

In 2000, she represented the United States in a criminal jury trial charging four defendants with telemarketing fraud that resulted in a $5 million loss to victims. Not only did the jury convict all four defendants in this case, but the jury instruction drafted by Judge Koh was later adopted as a model instruction in the Ninth Circuit Model Criminal Jury Instructions.

The Federal Bureau of Investigation awarded Judge Koh the Director Louis J. Freeh Award for demonstrated excellence in prosecuting a major criminal case (2000).

Judge Koh has a distinguished record and a wide variety of legal experiences that have well prepared her for a seat on the federal bench.

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In addition, her hearing is a historic one for the United States federal courts and for the Asian American community. ***If confirmed, Judge Koh will be the first Korean American woman in the nation to serve as a federal judge.***

I urge my colleagues to support her swift confirmation.

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Superior Court of California
County of Santa Clara

191 North First Street
San Jose, California 95113
(408) 882-2700

Chambers of
HON. CATHERINE A. GALLAGHER, Judge

February 27, 2009

The Office of Sen. Barbara Boxer
Attn: Judicial Advisory Committee
1700 Montgomery Street, Suite 240
San Francisco, CA 94111

Dear Judicial Advisory Committee Members:

It is with great pleasure that I write to recommend Judge Lucy Koh for appointment to the Federal Bench in San Jose. I was the Presiding Judge who welcomed Judge Koh to the Bench and have had the opportunity to observe her performance since she was appointed.

Judge Koh has been an extremely effective judge on our Court. Her success on the Court has been a function of her willingness to work hard, her ability to learn quickly, and her capacity to forge strong relationships with her colleagues and staff. I received favorable feedback about her courtroom skill from attorneys and the parties who appear before her. She responds well to suggestions and is a team player. She has successfully managed high-volume calendars and the fast pace of state court criminal and drug court practice.

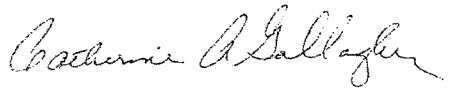
Judge Koh is universally held in high esteem and well-liked. She is a fast learner. She learned the California Penal Code and state criminal court procedures and practices very quickly. She has a reputation for being prepared, thoughtful, intellectually honest, and fair. She has demonstrated exemplary judicial temperament.

Judge Koh came to our court with an unusual depth and breadth of legal experience, including trial and appellate experience in Federal Court in both civil and criminal law. She has personally argued before the Ninth Circuit. One of the jury instructions she drafted has been adopted in the Ninth Circuit Model Criminal Jury Instructions. As a patent litigator, she was involved in overturning a quarter-of-a-century-old standard for willful patent infringement. She also has been involved in the federal legislative process as a U.S. Senate Judiciary Committee staffer and in federal law enforcement as a Special Assistant to the U.S. Deputy Attorney General.

In addition to her professional accomplishments, Judge Koh is very active in the community and in Court activities. She has volunteered as a judge for the homeless. She has hosted elementary, middle school, and high school students in her courtroom. She volunteers as a judge for high school and law school mock trial and moot court competitions. She mentors law students and young attorneys and regularly speaks on panels and attends community functions.

In sum, Judge Koh is a superb judge and is ready to tackle the challenges of Federal Court. However, I must admit from a personal as well as professional point of view, she would be sorely missed on our Court.

Very truly yours,



Catherine A. Gallagher
Judge of the Superior Court

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EDWARD A. WOODS

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March 3, 2010

ERIC M. GEORGE
EGEORGE@BWGFIRM.COM

VIA FACSIMILE AND MAIL

The Honorable Patrick J. Leahy
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510
Fax: 202.224.9516

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510
Fax: 202.224.9102

Re: Letter of Support for Judge Lucy Koh's Confirmation for Federal District Judge in San Jose, Northern District of California

Dear Chairman Leahy and Ranking Member Sessions:

It gives me great pleasure to offer my enthusiastic endorsement for the nomination of Judge Lucy H. Koh to the United States District Court for the Northern District of California. Judge Koh's impressive legal background in addressing intellectual property matters is particularly well-suited for the high tech industries of the Northern District of California.

Judge Koh's legal experience is at the highest levels of the profession. She began her career in public service in Washington D.C. at the Department of Justice serving in several capacities as a Special Assistant to the Deputy Attorney General and Special Counsel in the Office of Legislative Affairs. Later, she served as an Assistant U.S. Attorney in the Major Frauds Section of the United States Attorney's office in Los

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LAW OFFICES
BROWNE WOODS GEORGE LLP

Angeles where she prosecuted bank robbery, narcotics and immigration cases. Judge Koh's dedication to public service is exemplified by a jury instruction from one of her criminal cases is now a Ninth Circuit Model Jury Instruction.

Moreover, Judge Koh was a partner specializing in intellectual property disputes before taking the bench with the State of California. She represented a variety of companies in legal disputes at the district and appellate levels. Judge Koh's intellectual property experience makes her extremely well-versed in precisely the types of issues in the Northern District of California.

Judge Koh will represent the very best of the legal profession in her role as a federal district judge and I urge her confirmation.

Sincerely,

Eric M. George

EMG:cb

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03/03/2010 5:37PM

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
February 11, 2010

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Nominations Hearing
February 10, 2010

Today the Senate Committee on the Judiciary will hear from six more of President Obama's judicial nominees. I thank Senator Sessions for working with me to schedule this hearing and to work to include these nominees. We meet today while the Federal Government and most of the city remains shut down in the wake of a blizzard and record snow falls for this area. I commend Senator Klobuchar for chairing and Senator Sessions for serving as the ranking Republican at this hearing.

The nominees before us today traveled to the District of Columbia earlier this week. They include nominees from California, Indiana, Missouri and Nevada. I did not want their travel to Washington between snowstorms to go for naught. Working with them, I rescheduled their hearing from yesterday afternoon to this morning. Some of them had already been delayed from a planned hearing last week when the Republican side was not prepared to proceed. Although we were required to postpone our legislative hearings scheduled for Tuesday and Wednesday, I wanted to complete our hearing for these nominees if at all possible.

Just as I was determined for the Committee to proceed in the immediate aftermath of the 9/11 attacks and the anthrax attacks on the Senate to consider President Bush's nominees, I have asked the Committee to continue to do its work this week in connection with President Obama's nominees. They will bring to 35 the number of President Obama's Federal circuit and district court nominees who have had confirmation hearings.

This group of judicial nominees illustrates, again, how President Obama has reached across the aisle. This President has from the outset worked with Senators from both parties to select outstanding, qualified judicial nominees. Five of these nominees come from states with a Democratic Senator and a Republican Senator. Each nominee has the support of both home state Senators.

That is why it is so frustrating that Senate Republicans have chosen to delay and obstruct President Obama's nominations. Even nominees chosen after consultation with Republican home state Senators

have been filibustered, delayed and obstructed. Senate Republicans unsuccessfully filibustered the nomination of Judge David Hamilton of Indiana to the Seventh Circuit, despite support for his nomination from the senior Republican in the Senate, Dick Lugar of Indiana. Republicans delayed for months Senate consideration of Judge Beverly Martin of Georgia to the Eleventh Circuit despite her endorsement from both her Republican home state Senators. When Republicans finally agreed to her consideration on January 20, she was confirmed unanimously. Whether Jeffrey Viken or Roberto Lange of South Dakota, who were supported by Senator Thune, or Charlene Edwards Honeywell of Florida, who was supported by Senators Martinez and LeMieux, virtually all of President Obama's nominees have been prevented prompt Senate action by Republican objections.

I noted when the Senate considered the nominations of Judge Christina Reiss of Vermont and Mr. Abdul Kallon of Alabama relatively promptly that they should serve as the model for Senate action. Sadly, they are the exception rather than the model. They show what the Senate could do, but does not. Time and again, noncontroversial nominees are delayed. When the Senate does finally consider them, they are confirmed overwhelmingly. Of the 15 Federal circuit and district court judges confirmed, 12 have been confirmed unanimously.

That is right. Republicans have only voted against three of President Obama's nominees to the Federal circuit and district courts. One of those, Judge Gerry Lynch of the Second Circuit, garnered only three negative votes and 94 votes in favor. Judge Andre Davis of Maryland was stalled for months and then confirmed with 72 votes in favor and only 16 against. Judge David Hamilton was filibustered in a failed effort to prevent an up or down vote.

So why all the obstruction and delays? It is part of a partisan pattern. Even when they can't say "no," Republicans nonetheless demand that the Senate go slow. The practice is continuing. There have already been 16 filibusters of President Obama's nominees. Earlier this week, Republicans engaged in their 16th filibuster stalling the nomination of Craig Becker to be a member of the National Labor Relations Board. So far during President Obama's time in office, Senate Republicans have engaged in as many filibusters as there have been judicial nominees considered by the Senate. Think about that. And that comparison does not include the many other nominees who were delayed or are being denied up or down votes by Senate Republicans refusing to agree to time agreements to consider even noncontroversial nominees.

During the first two years of President Bush's time in office, the Democratic Senate majority proceeded to confirm 100 of his judicial nominees. By contrast, Senate Republicans have allowed only 15 of President Obama's Federal circuit and district court nominees to be acted upon by the Senate. So even though President Obama has worked more closely with Senate Republicans, they have chosen to treat his nominees much, much worse.

Despite the fact that President Obama began sending judicial nominees to the Senate two months earlier than President Bush, last year's total was the fewest judicial nominees confirmed in the first year of a Presidency in more than 50 years – since 1953 when President Eisenhower only made nine

nominations all year, all of which were confirmed. Those 12 confirmations were even below the 17 the Senate Republican majority allowed to be confirmed in the 1996 session. After that presidential election year, even Chief Justice Rehnquist began criticizing the pace of judicial confirmations and the partisan Republican tactics.

Last week, at the Democratic Policy Committee's issues retreat, I asked President Obama if he will continue to work hard to send names to the Senate as quickly as possible, and to commit to work with us, both Republicans and Democrats, to get these nominees confirmed. So far since taking office the President has reached across the aisle working with Republicans and Democrats to identify well-qualified nominations. Yet, even these nominations are delayed or obstructed. The President responded by stating:

Well, this is going to be a priority. Look, it's not just judges, unfortunately, Pat, it's also all our federal appointees. We've got a huge backlog of folks who are unanimously viewed as well qualified; nobody has a specific objection to them, but end up having a hold on them because of some completely unrelated piece of business.

On the judges front, we had a judge for the—coming out of Indiana, Judge Hamilton, who everybody said was outstanding—Evan Bayh, Democrat; Dick Lugar, Republican; all recommended. How long did it take us? Six months, six, seven months for somebody who was supported by the Democratic and Republican senator from that state. And you can multiply that across the board. So we have to start highlighting the fact that this is not how we should be doing business.

I could not agree more with President Obama. This should not be the way the Senate behaves.

Unfortunately, we have seen the repeated abuse of filibusters, and delay and obstruction have become the norm for Senate Republicans. We have seen unprecedented obstruction by Senate Republicans on issue after issue – over 100 filibusters last year alone, which affected 70 percent of all Senate action. Instead of time agreements and the will of the majority, the Senate is faced with a requirement to find 60 Senators to overcome a filibuster on issue after issue. Those who just a short time ago said that a majority vote is all that should be needed to confirm a nomination, and that filibusters of nominations are unconstitutional, have reversed themselves and now employ any delaying tactic they can.

Just as Senate Republicans reversed themselves when it came time to vote on the deficit reduction commission that they had sponsored, just as Senate Republicans who voted for the USA PATRIOT Act Sunset Extension Act, S.1692, which was reported by the Senate Judiciary Committee last October, have reversed themselves and abandoned it, so, too, have Senate Republicans reversed themselves on filibusters against nominations. They have ratcheted up their partisanship to delay and obstruct the President's nominees -- once the American people elected a Democratic President.
The Republican practice of making supermajorities the new standard to proceed to consider many noncontroversial and well-qualified nominations for important posts in the executive branch, and to fill vacancies on the Federal courts, is having a debilitating effect on our Government's ability to serve the

American people. Hard-working Americans who seek justice in our overburdened Federal courts are the ones who will pay the price for Republicans' obstruction and delay. They deserve better.

Even after years of Republican pocket filibusters that blocked more than 60 of President Clinton's judicial nominees and led to skyrocketing judicial vacancies, Democrats did not practice this kind of obstruction and delay in considering President Bush's nominations. We worked hard to reverse the Republican obstructionism. In the second half of 2001, the Democratic majority in the Senate proceeded to confirm 28 judges.

By February 10, 2002, the comparable date in President Bush's first term, the Senate had confirmed 32 circuit and district court nominations. Because of Republican obstruction, the Senate has confirmed less than half that total during President Obama's time in office. Only 15 Federal circuit and district court judges have been confirmed. Meanwhile, judicial vacancies have skyrocketed to more than 100.

During just the second year of President Bush's first term, the Democratic Senate majority confirmed 72 judicial nominations and helped reduce the vacancies left by Republican obstructionism of President Clinton's judicial nominees from over 110 to 59 by the end of 2002. Overall, in the 17 months that I chaired the Senate Judiciary Committee during President Bush's first term, the Senate confirmed 100 of his judicial nominees.

We continued to be fair and worked to reduce vacancies even during President Bush's last year in office. With Senate Democrats again in the majority, we 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 Federal circuits.

As matters stand today, judicial vacancies have spiked again, as they did due to Republican obstruction in the 1990s. These vacancies are again being left unfilled. We started 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 102 current vacancies and another 21 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 over 160 today and would be headed toward 180. That is the true measure of how far behind we have fallen.

Republican Senators insisted on stalling confirmation of the nomination of Judge Gerard Lynch, who was confirmed with more than 90 votes. They insisted on stalling the nomination of Judge Andre Davis, who was confirmed with more than 70 votes. They unsuccessfully filibustered the nomination of Judge David Hamilton last November, having delayed its consideration for months. They stalled Judge Beverly Martin's nomination for at least two months because they would not agree to consider it before January 20. They stalled for three additional weeks on Judge Greenaway's nomination and this week he was confirmed unanimously. We have wasted weeks and months having to seek time agreements in order to

consider nominations that were reported by the Senate Judiciary Committee unanimously and who are then confirmed overwhelmingly by the Senate once they are finally allowed to be considered.

I, again, urge Senate Republicans to reconsider their strategy and allow prompt consideration of the other judicial nominees awaiting Senate consideration: Judge Barbara Keenan of Virginia, nominated to the Fourth Circuit; Jane Stranch of Tennessee, nominated to the Sixth Circuit; Judge Thomas Vanaskie of Pennsylvania, nominated to the Third Circuit; Judge Denny Chin of New York, nominated to the Second Circuit; Judge William Conley, nominated to the Western District of Wisconsin; Justice Rogeriee Thompson of Rhode Island, nominated to the First Circuit; Judge James Wynn of North Carolina, nominated to the Fourth Circuit; Judge Albert Diaz of North Carolina, nominated to the Fourth Circuit; Judge Edward Chen, nominated to the Northern District of California; and Justice Louis Butler, nominated to the Western District of Wisconsin. I note, again, that the judicial nominees from states with Republican Senators are supported by their home state Republican Senators. Senators Alexander and Corker have supported Judge Stranch's nomination from Tennessee to the Sixth Circuit and Senator Burr came to their hearing and testified in favor of Judge Wynn and Judge Diaz of North Carolina and President Obama's nominating them to the Fourth Circuit.

Last December I urged Senate Republicans to allow the Senate to proceed to confirm all the judicial nominees reported by the Senate Judiciary Committee without dissent. That would have included Judge Keenan, Judge Chin, and Judge Conley. They refused and those nominations remained stalled before the Senate because of Republican delay. Since returning from the recess, the Senate Judiciary Committee has proceeded to report Judge Thompson and Judge Diaz without a single dissent. There are five more judicial nominees the Senate should be able to consider and confirm in short order were it not for Republican stalling.

I am prepared to enter into time agreements to debate and vote on the nominations of Judge Stranch, Judge Vanaskie and Judge Wynn, as well. Only Senator Coburn voted against Judge Wynn, with the 18 other Republicans and Democrats on the Committee all voting in favor. Only three Republicans voted against Judge Vanaskie, and only four against Ms. Stranch, who is supported by Senator Alexander. In addition, it is high time to enter into time agreements to debate and vote on the nominations of Judge Chen of California and Justice Butler of Wisconsin. They have each twice been favorably reported by the Judiciary Committee.

Today, the Senate Judiciary Committee has the opportunity to make additional progress. On the agenda after completing their hearing last month are four more district court nominees for Wyoming, Arkansas and Ohio. Reporting them would bring to 29 the Federal circuit and district court nominees so far sent to the Senate for final consideration and confirmation. Regrettably, obstruction and delay has meant that only 15 of those have been considered by the Senate and confirmed.

#####

1339 North Doheny Drive
Los Angeles, CA 90069

February 9, 2010

BY FAX AND U.S. MAIL

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 Senators Leahy and Sessions:

I am writing in support of Lucy H. Koh's nomination as a United States District Judge for the Northern District of California.

From 2001 to 2007, I was the Regional Director for the Pacific Region of the U.S. Securities and Exchange Commission, based in Los Angeles. In that position, I was responsible for the SEC's enforcement and inspection programs in nine Western states. From 1994 to 2001, I was an Assistant United States Attorney in Los Angeles, where I served as Deputy Chief of the Major Frauds Section. I am currently the managing partner of the Los Angeles office of the law firm Wilmer Cutler Pickering Hale & Dorr LLP.

I first came to know Judge Koh at the U.S. Attorney's Office, where we served as federal prosecutors together, and where I was her supervisor for approximately 1-1/2 years in the Major Frauds Section, from approximately 1998 to 2000. As Judge Koh's supervisor, I provided training and oversight, reviewed and approved charging and other significant prosecutorial decisions, and worked closely with her on her more complex cases.

On the basis of my experience with her, I believe Judge Koh possesses the traits and abilities that would make her an outstanding federal judge. As a prosecutor, Judge Koh was unfailingly fair and thoughtful. While she was always an appropriately tenacious and aggressive prosecutor, no matter how serious the conduct that she was investigating, Judge Koh never lost sight of the abiding principle that should guide every federal prosecutor – to ensure that justice is done. She implicitly understood the power she held as a prosecutor and the responsibilities that came with that power, and I have no doubt that she would exercise the same sense of fairness and restraint as a district judge.

Judge Koh was also extraordinarily hard-working and diligent as a prosecutor. During the time I supervised her, she handled several complex securities and financial institution fraud matters.

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Even though she had little substantive background in these areas, her intellectual curiosity and work ethic led her to develop an understanding of the factual and legal context necessary to be able to make well-informed investigative and charging decisions. She is not someone who would ever pretend to know more than she does; rather, she would do the homework necessary to ensure that she in fact knows what she needs to know. Judge Koh's diligence, work ethic, and humility, not to mention her innate intelligence, are precisely the qualities that should characterize our district judges.

Finally, I know that Judge Koh has been an active and involved member of various Asian Pacific American bar associations, and she would be an outstanding representative of the Asian Pacific American communities. Having served as the highest-ranking Asian Pacific American at the Securities and Exchange Commission, I strongly believe in the importance of having public officials and members of the judiciary be diverse and representative of the population they serve. The absence of any Asian Pacific American Article III judges in the Northern District of California is indefensible, particularly in light of the Asian Pacific American population of that district. Judge Koh's confirmation as the first female Korean American Article III judge and the first Korean American federal district judge would send an important and timely message about the importance of a diverse judiciary.

In sum, I am pleased to support Judge Koh as a United States District Judge with great enthusiasm.

Please do not hesitate to contact me at (213) 443-5301 if I can provide you any further information.

Very truly yours,

Randall R. Lee

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02/09/2010 2:24PM

NOMINATIONS FOR THREE UNITED STATES DISTRICT JUDGESHIPS IN THE STATE OF INDIANA – Sen. Lugar

Mr. Chairman, I would like to thank you and Ranking Member Jeff Sessions for your important work on the nomination of Jon E. DeGuilio to serve as U.S. District Judge for the Northern District of Indiana as well as the nominations of Judge Tanya Walton Pratt and Judge Jane E. Magnus-Stinson to serve as U.S. District Judges for the Southern District of Indiana.

I also appreciate this opportunity to thank my colleague from Indiana on the thoughtful, cooperative, merit-driven attitude that has marked his own approach to recommending prospective judicial nominees from our State. This process has led to the nomination of candidates such as those before your panel today who are well regarded by their peers in the Indiana legal community.

Jon DeGuilio attended the University of Notre Dame and the Valparaiso University School of Law. In addition to his work in private practice with the Law Offices of James L. Wieser, Mr. DeGuilio has served as both a Public Defender and Prosecuting Attorney in Lake County, Indiana, and was elected to serve as a City Councilman in Hammond, Indiana. From 1993 until 1999, DeGuilio served as United States Attorney for the Northern District of Indiana. Since 1999, Mr. DeGuilio has served as Vice President and General Counsel of Peoples Bank SB/NorthWest Indiana Bancorp in Munster, Indiana.

Judge Tanya Walton Pratt attended Spelman College and the Howard University School of Law. Following law school, Judge Pratt worked in private practice with the Indianapolis firms of Moss & Walton and later Walton & Pratt. During much of her time in private practice, Judge Pratt also worked as a Deputy Public Defender. In 1996, Judge Pratt was elected as a judge for the Criminal Division of the Marion County Superior Court. Judge Pratt was reelected in 2002 and again in 2008, and she has since transferred to the Court's Probate Division.

U.S. Magistrate Judge Jane Magnus-Stinson attended Butler University and the Indiana University School of Law, graduating *cum laude* in both instances. Following law school, Judge Magnus-Stinson worked for seven years in private practice with the Indianapolis law firm of Lewis, Bowman, St. Clair and Wagner. In 1991, Judge Magnus-Stinson joined the Office of then-Governor Evan Bayh where she worked as Counsel to the Governor and Deputy Chief of Staff. In 1995, Governor Bayh appointed Judge Magnus-Stinson as a judge on the Marion County Superior Court, a position for which she was later elected in 1996 and reelected in 2002. Since 2007, Judge Magnus-Stinson has served as a U.S. Magistrate Judge for the U.S. District Court for the Southern District of Indiana.

I would like to thank, again, Chairman Leahy, Ranking Member Sessions, and the members of this Committee for your work as you consider these nominations.

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February 4, 2010

VIA FACSIMILE: Fax: 202.224.9516

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Lucy Koh for District Court, Northern District of California

Dear Mr. Chairman:

At the request of the National Asian Pacific Bar Association ("NAPABA") I am writing to express my enthusiastic support for the nomination of Judge Lucy Koh to the position of U.S. District Court Judge for the Northern District of California.

I worked with Judge Koh in the U.S. Attorney's Office for the Central District of California and have followed her career since. In addition to extensive experience with the federal criminal law, both as a private practitioner and a judge she has had extensive experience with civil matters, including intellectual property cases and a wide range of corporate civil litigation. She is a brilliant lawyer and has an ideal judicial temperament: she will be courteous to all who appear before her but will also effectively manage her courtroom.

I have had the privilege of serving in various positions in the Justice Department in the Administrations of President Reagan, President George H.W. Bush (including as chief of staff to Attorney General William P. Barr) and President George W. Bush (including as Acting Assistant Attorney General, Office of Legal Counsel and Counsellor to Attorney General John Ashcroft) and had the opportunity to work with many outstanding lawyers (and also at times had some involvement in judicial selection). I can say without hesitation the Judge Koh will make outstanding federal judge. She is deeply committed to the rule of law and can be counted on to render decisions impartially and using her considerable intellect. I cannot imagine a better nomination to this important position. I spent several months in the U.S. Attorney's Office in the Northern District of California and am confident Judge Koh would be a tremendous addition to that bench.

If I can provide any additional information as you consider Judge Koh's nomination please contact me at 202 626 3634.

Sincerely,

Daniel Levin

02/04/2010 2:05PM

NATIONAL ASIAN PACIFIC AMERICAN BAR ASSOCIATION

February 9, 2010

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 Lucy H. Koh, Nominee for the United States District Court for the Northern District of California

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 The Honorable Lucy H. Koh for the United States District Court for the Northern District of California. Judge Koh has the experience, intellectual capacity, integrity, and judicial temperament to be an excellent United States District Court Judge. Judge Koh has been an active member of the Asian Pacific American legal community, and she has its strong support both locally and nationally. Given her background as a sitting state trial court judge, a former Assistant U.S. Attorney, a partner with an intellectual property background at a major law firm, a former Department of Justice attorney, and a Senate Judiciary Committee staff member, Judge Koh is poised to make an immediate contribution to the federal bench.

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 over 60 affiliate organizations and over 40,000 Asian Pacific American attorneys. NAPABA is deeply committed to supporting the

1612 K STREET, NW, SUITE 1400 • WASHINGTON, DC 20006
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appointment of qualified Asian Pacific Americans to the federal bench, especially where Asian Pacific Americans are woefully underrepresented.

Some progress has been made with respect to Asian Pacific American representation on the federal judiciary, and NAPABA thanks the Judiciary Committee for being part of that progress. Nevertheless, significant progress remains to be made. Specifically:

- Judge Koh's confirmation would be historic for the Asian Pacific American community because she would be the "first" in United States history in several respects: the first Korean American federal district court judge; the first female Korean American Article III judge; and only the second Korean American Article III judge (and the first to be nominated in almost 40 years).
- Of the approximately 875 federal Article III judges, only 10 are Asian Pacific American – just over 1 percent.
    - If the number of Asian Pacific American federal judges reflected the overall population of Asian Pacific Americans in the United States, then there would be 40-45 Asian Pacific American Article III judges.
- Although Asian Pacific Americans constitute approximately 30% of the population in the San Francisco/Greater Bay Area, there has never been an Asian Pacific American Article III judge in this area.[1]
    - The lack of an Asian Pacific American judge in this District is particularly unfortunate, given that many of the most infamous decisions affecting Asian Pacific Americans – including *United States v. Korematsu*, *Yick Wo v. Hopkins*, and *Lau v. Nichols* – were first rendered by the federal district court in San Francisco.
    - If the number of Asian Pacific American judges in the Northern District of California reflected that District's population, then there should be at least 4 Asian Pacific American judges in that District alone.

Just as important as the historic significance of this nomination, Judge Koh would be an excellent federal district court judge. She brings a background that is uniquely suited for a federal judgeship in Silicon Valley. Over her seventeen year legal career, Judge Koh has excelled in the face of the increased levels of responsibility of each position with poise, maturity, and intellectual vigor.

Appointed by Governor Arnold Schwarzenegger, Judge Koh has served for over two years as a California Superior Court Judge for Santa Clara County. She has presided over both a busy criminal calendar of over 500 cases a week, and is now presiding over

[1] Magistrate Judge Edward M. Chen also has been nominated for a vacancy on the Northern District of California bench. If confirmed, he is expected to serve in San Francisco.

an equally extensive civil docket. Notwithstanding the high volume of cases that she has handled, Judge Koh has been reversed only once and that was only a partial reversal. Judge Koh has been unanimously ranked Qualified by the American Bar Association.

In addition to her judicial experience, Judge Koh has significant experience working for the U.S. Department of Justice and with this Committee. For three years, Judge Koh served as an Assistant U.S. Attorney for the U.S. Attorney's Office for the Central District of California, where she prosecuted crimes involving financial fraud, narcotics, public corruption, immigration, and theft and violent crimes. During that time she received awards and recognitions from the Justice Department, the U.S. Federal Bureau of Investigation, the U.S. Postal Inspection Service, and the U.S. Secret Service. A jury instruction from one of her trials is now a Ninth Circuit Model Criminal Jury Instruction (Scheme to Defraud – Vicarious Liability). Prior to working at the U.S. Attorney's Office, Judge Koh was a Special Assistant to the Deputy Attorney General and Legislative Affairs Special Counsel for the Justice Department in Washington, D.C. She started her career after law school with this Senate Committee, working for Senator Edward M. Kennedy as a Women's Law & Public Policy Fellow.

Significantly, Judge Koh has a strong intellectual property background, which is important given the high number of intellectual property cases handled by the Northern District of California. Judge Koh was a partner for six years at McDermott Will & Emery LLP, where she litigated complex civil cases involving patent, trade secret, copyright, contract, fraud, and commercial disputes. She litigated several precedent-setting intellectual property cases, including *In re Seagate Technology*, 497 F.3d 1360 (Fed. Cir. 2007), which overturned a 24-year-old standard for willful patent infringement. For her dedication to her clients, the firm awarded her the firm-wide McDermott Client Service Award in 2007.

Judge Koh also has been active with numerous law-related and community service organizations. Her leadership positions in these organizations have included: Executive Committee Member, William A. Ingram Inns of Court (2009-Present); Board of Directors, Asian Pacific Bar Association of Silicon Valley (2006-08); Board of Directors, Korean American Bar Association of Northern California (2001-03); Board of Governors, Asian Pacific American Bar Association of Los Angeles (1999-2000).

For all of these accomplishments, NAPABA last year awarded Judge Koh 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 to the law enforcement awards and recognitions described earlier, Judge Koh has been recognized by a wide variety of organizations nationwide. These awards have included: Asian American Women of Achievement Award, National Association of Profession Asian American Women (2009); Women of Influence in Silicon Valley, *Silicon Valley/San Jose Business Journal* (2008); Mugunghwa Award, Korean American Bar Association of San Diego and Korean American Coalition of San Diego (2008); 40 Under 40, *Silicon Valley/San Jose Business Journal* (2007).

Judge Koh's personal story demonstrates a resilience and diversity that goes beyond race and social strata, which would serve her well as a federal district court judge. She is the first person in her family to be born in the United States. Her mother escaped North Korea after the 38th Parallel was established by walking for two weeks from North to South Korea, battling yellow fever during that time. Judge Koh's father fought against the Communists in the Korean War. He later immigrated to the United States because of his belief in American democracy. Working as a busboy and later as a waiter while taking classes at Johns Hopkins University, Judge Koh's father brought the family to Maryland, and Judge Koh was born in Washington, D.C. Judge Koh's mother, while raising Judge Koh and her two older siblings, obtained a Ph.D. in nutrition from the University of Maryland. The family then moved to Lorman, Mississippi, where Judge Koh's mother taught at Alcorn State University, the nation's first historically African American land grant college. In Mississippi, Judge Koh attended a predominantly African American elementary school while helping her father at the family-owned wig store and later restaurant. The family then moved to Norman, Oklahoma, where Judge Koh's mother taught at the University of Oklahoma. In Oklahoma, Judge Koh attended local public middle and high schools. Residing now in California for the last thirteen years, Judge Koh is married with two children.

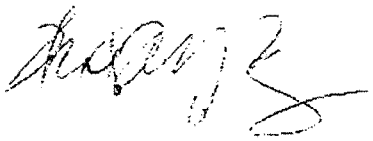
Based on her qualifications, professional achievements, and commitment to public service, Judge Lucy H. Koh would make an immediate contribution as a federal district court judge. Especially given the exceedingly low number of Asian Pacific American federal judges nationwide, the addition of Judge Koh to the federal judiciary is important to NAPABA. Accordingly, the National Asian Pacific American Bar Association proudly endorses and urges for the speedy confirmation of Judge Lucy H. Koh for the United States District Court for the Northern District of California.

Sincerely,

Joseph J. Centeno
President

Tina R. Matsuoka
Executive Director

John C. Yang
Co-Chair, Judiciary Committee



Wendy Wen Yun Chang
Co-Chair, Judiciary Committee

GOVERNOR ARNOLD SCHWARZENEGGER

January 29, 2010

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,

It gives me great pleasure to offer my full endorsement of Judge Lucy H. Koh for the United States District Court for the Northern District of California. She is an exemplary jurist with an unparalleled track record and a remarkably broad base of support across California's legal community.

I appointed Judge Koh to the Superior Court of Santa Clara County two years ago and, since that time, have never had cause to regret my decision. Her approach has always been careful and balanced, fine and fair. In fact, she has presided over thousands of criminal and civil matters and has seen only one partial reversal in all those cases. Her career as a judge builds on the reputation for talent and integrity she rightfully earned as a federal prosecutor and intellectual property litigator after several positions in the U.S. Department of Justice.

Simply put, Judge Koh exemplifies the very best of the legal profession and will be an excellent federal judge. I urge your confirmation of her appointment and invite you to contact my office should I be able to provide any assistance in your deliberations.

Sincerely,

Arnold Schwarzenegger

/la

STATE CAPITOL • SACRAMENTO, CALIFORNIA 95814 • (916) 445-2841

01/29/2010 4:55PM

Office of the Sheriff
County of Santa Clara

55 W. Younger Avenue
San Jose, California 95110
Phone (408) 808-4904

Laurie Smith
Sheriff

January 29, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510
Fax: 202.224.9516

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510
Fax: 202.224.9102

Dear Senators Leahy and Sessions,

I am pleased to write this letter of support for Santa Clara County Superior Court Judge Lucy Koh, who has been nominated to the U.S. District Court Bench, San Jose Division.

Santa Clara County is fortunate to have strong women in leadership positions in our justice system. The District Attorney is Dolores Carr. The Public Defender is Mary Greenwood. This year's Presiding Judge is Jamie Jacobs-May. Last year's Presiding Judge was Catherine Gallagher. I am the first women Sheriff in the state of California's history. Yet, there has never been a woman federal district judge in San Jose.

Judge Koh is the right person to become the first woman federal district judge in San Jose. The federal bench in San Jose needs someone with Judge Koh's law enforcement experience and her record of excellence and integrity in the legal profession.

As a federal prosecutor, Judge Koh tried serious cases involving crimes of securities fraud, insurance fraud, telemarketing fraud, arson, narcotics, bank robbery, and possession of counterfeit currency. She understands how criminal cases are investigated, charged, and litigated. She also understands the difference these cases can make to the community. Judge Koh also worked on federal law enforcement

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As a Superior Court Judge, Judge Koh has a strong reputation for being firm, fair, effective, and efficient. Deputy Sheriffs truly enjoy working as bailiffs in her Courtroom.

Moreover, Santa Clara County is over thirty percent Asian American. Just as it is important for law enforcement to reflect the community that it serves, it is equally important for the judiciary.

Finally, Judge Koh has tremendous ties to and support within the Silicon Valley community. We in law enforcement would be thrilled to see her appointed to the federal bench and have no doubt that she would serve the community with honor and distinction.

Thank you for your consideration of my recommendation.

Sincerely,

Sheriff Laurie Smith

01/29/2010 12:21PM

McDermott
Will & Emery

Boston Brussels Chicago Düsseldorf Houston London Los Angeles Miami Milan
Munich New York Orange County Rome San Diego Silicon Valley Washington, D.C.
Strategic alliance with MWE China Law Offices (Shanghai)

William F. Weld
bweld@mwe.com
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February 2, 2010

VIA FACSIMILE

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
United States Senate
152 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Lucy Koh

Dear Chairman Leahy and Ranking Member Sessions:

I am happy to support the nomination of Judge Lucy Koh for the U.S. District Court for the Northern District of California in San Jose.

Judge Koh was a partner at my law firm from 2002 until appointed to the bench in 2008, and was universally viewed as a brilliant litigator in our intellectual property department. She received our Client Service Award for superior handling of client matters. Her argument in the Seagate Technology case overturned 24 years of precedent in the law of patent infringement (which incidentally constitutes an appreciable part of the docket in the Northern District of California).

Judge Koh also has broad criminal and civil experience from her days in the Justice Department, both at Main Justice and in the Los Angeles U.S. Attorney's office. I do believe the combination of DOJ headquarters and field experience is a distinct positive for a U.S. District Judge.

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With reference to the perhaps unsettling fact that Judge Koh is a graduate of both Harvard College and Harvard Law School, all I can offer is that there are others bearing that handicap who have gone on to lead productive lives.

Seriously, Judge Koh will be a major asset for the federal judiciary, and I strongly urge her confirmation.

Yours sincerely,

Bill Weld

William F. Weld

WFW

02/02/2010 4:48PM

ERNEST A. YOUNG
ALSTON & BIRD PROFESSOR OF LAW
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YOUNG@LAW.DUKE.EDU

February 9, 2010

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 Senators:

I write in support of the nomination of Lucy Koh to be a federal district judge of the United States District Court for the Northern District of California. I am a professor of Constitutional Law and Federal Jurisdiction at Duke Law School, where I hold the Alston & Bird chair. I have known Lucy since 1992, when we were in law school together. She is an extremely able lawyer and an exceptional human being. She will be a great judge.

I met Lucy when I joined her team for the second-year Ames Moot Court competition at Harvard Law School. She quickly became one of my dearest friends at the law school. She combined an extremely sharp legal mind, rigorous standards, and a boundless willingness to work hard, on the one hand, with one of the warmest and most generous personalities I have ever encountered. On our six-person team, she not only strengthened our legal arguments with insights and thorough research, but she also helped her often-contentious colleagues work together as a team. Few students at Harvard so ably combined the academic and human dimensions of the lawyer's art.

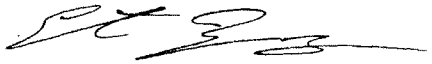
I hope that my letter may be useful in building bipartisan support for Lucy's nomination. As a long-time Republican and one of the few conservative law students at Harvard in the early 1990s, I frequently felt out of step with both the faculty and the overwhelming majority of my classmates. It was evident early on that my politics were not Lucy's politics, and we had spirited debates about issues of mutual interest. But I never experienced with Lucy any of the intolerance or closed-mindedness that conservative students often encountered from our more liberal colleagues. On the contrary, Lucy was always genuinely interested in the views of people with whom she disagreed, and she unfailingly treated those people not only with respect but with real warmth. While we often differed about questions in the law,

Lucy was able to see the other side even of issues she cared passionately about, and she was frequently willing to concede the weaker points of her position and find common ground somewhere in the middle.

Lucy embodies a commitment to diversity in the best sense—not simply gender or skin color or creed, but also diversity of ideas. I have no doubt that, as a judge, she fairly and thoughtfully considers all sides of even the most politically-fraught issues. And although Lucy is a person of great passion and conviction, she also well understands the difference between holding a personal position and interpreting and applying the law. She will make a great federal judge.

Others will speak to Lucy's competence as a lawyer in the Bay Area and a jurist on the state bench, as well as to the historic significance of this nomination for the Korean-American community. Those are all important things, but I hope that my contribution can simply highlight the fact that Lucy is one of the most open-minded, tolerant, and generous people I know. She will be a moderate, thoughtful presence on the bench. I hope very much that the Committee will report her nomination favorably. If I can be of any further assistance, please do not hesitate to let me know.

Sincerely,



Ernest A. Young
Alston & Bird Professor of Law

EAY:taw

SALLY FRANKLIN ZWEIG, ATTORNEY AT LAW
EMAIL: SZWEIG@KATZKORIN.COM

KATZ & KORIN P.C.
ATTORNEYS AT LAW
THE EMELIE BUILDING • 334 NORTH SENATE AVENUE • INDIANAPOLIS, INDIANA 46204
TELE: (317) 464-1100 • DIRECT LINE: (317) 464-2626 • FAX: (317) 464-1111

March 10, 2010

VIA FACSIMILE
202-224-9516

Patrick J. Leahy
Chairman
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy:

I note that the committee will again be considering the nomination of Magistrate Judge Jane Magnus Stinson to the bench of the Southern District Court of Indiana. I write in support of this nomination as a member of the bar practicing in the Southern District of Indiana. I also write as someone impressed with Judge Magnus Stinson as an exemplary jurist whose service has engendered well earned bipartisan respect. You have now considered two nominees for our district and so are hopefully well aware that there is some urgency to fill these empty benches as the Southern District of Indiana happens to have one of the heaviest dockets in the nation.

With your kind indulgence, there is some information that the Committee may wish to rely upon in further consideration of her nomination.

I have known Jane Magnus Stinson in every one of her professional capacities from private practice to her now extended career in public service. There are certain qualities that have been consistently recognized in her work at every level. From the beginning in private practice, she was well known as a worthy adversary – always impeccably well prepared and skilled. Upon moving to public service, as counsel to the Governor, her high energy and commitment to the achievement of policy initiatives led to a record of achievement that well justified her appointment to the state court bench.

Significantly, that job was one that Jane sought when many others with her reputation and skills might have passed it by. It clearly was both a challenge and an opportunity for continued public service that she gladly took on. She not only assumed the bench with a criminal court docket that required her to master some areas of the law new to her, but she did so at a time when those courts were laboring under intimidating case loads. Her court was one of the busiest in the state. She quickly earned the universal respect of prosecutors and defense counsel alike for how well her court was run and for her rapid development of a reputation as a tough but fair jurist. Not content with that alone, Jane extended her work with the Bar at large, frequently teaching and speaking on a wide range of topics – notably including an emphasis on professionalism and ethics. Her command of the law and ability to teach the skills that make for high levels of competence are simply extraordinary.

As an appointee to the Indiana Supreme Court Disciplinary Commission, I have long been aware of "Judge Jane's" leadership in the areas of civility and professionalism – both as an exemplar and a teacher. She has such a well based reputation in the legal community that it is no surprise that she is equally well known in the community at large, again for the same qualities of knowledge, commitment, and impeccable execution that makes her someone that her church and school acquaintances feel strongly they can rely upon for support in many worthy causes.

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KATZ&KORIN PC

When Judge Magnus Stinson was reviewed and considered for appointment as a Magistrate Judge for the Southern District Court of Indiana, I also had the privilege of serving on the bipartisan Magistrate Selection Committee which does the initial review. Judge Stinson was an easy choice for that Committee to recommend for the Article III judges to consider for final appointment. While she has not been in that job very long, it is worth noting from my experience as an active practitioner in those courts, that she is often asked to serve as the trial judge, which for a "new" magistrate is unusual. While unusual, it is not surprising that both plaintiff and defense lawyers will agree to have her preside over a case as her reputation as a fair and first rate trial judge is so easily confirmed by those unfamiliar with her.

I know this committee will have had a lengthy resume to review for Judge Magnus Stinson including the many honors and awards given to her in recognition of the qualities noted above, and my point in writing is to underscore that for the practitioners in our district, she has been consistently honored for good reason. Appointment to Article III status would be the obvious next step to take advantage of the chance to get a truly proven great judge in a position to continue to serve the people of Indiana. It is also worth noting that the very same bi-partisan support that her nomination has garnered from Senator Lugar and Senator Bayh is no less reflected locally – from her recommendation to the Magistrate Judge position to the broader professional recognition she routinely receives, Judge Magnus Stinson is universally regarded as one of our best, period.

I respectfully submit that the Committee should consider all of the various signs of high esteem that Judge Magnus Stinson has earned from her peers in Indianapolis. Those who know her best, find her to be a judge worthy of special recognition.

The Committee on the Judiciary has the opportunity to place Judge Jane Magnus Stinson in an office with a broader sphere of influence. This is simply additional evidence that the Committee may recommend her, secure in the knowledge that she is someone who would bring a high standard of proven judicial talent and professionalism to serve the Southern District of Indiana. Please add this information in further support that the Committee will serve the public well by voting to recommend her confirmation to the full Senate at its earliest convenience.

Thank you for your kind consideration.

Sincerely,

KATZ & KORIN, PC

Sally Franklin Zweig

SFZ/tbm

NOMINATIONS OF BRIAN A. JACKSON, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF LOUISIANA; ELIZABETH E. FOOTE, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF LOUISIANA; MARC T. TREADWELL, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF GEORGIA; JOSEPHINE S. TUCKER, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA; MARK A. GOLDSMITH, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN

WEDNESDAY, FEBRUARY 24, 2010

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC

The Committee met, pursuant to notice, at 2:05 p.m., Room SD–226, Dirksen Senate Office Building, Hon. Al Franken presiding.

Present: Senators Feinstein and Sessions.

OPENING STATEMENT OF HON. AL FRANKEN, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator FRANKEN. Good afternoon. The hearing will come to order.

I want to welcome everyone to today's hearing of the Senate Judiciary Committee. Today we will hear from five District Court nominees, two from Louisiana, one from Georgia, one from California, and one from Michigan.

I would like to extend a special welcome to my distinguished colleagues who are here to introduce their home State nominees: Senator Feinstein will be here shortly, Senator Landrieu, and Senator Chambliss. Thanks for being here today.

The nominees being considered are: Brian Jackson, to sit on the U.S. District Court for the Middle District of Louisiana; Elizabeth Foote, to sit on the U.S. District Court for the Western District of Louisiana; Marc Treadwell, to sit on the U.S. District Court for the Middle District of Georgia; California Superior Court Judge Josephine Tucker, to sit on the U.S. District Court for the Central Dis-

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trict of California; and Oakland County Circuit Court Judge, Mark Goldsmith, to sit on the U.S. District Court for the Eastern District of Michigan.

The experience and talent of today's nominees is extraordinary. We have two sitting judges, lawyers who have served as both defense and plaintiff attorneys. I am welcoming the Ranking Member right now. Welcome.

Senator SESSIONS. A meteoric rise you have achieved.

Senator FRANKEN. Thank you. And well deserved.

[Laughter.]

Senator FRANKEN. As I was saying, we have an incredibly talented group here today. We have two sitting judges, lawyers who have served as both defense and plaintiff attorneys, a nominee who has served in several different roles in the executive branch, and nominees who have engaged in extremely impressive pro bono work.

We also have nominees who are breaking barriers. One of our nominees, Elizabeth Foote, was only the fourth woman to practice law in Alexandria, Louisiana. Moreover, if confirmed, Brian Jackson would be only the second African-American judge to serve on the District Court in the Middle District of Louisiana.

I would like to thank all the nominees for being here today. It is an honor to be in the presence of such talented men and women. I look forward to hearing your testimony and hope that we can confirm you promptly so you can start the important work of administering justice. I have faith that with the U.S. Federal judges, all participants in our legal system will be better off.

In closing, I would like to outline how the hearing will proceed. After the Ranking Member, Senator Sessions, makes his introductory remarks, the home State Senators will introduce their nominees. Then each Senator on the Committee will have 5 minutes to ask questions of the nominees.

Now I will turn it over to the Ranking Member, Senator Sessions.

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

Senator SESSIONS. Thank you, Senator Franken. Welcome to all the nominees. We appreciate you agreeing to serve. Each of you have had significant accomplishments in your career.

After today, our Committee will have held hearings on all but two of President Obama's judicial nominees, 95 percent to date. At this point under President Bush, more than half of his nominees still had not had an initial hearing in the Judiciary Committee.

I just would share those numbers because people grumble that we're going slow. Four of today's nominees were nominated only 20 days ago and the Committee received their records just 2 weeks ago, so we're moving rapidly. I mention this because every nomination the Senate must consider carefully; we are talking about a lifetime appointment.

In that respect, these hearings are an important part of the process. They are the Senate's only opportunity to publicly review the record. We do try to do a pretty good staff review of their record

and backgrounds, as well as Senators' involvement. We consider very much the home State Senators and their evaluations.

A nominee's views on the role of a judge and the importance of the adherence to rule of law are also crucial to this vetting process. Those who sit on our Nation's judiciary must be totally committed to impartial and blind justice and put aside any personal experiences or opinions that could influence their decision on anything other than the facts and the law.

So, I look forward to hearing the views of today's nominees. We want judges who have the ability, the integrity, the experience to make good decisions and the personal discipline to ensure that their own views, biases, and prejudices do not influence their decision—making.

I am glad to see these excellent Senators, and we look forward to your comments. Thank you.

Senator FRANKEN. Thank you, Senator.

I would like to welcome my colleagues again and invite you to introduce your home State nominees. Senator Feinstein, would you like to start?

PRESENTATION OF JOSEPHINE STATON TUCKER, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA BY HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. Thank you very much, Mr. Chairman. I very much appreciate this. I would like to introduce Orange County Superior Court Judge Josephine Tucker. She's been nominated for the U.S. District Court of the Central District of California, to the court-house located in Santa Ana, and that's where she would be sitting. She has been recommended by a bipartisan Judicial Advisory Committee that I have and she comes primarily from a rural background. She was raised in St. Louis, Missouri by parents who had never been to high school, but encouraged her passion for reading, as well as her love of the outdoors.

She graduated summa cum laude from William Jewell College, and gained admission in her final year to Harvard Law School. In 1986, she graduated from Harvard, and then worked for 1 year as a law clerk to Hon. John Gibson on the U.S. Court of Appeals for the Eighth Circuit.

At the age of 26, she moved to California, became a member of the California Bar, practiced in the San Francisco office of Morrison & Foerster for 7 years, and then moved with her husband and family to Orange County. She became a partner at the law firm, and later the head of the firm's employment law practice. While in private practice, she litigated numerous multi-million—dollar employment cases on both the plaintiff and the defense side.

She wrote prolifically. Her publications include the California Employer's Guide to Employee Handbooks and Personnel Policy Manuals—that's a widely used reference book in this area of the law—three articles, and over 50 case critiques for the California Employment Law Reporter, and 60 discussions of the law confronting employers and employees in the Los Angeles Times Sunday edition.

Finally, she has devoted herself to a lot of pro bono work, providing volunteer legal services to the Make A Wish Foundation, the Inter-Community Child Guidance Center, the AIDS Foundation, the Orange Coast Inter-Faith Shelter.

In 2001, the Orange County Trial Lawyers Association recognized her overall work by naming her their Employment Lawyer of the Year. The next year, Governor Gray Davis appointed Judge Tucker to the Superior Court for Orange County. That was in 2002.

In that capacity, she's handled a judicial calendar comprising up to 500 cases at a time. She's presided over trials involving commercial contracts, tort claims, felony crimes, and family law. She has overseen case management conferences, settlement conferences, and ex parte applications, and she has been specially appointed by the Chief Justice of California to 2 years on the Appellate Division of the court, giving her experience with appeals as well as trials. So she has 15 years experience as a litigator and 8 years of experience as a judge.

In 2006, the Orange County Lawyer Magazine published an article entitled, "Judge Josephine Tucker: A True Role Model for Today's Women in the Law". In that article, she explained her judicial philosophy and it was: look at the facts, look at the law, make a decision.

So I happen to believe this straightforward approach will serve her well and that she will be a fine addition to the Federal bench of Orange County, and I thank you very much, Mr. Chairman, for being able to introduce her.

Thank you.

Senator FRANKEN. Thank you, Senator Feinstein.

Now I am going to turn to the Senators from Michigan. First, my colleague, Senator Levin.

PRESENTATION OF MARK A. GOLDSMITH, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN BY HON. CARL LEVIN, A U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator LEVIN. Thank you very much, Senator Franken, for holding these hearings. I want to commend this Committee on the expeditious way in which you do handle nominations. I wish I could make the same kind of claim for the Committee that I chair, the Armed Services Committee. We don't move quite as quickly; Senator Sessions probably would bear witness to that with me.

Debbie Stabenow and I are here to introduce to this Committee and to recommend to this Committee Mark Goldsmith, for the Eastern District Court, Federal court, in Michigan. We've known him for a long time. He was a litigator for, I think, 25 years or so before he was appointed to our highest trial court, which is the Circuit Court in Michigan, where he's been a judge for approximately 6 years.

Before that, he was active with State Bar functions, including his own private practice. He was special counsel to the State Bar Committee on Unauthorized Practice of the Law, active in the Attorney Discipline Board. He is a graduate of the University of Michigan, where he graduated with high honors—high distinction and honors from the School of Economics at the University of Michigan in

1974. He is a graduate of the law school at Harvard Law School in 1977.

Chairman mentioned that some of the witnesses are breaking barriers here today. I can only tell you that Mark and his wife Judy had some barriers broken for them a few days ago, when their daughter-in-law presented them with their first grandchild.

[Laughter.]

Senator LEVIN. I don't know of any more important barrier to break than that one, being a proud grandfather. But that's the reason that their son and daughter-in-law are not here today to be with them.

We're very proud of the process that we use in Michigan to make these recommendations. Senator Stabenow and I appoint a bipartisan board to make recommendations to us, and forward it then to the President. Judge Goldsmith got the highest marks that you could possibly get, the kudos that we want to hear about anybody that we would recommend to the President. So we're proud to be here today to make that recommendation to you and hope that you are able to put your stamp of approval on him.

Thank you, Mr. Chairman.

Senator FRANKEN. Thank you, Senator Levin.

Senator Stabenow.

PRESENTATION OF MARK A. GOLDSMITH, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN HON. DEBBIE STABENOW, A U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator STABENOW. Well, thank you very much, Mr. Chairman and Senator Sessions.

It is my great pleasure to join with Senator Levin. As he indicated, we have both known Judge Mark Goldsmith for many years. I cannot think of a person that I would be more enthusiastic or excited to introduce and endorse in front of this Committee. As you know, he has been nominated by the President to be a judge of the U.S. District Court for the Eastern District of Michigan, and I am absolutely convinced that he will serve with great distinction.

Senator Sessions, as you were talking about what you look for in a judge, I thought you were describing Mark Goldsmith. So, I am very pleased to be here to join in supporting him. As Senator Levin said, he joined the Oakland County Circuit bench in 2004. He has proven to be a highly respected judge, known for his integrity and his fairness.

You have also heard about his degrees from the University of Michigan and from Harvard University. He has served as a partner with Connington Lowe in Detroit, and as an Adjunct Professor of Law at Wayne State University's Law School.

I think it's also important to note that he's well—known in the community, where he has served on the boards of several nonprofit organizations, helping those in need in the Detroit area. He has been recognized for his pro bono involvement, his community work, most notably at B'nai B'rith Anti-Defamation League and Forgotten Harvest, a very significant organization that uses surpluses of perishable foods from grocery stores, restaurants and caterers and

provides them to emergency food providers. We are very appreciative of his efforts as a community leader.

It is also wonderful to recognize and welcome Judy here today. Do I understand—I think that your brother Merwin is here as well? Down at the end. Welcome. It's good to have you here as well. I am pleased to join with Senator Levin in congratulating you on the new title of grandfather. It's a very exciting title.

Mr. Chairman, let me just say again that Judge Goldsmith is the kind of nominee that I know that we will all be very proud of, and we would ask for your support.

Senator FRANKEN. Thank you, Senator.

Senator Landrieu, you have two nominees today.

PRESENTATION OF BRIAN A. JACKSON, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF LOUISIANA, AND ELIZABETH E. FOOTE, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF LOUISIANA BY HON. MARY LANDRIEU, A U.S. SENATOR FROM THE STATE OF LOUISIANA

Senator LANDRIEU. Yes, Mr. Chairman, I do. I'm pleased to present both of them to you and to Senator Sessions. Thank you so much for your work on this Committee. It is my privilege to introduce two outstanding attorneys in the State of Louisiana to be Federal judges. It is without hesitation that I say that many, many people in our State would think that these two individuals are two of the finest that we have to offer. You will see from my brief presentation, and all the paperwork that I've submitted on their behalf, their exceptional professional experience and outstanding records as public servants.

First, Brian Jackson. Brian comes from a very distinguished family of public servants and I know that he is proud, and I am pleased, that his father, Harold, and his mother, Andree—Harold, a retired U.S. Postal Service worker, and Andree, a retired school teacher—are here with him today, as well as his brother Kevin, who is retired from the U.S. Marine Corps and president of the Blinded Americans Association, and he works in Austin, Texas. His family is proud of him, but so are many, many members of the community.

As his Senator, I am extremely proud of him. He served for over 16 years with the Justice Department already, fully immersed in everything the Justice Department has done in the State of Louisiana and nationally. He served as U.S. Attorney briefly, waiting for the nominee of President Bush and the prior administration. He served from 1992 to 2002 as First Assistant. Besides his work already in that venue, in that position, here is a shareholder and leader on the board of directors for one of the premier firms in our State, Misco and Lewis. He has recently chaired their Committee on Diversity and on the board of directors.

In addition to his extremely exemplary professional experience, may I also say that he's been active with Catholic Charities, the Metropolitan Crime Commission, and Teach for America, all organizations that I have the highest respect for, and has served on the board of directors of the Federal Bar Association, the New Orleans Chapter.

He has graduated from some of our most outstanding universities, Xavier University for his undergraduate, Southern Law School in Baton Rouge, where he served as editor-in-chief of the Law Review there, and master's as well at Georgetown University. So, he is well—credentialed, well-experienced, and I know he's anxious to serve, Mr. Chairman. You will find all of his paperwork in order.

Elizabeth Erny Foote, I am honored to present to the Committee this morning to nominate her for judge in Louisiana's Western District. Beth is joined by her husband of 33 years, and her law partner, Ross Sith. She's also joined by her son David, who is a student at Mayberry College; her older son Paul is working abroad and couldn't be here. An extraordinary family.

She also comes from a family of great public servants. Her husband and brother are both retired State judges. Her father-in-law is a retired City Court judge. So, it looks like she was destined to be a judge, like it or not. But I am so pleased to recommend Beth. For 30 years, I have known her and can attest personally to her passion for justice and equality, particularly on behalf of women. She has been a tremendous advocate.

Besides a partner in the law firm, she was the immediate past president of the Louisiana Bar Association, in which she's been actively involved for 25 years. She was the first woman to be elected to a position serving on the Louisiana Bar, and has come recommended to me through a variety of different venues, but most importantly and impressive, 19 past presidents of the Bar Association have recommended her to me for this position. I'm sorry, 13 past presidents.

In addition, she has great academic credentials: a JD from LSU Law and a master's from Duke University. Her paperwork is also in order.

Mr. Chairman, let me just conclude by saying it is without hesitation that I recommended these two candidates to the President of the United States and I'm so pleased that he has chosen to nominate them and for them to be presented to this Committee for your approval.

Senator FRANKEN. Thank you, Senator Landrieu.

Senator Chambliss.

PRESENTATION OF MARC T. TREADWELL, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF GEORGIA BY HON. SAXBY CHAMBLISS, A U.S. SENATOR FROM THE STATE OF GEORGIA

Senator CHAMBLISS. Thank you very much, Senator Franken, Senator Sessions. I am very pleased to be here today to introduce to the Committee Marc Treadwell, who has been nominated by the President to be a U.S. District Court judge for the Middle District of Georgia. It is a particular pleasure because that is my home district that I practiced in for 6 years when I practiced law in Georgia.

Senator Isakson joins me in this introduction in support of Marc Treadwell; he unfortunately had a conflict today, but asked me to especially let the Committee know that he is very supportive of his candidacy.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00757 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

Marc Treadwell grew up in rural South Georgia, down in Blackshear, Georgia. He was a graduate of Valdosta State University, a university from which my daughter graduated. He was also a graduate of Mercer University Law School, the law school from which my son graduated. So I not only know how well-educated he is, but I know how expensive his education was.

Mark is just one of those individuals who has really developed into an outstanding lawyer in our State. He comes highly recommended by his peers. He's a member of the American Trial Lawyers Association, American College of Trial Lawyers, and has practiced law in Macon for a number of years. You know, as lawyers you tend to scrutinize maybe more closely the folks who are nominated up here, and I just can't say enough good things about the background and the preparation of Marc Treadwell to go to the bench.

He teaches now in addition to practicing, teaches at Mercer part-time as he practices there in Macon. He's written over 50 articles for publication in Law Reviews and other periodicals. He is recognized as an expert in Georgia evidence law and is just truly so well-respected by his peers that we received nothing but positive comments about Marc as we went through this process.

Marc and his wife Wimberly have two sons, Thomas and John. In addition to being an outstanding lawyer, he is a great citizen of Macon, Georgia, a member of Danville United Methodist Church, and it's just a privilege for Senator Isakson and I to recommend the nomination by President Obama of Marc Treadwell to the U.S. District Court, and I thank you for letting me be here today.

Senator FRANKEN. Thank you, Senator Chambliss.

Now I'd like to ask the nominees to all come to the table for the administration of the oath. OK. Could you all stand? We have Jackson, Foote, Treadwell, Tucker, and Judge Goldsmith. All right. Please raise your right hands.

[Whereupon, the witnesses were duly sworn.]

Senator FRANKEN. Thank you. You may be seated.

Mr. Jackson, you are free to give any opening remarks, and if you'd like to introduce any members of your family that are here today.

STATEMENT OF BRIAN A. JACKSON, TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF LOUISIANA

Mr. JACKSON. Well, thank you very much, Senator, for holding this hearing and for presiding over this hearing. I am privileged to be joined today by several people who are very, very special to me. As Senator Landrieu noted, I am joined by my father, Harold Jackson, my mother, Andree Jackson, my brother, Kevin Jackson, a retired Marine who has served his Nation honorably. I am deeply grateful that they're here today.

I'm also joined today by two of my very dear friends, Tim Francis, who has been a friend since high school, and Iden Martyn, who served with me in the Justice Department for several years and who is also now in private practice. My sister, Helene Dobeny, could not be here today, unfortunately, nor could any of my nieces and nephews. Nonetheless, I know they're with me in spirit and I am deeply, deeply grateful for their support as well.

And finally, I'd like to, of course, thank Senator Landrieu, not only for her kind remarks, but also for her support of my nomination. I'd also like to thank Senator Vitter for his support of my nomination. Finally, of course, I'm deeply indebted to the President for considering me for this position.

Thank you.

Senator FRANKEN. Thank you.

[The biographical information of Brian A. Jackson follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Brian Anthony Jackson

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

   United States District Judge for the Middle District of Louisiana

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:

   Liskow & Lewis, APLC
   701 Poydras Street, Suite 5000
   New Orleans, Louisiana 70139

   Residences:

   Baton Rouge, Louisiana

   New Orleans, Louisiana

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

   1960; New Orleans, Louisiana

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.

   1998 to 2000, Georgetown University Law Center, Masters of Laws; October 2000

   2000, Tulane University School of Law; no degree awarded (attended courses that were credited to requirements for the Masters of Laws degree conferred by Georgetown University Law Center)

   1982 to 1985, Southern University School of Law; Juris Doctor, May 1985

   1978 to 1982, Xavier University of Louisiana; Bachelor of Science, May 1982

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00760 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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, 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.

2002 to present
Liskow & Lewis
701 Poydras St., Suite 5000
New Orleans, Louisiana 70130
I am a shareholder (partner) in the law firm.

1994 to 2002
United States Attorney's Office
Middle District of Louisiana
United States Department of Justice
777 Florida St., Suite 208
Baton Rouge, Louisiana 70801
I served as First Assistant United States Attorney and, in 2001, as Interim United States Attorney for the Middle District of Louisiana.

1998 to 1999
Office of the Deputy Attorney General
United States Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530
While detailed to the Office of the Deputy Attorney General from the United States Attorney's Office for the Middle District of Louisiana, I served as an Associate Deputy Attorney General.

1992 to 1994
Executive Office for United States Attorneys
United States Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530
I served as the Assistant Director for the Evaluation and Review Staff.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00761 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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1988 to 1992
United States Attorney's Office
Eastern District of Louisiana
United States Department of Justice
500 Poydras Street, Rm. B210
New Orleans, Louisiana 70130
I served as a Special Assistant United States Attorney and, in 1990, as an Assistant United States Attorney in the Eastern District of Louisiana

1987 to 1988
United States Immigration & Naturalization Service
United States Department of Justice
425 I St., NW
Washington, DC 20536
I served as an Assistant General Counsel for the agency.

1985 to 1987
United States Immigration & Naturalization Service
United States Department of Justice
300 N. Los Angeles St.
Los Angeles, California 90012
I served as a General Attorney for the Los Angeles District Office of the agency.

1979 to 1982
Sears, Roebuck & Company
New Orleans, Louisiana
I served as a supervisor in the company's credit department.

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; however, I registered for the selective service at the age of 18.

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.

   Academic Scholarship - Southern University School of Law; August 1982 - May 1984

   Editor-in-Chief - Southern University Law Review; August 1984 - May 1985

   Attorney General's Award for Equal Employment Opportunity (from United States Attorney General William Barr); December 1992

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00762 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Director's Award for Superior Performance in a Supervisory Role (from the Director of the Executive Office for United States Attorneys), October 1998

President's Award; Louis A. Martinet Society (Baton Rouge Chapter); May, 2002

Chambers USA, America's Leading Lawyers for Business, 2008 and 2009

A/V Rating (highest ranking for legal ability and ethical standards) by Martindale-Hubbell Law Directory

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.

Louisiana State Bar Association, Member; October 1985 to present

Federal Bar Association, New Orleans Chapter, Member of the Board of Directors, January 2005 to present

New Orleans Bar Association, Member; April 2002 to present

New Orleans Bar Foundation, Member of the Board of Directors January 2006 to present

Chief Examiner for Criminal Law and Evidence, Louisiana Supreme Court Committee on Bar Admissions, Member; March 2002 to April 2009

Committee on Character and Fitness; Louisiana Supreme Court Committee on Bar Admissions, Member. April 2009 to present

Federation of Defense and Corporate Counsel, Member; July 2007 to present

American Bar Association, Member; April 2002 to present

National Bar Association, Member; June 2002 to present

Louis A. Martinet Legal Society, Member; May 2003 to present

Louisiana State Bar Association, Bar Governance Committee, Member; 2001 to 2002

Louisiana State Bar Association, Federal Bench Bar Liaison Committee, Member; 2001 to 2002

Baton Rouge Bar Association, Member; 1994 to present

National Black Prosecutors Association, Member; 1992 to 2002

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00763 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.

Louisiana Supreme Court, admitted October 1985. 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.

All Louisiana State Courts, 1985

United States Court of Appeals for the Fifth Circuit, 1988

United States District Court for the Eastern District of Louisiana, 1988

United States District Court for the Middle District of Louisiana, 1994

United States District Court for the Western District of Louisiana, 2008

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.

Metropolitan Crime Commission of New Orleans, Vice-Chairman of the Board of Directors; 2004 to Present

New Orleans Pro Bono Project, Member of the Board of Directors; 2008

Catholic Charities of New Orleans, Member of the Board of Directors, 2004 to 2008

Louisiana Bar Foundation, Fellow; 2003 to present

Office of Racial Harmony, Archdiocese of New Orleans, Chairman of the Implementation Committee; 2005 to present

Ruby Bridges Foundation, Member of the Board of Directors; 2002 to 2007

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00764 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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National Institute of Law and Equity, Member of the Board of Directors, 2003 to 2006

Law Enforcement Coordinating Committee for the Middle District of Louisiana, Chairperson of the Committee, 1996 to 1998

Teach For America (South Louisiana), Member and Chairperson of the Board of Directors; 1996 - 1998

100 Black Men of Metro Baton Rouge, Inc., Member; 1996 to 1998

U.S. Marine Corps Commandant's Diversity Working Group, Member; 1993 to 1994

Alpha Phi Alpha Fraternity, Inc., Member; 1990 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.

I have never been a member of any organization that currently discriminates 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.

"Take Five: Asserting the 5th Amendment's Protections in Commercial Litigation," The Commercial Law Connection (Newsletter of the National Bar Association's Commercial Law Section), Volume 3, Issue 2, Summer 2006

"Will America's Black Military Personnel Benefit from the Bush Administration's Withdrawal from the International Criminal Court?" The Nile Report (Newsletter of the National Institute for Law & Equity), May/June 2003

"Message From the First Assistant U.S. Attorney," The Middle District Digest (Newsletter of the Law Enforcement Coordinating Committee for the Middle District of Louisiana,), Volume IV, Summer 1998

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00765 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.

In March 1999, I testified before the United States Civil Rights Commission as the representative of United States Department of Justice on the Department's efforts to assist young black males to avoid becoming victims or perpetrators of crime. I do not have a copy of my testimony transcript.

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.

New Orleans Bar Association, Procrastinator's CLE Seminar, 2008
"Responding To Federal Grand Jury Subpoenas and Target Letters"

Louisiana State Bar Association, Annual White Collar Crime Seminar, 2008
"Charging and Defending Corporations" (with Eileen Gleason and Richard W. Westling)

Louisiana State Bar Association, Ethics Seminar, 2007
"Ethical Considerations in Government Investigations of Corporations"

Paul M. Hebert Law Center (L.S.U.), Criminal Litigation: From the Simple to the Complex, 2006
"Cooperation and Waiver of Privileges by Corporations"

South Texas College of Law, Advanced Civil Trial Conference, 2006
"Civil Practice and Criminal Practice – A Synergy" (with David Gerger)
(Summary: This seminar considered the range of civil law issues that often arise during the course of criminal litigation.)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00766 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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American Bar Association, Environmental Criminal Enforcement Seminar for Civil and Criminal Practitioners, (Moderator) 2004
"The Enforcement Perspective: Past and Present U.S. Attorneys"

Southern University Law Center, Recent Developments Seminar, 2002
"White Collar Crime Defense in the Post Enron Era"

Louisiana State Bar Association, Ethics and Professionalism Seminar, 2001
"Ethics in the Criminal Law Practice"
(Summary: I reviewed the variety of ethical issues that may arise during internal investigations and the defense of criminal cases.)

United States Department of Justice, Orientation Seminar for New United States Attorneys, (Panelist and Facilitator), 2001
(Summary: I was one of four First Assistant United States Attorneys asked to lead discussions with newly-appointed United States Attorneys to assist them in understanding the range of issue that chief federal prosecutors may confront.)

Baton Rouge Bar Association, Annual Bench Bar Conference, 2001
"Silence on the Border: To Gag or Not to Gag" (Panelist)
(Summary: I served as one of several panelists who discussed the implications of the issuance of suppression orders.)

Louisiana State Bar Association, Summer School for Lawyers Revisited, 2001
"Overview of Today's White Collar Crime"
(Summary: This was a basic discussion of the white collar defense practice and responses to government investigation. It was provided for the benefit of civil practitioners.)

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.

"Tax Law Ruled Unconstitutional; 30 Percent Penalty Set on Delinquencies," Times-Picayune (New Orleans), October 5, 2007

"Judge Delays Ruling on Memorial Records; Case Closed, Foti Says; Privacy Rights at Issue," Times-Picayune, August 7, 2007

"Efforts Failing to Extradite Suspects," The Advocate (Baton Rouge, Louisiana), December 2, 2002

"Longtime Federal Attorney Leaving for Private Practice," The Advocate, March 22, 2002

"Fowler in Debt, Despite Bankruptcy," The Advocate, January 1, 2002

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00767 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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"Indictment Alleges Food Stamp Fraud," The Advocate, September 27, 2001

"Report Slights BR Drug Court on Drug Cases, U.S. Attorney Says," The Advocate, April 21, 2001

"High Praise for Project Exile," The Advocate, February 20, 2001

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.

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.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00768 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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;

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. 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.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00769 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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I am a member of the Democratic Party. I have not held a position in the party or played a role in a political 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 have not served as a clerk to a judge.

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

I have never 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.

2002 to present
Liskow & Lewis
701 Poydras St., Suite 5000
New Orleans, Louisiana 70130
I am a shareholder (partner) in the law firm.

1994 to 2002
United States Attorney's Office
Middle District of Louisiana
United States Department of Justice
777 Florida St., Suite 208
Baton Rouge, Louisiana 70801
I served as First Assistant United States Attorney and, in 2001, as Interim United States Attorney for the Middle District of Louisiana.

1998 to 1999
Office of the Deputy Attorney General
United States Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530
While detailed to the Office of the Deputy Attorney General from the United States Attorney's Office for the Middle District of Louisiana, I served as an Associate Deputy Attorney General.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00770 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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1992 to 1994
Executive Office for United States Attorneys
United States Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530
I served as the Assistant Director for the Evaluation and Review Staff.

1988 to 1992
United States Attorney's Office
Eastern District of Louisiana
United States Department of Justice
500 Poydras Street, Rm. B210
New Orleans, Louisiana 70130
I served as a Special Assistant United States Attorney and, in 1990, as an Assistant United States Attorney in the Eastern District of Louisiana

1987 to 1988
United States Immigration & Naturalization Service
United States Department of Justice
425 I St., NW
Washington, DC 20536
I served as an Assistant General Counsel for the agency.

1985 to 1987
United States Immigration & Naturalization Service
United States Department of Justice
300 N. Los Angeles St.
Los Angeles, California 90012
I served as a General Attorney for the Los Angeles District Office of the agency.

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.

Immediately following graduation from law school 1985, I was hired by the united States Department of Justice and assigned to the Los Angeles District Office for the Immigration & Naturalization Service, where I represented the United States in deportation and removal hearings brought against non-citizens who were alleged to have been in the United States unlawfully. I was later promoted to the position of Assistant Regional Counsel for the agency and later,

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00771 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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in August 1987, was promoted to the position of Assistant General Counsel for the agency, whereupon I was transferred to Immigration & Naturalization Service headquarters in Washington, DC.

In March 1988, I joined the United States Attorney's Office for the Eastern District of Louisiana (New Orleans), where I was initially assigned all immigration cases, both civil and criminal. Later, in 1990, I was assigned to the General Crimes Unit and later still, to the Organized Crime Drug Enforcement Task Force (OCDETF), where I prosecuted major drug cases. During this time, I personally handled several dozen federal prosecutions, including trials and appeals.

In December 1992, I was offered the position of Assistant Director for the Executive Office for United States Attorneys, in charge of the Evaluation and Review Staff. During my tenure in this position, I supervised the inspection of several United States Attorney's Offices across the nation to ensure compliance with Department of Justice policies and applicable regulations. I also provided management advice and support to newly-appointed United States Attorneys.

I accepted the position of First Assistant United States Attorney for the Middle District of Louisiana in June 1994 and transferred to Baton Rouge, Louisiana where I was responsible for assisting the United States Attorney in the day-to-day management of the office. I supervised all investigations and litigation in the office and I personally handled both civil and criminal matters, including trials. In January 2002, I was appointed by the Attorney General to serve as the interim United States Attorney, pending the appointment of a new chief federal prosecutor by then-President Bush.

In June 1998, I was detailed to the Office of the Deputy Attorney General where I served as an Associate Deputy Attorney General. The issues in my portfolio of responsibilities included serving as the Deputy Attorney General's liaison to the 93 United States Attorneys. I was also tasked with coordinating the Department's anti-racial profiling efforts.

In April 2002, I resigned from the Justice Department to accept a shareholder (partner) position with the law firm of Liskow & Lewis in New Orleans. I am currently a member of the firm's board of directors and I previously served as the chair of the firm's diversity committee. I also hold the position of leader of the government investigations practice group. My practice is fairly evenly split between commercial litigation (representing corporate entities in various business disputes) and government investigations/white collar defense (generally, representing businesses and business executives who may be investigated by government agencies). I am also a member of the Criminal Justice Act panel of attorneys appointed to represent indigent criminal defendants in federal court.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00772 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.

Early in my government career, my practice was exclusively in the area of immigration law representing the United States. Later, when I joined the United States Attorney's Office in New Orleans, I handled civil immigration cases in the United States District Court, and later was assigned to the criminal division of the office.

Since joining my law firm, my clients have included several major oil and gas exploration companies, including Shell, ExxonMobil, and Chevron. Other clients have included Tenet Healthcare, Monsanto, Delaware North Corporation, as well as several locally owned businesses.

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 October 1985 through March 1987, my practice was exclusively in United States Immigration Court handling administrative hearings.

From March 1987 through December 1992, my practice was exclusively litigation in the United States District Court in New Orleans. Later, in June 1994 through March 2002, my practice was again exclusively litigation in the United States District Court for the Middle District of Louisiana.

Since April 2002, my practice is 90% litigation. However, the nature of my practice is such that the avoidance of court proceedings is almost always the goal. In the overwhelming number of cases, every effort is made to resolve government investigations with a resolution that avoids the filing of charges and subsequent trials. Accordingly, the frequency of my appearances in court can best be characterized as occasional.

i. Indicate the percentage of your practice in:
   1. federal courts; 50%
   2. state courts of record; 40%
   3. other courts; 0%
   4. administrative agencies 10%

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.

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I estimate that I tried over 200 cases in the United States Immigration Courts, all of which were handled as sole counsel for the United States. Each case was tried to final decision.

I have tried approximately 30 cases in the United States District Courts, all of which were tried to verdict before juries. I served as co-chief trial counsel in most of these cases.

I handled approximately 12 litigation matters in the Louisiana state courts, six of which as lead counsel.

i. What percentage of these trials were:
   1. jury; 25%
   2. non-jury. 75%

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. Touro Infirmary vs. Sizeler Architects, 947 So. 2d 740 (2006). Appellate argument was presented in the case before a panel that included Judges Charles R. Jones, Dennis Bagneris Sr., and Roland L. Belsome, of the 4th Circuit Court of Appeals for the State of Louisiana. I represented the client, Omnova Solutions, Inc., in 2006.

   I served as appellate counsel for a wall paper manufacturer in a dispute involving warranty provisions in a sales contract. My client was one of several named defendants in the case. The trial court denied Omnova's motion for summary judgment; however, the court of appeal reserved the decision and ruled in favor of Omnova.

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Opposing counsel was James M. Garner, 909 Poydras Street, Suite 2800, New Orleans, Louisiana 70112, (504) 299-2100.

2. Freeport-McMoran, Inc. vs. Transcontinental Gas Pipe Line Corp., 924 So. 2d 209 (2005). The case was tried before Honorable Curtis Calloway (19th Judicial District Court for the State of Louisiana). I represented the client, Freeport-McMoran, from 2002 to 2004.

   I represented Freeport-McMoran as the plaintiff at trial in a commercial dispute to recover payments of "excess royalties" negotiated under a settlement agreement involving natural gas contracts. Following a week-long trial, the court entered judgment for the defendant in the case.

   Opposing counsel was Leo Hamilton, 301 Main Street, 23rd Floor, Baton Rouge, Louisiana 70801, (225) 381-8056.

3. Muriel Land Corporation v. Texaco Refining and Marketing, Inc. and Motiva Enterprises, LLC, et al., Docket No. C-516520. The Honorable Kay Bates (19th Judicial District Court, State of Louisiana) presided in the proceedings. I have represented the client from 2003 to the present.

   I represented Texaco Refining and Marketing, Inc and Motiva Enterprises, LLC as defendants in a dispute against the owners of property on which a retail gasoline outlet operated for several years. The property owners claimed that ground soil became contaminated as a result of the operation of the service station on the property. Following pretrial hearings on the issues, the parties reached a negotiated settlement in the case.

   Opposing counsel was Benjamin Klein, 918 Government Street, Baton Rouge, Louisiana 70802, (225) 387-3198.

4. State of Louisiana and the Secretary of the Department of Revenue and Taxation vs. Texaco Trading and Transportation Co. at al., Docket No. 423598 "D." Honorable Janice Clark (19th Judicial District Court, State of Louisiana) presided in the case. I represented Chevron, which acquired named defendant Texaco, in the case since 2002.

   The lawsuit was brought against various Texaco entities by the State of Louisiana, which asserted that severances taxes were unpaid or underpaid based upon an alleged improper valuation of crude oil produced and severed from state mineral leases. Numerous pretrial motions were filed and argued in the case. Eventually, the parties reached a negotiated settlement.

   Opposing counsel was Robert K. Hammack, 411 Beverly Drive, Lafayette, Louisiana 70503, (337) 237-7483.

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5. Duplantier Family Partnership, et al vs. BP Amoco, et al., Docket No. 03-17519, Div. J-13. The presiding judge was Honorable Curtis Calloway (19th Judicial District Court for the State of Louisiana). I represented Devon Energy Production Company ("Devon") in the case, and did so from 2005 to 2008.

   Devon and several other oil and gas exploration and production companies were sued by land owners who claimed that production activities resulted in environmental damage. All claims against Devon were dismissed following the filing of a motion for summary judgment.

   Opposing counsel was Donald T. Carmouche, 214 W. Cornerview Street, Gonzalez, Louisiana 70707, (225) 644-7777.

6. Roy O. Martin Lumber Co. vs. Mobil Exploration & Producing Co., Docket No. 38,961"B." The Honorable Robin Free (18th Judicial District Court, State of Louisiana, presided in the case. I represented ExxonMobil in the matter from 2005 to 2007.

   Exxon Mobil Corporation and other oil and gas exploration companies were sued in a land damage (contamination) action filed by a corporate landowner. Following the filing of several pre-trial motions, the parties reached a settlement agreement.

   Opposing counsel was William W. Goodel, Jr., 124 Heymann Boulevard, #201, Lafayette, Louisiana 70505, (337)593-1263

7. Langhoff Properties, LLC et al. vs. American Oil Company, et al., Docket No. 2:06-cv-02410-JCZ-SS. The Honorable Jay C. Zainey (United States District Court, Eastern District of Louisiana) presided in the case. I represented Motiva in the lawsuit and have done so since 2003.

   This lawsuit was brought by owners of commercial property on which a retail gasoline outlet operated for several years. The lawsuit was initially filed in state court but was removed to federal court. Plaintiffs asserted that the property sustained environmental damage during the period defendants operated the gasoline station. Following several court-ordered mediation sessions, the parties eventually reached a settlement in the case.

   Opposing counsel was Edmond Haase, 1100 Poydras Street, Suite 1500, New Orleans, Louisiana, (504) 582-2310.

8. Shirley Ramsey vs. William Henderson, 286 F.3d 264 (2002). The Honorable James Brady (United States District Court, Middle District of Louisiana) presided in the case. I represented the defendant in the matter, the United States Postal Service, at the trial court and on appeal from 2001 to 2002.

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This lawsuit was filed by a United States Postal Service employee who asserted that she was the victim of race discrimination and that a hostile work environmental was created by her co-workers and supervisors. She brought suit under Title VII of the Civil Rights Act of 1964. The case was dismissed on summary judgment and the decision of the district court was affirmed by the United States Court of Appeals for the Fifth Circuit.

Opposing counsel was John Courtney Wilson, 1510 Veterans Boulevard, Metairie, Louisiana 70005, (504)832-0585.

9. United States of America vs. Barrow-Veal, Docket No. 97-31 (1998). The case was tried before The Honorable John V. Parker, Jr. (United States District Court, Middle District of Louisiana). The Federal Bureau of Investigation and the Department of Housing and Urban Affairs were the clients in the case. I represented the agencies from 1997 to 1998.

   As an Assistant United States Attorney, I prosecuted at trial a defendant who was accused of several acts of fraud against the United States Department of Housing and Urban Development. Charges of mail fraud and money-laundering were included in the indictment. The case was tried to verdict and a jury found the defendant guilty on all counts.

   Opposing counsel was Mark Upton, 435 Government Street, Baton Rouge, Louisiana 70801, (225) 344-1704.

10. United States of America vs. Silva-Chavez, 888 F.2d 1481 (1989). The Honorable Patrick Carr (United States District Court for the Eastern District of Louisiana) presided in the case. I represented the client agency in the case, the Immigration and Naturalization Service, in 1989.

    As an Assistant United States Attorney, I prosecuted the defendant, an undocumented alien, who unlawfully used a false social security number in applying for a state-issued driver's license. The defendant entered a conditional plea of guilty to the charge and appealed the conviction to the United States Court of Appeals for the Fifth Circuit, where he unsuccessfully argued that Congress did not intend the application of the statute to the facts featured in his case. The defendant's conviction was affirmed.

    Opposing counsel was John H. Craft, 825 Barrone Street, New Orleans, Louisiana 70113, (504) 581-9322

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

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00777 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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facts requested in this question, please omit any information protected by the attorney-client privilege.)

I have represented several individuals and corporate entities in government investigations by federal and state law enforcement authorities. These matters include the following (none of which constituted lobbying activities):

Representation of Allen Canning Company, the nation's largest privately owned cannery, in resolving a Clean Water Act investigation conducted by the Environmental Protection Agency.

On behalf of a non-profit entity, conducted an internal investigation of sweeping employee financial abuses. The matter was referred to federal authorities for possible grand jury investigation. The matter has now been closed without the filing of charges.

Represented a major offshore oil facility (Louisiana Offshore Oil Port, LLC) in assisting the United States Department of Justice in an anti-trust investigation and prosecution of international marine hose manufacturers.

Represented Peter Dicks, the chairman of the board of a British holding company, in a case filed by the District Attorney of St. Landry Parish, Louisiana asserting the facilitation of unlawful internet gaming. The matter was resolved without the filing of criminal charges.

At various times, I have represented vessel masters (captains) of large oceangoing vessels that have been accused of violating international environmental treaties.

Representation of a publicly traded New Orleans-based company that was the subject of hostile takeover attempts by large hedge funds.

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 course during my legal career.

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.

Upon resigning from Liskow & Lewis, I am entitled to receive termination compensation in the sum of $136,000, to be disbursed to me in three annual installments.

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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 have no plans, commitments, or agreements to pursue outside employment 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 will carefully consider the potential for conflicts of interests that could arise as a result of my representation of individuals and businesses in the district, or of cases involving my family members, friends and former partners and associates at my former law firm. I will faithfully abide by the provisions of Canon 3 of the Code of Conduct for United States Judges and any other applicable provision.

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 faithfully abide by the provisions of Canon 3 of the Code of Conduct for United States Judges, 28 U.S.C. § 455 and other applicable laws that inform the decision on recusal. If the grounds for recusal are present in a case or if the appearance of a conflict of interest arises, I would immediately notify the parties, orally and in writing, of the facts giving rise to the possible conflict of interest and inform the parties of their right to seek my recusal if one or more parties believed that I am unable to be impartial in the case.

For cases in which one or more parties file a disqualification motion seeking my recusal based on allegations of possible conflicts of interest, I would attempt to

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00779 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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arrange to have another judge consider the matter, including holding a hearing on the issue and developing a satisfactory record that may be reviewed on appeal.

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 2008, I served on the board of directors of the New Orleans Pro Bono Project, where my duties included soliciting other lawyers and law firms to participate in the program by accepting pro bono cases. Moreover, I am among the lawyers at my firm who assist associates in handling pro bono cases. During my tenure on my firm's board of directors, we developed a policy that permits credited billing hours to be awarded to associates who agree to handle pro bono cases.

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 January 2009, I was contacted by United States Senator Mary Landrieu regarding the position of United States Attorney for the Eastern District of Louisiana. According to Senator Landrieu, several persons had recommended that I be considered for the position due to my 16 year career in the Justice Department. Grateful for her consideration, I informed Senator Landrieu that I would honored to return to public service in any capacity that she and the President deemed appropriate.

In April, Senator Landrieu called to inform me of her decision to recommend that current United States Attorney Jim Letten be retained in his position due to his exemplary efforts to reduce crime in the district. However, she added that given my many years of practice in the federal courts, including my service as the interim United States Attorney and First Assistant United States Attorney for the Middle District of Louisiana, she believed that I was well-qualified to serve on the federal bench. Her recommendation that I be appointed to federal bench quickly followed.

I was contacted by the Department of Justice on July 27, 2009 regarding the submission of forms and various paperwork required for the nomination process. I have participated in telephone conversations with Department staff regarding the content of the completed forms. On September 25, 2009 I was interviewed at the

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Justice Department by members of the Department of Justice and the White House Counsel's Office staff. 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 such communication has taken place.

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Rev. 1/2008

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Jackson, Brian A.	U.S. District Court Middle District of Louisiana	10/29/2009
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type** (check appropriate type)	**6. Reporting Period**
District Judge - Nominee	☑ Nomination, Date 10/29/2009 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2008 to 09/30/2009
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
701 Poydras Street Suite 5000 New Orleans, Louisiana 70139	Reviewing Officer_____ Date_____	

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

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

☐ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. Director	Liskow & Lewis, APLC
2. Director	New Orleans Bar Foundation
3.	
4.	
5.	

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

☑ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting Jackson, Brian A.	Date of Report 10/29/2009

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2009	Liskow & Lewis, APLC - salary (to date)	$200,599.34
2.	2008	Liskow & Lewis, APLC - salary	$340,353.00
3.	2007	Liskow & Lewis, APLC - salary	$312,189.78
4.			

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

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

	DATE	SOURCE AND TYPE
1.		
2.		
3.		
4.		

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

☐ NONE *(No reportable reimbursements.)*

	SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.	Exempt				
2.					
3.					
4.					
5.					

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting Jackson, Brian A.	Date of Report 10/29/2009

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

☐ NONE *(No reportable gifts.)*

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

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☐ NONE *(No reportable liabilities.)*

CREDITOR	DESCRIPTION	VALUE CODE
1. Citimortgage	Mortgage on Investment Property, New Orleans, LA (Part VII, Line 1)	L
2.		
3.		
4.		
5.		

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting	Date of Report
Jackson, Brian A.	10/29/2009

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. Rental Property, New Orleans, LA (Orleans Parish)	E	Rent	M	W	Exempt				
2. Nueberger Berman Fund	A	Int./Div.	J	U					
3. Vangund REIT Index Fund	A	Int./Div.	J	U					
4. Janus Reseach Fund	A	Int./Div.	J	U					
5. Janus Orion Fund	A	Int./Div.	J	U					
6. Villere Balanced Fund	A	Int./Div.	J	U					
7. Ariel Appreciation Fund	A	Int./Div.	J	U					
8. Vanguard Wellington Fund	A	Int./Div.	J	U					
9. ExxonMobil	A	Int./Div.	J	U					
10. Vanguard GMNA Fund		None	L	U					
11. Vanguard 500 Index Fund		None	L	U					
12. Vanguard Target Retirement 2025		None	L	U					
13.									
14.									
15.									
16.									
17.									

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

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting Jackson, Brian A.	Date of Report 10/29/2009

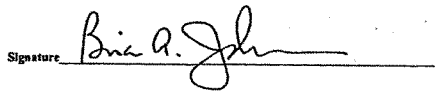
VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Jackson, Brian A.	Date of Report 10/29/2009

IX. CERTIFICATION.

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

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

Signature 

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		17	252	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		500	530	Notes payable to relatives			
Unlisted securities--add schedule		136	000	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		460	525
Real estate owned-add schedule		965	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		51	400	Auto loan		18	577
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		479	102
				Net Worth	1	191	080
Total Assets	1	670	182	Total liabilities and net worth	1	670	182
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you a defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
AT&T	$ 866
Comcast	788
ExxonMobil	14,240
Lucent Technologies	194
LSI Corporation	21
Ariel Appreciation Fund	12,428
Janus Money Market Fund	213
Janus Orion Fund	8,016
Janus Research Fund	7,881
Neuberger Berman Fund	1,772
Vanguard REIT Index Fund	4,142
Villere Balanced Fund	11,687
Vanguard 500 Index Fund	62,698
Vanguard GNMA Fund	62,586
Vanguard Target Retirement 2025	64,558
Vanguard Wellington Fund	14,196
Federal Thrift Savings Plan (G Fund)	234,244
Total Listed Securities	$ 500,530
Unlisted Securities	
Ownership Interest in Liskow & Lewis, APLC	$ 136,000
Real Estate Owned	
Personal residence 1	$ 245,000
Personal residence 2	480,000
Rental Property	240,000
Total Real Estate Owned	$ 965,000
Real Estate Mortgages Payable	
Personal residence 1	$ 55,460
Personal residence 2	332,264
Rental Property	72,801
Total Real Estate Mortgages Payable	$ 460,525

AFFIDAVIT

I, Brian A. Jackson, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

10/29/09
(DATE)

Brian A. Jackson
(NAME)

[illegible], Bar Roll no. #26866
(NOTARY) Commissioned for Life

Now to Elizabeth Foote.

Ms. Foote.

Ms. FOOTE. Thank you, Senator.

Senator FRANKEN. And by the way, welcome to all members of Mr. Jackson's family.

Mr. JACKSON. Thank you.

STATEMENT OF ELIZABETH E. FOOTE, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF LOUISIANA

Ms. FOOTE. Thank you, Senator. I, too, would like to thank the President. I would like to thank this Committee for the courtesy and promptness of the hearing. I'd like to thank Senator Landrieu for her lovely introduction and recommendation for this job, and Senator Vitter for his support as well.

With the Committee's indulgence, I would like to introduce my family. My husband Ross is a retired District Court judge for 33—he's my husband for 33 years, he was a judge for 14. My son David, who's in his last semester at Middlebury College in Vermont. My son Paul lives and works in London and is watching via webcast. My brothers, Paul and Jay, could not be here but they have sent in their stead as their representative my niece, Margo Elizabeth Erny, who is my namesake, and her husband, John Holliday.

My in-laws, Toni and George Foote, who are 87 and 90 years old, are likewise watching this webcast in their spare bedroom. They have sent as their representatives my brother-in-laws George Foote and Ray Foote. Representing the 27 Foote grandchildren and 21 great-grandchildren is my niece Caroline Marriott, and I'm so glad that she could come and be with us today.

I also have two friends who have joined me today. One of my oldest friends, Betty Owens, who reminded me this morning that I encouraged her to go to law school, and one of my youngest friends, Lauren Torbett, who I taught at Mock Trial in high school and now is waiting admission to the New York Bar.

Thank you so much for that opportunity.

Senator FRANKEN. Well, thank you, Foote soldiers.

[Laughter.]

Senator FRANKEN. Then, Mr. Treadwell, tread well.

[The biographical information of Elizabeth E. Foote follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Elizabeth Erny Foote (Formerly, Elizabeth Frances Erny)

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

   United States District Judge for the Western District of Louisiana

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.

   The Smith Foote Law Firm, LLP
   720 Murray Street
   Alexandria, LA 71301

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

   1953, Lafayette, Louisiana

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, Louisiana State University, Paul M. Hebert Law Center; J. D., 1978

   1974-1975, Duke University; M.A., 1975

   1970-1974, Louisiana State University; B.A. (Honors Division), 1974

   1971, Nicholls State University (no degree-summer school)

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.

65688.784

1980-Present
The Smith Foote Law Firm, LLP (and predecessor firms)
720 Murray Street
Alexandria, Louisiana 71309
Partner (1981-Present)
Associate Attorney (1980-1981)

1979-1980
Ledbetter, Percy & Stubbs (since dissolved)
800 Johnston Street
Alexandria, Louisiana 71301
Associate Attorney

1978-1981
Louisiana Third Circuit Court of Appeal
1000 Main Street
Lake Charles, Louisiana 70615
Interim Part-Time Law Clerk to Chief Judge William Culpepper (Fall of 1980 or 1981)
Law Clerk to Chief Judge William Culpepper (1978-1979)

1977-1978
Self-Employed
2249 Broussard Street
Baton Rouge, Louisiana 70808
Contract Law Clerk

1976-1977
McCollister, Belcher, McCleary, Fazio, Mixon, Holladay and Jones
One American Place
301 Main Street
Baton Rouge, Louisiana 70801
Law Clerk

1974
Franklin Press
1391 Highland Road
Baton Rouge, Louisiana 70802
Proofreader (summer only)

Other Affiliations

1986-Present
720 Company (owns and operates office building for my law practice)
720 Murray Street
Alexandria, Louisiana 71309
Partner

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65688.785

2007-Present, 2000-2003, & 1994-1996
Louisiana State Bar Association (uncompensated)
601 St. Charles Avenue
New Orleans, Louisiana 70130
Immediate Past President (2009-2010)
President (2008-2009)
President-Elect (2007-2008)
Treasurer (1994-1996)
Governor (1994-1996, 2000-2003 & 2007-Present)

1997-Present
Catalyst Vidalia Corporation
409 Texas Street
Vidalia, Louisiana 71373
Director

2007-Present & 1997-1999
Louisiana Bar Foundation (uncompensated)
909 Poydras Street, Suite 1550
New Orleans, Louisiana 70112
Director

2006-Present
Louisiana Civil Justice Center (uncompensated)
601 St. Charles Avenue
New Orleans, Louisiana 70130
President (2006-2007) & Director (2006-2010)

2007-2008
Louisiana Client Assistance Foundation (uncompensated)
601 St. Charles Avenue
New Orleans, Louisiana 70130
Director

2003-2006
River Cities Cultural Alliance (uncompensated)
1101 4th Street
Alexandria, Louisiana 71301
Director

1999-2005
United Way of Central Louisiana, Inc. (uncompensated)
1101 4th Street
Alexandria, Louisiana 71301
Board Member (1999-2005)
Treasurer (2002)

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1999-2005
Alexandria Central Louisiana Economic Development District (uncompensated)
City of Alexandria
915 Third Street
Alexandria, Louisiana 71301
Commissioner

2001-2002
Rapides Regional Medical Center (uncompensated)
211 Fourth Street
Alexandria, Louisiana 71301
Director

1998-2000
Central Louisiana Chamber of Commerce (uncompensated)
1118 3rd Street
Alexandria, Louisiana 71301
Director

1991-1999
The Hope House (uncompensated)
29 Bolton Avenue
Alexandria, Louisiana 71301
President (1997-1999)
President-Elect (1995-1996)
Director (1991-1999)

1997-1999
Shepherd Ministries (uncompensated)
1400 Jackson Street
Alexandria, Louisiana 71301
Director

1995-1998
Rapides Bank & Trust Company in Alexandria
400 Murray Street
Alexandria, Louisiana 71301
Director

1996-1998
City Park Players (uncompensated)
2 Sylvester Street
Alexandria, Louisiana 71301
Director

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Early 1980s
Alexandria Bar Association (uncompensated)
P. O. Box 3
Alexandria, Louisiana 71309
Treasurer (One Year Term)

Early 1980s
Alexandria Family Counseling Agency (uncompensated)
1404 Murray Street
Alexandria, Louisiana 71301
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 military nor have I 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.

Martindale-Hubbell, AV Rated (Highest Ranking for Legal Ability & Ethical Standards)
Louisiana Super Lawyers Magazine, "Super Lawyer" (2009 & 2010)
American Bar Association, Fellow of the National Institute for Teaching Ethics and Professionalism (2009)
Louisiana Association of Nonprofit Associations, "Louisiana Heroine Award" (2004)
Alexandria Human Relations Commission, Community Award (2004)
The Town Talk (Alexandria, Louisiana) "Woman of the Century" (2000)
Central Louisiana Women Business Owners, "Woman of Excellence" (1996)
Louisiana State Bar Association, "President's Award" (1994)
Louisiana Business & Professional Women, "Outstanding Young Career Woman" (1980)
Louisiana State University Alumni Scholar, Full Scholarship (1970-1974)

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.

Alexandria Bar Association
- Treasurer (early 1980s)
- Committee on Continuing Legal Education (1985-1986)

American Bar Association
- House of Delegates (2008-2009)
- Consortium on Professionalism (2008-Present)

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Central Louisiana Association of Women Attorneys
Founding Member, 1978
Committees of the Louisiana Supreme Court
Ad Hoc Committee to Study Perceptions of the Legal Systems (2009-Present)
Committee on Judicial Ethics (2008-2009)
Louisiana Supreme Court Judicial Council (2008-2009)
Committee to Study Attorney Advertising (2006-2007)
Committee to Study Financial Assistance to Clients (2002)
Mandatory Continuing Legal Education Committee (1998-1999)
Committee on Preventing Lawyer Malpractice (1998)
Louisiana Supreme Court Disciplinary Board of the Louisiana State Bar Association, Hearing Committee Member (1996-1998)
The Crossroads American Inn of Court of Alexandria-Pineville
Defense Research Institute
Governor's Fifty States Project
Chair (1984-1986)
Louisiana Association of Defense Counsel
Louisiana Association of Justice
Louisiana Civil Justice Center
President (2006-2007)
Director (2006-Present)
Louisiana State Bar Association (LSBA)
Immediate Past-President (2009-Present)
President (2008-2009)
Presiding Officer, House of Delegates (Jan. 2, 2009 and June 12, 2009)
President-Elect (2007-2008)
Treasurer (June 1994 -June 1996)
Member, Board of Governors (2007-Present, 2000-2003, & 1994-1996)
Member, House of Delegates (2006 & 1998-2000)

As an active officer and member of LSBA for most of my legal career, including a term as LSBA President, I have sat on many Committees. Based on my recollection and records, I have identified the following terms of service:

Office of Disciplinary Counsel Liaison Committee Chair (2009-Present)
Committee on the Profession, Vice-Chair, (2009-2010)
Lawyers In Transition (2007- Present)
Dues Increase Committee (2006-2007)
Access to Justice Committee (2005-Present)
Disaster Response Committee, Co-Chair (2005-2006)
Professional Assessment Committee (2004-2007)
Bench/Bar Committee Chair (2004-2007)
Legal Malpractice Insurance Committee (2003-2009)
Group Insurance Committee (2002-2005)
Long Range Planning Committee (1996)
Long Range Planning Committee (1992)

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Continuing Legal Education Committee (1985-1999); Chair (1998-1999)
Outstanding Young Lawyer Selection Committee (1985)
Young Lawyers Community Law Week and Law Fair Committee (1985)
Louisiana Bar Foundation
Director (2007-Present & 1997-1999)
IOLTA Grants Committee (1997-1998)
Communications Chair (1996)
Louisiana State Law Institute
Louisiana State University Paul M. Hebert Law Center Board of Trustees (2005-Present)
Shreveport 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.

Louisiana, 1978

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 the United States, 1995
United States Court of Appeal for the Fifth Circuit, 1985
United States District Court for the Eastern District of Louisiana, 1999
United States District Court for the Western District of Louisiana, 1979
Louisiana Supreme Court, 1978

There has been no lapse 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.

Alexandria Business and Professional Women (approximately 1979-1981)
Alexandria-Pineville Commission for Women (1979-1982)
Chair, 1979-81
Alexandria Family Counseling Agency

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Director (early 1980s)
Alexandria Mental Health Center
Director (early 1980s)
American Heart Walk/Run for Rapides Parish
Vice-Chairman (1998)
Bank One Community Advisory Board (1998-2000)
Central Cities Development Corporation (1999-2003)
Central Louisiana Chamber of Commerce
Director (1998-2000)
City Park Players Little Theater
Director (1996-1998)
Hope House Women's Shelter
President (1997-1999)
Director (1991-1999)
Krewe of Medea (2000-2008)
Louisiana Bar Journal
Editorial Board (1997-2000)
Louisiana State University at Alexandria, Lay Advisory Board (1998-1999)
Vice President (1999)
March of Dimes - Rapides Parish
Fundraising Co-Chair (early 1980s)
Mystic Krewe of Louisiana (1996-2008)
Rehabilitation Hospital of Alexandria (HealthSouth)
Advisory Board (1997-2001)
River Cities Cultural Alliance
Chair (2005)
Director (2003-2006)
Rotary Club of Alexandria (1995-Present)
Shepherd Ministries
Executive Board (1997-1999)
United Way of Central Louisiana
Chair (2004)
Treasurer (2002)
Campaign Chair (2000)
Director (1999-2005)

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.

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The Krewe of Medea is a Mardi Gras Krewe, an organization that produces a party once a year as part of the Mardi Gras Celebration. The Krewe of Medea, like many similar organizations, has only women as dues-paying members but does not so restrict participation in its events. I ceased to be a member of the Krewe of Medea in 2008. None of the other organizations listed discriminates on the basis of race, sex, religion, or national origin now, nor has any of the organizations done so during my affiliation. The Mystic Krewe of Louisiana and the Rotary Club of Alexandria each were men-only organizations prior to my joining. I have no knowledge of any other past discrimination by any of these organizations.

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.

As President of the Louisiana State Bar Association (LSBA), I published a bimonthly column, titled "President's Message," in the Louisiana Bar Journal:

"Equal Opportunities for the Participation of All Lawyers" (Apr./May 2009)
"Induction Ceremony of Chief Justice Catherine D. Kimball" (Feb./Mar. 2009)
"A Lifetime of Service" (Dec. 2008/Jan. 2009)
"New Rules on Lawyer Advertising and Solicitation: Mixed Reviews Bring Praise and Litigation" (Oct./Nov. 2008)
"Commit to the Profession" (Aug./Sept. 2008)

Also as LSBA President, I was featured in a video entitled "Equal Justice Under the Law," produced in 2009. My remarks, shown prior to every LSBA-sponsored CLE program, encouraged lawyers to participate in pro bono projects. After my term ended, the video was revised to carry the same message from my successor.

I served as a member of the Editorial Board of the Louisiana Bar Journal from 1997-2000. I have not kept records of the pieces I edited and I have no specific recollections of them. I also have authored the following works in the Louisiana Bar Journal:

"President's Report: What Has the LSBA Done for Me Lately?" LSBA Annual Report (Feb./March 2009)
"In His Own Words: Chief Justice Pascal F. Calogero, Jr." (Dec. 2008/Jan. 2009)
Letter to the Editor (Aug./Sept. 2008)
"18 Months and Counting: Cooperative Efforts Keep Disaster Legal Assistance Call Center Available to Help Citizens" (Feb./Mar. 2007)
"Namesake of Harmon Drew Super Group Talks on Careers, Family and Burnout" (Oct. 1999)

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"When It Rains It Pours" (Feb. 1998) (coauthor)
"A Woman's View of Law Practice in the Next Century" (June 1991)

I served as Associate Editor of a book published by the Louisiana Bar Foundation: *In Our Own Words: Reflections on Professionalism in the Law* (1998). I contributed a chapter to this volume entitled "Women in the Profession: From Unswept Floors to the Glass Ceilings."

In addition, having been involved with and served in leadership roles of charitable causes throughout my career, I occasionally have contributed short messages for newsletters or fundraising appeals. For example, I recall contributing a short message for a United Way newsletter, but I do not recall the year and do not have a copy.

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.

As President of the Louisiana State Bar Association from 2008-2009, and having served in various leadership roles with the Association throughout my career, I have had some participation in the formulation of Bar policy. For example, the Association's House of Delegates proposes and the Board of Governors adopts or rejects many legal policy proposals each year. As President, I had overall responsibility for the operation of this process. In the following cases, I personally prepared or contributed to a report, memoranda, or policy statement beyond my executive role:

Member Firm Statement of Diversity Principles (Apr. 4, 2009)
President's Statement Regarding Tulane Law Review Article on the Louisiana Supreme Court (June 26, 2008)
Resolution to Create a Committee on the Profession (June 12, 2008)
Resolution to Create a Lawyers in Transition Committee (Apr. 5, 2008)
Louisiana State Bar Association Diversity Statement (Jan. 12, 2008)
Strategic Plan of the Louisiana State Bar Association (Apr. 5, 2008)

I also contributed to the following reports as a member of the authoring committee:

Report of the Louisiana Supreme Court Committee to Study Attorney Advertising (2007) (Prepared for review and action by the Justices of the Court and not released to the public)

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Report of the Louisiana Supreme Court Committee to Study Financial Assistance to Clients (2002) (Prepared for review and action by the Justices of the Court and not released to the public)

Report of the Conclave on Legal Education and Professional Development, Louisiana Bar Foundation (1991). I have not retained a copy. The Foundation's address is: 909 Poydras Street, Suite 1550, New Orleans, LA 70803.

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 served on the Governor's Fifty States Project from 1986-1987, including a term as its Chair. This Committee was appointed by the Governor to examine the laws of the State of Louisiana. I recall that a group of members of the Committee testified before the Louisiana State House in or about 1988. I have no records of this 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.

Continuing Legal Education Engagements

"What Has the LSBA Done For Me Lately?"
John M. Duhe Inn of Court, Lafayette, Louisiana, Sept. 9, 2009
LSBA Seminar, Alexandria, Louisiana, Aug. 13, 2009
LSBA Seminar, Kenner, Louisiana, May 12, 2009
LSBA Seminar, Shreveport Convention Center, Apr. 30, 2009
LSBA Seminar, University of Louisiana at Monroe, Apr. 29, 2009
"The State of Our Profession," LSBA Solo and Small Firm CLE, New Orleans, Louisiana, Mar. 26, 2009
"Professionalism," Baton Rouge Bar Association CLE by the Hour, Dec. 29, 2008
"Ethics from the Defense Perspective: Representing the Insured and the Insurer at the Same Time," Louisiana State University Law Center Insurance Law Seminar, Nov. 7, 2008
"The Who and What of the Medical Malpractice Act: A Primer," LSBA Seminar, New York, New York, Nov. 20, 2007

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"The Current Status of the Medical Malpractice Act," Louisiana State University Paul M. Hebert Law Center Medical Malpractice Seminar, Nov. 17, 2006
"Lying in Wait With a Deadly Motion: Winning With Pre-Trial Motions"
LSBA Summer School for Lawyers, Sandestin, Florida, June 7, 2005
Advanced Tort Litigation Seminar, Louisiana State University Paul M. Hebert Law Center, Feb. 13, 2007
Lafayette Parish Bar Association Bench-Bar Conference, Sept. 28, 2007
Young Lawyers Seminar, New Orleans, Louisiana, Mar. 25, 2008
"Trial Advocacy–Tips on Trial and Appellate Briefs," Shreveport Bar Association 2004 Recent Developments Seminar, Oct. 14-15, 2004 (no notes)
"What's Right for Your Firm: Three Views on Management" (no notes)
LSBA Summer School for Lawyers, Sandestin, Florida, June 7, 2004
LSBA Summer School Revisited, Dec. 9-10, 2004
"Breaking Down the Walls of Separation, A Day of Dialogue: What Judges and Lawyers Can Learn From Each Other" (panel), LSBA Seminar, New Orleans, Louisiana, Jan. 23, 2004 (no notes)
"Writing to Win: Tips On Trial and Appellate Briefs," LSBA CLE in the City, Grand Hyatt, New York, Nov. 22-24, 2003 (no notes)
"Medical Malpractice: Are You Talking To Me?" Annual Nuts & Bolts Seminar, Destin, Florida, June 11-13, 2003 (no notes)
"Depositions 101: Ethics and Professionalism in the Context of Expert and Non-Expert Witness Depositions," LSBA Seminar, New Orleans, Louisiana, Nov. 8, 2002 (no notes)
"Ethics: The Duty To Defend – Trouble Areas and Ethical Considerations," LSBA Insurance Law Seminar, Oct. 1, 1999 (no notes)
"The Expert Witness Deposition," LSBA Deposition School, Mar. 26, 1999 (no notes)
"Tort Law & Workers' Compensation: When Two Systems Collide," LSBA Summer School for Lawyers, Sandestin, Florida, June 1998 (no notes)
1997 Evidence and Procedure Seminar, Louisiana Judicial College, Feb. 1997 (no notes)
Chair & Presenter, "Selected Problems in Evidence and Civil Procedure," LSBA Georgia For the Mind Seminar," Nov. 1996 (no notes)
"Deposing the Fact Witness," LSBA Depositions from A-Z Seminar, Oct. 1996 (no notes)
"Handle with Care: The Opposition's Expert" (no notes)
LSBA Summer School for Lawyers, Sandestin, Florida (June 1996)
LSBA Summer School Revisited (Dec. 1996)
"Ethics: The Role of the Louisiana State Bar Association in the Regulation of the Practice of Law," Fourth Annual Judge Alvin B. Rubin Federal Law Symposium on Ethics, Federal Bar Association, New Orleans, Louisiana, Mar. 1996 (no notes)
1996 Evidence and Procedure Seminar, Louisiana Judicial College, Feb. 1996 (no notes)

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"Ethics: The Regulation of the Practice of Law," (no notes) Divorce Law Practice Seminar Louisiana State University Paul M. Hebert Law Center, Sept. 1995; repeated at the Institute on Real Estate Law, Nov. 1995
"What if the Boiler Explodes on Steamboat Willie – An Examination of the Effect of Billiot on Workers' Compensation and Tort Claims," LSBA Disneyworld Program, July 1995 (no notes)
"Mediation" (no notes)
LSBA Summer School for Lawyers, Sandestin, Florida (June 1994)
LSBA Summer School Revisited (Dec. 1994)

Law School Professionalism Presentations

As President-Elect and then President of the LSBA, I was among the designers of a revised program for first-year law students entitled "Character and Fitness in the Bar Admissions Process." I personally participated in these presentations to Loyola Law School (Mar. 26, 2009), Southern University Law School (Apr. 8, 2009), and the Louisiana State University Paul M. Hebert Law Center (Apr. 8, 2009). Our program won the 2009 ABA Smythe Gambrell Award for professional programming. (no notes)

I also participated in first-year orientation programs in multiple years at Southern University Law School (2008) and at Louisiana State University Paul M. Hebert Law Center (2004-2009). Lastly, I was a panelist at an LSBA professionalism program for third-year law students at Louisiana State University Paul M. Hebert Law Center (Apr. 2006). (no notes)

Other

"Activities of Louisiana State Bar Association, 2008-2009" Downtown Rotary Club of Alexandria, Louisiana, June 30, 2009
"State of Our Profession," General Assembly of the Louisiana State Bar Association and the House of Delegates, June 12, 2009
Remarks at the Annual Meeting Installation Dinner, LSBA, June 12, 2009
Remarks a the Young Lawyers Awards Banquet, LSBA, June 11, 2009
"About the LSBA," Remarks at the LSBA and Louisiana Attorney Disciplinary Board Joint Seminar, Baton Rouge, Louisiana, Mar. 9, 2009
Swearing-In of Chief Justice Catherine Kimball, Supreme Court of Louisiana, Jan. 12, 2009
Tribute to Retiring Chief Justice Pascal Calogero, Supreme Court of Louisiana, Dec. 2008 (no notes)
"Welcome to Our Profession," Louisiana Supreme Court Bar Admissions Ceremony, Pontchartrain Center, Kenner, Louisiana, Oct. 23, 2008
"Report of the Louisiana State Bar Association to the Louisiana Judicial College," Conference of Louisiana Judicial College, New Orleans, Louisiana, Oct. 7, 2008 (no notes)
"Top 10 Issues," Leadership LSBA Orientation, Aug. 2008

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Installation Speech, Louisiana State Bar Association Annual Meeting, June 13, 2008
"The Role of the Louisiana Civil Code in Louisiana Law," Jean Lafitte Acadian Cultural Center, Lafayette, Louisiana, May 27, 2008 (no notes)
Awards Ceremony at Tulane Law School, New Orleans, May 16, 2008 (no notes)
"Commit to the Profession" Recruitment Speech as LSBA President-Elect to Various Attorney Groups, spring 2008
"Stirring Things Up," Remarks to the 2008-2009 LSBA Board of Directors, Spring 2008
Commencement Speaker, Louisiana State University at Alexandria, Alexandria, Louisiana, December 24, 2001 (no notes)
"Behind the Scenes of the 1996 Senatorial Race," Cenla Chapter of Public Relations Association, 1996 (no notes)
Keynote Address, Louisiana State Paralegal Association State Convention, Sept. 1993 (no notes)
"Balancing a Career and Family," Rapides General Hospital Women's Forum, 1986 and 1989 (no notes)
Speaker, Acadiana Women's Attorneys Association, 1990 (no notes)
"Women in the Practice of Law," LSBA Convention, Louisiana Women's State Bar Association meeting, summer 1986 (no notes)

I have compiled this list of speeches and talks based on search of my records and my best recollection. In addition, during my service as an officer of the Louisiana State Bar Association and other organizations, I often offered short introductions of guests and made other welcoming remarks.

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.

Louisiana Bar Journal, Volume 57, Number 3, October/November 2009, article appearing on Pages 178-179, entitled "LSBA's Bar Admissions Education Initiative Receives 2009 ABA Professionalism Award." This is a re-print of the article that appeared in the Louisiana State Bar Association Bar Briefs, Vol. 24, No. 5, September 2009.
"Immediate Past President Elizabeth Erny Foote," Web Publication of the Louisiana State Bar Association bio of Elizabeth Foote .
"Inside Law," "Reviews Already Underway on Attorney Advertising," CityBusiness, May 18, 2009.
"Scalia To Speak in NO on 'Rule of Law' in Iraq." The Advocate Online, April 24, 2009.
"LSBA strengthens pro bono efforts with summit," Bar Briefs; LSBA; March 2009, Volume 24, No. 2.
Press Release, "Ad-Justment," New Orleans CityBusiness, February 16, 2009.

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Press Release, "State Bar Wants Courthouse IDs," New Orleans CityBusiness, February 16, 2009.
"Kimball Assumes Post," The Advocate Online, January 13, 2009.
"Lawsuit delays launch of new advertising laws," New Orleans CityBusiness, November 24, 2008
"Lawsuit seeks to block tough lawyer ad rules;" AP Story; The American Press, Lake Charles, Louisiana, October 27, 2008
"Louisiana's Planned Crackdown on Lawyer Advertising Brings Objection;" AP Story; The Washington Post, November 2, 2008
LSBA Responds to Hurricanes Gustav and Ike "A Message from LSBA President Elizabeth Erny Foote," Bar Briefs, LSBA, September 2008, Vol. 23, No. 5.
"Hurricane Hotline In Service;" The Advocate Online, September 30, 2008.
"Off the Clock" "Beth Foote" New Orleans CityBusiness, August 11, 2008.
"Foote Installed as LSBA's 68th President," Louisiana Advocates, August 2008.
"2008 Midwest Floods Relief Fund Established," Bar Briefs, July 2008, Vol. 23, No. 4.
"Louisiana High Court Sets Lawyers' Ad Rules" (AP), Bastrop Enterprise, Bastrop, Louisiana, July 5, 2008
"President's Interview, Elizabeth Erny Foote, 68th President of the Louisiana State Bar Association," by Mark A. Cunningham, Louisiana Bar Journal, Vol. 56, No. 1, June-July 2008.
"United Way Drive," Alexandria Daily Town Talk, October 26, 2000
"Women of Excellence: Elizabeth Foote," Alexandria Daily Town Talk, October 15, 2000
"Dig Deeper," Alexandria Daily Town Talk, September 16, 2000
"United Way Sets Goal," Alexandria Daily Town Talk, September 8, 2000
"Fourth Generation Native Enjoys Giving Back to Area," October 17, 1999
"Women's Conference to Feature Seven Workshops," Alexandria Daily Town Talk, Wednesday, January 30, 1980.
"Women's Commission Planning Conference," Town Talk, Alexandria-Pineville, La., Sunday, December 1979.
"Couples in the Same Profession Sharing their lives and their Careers," The Red River Journal, January 4-10, 1979.

In addition, having been involved with and served in leadership roles for charitable causes throughout my career, I have been interviewed by local television stations on several occasions to promote a charitable cause or fundraising event. For example, I recall being interviewed on behalf of two local charities, Hope House and United Way, on more than one occasion. I have no record of the dates of these interviews.

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.

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Sometime in the early 1980s I sat as Alexandria City Court Judge on an ad hoc basis on two separate occasions for one afternoon each. I was sworn as an officer of the Court but presided under the guidance of a full-time judge. The matters before me were either criminal pleas or uncontested cases. I have no records or recollection of the specific matters.

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.

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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 except for on two afternoons in the early 1980s. Therefore I have not recused myself or had a conflict of interest alleged against me.

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.

Chair, Alexandria-Pineville Commission for Women, 1979-81; Member, 1982.
Appointed by the Mayor of the City of Alexandria.

Chair, Governor's Fifty States Project, 1984-86; Membership, 1986-87.
Appointed by the Governor of Louisiana.

Commissioner, Alexandria Central Economic Development District, 1999-2005.
Appointed by the Mayor of the City of Alexandria.

I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00807 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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 served as an elected member of the Rapides Parish Democratic Party Steering Committee from 1987-1991. I was a candidate again for the Steering Committee in 1999, when I was unsuccessful. I also was a candidate to be a Delegate to the 2004 Democratic National Conventional and was unsuccessful.

I serve as Treasurer of the JAZZ Political Action Committee, a position I have held since 2004.

I provided assistance on a volunteer basis to the following campaigns:
Mary Landrieu for U.S. Senate (2008) (fundraising)
Catherine "Kitty" Kimball for Chief Justice (2008) (hosted one fundraiser)
Randy Ewing for Governor (2003) (fundraising and get-out-the-vote)
Mary Landrieu for U.S. Senate (2002) (fundraising and get-out-the-vote)
John Breaux for U.S. Senate (1998) (fundraising)
Mary Landrieu for U.S. Senate (1996) (fundraising and get-out-the-vote)
Mary Landrieu for Governor (1995) (fundraising and get-out-the-vote)
Mary Landrieu for State Treasurer (1987) (fundraising)

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 served as law clerk to Chief Judge William Culpepper of the Louisiana Third Circuit Court of Appeal from 1978-1979. At Judge Culpepper's request, I returned as an interim clerk for a few months in the fall of either 1980 or 1981. I cannot recall which year.

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.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00808 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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1980-Present
The Smith Foote Law Firm, LLP (and predecessor firms)
720 Murray Street
Alexandria, Louisiana 71309
Partner (1981-Present)
Associate Attorney (1980-1981)

Our firm has also been known by the following names:
Percy, Smith & Foote, LLP (2003-2008)
Percy, Smith, Foote & Gadel, LLP (1999-2003)
Percy, Smith & Foote (1992-1999)
Percy, Smith, Foote & Honeycutt (1986-1992)
Percy, Smith, Wilson, Foote, Walker & Honeycutt (1986)
Trimble, Percy, Smith, Wilson, Foote, Walker & Honeycutt (1984-1986
Trimble, Percy, Smith, Wilson, Foote & Walker (1983-1984)
Trimble, Randow, Percy, Smith, Wilson & Foote (1981–1983)
Trimble, Randow, Percy, Smith & Wilson (1980-1981)
Dates were approximated based on a search of law firm records.

1979-1980
Ledbetter, Percy & Stubbs (since dissolved)
800 Johnston Street
Alexandria, Louisiana 71301
Associate Attorney

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 except in one case in which I assisted the chief mediator as a training exercise.

b. Describe:

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

Other than my work with the Louisiana State Bar Association and other community organizations, I have spent my entire legal career as a commercial lawyer and litigator in Alexandria, Louisiana. I have been a partner with the same small firm for nearly three decades. Today, my practice centers on commercial business work, insurance defense, and risk management. Increasingly over the years, I have concentrated on medical malpractice defense, contract negotiations, other business representations, and non-profit law. Also, early in my career, I took on many domestic relations matters, but I ceased to practice in that area in the early 1990s.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00809 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Early in my career, I occasionally was appointed to represent criminal defendants on a pro bono basis, including in one jury trial.

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

My typical clients have been individuals and businesses of all sizes. As I have taken on more malpractice defense work, I have had more hospitals and individual physicians as clients. I have also represented insurance companies.

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 and I have appeared in court frequently throughout my career.

i. Indicate the percentage of your practice in:
   1. federal courts: 15%
   2. state courts of record: 84%
   3. other courts:
   4. administrative agencies: 1%

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.

I estimate that I have tried 85 cases to verdict, judgment, or final decision. I was chief counsel in all but a handful of these cases.

i. What percentage of these trials were:
   1. jury: 20%
   2. non-jury: 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.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00810 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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My sole practice before the Supreme Court of the United States consisted of opposing a petition for certiorari in Calhoun v. St. Paul Fire & Marine Ins. Co. The Court denied cert. 515 U.S. 1104 (1995).

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. Adams v. Adams, 408 So. 2d 1322 (La. 1982).

My client brought this divorce action. The case presented a novel legal issue as to whether or not a person who was involuntarily separated from his spouse as a result of mental illness could be divorced. The Louisiana Supreme Court found for my client and affirmed the divorce decree. As a young lawyer, I tried this case as co-counsel, but I argued the matter on my own at the Court of Appeal and the Louisiana Supreme Court in 1981.

Judge Jules Davidson (now deceased) presided over the case in the Ninth Judicial District Court. My co-counsel was William H Ledbetter, 2285 Benton Road, Suite D-101, Bossier City, LA 71111, Tel: 318-747-5333. Counsel for the Defendant was Jake Shapiro (now deceased).

2. O'Brien v. Rizvi, 898 So. 2d 360 (La. 2005).

My clients, a physician practicing at a Veterans Administration (VA) hospital, his employer, and his insurance company were defendants in this medical malpractice suit. The physician was employed "in locum tenens," allowing him to practice at the VA hospital even though he was not licensed in the State of Louisiana. My client claimed protection by the statutory cap on damages as a qualified healthcare provider under the Louisiana Medical Malpractice Act. Plaintiffs appealed to the Louisiana Supreme Court on the issue of whether a doctor not licensed in the State of Louisiana but for whom premiums had been paid into the Louisiana Patients' Compensation Fund was eligible to be qualified within the meaning of the Louisiana Medical Malpractice Act. The Louisiana Patients' Compensation Fund intervened. My client settled with the plaintiffs on the morning of the Supreme Court argument. At the Court's request, I nevertheless

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00811 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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argued the case, which proceeded between the plaintiffs and the intervenor. The Court ruled for the plaintiffs on that issue.

Judge Donald T. Johnson presided in the Ninth Judicial District Court. Counsel for Plaintiffs was Edward P. Sutherland, 114 Napoleon St., Baton Rouge, LA 70802, Tel: 225-343-8024. Counsel for the intervenor was David A. Woodridge, Jr., 8440 Jefferson Highway, Suite 301, Baton Rouge, LA 70809, Tel: 225-929-7033.

3. Coushatta Tribe of La. v. Abramoff, No. 2:07-cv-01866, 2009 U.S. Dist. LEXIS 87599 (W.D. La. September 21, 2009).

The plaintiff Tribe brought this suit against Jack Abramoff, a former Washington-based lobbyist, and related defendants in connection with payments made for government relations work. I was local counsel to Greenberg Traurig, LLP, a law firm that had employed Abramoff. I argued two motions before the District Court. The case settled as between my client and the plaintiff Tribe; it was submitted to arbitration between my client and its insurers.

Judge Tucker Melancon presided in the United States District Court for the Western District of Louisiana. Principal counsel for Greenberg Traurig as to the claim by the Tribe were Kevin M. Downey & Carl R. Metz, 725 12th St., NW, Washington, DC 20005, Tel: 202-434-5000. Principal counsel for Greenberg Traurig as to its claim against the insurers was Stephen A. Weisbrod, Gilbert LLP, 1100 New York Ave., NW, Suite 700, Washington, DC 20005, Tel: 202-772-2200. Several insurance companies were involved, each of whom had multiple counsel. Principal counsel for the insurers included John D. Gordan, III, Morgan, Lewis & Bockius, LLP, 101 Park Ave., New York, NY 10178, Tel: 202-309-6000 & Barry A. Chasnoff, Akin Gump Strauss Hauer & Feld, LLP, 300 Convent St., Suite 1500, San Antonio, TX 78205, Tel: 210-270-0800. Counsel for the Coushatta Tribe was Charles D. Elliott, Villar & Elliott, LLC, P.O. Box 12730, Alexandria, LA 71315, Tel: 318-442-9533.

4. Dantzler v. Gilchrist Constr. Co., 779 So. 2d 1110 (La. Ct. App. 2001).

My client, the defendant construction company, was sued for damages arising from faulty construction of a metal building complex. The case was tried to a jury verdict in 1995 and plaintiff won a judgment against my client, the construction company. One of the company's two partners paid half the judgment; the other had declared bankruptcy. Plaintiff later sought to enforce the judgment against a separate corporate entity with a similar name and ownership by the one partner who had already paid half the judgment. The appeals, which I briefed and argued, involved issues of Louisiana partnership law, successor corporate liability, and res judicata. Under the final resolution, no further payment was required of my client.

Judge B. Dexter Ryland (now deceased) presided in the Ninth Judicial District Court. Counsel for plaintiff was Donald R. Wilson, 1057 Courthouse St., Jena, LA 71342, Tel: 318-992-2104.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00812 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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5. Fontenot v. Mathews, No. 197,526-G (La. Jud. Dist. 1999-2003).

Defendant driver was involved in a severe traffic accident in which his farm tractor was rear-ended by another vehicle. He was sued by and on behalf of the occupants of the second vehicle, including three children (one of whom was killed and one rendered a quadriplegic by the collision). I represented the defendant driver and his insurer (subsequently, at my suggestion, the driver obtained additional counsel to avoid conflict). Plaintiffs claimed my client had been negligent by not displaying a triangular reflector on the back of his tractor; they also brought negligence claims against other drivers and product liability claims against their vehicle manufacturer and others. After extensive discovery, we settled the case for policy limits.

Judge Harry F. Randow presided in the Ninth Judicial District Court. Counsel for plaintiffs was John C. Davidson, P.O. Box 1431, Alexandria, LA 71309, Tel: 318-443-6893. Additional counsel for the defendant was Scott M. Brame, P.O. Box 831, Alexandria, LA 71309, Tel: 318-448-8111.

6. Haynes v. St. Paul Fire & Marine Ins. Co., 43 F.3d 668 (5th Cir. 1994), *cert. denied*, 515 U.S. 1104 (1995).

Plaintiff minor child was injured by a saw in an art and frame gallery owned by his grandparents. The initial suit named the alleged (but incorrect) manufacturer of the saw and the shop's general liability insurer. My clients, the actual manufacturers of the saw, were subsequently added as defendants and the originally-alleged manufacturer was dismissed. The key issues that I briefed and argued to the United States Court of Appeals for the Fifth Circuit involved the applicability of the prescription statute to minors and its particular application to the multiple defendants in this case. The Court of Appeals affirmed judgment for my client and the Supreme Court of the United States denied certiorari.

Judge Donald E. Walter presided in the United States District Court for the Western District of Louisiana. Counsel for plaintiffs was Donald G. Cave, 3909 Plaza Tower Drive, Baton Rouge, LA 70816, Tel: 225-292-3194. Counsel for the insurer with whom I co-briefed the appeal was Hayes L. Harkey, Jr., P.O. Box 8032, Monroe, LA 71211, Tel: 318-387-2422.

7. La. District Council of the Assemblies of God v. Welch, No. 35,895 (La. Jud. Dist. 1998-2003).

I represented the Louisiana District Council of the Assemblies of God in this action to recover church property. Defendant had attempted to manipulate corporate documents to gain ownership of a rural church with a dwindling population. We resolved the case with a stipulated judgment awarding ownership of all property to my client. In addition to presenting complex legal and factual issues regarding corporate control of the non-profit

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00813 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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entity, this case was important to people in this community and especially those who had affiliation with the church.

Judge Kathy A. Johnson presided in the Seventh Judicial District. Counsel for the defendants was Andrew P. Texada, P.O. Box 1711, Alexandria, LA 71309, Tel: 318-487-4910.

8. Garcie v. Britt, 653 So. 2d 131 (La. Ct. App. 1995).

Plaintiff brought this tort suit against my client, a bar owner, for burns he suffered in the bar room after consuming a flaming drink. We tried the case to a jury, requiring the testimony of a roster of barroom witnesses, resulting in a fair damages verdict. The key fact issue was how the accident occurred. The legal issues included comparative fault and the applicability of the defense of intoxication as a bar to recovery. The Court of Appeal affirmed on cross-appeals.

Judge Peyton Cunningham, Jr., presided in the Tenth Judicial District Court. Counsel for plaintiff was William Preston Crews, Jr., 129 St. Denis St., Natchitoches, LA 71458, Tel: 318-356-8001.

9. St. Romain v. Commercial Union Ins. Co., No. 86-9077-B (La. Jud. Dist. 1986-1988).

This case arose from a child being badly burned by a hot water heater that allegedly was improperly manufactured and installed. I represented one of several defendants, the insurer of the bankrupt owner of the home in which the incident took place. The case was tried to a jury for approximately two weeks but settled before the last closing argument. My client did not contribute to the settlement but was dismissed by it.

Judge Harold Brouillette presided in the Twelfth Judicial District Court. Among the plaintiffs' attorneys were John T. Bennett, P.O. Box 275, Marksville, LA 71351, Tel: 318-253-4631 & Robert M. Murphy, 200 Derbigny St., Ste. 5600, Gretna, LA 70053, Tel: 504-364-3876. Other defense counsel included Laurence E. Larmann, One Galleria Blvd., Suite 1400, Metairie, LA 70001, Tel: 504-836-6500.

10. Culpepper v. Mer Rouge Cmty. Servs., No. 38,207-CA (La. Ct. App. 2002-2004).

Plaintiff brought this suit for injuries incurred by her mother while in the care of my client, a nursing home. The key issue was whether my client was a qualified health care provider within the meaning of the Louisiana Medical Malpractice Act such that a statutory cap on damages applied. Its resolution turned on complex fact issues and insurance-contract terms. Following an evidentiary hearing, the district court agreed with my client and dismissed the plaintiff's case. The plaintiff appealed, the Patient's Compensation Fund intervened, and the case settled while the appeal was pending.

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Judge Alvin Sharp presided in the Fourth Judicial District Court. Counsel for plaintiff was Hodge O'Neal, O'Neal Law Firm, P.O. Box 14900, Monroe, LA 71207, Tel: 318-323-8888.

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.)

As a law firm partner, I have been primarily a litigator. In addition, I have represented business owners and non-profits in a variety of matters including the negotiation and drafting of leases, the purchase and sale of business interests, and the structuring of franchise agreements. I also co-manage the administrative aspects of our small law firm of six attorneys and several other professional support staff members.

I engaged in substantial legal activity through my service as President of the Louisiana State Bar Association from 2008-2009 and in other offices of the Association throughout my career. The signature initiative of my Bar Association presidency was the creation of a standing Committee on the Profession, resulting in increased professionalism support and the development of a program for first-year law students on character and fitness in the bar admissions process. Through this work, the Association has sought to improve understanding of ethical and professional conduct obligations among law students and attorneys in our State. Our work was recognized by the American Bar Association's 2009 Smythe Gambrell Professionalism Award. I also led an expansion of the Bar Association's outreach and diversity initiatives in partnership with local and specialty bars, with law schools, and with young lawyers' organizations.

I have not performed lobbying activities on a formal or systematic basis, but occasionally have engaged in limited outreach to government officials as an officer of an organization or when requested to do so by a client. The only specific example of such activity for which I was compensated occurred in early 2002, when I contacted a home state Senator on behalf of a local organization seeking a federal license; I performed fewer than 20 hours of work on this matter and my client was unsuccessful in achieving its desired outcome. Other instances of related activity that I recall are contacting the Public Service Commission of Louisiana in 1998 on a utility contract issue; requesting funding from the State for legal services activities on behalf of the Louisiana State Bar Association and other issues on which the Association adopted a formal position during my term as president in 2008-2009; and participating in "ABA Day on the Hill" in 2008 and 2009 with the American Bar Association to encourage the Louisiana congressional delegation to support funding of legal services corporations. I have never registered as a lobbyist.

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

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00815 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.

Louisiana State University Paul M. Hebert Law Center, Adjunct Professor
Appellate Advocacy: 1999, 2000, 2001, 2002

The School provided the syllabi for these courses and I have not retained them. In addition to these courses, I guest-lectured at an Evidence Class and an Advance Seminar on Torts in spring 1997 and a Torts Seminar in 1995.

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.

The only deferred income arrangements into which I have entered are contingency fee cases taken on by my firm in which I have a partnership interest. If confirmed, I would handle these interests according to judicial ethics advice.

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.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00816 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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My husband is a partner in The Smith Foote Law Firm, in which I am presently also a partner. My nephew and his wife are both practicing attorneys in Louisiana and my brother-in-law is a practicing attorney in Washington, D.C. If confirmed, I would recuse myself from any case in which one of these family members appeared as an attorney as well as any case in which any member of The Smith Foote Law Firm appeared.

As to all other potential conflicts—including in cases where former clients and other attorneys with whom I have a prior relationship—I would abide by the Code of Conduct for United States Judges and recuse myself and/or disclose relationships as appropriate.

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

If confirmed, I will abide by the provisions of Canon 3 of the Code of Conduct for United States Judges and other applicable laws and standards. I will endeavor at the outset of each case to identify any potential conflict or appearance of conflict. I will treat any such conflict or appearance of conflict in accordance with the laws and rules, with the guidance of my colleagues, and with disclosure on the record and recusal where necessary.

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.

Throughout my career, I personally have represented clients on a pro bono or reduced fee basis. My principal contribution to legal service work has been through my sustained commitment to the Louisiana State Bar Association, to which I have volunteered thousands of hours of service, including approximately 1,400 hours in 2008 alone.

The example of my access to justice work through the Bar Association that was most meaningful to me was my participation in the Disaster Relief Committee, which I co-chaired, in the wake of Hurricanes Katrina and Rita. Our Committee partnered with the American Bar Association and the LSBA Young Lawyers Section to establish a call-in legal helpline used by more than 14,000 distinct clients. The challenges in establishing the call line in the immediate aftermath of the hurricanes were considerable. The call line was continued after the hurricanes. Leadership of the LSBA incorporated the Louisiana Civil Justice Center as a separate entity that now operates the call center. I worked to expand services provided to encompass non-emergency situations. Today, the call center is a key point of entry for new clients of several important legal services providers.

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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 February 2009, I wrote to Senator Mary Landrieu requesting consideration for the anticipated vacancy in the United States District Court for the Western District of Louisiana to be created by Judge Tucker Melancon taking senior status. Volunteers designated by Senator Landrieu's office interviewed me in Lafayette, Louisiana, on May 9, 2009. Since September 23, 2009, I have been in contact with pre-nomination officials at the Department of Justice. I interviewed in Washington with attorneys from the Office of White House Counsel and from the Department of Justice on December 1, 2009. On February 4, 2010 the President submitted my nomination to the Senate.

a. 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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Rev. 1/2008

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Foote, Elizabeth E.	U S District Court Western District of Louisiana	02/05/2010
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type** (check appropriate type)	**6. Reporting Period**
District Judge-Nominee	☑ Nomination, Date 2/4/2010 ☐ Initial ☐ Annual ☐ Final **5b.** ☐ Amended Report	1/1/2009 to 1/31/2010
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
720 Murray Street Alexandria, LA 71301	Reviewing Officer_____ Date_____	

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

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

☐ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. Partner	The Smith Foote Law Firm, LLP
2. Partner	720 Murray Street-law office building partnership
3. Board member	Catalyst Vidalia Corporation(Louisiana Hydroelectric, Ltd.)
4. Immediate past president and Board member	Louisiana State Bar Association
5. Board member	Louisiana Civil Justice Center
6. Board member	Louisiana Bar Foundation
7. Board of trustees member	Louisiana State University/Paul M. Hebert Law Center

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

☐ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1. Future	Termination of Partnership Agreement-The Smith Foote Law firm
2.	
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 11	Name of Person Reporting	Date of Report
	Foote, Elizabeth E.	02/05/2010

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

A. Filer's Non-Investment Income

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

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2010	See Part VIII	$0.00
2. 2009	The Smith Foote Law firm profits-ESTIMATED	$2,400,000.00
3. 2009	Director fees-Catalyst Vidalia	$20,000.00
4. 2009	Louisiana State Bar-travel expenses	$2,305.49
5. 2008	The Smith Foote law firm profit allocation	$0.00
6. 2008	Director fees-Catalyst Vidalia	$20,000.00
7. 2008	Louisiana State Bar--travel expenses	$1,376.00

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

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

DATE	SOURCE AND TYPE
1. 2010	LA State Employees Retirement System--retired judge
2. 2009	LA State Employees Retirement System-retired judge
3. 2009	The Smith Foote Law Firm-share of partnership profit
4. 2009	LA Supreme Court teaching fee

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

☐ NONE *(No reportable reimbursements.)*

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. EXEMPT				
2.				
3.				
4.				

FINANCIAL DISCLOSURE REPORT Page 3 of 11	Name of Person Reporting Foote, Elizabeth E.	Date of Report 02/05/2010

5.

FINANCIAL DISCLOSURE REPORT Page 4 of 11	Name of Person Reporting Foote, Elizabeth E.	Date of Report 02/05/2010

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

☐ NONE *(No reportable gifts.)*

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

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☐ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.	American Express	Credit Card	J
2.	Red River Bank	Line of credit for law firm/co-maker/guarantor	O
3.	Red River Bank	Real estate loan-law firm building/co-maker/guarantor	M
4.	Red River Bank	Personal loan-pledged CD against loan/co-maker/guarantor	J
5.	U. S. Treasury and LA Dept of Revenue	2009 Federal income taxes-estimated	P1

FINANCIAL DISCLOSURE REPORT
Page 5 of 11

Name of Person Reporting	Date of Report
Foote, Elizabeth E.	02/05/2010

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period: (1) Amount Code 1 (A-H)	B: (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period: (1) Value Code 2 (J-P)	C: (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period: (1) Type (e.g., buy, sell, redemption)	D: (2) Date Month - Day	D: (3) Value Code 2 (J-P)	D: (4) Gain Code 1 (A-H)	D: (5) Identity of buyer/seller (if private transaction)
1. Wells Fargo-Roth IRA					Exempt				
2. ----Templeton World Fund	A	Int./Div.	K	T					
3. ----Van Kampen Capital Growth Fund	A	Int./Div.	K	T					
4. ----Washington Mutual Investment Fund	A	Int./Div.	J	T					
5. ING-Law Firm 401k									
6. ----Vanguard VIF Diversified Value	A	Int./Div.	J	T					
7. ----Fidelity VIP Contrafund Port	A	Int./Div.	J	T					
8. ----ING AM Century SmMidCap Value	A	Int./Div.	J	T					
9. ----Baron Growth Fund	A	Int./Div.	J	T					
10. ----Oppenheimer Developing Mkts Fund	A	Int./Div.	J	T					
11. Charles Schwab-IRA									
12. ----Schwab Money Market	A	Int./Div.	J	T					
13. ----Pimco Total return	A	Int./Div.	K	T					
14. ----T Rowe Price Intl Bond	A	Int./Div.	J	T					
15. ----Aston Montag & Caldwell Growth	A	Int./Div.	J	T					
16. ----Calamos Growth Fund	A	Int./Div.	J	T					
17. ----Columbia Value & Restructuring	A	Int./Div.	J	T					

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

FINANCIAL DISCLOSURE REPORT
Page 6 of 11

Name of Person Reporting	Date of Report
Foote, Elizabeth E.	02/05/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. ----Harbor International	A	Int./Div.	J	T					
19. ----ING Global Real Estate	A	Int./Div.	J	T					
20. ----Keeley Small Cap Value	A	Int./Div.	J	T					
21. ----Longleaf Partners Fund	A	Int./Div.	J	T					
22. ----Mainstay ICAP Intl Fund	A	Int./Div.	J	T					
23. ----Selected American Shares	A	Int./Div.	J	T					
24. ----T Rowe Price Emerging Markets Stk	A	Int./Div.	J	T					
25. ----Westport Select Cap Fund	A	Int./Div.	J	T					
26. Red River Bank checking		None	K	T					
27. Red River Bank savings	A	Interest	J	T					
28. ING Savings	C	Interest	M	T					
29. ING USA Annuity	B	Distribution							
30. Prudential -IRA									
31. ----AST T Rowe Price Large Cap	A	Int./Div.	K	T					
32. ----AST Goldman Sachs Concentrated Growth	A	Int./Div.	K	T					
33. ----AST Small Cap Value	A	Int./Div.	K	T					
34. ----AST Neuberger Berman/LSV Mid Cap Value	A	Int./Div.	K	T					

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

FINANCIAL DISCLOSURE REPORT Page 7 of 11	Name of Person Reporting	Date of Report
	Foote, Elizabeth E.	02/05/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
35. ----AST International Growth	A	Int./Div.	K	T					
36. American Funds 529 plan acct									
37. ----American Funds Money Market	A	Int./Div.	K	T					
38. ----Cash Management Trust of America	A	Int./Div.							
39. ----American Balanced Fund	A	Int./Div.	K	T					
40. Wells Fargo Roth IRA									
41. ----John Hancock Regional Bank	A	Int./Div.	J	T					
42. ----Templeton World Fund	A	Int./Div.	L	T					
43. ----Washington Mutual Invs Fund	A	Int./Div.	K	T					
44. ING-Law Firm 401k									
45. ----ING Strategic Alloc Growth	A	Int./Div.	J	T					
46. ----ING Strategic Alloc Mod Port	A	Int./Div.	K	T					
47. ----ING Strategic Alloc Consv Port	A	Int./Div.	K	T					
48. ----Fidelity VIP Contrafund	B	Int./Div.	K	T					
49. ----Lord Abbett Mid-Cap Value	B	Int./Div.	K	T					
50. ----Oppenheimer Developing Mkts	C	Int./Div.	K	T					
51. ----ING International Value Port	A	Int./Div.	K	T					

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

FINANCIAL DISCLOSURE REPORT
Page 8 of 11

Name of Person Reporting	Date of Report
Foote, Elizabeth E.	02/05/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
52. Chase Investments									
53. ----JP Morgan US Tres Plus MMKT	A	Int./Div.	J	T					
54. ----JPMorgan Chase & CO common	A	Dividend	K	T					
55. ----AllianceBer Global Thematic Grth	A	Int./Div.	J	T					
56. ----JPMorgan Intrepid Mid Cap	A	Int./Div.	J	T					
57. ----JPMorgan Large Cap Grth	A	Int./Div.	J	T					
58. Red River Bank-7 CDs	E	Interest	P1	T					
59. ING Savings	B	Interest	M	T					
60. OM Financial Life Ins Company		None	N	T					
61. Charles Schwab									
62. ----Cash acct	A	Interest	J	T					
63. ----PMC Core Fixed Income	A	Int./Div.	J	T					
64. ----PMC Diversified Equity	A	Int./Div.	K	T					
65. Wells Fargo-3 FDIC Insured CD's	B	Interest	N	T					
66. Chase Investment-AIM Global Small & Mid Cap Growth	A	Dividend	J	T					
67. Genworth Financial Trust Co-GFAM ARO -100 Global 6	D	Int./Div.	N	T					
68. Merit Oil-royalty interest- Rapides Parish, L A	D	Royalty	K	W					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
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3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
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FINANCIAL DISCLOSURE REPORT
Page 9 of 11

Name of Person Reporting	Date of Report
Foote, Elizabeth E.	02/05/2010

VII. INVESTMENTS and TRUSTS — *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
69. Note receivable-Smith Foote law firm--law firm operations		None	N	U					
70. 60 acres timber land- Rapides Parish,LA		None	O	W					
71. 1/2 int interest 17 acres land -Grant Parish, LA		None	J	W					
72. 1/2 interest 2 acres- Rapides Parish,LA		None	J	W					
73. 1/6 interest 720 Murray Street Company	B	Distribution	L	W					
74. 1/3 interest 720 Murray Street Company (power of attorney)	E	Distribution	M	W					
75. Chase checking acct		None	J	T					
76. Cash surrender surrender value-MetLife		None	K	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
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FINANCIAL DISCLOSURE REPORT Page 10 of 11	Name of Person Reporting Foote, Elizabeth E.	Date of Report 02/05/2010

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

PART III-A Non-Investment Income

For 2010 there have been no distributions from the law partnership, thus, zero income indicated.

FINANCIAL DISCLOSURE REPORT Page 11 of 11	Name of Person Reporting Foote, Elizabeth E.	Date of Report 02/05/2010

IX. CERTIFICATION.

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

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

Signature_____

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks	2	804	978	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		860	290	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:		349	000	Accounts and bills due		12	500
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		91	190
Real estate owned-add schedule		978	500	Chattel mortgages and other liens payable		22	390
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		140	000				
Cash value-life insurance							
Other assets itemize:							
IRA Accounts		659	564				
				Total liabilities		126	080
				Net Worth	5	666	252
Total Assets	5	792	332	Total liabilities and net worth	5	792	332
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		694	270	Are any assets pledged? (Add schedule)	Yes		
On leases or contracts				Are you a defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax	2	250	000				
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Genworth Private Asset Mgmt	$ 268,797
O M Equity Indexed Annuity	273,416
Envestnet/Schwab	154,366
Evestnet/Schwab	27,776
Chase Investment	64,569
Chase Investment	4,600
American Funds	23,109
American Funds	43,657
Total Listed Securities	$ 860,290
Real Estate Owned	
Personal residence	$ 350,000
Timber land Rapides Parish	510,000
1/2 undivided interest 17 acres	8,500
1/2 undivided interest 2 acres	10,000
1/6 interest Law Office Building	100,000
Total Real Estate Owned	$ 978,500
Real Estate Mortgages Payable	
Personal residence	$ 98,500

Pledged assets:
Stand-alone CD that was pledged to secure college age son's car loan ($14,000)

AFFIDAVIT

I, **ELIZABETH ERNY FOOTE**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

2/9/2010
(DATE)

ELIZABETH ERNY FOOTE

JANET D. REDNER
NOTARY PUBLIC ID#19092
RAPIDES PARISH, LOUISIANA

STATEMENT OF MARC T. TREADWELL, TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF GEORGIA

Mr. TREADWELL. Thank you, Mr. Chairman. I, too, appreciate the Committee allowing us to appear here so quickly today. I'd like to thank Senator Chambliss for his kind introduction and the support that he's shown, and I certainly am thankful to the President for giving me this opportunity to potentially serve the residents of the Middle District of Georgia.

My wife Wemberly is here with me today. My older son Thomas is a student at Auburn, Auburn University, and he's in mid-term exams so he cannot be here. My younger son John is a high school senior, and he's here with me. He'll be going to either Auburn or the University of Alabama in the fall.

Thank you.

Senator FRANKEN. Thank you.

Now we'll go to Judge Tucker.

The biographical information of Marc T. Treadwell follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Marc Thomas Treadwell

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

   United States District Judge for the Middle District of Georgia

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: Adams, Jordan & Treadwell, P.C.
   577 Mulberry Street, Suite 1250
   P.O. Box 928
   Macon, Georgia 31202

   Residence: Forsyth, Monroe County, Georgia

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

   1955; Fort Campbell, Kentucky

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.

   1978-1981, Walter F. George School of Law, Mercer University; J.D. (*cum laude*), 1981

   1973-1978, Valdosta State University; B.A., 1978

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.

2000 – Present
Adams, Jordan & Treadwell, P.C.
577 Mulberry Street, Suite 1250
P.O. Box 928
Macon, Georgia 31202
Partner-Shareholder

1998 – Present
Walter F. George School of Law
1021 Georgia Avenue
Macon, Georgia 31207
Adjunct Professor of Law

1985 – 2000
Chambless, Hidgon & Carson, LLP
577 Walnut Street, Suite 200
Macon, Georgia 31202
Associate (1985 – 1987)
Partner (1987 – 2000)

1980 – 1985
Kilpatrick & Cody (now Kilpatrick Stockton, LLP)
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309
Associate (1981 – 1985)
Summer Associate (1980)

1981 (April, May)
Hall, Bloch, Garland & Meyer, LLP
577 Mulberry Street, Suite 1500
Macon, Georgia 31201
Law Clerk

1979
Administrative Office of the Courts of Georgia
Savannah Office
415 West Broughton Street
Savannah, Georgia 31401
Summer Clerk (Case Counter)

1978
Administrative Office of the Courts of Georgia
Valdosta Office
P.O. Box 1025
Valdosta, Georgia 31095
Summer Clerk (Case Counter)

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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 the Selective Service upon turning age 18.

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.

   Omicron Delta Kappa Honor Society (1977)
   Brainerd Currie Honor Society (1980)
   Order of Barristers (1980)
   Mercer Law Review (1980 – 1981)
   Editor, Eleventh Circuit Survey Issue (1981)
   Member, Intrastate Moot Court Championship Team (1980)
   Intrastate Moot Court Best Brief Award (1980)
   Martindale Hubbell Law Directory AV Rating (1992 – Present)
   Georgia Super Lawyer (2004 – Present)
   The Best Lawyers in America (2001 – Present)
   American College of Trial Lawyers (2003 – Present)
   International Academy of Trial Lawyers (2009 – Present)

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.

   Fellow, American College of Trial Lawyers (2003 – Present)
   Vice Chair, Georgia State Committee (2008 – Present)
   Federal Rules of Evidence Committee (2006)
   Fellow, International Academy of Trial Lawyers (2009 – Present)
   State Bar of Georgia (1981 – Present)
   Federal Courts Liason Committee (1998 – 2002)
   Editorial Board, *Georgia State Bar Journal* (1993 – 1995)
   Executive Council, Younger Lawyers Section (1983 – 1985)
   Master, William Augustus Bootle Inn of Court (1999 – Present)
   President (2009 – Present)
   Vice-President (2008 – 2009)
   Chairman, Local Rules Committee, United States District Court, Middle District of Georgia (1998 – 2002)
   Middle Georgia Trial Lawyers Association (2000 – Present)
   President (2005)
   Macon Bar Association (1985 – Present)
   Federal Bar Association (1990 – Present)
   Georgia Association of Trial Lawyers (1998 – Present)

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American Association for Justice (2000 – 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.

Georgia, 1981

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 the United States, 1988
United States District Court for the Middle District of Georgia, 1985
United States District Court for the Northern District of Georgia, 1981
United States District Court for the Southern District of Georgia, 1985

There have been no lapses in memberships in the Bars of these Courts.

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.

Tubman African American Museum (2000 – Present)
Sons and Daughters in Touch (2007 – Present)
Society of the First Infantry Division (2007 – Present)
Museum of Arts and Sciences (1990 – Present)
Historic Macon Foundation, Inc. (2000 – Present)
Hay House Foundation (off and on since 1985)
Friends of the Ocmulgee Heritage Trail (2006 – Present)
Macon Arts (2004 – Present)
Idle Hour Country Club (1988 – Present)
Ansley Golf Club (1984 – 1995)
Stonehill Homeowner's Association (2004 – Present)
Fripp Island (South Carolina) Property Owners Association (2000 – Present)
Fripp Island (South Carolina) Club (2000 – Present)
Okefenokee Golf Club (1989 – 2009)

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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 taker to change these policies and practices.

None of the organizations I have listed presently discriminates or has discriminated during the time I have been a member on the basis of race, sex, religion, or national origin. I understand that Idle Hour Country Club, which has existed for approximately a century, once discriminated on the basis of race. Throughout my membership, the Club has had strong anti-discriminatory recruitment and membership policies and today has a diverse membership. I have assisted in recruitment efforts toward a diverse membership. I am not aware of discrimination prior to my membership by any of the other organizations listed, though it is possible that such discrimination occurred well prior to any affiliation I had with those organizations.

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.

Authored five-part, 22,000 word series for *The Macon Telegraph* on the 1963 murder of Army Lt. Col. Lemuel Penn by members of the Ku Klux Klan. The Macon Telegraph, September 4, 1994 at A1; September 11, 1994 at B1; September 18, 1994 at B1; September 25, 1994 at B1; October 2, 1994 at B1.

Whisper to the Black Candle: *Voodoo, Murder, and the Case of Anjette Lyles*, by Jaclyn Weldon White (Macon: Mercer University Press, 1999), 9 *J. of S. Legal His.* 191 (2001). (Book Review)

Aretz v. United States: Fifth Circuit Announces Major Development in Georgia Tort Law? 31 Mercer L. Rev. 1095 (1980).

1986 Eleventh Circuit Survey: Evidence, 38 Mercer L. Rev. 1253 (1987).

1987 Eleventh Circuit Survey: Evidence, 39 Mercer L. Rev. 1259 (1988).

1988 Annual Survey of Georgia Law: Evidence, 40 Mercer L. Rev. 225 (1988).

1988 Eleventh Circuit Survey: Evidence, 40 Mercer L. Rev. 1291 (1989).

1989 Annual Survey of Georgia Law: Evidence, 41 Mercer L. Rev. 175 (1989).

1989 Eleventh Circuit Survey: Evidence, 41 Mercer L. Rev. 1357 (1990).

1990 Annual Survey of Georgia Law: Evidence, 42 Mercer L. Rev. 223 (1990).

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An Analysis of Georgia's Proposed Rules of Evidence, 26 Ga. State Bar J. 173 (1990).
1990 Eleventh Circuit Survey: Evidence, 42 Mercer L. Rev. 1451 (1991).
1991 Annual Survey of Georgia Law: Evidence, 43 Mercer L. Rev. 257 (1991).
1991 Eleventh Circuit Survey: Evidence, 43 Mercer L. Rev. 1173 (1992).
1992 Annual Survey of Georgia Law: Evidence, 44 Mercer L. Rev. 213 (1992).
1992 Eleventh Circuit Survey: Evidence, 44 Mercer L. Rev. 1209 (1993).
1993 Annual Survey of Georgia Law: Evidence, 45 Mercer L. Rev. 229 (1993).
1993 Eleventh Ciruit Survey: Evidence, 45 Mercer L. Rev. 1291 (1994).
1994 Annual Survey of Georgia Law: Evidence, 46 Mercer L. Rev. 233 (1994).
Evidence of Other Transactions in Civil Cases, Ga. Defense Lawyers' Association J. (1994).
1994 Eleventh Circuit Survey: Evidence, 46 Mercer L. Rev. 1377 (1995).
1995 Annual Survey of Georgia Law: Evidence, 47 Mercer L. Rev. 127 (1995).
1995 Eleventh Circuit Survey: Evidence, 47 Mercer L. Rev. 837 (1996).
1996 Annual Survey of Georgia Law: Evidence, 48 Mercer L. Rev. 323 (1996).
1996 Eleventh Circuit Survey: Evidence, 48 Mercer L. Rev. 1607 (1997).
1997 Annual Survey of Georgia Law: Evidence, 49 Mercer L. Rev. 149 (1997).
1997 Eleventh Circuit Survey: Evidence, 49 Mercer L. Rev. 1027 (1998).
1998 Annual Survey of Georgia Law: Evidence, 50 Mercer L. Rev. 229 (1998).
1998 Eleventh Circuit Survey: Evidence, 50 Mercer L. Rev. 1019 (1999).
1999 Annual Survey of Georgia Law: Evidence, 51 Mercer L. Rev. 279 (2000).
1999 Eleventh Circuit Survey: Evidence, 51 Mercer L. Rev. 1165 (2000).
2000 Annual Survey of Georgia Law: Evidence, 52 Mercer L. Rev. 263 (2001).
2000 Eleventh Circuit Survey: Evidence, 52 Mercer L. Rev. 1403 (2001).
2001 Annual Survey of Georgia Law: Evidence, 53 Mercer L. Rev. 295 (2002).
2001 Eleventh Circuit Survey: Evidence, 53 Mercer L. Rev. 1399 (2002).
2002 Annual Survey of Georgia Law: Evidence, 54 Mercer L. Rev. 309 (2002).
2002 Eleventh Circuit Survey: Evidence, 54 Mercer L. Rev. 1487 (2003).
2003 Annual Survey of Georgia Law: Evidence, 55 Mercer L. Rev. 249 (2003).
2003 Eleventh Circuit Survey: Evidence, 55 Mercer L. Rev. 1219 (2004).
2004 Annual Survey of Georgia Law: Evidence, 56 Mercer L. Rev. 235 (2004).
2004 Eleventh Circuit Survey: Evidence, 56 Mercer L. Rev. 1273 (2005).
2005 Annual Survey of Georgia Law: Evidence, 57 Mercer L. Rev. 187 (2005).
2005 Eleventh Circuit Survey: Evidence, 57 Mercer L. Rev. 1083 (2006).
2006 Annual Survey of Georgia Law: Evidence, 58 Mercer L. Rev. 151 (2006).
2006 Eleventh Circuit Survey: Evidence, 58 Mercer L. Rev. 1219 (2007).
2007 Annual Survey of Georgia Law: Evidence, 59 Mercer L. Rev. 157 (2007).
2007 Eleventh Circuit Survey: Evidence, 59 Mercer L. Rev. 1181 (2008).
2008 Annual Survey of Georgia Law: Evidence, 60 Mercer L. Rev. 135 (2008).
2008 Eleventh Circuit Survey: Evidence, 60 Mercer L. Rev. 1211 (2009).
2009 Annual Survey of Georgia Law: Evidence, 61 Mercer L. Rev. 135 (2009).
Testimonial for website of Premier Settlement Services, Inc.
Pre-Trial Evidence Points, GTLA Trial Practice Manual (Written by Hon. Martha Christian, updated by Marc Treadwell).

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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.

I served as Chairman of the Local Rules Committee of the United States District Court for the Middle District of Georgia from 1998-2002. As part of the Committee's ongoing work, we occasionally reported recommended changes to specific rules. I have not retained copies of any such reports.

I served for one year on the Federal Rules of Evidence Committee of the American College of Trial Lawyers (19900 MacArthur Blvd., Suite 610, Irvine, CA 92612). I recall only one report, on proposed Rule 502 of the Federal Rules of Evidence, of which I have not retained a copy.

I have no other recollection or record of reports, memoranda, or policy statements that I prepared or contributed in the preparation of that was issued by an organization of which I was a member.

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 speak once or twice a year at Continuing Legal Education seminars on evidence and trial issues. I have done so with this frequency for about ten years, and taught similar seminars on occasion for 15 years prior to that. In these presentations, I do not speak from a prepared text. In most cases, I have no transcripts or notes. As an example of a typical presentation, I most recently spoke on October 1, 2009, at a seminar at the State Bar of Georgia headquarters in Atlanta, Georgia.

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As an officer of the Bootle Inn of Court since 2008, I have presided occasionally over programs and introduced featured speakers. I recall only one occasion on which I gave substantial remarks, during a program on September 10, 2009, honoring our local Federal judges who had recently taken senior status.

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.

Steve Harvey, *Local News*, Atlanta Journal & Constitution, March 11, 1992, at F2.

Mike Wynn, *Crash Victim's Relatives Sue Swainsboro, Officer*, Augusta Chronicle, March 21, 2002, at B5.

S. Heather Duncan, *Junod Appointed Bibb Tax Assessor*, Macon Telegraph, May 15, 2002, at B1.

S. Heather Duncan, *Macon-Bibb Tax Talks Begin; County Seeks Dramatic Increase*, Macon Telegraph, July 3, 2002, at B5.

Mike Wynn, *City Settles Suit Over Chase Death*, Augusta Chronicle, July 9, 2002, at B5.

S. Heather Duncan, *Macon-Bibb Sales Tax Split Going to Mediator*, Macon Telegraph, Sept. 6, 2002, at B3.

S. Heather Duncan, *Bibb Bemoans Tax Exempt Carlyle Place; State Law Relieves Nonprofit Organizations that House the Elderly from Paying Property Taxes*, Macon Telegraph, Oct. 13, 2002, at A1.

S. Heather Duncan, *Macon Offers to Reduce Its Sales Tax Share to 2/3; Despite Cut, City and Bibb County Unable to Reach Deal*, Macon Telegraph, Nov. 6, 2002, at B1.

Mike Donila, *Options Are Few if Sales Tax Expires; Without Macon, Bibb Agreement on Split, Residents Would Have to Wait a Year to OK Similar Tax*, Macon Telegraph, Nov. 16, 2002, at B1.

Mike Donila, *Macon, Bibb Halt Tax Talks Without Deal*, Macon Telegraph, Dec. 7, 2002, at A1.

Mike Donila, *Sales Tax Stall Over Rec. Dept.*, Macon Telegraph, Dec. 13, 2002, at A1.

Travis Fain, *Bibb Makes Its Final Offers on Tax Split*, Macon Telegraph, Dec. 17, 2002, at D1.

Travis Fain, *Macon, Bibb Agree on Tax Split; City to Get 60 Percent, County to Get 40 Percent*, Macon Telegraph, Dec. 24, 2002, at A1.

Becky Purser, *Court Orders Insurance Provider to Pay Houston Man's Health Costs*, Macon Telegraph, March 30, 2004, at B3.

Treadwell Latest Alum Inducted Into Trial Lawyers, Mercer Law Letter, Summer 2004.

Becky Purser, *Appeals Court Sides With Former Kathleen Man Battling Cancer*, Macon Telegraph, Feb. 16, 2005, at A1.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00839 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Jonathan Ringel, *Transplant Ruling Survives Appeal*, Federal Daily Report, Feb. 23, 2005.
Becky Purser, *Authority to Ask State Court to Review Case*, Macon Telegraph, March 22, 2005, at B7.
Chuck Thompson, *Cancer Patient Who Won Battle With Insurer Dies*, Macon Telegraph, Oct. 11, 2005, at B1.
Alyson Palmer, *Court Deals Wins on Both Sides of Tort Suits*, Fulton Daily Report, June 9, 2009.
Political Notebook: Alls Not Quiet at the Capitol, Macon Telegraph, Oct. 17, 2009, at B1.

I have infrequently been interviewed and have no specific recollection or records of any interview other than those I have listed.

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 never 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

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00840 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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 never been 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 you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have represented Bibb County as an attorney and my law partner serves as the County Attorney, but I have not myself held public office. I have had no

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00841 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.

In May 2008, I was a named co-host at a reception in support of the Democratic Party of Georgia. I do not recall any memberships or other services rendered to a political party or election committee.

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 clerk to a judge.

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

I have never practiced alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

2000 – Present
Adams, Jordan & Treadwell, P.C.
577 Mulberry Street, Suite 1250
P.O. Box 928
Macon, Georgia 31202
Partner-Shareholder

1985 – 2000
Chambless, Hidgon & Carson, LLP
577 Walnut Street, Suite 200
Macon, Georgia 31202
Associate (1985 – 1987)
Partner (1987 – 2000)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00842 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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1981 – 1985
Kilpatrick & Cody (now Kilpatrick Stockton, LLP)
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309-4528
Associate

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.

At Kilpatrick & Cody (1981-1985), I represented both plaintiffs and defendants in civil litigation. During my association with Chambless, Higdon & Carson, LLP (1985-2000), I represented both plaintiffs and defendants in civil litigation. Initially, my practice was primarily defense oriented but within a few years of joining the firm my practice became more plaintiff oriented. During my later years with the firm, I primarily represented plaintiffs in personal injury and wrongful death actions. At Adams, Jordan & Treadwell, P.C. (2000-Present), I have represented primarily plaintiffs in personal injury and wrongful death actions. My partner, Virgil L. Adams, is Bibb County Attorney and I have represented Bibb County in many contested matters.

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

For the last fifteen years, my practice has primarily focused on representing plaintiffs in personal injury and wrongful death actions. Thus, my typical clients have been individuals. While I have handled a wide variety of personal injury litigation, most of my time has been spent in complex litigation such as product liability, medical malpractice, and catastrophic injury 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.

Nearly 100% of my practice has been in litigation. I appear in court frequently, although the frequency of appearances has decreased as the cases I have handled

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have become more complex. In my early legal career, I tried numerous "small cases" and thus appeared in court much more frequently.

i. Indicate the percentage of your practice in:
   1. federal courts: 20%
   2. state courts of record: 79%
   3. other courts: 0%
   4. administrative agencies: 1%

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.

I estimate that I have tried 75 to 100 cases to verdict or judgment, almost all as lead counsel. I sat "second chair" at three trials while at Kilpatrick & Cody and three while at Chambless, Higdon & Carson.

i. What percentage of these trials were:
   1. jury: 70%
   2. non-jury: 30%

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

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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. *Hosp. Auth. of Houston County v. Bohannon*, 272 Ga. App. 96, 611 S.E.2d 663 (2005). Tried non-jury before Houston Superior Court Judge George Nunn in 2004.

I represented the Plaintiff "pro bono" in this declaratory judgment action seeking a determination that the Plaintiff's health benefit plan provided coverage for a stem cell transplant as treatment for the Plaintiff's kidney cancer. Because of the urgency of the matter, the case was tried non-jury ten days after filing and Judge Nunn entered judgment in favor of the Plaintiff. A six-judge panel of the Georgia Court of Appeals, Judges Andrews and Blackburn dissenting, affirmed. The majority reasoned that the health benefit plan was a contract of adhesion and held that Judge Nunn properly ordered the Defendants to provide coverage for the Plaintiff's treatment. I believe the case is significant because the Court of Appeals' holding provides some protection for patients, consumers and insureds who are presented with, as the Court of Appeals' majority put it, "take it or leave it" contracts.

Opposing Counsel: Frank L. Butler, III
Constangy, Brooks & Smith, LLC
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Macon, Georgia 31202
(478) 750-8600

Lewis Hassett
Morris, Manning & Martin, LLP
1600 Atlanta Financial Center
3343 Peachtree Road, N.E.
Atlanta, Georgia 30326
(404) 233-7000

2. *Ledbetter v. First State Bank & Trust Company*, 85 F.3d 1537 (11th Cir. 1996). Tried before Judge Duross Fitzpatrick and a jury for approximately three weeks in March 1997.

I represented a trust beneficiary, a member of the Haley family in Albany, in an action against his trustee, First State Bank & Trust Company. Although the Haley family, directly or through trusts, owned a majority of the stock of First State, my client contended that non family bank management was improperly exercising voting control over First State through the bank's trust department in an effort to delay a merger with a larger bank, to enhance management's compensation plans, and for other improper purposes. Judge Fitzpatrick granted summary judgment to First State, but the Eleventh Circuit reversed, reinforcing the principle of Georgia

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law that "the foremost duty which a fiduciary owes to its beneficiary is undivided loyalty." The decision is of particular significance for corporate trustees managing trusts that hold stock in the corporate trustee. Upon remand and after a lengthy trial, my client largely prevailed. The jury awarded only nominal damages but also awarded attorneys' fees against the Defendant.

Opposing Counsel: John T. Marshall, William G. Leonard
Powell, Goldstein, Frazer & Murphy
(now Bryan Cave, LLP)
One Atlantic Center, Fourteenth Floor
1201 W. Peachtree Street, NW
Atlanta, Georgia 30309
(404) 572-6615

3. *Moss v. Klein Tools, Inc.* (No. 88-00224, M.D. Ga. filed July 6, 1988). Tried before Judge Wilbur Owens and a jury.

In this product liability action involving a "rebar hook," the jury returned a verdict in favor of Plaintiffs in the amount of $1,910,778.96 for special, general and punitive damages. At the time, according to Middle District Court Clerk Greg Leonard, the verdict was the largest product liability verdict in the Middle District. The case was also significant because the actual rebar hook was never found, and thus the Plaintiffs faced considerable product identification obstacles. The case was settled on appeal.

Opposing Counsel: Peter K. Kintz
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Suite 320
Atlanta, Georgia 30305
(404) 816-1222

Robert E. Arroyo
Jackson Lewis
320 West Ohio Street
Suite 500
Chicago, Illinois 60654
(312) 787-4949
(Jackson Lewis handled the appeal)

4. *Pate v. Oakwood Mobile Homes, Inc.*, 374 F.3d 1081 (11th Cir. 2004) and *Phillips v. United States*, 956 F.2d 1071 (11th Cir. 1992). *Pate* was tried before Judge Clay Land in 2003. *Phillips* was tried before Judge Robert Elliott in 1990.

I mention these cases together because both involved negligent inspection claims against Federal agencies (Corp of Engineers in *Phillips* and OSHA in *Pate)* and ended in Eleventh Circuit decisions after substantial district court judgments in

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favor of the Plaintiffs. In *Phillips,* the Eleventh Circuit clarified precedent regarding the discretionary function and independent contractor exceptions to the Federal Tort Claims Act. The Eleventh Circuit's opinion also provides guidance regarding the liability of a party who voluntarily assumes safety responsibilities and then performs those duties negligently. Unfortunately for my client in *Pate*, the Eleventh Circuit, although reinforcing *Phillips*, held that OSHA did not owe a duty to the Plaintiff. Judge Land's opinion and judgment, then and now, appears to be the only case imposing liability against OSHA for the negligent performance of its inspection responsibilities.

Other Counsel:

Manley F. Brown (co-counsel in *Phillips*)
O'Neal, Brown & Clark
Suite 1001, American Federal Building
544 Mulberry Street
Macon, Georgia 31201
(478) 742-8981

Opposing Counsel:

Dana J. Martin (opposing in *Pate*)
Mark V. Stern
United States Department of Justice
601 D Street, NW
Room 9606
Washington, District of Columbia 20530
(202) 514-5377

Gail Johnson (opposing in *Phillips*)
Steven Handler
United States Department of Justice
601 D Street, NW
Room 9606
Washington, District of Columbia 20530

5. *Cooper v. Edwards*, 235 Ga. App. 48, 508 S.E.2d 708 (1998); *Childers v. Cooper* No. 96-1273 (Laurens Superior Court filed September 26, 1996). These cases were jointly tried before Judge William Towson and a jury in January 1998.

   Although these cases were fairly routine tractor-trailer cases, the Court of Appeals' decision in *Cooper* is significant for its ruling with regard to proper venue under Georgia's Long Arm Statute. At the time suit was filed, one of the Defendants was incarcerated in federal prison in Estill, South Carolina and the court held this was sufficient to establish non-residency for purposes of the Long Arm Statute, thus making venue appropriate in the county where the cause of action arose.

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Opposing Counsel: Hugh McNatt
McNatt, Greene & Peterson
602 Church Street
P.O. Drawer 1168
Vidalia, Georgia 30475-1168
(912) 537-9343

6. *West v. Mache of Cochran, Inc.*, 187 Ga. App. 365, 370 S.E.2d 169 (1988). The case was tried twice before Judge Phil West and juries in the Superior Court of Bleckley County, first in 1987 and again in 1989.

In this action, the Plaintiff alleged that a Western Auto store, by engaging in a straw man transaction to avoid federal firearm laws, negligently sold a firearm to a customer who was ineligible to purchase a firearm. Shortly thereafter, the customer shot and killed the Plaintiff's wife. I believe the case has some significance because of the Court of Appeals' holding that the Plaintiff, by demonstrating that the store intentionally engaged in a straw man transaction, was entitled to a verdict on liability as a matter of law.

Other Counsel: Thomas Richardson (lead counsel for Plaintiffs)
Chambless, Higdon & Carson, LLP
577 Walnut Street, Suite 200
P.O. Box 246
Macon, Georgia 31202
(478) 745-1181

Opposing Counsel: Edgar Neeley, III (deceased)

7. *Hogg, In her Capacity as Clerk of the Macon County Superior Court v. Allen, Chairman of the Macon County Board of Commissioners,* No. 2003-C-239 (Macon Superior Court filed July 15, 2003).

I represented the Macon County Board of Commissioners in a dispute involving hiring practices in the offices of County constitutional officers, principally the Superior Court Clerk and the Probate Judge. Generally, Georgia law grants constitutional officers the exclusive power to hire and fire their employees. The Board of Commissioners, however, was concerned that the white constitutional officers would continue to hire only white employees. The issue was brought to a head when the Commissioners challenged a particular hiring decision and the Superior Court Clerk and Probate Court filed suit. After a series of conferences, mediation and hearings, and with the assistance of Judge Tommy Day Wilcox, the parties agreed to a consent order that gave the Board of Commissioners unprecedented input in hiring practices by the Superior Court Clerk and the Probate Judge. The consent order has led to improved diversity in newly-hired court staff since its implementation in 2003.

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Other Counsel: Mr. Jon L. Coogle (co-counsel for Macon County)
P.O. Box 178
Oglethorpe, Georgia 31068
(478) 472-7733

Opposing Counsel: Mr. Charles E. Jones
Jones and Oliver, P.C.
102 Peachtree Street
Fort Valley, Georgia 31030
(478) 822-9962

8. *Robinson v. SKE Support Service, Inc., et al.*, No. 5:06-CV-193 (M.D. Ga. filed June 8, 2006).

I served as lead counsel in this complex product liability action involving the collapse of a manlift at Robins Air Force Base. The case presented particular challenges because the Air Force, after two exhaustive investigations, could not determine the cause of the failure. Fortunately, the Air Force preserved the lift and we were able, with the help of multiple experts, to determine the cause of the malfunction and to recreate the incident. Our client was a 20-year-old airman who suffered numerous injuries, most significantly a head injury that left him totally physically disabled and with the mental faculties of a five-year-old child. Consequently, our client and his parents were in desperate need of significant and expensive care far in excess of that provided by his military and veteran benefits. As a result of the 2007 confidential settlement of the case, not only have the client's needs been met, but he has been able to obtain intense and innovative therapy and he has substantially improved.

Opposing Counsel: Mr. Warner Fox
Hawkins & Parnell, LLP
4000 SunTrust Plaza
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(404) 614-7400

Mr. Robert M. Sneed
1355 Peachtree Street, N.E.
The Peachtree – Suite 300
Atlanta, Georgia 30309-3231
(404) 572-2804

Mr. Carr G. Dodson
Jones, Cork & Miller, LLP
500 SunTrust Bank Buidling
P.O. Box 6437
Macon, Georgia 31208-6437

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(478) 745-2821

9. *Monday v. Putnam County Hospital Auth.*, No. 07-CV-3551ST (State Court of Baldwin Co. filed September 28, 2007).

In this tragic case, the Plaintiffs' 10-year-old son was reduced to a near vegetative state as a result of excessive administration of fluids while being treated for diabetic ketoacidosis. The case presented particular challenges because of Georgia's new "emergency room immunity" legislation and the fact that the Defendants and potential defendants had limited insurance. Moreover, the two principal Defendants had "eroding limits" policies, which meant that the cost of defense would reduce the available coverage. Through a series of maneuvers, we were able to convince the various Defendants and potential Defendants to tender their coverages and, after a significant reduction in fees, the settlement proceeds were structured in a manner that will allow the Plaintiffs to care for their son for the remainder of his life.

Opposing Counsel: Mr. Timothy H. Bendin
Hall Booth Smith & Slover, P.C.
1180 West Peachtree Street, NW
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Atlanta, Georgia 30309-3479
(404) 954-5000

Ms. Brynda R. Insley
Insley and Race, LLC
The Mayfair Royal
181 14th Street, N.E., Suite 200
Atlanta, Georgia 30309
(404) 876-9818

Mr. C. Matthew Smith
The Weathington Firm, P.C.
191 Peachtree Street N.E., Suite 3900
Atlanta, Georgia 30303
(404) 524-1600

Mr. Douglas W. Smith
Carlock, Copeland, Semler & Stair, LLP
2600 Marquis Two Tower
285 Peachtree Center Avenue
Atlanta, Georgia 30303-1235
(404) 522-8220

10. *Hosp. Auth. of Lowndes County v. Meeks,* 294 Ga. App. 649, 669 S.E.2d 667 (2008), aff'd, 285 Ga. 521, 678 S.E.2d 71 (2009).

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In this medical malpractice and negligent credentialing action, the Court of Appeals reversed a trial court ruling completely barring any discovery of hospital credentialing files. The Georgia Supreme Court granted certiorari and on June 8, 2009 affirmed the Court of Appeals. These decisions clarified the scope of Georgia's peer review privilege.

Other Counsel: O. Wayne Ellerbee (co-counsel for *Meeks*)
P.O. Box 25
Valdosta, Georgia 31603-0025
(229) 242-2211

Opposing Counsel: Mr. Glenn Whitley
Reinhardt, Whitley, Wilmot, Summerlin
& Pitmman, P.C.
P.O. Drawer 1287
Tifton, Georgia 31793
(229) 382-6135

Mr. Walter H. New
P.O. Box 111
Quitman, Georgia 31643-0111
(229) 263-8949

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.)

Throughout my career, I have been a civil trial lawyer and my most significant legal activities have been in the courtroom. The American College of Trial Lawyers inducted me as a member in 2003, recognizing my experience and expertise in this area. In recent years, I primarily have represented injured plaintiffs in cases ranging from minor torts to complex liability litigation. I have also represented individual and corporate defendants and engaged in legal work for Bibb County, Georgia. I have occasionally performed non-litigation legal services, such as in negotiating the division of sales tax revenues between Bibb County and the City of Macon in 2002.

Writing and teaching about the law and rules of evidence, Georgia and Federal, are also substantial professional activities for me. Since 1986, I have authored the Evidence Survey Article for Mercer Law School's Annual Eleventh Circuit Survey and since 1988, I have authored the Evidence Survey Article for Mercer Law School's Annual Survey of

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Georgia Law. In addition, I speak frequently at Continuing Legal Education seminars on evidence topics.

I have performed no lobbying activities.

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.

    Since 1998, I have taught one term each year at Mercer Law School, instructing a third-year course on Georgia Civil Practice and Procedure.

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 made no arrangements for future compensation.

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, if confirmed, during my service with the court. If confirmed, I hope to continue to teach at Mercer Law School, so long as I can do so consistent with my court responsibilities.

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.

The only likely potential conflicts of interest of which I am aware that would arise if I am confirmed would be cases in which my current firm serves as counsel for a party or where I have previously represented a party. I will recuse myself from those cases when I first take the bench, if confirmed

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

If confirmed, I will handle all matters involving actual or potential conflicts of interest through the careful and diligent application of Canon 3 of the Code of Conduct for United States Judges as well as other relevant Canon and statutory provisions.

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.

Throughout my 28 years of practice, I have frequently performed legal services at no charge or on a reduced fee basis for financially disadvantaged people.

In my single most extensive pro bono case, I won a declaratory judgment action seeking a determination that my client's health benefit plan provided coverage for a stem cell transplant as treatment for his kidney cancer. I estimate that I spent well over 100 hours in the expedited trial and appeal of this case.

Since 2000, I have performed legal services intermittently for Adopt-A-Role Model, a local non-profit organization that provides mentoring services and opportunities to young African-American males between the ages of 6 and 11 who are from female-headed households living in public housing. My work included filing suit to resolve title issues relating to a house purchased by Adopt-A-Role Model. I estimate I have spent over 100 hours on behalf of the organization, without fee.

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

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00853 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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 February 2009, Georgia's Democratic Congressional Delegation announced formation of a Judicial Advisory Panel to evaluate candidates for a vacancy on the United States District Court for the Middle District of Georgia, and for other offices. I made an initial submission of interest to the Panel that month and submitted a full questionnaire in March 2009. The Panel interviewed me and other applicants on March 28, 2009. I understand that, based on the Panel's evaluations, the Delegation recommended three candidates, including me, to the White House for the District Court seat.

Since October 14, 2009, I have been in contact with pre-nomination officials at the Department of Justice. I was interviewed on December 9, 2009 by members of the White House Counsel's Office and the Department of Justice. On February 4, 2010, the President submitted by nomination to the Senate.

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 taken place.

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AO-10 (WP)
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT

Nomination Report

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

1. Person Reporting *(Last name, first, middle initial)*	2. Court or Organization	3. Date of Report
Treadwell, Marc T.	United States District Court, Middle District of Georgia	2/5/2010
4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)*	**5. Report Type (check appropriate type)**	**6. Reporting Period**
District Judge - Nominee	_X_ Nomination, Date 2/4/2010 ___ Initial ___ Annual ___ Final	1/1/2009 - 1/31/2010
7. Chambers or Office Address	**8.** On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.	
Adams, Jordan & Treadwell, P.C. P.O. Box 928 Macon, GA 31202-0928	Reviewing Officer _____ Date _____	

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

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

	POSITION	NAME OF ORGANIZATION/ENTITY
☐	NONE (No reportable positions.)	
1	Vice President	Adams, Jordan & Treadwell, P.C.
2		
3		

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

	DATE	PARTIES AND TERMS
X	NONE (No reportable agreements.)	
1		
2		

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

A. Filer's Non-Investment Income

	DATE	SOURCE AND TYPE	GROSS
☐	NONE (No reportable non-investment income.)		
1	2010	Adams, Jordan & Treadwell, P.C., salary	0 to date
2	2009	Adams, Jordan & Treadwell, P.C., salary	$ 522,666.68
3	2008	Adams, Jordan & Treadwell, P.C., salary	$ 598,712.89
4	2009	Mercer Law School, salary	$ 2,000.00
5	2008	Mercer Law School, salary	$ 2,000.00

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Treadwell, Marc T.

Date of Report: 2/5/2010

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

☐ NONE (No reportable non-investment income.)

1	2010	WT Designs; Landscape Architect
2	2009	WT Designs; Landscape Architect

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

	SOURCE	DESCRIPTION
☐	NONE (No such reportable reimbursements.)	
1	EXEMPT	
2		
3		

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

	SOURCE	DESCRIPTION	VALUE
☐	NONE (No such reportable gifts.)		
1	EXEMPT		$
2			$
3			$

VI. LIABILITIES. *(Includes those of spouse and dependent children See pp. 32-33 of Instructions.)*

	CREDITOR	DESCRIPTION	VALUE CODE*
X	NONE (No reportable liabilities.)		
1			
2			
3			
4			

*Value Codes: J = $1,000 or less; K = $1,001-$50,000; L = $50,001-$100,000; M = $100,001-$250,000; N = $250,001-$500,000; O = $500,001-$1,000,000; P = $1,000,001-$5,000,000

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Treadwell, Marc T.	2/5/2010

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A Description of Assets (including trust assets)	B Income during reporting period (1) Amount (Code (A)-(H))	B (2) Type (e.g., div., rent or int.)	C Gross value at end of reporting period (1) Value (Code (J)-(P))	C (2) Value Method (Code (Q)-(W))	D Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	D (2) Date (Month-Day)	D (3) Value (Code (J)-(P))	D (4) Gain (Code (A)-(H))	E Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income,									
1 Merrill Lynch CMA					Exempt				
2 -Cash	B	Interest	G	T					
3 -Powershares VRDO TXFR	B	Dividend	G	T					
4 Merrill Lynch - Wimberly									
5 -Cash	A	Interest	K	T					
6 -American Express (AXP)	A	Dividend	E	T					
7 -Ameriprise (AMP)	A	Dividend	J	T					
8 -Bristol-Myers (BMY)	A	Dividend	J	T					
9 -General Electric (GE)	A	Dividend	J	T					
10 -Home Depot (HD)	A	Dividend	J	T					
11 -Johnson & Johnson (J&J)	A	Dividend	K	T					
12 -Kimberly-Clark (KMD)	B	Dividend	K	T					
13 -Zimmer (ZMH)	A	Dividend	J	T					
14 Marc IRA									
15 -Cash	C	Interest	J	T					
16 -Diamonds Trust Series (DIA)	A	Dividend	J	T					
17 -Ishares S&P 500 (IVE)	A	Dividend	J	T					

Income Gain Codes: A=$1,000 or less; B=$1,001-$2,500; C=$2,501-$5,000; D=$5,001-$7,500; E=$7,501-$10,000
(See Col. B1, D4) F=$10,001-$15,000; G=$15,001-$50,000; H1=$50,001-$100,000; H2=More than $100,000
Value Codes: J=$15,000 or less; K=$15,001-$50,000; L=$50,001-$100,000; M=$100,001-$250,000
(See Col. C1, D3) N=$250,001-$500,000; O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000
P3=More than $25,000,000
Value Method Codes: Q=Appraisal; R=Cost (real estate only); S=Assessment
(See Col. C2) T=Cash Market; U=Book Value; V=Other; W=Estimate

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Treadwell, Marc T.	2/5/2010

VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-37 of Instructions.)*

	A Description of Asset (maximum 1000 assets)	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(Please list assets in order of income from most to least)	(1) Type (e.g., dividend, rent, interest)	(2) Amount Code (A-H)	(3) Value Code (J-P)	(4) Value Method Code (Q-W)	(1) 1978 (e.g., purchase, sale, or exchange)	(2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
	NONE (No reportable income, assets, or transactions)									
18	-Ishares DJ US (IYF)	Dividend	A	J	T					
19	-Ishares MSCI EAFE (EFA)	Dividend	A	J	T					
20	-Ishares S&P Latin (ILF)	Dividend	A	J	T					
21	-Ishares MSCI Emerg (EEM)	Dividend	A	J	T					
22	-Ishares FTSE (FXI)	Dividend	A	J	T					
23	-Ishares S&P Mid Cap 400 (IJK)	Dividend	A	J	T					
24	-Ishares TR DJ US (IYW)	Dividend	A	J	T					
25	-Ishares S&P 500 (IVW)	Dividend	A	J	T					
26	-Ishares DJ US Basic (IYM)	Dividend	A	J	T					
27	-Ishares DJ US Consumer (IYK)	Dividend	A	J	T					
28	-Ishares Dow Jones (IYE)	Dividend	A	J	T					
29	-Ishares Trust Dow Jones (IYJ)	Dividend	A	J	T					
30	-Ishares Dow Jones US (IYK)	Dividend	A	J	T					
31	-Ishares S&P Mid Cap (IJJ)	Dividend	A	J	T					
32	-Mid Cap SPDR (MDY)	Dividend	A	J	T					
33	-Timco Unconstrained (PUCPX)	Dividend	A	J	T					
34	-Powershares QQQ TR (QQQQ)	Dividend	A	J	T					

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

2 Value Codes: (See Cols C3 and D3) J=$15,000 or less; P4=More than $50,000,000; K=$15,001-$50,000; L=$50,001-$100,000; M=$100,001-$250,000; N=$250,001-$500,000; O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000

3 Value Method Codes: (See Col C4) Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash Market; U=Book Value; V=Other; W=Estimate

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Treadwell, Marc T.	2/5/2010

VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions *(includes those of spouse and dependent children. See pp. 34-57 of instructions.)*

	A Description of Assets (including trust assets)	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
		(1) Amount (Code 1)	(2) Type (e.g., div., rent, int.)	(1) Value (Code 2)	(2) Value Method (Code 3)	(1) Type (e.g., buy, sell, redemption)	(2) Date (Month-Day)	(3) Value (Code 2)	(4) Gain (Code 1)	(5) Identity of buyer/seller (if private transaction)
☐	**NONE** (No reportable income, assets, or transactions)									
35	-SPDR S P Emerg Asia (GMF)	A	Dividend	J	T					
36	-SPDR S P Emerg Europe (GUR)	A	Dividend	J	T					
37	-S&P DEP RCPT (SPY)	A	Dividend	J	T					
38	-Van KMPN BD FD (VBF)	A	Dividend	J	T					
39	Trust #1									
40	-Ridgeworth FD Tax EX	D	Dividend	O	T					
41	-BP(BP)	D	Dividend	O	T					
42	-Praxair (PX)	D	Dividend	O	T					
43	-General Electric (GE)	D	Dividend	O	T					
44	-Home Depot (HD)	D	Dividend	O	T					
45	-Coca-Cola (KO)	D	Dividend	O	T					
46	-Colgate Palmolive (CL)	D	Dividend	O	T					
47	-Kimberly-Clark (KB)	D	Dividend	O	T					
48	-Wal-Mart (WMT)	D	Dividend	O	T					
49	-Bristol Myers Squibb (BMY)	D	Dividend	O	T					
50	-Johnson & Johnson (J&J)	D	Dividend	O	T					
51	-American Express (AXP)	D	Dividend	O	T					

1. Income Gain Codes: (See Col. B (1) and D (4))
A=$1,000 or less; B=$1,001-$2,500; C=$2,501-$5,000; D=$5,001-$15,000; E=$15,001-$50,000;
F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=More than $5,000,000

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

3. Value Method Codes: (See Col. C2)
Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash Market;
U=Book Value; V=Other; W=Estimate

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Treadwell, Marc T.	2/5/2010

VII. Page 4 INVESTMENTS and TRUSTS – income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A Description of Assets (including trust assets)	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., div., rent or int.)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell or exchange)	(2) Date Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ **NONE** (No reportable income, assets, or transactions)									
52 - Bank of America (BAC)	D	Dividend	O	T					
53 -JP Morgan (JPM)	D	Dividend	O	T					
54 -Schwab (SCHW)	D	Dividend	O	T					
55 -Wells Fargo (WFC)	D	Dividend	O	T					
56 -Hewlett Packard (HPQ)	D	Dividend	O	T					
57 -Intel (INTC)	D	Dividend	O	T					
58 -Microsoft (MSFT)	D	Dividend	O	T					
59 -Verizon (VZ)	D	Dividend	O	T					
60 -Forum FDS ABS Strat (ASFIX)	D	Dividend	O	T					
61 -M&N FD World Opp. (EXWAX)	D	Dividend	O	T					
62 -Oppenheimer Dev. MKTS (ODVYX)	D	Dividend	O	T					
63 Trust #2									
64 -Ridgeworth FD Tax EX	D	Dividend	N	T					
65 -BP (BP)	D	Dividend	N	T					
66 -General Electric (GE)	D	Dividend	N	T					
67 -Home Depot (HD)	D	Dividend	N	T					
68 -Wal-Mart (WMT)	D	Dividend	N	T					

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FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Treadwell, Marc T.	2/5/2010

VII. Page 5 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-37 of Instructions.)*

	A Description of Assets (Including trust assets) *Please list your own assets separately from your children's.*	B Income during reporting period (1) Amt. Code (A-H)	(2) Type (e.g., div., rent or int.)	C Gross value at end of reporting period (1) Value Code (J-P)	(2) Value Method Code (Q-W)	D Transactions during reporting period (1) Type (e.g., buy, sell or exchange)	(2) Date Month - Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
	NONE (No reportable income, assets, or transactions)									
69	-Abbot Labs (ABT)	D	Dividend	N	T					
70	-JP Morgan Chase	D	Dividend	N	T					
71	-Intel (INTC)	D	Dividend	N	T					
72	-Oppenheimer Dev. MKTS (ODVYX)	D	Dividend	N	T					
73	Morgan Stanley									
74	-AT&T (T)	A	Dividend	C	T					
75	-Coca-Cola (K)	A	Dividend	K	T					
76	-Wal-Mart (WMT)	A	Dividend	L	T					
77	IRA									
78	-Capital Income Builder Fd (CIBBX)	A	Dividend	K	T					
79	-Capital World Growth (CWGBX)	A	Dividend	K	T					
80	-Washington Mutual Fund Cl. B (WSHBX)	A	Dividend	K	T					
81	401(k)									
82	-Growth Fund of America - R2	A	Dividend	L	T					
83	-Investment Company of America - R2	A	Dividend	L	T					
84	-Fundamental Investors - R2	A	Dividend	L	T					
85	Trust #3									

Income/Gain Codes: A=$1,000 or less; B=$1,001-$2,500; C=$2,501-$5,000; D=$5,001-$15,000; E=$15,001-$50,000; F=$50,001-$100,000; G=$100,001-$1,000,000; H=$1,000,001-$5,000,000; I=More than $5,000,000. (See Col. B1, D4)

Value Codes: J=$15,000 or less; K=$15,001-$50,000; L=$50,001-$100,000; M=$100,001-$250,000; N=$250,001-$500,000; O=$500,001-$1,000,000; P=$1,000,001-$5,000,000; P1=$5,000,001-$25,000,000; P2=$25,000,001-$50,000,000; P3=More than $50,000,000. (See Col. C1, D3)

Value Method Codes: Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash Market; U=Book value; V=Other; W=Estimate. (See Col. C2)

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Treadwell, Marc T.	2/5/2010

VII. Page 6 INVESTMENTS and TRUSTS -- income, value, transactions *(includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A Description of Assets (Including trust assets) *Interest in property held in a trust to be reported in response to Part D.*	B Income during reporting period (1) Amt. Code 1 (A-H)	(2) Type	C Gross value at end of reporting period (1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	D Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	(2) Date Month-Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	If you exempt from the trust (5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
86 -General Electric (GE)	A	Dividend	J	T					
87 -Johnson & Johnson (J&J)	A	Dividend	K	T					
88 Trust #4									
89 -General Electric (GE)	A	Dividend	K	T					
90 -Home Depot (HD)	A	Dividend	J	T					
91 -Johnson & Johnson (J&J)	A	Dividend	K	T					
92 -Fidelity Adv Healthcare (FACDX)	A	Dividend	J	T					
93 -Fidelity Adv Growth (FGIRX)	A	Dividend	J	T					
94 -MFS Growth (MCGWX)	A	Dividend	K	T					
95 -Putnam Europe Equity (PEUGX)	A	Dividend	J	T					
96 -Putnam Investors FD CL A (PINVX)	A	Dividend	J	T					
97 529 Account #1									
98 -BLKRK 100% Equity	A	Dividend	J	T					
99 529 Account #2									
100 -BLKRK 100% Equity	A	Dividend	K	T					
101 Rental Property	A	Rent	N	W					
102 Northwestern Policy #1	A	Dividend	K	T					
103 Northwestern Policy #2	A	Dividend	K	T					

Income Gain Codes: A=$1,000 or less B=$1,001-$2,500 C=$2,501-$5,000 D=$5,001-$15,000 E=$15,001-$50,000
(See Col. C1) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=More than $5,000,000

Value Codes J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000
(See Col. C1 and C2) N=$250,001-$500,000 O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000
P3=$25,000,001-$50,000,000 P4=More than $50,000,000

Value Method Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash Market
(See Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Treadwell, Marc T.	2/5/2010

VII. Page 7 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A Description of Asset (including trust assets) Place "(JT)" after each asset owned jointly by you and your spouse	B Income during reporting period (1) Amount (Code A-J)	(2) Type (e.g., div., rent, or int.)	C Gross value at end of reporting period (1) Value (Code K-W)	(2) Value Method (Code Q-W)	D Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	(2) Date (Month, Day)	(3) Value (Code J-P)	(4) Gain (Code A-H)	If gain exempt from disclosure (5) Type of Asset (e.g., cash, U.S. Treasury bill, mutual fund, municipal bond)
☐ **NONE** (No reportable income, assets, or transactions)									
104 Northwestern Policy #3	A	Dividend	K	T					
105 Northwestern Policy #4	A	Dividend	K	T					
106 E-Trade									
107 -Amazon (AMZN)	A	Dividend	J	T					
108 -CTRIP (CTRP)	A	Dividend	J	T					
109 -Dell	A	Dividend	J	T					
110 -Earthlink (ELNK)	A	Dividend	J	T					
111 -Expedia (EXPE)	A	Dividend	J	T					
112 -Google (GOOG)	A	Dividend	J	T					
113									
114									
115									
116									

Income Gain Codes: A=$1,000 or less; B=$1,001-$2,500; C=$2,501-$5,000; D=$5,001-$15,000; E=$15,001-$50,000
(See Col. D1) F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=More than $5,000,000

Value Codes: J=$15,000 or less; K=$15,001-$50,000; L=$50,001-$100,000; M=$100,001-$250,000
(See Col. C1) N=$250,001-$500,000; O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000
Q=$25,000,001-$50,000,000; R1=More than $50,000,000

Value Method Codes: Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash Market
(See Col. C2) U=Book value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Treadwell, Marc T.	2/5/2010

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

IX. CERTIFICATION.

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

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

Signature _____ Date February 5, 2010

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

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		712	719	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule	1	811	102	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		299	000
Real estate owned-add schedule	1	319	900	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		100	000				
Cash value-life insurance		85	000				
Other assets itemize:							
				Total liabilities		299	000
				Net Worth	3	729	721
Total Assets	4	028	721	Total liabilities and net worth	4	028	721
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you a defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Merrill Lynch CMA Account	
Power Shares VRDO Tax Free (PVI)	$ 200,000
College Savings Account #1 - BLKRK	7,674
College Savings Account #2 - BLKRK	19,586
Merrill Lynch Account:	
Bristol-Myers Squib Company	14,616
Home Depot	10,923
Johnson & Johnson	25,779
American Express Company	33,894
Kimberly Clark	35,634
Ameriprise Finl Inc.	6,883
General Electric	5,628
Zimmer Holdings, Inc.	3,379
Merrill Lynch Retirement Account:	
Ishares & P Latin America	6,733
Pimco Unconstrained	9,263
IsharesD Jones US Basic	6,789
SPDR S P Emerging Europe	3,760
IsharesDJ US Finl	6,419
IsharesMSCI Emerging	9,034
Midcap SPDR TR SER 1	5,610
Ishares S&P Mid Cap 400	4,561
Ishares MSCI Eafe Index	6,192
Ishares TR Dow Jones US	6,298
Powershares QQQ TR Units	6,418
Ishares S&P Mid Cap 400	6,573
Ishares S&P 500 Value	7,416
SPDR S P Emerg Asia PAC	3,559
Ishares FTSE Xinhua HK	3,465
FIA Card SVS NA RASP	159
Ishares S&P 500 Growth	7,828
Ishares DJ Consumer	1,039
Ishares DJ US	7,150
S&P Dep Rcpt	967
Van Kmpn Bd Fd	2,981
Diamons Trust Series I	7,541
Retirement Rsrvs CL I	3,323

Trust Account #1:	
General Electric	11,702
Johnson & Johnson	15,331
Trust Account #2:	
General Electric	26,763
Home Depot	7,239
Johnson & Johnson	15,331
Fidelity Health Care Fund	5,507
Fidelity Growth and Income Fund	4,677
Massachusetts Financial Services GA Fund	14,962
Putnam European Equity Fund	3,828
Putnam Investment Fund	3,638
Putnam Research Fund	3,185
Trust Account #3:	
BP	95,447
General Electric	58,486
Home Depot	98,528
Wal-Mart	74,886
Abbott Labs	21,776
Johnson & Johnson	76,788
JP Morgan Chase	28,385
Intel	58,436
Ridgeworth FD-Tax-Exempt	46,175
Praxair	15,448
Coca-Cola	5,500
Colgate Palmolive	60,787
Kimberly Clark	12,136
Bristol Myers Squibb	7,434
American Express	11,706
Hewlett Packard Co.	19,436
Microsoft	34,152
Forum Feds. Absolute Strategies	5,747
Bank of America	11,700
Schwab	7,292
Opperheimer Dev Mkts	26,297
Wells Fargo	10,076
Verizon	8,919
Manning & Napier Fd	26,390
Morgan Stanley Account:	
Security Alcatell	40
AT&T	3,062
Coca-Cola	16,515
Wal-Mart	64,188

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ETrade Account	
Amazon	5,016
CTRIP COM Intl Ltd.	1,251
Dell, Inc.	1,290
Earthlink	811
Expedia	256
Google	5,299
Adams, Jordan & Treadwell 401(k):	
Investment Company of America-R2	63,985
The Growth Fund of America-R2	86,402
Fundamental Investors-R2	65,937
IRA:	
Capital Income Builder Fund	25,831
Capital World Growth and Income Fund	29,014
Washington Mutual Investment Fund	21,041
Total Listed Securities	$ 1,811,102
Real Estate Owned	
Personal residence	$ 522,000
Residence #2	547,900
Residence #3	250,000
Total Real Estate Owned	$ 1,319,900
Real Estate Mortgages Payable	
Personal residence	$ 199,000
Residence #2	100,000
Total Real Estate Mortgages	$ 299,000

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AFFIDAVIT

I, **MARC THOMAS TREADWELL**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

February 5, 2010
(DATE)

(NAME)

(NOTARY)

HEATHERLEE DILLARD-HAMMONDS
NOTARY PUBLIC
MONROE COUNTY, GEORGIA
MY COMMISSION EXPIRES JAN 3, 2014

STATEMENT OF HON. JOSEPHINE S. TUCKER, TO BE U.S. DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA

Judge TUCKER. Thank you, Senator.

First, I would like to thank President Obama for the confidence of his nomination and I would like to thank my home State Senators, Senator Boxer and Senator Feinstein, for their support. I would particularly like to thank Senator Feinstein for her warm and generous introduction as well. I'd like to thank you, Senator Franken, for chairing this hearing and participating in it.

I would like to introduce my family, if I may. I have with me today my wonderful husband of over 21 years, Steven Tucker, my eldest son, Zachary Tucker, my son Abram Tucker, who is—my oldest son is 19, and Abram is 16. My daughter, Laura Tucker, who is 10 but will tell you she's almost 11, and I also have with me my oldest brother, the trailblazer of the family who first attended college, was the first one in our family to attend college, is Gary Staton. My sister, who is a well-known trial attorney in Arizona, Georgia Staton. My sister-in-law, Gary's wife, Victoria Staton. I believe those are all who are present here today.

I would also like to, of course, mention my 86-year-old mother who is in Arizona, unable to attend. I would like to say viewing the webcast, but she and technology do not really get along so I have a feeling that will come later. And my father, who is departed, but with us in spirit, George Staton.

I would also like to introduce my brother who could not be here today, and that is Danny Staton, and his wife, Mia Balledinas-Staton.

Thank you very much.

Senator FRANKEN. Thank you, Judge.

Judge Goldsmith.

[The biographical information of Josephine Staton Tucker 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).

   Josephine Staton Tucker (formerly Josephine Laura Staton)

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

   United States District Judge for the Central District of California

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.

   Superior Court of California, County of Orange
   700 Civic Center Drive West
   Santa Ana, California 92701

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

   1961; St. Louis, Missouri

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.

   1983-1986, Harvard Law School; J.D., 1986
   1979-1983, William Jewell College; B.A. (*summa cum laude*), 1983
   1982, Oxford University; no degree (college semester abroad)

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.

   2002-Present
   Superior Court of California, County of Orange
   700 Civic Center Drive West
   Santa Ana, California 92701
   Superior Court Judge

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1987-2002
Morrison & Foerster, LLP
425 Market St.
San Francisco, California 94105
Partner (1995-2002, Irvine, California, office)
Associate (1987-1994, San Francisco, California, office)

1986-1987
United States Court of Appeals for the Eighth Circuit
400 East 9th Street
Kansas City, Missouri 64106
Law Clerk to the Honorable John R. Gibson

1985
Shook, Hardy & Bacon
2555 Grand Blvd.
Kansas City, Missouri 64108
Summer Law Clerk

1985
Luce, Forward, Hamilton & Scripps
600 West Broadway, Suite 2600
San Diego, California 92101
Summer Law Clerk

1984
Jones, Skelton & Hochuli
2901 North Central Avenue, Suite 800
Phoenix, Arizona 85012
Summer Law Clerk

1983
Niewald, Waldeck, Norris & Brown (since dissolved)
120 West 12th St.
Kansas City, Missouri 64105
Summer 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 not served in the military. I have not registered for selective service as I was not eligible to do so.

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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.

   Orange County Trial Lawyers Association, Employment Trial Lawyer of the Year, 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
   American College of Business Court Judges
   Association of Business Trial Lawyers
   Judicial Advisory Council, 2010
   Bar Association of San Francisco
   California Center for Judicial Education and Research
   Court Security Committee, Sub-committee Chair on Personal Security, 2007-2008
   California Judges Association
   National Association of Women Judges
   Orange County Bar Association
   Orange County Superior Court Legal Resources Committee
   Orange County Superior Court Security Committee
   Orange County Superior Court Technology Committee
   Orange County Trial Lawyers Association
   Warren J. Ferguson American Inn of Court

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.

       California, 1988
       Missouri, 1986

       In California, a person serving as a judge is not considered a member of the State Bar. After I became a judge in 2002, I allowed my membership in the Missouri Bar to lapse because I was no longer practicing law. There have been no other 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 Court of Appeals for the Eighth Circuit, 1987
       United States Court of Appeals for the Ninth Circuit, 1988

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United States District Court for the Central District of California, 1995
United States District Court for the Eastern District of California, 1994
United States District Court for the Northern District of California, 1988
United States District Court for the Southern District of California, 2000
United States District Court for the District of Colorado, 1999
Supreme Court of California, 1988
Supreme Court of Missouri, 1986

In California, a person serving as a judge is not considered a member of the State Bar. After I became a judge in 2002, I allowed my membership in the Missouri Bar to lapse because I was no longer practicing law. I am aware of no other 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.

California Employment Law Reporter, Editorial Consultant (1997-1999)
Tustin Ranch Public Golf Course, Member (approximately 2003 and 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.

None of the organizations listed above currently discriminates 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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California Employers' Guide to Employee Handbooks and Personnel Policy Manuals (Matthew Bender & Co. 1989) (Chief Editor and Co-Author of Editions from approximately late 1990s-2001)

"High Technology Communications in the Workplace: The Employer's Right to Monitor Versus the Employee's Right to Privacy," CALIFORNIA EMPLOYMENT LAW REPORTER (Mar. 1998) (coauthor)

"Designation of Leave Under the Family and Medical Leave Act: Is the Clock Running?" CALIFORNIA EMPLOYMENT LAW REPORTER (Mar. 1995)

"Sexual Harassment in Professional Relationships: What Does New Civil Code Section 51.9 Mean for Employers?" CALIFORNIA EMPLOYMENT LAW REPORTER (Nov. 1994)

Editorial Consultant, CALIFORNIA EMPLOYMENT LAW REPORTER (Oct. 1997- Dec. 1999) (monthly commentaries)

Contributor, Shoptalk column, LOS ANGELES TIMES (1995-2002)

In addition to the published material listed above, I may have authored short client updates or newsletter material while a law firm partner but I have not kept copies of any such writing.

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

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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.

"Pearls of Wisdom from the Bench" (Panel), Orange County Trial Lawyers Association (Feb. 26, 2009) (no notes or transcript)

"Elimination of Bias in the Courts and the Legal Profession," (Continuing Legal Education Seminar), Orange County Bar Association (annually, Jan. 2004-2008)

"Creating an Employee Handbook: How to Get it Off Your 'To Do' List and Into Your Employees' Hands" (client seminar), Morrison & Foerster LLP, Irvine, California (1999)

As an attorney, I occasionally gave presentations on compliance with state and federal employment laws. The seminars typically were sponsored either by our law firm for existing or prospective clients or by employer groups. I did not maintain any log of these presentations and have no knowledge of any such presentation having been recorded.

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.

Judith A. Williams, "Judge Josephine Tucker: A True Role Model for Today's Women in the Law," ORANGE COUNTY LAWYER MAGAZINE, Aug. 2006

Don Ray, "Judge's Calm, Confident Demeanor Impresses Lawyers," LOS ANGELES DAILY JOURNAL, Aug. 24, 2005

Melinda Ligos, "The Trials of Job Hunting Beyond A Certain Size," N.Y. TIMES, May 26, 2002, at 10-1

Kevin O'Leary, "Masters of the Legal Universe: Orange County's Top Trial Lawyers Prove That They Are a Client's Best Friend," OC METRO MAGAZINE, May 16, 2002

Steven T. Taylor, "Parents At Law: Is Balance A Mere Myth? How They Make the Dual Role Doable," L. PRACTICE MANAGEMENT, Oct. 2001, at 28

Jeff Barnard, "Book Says No One is Following Advice to Find Love Outside Work," ASSOCIATED PRESS, Dec. 19, 1998

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Gail Dutton, "One Workforce, Many Languages," MANAGEMENT REVIEW, Dec. 1998, at 42

Gail Dutton, "Caught in the Middle," MANAGEMENT REVIEW, Apr. 1998, at 54

"Whose Rolodex is it? A Battle Brews Over the Rights to Customer Lists," WALL ST. J., Jan. 2, 1998

"E-Mail at Work: Don't Let It Get You In Trouble," BUSINESS WEEK ONLINE, Apr. 6, 1998.

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 October 2002, I was appointed by Governor Gray Davis to the Superior Court of California, County of Orange. In 2004, I was elected, unopposed, to a further six-year term. The Superior Court is a state court of general jurisdiction. My assignments have included criminal, family, and civil matters.

In 2008, I was appointed by the Chief Justice of California to serve on the Appellate Division of the Superior Court of California, County of Orange, for a term running through 2010. The Division has appellate jurisdiction over misdemeanor criminal and limited civil cases originating in the Superior Court. This assignment is in addition to my regular trial court assignment on the Superior Court. For the 2009-2010 term, I am Assistant Presiding Judge of the Division.

In 2009, I was appointed by the Chief Justice of California to sit on temporary appointment on the Court of Appeal, Second Appellate District, Division One. This appointment was effective March and April 2009. The Court of Appeal is a state court with general appellate jurisdiction.

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

I have presided over approximately 100 cases to judgment or verdict.

i. Of these, approximately what percent were:

jury trials:	35%
bench trials:	65%
civil proceedings:	80%
criminal proceedings:	20%

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00877 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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

Coast Plaza Doctors Hosp. v. Blue Cross of Cal., 173 Cal.App.4th 1179 (Cal. Ct. App. 2009)
Groundtech v. Cuthers, 2009 WL 1585954 (Cal. Ct. App. June 5, 2009)
In re J.D., Jr., 2009 WL 1464407 (Cal. Ct. App. May 27, 2007)
People v. Cardenas, 2009 WL 1464395 (Cal. Ct. App. May 27, 2007)
Keller v. Askar, 2009 WL 1464389 (Cal. Ct. App. May 27, 2009)
Amalgamated Transit Union, Local 1589 v. Long Beach Public Transp. Co., 2009 WL 1277735 (Cal. Ct. App. May 11, 2009)
People v. Ortega, 2009 WL 1273002 (Cal. Ct. App. May 11, 2009)
In re M.B., 2009 WL 1273018 (Cal. Ct. App. May 11, 2009)
Creative Labs, Inc. v. Max Group Corp., 2009 WL 1153964 (Cal. Ct. App. Apr. 30, 2009)
People v. Neal, 2009 WL 1088734 (Cal. Ct. App. Apr. 23, 2009)
People v. Cain, 2009 WL 1090058 (Cal. Ct. App. Apr. 23, 2009)
People v. Gray, 2009 WL 1058535 (Cal. Ct. App. Apr. 21, 2009)
Halil v. Med. Bd. of Cal., 2009 WL 783251 (Cal. Ct. App. Apr. 8, 2009)
In re E.L., 2009 WL 921377 (Cal. Ct. App. Apr. 7, 2009)
Dayco Funding Corp. v. Schneider, 2009 WL 795030 (Cal. Ct. App. Mar. 27, 2009)
People v. Williams, 2009 WL 783253 (Cal. Ct. App. Mar. 26, 2009)
People v. Fraga, 2009 WL 784067 (Cal. Ct. App. Mar. 26, 2009)
Grant Thornton v. Burgh Balian & Bergstein, 2009 WL 792305 (Cal. Ct. App. Mar. 26, 2009)
People v. Jimenez, 2009 WL 783040 (Cal. Ct. App. Mar. 26, 2009)
In re C.G., 2009 WL 737737 (Cal. Ct. App. Mar. 23, 2009)
People v. Walker, 2009 WL 724440 (Cal. Ct. App. Mar. 20, 2009)

In addition to the opinions listed above, issued while I sat by temporary appointment to the Court of Appeal, I authored short panel opinions (usually only a few paragraphs) when sitting on the Appellate Division of the Superior Court. These opinions are not published to electronic databases and are not searchable by author on the Court's electronic records system.

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. *Corbin v. SiteLite, Inc.*, Case No. 03CC10842 (Cal. Super. Ct.). This lawsuit arose from bridge financing provided to defendant company by plaintiff lenders. The terms of the promissory note allowed the defendant corporation to convert any principal sum and interest owed into shares of stock should the corporation generate net proceeds of $2.5 million through a stock offering. Plaintiffs alleged that SiteLite, through its founder and CEO, fraudulently represented that such a stock offering had occurred in order to avoid repayment. The jury rendered a verdict in favor of all plaintiffs.

   Plaintiffs' Counsel was Ronald Darling, 5 Hutton Centre, Suite 1050, Santa Ana, CA 92707, (714) 384-4250. Defendants' Counsel was Anthony Ellrod, 801 S. Figueroa Street, Los Angeles, CA 90017, (213) 430-2612.

2. *Palanjian v. Carnation Vill., LLC*, Case No. 07CC04838 (Cal. Super. Ct.). This construction defect lawsuit arose out of defendant's development of a multi-million dollar condominium complex in Newport Beach, California. Plaintiff, a homeowner, alleged that defendant used unlicensed contractors, failed to remedy known defects relating to water intrusion, and misrepresented remedial measures taken. Plaintiff also alleged the alter ego liability of the owner of Carnation Village, LLC. The case was tried before a jury, and the jury rendered a verdict in favor of plaintiff.

   Plaintiff's Counsel was Stephen McNamara, 19900 MacArthur Blvd. #950, Irvine, CA 92612, (949) 263-1316. Defendants' Counsel were James Caviola, 20422 Beach Blvd., Ste. 415, Huntington Beach, CA 92648, (714) 969-9111; and James Duff, One Wilshire Blvd., Ste. 2210, Los Angeles, CA 90017, (213) 629-7950.

3. *Coastal Law Enforcement Action Network v. California Coastal Comm'n*, Case No. 2008-107638 (Cal. Super. Ct.). Petitioners filed a Verified Petition for Writ of Mandate, alleging that the California Coastal Commission abused its discretion and violated the California Coastal Act of 1976 in approving two monuments erected along Bolsa Chica Street in Huntington Beach. I determined that substantial evidence in the record supported the Commission's findings that, with certain additional signage, the monuments would not appear to "privatize" the area. Accordingly, I denied Petitioners' request for a writ of mandate.

   Petitioner's Counsel was David Weinsoff, Law Office of David Weinsoff, 138 Ridgeway, Fairfax, California 94930, 415-460-9760. Counsel for the Coastal Commission was Laurie R. Pearlman, Office of the Attorney General, 300 South Spring Street, Suite 1702, Los Angeles, California 90013, 213-897-2801. Counsel for Real Party in Interest, Signal Landmark/Hearthside Homes, Inc., was George M. Soneff, Manatt, Phelps & Phillips, LLP, 11355 W. Olympic Blvd., Los Angeles, California 90064.

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4. *Burnell v. Barnes*, Case No. 2008-103415 (Cal. Super. Ct.). This began as a breach of contract lawsuit by one partner against another in a horse-purchasing and breeding business. The defendant partner filed a cross-complaint against the agent who facilitated the international horse purchases. The partners resolved the claims as to each other, the parties waived a jury trial, and the original defendant's action against the agent proceeded to a court trial on concealment, fraudulent and/or negligent misrepresentation, and failure to meet standard of care for horse brokers. After trial, I issued a ruling by minute order, finding in favor of the agent on all causes of action.

   Cross-complainants' counsel was Tom Normandin, 2122 N. Broadway, Ste. 200, Santa Ana, CA 92706, (714) 547-2444. Cross-defendants' counsel was Robert Risbrough, 5 Hutton Centre, Ste. 1050, Santa Ana, CA 92707, (714) 384-4250.

5. *Ward v. Tan,* Case No. 07CC11121 (Cal. Super. Ct.). Plaintiff tenant brought this negligence action against his property owner alleging failure to maintain a garage door resulted in significant personal injuries when it closed unexpectedly on plaintiff. The evidence at trial reflected that plaintiff had had numerous pre-existing injuries from the time period that he worked as a motorcycle stuntman, touring with Evel Knievel. The jury rendered a verdict for defendant, finding the property owner's negligence was not a substantial factor in plaintiff's injuries.

   Plaintiff's counsel was Robert Gibson, 1551 N. Tustin Ave., Ste. 530, Santa Ana, CA 92705, (714) 547-8377. Defendant's counsel was Amy Duff, 1 City Blvd. West, Ste. 200, Orange, CA 92868, (714) 705-5000.

6. *Sun v. U.S. Bancorp Equip. Fin., Inc.*, Case No. 2008-105190 (Cal. Super. Ct.). Plaintiff sales representative alleged sex discrimination and retaliation against her employer. She further alleged that after she resigned her employment, defendant failed to pay her wages due and owing in the form of commissions. She also alleged her supervisor defamed her by making comments to the effect that plaintiff had slept with a client. The parties waived jury trial and the matter proceeded to a court trial. I found in favor of the plaintiff on her breach of contract and failure to pay wages claims. I found that plaintiff had failed to meet her burden of proof on the discrimination, retaliation, and defamation claims. Judgment was entered in favor of plaintiff.

   Plaintiff's counsel was Michael Welch, Four Embarcadero Center, 39th Floor San Francisco, CA 94111, (415) 399-1500. Defendants' counsel was Tina M. Tran, Orrick, Herrington, 777 South Figueroa St., Ste. 3200, Los Angeles, CA 90017, 213-612-2393.

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7. *In Re Marriage of Hillman,* Case No. 04D011462 (Cal. Super. Ct.). In this marriage dissolution case, the key issues for trial involved: (1) whether husband had effected a transmutation of his separate property into community property, (2) whether husband breached his fiduciary duty to his wife, and (3) whether wife was entitled to reimbursement for husband's breach of fiduciary duty. After a court trial, I determined that husband had transmuted his separate property interest in his potential personal injury settlement through a writing satisfying the requirements of California Family Code § 852(a). I further determined that husband breached his fiduciary duty by allowing the parties' residence to fall into foreclosure without apprising wife or giving her an opportunity to cure. Finally, I ordered that wife be given a greater share of the proceeds from the sale of other real property owned by the community as a remedy for husband's breach of his fiduciary duty.

   Petitioner's Counsel was Leslee J. Newman, 1016 W. Town & Country Road, Orange, CA 92868, (714) 667-1515. Respondent's Counsel was Terrence Roberts, Western State University, College of Law, Civil Practice Clinic, 1111 N. State College Boulevard, Fullerton, CA 92831, (714) 459-1159.

8. *Wilson-Luker v. Luker*, Case No. 04D007885 (Cal. Super Ct.). In this marriage dissolution case, I presided over the trial and the hearing on the order to show cause re custody. The primary issue in this case was whether the mother should be allowed to maintain primary custody of the minor child if she moved from California to North Carolina. I rejected the testimony of the court-appointed child custody expert and determined the mother would not facilitate a long-distance relationship between the father and the child. Thus, I ordered that if the mother moved to North Carolina, the father would be given custody.

   Petitioner's Counsel was John R. Schilling, 4675 MacArthur Court, #700, Newport Beach, CA 92660, (949) 833-8833. Respondent's Counsel was Richard P. Sullivan, 660 W. First Street, Tustin, CA 92780, (714) 538-5200.

9. *People v. Murillo*, Case No. 04NF3401 (Cal Super. Ct.). This felony criminal case involved second degree robbery of four victims, attempted second degree robbery of a fifth victim, and street terrorism, with criminal street gang enhancements. The jury returned a verdict of guilty against defendant on all counts and found true the allegations that the crimes were committed for the benefit of a criminal street gang. I presided over the trial and sentencing.

   Prosecutor was Steven Yonemura, Deputy District Attorney, Office of the District Attorney, County of Orange, 700 Civic Center Drive West, Santa Ana, CA 92701, (714) 834-4654. Defendant's Counsel was Rasheed Alexander, San Bernardino Public Defender's Office, 364 North Mountainview Avenue, San Bernardino, CA 92415, (909) 387-4414.

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10. People v. Param, Aguilar, and Telona, Case No. 04NF2346 (Cal. Super. Ct.)

The district attorney filed a felony complaint charging three defendants with assault with a deadly weapon. After a preliminary hearing, the felony counts were reduced to misdemeanors and the case proceeded to trial. I presided over the pretrial motions and trial. Evidence adduced at trial involved a gang-related attack on a rival gang member. I granted motions by the People to admit the victim's former testimony and to admit a 911 tape and testimony. The jury returned a verdict of guilty for two defendants; and a verdict of not guilty for the third.

Prosecutor was Holly Davis, Deputy District Attorney, Office of the District Attorney, County of Orange, 401 Civic Center Drive West, Santa Ana, CA 92701, (714) 834-3900. Defendants' Counsel were William Weinberg, 600 S. Main Street, Orange, CA 92868, (714) 834-1400; Stephen T. Crandall, Office of the Alternate Defender, 600 W. Santa Ana Blvd., #600, Santa Ana, CA 92701, (714) 568-4160; and Robert L. Miller, Robert Miller & Associates 1801 Parkcourt Place, Bldg. H, Santa Ana, CA 92701, (714) 568-1560.

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. *Coast Plaza Doctors Hosp. v. Blue Cross of Cal.*, 173 Cal.App.4th 1179 (Cal. Ct. App. 2009). Counsel for plaintiff-appellant Coast Plaza Doctors Hospital were Daron Tooch, Glenn Solomon, and John Mills, Hooper, Lundy & Bookman, 1875 Century Park E #1600, Los Angeles, CA 90067-2799, (310) 551-8111. Counsel for defendant-respondent Blue Cross of California was Aileen F. Bruno, Wellpoint Health Networks, 21555 Oxnard St., Woodland Hills, CA 91367, (818) 234-2471. Counsel for defendant-respondent Prospect Medical Group was Thomas Freeman, Bird Marella et al APC, 1875 Century Park E #2300, Los Angeles, CA 90067, (310) 201-2100.

2. *In re J.D., Jr.*, 2009 WL 1464407 (Cal. Ct. App. May 27, 2007). Counsel for defendant-appellant was John Dodd, 17621 Irvine Blvd #200, Tustin, CA 92780, (714) 731-5572. Counsel for plaintiff-respondent was Fred Klink, Office of County Counsel, 648 Hall of Administration, 500 W Temple St Los Angeles, CA 90012, (213) 974-1801.

3. *People v. Cardenas*, 2009 WL 1464395 (Cal. Ct. App. May 27, 2007). Counsel for defendant-appellant was Mark Lenenberg, PO Box 940327, Simi Valley, CA 93094, (805) 526-5988. Counsel for plaintiff-respondent were Steven D. Matthews, Joseph P. Lee, Office of the Attorney General, 300 S. Spring St #5212, Los Angeles, CA 90013, (213) 897-2367.

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4. *Amalgamated Transit Union, Local 1589 v. Long Beach Public Transp. Co.*, 2009 WL 1277735 (Cal. Ct. App. May 11, 2009). Counsel for plaintiff-appellant were William Flynn and Benjamin Lunch, Neyhart, Anderson, Flynn & Grosboll, 44 Montgomery St #2080, San Francisco, CA 94104-6702, (415) 677-9440. Counsel for defendants-respondents were Robert Wenzel and Amber Solano, Atkinson, Andelson, Loya, Ruud & Romo, 12800 Center Court Dr Ste 300, Cerritos, CA 90703, (562) 653-3200.

5. *Creative Labs, Inc. v. Max Group Corp.*, 2009 WL 1153964 (Cal. Ct. App. Apr. 30, 2009). Counsel for defendant-appellant was Rodney Bell, Chang & Cote, LLP, 19138 E Walnut Dr N Ste 100, Rowland Heights, CA 91748, (626) 854-2112. Counsel for plaintiff-respondent was Martin Goldman, Law Offices of Martin F. Goldman, 10880 Wilshire Blvd #2240, Los Angeles, CA 90024, (310) 470-8487.

6. *People v. Neal*, 2009 WL 1088734 (Cal. Ct. App. Apr. 23, 2009). Counsel for defendant-appellant was John Steinberg. Counsel for plaintiff-respondent were Victoria Wilson and Mary Sanchez, Office of the Attorney General, 300 S Spring St #5212, Los Angeles, CA 90013, (213) 897-2251.

7. *In re E.L.*, 2009 WL 921377 (Cal. Ct. App. Apr. 7, 2009). Counsel for defendant-appellant was Mary Bernstein, 1223 Wilshire Blvd #557, Santa Monica, CA 90403, (310) 395-4640. Counsel for plaintiff-respondent were Susan Sullivan Pithey and Michael Keller, Office of the Attorney General 300 S Spring St #5212, Los Angeles, CA 90013, (213) 897-2000.

8. *Dayco Funding Corp. v. Schneider,* 2009 WL 795030 (Cal. Ct. App. Mar. 27, 2009). Counsel for Plaintiff-appellant were David Marcus and Amy Cooper, Marcus Watanabe, Snyder & Dave, 1901 Avenue of the Stars #300, Los Angeles, CA 90067-6005, (310) 284-2020. Counsel for Defendant-respondent was Marc Smith, Krane & Smith, 16255 Ventura Blvd Ste 600, Encino, CA 91436, (818) 382-4000.

9. *People v. Fraga,* 2009 WL 784067 (Cal. Ct. App. Mar. 26, 2009). Counsel for defendant-appellant was Patrick Morgan Ford, 1901 1st Ave #400, San Diego, CA 92101, (619) 236-0679. Counsel for plaintiff-respondent were Victoria B. Wilson and Herbert S. Tetef, Office of the Attorney General, 300 S Spring St #5212, Los Angeles, CA 90013, (213) 897-2251.

10. *Grant Thornton v. Burgh Balian & Bergstein*, 2009 WL 792305 (Cal. Ct. App. Mar. 26, 2009). Counsel for cross-defendants-appellants was Robert Keaster, Chamberlin, Keaster & Brockman LLP, 16000 Ventura Blvd Ste 700 Encino, CA 91436, (818) 385-1434. Counsel for cross-complainant-respondent were Robert Stern, Anthony Press, and James Oliva, Morrison & Foerster LLP, 555 W 5th St #3500, Los Angeles, CA 90013, (213) 892-5597.

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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.

None of my opinions, issued while sitting as an appellate judge, has been reversed by a reviewing court or affirmed with significant criticism. In three cases where I presided as a trial judge, one or more of my rulings was reversed:

In re Marriage of Hancock, Case No. G037502, 2007 WL 1508717 (Cal Ct. App. 2007) (Court of Appeal reversed in part, finding error in failure to limit husband's right to reimbursement to the amount set forth in the parties' stipulation)

In re Marriage of Helmers and Blank, Case No. G041169, 2009 WL 1835940 (Cal Ct. App. June 26, 2009) (Court of Appeal reversed, finding error in imposition of evidentiary sanctions based on lack of evidence of service of formal order on defendant)

Le v. Pham, Case No. G041473, 2010 WL 22811 (Cal Ct. App. Jan. 6, 2010) (Court of Appeal reversed in part, finding error in my dismissal of a breach of fiduciary duty claim for violation of right of first refusal among stockholders provided for in bylaws of a pharmacy corporation)

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 state trial court judge, none of my decisions are published. None of the opinions I have authored while sitting with the Appellate Division of the Superior Court has been published; each opinion is filed with the case to which it pertains.

In the two months that I was on assignment to the Court of Appeal, I drafted approximately 20 opinions, one of which received an official citation. The others are considered unpublished, but are available through electronic databases.

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.

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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:

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 state court in California, a litigant may exercise what is essentially a "peremptory challenge" under California Code of Civil Procedure § 170.6. A general declaration of prejudice suffices; no further reason need be given. Depending on the circumstances, the judge may not know that any such challenge was exercised. Because an attorney may have many reasons for exercising such a challenge unrelated to the judge (i.e., seeking a delay in the trial), I typically do not review or keep track of such challenges, as I do not want it to be perceived as having an impact on a future case should that attorney or party appear before me.

I do not keep records of cases in which I have recused myself. I recall recusing myself in the following cases, although it is possible there have been more:

Thin Film Devices, a small claims case for which I have not been able to locate a case number. The defendant company was owned by a family friend.

In re Mersel, Case No. 07D000741. One of the parties was a former law partner.

Goldstein Law Offices v. Hardaway, Case No. 30-2009-00123454. The attorney representing the defendant had previously represented me personally.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00885 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Sharp v. Carney Constr., Case No. 30-2009-00291718. The attorney representing the plaintiff had previously represented me personally.

Rutan & Tucker v. Transatlantic Aviation, Case No. 30-2009-00125121. I have former colleagues who are partners at plaintiff law firm.

Regents of the Univ. of Cal. v. St. Francis Med. Ctr., Case No. 30-2009-00290584. My spouse is employed by, and we hold stock in, United Healthcare, a parent company to one of the defendants.

Staton v. Apria Healthcare, Inc., Case No. 30-2009-00295232. As an attorney, I represented Apria Healthcare in employment litigation and this was an employment discrimination case.

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 public office other than judicial offices. 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.

       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 served as a law clerk to The Honorable John R. Gibson, United States Court of Appeals for the Eighth Circuit, from 1986-1987.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00886 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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

I have never 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.

1987-2002
Morrison & Foerster, LLP
425 Market St.
San Francisco, California 94105
Partner (1995-2002, Irvine, California, office)
Associate (1987-1994, San Francisco, California, 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 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.

In my first year at Morrison & Foerster, I was a general litigator. Thereafter, I transferred to the Employment Law Department. From approximately 1996 through my departure in 2002, I was the Co-Chair of Morrison & Foerster's Employment Law Department, which was comprised of more than 50 attorneys. For approximately four months in 1993, Morrison & Foerster allowed me to take a leave of absence to prosecute cases in the Alameda County District Attorney's office.

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

My practice involved all aspects of employment law, including individual and class action litigation regarding employment discrimination, wrongful discharge, trade secrets and unfair competition, privacy, and wage and hour issues. I regularly represented corporate clients, both large and small, before administrative agencies and in state and federal court. I provided training and counseling to employers regarding compliance with federal and state employment laws. In the last several years of my practice (approximately 1997-2002), I began representing employees as

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00887 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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well as employers. I represented those individual clients in cases involving whistleblowing, wage and hour matters, wrongful termination, discrimination, and harassment.

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: 30%
   2. state courts of record: 60%
   3. other courts: 0%
   4. administrative agencies: 10%

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.

As an attorney, I tried eight cases in total: three civil trials, three criminal trials, and two hearings before the California Labor Commissioner. I was sole counsel in the criminal trials, the civil court trial, and the Labor Commissioner hearings. I was lead counsel in the civil jury trials.

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

e. Describe your practice, if any, before the Supreme Court of the United States. 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:

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00888 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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. *Ramljak v. FileNET Corp.*; Case No. BC233021; Los Angeles Superior Court; The Honorable John P. Shook; July 2000 through Aug. 2001.

My client was a FileNET sales employee who was terminated shortly after he filed a claim for unpaid commissions with the California Division of Labor Standards Enforcement. We prevailed on all claims submitted to the jury, including claims for failure to pay commissions, breach of contract, wrongful termination, and violation of the California Investigative Consumer Reporting Agencies Act. The jury awarded my client more than $2.7 million and also found that the defendants acted with oppression and malice, justifying punitive damages. The parties entered into a confidential settlement prior to the start of the punitive damages phase. I was lead counsel during all phases of the case, including discovery, pre-trial, and trial.

Opposing counsel:

Timothy M. Freudenberger
Carlton, DiSante & Freudenberger
2600 Michelson Drive
Suite 800
Irvine, California 92612
(949) 622-1661

Dave Carothers
Carlton, DiSante & Freudenberger
4510 Executive Drive
Suite 300
San Diego, California 92121
(858) 646-0007

Co-counsel:

Eric M. Acker
Morrison & Foerster, LLP
15231 High Bluff Drive, Ste. 100
San Diego, California 92130
(858) 720-5100

2. *United States ex rel. Benz v. PrimeCare International*; Case No. 976116; United States District Court, Central District of California; The Honorable Edward Rafeedie; 1997- Apr. 2000.

My client, the Chief Financial Officer of defendant PrimeCare International, complained of Medicare fraud within the company to its CEO and was terminated after he refused to sign a letter retracting his allegations. The action was brought on his own behalf and as a relator on behalf of the United States pursuant to the False

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00889 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Claims Act. The jury found in favor of my client on his claims of wrongful termination, breach of contract, failure to pay wages, and intentional infliction of emotional distress, and awarded him $4.6 million, not including attorneys' fees. The jury could not reach a unanimous decision on the False Claims Act claim, and therefore, a mistrial was declared as to that claim. In 2001, the corporate defendant settled with my client. The individual defendant appealed and was granted a new trial by the Ninth Circuit. At the time of my appointment to the bench in 2002, no retrial had occurred. I was lead counsel during all phases of the case, including discovery, pre-trial, and trial.

Opposing counsel:

Gordon A. Greenberg
McDermott, Will & Emery
2049 Century Park East
Los Angeles, CA 90067-3208
(310) 277-4110

Marc S. Harris
Scheper Kim & Overland LLP
601 W 5th St 12th Fl
Los Angeles, CA 90071
(213) 613-4690

Co-counsel:

Sterling Brennan
Workman, Nydegger
60 E. South Temple, Suite 1000
Salt Lake City, Utah 84111
(801) 533-9800

Eric M. Acker
Morrison & Foerster, LLP
15231 High Bluff Drive, Ste. 100
San Diego, CA 92130
(858) 720-5100

3. *Benz v. Rocky Mountain Admin. Servs. Co.*; Case No. 77 160 00172 00; American Arbitration Association, Denver, Colorado Office; Arbitrator: The Honorable Robert J. Corcoran (Ret.); 1999-May 2001.

My client obtained a position as Chief Financial Officer for Blue Cross/Blue Shield of Colorado sometime after his termination from PrimeCare (described in the prior-listed case). In this action, he alleged that he was terminated after Blue Cross discovered that he had filed a *qui tam* action against PrimeCare. Blue Cross alleged that it terminated my client because of his failure to disclose on his resume that he had worked for PrimeCare. The case was originally filed in federal court in the Central District of California. Defendants' motion for a change of venue to federal court in Colorado was granted, and the federal district court in Colorado ordered the matter to arbitration pursuant to the parties' contract. The matter was arbitrated in Colorado. After the arbitrator rendered his decision, the parties entered into a confidential settlement agreement. I was lead counsel during all phases of litigation, including the federal court proceedings and at the arbitration.

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Opposing counsel:

Michael D. Nosler
General Counsel
Colorado State University System
410 17th Street
Denver, Colorado 80202
(303) 534-6290

Co-counsel:

Edson McClellan
Rutan & Tucker
611 Anton Blvd., 14th Floor
Costa Mesa, California 92626
(714) 641-5100

4. *Kay v. Playmates Toys, Inc.*; Case No. BC181120; Los Angeles Superior Court; The Honorable Peter D. Lichtman; Nov. 1997-June 1998.

My client, Playmates Toys Inc. (of "Teenage Mutant Ninja Turtle" fame), was sued by its former Chief Financial Officer for breach of contract and wrongful termination. When the plaintiff left the company, he took with him company documents, including confidential information and privileged attorney-client documents. My client then brought claims against plaintiff and his attorneys for, among other things, conversion of the documents. My client sought, and was granted, a preliminary injunction requiring the return of the documents. After the court's ruling, the parties settled all outstanding disputes between them. I was lead counsel during all phases of this action, including obtaining injunctive relief.

Opposing counsel:

Andrew S. Pauly
Greenwald, Pauly, Foster & Miller
1299 Ocean Avenue, Suite 400
Santa Monica, California 90401
(310) 451-8001

Co-counsel:

Robert J. Keenan
U.S. Attorney's Office
411 W. Fourth Street
Santa Ana, California 92701-4599
(714) 338-3597

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5. *Franco dba Techquest Sales & Mktg. v. LanguageForce, Inc.*; Case No. 800621; Orange County Superior Court; The Honorable Francisco F. Firmat; JAMS Arbitration, Arbitrator: The Honorable Bruce W. Sumner (Ret.), Oct. 1998-May 1999.

   This case involved a claim for commissions by an independent sales representative who performed work for my client, LanguageForce. It was compelled to arbitration, at which we prevailed. I was lead counsel during all phases of the action, both in the trial court and at arbitration.

   Opposing counsel:

   Christopher Real
   Law Offices of Real & Mullahy
   3625 Del Amo Boulevard
   Suite 340
   Torrance, California 90503
   (310) 921-3322

6. *Williams v. Toshiba Am. Info. Sys., Inc.*; Case No. 811968; Orange County Superior Court; The Honorable Derek W. Hunt; July 1999-Apr. 2000.

   My client, Toshiba, eliminated the third shift on one of its operations and, as a result, plaintiff was terminated. She alleged that her termination was based on her race. The case was settled confidentially, after the plaintiff's deposition and prior to a motion for summary judgment. I was lead counsel during all phases of the litigation.

   Opposing counsel:
   Mitra Shahri
   Mitra Law Group
   Riviera Plaza, Suite 350
   1618 SW First Avenue
   Portland, Oregon 97201
   (503) 243-4545

7. *Miller v. Abbey Healthcare Group, Inc.*; Case No. 735107; Orange County Superior Court; August 1994-July 1995.

   Plaintiff, a senior executive employee, alleged that my client wrongfully terminated him in violation of public policy because he had complained that the Chief Executive Officer was sexually harassing a female executive. The company's position was that plaintiff was terminated for performance reasons and had not complained about harassment. After significant discovery and motion practice, the case settled for a confidential amount prior to any trial. I was lead counsel during all phases of litigation, including discovery, motion practice, negotiation, and settlement.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00892 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Opposing counsel:

Joel W. Baruch
Law Offices of Joel W. Baruch
2020 Main Street, Suite 900
Irvine, California 92614
(949) 864-9662

8. *Burfield v. Abbey Med., Inc.*; Case No.,73 160 00216 99X; American Arbitration Association; Arbitrator: Janice Burnham (1995), The Honorable Judith M. Ryan (Ret.) (upon re-filing in 1999); 1995-1999.

Plaintiff, a former President of my client, filed a claim in arbitration alleging breach of contract, and seeking hundreds of thousands of dollars in severance and stock options. After failing to prosecute his claim, he refiled several years later. After a hearing, the arbitrator granted my client's motion to dismiss on statute of limitations and laches grounds. I was lead counsel throughout the case.

Opposing Counsel:

Carson P. Veach
Freeborn & Peters
311 South Wacker Drive
Suite 3000
Chicago, Illinois 60606
(312) 360-6000

Peter C. Woodford
Seyfarth Shaw
131 South Dearborn Street
Suite 2400
Chicago, Illinois 60603
(312) 460-5000

9. *Arreguin v. Waban, Inc.*; BC158318; Los Angeles Superior Court; The Honorable Charles McCoy; Oct. 1996-Jan. 1998.

My client employed plaintiff, who claimed sexual harassment. The company denied the allegations and alleged that she was disciplined for performance problems. The case was resolved by summary judgment for my client on the grounds that plaintiff's claims were barred by the doctrine of judicial estoppel in that she failed to disclose her claims as an asset in bankruptcy. I was lead counsel during all phases of litigation.

Opposing counsel:

Stephen A. Ebner
Law Offices of Stephen A. Ebner
4766 Park Granada
Suite 206
Calabasas, California 91302
(818) 591-7990

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10. *Huls v. USAA*; Case No. CV539931; Sacramento County Superior Court; The Honorable Ronald W. Tochterman; Apr. 1994-Jan. 13, 1995.

    Plaintiff brought this action against my clients, USAA and two individual employees, alleging, among other things, invasion of privacy and defamation. During the course of discovery, I learned that plaintiff obtained all evidence for her case by secretly eavesdropping on and tape recording her supervisors' telephone conversations. The court granted summary judgment in favor of my clients on the grounds that plaintiff's evidence was illegally-obtained and therefore barred. In this case, I propounded and responded to all discovery, took plaintiff's deposition, defended the depositions of the individual defendants, and drafted and argued the motion for summary judgment.

    Opposing counsel:

    Robert P. Henk
    Henk Leonard
    2260 Douglas Blvd., Suite 200
    Roseville, California 95661
    (916) 787-4544

    Co-Counsel:

    Robert A. Naeve
    Jones, Day
    3161 Michelson Drive, Suite 800
    Irvine, California 92612-4408
    (949) 851-3939

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 employment law practice involved both litigation and counseling. On the counseling side, I regularly advised employers on a variety of topics including employment agreements, leaves of absence, wage-and-hour issues, accommodating disabilities, handling terminations, and developing employment policies and procedures. I also conducted sexual harassment and other compliance training. For example, I guided a national retailer in conducting a company-wide compliance review of all in-store employee positions to allow the retailer to take steps to remedy any statistically-demonstrable discrimination. This client was able to avoid a class action when other companies within the industry were being targeted.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00894 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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I also have sought out additional committee work and projects to assist the Orange County bench. As a member of the California Center for Judicial Education and Research ("CJER") Security Education Committee, I assisted in developing videotapes that promote personal and courthouse security for judicial officers and staff. As a long-term member of the Legal Resources Committee for the Orange County Superior Court, I have been involved in developing online resources, such as an online judicial library of local materials, for the benefit of the Orange County bench. Because of my employment law background, I also have been called upon to serve on committees to interview and recommend the hiring of the legal research manager and research attorneys.

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.

    None.

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 will receive payments, upon retirement, from the California Judges' Retirement System II. The only other deferred income/future benefits would arise out of my spouse's current employment.

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.

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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 husband is employed by Prescription Solutions, a wholly-owned subsidiary of United Healthcare, and we presently own shares in United Healthcare.

I already have divested myself of all other individual stock holdings in favor of mutual funds. I did so because Canon 4 of the California Code of Judicial Ethics requires a judge to conduct his/her affairs to minimize the risk of conflict with judicial obligations.

My brother is a business owner who currently resides in Florida, but who, at times, conducts business in California. In addition, actual or apparent conflicts could arise from matters involving attorneys who are personal friends.

Though I have not practiced law since becoming a judge in 2002, if confirmed, I would remain careful to avoid conflicts with my work from private practice, including on any matters in which I personally participated or involving clients for whom I performed work that might give rise to conflict or the appearance of conflict.

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

If confirmed, I would resolve any potential conflict by following the federal recusal statute, the Code of Conduct for United States Judges, and applicable policies and procedures of the District Court. Further, I would participate in the Court's automatic recusal system and would disclose any non-disqualifying relationships to the parties.

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 private practice until 2002, I oriented my pro bono work toward organizations that served families and children. Because I specialized in employment law, my services usually consisted of the same services I provided to other firm clients: employment law counseling, such as creating or revising employee handbooks, employment agreements, and other documents, and advising the organizations regarding all aspects of the

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employer-employee relationship. I provided regular and ongoing pro bono counsel to several non-profits including the Make-A-Wish Foundation of Orange County; the Intercommunity Child Guidance Center of Whittier, California; the Orange Coast Interfaith Shelter in Costa Mesa, California; and the San Francisco AIDS Foundation.

Although prohibited from practice of law as a judicial officer since 2002, I have attempted to remain involved in the community. As a member of the Warren J. Ferguson American Inn of Court, I have the opportunity on a regular basis to interact with and mentor young attorneys, particularly on issues relating to trial practice and ethics. For several years, I also have served as a judge for the Constitutional Rights Foundation mock trial program for high school students. In addition, I participate in our court's jury welcome program, in which judges volunteer to greet and thank those jurors who appear for service.

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 March 2009, I submitted an application for the District Court vacancy to Senator Dianne Feinstein's Central District Judicial Advisory Committee. I had learned of the opening and the Committee's call for applications from an e-mail sent to all bench officers by the President Judge of our court. On April 8, 2009, I interviewed with the Committee in Los Angeles. I understand that I was among the candidates recommended to the Committee's statewide chair, with whom I interviewed in May 2009. Since early October, 2009, I have been in contact with pre-nomination officials at the Department of Justice. On November 19, 2009, I interviewed in Washington, D.C., with attorneys from the Department of Justice and the Office of White House Counsel. The President submitted my nomination to the Senate on February 4, 2010.

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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FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Tucker, Josephine S.	U.S. District Court, Central District of California	02/05/2010
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type** (check appropriate type)	**6. Reporting Period**
District Judge-Nominee	☑ Nomination, Date 02/04/2010 ☐ Initial ☐ Annual ☐ Final **5b.** ☐ Amended Report	01/01/2009 to 1/31/2010
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
700 Civic Center Drive West Santa Ana, CA 92701	Reviewing Officer_____ Date_____	

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

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

☐ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. Superior Court Judge	Orange County Superior Court
2. President	Gold Star Ventures, Inc.
3. Trustee	Trust #1
4. Judicial Advisory Council	Association of Business Trial Lawyers
5.	

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

☐ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1. 2002	California Judges' Retirement System II, no control
2.	
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 8	Name of Person Reporting Tucker, Josephine S.	Date of Report 02/05/2010

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

A. Filer's Non-Investment Income

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

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2010	State of California - Judicial Salary	$11,831.91
2. 2010	County of Orange, California - Judicial Benefit Reimbursement	$6,229.16
3. 2009	State of California - Judicial Salary	$150,423.97
4. 2009	County of Orange, California - Judicial Benefit Reimbursement	$19,960.83
5. 2008	State of California - Judicial Salary	$144,036.72
6. 2008	County of Orange, California - Judicial Benefit Reimbursement	$25,072.51

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

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

DATE	SOURCE AND TYPE
1. 2009	United Healthcare -salary
2.	
3.	
4.	

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

☐ NONE *(No reportable reimbursements.)*

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. Exempt				
2.				
3.				
4.				
5.				

FINANCIAL DISCLOSURE REPORT Page 3 of 8	Name of Person Reporting Tucker, Josephine S.	Date of Report 02/05/2010

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

☐ NONE *(No reportable gifts.)*

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

VI. LIABILITIES. ***(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)***

☑ NONE *(No reportable liabilities.)*

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

FINANCIAL DISCLOSURE REPORT
Page 4 of 8

Name of Person Reporting	Date of Report
Tucker, Josephine S.	02/05/2010

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. IRA #1	A	Int./Div.	N	T	Exempt				
2. -Ave Maria Rising Dividend Fund									
3. -First Eagle Overseas Fund Cl 1									
4. -First Eagle US Value Fund Cl 1									
5. -Janus Balanced Fund Cl J									
6. -Stratton Small Cap Value Fund									
7. -Charles Schwab Bank									
8. IRA #2		None	K	T					
9. -Parnassus Equity Income Fund Insvestor Sh									
10. -Charles Schwab Bank									
11. IRA #3	A	Int./Div.	L	T					
12. -Ave Maria Rising Dividend Fund									
13. -First Eagle Overseas Fund Cl 1									
14. -First Eagle US Value Fund Cl 1									
15. -Janus Balanced Fund Cl J									
16. -Stratton Small Cap Value Fund									
17. -Charles Schwab Bank									

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

FINANCIAL DISCLOSURE REPORT
Page 5 of 8

Name of Person Reporting	Date of Report
Tucker, Josephine S.	02/05/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
18. Deferred Compensation Plan #1		None	N	T					
19. -LVIP Delaware Bond Fund-Standard Class									
20. -Fidelity VIP Contrafund - Service Class									
21. -DWS VIP Equity 500 Index Class A									
22. -Fidelity VIP Growth - Service class									
23. -Franklin FTVIPT Small Mid-Cap Growth S ecurities									
24. -American Century VP International - Class I									
25. 401k #1		None	N	T					
26. -Fidelity Small Company Fund									
27. -Vanguard Mid-Cap Index Fund Instl.									
28. -Vanguard Small-Cap Index Fund Instl.									
29. -Wellington Mid-Cap Opportunities 2									
30. -EuroPacific Growth Fund Class R$-5									
31. 401k #2		None	L	T					
32. -Wells Fargo Advan. Con. Alloc (Admin)									
33. State of California Savings Plus Program (401k/457)		None	M	T					
34. Schwab 529 College Savings Plan Short T erm Portfolio		None	L	T					

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

FINANCIAL DISCLOSURE REPORT
Page 6 of 8

Name of Person Reporting	Date of Report
Tucker, Josephine S.	02/05/2010

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-68 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
35. Schwab 529 College Savings Plan Conserv ative Portfolio		None	K	T					
36. Schwab 529 College Savings Plan Mod. Ag gressive Port.		None	K	T					
37. Chase Bank	A	Interest	J	T					
38. Unitedhealth Group (UNH)	A	Dividend	N	T					
39. U.S. Series E Savings Bonds	A	Interest	K	T					
40. Wells Fargo Bank	B	Interest							
41. Gateway Fund Class A	B	Dividend							
42. VCSP/CollegeAmerica (529 plan)	B	Dividend							
43. -AMCAP Fund									
44. -The Investment Company of America									
45. -Capital World Growth and Income									
46. TIAA-CREF		None	J	T					
47. American Century Giftrust		None	K	T					
48.									

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

FINANCIAL DISCLOSURE REPORT Page 7 of 8	Name of Person Reporting Tucker, Josephine S.	Date of Report 02/05/2010

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

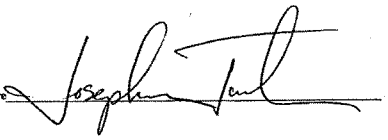
Part I. Positions: Item 1: Entity dissolved in 2009. Item 2: Trust #1 is an unfunded family trust.

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting Tucker, Josephine S.	Date of Report 02/05/2010

IX. CERTIFICATION.

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

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

Signature 

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		10	075	Notes payable to banks-secured			
U.S. Government securities-add schedule		15	690	Notes payable to banks-unsecured			
Listed securities-add schedule	1	503	403	Notes payable to relatives		90	874
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		5	500
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		726	533
Real estate owned-add schedule	2	200	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		60	500	401(k) loan		43	195
Cash value-life insurance							
Other assets itemize:							
Savings Plus Program: 401(k)/457		60	642				
Judges' Retirement System II		250	000				
Cash in IRA Brokerage Account		47	513	Total liabilities		866	102
TIAA-CREF			986	Net Worth	3	282	707
Total Assets	4	148	809	Total liabilities and net worth	4	148	809
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you a defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

U.S. Government Securities	
Series EE Bonds	$ 15,690
Listed Securities	
Ave Maria Rising Dividend Fund	$ 48,750
First Eagle Overseas Fund Cl 1	73,999
First Eagle US Value Fund Cl 1	75,016
Janus Balanced Fund Cl J	64,209
Stratton Small Cap Value Fund	47,077
Parnassus Equity Income Fund	50,195
UNH	278,616
LVIP Delaware Bond Fund	79,735
Fidelity VIP Contrafund	41,787
DWS VIP Equity 500 Index	33,283
Fidelity VIP Growth	30,255
Franklin FTVIPT Small-Mid Cap Growth Sec.	23,883
American Century VP Intl	42,374
EuroPacific Growth Fund	123,535
Fidelity Small Company Fund	43,692
Vanguard Mid-Cap Index Fund	68,592
Vanguard Small-Cap Index Fund	74,311
Wellington Mid-Cap Opportunities	79,286
Wells Fargo Advantage Conservative Allocation	63,729
Schwab 529 College Savings Plan(short term)	82,923
Schwab 529 College Savings Plan(conservative)	49,857
Schwab 529 College Savings Plan(aggressive)	28,299
Total Listed Securities	$ 1,503,403
Real Estate Owned	
Personal Residence	$ 2,200,000
Real Estate Mortgages Payable	
Personal Residence	$ 726, 533

AFFIDAVIT

I, **Josephine Staton Tucker**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

02.08.10
(DATE)

(NAME)

MARK W. MASTERS
COMM. #1732915
NOTARY PUBLIC - CALIFORNIA
ORANGE COUNTY
My Comm. Expires Apr. 11, 2011

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 8 DAY OF Feb 2010
BY
(NOTARY PUBLIC)
NOTARY PUBLIC

STATEMENT OF HON. MARK A. GOLDSMITH, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN

Judge GOLDSMITH. Thank you, Mr. Chairman. I thank the Ranking Member, Senator Sessions, and all members of the Committee for allowing me to appear this afternoon at this hearing. I'm very grateful to the President for his confidence in me in making this nomination. I am very grateful also to Senator Levin and Senator Stabenow for their support, for their gracious remarks this afternoon.

I would like to introduce to you the love of my life, my wife for the last, almost 21 years, Judy Goldsmith, and also joining us this afternoon is my oldest brother, Merwin Goldsmith, representing all my siblings, John, Steven, and Barbara as well.

Our two children are not present for very good reasons. As you already heard, our son Jared and his wife Stephanie were working on a joint venture for the last 9 months that finally brought fruit at about 2:23 p.m. this past Saturday, and they brought into the world Alexis Caitlin Talia. So, they are really busy with that very important work and couldn't join us this afternoon, understandably. And our daughter Molly, who is 16 and an eleventh grader, is in Israel study for her winter semester of eleventh grade, and she's going to be joining us by way of the webcast.

Two people who are with us in spirit are my parents, Bessie and Max Goldsmith. I am grateful to them for giving me the gift of life and my core values of faith and family and community and country. I know they're with us in spirit today.

Thank you, Mr. Chairman.

Senator FRANKEN. Thank you, Your Honor.

[The biographical information of Mark A. Goldsmith 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).

   Mark Allan Goldsmith

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

   United States District Judge for the Eastern District of Michigan

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Office: Oakland County Circuit Court
   1200 North Telegraph Road
   Pontiac, Michigan 48341

   Residence: Huntington Woods, Michigan

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

   1952; Detroit, Michigan

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.

   1974 – 1977, Harvard Law School; J.D. (cum laude), 1977

   1970 – 1974, University of Michigan; B.A. (awarded with High Distinction and High Honors in Economics), 1974

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.

2004 – present
Oakland County Circuit Court
1200 North Telegraph Road
Pontiac, Michigan 48341
Circuit Court Judge

2002 – 2004
Oakland County 45B District Court
13600 Oak Park Blvd.
Oak Park, Michigan 48237
Part-time Magistrate

1998 and 2001
Wayne State University Law School
471 Palmer Street
Detroit, Michigan 48202
Adjunct Instructor (part-time)

1996 – 2004
Michigan Attorney Discipline Board
211 West Fort Street, Suite 1410
Detroit, Michigan 48226
Hearing Panelist (part-time)

1987 – 2004
Honigman Miller Schwartz and Cohn
2290 First National Building
Detroit, Michigan 48226
Associate (1987 – 1988)
Partner (1988 – 2004)

1980 – 1987
Sole Practitioner
280 North Woodward Avenue
Birmingham, Michigan 48009

1980s
Oakland County 45B District Court
13600 Oak Park Boulevard
Oak Park, Michigan 48237
Court-Appointed Mediator (part-time)

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1979 – 1980
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, New York 10019
Litigation Associate

1976
Cleary, Gottlieb, Steen & Hamilton
One Liberty Plaza
New York, New York 10006
Summer Associate

1974
Camp Ramah
Utterson Ontario, Canada
Summer Camp Counselor

Other Affiliations (uncompensated)

2008 - present
Council of Orthodox Rabbis of Greater Detroit
18877 West Ten Mile Road
Southfield, Michigan 48075
Member, Board of Directors

2006 - present
Wayne State University Center for the Study of Citizenship
3089 Faculty/Administration Bldg.
Wayne State University
Detroit, Michigan 48202
Member, Executive Board

1999
Forgotten Harvest Food Bank
21800 Greenfield Road
Oak Park, Michigan 48237
Member, Board of Directors

1993 – 1997
Maxal Investment Company (family trust)
2290 First National Bldg.
Detroit, Michigan 48226
President

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1987 - present
Congregation Beth Shalom
14601 Lincoln Street
Oak Park, Michigan 48237
President (1997-1999)
Member, Board of Directors (1987-2005)

1980 - 2004
Goldsmith Group, Ltd.
66 W. 88th Street #4-D
New York, New York 10024
Secretary

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 registered for the Selective Service upon turning 18.

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.

Wings of Justice Award, Oakland County Democratic Party (2009)
Fellow, Michigan State Bar Foundation (2005)
Awarded certificates of appreciation for my pro bono services by the Pro Bono Civil Assignment Panel of the U.S. District Court for the Eastern District of Michigan (1997 and 2003)
Second Century Award for Leadership, Jewish Theological Seminary of America (1997)
Member of the Honors Program in Economics, University of Michigan (1971-1974)
Branstrom Freshman Prize for academic excellence, University of Michigan (1971)
James B. Angell Scholar (academic excellence), University of Michigan (1971-1974)
Phi Beta Kappa (1973)
Chairman, Central Student Judiciary, University of Michigan (1971-1974)
College Scholarship, Stone Container Corporation (1970-1974)

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
B'nai B'rith Barristers
Vice President for Religious Affairs (2009-present)

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Federal Bar Association, Eastern District of Michigan Chapter
Member, Board of Directors (2001 – 2002)
President (2007-2008)
President-elect (2006-2007)
Vice-President (2005-2006)
Secretary (2004-2005)
Treasurer (2003-2004)
Program Chair (2002-2003)
Co-chair, Pro Bono Committee (2001-2007)
Metropolitan Detroit Bar Association
Michigan State Bar Association
Member, Committee on the Unauthorized Practice of Law
Oakland County 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.

Michigan, 1978
New York, 1979
Texas, 1989

There has been no lapse in any 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, 1993
United States Court of Appeals for the Sixth Circuit, 1982
United States District Court, Eastern District of Michigan, 1982
United States District Court, Western District of Michigan, 1988
United States District Court, Eastern District of New York, 1980
United States District Court, Southern District of New York, 1980
United States District Court, Southern District of Texas, 1989
United States Court of Military Appeals, 1987
United States Air Force Court of Military Review, 1985
United States Tax Court, 1982
Michigan Supreme Court, 1978
New York State Supreme Court Appellate Division, First Department, 1979
Texas Supreme Court, 1989

There has been no lapse in any 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.

Oakland County Criminal Justice Coordinating Council (2008 - present)
JUST US, Oakland County Circuit Court (2008 - present)
Legal Aid and Defender Association, Inc.,
Member, Fair Housing Advisory Board (Oakland County) (2007- present)
American Israel Public Affairs Committee (1990s – present)
Huntington Woods Men's Club (2007-2008)
American Constitution Society, Michigan Lawyers Chapter
Member, Board of Directors (2005-present)
Circle of Friends (1997-1999)
B'nai B'rith Anti-Defamation League
Member, Regional Advisory Board (1986-1994)
Jewish Federation of Metropolitan Detroit
Chair, Executive Committee of the Young Adult Division (1985-1986)

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 been a member of any organization that currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin. The Huntington Men's Club is a community service organization that has never discriminated in its membership. Despite its name, the organization has male and female members.

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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Receiverships in the Real Estate Setting, THE MICHIGAN BUSINESS LAW JOURNAL, Vol. XXVIII, Issue 2 (Summer 2008) (co-authored with Gregory J. DeMars)
Judge Gives Thanks for Democracy, OAKLAND PRESS (11/25/07)
Jury Duty Is an Opportunity for Community Building, OAKLAND PRESS (February 2005)
Turning 50, FBA NEWSLETTER (Winter 2007)
President's Column, FBA NEWSLETTER (Fall 2007)
Civility – Not Just A Matter of Etiquette, FBA NEWSLETTER (Spring 2008)
Interior Design, FBA NEWSLETTER (Summer 2008)
Column, *Federal Opinion Notes – Eastern District*, MICHIGAN BAR JOURNAL (March 1997; July 1997; October 1997; February 1998; June 1998; October 1998; and January 1999)
Guaranteed Income for the Elderly, Senator Vance Hartke, 6 INDIANA LAW REVIEW 220 (1972) (researcher and editor)
President's Column, CONGREGATION BETH SHALOM NEWSLETTER (1997-99) Copies are unavailable.

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.

Recommended Initiatives and Activities, Federal Bar Association Eastern District of Michigan Chapter Diversity Task Force (2009)

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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Introduction of Governor Granholm, Federal Bar Association luncheon, Detroit, Michigan (April 2004)
Remarks on the Private Faith of a Public Man, First Presbyterian Church, Birmingham, Michigan, (November 2004). No transcript or notes available.
Presentation of Torah Legacy Award to Brent and Nancy Triest, Machon L'Torah, Southfield, Michigan (June 23, 2002)
Presentation of Leadership Award to Michael and Debbie Balkin, Congregation Shaarey Zedek, Southfield, Michigan (May 28, 2002)
Remarks at Oakland County Bar Association Swearing-In Ceremony (Nov. 17, 2004). The event was summarized in LACHES (January 2005)
"Judicial Tips for Litigators," Michigan Association for Justice Rapid Fire Seminar, Dearborn, Michigan (June 2008)
Dedication of the Woodward Avenue Shul, Royal Oak, Michigan (August 24, 2008)
Remarks on the completion of a Talmudic tractate, Woodward Avenue Shul, Royal Oak, Michigan (September 20, 2008)
Remarks to the American Constitution Society on the Impact of the 2008 Elections on Michigan Courts, Detroit Michigan (November 11, 2008)
Invocation at Swearing-In of Jessica Cooper as Oakland County Prosecutor, Pontiac Michigan (January 21, 2009)
"Festivals in Ancient Times." Woodward Avenue Shul, Royal Oak, Michigan (May 28, 2009)
"Judicial Tips for Litigators," Michigan Association for Justice Rapid Fire Seminar, Dearborn, Michigan (May 8, 2009)
Remarks, Federal Bar Association Annual Dinner, Detroit, Michigan (June 17, 2008)
Remarks, Federal Bar Association State of the Court Luncheon, Detroit, Michigan (Sept. 11, 2008)
Remarks on Supreme Court decision in *Caperton* for American Constitution Society program, Wayne State University Law School, Detroit, Michigan (June 29, 2009)
Remarks at the Phil Hart Dinner of the Oakland County Democratic Party upon receiving the "Wings of Justice" Award, Troy, Michigan (Oct. 4, 2009)
Remarks at my investiture to Oakland County Circuit Court, Pontiac, Michigan (May 10, 2004)
Secular Courts' Treatment of Issues Pertaining to a Beth Din (Religious Court), Congregation Mogen Avraham, Southfield, Michigan (June 2008)

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.

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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.

In August 2002, I was appointed by the 45B District Court of Oakland County, Michigan to serve as a part-time magistrate. As a magistrate, I handled traffic violations and conducted arraignments and hearings. That court has jurisdiction over misdemeanors, civil infractions and civil disputes under $25,000. I resigned my appointment in March 2004 when I was appointed by Governor Granholm to be an Oakland County Circuit Court Judge. The Circuit Court has exclusive jurisdiction over all felonies, civil claims in excess of $25,000 for which another court does not have exclusive jurisdiction and equitable claims. I was elected to the position in November 2004 and re-elected in November 2006.

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

I have presided over approximately 177 cases to verdict or judgment.

i. Of these, approximately what percent were:

jury trials:	90%
bench trials:	10%
civil proceedings:	24%
criminal proceedings:	76%

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

See attached list of opinions.

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. *City of Troy v. Premium Construction*, Oakland Circuit Court Case No. 01-035191-CC. This was a condemnation bench trial, involving complex environmental questions. I found in favor of the property owner and awarded $3.9 million in just compensation and $1.1 million in attorney fees.

Plaintiff's counsel was Susan Lancaster, 500 W. Big Beaver Rd., Troy, MI 48084 (248-540-3320). Defendant's counsel was Ronald Reynolds, Berry, Reynolds and Rogowski, 33493 W. 14 Mile Rd., Suite 100, Farmington Hills, MI 48331 (248-851-3434).

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2. *People v. Nouri*, Oakland Circuit Court Case No. 07-218065-FC. This was a jury trial in which Defendant was convicted of criminal sexual conduct. I later granted Defendant a new trial based on ineffective assistance of counsel. The Michigan Court of Appeals reversed in an unpublished 2-1 decision. *People v Nouri*, 2009 WL 3199532 (Oct. 6, 2009). Defendant's application for leave to appeal to the Michigan Supreme Court was denied. 2010 WL 322194 (Mich. Jan. 27, 2010).

   The prosecutor was Hala Jarbour, 1200 N. Telegraph Rd., Pontiac, MI 48341 (248-858-5575). The defendant was represented by David Griem, 500 Griswold, Ste 2400, Detroit, MI 48226 (313-961-1200); and Deanna Kelley, 31700 W. 13 Mile Rd., Ste. 96, Farmington Hills, MI 48334 (248-737-2770). Defendant's post-trial counsel was Mark Kriger, 645 Griswold, Suite 1717, Detroit, MI 48226 (313-967-0100).

3. *Ameritech Michigan v. The Detroit Edison Company*, Oakland Circuit Court No. 01-030537-NZ. This was a jury trial, conducted in two phases before different juries, to resolve the question of which entity owed the other for rental fees for use of utility poles. Detroit Edison was found to be owed $15.6 million.

   Plaintiff's counsel was Michael Vartanian, Dickinson Wright, PLLC, 301 E. Liberty, Ste. 500, Ann Arbor, MI 48104 (734-623-1690). Defendant's counsel was Timothy Young, Cummings, McClory, Davis & Acho, PLC, 2200 Schoolcraft, Ste. 2000, Livonia, MI 48150 (734-261-2400).

4. *Lear Corporation v. Dura Automotive Systems, Inc.*, Oakland Circuit Court No. 06-075939-CK. I granted a preliminary injunction regarding the use of offset rights after an extensive evidentiary hearing over several days.

   Plaintiff's counsel was Thomas Tallerico, Bodman LLP, 1901 St. Antoine St., Detroit, MI 48226 (313-259-7777). Defendant's counsel was Ann Marie Uetz, Foley & Lardner, 150 W. Jefferson, Detroit, MI 48226 (313-234-7113).

5. *People v. Capito,* Oakland Circuit Court Case No. 06-208991-FC. This was a trial for assault with intent to murder, tried before two juries, in which they returned guilty verdicts as to three co-defendants. The "leader" of this group was a promising college student who had disemboweled the victim.

   The prosecutor was Brett Chudler, 1200 N. Telegraph Rd., Pontiac, MI 48341 (248-452-8692). Defense counsel was Delphia Burton, 547 E. Jefferson, Detroit, MI 48226 (313-963-1960).

6. *People v. Light*, Oakland Circuit Court Case No. 05-204084-FC. Defendant was convicted by a jury of first degree murder, based on DNA evidence left at the murder scene some 10 years earlier.

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The prosecutor was Brett Chudler, 1200 N. Telegraph Rd., Pontiac, MI 48341 (248-452-8692). Defense counsel was Joseph Lavigne, 31700 W. 13 Mile Rd., Ste. 96, Farmington Hills, MI 48334 (248-539-3144).

7. *People v. Cummins*, Oakland Circuit Court Case No. 05-200525-FH. Defendant, who was charged with malicious destruction of property belonging to a rival within the same political party, pled no contest after his jury trial was nearly completed.

   The prosecutor was Jeffrey Hall, 1200 N. Telegraph Rd., Pontiac, MI 48341 (248-452-8690). Defense counsel was Jeffrey Leib, 30445 Northwestern Hwy., Ste. 140, Farmington Hills, MI 48334 (248-851-7800).

8. *Schiller v. Masri*, Oakland Circuit Court Case No. 05-063355-NH. The jury found no cause of action in this medical malpractice case involving the allegedly negligent insertion of a pacemaker.

   Plaintiff's counsel was Samuel Meklir, Sommers, Schwartz, Silver & Schwartz, PC, 2000 Town Ctr. Ste. 900, Southfield, MI 48075 (248-355-0300). The defendants' counsel was Daniel Beyer, Kerr, Russell & Weber, PLC, 500 Woodward Ave., St. 2500, Detroit, MI 48226 (313-961-0200).

9. *People v. Hunt*, Oakland Circuit Court Case No. 06-210955-FH. After a jury trial, Defendant-stepfather was found not guilty as to one act of criminal sexual conduct involving his stepdaughter; the jury was hung as to another count.

   The prosecutor was Shareen Lynch, 1200 N. Telegraph Rd., Pontiac, MI 48341 (248-858-5240. Defense counsel was Lisa Dwyer, 710 N. Crooks Rd., Clawson, MI 48017 (248-435-8539).

10. *People v. Powell*, Oakland Circuit Court Case No 04-195957-FC. Defendant was convicted of 12 out of 13 counts of criminal sexual conduct against a neighborhood boy.

    The prosecutor was Cynthia Brown, 1200 N. Telegraph Rd., Pontiac, MI 48341 (248-858-5232). Defense counsel was Mitchell Ribitwer, Ribitwer & Sabbota, LLP, 26862 Woodward Ave., Unit 200, Royal Oak, MI 48067 (248-543-8000).

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. *American Axle & Mfg. Inc. v. Ashanti*, Oakland Circuit Court Case No. 08-096252-CB. Plaintiff's counsel was William Schaefer, Driggers, Schultz & Herbst, PC, 2600 W. Big Beaver Rd., Ste. 550, Troy, MI 48084 (248-649-6000). Defendant's counsel was Jay Schreier, 20225 Victory Pkwy., Ste. 425, Livonia, MI 48152 (248-542-8400).

2. *People v. Gallusser*, Oakland Circuit Court Case No. 07-213137-FH. The prosecutor was Josh Arnkoff, 1200 N. Telegraph Rd., Pontiac, MI 48341 (248-858-5574). Defendant's counsel was Jeffrey Quas, 827 N. Main St., Ste. A, Royal Oak, MI 48307 (248-652-7799).

3. *People v. Hicks*, Oakland Circuit Court Case No. 08-218786-FH. The prosecutor was Josh Arnkoff, 1200 N. Telegraph Rd., Pontiac, MI 48341 (248-858-5574). Defendant's counsel was Vincent Giovanni, 26111 W. 14 Mile Rd., Ste. 201, Franklin, MI 48025 (248-851-2280).

4. *Lear Corporation v. Dura Automotive Systems, Inc.*, Oakland Circuit Court Case No. 06-075939-CK. Plaintiff's counsel was Thomas Tallerico, Bodman LLP, 1901 St. Antoine St., Detroit, MI 48226 (313-259-7777). Defendant's counsel was Ann Marie Uetz, Foley & Lardner, 150 W. Jefferson, Detroit, MI 48226 (313-234-7113).

5. *Ameritech Michigan v. The Detroit Edison Company*, Oakland Circuit Court Case No. 01-030537-NZ. Plaintiff's counsel was Michael Vartanian, Dickinson Wright, PLLC, 301 E. Liberty, Ste. 500, Ann Arbor, MI 48104 (734-623-1690). Defendant's counsel was Timothy Young, Cummings, McClory, Davis & Acho, PLC, 2200 Schoolcraft, Ste. 2000, Livonia, MI 48150 (734-261-2400).

6. *People v. Nouri*, Oakland Circuit Court Case No. 07-218065-FC. The prosecutor was Hala Jarbour, 1200 N. Telegraph Rd., Pontiac, MI 48341 (248-858-5575). The Defendant's trial counsel was David Griem, 500 Griswold, Ste 2400, Detroit, MI 48226 (313-961-1200) and Deanna Kelley, 31700 W. 13 Mile Rd., Ste. 96, Farmington Hills, MI 48334 (248-737-2770). Defendant's post-trial counsel was Mark Kriger, 645 Griswold, Suite 1717, Detroit, MI 48226 (313-967-0100).

7. *City of Troy v. Premium Construction*, Oakland Circuit Court Case No. 01-035191-CC: Plaintiff's counsel was Susan Lancaster, 500 W. Big Beaver Rd., Troy, MI 48084 (248-540-3320). Defendant's counsel was Ronald Reynolds, Berry, Reynolds and Rogowski, 33493 W. 14 Mile Rd., Suite 100, Farmington Hills, MI 48331 (248-851-3434).

8. *Board of Oakland County Road Commissioners v. West Bloomfield Office Center, PLLC*, Oakland Circuit Court Case No. 06-077907-CC: Plaintiff's counsel was Peter Webster, Dickinson Wright, PLLC, 38525 Woodward

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Ave., Ste. 2000, Bloomfield Hills, MI 48304 (248-433-7200). Defendant's counsel was Alan Ackerman, Ackerman, Ackerman & Dynkowski, 100 W. Long Lake Rd., Ste. 210, Bloomfield Hills, MI 48304 (248-537-1155).

9. *U.S. Energia, LLC v. E-1 Power, Inc.*, Oakland Circuit Court Case No. 07-082717-CZ. Plaintiff's counsel was Rodger D. Young, Young & Susser, PC, 26200 American Dr., Ste. 205, Southfield, MI 48034 (248-353-8620). Defendants' counsel was I.W. Winsten, Honigman Miller Schwartz and Cohn, PLLC, 2290 First National Bldg., Detroit, MI 48226 (313-465-7608).

10. *Northern Insurance Co v. Olga's Kitchen, Inc. et al.*, Oakland Circuit Court Case No. 03-054961-CZ. Plaintiff's counsel was Peter Kupelian, Kupelian, Ormond & Magy, PC, 25800 Northwestern Hwy., Ste. 950, Southfield, MI 48075 (248-357-0000). Defendants' counsel was Bruce Segal, Honigman Miller Schwartz and Cohn, LLP, 38500 Woodward Ave., Bloomfield Hills, MI 48302 (248-566-8482) and Leonard Henk, Kallas & Henk, PC, 43902 Woodward Ave., Ste. 200, Bloomfield Hills, MI 48302 (248-335-5450).

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

None to 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.

People v. Jambour, 729 N.W.2d 569 (Mich. Ct. App. 2007). I granted a motion in limine to exclude certain fingerprint evidence (white fingerprint cards) on the grounds that it had not been properly authenticated under MRE 901. The fingerprint technician died before trial; the People called an officer who had been present at the crime scene. He testified that he had observed the technician processing black fingerprint cards, which ultimately were determined to bear the prints of someone other than Defendant. Based on the lack of evidence establishing that the technician had processed white fingerprints cards at the scene, I excluded the evidence and dismissed the case. On appeal by the People, the Court of Appeals affirmed. 717 N.W.2d 889 (Mich Ct. App. 2006). The Michigan Supreme Court reversed the Court of Appeals, finding that the fingerprints had been sufficiently authenticated. 720 N.W.2d 746 (Mich. 2006). On remand, the Court of Appeals reversed the dismissal order on issues on which I had not ruled. 729 N.W.2d 569 (Mich Ct. App. 2007).

People v. Mullen, 762 N.W.2d 170 (Mich. Ct. App. 2008). Defendant was charged with operating a vehicle under the influence of liquor. He moved to exclude the result of a blood alcohol test on the grounds that the blood draw was

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00921 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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secured based on a warrant that was not supported by probable cause. After conducting an evidentiary hearing, I found that the officer's affidavit in support of the warrant intentionally and/or recklessly contained misrepresentations and I granted defendant's suppression motion. On appeal, the Court of Appeals reversed. 762 N.W.2d 170 (Mich Ct. App. 2008), finding that, although none of my factual findings was clearly erroneous, the officer's misrepresentations and omissions were not material.

Smith v. Khouri, 751 N.W.2d 472 (Mich. 2008) . In this dental malpractice action, I awarded reasonable attorney fees as case evaluation sanctions to Plaintiff, to which he was entitled following his success at trial. The Court of Appeals affirmed in an unpublished decision. 2006 WL 3333669 (Mich. Ct. App. Nov. 16, 2006). In a 4-3 decision, the Supreme Court reversed, announcing a new analysis for the determination of reasonable attorney fees. 751 N.W.2d 472 (Mich. 2008).

Perrelli v. Secretary of State. I had reversed the Driver's License Appeal Division's revocation of petitioner's driver's license on a due process violation in that there had been inadequate notice of the nature of the hearing. In an unpublished decision on April 29, 2005 (docket no. 260424), the Michigan Court of Appeals reversed, stating without explaining, that petitioner had contributed to the error.

Zavradinos v. JTRB, Inc., 753 N.W.2d 60 (Mich. 2008). I had found that a brokerage account established by a husband and wife was created as a joint tenancy with rights of survivorship, rather than as a tenancy by the entireties. In a 2-1 decision, the Michigan Court of Appeals reversed, holding that Plaintiff had not overcome the presumption in favor of entireties ownership. 2007 WL 2404612 (Mich. Ct. App. Aug. 27, 2007). In a 4-3 order, the Michigan Supreme court denied the application for leave to appeal. 753 N.W.2d 60 (Mich. 2008).

People v. Shelton, 2006 WL 1085242 (Mich. App. Ct. Apr. 25, 2006). Appeal of a sentencing guideline decision. The Michigan Court of Appeals vacated the sentence and remanded for resentencing because, after sentencing, the Michigan Supreme Court overruled the Michigan Court of Appeals precedent on which I had relied. 2006 WL 1085242 (Mich. App. Ct. Apr. 25, 2006).

McManigal v. Levosinski, 2009 WL 250314 (Mich. Ct. App. Feb. 3, 2009). After I had denied summary disposition to Defendant, finding that Plaintiff had established under the no-fault law his entitlement to recovery of noneconomic loss for "serious impairment of an important body function," the Michigan Court of Appeals reversed, finding Plaintiff suffered no serious impairment, even though Plaintiff's doctor had attested that Plaintiff would likely suffer life-long pain and that Plaintiff testified that he could not perform routine household chores. 2009 WL 250314 (Mich. Ct. App. Feb. 3, 2009). The Michigan Supreme

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00922 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Court is holding the application for leave to appeal in abeyance, pending its decision in another case. 769 N.W. 2d 905 (Mich. 2009).

Hall v. Pontiac School District, 2006 WL 2987702 (Mich. Ct. App. Oct. 19, 2006). I had denied summary disposition to the school district, rejecting its claim of governmental immunity, where the individual defendant (the district's general counsel and human resources director) had allegedly falsely informed Plaintiff's disability insurer that Plaintiff was not truly disabled. The Michigan Court of Appeals reversed, finding that the individual defendant was engaged in a governmental function of preventing abuse of the medical leave policy, even though Plaintiff's disability policy was not purchased through the district. 2006 WL 2987702 (Mich. Ct. App. Oct. 19, 2006).

People v. Nouri, 2009 WL 3199532 (Mich. Ct. App. Oct. 6, 2009). I granted Defendant's motion for a new trial based on ineffective assistance of counsel and denial of the right to testify. The Michigan Court of Appeals initially denied the People's application for leave to appeal. In lieu of granting the People's application for leave to appeal, the Michigan Supreme Court remanded the case to the Court of Appeals as if on leave granted. 766 N.W.2d 808 (Mich. 2009). The Michigan Court of Appeals then reversed the grant of a new trial. 2009 WL 3199532 (Mich. Ct. App. Oct. 6, 2009). Defendant's application for leave to appeal to the Michigan Supreme Court was denied. 2010 WL 322194 (Mich. Jan. 27, 2010).

Al-Naimi v. Foodland Distributors, Inc., 773 N.W.2d 904 (Mich. 2009). After I granted summary disposition against the judgment creditor, the Michigan Court of Appeals affirmed. 2009 WL 1564956 (Mich. Ct. App. June 2, 2009). The Michigan Supreme Court reversed, adopting the dissenting opinion in the Court of Appeals, which was based on arguments never presented to the trial court. 773 N.W.2d 904 (Mich. 2009).

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 custom of the Oakland County Circuit Court is not to publish opinions. Written decisions are maintained by the Clerk of the Court in the relevant case files, either in paper form or electronic form. I also maintain paper copies of some opinions in my chambers.

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.

People v. Nouri, No. 07-218065-FC, slip op. (Oakland Cir. Court, Jan. 21, 2009). On appeal, *People v. Nouri,* 766 N.W.2d 808 (Mich. 2009) (remanded to

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Michigan Court of Appeals) and reversed *People v. Nouri,* 2009 WL 3199532 (Mich. Ct. App. Oct. 6, 2009).

People v. Hicks, No. 08-218786-FH, slip op. (Oakland Cir. Court, Mar. 17, 2008).

People v. Gallusser, No. 07-213137-FH, slip op. (Oakland Cir. Court, June 25, 2007).

People v. James, No. 08-219528-FH, (Oakland Cir. Court, Apr. 18, 2008).

People v. Nguyen, No. 05-204358-FH, (Oakland Cir. Court, Jan. 31, 2007).

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:

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.

Our court does not have an automatic recusal system. Pursuant to court rule, for the first two years following my appointment to the circuit court, I automatically disqualified myself from any case where my former firm, Honigman Miller Schwartz and Cohn, appeared as counsel. Thereafter, in any case where my former firm appeared, I disclosed to the parties, in writing, that I receive payments from my former firm pursuant to the firm's partnership agreement. I notify the parties that I will disqualify myself unless the parties stipulate that I remain on the case.

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Other than cases in which my former firm appeared as counsel, the only cases I recall recusing myself sua sponte are the following:

In *Deangelis v. Kirsch*, Oakland County Circuit Court Case No. 03-047042-NH, I recused myself because I was a personal friend of one of the parties.

In *Cotton v. Kirsch*, Oakland County Circuit Court Case No. 09-099788-CZ, I recused myself because I was a personal friend of one of the parties.

In *Lichterman v. ITEC*, Oakland County Circuit Court Case No. 09-098423-CK, I recused myself because of personal knowledge of facts.

In *Pontiac City v. Pelmar Investments*, Oakland County Circuit Court Case No. 06-074803-NZ, I disqualified myself because a member of our bench with whom I am friendly was a material witness in the case.

The only cases I recall where I have been asked to recuse are:

In *Machining Enterprises, Inc v. Wausau Business Insurance Co*, Oakland County Circuit Court Case No. 04-056594-CK, Plaintiff filed a motion seeking my disqualification in an insurance coverage case under MCR 2.003(B), which requires disqualification where the judge was member of a firm representing a party within the preceding two years. The Honigman firm (where I had been a partner within the preceding two years) represented General Motors in the underlying litigation. GM was not a party to the insurance coverage dispute and the Honigman firm did not appear in the insurance coverage action. I denied the motion to disqualify. Chief Judge Potts denied the motion, as well, and the Court of Appeals affirmed the denial in an unpublished decision (Court of Appeals Docket no. 277950), decided December 16, 2008.

In *Fogel v. The Akiva Hebrew Day School*, Oakland County Circuit Case No. 06-074386-NO, I informed counsel for both parties, *sua sponte*, that I had certain contacts with the defendant-school. My nephews and a niece attended the school, and I had made minor charitable contributions to the school. Plaintiff then filed a motion to disqualify. After conducting a hearing, but before I had ruled on the motion, Plaintiff decided to withdraw the recusal motion, so no ruling was required.

In *Entech Personnel Services v. Feliciano Transport*, Oakland County Circuit Case No. 02-042875-CZ, Plaintiff filed a motion for disqualification, claiming I was biased. I held a hearing and denied the motion because I was not biased.

In *People v. Kamp*, Oakland County Circuit Case No. 08-223473-FH, Defendant filed a motion for disqualification alleging that I had conducted ex parte discussions with a court-appointed psychologist who had evaluated Defendant in connection with sentencing. I conducted a hearing and denied the motion on the grounds, inter alia, that Defendant had consented to the contact.

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In *Turcas v State Farm Ins. Co.*, Oakland County Circuit Case No. 07-084832-NF, Plaintiff sought disqualification, claiming I had personal knowledge of evidentiary facts. Based on the motion papers, I denied the motion as I had no such knowledge.

In *Hartford Ins. Co. v Professional Temperature Heating and Air Conditioning, Inc.*, Oakland County Circuit Case No. 09-098423-CK, Defendant sought to disqualify me based on my involvement with a charitable organization. After a hearing, I denied the motion because the charitable organization was not a party to the action and, having been paid under the insurance policy at issue, it did not stand to gain or lose based of any outcome in the case. Further, any familial relationship I had with the organization's executive director was beyond the degree of consanguinity that would require disqualification under the court rule.

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 public office other than judicial office. I have not had any 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.

Michigan Democratic Party, Member (various years 1987-2008).

Stabenow for U.S. Senate, Chair, Lawyers for Stabenow (2000) and Finance Committee Member (2000). Granholm for Governor, Finance Committee (2002). Friends of Senator Carl Levin, Chair, Lawyers for Carl Levin (2002).

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 have not served as a clerk to a judge.

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

From 1980-1987, I was a sole practitioner at various addresses (29610 Middlebelt #1301 Farmington Hills, Michigan 48334; 755 W. Big Beaver Rd., Troy, Michigan 48084; and 280 N. Woodward #407 Birmingham, Michigan 48009).

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 – 1980
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, New York 10019
Litigation Associate

1987 – 2004
Honigman Miller Schwartz and Cohn
2290 First National Bldg.
Detroit, Michigan 48226
Associate (1987 – 1988)
Partner (1988 – 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.

At some point in the 1980s, I served as a court-appointed mediator for the 45B District Court. I do not recall, and do not have access to, any of the matters I may have mediated.

b. Describe:

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

After law school, from 1979 to 1980, I was litigation associate at the New York firm of Paul, Weiss Rifkind, Wharton & Garrison, specializing in securities, antitrust, and other commercial matters. After my return to Michigan, I was a sole practitioner from 1980 to 1987, with my practice divided roughly 25% criminal and 75% civil. The criminal cases primarily were felonies. My civil matters were mostly business litigation, including partnership disputes, real estate, debtor/creditor and tax matters. When I joined the Honigman firm in 1987, I began to specialize in the

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areas of environmental law, insurance coverage, real estate and general commercial matters. I continued to handle occasional criminal matters. Throughout my years in private practice years, although my practice included all phases of litigation, I placed special emphasis on appellate work. I appeared in federal and state trial and appellate courts at all levels and in military appellate courts. I have presided over criminal and civil matters since I was appointed to the state trial bench in 2004.

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

During my years at the Paul, Weiss firm, my clients typically were large corporations. While I was a sole practitioner, my typical clients were individuals and small businesses. When I joined the Honigman firm in 1987, my typical clients were individuals, small businesses and large corporations.

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.

Throughout my career, my practice has been essentially 100% litigation. I appeared in court frequently.

i. Indicate the percentage of your practice in:
   1. federal courts: 45%
   2. state courts of record: 45%
   3. other courts: 0%
   4. administrative agencies: 10%

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 tried 10 cases to judgment. I was sole counsel in five, lead counsel in two, and co-counsel in three.

i. What percentage of these trials were:
   1. jury: 10%
   2. non-jury: 90%

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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 assisted in the preparation and filing of the Brief of Amicus Curiae Michigan Governor Jennifer M. Granholm in *Grutter v. Bollinger* and *Gratz v Bollinger*, U.S. Supreme Court Case Nos. 02-241 and 02-516. The amicus brief appears at 2003 WL 399363 (Feb. 14, 2003). I prepared and filed Petitions for Writ of Certiorari on behalf of my clients in *Futernick v. Sumpter Township*, 78 F3d 1051 (6th Cir. 1996); *United States v. Robinson*, 26 M.J. 361 (1988); *Even v. United States*, 83-1319 (6th Cir. 1983); and *United States v. Williams,* 704 F2d 315 (6th Cir. 1983).

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. *Donahey v. Bogle*, Case No. 87-74771 (E.D. Mich.). I represented defendant Bogle, a land owner who was sued by her land vendee under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") seeking recovery of response costs for investigative and remedial work as a result of contamination caused by Bogle's corporate tenant, St. Clair Rubber Co. Additionally, Plaintiff sought rescission of the land contract on grounds of misrepresentation and mistake. Mrs. Bogle denied any liability for response costs; cross-claimed against St. Clair Rubber Co. and its sole shareholder, Seabourn Livingstone under CERCLA; and counter-claimed against Plaintiff for specific performance of the land contract. After Mrs. Bogle's motion to dismiss was granted in part, the district court conducted a two-and-a-half week trial in April 1991 on the issue of CERCLA liability and the land contract issue. The trial court entered a judgment in favor of Mrs. Bogle on the CERCLA claim and awarded her specific performance of the land contract. The United States Court of Appeals for the Sixth Circuit affirmed in part and reversed in part. *Donahey v. Bogle*, 987 F.2d 1250 (6th Cir. 1993) The Supreme Court of the United States vacated the judgment and remanded for a determination of whether attorney fees

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were recoverable under CERCLA at all in the circumstances of the case. *Donahey v. Bogle,* 512 U.S. 1201 (1994). The case was re-argued before a new panel of the Sixth Circuit in 1995 and then re-argued *en banc.* In its en banc decision, the Sixth Circuit reinstated the prior panel decision in part, vacating certain rulings. *Donahey v. Bogle,* 129 F.3d 838 (1997). The Supreme Court then vacated the judgment and remanded for consideration of certain issues. *Donahey v. Bogle,* 524 U.S. 94 (1998). After remand, the case settled. I was chief trial counsel, prepared all appellate briefs, and argued all matters on appeal, which included three arguments before the Sixth Circuit, including the *en banc* argument. My client waived filing briefs in the Supreme Court; other parties handled the proceedings before the Supreme Court.

My co-counsel included Jay E. Brant and Daniel G. Helton, then my colleagues at Honigman Miller Schwartz and Cohn in Detroit. Both have since left the firm. Plaintiff's counsel was Herbert G. Sparrow , Dickinson, Wright, One Detroit Center, 500 Woodward Ave. #4000, Detroit, MI 48226 (313-223-5000). Third-party defendant St. Clair Rubber Co. was represented by C. Berry Wetherinton, then with Plunkett & Cooney, now with C. Berry Wetherington & Associates, P.O. Box 6, Birmingham, MI 48312 (248-631-6330). Seabourn Livingstone was represented by Henry N. Carnaby, then with Bodman, now with Continental Airlines, 1600 Smith, Fl 20, HQSHR, Houston TX 77002 (713-324-5322). The presiding judge was U.S. District Judge Lawrence P. Zatkoff.

2. *Bronson Plating Co. v. Michigan Millers Mutual Ins. Co.*, Case No. 86-09504-CK (Branch County (Mich.) Circuit Court). I represented Bronson Plating Co. in a significant insurance coverage action against ten insurance companies for declaration of coverage for environmental claims made by the EPA and the MDNR. The trial court dismissed the action, concluding that there was no "suit" because the EPA had only sent the insured a potentially responsible party letter ("PRP letter"), but had not filed a complaint in a court of law. On appeal, the Michigan Court of Appeals reversed, agreeing with our contention that a PRP letter is the functional equivalent of a complaint filed in a court of law, because legal prejudice can result from ignoring a PRP letter. 496 N.W.2d 373 (Mich. Ct. App. 1992). The Michigan Supreme Court agreed, holding that a PRP letter constitutes a "suit" and triggers the insurer's duty to defend. 519 N.W.2d 864 (Mich. 1994). On remand, the trial court granted the insurers' motion for summary disposition on different grounds. The Michigan Court of Appeals affirmed.

   My co-counsel were Jay E. Brant and Daniel G. Helton, then my colleagues at Honigman Miller Schwartz and Cohn in Detroit. Opposition counsel for the insurers included John A. Yeager, Willingham & Cote, 333 Albert Ave. #500, E. Lansing, MI 48833 (517-324-1046)(Michigan Millers Mutual Ins. Co.); Michael B. Ortega, then with Miller, Canfield, now with Lewis Reed & Allen PC, 136 E. Michigan Ave. #800, Kalamazoo, MI 49007 (616-388-7600)(Federal Ins. Co.); W. Mack Faison, Miller, Canfield, 150 W. Jefferson #2500, Detroit, MI 48226

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(313-496-7578) (Federal Ins. Co.); and Myra L. Willis, then with Howard & Howard, now with National City Corp Law Div, 245 N. Rose, Kalamazoo, MI 49007 (269-376-5401)(Auto-Owners Ins. Co.). The trial judge was Michael Cherry.

3. *Arco Industries Corporation v American Motorists Insurance Company*, Case No. A87-0218-CK (Kalamazoo County (Mich.) Circuit Court. I represented plaintiffs Arco Industries Corporation and Frederick C. Matthaei, Jr. in an environmental coverage action against several insurers to obtain defense and indemnity for environmental claims brought against Arco by the State of Michigan. Negotiations with certain insurers brought about settlements totaling over $1.5 million. The case went to trial against the sole non-settling insurer, American Motorists Insurance Company. After a three-week trial in April 1990 before Circuit Court Judge William Schma, the court issued a 48-page ruling finding in our favor. The judgment was for the policy limits, which amounted to $3.5 million. The Michigan Court of Appeals reversed the trial court but the Michigan Supreme Court reversed the Court of Appeals, affirming the trial court's finding and remanding to the intermediate court. 531 N.W.2d 168 (Mich. 1995) ("Arco I"). On remand to the Court of Appeals, that court again reversed the trial court but on a separate issue. 546 N.W.2d 709 (Mich. App. Ct. 1996). The Supreme Court again reversed the Court of Appeals and remanded. 572 N.W.2d 617 (Mich. 1998) ("Arco II"). The Supreme Court decisions in Arco I and Arco II are important decisions in Michigan insurance coverage law. On remand, the Court of Appeals sustained the trial court judgment in favor of Arco, 594 N.W.2d 61 (Mich. Ct. App. 1998), a decision affirmed by the Michigan Supreme Court. 617 N.W.2d 330 (Mich. 2000). I co-tried the case and was principally responsible for drafting the pre-trial and appellate briefs.

   My co-counsel were Jay E. Brant and Daniel G. Helton, then my colleagues at Honigman Miller Schwartz and Cohn. Opposing counsel included T. Andrew Culbert and Paul H. Saint-Antoine, Drinker, Biddle & Reath, 1345 Chestnut Street, Philadelphia, Pennsylvania 19107 (215-988-2700); Kevin J. Moody and Sherry Katz-Crank, Miller, Canfield, Paddock and Stone, One Michigan Ave. #900, Lansing, Michigan 48933 (517-483-4989).

4. *Thomas Solvent Co. v. Auto-Owners Insurance Co.*, Case No. 90-2779-CK (Calhoun County (Mich.) Circuit Court). I represented insured-plaintiff Thomas and his related entities in an environmental insurance coverage action against three insurers, seeking a declaration that the insurers had a duty to defend and indemnify against environmental claims brought by the federal and state governments and private parties. Prior to trial, we successfully negotiated a series of settlements with various insurers that totaled nearly nine million dollars. We proceeded to trial against two insurers, whose policies could not be located. At trial, our task was to reconstruct through secondary evidence the relevant terms of the policies. Trial was conducted over a two-week period in March 1995. The trial court, presided over by Judge Sindt, dismissed our clients' claims, holding

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that it was the insureds' burden is to prove all terms of the policies, whether or not they are relevant to the coverage claim at issue. Because there were potentially numerous riders and endorsements – none of which bore on our coverage claim, but which nonetheless could not be established – our claims were dismissed. The Michigan Court of Appeals affirmed in an unpublished decision in No. 192210 dated May 19, 1998. Our application for leave to appeal was denied by the Michigan Supreme Court.

My co-counsel was Jay E. Brant, then my colleague at Honigman Miller Schwartz and Cohn. Opposing counsel included Myra L. Willis, then with Howard & Howard, now with National City Corp Law Div, 245 N. Rose, Kalamazoo, MI 49007 (269-376-5401); and Lon A. Berke, Wiley, Rein & Fielding, 1776 K Street, N.W. Washington, D.C. 20006 (202-429-7000).

5. *United States v. Robinson*, U.S. Air Force Court of Military Review, ACM 24420. Defendant was a staff sergeant in the United States Air Force, stationed in West Germany, where he was tried and convicted in 1983 by court martial of the murder and rape of a fellow service member. I represented Defendant on appeal. The central issue in the appeal was whether Defendant's rights under the Constitution and the Code of Military Justice were violated when he was interrogated by investigating officers a few months after he had been interviewed by other investigators who had placed Defendant under a hypnotic trance to learn the identity of the perpetrator. The conviction was affirmed by the U.S. Air Force Court of Military Review, 21 M.J. 937 (1986) and by the U.S. Court of Military Appeals, 26 M.J.361 (1988). Certiorari was denied by the Supreme Court of the United States. 488 U.S. 1005 (1989). The significance of the case is that it rejected a per se rule that hypnotically refreshed testimony is inherently unreliable and inadmissible.

   My civilian co-counsel was Clyde B. Pritchard, P.O. Box 250677, Franklin, MI 48025 (248-865-0775) and my military co-counsel were Lt. Col. Richard F. O'Hair and Captain Mark R. Land, last known address: Office of the Judge Advocate General, U.S. Air Force, HG USAF/JAJD, Bldg. 5683, Bolling AFB, DC 20332-6128 (202-767-1562). Opposing counsel were Captain Marc Van Nuys, Lt. Col. Robert E. Giovagnoni, Col. Joe R. Lamport, last known address: Office of the Judge Advocate General, U.S. Air Force (202-767-1546).

6. *Futernick v. Sumpter Township*, 78 F.3d 1051 (6th Cir. 1996). I represented plaintiff Futernick in an appeal from the dismissal by the District Court for the Eastern District of Michigan of his Section 1983 claims against a Michigan state environmental enforcement official who had engaged in selective enforcement of the laws against plaintiff. The U.S. Court of Appeals for the Sixth Circuit affirmed the dismissal. Certiorari was denied by the Supreme Court of the United States. 519 U.S. 928 (1996).

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My co-counsel was Joseph Polito, Honigman Miller Schwartz and Cohn, 2290 First National Bldg., Detroit, MI 48226 (313-465-7000). Opposing counsel was Julie McCann-O'Connor, O'Connor, De Grazia, Tamm & O'Connor PC, 411 Andover Rd., #300E, Bloomfield Hills, MI 48302 (248-433-2000); Christopher Koch, then with O'Connor, De Grazi, now with Lennox International, 2140 Lake Park Blvd., Richardson, TX 75080 (972-497-5215); John C. Scherbarth, Mich. Asst. Attorney General, P.O. Box 30755, Lansing, MI 48909 (517-373-7540); R. Phillip Brown, then with the Office of the Michigan Attorney General, current address unknown.

7. *Theophelis v. United States*, 751 F.2d 165 (6th Cir. 1984). I represented plaintiff Theophelis in an appeal from a grant of summary judgment by the U.S. District Court for the Eastern District of Michigan in favor of the United States on Plaintiff's challenge to his tax assessment by the IRS. The U.S. Court of Appeals for the Sixth Circuit affirmed.

   My co-counsel was Fred Gordon, 115 S. Main St. #300, Royal Oak, MI 48067 (248-546-7600). Opposing counsel were Glenn L. Archer, Jr. and Michael L. Paup, then with the U.S. Attorney's Office, current address unknown; Richard Perkins and John P. Griffin, then with Tax Division, Department of Justice, Washington, D.C., current address unknown.

8. *United States v. Bettley*, Case Nos. 82-1397 and 83-1277 (6th Cir.). On appeal, I represented defendant Bettley, who was convicted by a jury of bank fraud in the U.S. District Court for the Eastern District of Michigan. I argued that the bank fraud statute under which he was convicted did not encompass the check-kiting scheme alleged by the government. The U.S. Court of Appeals for the Sixth Circuit agreed and reversed.

   My co-counsel was Clyde B. Pritchard, P.O. Box 250677, Franklin, MI 48025 (248-865-0775). Opposing counsel was F. William Soisson, 211 W. Fort Detroit, MI 48226 (313-226-9668); Maura Corrigan, then with the U.S. Attorney's Office, now Justice of the Michigan Supreme Court, Hall of Justice, 925 W. Ottawa, Lansing, MI 48909 (517-373-1244).

9. *Even v. United States*, Case No. 83-1319 (6th Cir.). I represented plaintiff Even on appeal from the dismissal of his claim by the U.S. District Court for the Eastern District of Michigan He alleged that he was entitled to judicial review of the Air National Guard's decision to terminate his civilian employment with the Guard. The U.S. Court of Appeals for the Sixth affirmed the dismissal. Certiorari was denied by the United States Supreme Court. 469 U.S. 1086 (1984).

   My co-counsel was Clyde B. Pritchard, P.O. Box 250677, Franklin, MI 48025 (248-865-0775). Opposing counsel was Assistant U.S. Attorney L. Michael Wicks

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10. *United States v. Williams*, 704 F.2d 315 (6th Cir 1983). On appeal, I represented defendant Williams, who was convicted by a jury in the U.S. District Court for the Eastern District of Michigan for attempted possession of cocaine. The question on appeal was whether compelling the Defendant to speak at his trial – so that a witness who had allegedly heard him on the phone could identify his voice – violated Defendant's Fifth Amendment right to remain silent. The U.S. Court of Appeals for the Sixth Circuit affirmed the conviction. Certiorari was denied by the Supreme Court of the United States. 464 U.S. 991 (1983).

    My co-counsel was Clyde B. Pritchard, P.O. Box 250677, Franklin, MI 48025 (248-865-0775). Opposing counsel: was Ellen Dennis, then with the U.S. Attorney's Office, now at Law Offices of Ellen Dennis, 101 S. Ann Arbor St. #203A, Saline, MI 48176 (734-944-5819) and Elizabeth Wild, then with the U.S. Attorney's Office, now an assistant Berrien County prosecutor, 811 Port, St. Joseph, MI 49085 (269-983-7111).

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.)

    Outside of litigation, my most significant legal activity has been my involvement with the Federal Bar Association. I served as president of the Eastern District of Michigan chapter from 2007 to 2008, launching several innovative programs. I launched a diversity task force, which culminated in a report addressing ways to attract minority lawyers to federal practice. I also spearheaded a "Careers in Justice Day," which brought judges, lawyers and law enforcement personnel to area schools in disadvantaged neighborhoods, to inform students of career opportunities in the justice system. I also developed a mentoring program for young lawyers to enhance their courtroom skills, by inviting seasoned practitioners and judges to teach and critique their performances. I created a book club for the bench and bar, through which books on legal themes were read and discussed. During my presidential year, our chapter won five national FBA awards for excellence in programming and activities.

    Through the FBA, I also was able to discharge my pro bono responsibilities. I chaired or co-chaired the pro bono committee or served as officer liaison from 2001 to 2007. In that capacity, I helped develop seminars for teaching lawyers substantive and practice skill sets to assist pro bono clients. I also engaged in direct representation of pro bono clients.

    Another significant activity was my involvement with the Inn of Court program of the Oakland County Bar Association from 2004 to 2007. I mentored young lawyers through simulated court performances and other instructional techniques. Both technical skills and ethical challenges were addressed.

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Other significant legal activity in which I have engaged includes litigation touching on a variety of diverse subject matters. For example, in *Sunterra v. AlixPartners LLC*, I co-tried a matter before a New York AAA arbitration panel, resulting in dismissal of a $2.6 million claim against our client and an award of $225,000 in attorney fees. I handled expert witness issues concerning D&O insurance procurement practices and claims handling in bankruptcy. In *Andries v. Fleet-Car Lease, Inc.*, No. 99-Civ-71002 (E.D. Mich.), I tried a breach of contract claim that raised complex stock valuation issues, resulting in a jury verdict of no cause of action in my client's favor. In an administrative environmental matter, *In re: Part 301, Inland Lakes and Streams, and Part 303, Wetland Protection of the Natural Resources and Environmental Protection Act, Petition of Concerned Area Residents Speak (CARS) on the permit issued to GGP-Grandville, LLC, File No. 96-09-640*, I tried a contested case proceeding before a Michigan Department of Environmental Quality administrative law judge in which my client unsuccessfully challenged issuance of a wetlands permit. In *In Re Motion for Leave to Sue the Receiver of Venus Plaza Shopping Center*, 579 N.W.2d 99 (Mich. Ct. App. 1998), I wrote the briefs and argued in both the trial court and the appellate court, resulting in successfully defending a receiver from a claim of personal liability where there was no allegation of bad faith against the receiver. In *United States v. Griffin*, 1988 WL 9164 (6th Cir. Feb. 9, 1988), I wrote the briefs and argued in appellate court, securing remand from the Court of Appeals for the Sixth Circuit on the basis of insufficient district court rulings on evidentiary objections at my client's counterfeiting trial. In *45-B District Judge v. Oakland County Circuit Judge,* (Mich. Ct. App. No. 98541, Jan. 13, 1988), I wrote the brief and presented argument in the Michigan Court of Appeals, successfully challenging the Oakland County Circuit Court's policy of remanding to district courts all condemnation cases mediated under $10,000. In *Centaur Management Co. v. UAW-GM Legal Services Plan*, (Mich. Ct. App. No. 198326, Aug.21, 1988), a breach of commercial lease and tortious interference case that was filed in Eaton County (Mich.) Circuit Court, I wrote the appellate brief and argued in the Michigan Court of Appeals, securing a reduction worth nearly one million dollars to client from a damage award.

I have not provided lobbying activities on behalf of a 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.

    During the fall semester in 1998 and 2001, I served as an adjunct instructor at Wayne State University Law School, teaching Pretrial Advocacy. The course covered all aspects of pre-trial litigation.

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

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

Under the partnership agreement with my former firm Honigman Miller Schwartz and Cohn, I receive a monthly payment of $4,487.90, which will continue until August 2012.

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 if I am confirmed as a district judge. While I will always put court work first, I may wish to teach legal courses or seminars, as appropriate, from time to time.

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 anticipate recusing myself from any petition for review of a conviction for which I entered judgment while serving on the Oakland County Circuit Court. I do not foresee any recurrent basis for disqualification, except possibly in connection with matters in which my former firm is counsel for a party. If confirmed, I will carefully review and address any real of potential conflicts in accordance with the Code of Conduct for United States Judges and all laws, rules, and practices governed by such circumstances.

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

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If confirmed, I will carefully review and address any real or potential conflicts in accordance with the Code of Conduct for United States Judges and all laws, rules, and practices governed by such circumstances. I also will seek the advice of colleagues and of the Judicial Conference as needed.

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 discharged my pro bono obligation in a number of ways. I have acted as the pro bono chair, co-chair and/or the officer liaison to that committee for our local Federal Bar Association chapter for approximately seven years. In that capacity, I have worked with the district court's pro bono committee, chaired by U.S. District Judge Hood, to conduct seminars in how to handle pro bono matters and to assist in locating others to handle pro bono matters. These activities have consumed dozens of hours every year. In addition, I have personally handled pro bono matters for the federal district court, representing prisoners in cases challenging prison conditions. These actions also typically have consumed a significant amount of time. Because of my commitment, I received certificates of appreciation from the Court in 1997 and 2003.

As just one example, my last pro bono case before my appointment to the bench consumed well over 200 hours in 2003-2004. In that action, I represented a prisoner who claimed his right to practice his religion was infringed by prison officials who had stripped him of several years of good time because he refused orders to work on his holy days. The case was ultimately concluded by way of a settlement in which the prisoner regained substantially all of his good time credit.

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 30, 2009, I submitted an application to the judicial advisory committee established by Sen. Carl Levin and Sen. Debbie Stabenow. I was interviewed by the committee on May 26, 2009 and was selected to be recommended to the Senators. I was informed by the Senators on June 9, 2009 that they intended to recommend me to the President for appointment to the federal district court

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bench. Since July 2009, I have been in contact with pre-nomination officials at the Department of Justice. On November 2, 2009, I was interviewed by representatives of the Justice Department and the White House Counsel's Office. On February 3, 2010, Sen. Levin called me. The President submitted my nomination to the Senate on February 4, 2010.

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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FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Goldsmith, Mark A.	U.S. District Court for the Eastern District of Michigan	2/5/2010
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type** (check appropriate type)	**6. Reporting Period**
District Judge - Nominee	☑ Nomination, Date 2/4/2010 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2009 to 1/31/2010
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
1200 N. Telegraph Road Pontiac, MI 48341	Reviewing Officer_____ Date_____	

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

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

☐ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. Member of executive board of directors	Wayne State University Center for the Study of Citizenship
2. Member of board of directors	American Constitution Society, Michigan lawyers chapter
3. President	Federal Bar Association, E.D. Mich. chapter
4. Circuit Judge	Oakland County, Michigan
5. Vice President for Religious Affairs	B'nai B'rith Barristers

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

☐ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1. 2004	Agreement with Honigman Miller Schwartz and Cohn (former firm) re separation from firm; receive $4,487.90/mo until 08/2012
2. 2004	Honigman Miller Schwartz and Cohn Income Deferral and Profit Sharing Plan
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting	Date of Report
	Goldsmith, Mark A.	2/3/2010

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

A. Filer's Non-Investment Income

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

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2010	State of Michigan/Oakland County -- wages	$13,252.83
2. 2010	Honigman Miller Schwartz and Cohn separation agreement	$8,975.80
3. 2009	State of Michigan/Oakland County -- wages	$139,919.00
4. 2009	Honigman Miller Schwartz and Cohn separation agreement	$53,854.80
5. 2008	State of Michigan/Oakland County -- wages	$139,919.00
6. 2008	Honigman Miller Schwartz and Cohn separation agreement	$53,856.00

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

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

DATE	SOURCE AND TYPE
1. 2010	self-employed social worker
2. 2010	Ann Taylor Retail, Inc. sales associate
3. 2009	self-employed social worker
4. 2009	Ann Taylor Retail, Inc. sales associate

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

☐ NONE *(No reportable reimbursements.)*

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. Exempt				
2.				
3.				
4.				
5.				

FINANCIAL DISCLOSURE REPORT Page 3 of 7	Name of Person Reporting Goldsmith, Mark A.	Date of Report 2/3/2010

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

☐ NONE *(No reportable gifts.)*

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

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☐ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.	GMAC	Car leases	J
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 7

Name of Person Reporting	Date of Report
Goldsmith, Mark A.	2/3/2010

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period: (1) Amount Code 1 (A-H)	B: (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period: (1) Value Code 2 (J-P)	C: (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period: (1) Type (e.g., buy, sell, redemption)	D: (2) Date Month - Day	D: (3) Value Code 2 (J-P)	D: (4) Gain Code 1 (A-H)	D: (5) Identity of buyer/seller (if private transaction)
1. AIM Charter (IRA-Brok Acct # 1)	A	Dividend	L	T	Exempt				
2. Calamos Growth (IRA-Brok Acct #1)		None	K	T					
3. Fidelity Contra (IRA-Brok Acct #2)	A	Dividend	K	T					
4. Fidelity Int'l Discovery (IRA-Brok Acct #2)	A	Dividend	K	T					
5. Fidelity Int'l Small Cap (IRA-Brok Acct #2)	B	Dividend	K	T					
6. Fidelity Cash Reserves (IRA-Brok Acct #2)	A	Dividend	J	T					
7. TRowePrice Growth (401-K-Brok Acct #3)		None	M	T					
8. Van Kampen Growth & Income (401-K-Brok Acct #3)		None	N	T					
9. JP Morgan Small Cap Value Select (401-K-Brok Acct #3)		None	M	T					
10. Vanguard Mid-Cap Index (401-K-Brok Acct #3)		None	M	T					
11. SsgA Russell 2000 Index (employer 401-K)		None	L	T					
12. Pacific One Variable Annuity		None	K	T					
13. TRowePrice Blue Chip Growth	A	Dividend	K	T					
14. Barron Asset (Brok Acct #4)	A	Dividend	L	T					
15. Fidelity Int'l Discovery (Brok Acct #4)	A	Dividend	J	T					
16. Janus Enterprise (Brok Acct #4)		None	J	T					
17. Janus 20 (Brok Acct #4)	A	Dividend	L	T					

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

FINANCIAL DISCLOSURE REPORT
Page 5 of 7

Name of Person Reporting	Date of Report
Goldsmith, Mark A.	2/3/2010

VII. INVESTMENTS and TRUSTS — *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
18. Managers Fremont Microcap (Brok Acct #4)		None	M	T					
19. Vanguard 500 Index	B	Dividend	L	T					
20. Fidelity Muni Money (UGMA-Brok Acct #5)	A	Dividend	J	T					
21. Ishares TR S&P 500 Index (UGMA-Brok Acct #5)	A	Dividend	J	T					
22. TIAACREF 100% Equity (UGMA-529)		None	L	T					
23. Ann Taylor Stores Corp common stock		None	J	T					
24. Fidelity Cash Reserves (IRA-Brok Acct #6)	A	Dividend	J	T					
25. Life insurance (surrender value)		None	J	T					
26. Congregation Beth Shalom Bond	A	Interest	J	T					
27. Israel Bonds		None	J	T					

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

FINANCIAL DISCLOSURE REPORT Page 6 of 7	Name of Person Reporting	Date of Report
	Goldsmith, Mark A.	2/3/2010

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

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting	Date of Report
	Goldsmith, Mark A.	2/5/2010

IX. CERTIFICATION.

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

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

Signature

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		5	500	Notes payable to banks-secured			
U.S. Government securities-add schedule		1	000	Notes payable to banks-unsecured			
Listed securities-add schedule	1	548	972	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		130	531
Real estate owned-add schedule		400	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		50	000	Fidelity Margin		15	980
Cash value-life insurance			682				
Other assets itemize:							
Cong. Beth Shalom		5	000				
Israel Bonds			377				
				Total liabilities		146	511
				Net Worth	1	865	020
Total Assets	2	011	531	Total liabilities and net worth	2	011	531
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you a defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

U.S. Government Securities	
Series EE Bonds	$ 1,000
Listed Securities	
AIM Charter Fund Class A	$ 56,659
Calamos Growth Fund Class C	43,274
T Rowe Price Blue Chip Growth	16,843
T Rowe Price Growth	242,471
Van Kampen Growth and Income	235,809
JP Morgan Small Cap Value Select	123,812
Vanguard Mid Cap Index	128,715
Janus 20 Class J	63,564
Barron Asset Fund	51,937
Fidelity Int'l Discovery	53,400
Janus Enterprise Fund Class J	6,498
Managers Fremont Micro Cap	136,209
Fidelity Mich Muni Money Market	367
IShares TR S&P 500 Index	3,935
Fidelity Cash Reserves	7
Fidelity Contrafund	44,919
Fidelity Int'l Small Cap	45,878
Vanguard 500 Index Fund Admiral Shares	93,594
529 TIAACREF 100% Equity	88,081
SSgA Russell 2000	83,429
Pacific Life One Variable	27,475
Ann Taylor Stores Corp common stock	1,980
General Electric Common Stock	116
Total Listed Securities	$ 1,548,972
Real Estate Owned	
Personal residence	$ 400,000
Real Estate Mortgages Payable	
Personal residence	$ 130,531

AFFIDAVIT

I, Mark A. Goldsmith, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

2/8/10
(DATE)

(NAME)

Karen L. Russ Koshen
(NOTARY)
Karen L. Russ Koshen

Subscribed and sworn to before me, a Notary Public, in and for the County of Oakland, acting in Oakland County, State of Michigan, on the 8th day of February, 2010.

Karen L. Koshen
Notary Public, Oakland, County, Michigan
My commission expires: 10-07-12

Well, I guess I'll start with some questions. First, Judge Tucker, as Senator Feinstein mentioned, before you started serving as a judge you were an employment lawyer for many years, I believe were named the Employment Lawyer of the Year at one point by some august organization. In fact, for 6 years you even co-chaired your firm's employment law department. In your capacity as an employment lawyer, you helped many corporate clients draft employment agreements and other employee documents.

Now, given your experience in employment law, I'm interested in your opinion of mandatory arbitration as a condition of employment contracts. When is mandatory arbitration in employment contracts appropriate and when is it not appropriate, in your opinion?

Judge TUCKER. Thank you for that question, Senator. Probably it is best answered by explaining, as a judge, now that I'm a judge and have been for the last 7 years, how I address mandatory employment arbitration agreements that come before me.

They are treated very similar to other mandatory arbitration agreements outside the employment context. What I do as a judge, is I look to precedential decisions, to decisions of higher courts, which tell me to determine whether the agreement, for example, is substantively unconscionable or procedurally unconscionable.

I look to issues of waiver, whether one party or the other has waived the right to arbitration. And in some instances under California law, I am required to hold an evidentiary hearing to determine, for example, whether the agreement was—is—is fair, in essence. That's what substantive, unconscionability and procedural unconscionability address.

I apply the law, the contours of those doctrines to the facts at hand, and in some instances enforce the arbitration agreement and in other instances do not. But it all depends upon the particular facts and how they relate to the governing law.

Senator FRANKEN. In your experience, are there some kinds of cases where—you're talking about things that are unconscionable, where it would simply be unconscionable to go back to the mandatory arbitration agreement. Sometimes are you taking into account that the plaintiff is at a disadvantage in court or are you taking it that the complaint is outside the scope of a normal employment situation that's covered by arbitration?

Judge TUCKER. I would take into account all of the relevant facts. Sometimes the relevant facts have to do with how the agreement was crafted. Sometimes they have to do with the scope of the arbitration agreement, in which case I have to look carefully at the language of the arbitration agreement.

But I am guided by precedent essentially when it comes to determining whether a particular agreement would be substantively unconscionable or procedurally unconscionable. There is case law that would guide me in that determination.

Senator FRANKEN. Thank you.

Ms. Foote, you were co-chair of the Louisiana State Bar Association's Hurricane Katrina and Rita disaster relief efforts. I want to commend you for your extremely valuable work.

How has that experience of doing disaster-related legal work shaped your view of the judicial system?

Ms. FOOTE. Thank you, Senator. Being Bar president and my work with the disaster Committee gave me both a macro and micro view of the judicial system—macro in the sense that you became familiar with big-picture issues like access to justice. The disaster relief Committee put together a call center that handled over 14,000 distinct clients.

Since that time—since that time we have formed a nonprofit corporation on which I serve on the board, and we have used that call center to be a point of access for legal services throughout the State of Louisiana. So, that's a big-picture issue. Also, my experience with the Bar has given me the perspective of the lawyers and what lawyers want out of the judicial system.

Senator FRANKEN. Thank you. It appears my time is up, and I'll turn it over to the Ranking Member.

Senator SESSIONS. Thank you.

Mr. Jackson, I see you've been—I guess it's Judge Jackson.

Mr. JACKSON. Well, not just yet.

Senator SESSIONS. Not yet?

Mr. JACKSON. I believe that's an error.

Senator SESSIONS. That's an error. Premature.

Mr. JACKSON. Right.

Senator SESSIONS. But you're looking good, I have to tell you.

[Laughter.]

Senator SESSIONS. I wouldn't issue any opinions or declaratory judgments yet, but I think you've got a good background.

Mr. JACKSON. Well, thank you.

Senator SESSIONS. I respect Assistant U.S. Attorneys that do a lot of Federal court practice, and they're familiar with it in some depth. You've been First Assistant, which indicates people respect your leadership skills and judgment. First Assistants are pretty solid people.

Mr. JACKSON. Thank you, Judge. Senator.

Senator SESSIONS. They have the respect of their peers. We've had—you've seen the law change with regard to sentencing guidelines.

Mr. JACKSON. Yes, Senator, I have.

Senator SESSIONS. We've got a number of people here that have not dealt with the sentencing guidelines. I guess you've seen them up close and personal. What kind of deference, in light of the Supreme Court decision that eliminated, for the most part, I guess, the mandatory nature of it—what—how do you feel like a good judge should approach the guidelines and what kind of deference should they be given in any decision you might render?

Mr. JACKSON. Well, Senator, as you know, I have served as both a Federal prosecutor and a defense attorney, practicing in the Federal system, so I am indeed very familiar with the Federal sentencing guidelines. I appreciated the guidelines for providing the kind of uniformity and certainty I think the Congress was seeking when it—when it enacted the guidelines, and that the Sentencing Commission has tried very hard to—to promulgate over—over time.

I will tell you that I agree that the guidelines are presumptively reasonable. I think they provide a great service, not only to judges, but also to litigants, defendants. If I am confirmed, I will tell you that I intend to give great deference to the sentencing guidelines.

Again, I realize that that was a bipartisan product that was worked on for several years by the Congress, and again, I think the guidelines have served the defendants and certainly have served the Nation well.

Senator SESSIONS. Yes, it was. I know you had Senator Kennedy, Biden and Leahy, along with Thurmond and Hatch and others on this side of the aisle. It was, from my experience, a major change, but it did definitely eliminate the danger that occurs when two judges, one in one hall of the courthouse and another in another one, give dramatically different sentences for the same offense.

I do think the Sentencing Commission invests a tremendous amount of time in trying to identify what the ranges of sentences should be and they essentially have been in the median area of where good judges have sentenced over the years, I think. So I would encourage you to think about this experience as a prosecutor here.

I won't ask you now, but some people may think that they are just free to, willy-nilly, ignore those guidelines. I think that causes you starting down a slippery slope, Mr. Jackson, because next you'll have a change and change and change, and pretty soon you have no guiding principle on how to have stability in sentencing.

Mr. JACKSON. I couldn't agree more, Senator. Again, they are absolutely essential to the system.

Senator SESSIONS. Do any of you have any opinions that you might not—that you have this day on a concern about the guidelines that would cause you to depart in a more regular way than Mr. Jackson indicated?

[No response].

Senator SESSIONS. Let's see. Mr. Treadwell, you come highly recommended. Senator Chambliss has assured me that you're a capable, skilled attorney. I understand you've been a plaintiff attorney a good bit in your life, which I think is legitimate; I've filed plaintiff suits myself. I guess I would ask you—well, first, I can see from your background you have respect from your peers because you've held a lot of important offices and been selected to do some important things by the Bar. But do you feel like you can give both a corporation that's been sued as well as a plaintiff who is sued, or any other party that comes before the court, a fair and good day in court?

Mr. TREADWELL. I absolutely do, Senator Sessions. In fact, during my career I've represented defendant corporations, appointed criminal defendants. Recently, my practice has centered on representing plaintiffs. I have always been a zealous advocate for whoever my client is. I think that, if anything, that's given me a greater appreciation for the absolute essential impartiality on the part of a judge.

Senator SESSIONS. Well said. My impression is—and see if you agree—that judges that have been good, respected advocates in the courtroom turn out to be pretty good judges on the bench.

Mr. TREADWELL. I would agree with that. I think judges—or lawyers who have spent time in the courtroom like that come to know what type judges they would like to see on the bench and hopefully they can be that type judge.

Senator SESSIONS. I think so.

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Judge Goldsmith, in your investiture remarks, in a speech, you were talking about the formative years of the American Republic. You said, "It was the judiciary that viewed its mission as searching for common ground, while the context was constitutional decisionmaking, statutory interpretation, weaving a fabric of common law." Then you go on to say, "American judges have, in their finest moments, sought to divine and apply the common values of our country to the disputes before them."

In one sense I think that is a statement that does not trouble me, but I would like for you to share with me the extent to which you think a judge's role is to divine the common values and therefore apply them to the decisionmaking process, and how might that conflict with the duty to simply follow the statutory or constitutional mandates that are in place?

Judge GOLDSMITH. Thank you, Senator, for that question.

I believe, as a trial judge, I am going to be bound by the precedents of the Supreme Court of the United States and the Sixth Circuit, if I am confirmed as a U.S. District Judge. I don't think there's any room to be divining anything other than to try to follow scrupulously what the higher courts require me to do in a particular case.

The particular phrase that you were reporting from my investiture remarks really were looking to questions of first impression, where legal matters didn't have any clear guidance from a higher court. That was the context in which I was talking about trying to find common ground to try to build a consensus.

Senator SESSIONS. Well, we have situations that are very real. Sometimes they become cases of first impression, such as two justices on the Supreme Court against the plain words of the document, found that the death penalty was cruel and unusual, when it had multiple references to the death penalty within the document itself in an approving fashion.

We have judges that somehow thought they were finding, I guess, common values when they found that the Constitution guaranteed the right of abortion, or you have the judges who have, in a case of first impression with regard to the EPA's ability to rule on CO_2, concluded that a 1970 Act, when I guess if anything they probably thought the world was cooling then, had no thought about Congress' Act and no thought to eliminate CO_2. But I guess they, for some reason, thought that there was some value in giving—in treating it as a pollutant at this point in time.

So I guess you see, all of you, the concerns some of us have, that feel like a judge has to show discipline on these issues and to be careful. But do your words suggest, and what you say today suggest, that if it's a case of first impression and the answer is not clear, that your goal is to divine the common values, which I guess would be—and then use that to decide the dispute?

Judge GOLDSMITH. Well, I would look to the traditional tools that a judge should look to, which is the binding precedents of the Supreme Court, and in my case it would be the Sixth Circuit. I will try to get what the guidance is from those decisions in making up my mind, even if it were a case of first impression.

Senator SESSIONS. I think you're right. I think even in cases of first impression, if a judge looks carefully, there is some body of au-

thority that can help them reach an objective decision. I do think the danger is—one of our Senators—who is now present, nominated you, of which I know you're appreciative—indicated that in that case of first impression you have a great more freedom than I think is accurate.

Mr. Chairman, our people have—my staff has looked over these nominees' records. I think we feel good about them and their background. We will have some time, but not a lot, before your vote comes up. If people have complaints, they can make them. That's the one opportunity that we have in this whole process for the American people to at least register their views. Then we'll move forward, I think, in each of your cases without any undue delay to a final vote.

I appreciate the Senators who recommended you, and appreciate and give deference to the President's choice. We can't all second-guess the President, and each of you have some very strong things in your background that I think speak well of you.

Thank you.

Senator FRANKEN. Thank you. I'd like to thank the Ranking Member. Thank you for getting to Judge Goldsmith, because his daughter is watching from Israel. So, I'm glad you gave him a little bit of the once-over there.

I'd like to put Chairman Leahy's statement into the record, without objection.

Senator SESSIONS. No objection.

[The prepared statement of Chairman Leahy appears as a submission for the record.]

Senator FRANKEN. Okay. Thank you.

And I'd like to thank you all for being here today, and for your families. I want to thank you, each, for your statements and testimony today. You are all very impressive and very thoughtful individuals. It's really good that folks like you are going to be serving our Nation's courts.

I will hold the hearing record open for 1 week.

The hearing is now adjourned. Thank you.

[Whereupon, at 2:57 p.m. the Committee was adjourned.]

[Questions and answers and a submission for the record follow.]

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QUESTIONS AND ANSWERS

Responses of Elizabeth Erny Foote
Nominee to the U.S. District Court for the Western District of Louisiana
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. For a district court judge, constitutional interpretation is governed by the language of the Constitution and the controlling Supreme Court precedent.

2. **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: In *Gonzales v. Raich*, 545 U.S. 1 (2005), the Supreme Court explained the consistency of *Lopez* and *Morrison* with the court's historical precedent. The Justices noted that the statutes under scrutiny in *Lopez* and *Morrison* did not regulate economic activity. Current Supreme Court precedent interprets the power of the federal government under the Commerce Clause as broad, but not unlimited.

3. **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: Whether or not I agree with Justice Kennedy's analysis, I would be bound by the majority's decision in the case and I would follow it.

   a. **How would you determine what the evolving standards of decency are?**

      Response: If confirmed, my job as a district court judge will not be to determine "evolving standards of decency" but to apply the Supreme Court and other appropriate precedent to the dispute before me.

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b. Do you think that a judge could ever find that the "evolving standards of decency" dictated that the death penalty is unconstitutional in all cases?

Response: No, a district court judge could never find that the "evolving standards of decency" dictated that the death penalty is unconstitutional in all cases.

c. What factors do you believe would be relevant to the judge's analysis?

Response: In deciding whether or not the death penalty was unconstitutional in a case before me, I would apply the controlling precedent of the United States Supreme Court and the Fifth Circuit.

4. 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: No.

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: No, I would not consider foreign law in interpreting the Eighth Amendment. No, I would not consider foreign law in interpreting other amendments.

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Responses of Elizabeth Erny Foote
Nominee to the U.S. District Court for the Western District of Louisiana
to the Written Questions of Senator Jeff Sessions

1. **In the questionnaire that you submitted to the Committee, you indicated that only one percent of the cases you have handled involved criminal law. Criminal cases account for a substantial portion of the federal district court docket.**

   a. **How has your professional experience prepared you for the position to which you have been nominated?**

   Response: Although my experience in representing criminal defendants has been limited to appointed cases early in my career, my first jury trial tried to verdict was a criminal case which lasted several days. The defendant - charged with felony rape - was acquitted.

   My experience as a state bar leader has educated me on criminal justice issues that affect the judiciary. These issues include: the design and implementation of a new statewide indigent defense system in Louisiana; an examination of the statutory law pertaining to and the treatment of juveniles in Louisiana's judicial system versus other states; and the effect of reclassification of offenses on law enforcement and the courts.

   Additionally, if confirmed, I will bring to the bench more than 30 years experience litigating commercial and tort cases. My clients have included individuals and businesses of all sizes. I have taught legal writing and oral advocacy. My professional experience as a bar leader increased my understanding of "big picture" issues facing the judiciary, such as the importance of maintaining the public's confidence. I will bring to the bench the perspective not only of a seasoned litigator, but of a student of the judicial system.

   b. **If confirmed, how do you plan to educate yourself with respect to federal criminal law and the federal sentencing guidelines?**

   Response: In preparing for the nomination, I have familiarized myself with the federal sentencing guidelines and the applicable precedent. If confirmed, I intend to continue my personal study, to avail myself of the resources of the Federal Judiciary Center and other educational programs, and to rely on the assistance of my colleagues on the bench.

      i. **Now that the guidelines are advisory rather than mandatory, a judge may impose any sentence ranging from probation to the statutory maximum. What are your views of the guidelines?**

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00955 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Response: I respect the substantial work of the U.S. Sentencing Commission and Congress to insure fair, consistent and predictable sentencing through the guidelines. The Supreme Court has held that the guidelines can be used as the FIRST consideration in sentencing. Especially for a new judge, the guidelines provide a compendium of wisdom and are entitled to deference.

ii. Do you commit to follow the guidelines?

Response: I commit to follow the precedent of the United States Supreme Court and the Fifth Circuit Court of Appeals as to the use of the guidelines in sentencing. Under this law, departures from the guidelines are rare.

iii. 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.

2. **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. I recognize that you do not know 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: If what the President meant was that a good judge makes decisions not based on emotion but treats all individuals equally – with fairness, respect, and dignity – then I hope I will meet those criteria if confirmed.

b. What role do you believe that empathy should play in a judge's consideration of a case?

Response: I agree with your (Senator Sessions') statement, "Empathy is not a legal standard." Empathy instead is a tool which assists a judge to treat all individuals in the system with respect, dignity, and fairness.

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.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00956 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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i. If so, under what circumstances?

Response: See above

3. What in your view is the role of a judge?

Response: A judge is a neutral arbiter whose limited job is to decide the dispute before him or her in a fair and impartial manner; to treat the litigants and attorneys with respect and dignity; and to make timely, well-reasoned decisions based on the facts, applicable statutory law, and controlling precedent.

4. What is your definition of "judicial activism?"

Response: The term "judicial activism" as I understand it describes the practice of a judge who ignores clear statutory law and controlling precedent in order to obtain a predetermined result or to promote a personal agenda.

5. 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 to the facts presented before you?

Response: In such a case, I would apply the controlling precedent of the United States Supreme Court and the Fifth Circuit Court of Appeals to the facts before me.

6. 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?

Response: No.

7. 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: No.

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8. Please describe with particularity the process by which these questions were answered.

Response: I received the questions from attorneys in the Department of Justice. I drafted my responses and discussed them with Department of Justice attorneys. I then finalized my answers.

9. Do these answers reflect your true and personal views?

Response: Yes.

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Responses of Mark A. Goldsmith
Nominee to the United States District Court for the Eastern District of Michigan
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?**

   No.

2. **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?**

      In Gonzales v. Raich, 545 U.S. 1, 23-25 (2005), the United States Supreme Court held that Lopez and Morrison are consistent with the Supreme Court's earlier Commerce Clause decisions. If confirmed by the United States Senate, I would follow all decisions of the United States Supreme Court.

   b. **Why or why not?**

      The United States Supreme Court explained in Gonzales that Lopez and Morrison were consistent with earlier Commerce Clause decisions because the statutory schemes in those cases did not address economic activity.

3. **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?**

   Justice Kennedy's analysis is the law of the land. If confirmed, I would follow that decision, as I will follow all decisions of the United States Supreme Court.

   a. **How would you determine what the evolving standards of decency are?**

      If confirmed, I would follow all applicable decisions of the United States Supreme Court and the United States Court of Appeals for the Sixth Circuit in determining the meaning and applicability of the concept of "evolving standards of decency," should that issue come before me as a trial judge.

   b. **Do you think that a judge could ever find that the "evolving standards of decency" dictated that the death penalty is unconstitutional in all cases?**

The United States Supreme Court has rejected the argument that the death penalty is unconstitutional in all cases. Based on that holding, I do not see how a judge on a lower court could conclude that the death penalty is unconstitutional in all cases.

c. What factors do you believe would be relevant to the judge's analysis?

If confirmed, I would follow whatever factors are set forth in applicable decisions of the United States Supreme Court and the United States Court of Appeals for the Sixth Circuit.

4. 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?

No.

a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

See above.

b. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

No.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00960 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Responses of Mark A. Goldsmith
Nominee to the United States District Court for the Eastern District of Michigan
to the Written Questions of Senator Jeff Sessions

1. **At your hearing, I asked you about the following remarks you delivered during your investiture. You stated that during the formative years of the American Republic,**

   "[i]t was the judiciary that viewed its mission as searching for common ground. Whether the context was constitutional decision-making, statutory interpretation, or weaving the fabric of the common law, American judges have, in their finest moments, sought to divine and apply the common values of our country to the disputes before them."

   You testified that your remarks were directed at cases or questions of first impression, "where legal matters didn't have any clear guidance from a higher court. That was the context in which I was talking about trying to find common ground to build a consensus." You then testified: "I would look to the traditional tools that a judge should look to, which is the binding precedent of the Supreme Court, and in my case it would be the Sixth Circuit. I will try to get what the guidance is from those decisions in making up my mind, even if [it] were a case of first impression."

   a. **Given your testimony, do you still believe that judges should apply the "common values of our country to the disputes before them" in any case?**

      Response: I believe that trial judges should apply scrupulously the precedents of the higher courts by which they are bound. If I am fortunate enough to be confirmed by the United States Senate, I would faithfully follow the precedents of the United States Supreme Court and the United States Court of Appeals for the Sixth Circuit. In cases of first impression, I believe that judges should look to the decisions of higher courts for guidance. In cases of first impression, I would use traditional tools of judicial analysis: text, opinions from other circuits, and legal and legislative history.

   b. **How do you define "the common values of our country"?**

      The common values of our country are the legal values reflected and embodied in our Constitution, statutes and case law, as determined by the traditional tools of judicial analysis: text, court opinions, and legal and legislative history. I do not believe that a judge should import into the analysis his or her subjective sense of common values.

   c. **Do you agree that a judge's role is to apply the law to the facts of a given case?**

      Yes.

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d. Do you think it is ever proper for judges to indulge in their own values in determining what the law means?

No.

a. If so, under what circumstances?

See above.

ii. Please provide an example of a case in which you have done so.

See above.

iii. Please provide an example of a case in which you have had to set aside your own values and rule based solely on the law.

I do not believe that I have ever had a conflict between my values and any decision that I have made as a judge.

2. You also said in your investiture speech that judges "have synthesized the moorings of history with the demands of modernity to identify and apply the evolving historical consensus of our wonderfully diverse country."

a. Do you think that the meaning of our laws and Constitution is a product of the "moorings of history" and the "demands of modernity," or is it the product of the plain language and original meaning of our statutes and Constitution? Please explain your answer.

I believe a federal district judge must discern the meaning of our laws and the Constitution by looking to the text and the meaning it has been given by precedents of the United States Supreme Court and the Court of Appeals embracing his or her district. That is the approach I would follow if I am confirmed by the United States Senate. To the extent there are no precedents directly on point, a trial judge should seek guidance from decisions of higher courts addressing related or analogous circumstances. In such cases, trial judges should analyze the text, opinions from other circuits, and legal and legislative history to determine the meaning of a law and how it should be applied to contemporary circumstances not specifically contemplated by those who enacted the law. That is the sense in which I was using the terms "moorings of history" and "demands of modernity."

b. Is it fair to say that you agree with that concept of a "living constitution"? Please explain your answer.

I find the term "living constitution" to be vague. To the extent the phrase is understood to mean that the Constitution is an ever-changing document, and that

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00962 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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judges are free to re-interpret it without reference to the text and intent of the Framers, I do not agree with such a notion.

3. **You were among a group of attorneys who authored an *amicus* brief for Governor Jennifer Granholm in support of the University of Michigan's position that affirmative action policies did not violate the Equal Protection Clause in the cases of *Grutter v. Bollinger*, 539 U.S. 306 (2003) and *Gratz v. Bollinger*, 539 U.S. 244 (2003). The brief argued that the First Amendment provides a heightened degree of protection to academic institutions.**

   a. **Is that a fair characterization of the argument set forth in your brief?**

      The amicus brief did not use the term "heightened degree of protection" for academic institutions. Rather, the brief argued that the First Amendment protects academic institutions in their academic decision-making by requiring courts to show due deference to such decisions.

   b. **Is it your personal view that the First Amendment provides a heightened degree of protection to academic institutions? Please explain why or why not.**

      There is a long line of precedents of the United States Supreme Court holding that courts should show appropriate deference to academic institutions in their academic decision-making. That view was confirmed in Grutter, where Justice O'Connor, speaking for the Court, stated: "Our holding today is in keeping with our tradition of giving a degree of deference to a university's academic decisions, within constitutionally prescribed limits." 539 U.S. at 328.

   c. **Do you believe that the First Amendment protects the free speech of corporate institutions, as the Supreme Court held recently in *Citizens United v. Federal Election Commission*? Please explain your answer.**

      The United States Supreme Court held in Citizens United that the First Amendment provides protection to corporate institutions. If confirmed, I would follow that decision.

4. **Now that the guidelines are advisory rather than mandatory, a judge may impose any sentence ranging from probation to the statutory maximum.**

   a. **What are your views of the guidelines?**

      As a trial judge sitting in the criminal/civil division of our circuit court for nearly six years, I have utilized sentencing guidelines for all felony sentences. I have found the guidelines extraordinarily helpful in standardizing sentencing so that comparably situated criminal defendants are treated comparably, while still taking into account the individual circumstances of each defendant. If confirmed, I expect to take the same approach to the federal sentencing guidelines.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00963 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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b. Do you commit to follow the guidelines?

The United States Supreme Court held in United States v. Booker, 543 U.S. 220 (2005) that the federal sentencing guidelines are advisory, not mandatory. Based on my very favorable experience in state court with sentencing guidelines, I would consult and take into account the federal sentencing guidelines as required by Booker.

c. 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.

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. I recognize that you do not know 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?

I do not know what the President may have had in mind when he made his statement. At least one dictionary definition of the term "empathy" is an understanding of another person's feelings, situation or motives. As such, it is a cognitive skill, which I believe I possess.

b. What role do you believe that empathy should play in a judge's consideration of a case?

I do not believe empathy plays any role in interpreting the law.

c. Do you think that it is ever proper for judges to indulge their own subjective sense of empathy in determining what the law means?

No.

a. If so, under what circumstances?

See above.

ii. Please provide an example of a case in which you have done so.

See above.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00964 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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iii. Please provide an example of a case where you had to set aside your own subjective sense of empathy and rule solely based on the law.

I do not recall a case where I had to set aside my sense of empathy in ruling on a case.

6. Please describe with particularity the process by which these questions were answered.

After I drafted answers, I conferred with attorneys from the United States Department of Justice. I then finalized my answers and submitted them to the Department of Justice for submission to the United States Senate.

7. Do these answers reflect your true and personal views?

Yes.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00965 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Responses of Brian Anthony Jackson
Nominee to the U.S. District Court for the Middle District of Louisiana
to the Written Questions of Senator Tom Coburn

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. In my view, the Constitution is not a document that evolves as society interprets it. The original text of the Constitution should be given great deference by the courts. Consideration of its original meaning should be the controlling factor in its interpretation.

2. **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: The Supreme Court ruled in *Gonzalez v. Raich*, 545 U.S. 1 (2005), that *Lopez* and *Morrison* are consistent with prior decisions interpreting the Commerce Clause. In *Gonzalez*, the Court noted that, "[o]ur opinion in *Lopez* casts no doubt on the validity" of the ability of Congress to regulate economic activities that affect interstate commerce.

3. **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: Justice Kennedy's analysis formed the basis of the holding in the *Roper* case. As a district court judge, I am bound to following the decisions of the court, notwithstanding my personal views.

   a. **How would you determine what the evolving standards of decency are?**

      Response: As a district judge, I would adhere to the precedents of the Supreme Court and the Court of Appeals, including those that provide guidance on this issue.

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b. Do you think that a judge could ever find that the "evolving standards of decency" dictated that the death penalty is unconstitutional in all cases?

Response: No. Because the Supreme Court has ruled that capital punishment is a constitutionally-sanctioned penalty, it would not be appropriate for a district judge to ever consider "evolving standards of decency" in applying the death penalty.

c. What factors do you believe would be relevant to the judge's analysis?

Response: *Roper* is now binding precedent on all federal judges. As such, I would be guided by the factors identified by the Supreme Court's decision in the case, notwithstanding my personal views on the appropriateness of the factors.

4. 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: No.

a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: See above.

b. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: No.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00967 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Responses of Brian Anthony Jackson
Nominee to the U.S. District Court for the Middle District of Louisiana
to the Written Questions of Senator Jeff Sessions

1. **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. **I recognize that you do not know 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: To the extent the President's concept of empathy, as applied to judges, requires that judicial officers be committed to treating all citizens who appear before them with fairness, looking beyond any personal bias or prejudice, I believe I would satisfy his criteria.

   b. **What role do you believe that empathy should play in a judge's consideration of a case?**

      Response: Empathy, as defined in a manner consistent with the concept of "blind justice," (that is, a quality of judging that is free of personal bias or personal opinion and that reflects broadly a factual understanding of the circumstances of the litigants) is important to our nation's justice system. Judges should be committed to rendering decisions that are free of personal bias. A judge's personal feelings about litigants should play no role in the court's rulings.

   c. **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. Judges should commit themselves to rendering fair and unbiased justice in a manner consistent with the Constitutional factors identified by the Supreme Court. A subjective approach to determining what the law means is inappropriate, as it could result in the failure to following precedent.

      i. **If so, under what circumstances?**

         Response: See above.

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2. **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. If confirmed to serve on the federal bench, I would commit myself to faithfully following the precedents of the United States Court of Appeals for the Fifth Circuit and the United States Supreme Court.

   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 to the facts presented before you?**

      Response: If confirmed to the district court, I would be committed to rendering decisions that are consistent with stare decisis and that are consistent with precedents of the higher courts on all legal questions, notwithstanding my personal views.

3. **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?**

   Response: No. The Supreme Court and the Courts of Appeals have provided ample guidance to the lower courts, in the form of precedents, when deciding what the law means. District judges must be bound solely by the jurisprudence of prior appellate court decisions.

4. **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: No. I fully appreciate the limits of judicial authority. If confirmed to serve on the federal bench, I would not impose my personal views on public policy matters in my judicial decisions.

5. **Please describe with particularity the process by which these questions were answered.**

   Response: After receiving these written questions through the Justice Department, I personally drafted answers thereto after reflecting carefully on each one. I then discussed my answers with members of the Justice Department and made a few revisions to them before forwarding the answers to the Judiciary Committee through the Justice Department.

6. **Do these answers reflect your true and personal views?**

   Response: Yes.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00969 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Responses of Marc T. Treadwell
Nominee to the U.S. District Court for the Middle District of Georgia
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.

2. **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*, 545 U.S. 1, 23 (2005), the Supreme Court held that *Lopez* and *Morrison* are consistent with prior Supreme Court Commerce Clause decisions.

   b. **Why or why not?**

      Response: In *Gonzales v. Raich*, the Supreme Court rejected the argument that *Lopez* and *Morrison* departed from prior Commerce Clause precedent. If confirmed as a district judge, I would be bound by the Court's holding.

3. **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: Justice Kennedy's analysis in the majority opinion in *Roper v. Simmons* is controlling precedent and thus must be followed by federal district judges.

   a. **How would you determine what the evolving standards of decency are?**

      Response: If called upon to make that determination, I would apply controlling precedent.

   b. **Do you think that a judge could ever find that the "evolving standards of decency" dictated that the death penalty is unconstitutional in all cases?**

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Response: I know of no controlling precedent that would support such a result. On the contrary, the Supreme Court has held that capital punishment is constitutional.

c. What factors do you believe would be relevant to the judge's analysis?

Response: For a district judge, the relevant factors would be determined by controlling precedent.

4. 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: No.

a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: See above.

b. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: I know of no basis for considering foreign law when interpreting the Eighth Amendment or any other amendment to the United States Constitution and I would not consider foreign law.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00971 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Responses of Marc T. Treadwell
Nominee to the U.S. District Court for the Middle District of Georgia
to the Written Questions of Senator Jeff Sessions

1. **In your questionnaire, you indicated that criminal cases amounted to only one percent of your overall litigation experience. Criminal cases account for a substantial portion of the docket you will handle if confirmed.**

   a. **How has your professional experience prepared you for the position to which you have been nominated?**

      Response: I believe that my extensive experience trying cases has prepared me for many issues encountered in criminal proceedings. Further, I have been appointed to represent criminal defendants in federal court and, as a result, I have a working knowledge of the federal sentencing guidelines. Moreover, since 1986, I have annually reviewed Eleventh Circuit evidence decisions for the Mercer Law Review and since 1988, I have reviewed Georgia appellate evidence decisions. Most appellate evidence decisions arise from criminal prosecutions, and thus I feel I have a strong base of knowledge of evidentiary principles applicable to criminal proceedings. For example, I have followed closely and written extensively about the use of extrinsic act evidence in criminal cases, as permitted by Federal Rule of Evidence 404(b), and the Supreme Court's recent decision in *Crawford v. Washington*, 541 U.S. 36 (2004), and its progeny regarding testimonial hearsay in criminal cases.

      More generally, I believe that the broad variety of cases and matters I have handled during my twenty-eight years of practicing law has helped prepare me for service as a district court judge. I also believe that ten years of teaching third-year law students has given me a perspective that would serve me well if I am confirmed. Finally, I believe my legal writing experience as the author of over fifty articles for legal publications would assist me greatly in the performance of the duties of a district court judge.

   b. **If confirmed, how do you plan to educate yourself with respect to federal criminal law and the federal sentencing guidelines?**

      Response: If confirmed, I plan to avail myself of all available resources, particularly those offered by the Administrative Office of the United States Courts, to ensure that I would be prepared to fulfill my duties. I would place particular emphasis on the sentencing guidelines and procedural rules, such as the Federal Rules of Criminal Procedure, and I would consult with my colleagues.

      i. **Now that the guidelines are advisory rather than mandatory, a judge may impose any sentence ranging from probation to the statutory maximum. What are your views of the guidelines?**

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Response: I believe the guidelines are presumptively applicable. In my view, few circumstances or factors, if any, would warrant deviation from the guidelines.

ii. Do you commit to follow the guidelines?

Response: While the Supreme Court has held that the guidelines are advisory, I believe they are presumptively applicable and I would review any request to deviate from the guidelines with that presumption in mind.

iii. 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.

2. 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. I recognize that you do not know 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: I do not know if I fit the criteria quoted above, although I assume that I met the criteria used by the President in the selection of district court nominees. If confirmed, I commit to basing my decisions and rulings on the relevant facts and applicable precedent binding on district court judges.

b. What role do you believe that empathy should play in a judge's consideration of a case?

Response: To the extent that empathy on the part of a judge would lead to the consideration of non-relevant factors, empathy should not play a role in a judge's consideration of a case.

a. 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.

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i. If so, under what circumstances?

Response: See above.

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: 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 to the facts presented before you?

Response: If confirmed, I would rule in accordance with Supreme Court and Court of Appeals precedent, regardless of my personal feelings.

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?

Response: I do not think it proper for judges to indulge their own values in determining what the law means.

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?

Response: I do not think it is proper for judges to indulge their own policy preferences in determining what the law means.

6. Please describe with particularity the process by which these questions were answered.

Response: I received these questions, along with questions from Senator Coburn, by email from the Department of Justice. I prepared responses, discussed my responses with Department of Justice attorneys, and then submitted my responses to the Department of Justice for delivery to the Judiciary Committee.

7. Do these answers reflect your true and personal views?

Response: Yes.

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Responses of Josephine Staton Tucker
Nominee to the U.S. District Court for the Central District of California
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 have never referred to the Constitution as a "'living' document that is constantly evolving," and I do not agree with that perspective. I believe that the Constitution is an immutable document establishing rights, principles, obligations and relationships, and that the courts must apply it to a changing society. The Constitution should be interpreted by a district court judge with reference to its language and to the decisions of higher courts.

2. **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: In *Lopez,* the Supreme Court did not indicate that it intended to depart from earlier decisions. Rather, the Court held that the Act at issue could not "be sustained under our cases upholding regulations of activities that arise out of or are connected with a commercial transaction, which viewed in the aggregate, substantially affects interstate commerce." 514 U.S. at 561. Similarly, in *Gonzales v. Raich*, 545 U.S. 1 (2005), the Supreme Court made clear that its decisions in *Lopez* and *Morrison* were not inconsistent with its earlier Commerce Clause decisions.

3. **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: *Roper v. Simmons* is binding precedent, and, if confirmed, I would follow it.

   a. **How would you determine what the evolving standards of decency are?**

      Response: As a district court judge, if confirmed, I would be constrained by prior higher court decisions that had already determined the constitutionality of capital

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punishment in particular circumstances. If I were required to determine the "evolving standards of decency" in a case in which no such higher court guidance were available, I would be bound to use the analysis set forth by the Supreme Court. In *Roper,* the Court explained that its determination began with a review of objective indicia of national consensus, as expressed in particular by the enactments of legislatures, followed by its determination of the proportionality of the punishment. 543 U.S. at 564.

b. Do you think that a judge could ever find that the "evolving standards of decency" dictated that the death penalty is unconstitutional in all cases?

Response: A district court judge is obligated to follow the decisions of higher courts. Those binding decisions would not permit a district court judge to find that the death penalty is unconstitutional in all cases.

c. What factors do you believe would be relevant to the judge's analysis?

Response: The most relevant factor in a district court judge's analysis would be the prior, binding decisions of higher courts. For example, while the Supreme Court has articulated its method of determining the constitutionality of capital punishment based on the "evolving standards of decency," to the extent that the Supreme Court has applied that analysis in a particular circumstance to uphold the death penalty, it is not within the province of a district court judge to ignore that precedent.

4. 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: No.

a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: I cannot conceive of any circumstance in which I would consider foreign law when interpreting the Constitution, except if directed to do so by applicable Ninth Circuit or Supreme Court decisions.

b. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: Please see my previous answer.

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Responses of Josephine Staton Tucker
Nominee to the U.S. District Court for the Central District of California
to the Written Questions of Senator Jeff Sessions

1. **In the questionnaire that you submitted to the Committee, you indicated that only one percent of the cases you handled while in private practice involved criminal law. You also noted that as a judge on the California Superior Court, only 20 percent of your current docket consists of criminal cases. Criminal cases account for a substantial portion of the federal district court docket.**

   a. **What steps will you take to prepare yourself for the transition to the federal district court if confirmed?**

      Response: To clarify, my current docket as a judge of the California Superior Court consists entirely of civil matters. From November, 2002 through July, 2005, my judicial assignment consisted entirely of criminal matters, including trials, arraignments, pretrial motions, preliminary hearings, and sentencing. As a state court judge, I have presided over approximately 100 trials, approximately 20 of which were criminal cases. If confirmed, to prepare myself, I would take advantage of educational materials and courses offered to new judges, including those available through the Federal Judicial Center. I would review applicable federal statutes and case law, and I would confer with other experienced federal district court judges in the Central District of California.

   b. **If confirmed, how do you plan to educate yourself with respect to federal criminal law and the federal sentencing guidelines?**

      Response: If confirmed, I would study carefully the Federal Sentencing Guidelines Manual, the Federal Rules of Criminal Procedure, and relevant criminal statutes and case law. I would avail myself of the resources of the Federal Judicial Center, including publications and courses regarding issues arising in criminal cases. I would also seek guidance from experienced federal district court judges in the Central District of California.

      i. **Now that the guidelines are advisory rather than mandatory, a judge may impose any sentence ranging from probation to the statutory maximum. What are your views of the guidelines?**

         Response: The guidelines were the result of an extended and bipartisan effort to ensure fairness and consistency in sentencing so that similarly situated offenders are not subject to widely disparate sentences. For that reason, if confirmed, I intend to rely on the guidelines.

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ii. Do you commit to follow the guidelines?

Response: Although in *United States v. Booker*, the Supreme Court held that the guidelines are advisory, if confirmed, I intend to follow the guidelines.

iii. 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.

2. 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. I recognize that you do not know 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: I believe that, because of my varied work and life experiences, I possess empathy in that I have the ability to understand a broad range of perspectives.

b. What role do you believe that empathy should play in a judge's consideration of a case?

Response: None. I believe that empathy is a character trait that may cause a judge to be more courteous and respectful in interacting with attorneys, litigants, jurors, witnesses, and staff. Empathy also may allow a judge to fully understand the facts presented by all parties. However, if empathy infects the judicial decisionmaking process, then the judge has failed to meet his or her responsibility of serving as a neutral, unbiased arbiter. Cases should be decided based solely on an objective consideration of the facts and an analysis of applicable law, unclouded by a sense of empathy.

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?

Response: Please see my previous answer.

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ii. Please provide an example of a case in which you have done so.

Response: I have not done so.

iii. Please provide an example of a case in which you had to set aside your own subjective sense of empathy and rule solely based on the law.

Response: I presided over a case in which an individual lost his home to foreclosure and brought suit against his lender. While the loss of a home is a traumatic event, and I felt empathy for his unfortunate circumstances, he did not have a viable claim under the law, and I dismissed the action.

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: 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 to the facts presented before you?

Response: As a district court judge, I would be bound by applicable decisions of higher courts. Even if I believed that the Ninth Circuit or the Supreme Court had seriously erred, I would apply established precedent to the facts before me.

4. 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: Please see my previous answer.

b. Please provide an example of a case in which you have done so.

Response: I have not done so.

c. Please provide an example of a case in which you had to set aside your own values and rule solely based on the law.

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Response: I cannot recall a specific case in which I had to set aside my values in order to rule based solely on the law. However, as a state superior court judge for over seven years, my decisionmaking record reflects my respect for the law and my ability to base my rulings solely on the applicable law.

5. 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: Please see my previous answer.

b. Please provide an example of a case in which you have done so.

Response: I have not done so.

c. Please provide an example of a case in which you had to set aside your own policy preferences and rule solely based on the law.

Response: I presided over many marital dissolution cases in which one of the parties had engaged in conduct during the marriage that caused significant emotional harm to the other party and to the family unit. While I might prefer that such conduct have negative financial consequences, California law generally requires an equal distribution of all property acquired during the marriage, and I scrupulously followed that law.

6. Please describe with particularity the process by which these questions were answered.

Response: On March 3, 2010, I received these questions from the Department of Justice. I reviewed the questions and drafted my responses. I then discussed the questions with a representative of the Department of Justice, finalized my responses, and forwarded my final responses to the Department of Justice. It is my understanding that the Department of Justice will send these responses to the Committee.

7. Do these answers reflect your true and personal views?

Response: Yes.

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SUBMISSIONS FOR THE RECORD

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
February 24, 2010

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Nominations Hearing
February 24, 2010

Today, we will hear from five of President Obama's well-qualified judicial nominees, all of whom have the support of the Senators from their home states who know them best. The nominations of Brian Jackson and Elizabeth Foote to fill Federal district court vacancies in Louisiana have the support of Senator Landrieu, a Democrat, and Senator Vitter, a Republican. The nomination of Judge Josephine Tucker to fill a vacancy in the Central District of California has the support of Senator Feinstein, a senior member of this Committee, and Senator Boxer. The nomination of Judge Mark Goldsmith to the Eastern District of Michigan has the support of Senators Levin and Stabenow. And the nomination of Marc Treadwell to the Middle District of Georgia has the support of Georgia's Senators, Senator Isakson and Senator Chambliss, both Republicans.

I trust that these nominees will be treated well by the Committee and will receive the prompt consideration they deserve. The Senate Judiciary Committee has favorably reported 29 of President Obama's Federal circuit and district court nominees to the Senate for final consideration and confirmation. An additional six judicial nominees appeared before the Committee on February 11 and are on the Committee's agenda tomorrow. When those outstanding nominees are reported, the number of Federal circuit and district court nominees reported to the full Senate will total 35.

By this date during President Bush's first term, the Senate had confirmed 37 Federal circuit and district court nominations. That was a tumultuous period in which Senate Democrats worked hard to make progress with a staunchly partisan Republican President. That included the period of the 9/11 attacks and the anthrax attacks upon the Senate. In spite of all the obstacles, by February 24, 2002, the Senate had moved forward to help confirm 37 of President Bush's judicial nominees.

Although a comparable number of President Obama's judicial nominees have been available for Senate consideration and confirmation, the Senate has confirmed only 15 Federal circuit and district court nominees so far during President Obama's time in office. That is just 40 percent as many. Nearly as many judicial nominations are now pending on the Executive Calendar—14—as have been confirmed so far this Congress.

Another way to state the comparison is to look at it the other way, and understand that we had confirmed 15 of President Bush's judicial nominees by November 6, 2001. That comparison shows that,

despite the fact that President Obama began sending judicial nominations to the Senate two months earlier than President Bush, after President Obama's 13 months in office the Senate is already three and one-half months behind where we were during the Bush administration. Meanwhile, judicial vacancies have skyrocketed to more than 100.

Although I am frustrated with the Republican obstructionism and delay we see on the Senate floor, I am pleased that we are able to consider five well-qualified nominees today on a timely basis.

President Obama nominated Brian A. Jackson to serve on the U.S. District Court for the Middle District of Louisiana. Mr. Jackson is a partner at New Orleans law firm Liskow & Lewis. Previously, he worked as an Assistant U.S. Attorney in both the Eastern and the Middle Districts of Louisiana, and he also served the Middle District as Interim U.S. Attorney. In addition, Mr. Jackson dedicated a number of years to the Department of Justice and to the U.S. Immigration and Naturalization Service. He earned his B.S. from Xavier University of Louisiana, his J.D. from Southern University, where he was editor-in-chief of the law review, and his LL.M. from my alma matter, Georgetown University Law Center. If confirmed, Mr. Jackson will be the second African American judge to serve on the district court in the Middle District of Louisiana.

Elizabeth E. Foote is nominated to be a Federal district judge in the Western District of Louisiana. For the last 30 years, Ms. Foote has worked in private practice at The Smith Foote Law Firm in Alexandria, Louisiana. She was also an associate at another Alexandria law firm, and she served as a law clerk to Chief Judge William Culpepper of the Louisiana Third Circuit Court of Appeals. Ms. Foote earned her B.A. with honors from Louisiana State University, her M.A. from Duke University, and her J.D. from Louisiana State University's Paul M. Hebert Law Center.

Judge Josephine S. Tucker is nominated to the U.S. District Court for the Central District of California. Currently a trial judge on California's Orange County Superior Court, she previously practiced labor and employment law in Morrison & Foerster's San Francisco and Irving, California offices. Judge Tucker clerked for Judge John R. Gibson on the Eighth Circuit. She earned her B.A., summa cum laude, from William Jewell College in Liberty, Missouri and her J.D. from Harvard Law School in 1986.

President Obama nominated Judge Mark Goldsmith to serve as a Federal district court judge in the Eastern District of Michigan. Judge Goldsmith is currently a judge for Michigan's Oakland County Circuit Court, and he previously practiced law for 17 years at Honigman, Miller, Schwartz, and Cohn in Detroit. He also worked as an Oakland County magistrate judge and as a solo practitioner. Judge Goldsmith earned his B.A., Phi Beta Kappa and with high distinction, from the University of Michigan, and he received his J.D., cum laude, from Harvard Law School.

Marc T. Treadwell is nominated to the U.S. District Court for the Middle District of Georgia. Currently a partner at Macon, Georgia's Adams, Jordan & Treadwell, he has been a civil litigator in Georgia for 29 years. He received his B.A. from Valdosta State University, and he earned his law degree, cum laude, from Mercer University's Walter F. George School of Law.

President Obama deserves praise for working closely with home state Senators, whether Democratic or Republican, to identify and select well-qualified nominees to fill vacancies on the Federal bench. Last year, President Obama sent 33 Federal circuit and district court nominations to the Senate, but the Senate confirmed only 12 of them, the fewest judicial nominees confirmed in the first year of a Presidency in more than 50 years. Among the frustrations is that Senate Republicans have chosen to delay and obstruct even nominees chosen after consultation with Republican home state Senators. President Obama has worked closely with Senate Republicans, but they have still chosen to treat his nominees badly.

Senate Republicans unsuccessfully filibustered the nomination of Judge David Hamilton of Indiana to the Seventh Circuit, despite support for his nomination from the senior Republican in the Senate, Dick Lugar of Indiana. Republicans delayed for months Senate consideration of Judge Beverly Martin of Georgia to the Eleventh Circuit despite the endorsement of both her Republican home state Senators. When Republicans finally agreed to consider her nomination on January 20, she was confirmed unanimously. Whether Jeffrey Viken or Roberto Lange of South Dakota, who were supported by Senator Thune, or Charlene Edwards Honeywell of Florida, who was supported by Senators Martinez and LeMieux, virtually all of President Obama's nominees have been prevented prompt Senate action by Republican objections.

I noted when the Senate considered the nominations of Judge Christina Reiss of Vermont and Mr. Abdul Kallon of Alabama relatively promptly that they should serve as the model for Senate action. Sadly, they are the exception rather than the model. They show what the Senate could do, but does not. Time and again, noncontroversial nominees are delayed. When the Senate does finally consider them, they are confirmed overwhelmingly.

Of the 15 Federal circuit and district court judges confirmed, 12 have been confirmed unanimously. That is right. Republicans have only voted against three of President Obama's nominees to the Federal circuit and district courts. One of those, Judge Gerry Lynch of the Second Circuit, garnered only three negative votes and 94 votes in favor. Judge Andre Davis of Maryland was stalled for months and then confirmed with 72 votes in favor and only 16 against. Judge David Hamilton was filibustered in a failed effort to prevent an up or down vote.

So why all the obstruction and delays? It is part of a partisan pattern. Even when they cannot say "no," Republicans nonetheless demand that the Senate go slow. The practice is continuing. There have already been 16 filibusters of President Obama's nominees. So far during President Obama's 13 months in office, Senate Republicans have engaged in more filibusters than there have been Federal circuit and district nominees considered by the Senate. And that comparison does not include the many other nominees who were delayed or are being denied up or down votes by Senate Republicans refusing to agree to time agreements to consider even noncontroversial nominees.

During the first two years of President Bush's time in office, the Democratic Senate majority proceeded to confirm 100 of his judicial nominees. I know; I remember. I chaired the Senate Judiciary Committee

for 17 months during that period and oversaw the hearings and confirmations of all 100. By contrast, Senate Republicans have allowed only 15 of President Obama's Federal circuit and district court nominees to be acted upon by the Senate during his 13 months in office.

With four months to go, the Senate has a lot of ground to recover. There is an easy place to start. The Senate can virtually double its total by considering the 14 judicial nominees currently on the Senate Executive Calendar after being favorably reported by the Senate Judiciary Committee.

As matters stand today, judicial vacancies have spiked again, as they did due to Republican obstruction in the 1990s. These vacancies are again being left unfilled. We started 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 102 current vacancies and another 21 already announced. If we had proceeded on the judgeship bill recommended by the Judicial Conference to address the growing burden on our Federal judiciary in order to provide the resources the courts need -- as we did in 1984 and 1990 when Republican Presidents were in office -- current vacancies would stand over 160 today and would be headed toward 180. That is the true measure of how far behind we have fallen.

So I urge Senate Republicans to reconsider their strategy. I hope Republicans on the Committee will allow prompt consideration of the five well-qualified nominees before us today as well as the six judicial nominees on the Committee's agenda this week. I urge Senate Republicans to work with us to provide final consideration without further delay to the 14 judicial nominees on the Senate Executive Calendar awaiting final action. We can make progress if we work together.

I welcome all of the nominees and their families to the Committee today.

# # # # #

NOMINATION OF SHARON J. COLEMAN, OF ILLINOIS, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS; GARY S. FEINERMAN, OF ILLINOIS, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS; AND WILLIAM J. MARTINEZ, OF COLORADO, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLORADO

WEDNESDAY, MARCH 10, 2010

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 2:50 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Sheldon Whitehouse, presiding.

Present: Senators Whitehouse, Durbin, and Sessions.

OPENING STATEMENT OF HON. SHELDON WHITEHOUSE, A U.S. SENATOR FROM THE OF RHODE ISLAND

Senator WHITEHOUSE. All right. We will call the hearing to order. Senator Sessions has informed me through his staff that he is on his way, but he is voting, and he does not wish to delay the proceedings while we go through the introductions.

Today we will consider three nominations to the Federal bench. Justice Sharon J. Coleman has been nominated to be United States District Judge for the Northern District of Illinois. Gary S. Feinerman has been nominated to be United States District Judge for the Northern District of Illinois. And William J. Martinez has been nominated to be United States District Judge for the District of Colorado.

Each nominee brings a record of experience and achievement in the law to this hearing today. I congratulate each of you on your nominations.

In addition to welcoming today's nominees, I would also like to welcome their families and friends to a happy day at the U.S. Senate. I, of course, would also like to welcome my colleagues who are here to introduce the nominees.

The way we will do this is that we will have the introductions by the Senators here in their order of seniority, and we will then proceed to the panel of nominees. Each nominee at that point will

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have the opportunity to introduce his or her family, and by then we should have a full complement of a Chairman and Ranking Member here, and we will proceed to the questions.

Let me just say that voting to confirm an individual to the Federal bench is one of the most important and lasting decisions that a Senator can make. Every day Federal judges make decisions that affect the lives of Americans in all walks of life. Their responsibilities are weighty and must be fulfilled in keeping with a proper understanding of the judicial function under the American system of government.

Judges must respect the role of Congress as representatives of the American people; decide cases based on the law and the facts, not prejudge any case but listen to every party that comes before them, popular or not; respect precedent; and limit themselves to the issues that the court is called upon to decide. I hope that each judicial nominee we hear from today understands the importance of those principles.

The Ranking Member may wish to make a statement when he comes, but in the meantime, why don't we proceed to the distinguished Senator from Illinois, the senior Senator of the State of Illinois, Senator Durbin.

PRESENTATION OF GARY S. FEINERMAN, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS, AND SHARON J. COLEMAN, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS, BY HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator DURBIN. Thank you very much, Senator Whitehouse, for convening this hearing. It is great to be here today. We have three excellent nominees, and I learned from Mr. Martinez that he rounds it out by having a Chicago connection. So I could not ask for a better panel of nominees from my selfish and personal perspective.

But I am here particularly to introduce Justice Sharon Coleman and Mr. Gary Feinerman. They have been nominated to serve as U.S. District Court Judges in the Northern District of Illinois. They have received the highest possible rating from the American Bar Association. They were recommended to me by a bipartisan merit selection Committee chaired by former Congressman, former D.C. Circuit Judge, and former White House Counsel Abner Mikva. I recommended these names to President Obama, and we are fortunate that such outstanding individuals are willing to serve on the Federal bench.

I would like to first introduce Sharon Coleman. And I do not know if this is the appropriate time for her to introduce her family. Would this be appropriate? Or do you want to wait until——

Senator WHITEHOUSE. We will wait on that until they are at the panel, and then they can introduce their families.

Senator DURBIN. OK. Since you have the gavel, I think it is a great idea.

She was born in Chicago, spent much of her childhood in Huntsville, Alabama, and I hope that when the Ranking Member comes, Senator Sessions of Alabama, he will appreciate her roots. Justice

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Coleman has devoted her legal career to public service. She has been a State court judge in Cook County, Illinois, for the past decade and a half, and presided over 600 cases to verdict. She was elected to be a Cook County trial judge in 1996, won a retention election in 2002. In 2008, she received a promotion, elected to a 10-year term on the Illinois appellate court, and we are hoping that she will not be able to serve out that term if she is considered favorably by the Senate for this Federal appointment.

She has an excellent reputation for fairness and impartiality. Before serving on the bench, for 4 years she was an Assistant U.S. Attorney in Chicago, 8 years in the Cook County State's Attorney's Office. A county prosecutor, she handled a wide variety of cases from muggings to murders. She was promoted to be the chief of the Public Interest Bureau where she supervised 75 attorneys and created a special unit to protect senior citizens from exploitation.

Justice Coleman has served on the boards of numerous bar associations and organizations in Chicago, received many, many awards, including the prestigious C.F. Stradford Award from the Cook County State's Attorney's Office, the Esther Rothstein Award from the Women's Bar Association of Illinois, and a Woman of Excellence Award from the Chicago Defender newspaper.

Justice Coleman attended Northwestern University, Northern Illinois University, and Washington University Law School, where she received a full scholarship.

Gary Feinerman is another nominee before us today. He has been a star of equal merit in the Chicago legal community. Mr. Feinerman is a partner at one of Chicago's oldest and largest law firms, Sidley Austin, and specializes in litigation and appellate work. From 2003 to 2007, he was our State Solicitor General representing Illinois in criminal and civil appeals. He won five Best Brief Awards from the National Association of Attorneys General, and he personally argued two cases before the U.S. Supreme Court, a challenging assignment for any lawyer. He also argued before the U.S. Court of Appeals for the Seventh Circuit and the Illinois Supreme Court.

Early in his career, Mr. Feinerman worked at the Chicago law firm of Mayer Brown and in the Justice Department's Office of Policy Development. He served as a judicial law clerk for Supreme Court Justice Anthony Kennedy and for Seventh Circuit Judge Joel Flaum. He is a leader in the Chicago legal community, president of the Appellate Lawyers Association of Illinois, and serves on the boards of Chicago's Constitutional Rights Foundation and the Midwest chapter of the Anti-Defamation League. Mr. Feinerman has also had an active pro bono practice which speaks well of his commitment to the legal profession and to helping the disadvantaged.

His academic record is equally impressive. He graduated from Yale University and Stanford Law School, where he finished second in his class.

Mr. Chairman, I am going to do all I can to expedite these nominations. The Northern District has more district court vacancies—currently there are six—than any other district in America. Yet the number of case filings is on the rise, so there is more work to go around and fewer judges to do it. This means that people who are looking for their day in court have to wait longer. Too often justice

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00987 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

delayed is justice denied. We have an urgent need for additional judges in the Northern District of Illinois. I hope my Senate colleagues will consider and confirm Justice Coleman and Gary Feinerman as quickly as possible.

Thank you.

Senator WHITEHOUSE. Thank you very much, Senator Durbin. Thank you for your statement. I know how busy you are as our Majority Whip and Assistant Majority Leader, so the fact that you have taken time out of your busy schedule to come here and put your personal imprimatur on these two wonderful candidates is a strong sign of your support for them and of their merit, and I appreciate that very much.

I will now call on Senator Mark Udall of Colorado to make an introduction of his nominee.

PRESENTATION OF WILLIAM J. MARTINEZ, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLORADO, BY HON. MARK UDALL, A U.S. SENATOR FROM THE STATE OF COLORADO

Senator UDALL. Thank you, Mr. Chairman, and let me start by stating my thanks to you and Chairman Leahy and Ranking Member Sessions and the Committee itself for providing me with some time to introduce President Obama's nominee to be the next Federal district court judge in Colorado, Bill Martinez.

Bill is an accomplished authority, Mr. Chairman, and a true role model in our State. His personal story captures what is inspirational about our great country, America, and highlights what can be accomplished with focused discipline and extraordinary hard work.

Bill was not born with great privilege. He came to the United States as an immigrant child from Mexico City and literally worked his way through college and toward a career in the law. And as he told me last year when I had a chance to spend some time with him, his experience with ethnic prejudice and poverty instilled in him a lifelong passion for justice.

As a lawyer, as you can imagine given that background, he has represented clients from many walks of life, but his focus has really been on helping those with the least amount of power in our society.

In one of his many pro bono cases, he represented low-rent and Section 8 tenants. Mr. Chairman, you know from your experience, there is no money and little glory in that kind of practice, but it reflects what our justice system really should be about, which is ensuring that everyone has their day in court.

Mr. Chairman, I believe in strong, well-balanced courts that serve the needs of our citizens. Bill Martinez brings that sense of balance because of his broad legal background and professionalism. He is, as the Denver Post, our statewide newspaper, noted, considered an expert in employment and civil rights law. I know also that Bill understands the constitutional role of the judiciary, which you spoke to in your initial remarks, and will fulfill his special responsibility as an Article III judge, if confirmed.

Our judicial system is built on principles of trust and integrity that make our country a beacon of justice around the world. No

matter how perfectly designed a judicial system may be in theory, however, it will not long maintain the trust of its citizens or the integrity they demand of it unless it has judges who are people of strong character and who reflect the community they serve.

Senator Bennet and I last year convened a bipartisan advisory committee, which was ably chaired by Denver lawyer Hal Hadden, well known and highly respected in Colorado, and former Colorado Supreme Court Justice Rebecca Kourlis, who also has that standing in the State of Colorado.

Bill Martinez's life experience, his record of legal service, and his impressive abilities are what persuaded this Committee to recommend him to Senator Bennet and myself for a Federal judgeship.

So, Mr. Chairman, in closing, I am confident that, if confirmed, Bill Martinez will undertake this solemn duty with a passion to do justice. That is what has guided him in his life from a very early age. And thank you for providing me with a bit of time to introduce one of Colorado's great attorneys, and I strongly urge this Committee to support him.

Thank you, Mr. Chairman.

Senator WHITEHOUSE. Thank you, Senator Udall. It is a pleasure to have you here, and it is a delight and also a testament to the character and ability of the nominee that both of Colorado's distinguished Senators are here. So, without further ado, I will turn to Senator Bennet.

PRESENTATION OF WILLIAM J. MARTINEZ, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLORADO, BY HON. MICHAEL F. BENNET, A U.S. SENATOR FROM THE STATE OF COLORADO

Senator BENNET. Thank you, Mr. Chairman, and I would like to say first thank you to you for having both of us here.

I want to say thank you to my senior Senator, Mark Udall, for running an extraordinary process to fill these vacancies. We have vacancies all over the country, as you know, that need to be filled because people are awaiting justice. And the process that Mark Udall ran which ended up with Bill Martinez, quite rightly, being recommended to you was one that I think could be a model for the entire country. So it was a great privilege for me to be part of that.

Part of the perils of being the junior Senator is that the senior Senator says everything you were going to say, so I would ask that my statement be put in the record, but just lend my voice to Senator Udall's to say I am very proud to come before this Committee and highlight the experience and accomplishments of this superbly qualified nominee. Bill Martinez will be an asset, a huge asset to the Federal bench.

I would like to thank the Committee for holding this hearing today, and I look forward to supporting Bill Martinez's nomination when it reaches the floor.

I would like to say congratulations to Bill and to his family, and thanks for having me today.

Senator WHITEHOUSE. Without objection, your full statement will be added to the record, and the record of this proceeding will actually stay open for a week from the conclusion of the hearing for any

statement that any other Senator or, frankly, any other person or organization seeks to add.

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

Senator WHITEHOUSE. I know that both of you are very busy, and thank you so much for taking the time to be here to support your candidate.

We will stand in recess for just a few moments to let the room switch over for the nominees and to allow Senator Sessions a few more moments to get here and join us.

[Recess from 3:03 p.m. to 3:08 p.m.]

Senator WHITEHOUSE. The hearing will come back to order. I want to welcome Senator Sessions, who is not only the Ranking Member at this hearing, but the Ranking Member of the entire Judiciary Committee. And so it is a great honor for us to have him here, and before we call forward the nominees to be sworn, I would recognize him for his opening statement. Senator Sessions.

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

Senator SESSIONS. Well, thank you, Senator Whitehouse. I appreciate that. These are important hearings, and I look forward to participating in it. And I would just note, as you know but for the record, how much work does go into a person's nominating process. The FBI does background checks, the White House checks, the Department of Justice checks, the local Senators are inquired of, and a lot of things happen to ensure that we are fulfilling our responsibility of advice and consent.

Today's nominees have been nominated for a lifetime appointment. This is the only time in a public forum they will be asked any questions or held to account, so we need to do our job on that. All were nominated just 14 days ago. That is pretty fast. And so these hearings and follow-up written questions will be the best way I think we have to be able to fulfill our responsibility.

I want to take a moment to thank the Chairman for working with us on some nominees who have had extensive records to allow more time to look at that, and I think we can work on that.

So, Mr. Chairman, I would be delighted to hear from this panel. I think that we are in a position to go forward on these nominees today. It is a very short turnaround, and if in the course of it we find things that indicate that the nominee—there are other questions, I think they should be—we should set up a mechanism where that can be asked, and we will be able to fulfill our responsibility.

So thank you very much.

Senator WHITEHOUSE. Thank you, Senator Sessions. I am sure that Senators Durbin and Burris and Senators Udall and Bennet are very appreciative of the minority's courtesy in allowing these nominees to proceed.

Senator SESSIONS. And I would say it does mean a lot to us that Senators, I think, take seriously their responsibility to review nominees, and their positive evaluations are important to us.

Senator WHITEHOUSE. If the nominees could come forward and stand to be sworn. Do you affirm that the testimony you are about

to give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. FEINERMAN. I do.

Justice COLEMAN. I do.

Mr. MARTINEZ. I do.

Senator WHITEHOUSE. Thank you very much. Please be seated and welcome. I think what I will do is follow the order of precedence set by my colleagues, which would bring before us Justice Coleman first, followed by Mr. Feinerman, followed by Mr. Martinez.

Justice Coleman, you are recognized for any opening statement you would care to make.

STATEMENT OF SHARON J. COLEMAN, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS

Justice COLEMAN. Thank you very much, Senator Whitehouse and Senator Sessions. I have no opening statement. I would like to say, however, that I thank you, Mr. Chairman, and Senator Sessions and the Committee for the hard work that they do in this very important task. I also thank my senior Senator, Senator Durbin, for putting forth my name to the President. I also thank Senator Burris, who met with us this morning, for his consideration, the Committee that worked so hard to reach this result where we are here before you today; and also, last but not least, the President for nominating me to this position.

Senator WHITEHOUSE. Would you like to take a moment to recognize any family members?

Justice COLEMAN. Very much so. I have quite a crew here. Thank you very much. If they can stand when I call their names.

My husband first, Wheeler Coleman, is here. Our children—my son, James Coleman; my daughter, Kara Coleman—are here. I am also happy to say that my father, Dr. James Johnson, who recently relocated from Huntsville, Alabama, to be near me in Chicago, is here.

And also I have with me several relatives, my three sisters-in-law. The oldest one, Cynthia Mitchell and her husband, Cecil Mitchell, they have come from North Carolina, along with their son, my nephew, Brandon. Also we have extended family and friends from North Carolina, if they could stand.

I also have my two sisters-in-law from Chicago, and they are Deborah and Barbara Coleman, and if they could please stand, from Chicago. And they also have brought friends with them, if they could also stand.

We also have extended family from the area, the Jacksons, if they could also stand.

I also would like to introduce someone who has been with me throughout this week, my lifelong friend for over 30 years, Ilene Slonoff, who came from Hinsdale, Illinois.

And I also would like to acknowledge my only sibling, Dr. Jackie Johnson Minter, who is watching on the webcast which you have provided in Houston, Texas, Sugarland, Texas, and also family and friends throughout Alabama, Montana, Illinois, Missouri, North Carolina, and California. So I would like to recognize all of them.

Thank you very much for that opportunity.

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Senator WHITEHOUSE. Well, that is a very impressive as well as geographically far-flung delegation.

[Laughter.]

Senator WHITEHOUSE. And we are delighted to welcome them all here today.

Justice COLEMAN. Excuse me, Senator. If I could also just acknowledge, although they are not with me personally today, I would like to recognize, make mention of my mother, Dr. Fran Johnson, and my mother-in-law, Marie Coleman. They are watching over the rails of heaven. My mother was an associate provost at University of Alabama-Huntsville until 2006.

Thank you very much.

Senator WHITEHOUSE. Indeed they are. Thank you.

Mr. Feinerman.

[The biographical information of Sharon Johnson Coleman follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Sharon Johnson Coleman (formerly Sharon Lynn Johnson)

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

   United States District Judge for the Northern District of Illinois

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.

   160 North LaSalle Street
   Chicago, Illinois 60601

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

   1960; 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.

   1981-1984, Washington University School of Law; J.D., 1984
   1979-1981, Northern Illinois University; B.A., 1981
   1978-1979, University of Alabama – Huntsville; No Degree
   1977-1978, Northwestern University; 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.

   2008-Present
   Illinois Appellate Court, First District
   160 North LaSalle Street
   Chicago, Illinois 60601
   Judge

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1996-2008
Circuit Court of Cook County
50 West Washington Street
Chicago, Illinois 60602
Judge

1993-96 & 1984-1989
Cook County State's Attorney's Office
28 North Clark Street, Third Floor
Chicago, Illinois 60602
Deputy State's Attorney & Bureau Chief, Public Interest Bureau (1993-1996)
Assistant State's Attorney (1984-1989)

1989-93
Office of the United States Attorney for the Northern District of Illinois
219 South Dearborn Street
Chicago, Illinois 60604
Assistant United States Attorney

1988-90
Roosevelt University
430 South Michigan Avenue
Chicago, Illinois 60605
Instructor, Paralegal Program (Part-Time)

1983
Land of Lincoln Legal Assistance Foundation
8787 State Street
East St. Louis, Illinois 62203
Summer Law Clerk

1982
Northern Illinois University
1425 West Lincoln Highway
DeKalb, Illinois 60115
English Teacher, Upward Bound Program (Summer Position)

1981
Washington University Library Systems
One Brookings Drive
St. Louis, Missouri 63130
Assistant Librarian

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00994 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Other Affiliations (uncompensated)
2008-Present
Illinois Judicial Council
20 South Clark Street, Suite 900
Chicago, Illinois 60603
Director

2000-2006
Illinois Judges Association
321 South Plymouth Court
Chicago, Illinois 60604
Director

1995-2000
Just the Beginning Foundation, Inc.
223 South Wacker Drive, Suite 6600
Chicago, Illinois 60606
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 military. 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.

C.F. Stradford Award, Cook County State's Attorney's Office, 2010
Esther Rothstein Award, Women's Bar Association of Illinois, 2010
Chicago Defender, Woman of Excellence, 2009
Illinois Judicial Council, Chairperson's Award, 2009
Village of Hillside, Mayor's Recognition, 2008
Chicago Coalition on Law-Related Education, Service Award, 2008
Illinois Judicial Council, Meritorious Service Award, 2002
Northern Illinois University History Department, Alum of the Year, 1998
National Black Prosecutors Association, Merit Award, 1996
Washington University School of Law, Graduate and Professional Opportunities Fellowship (full tuition and stipend), 1981-1984

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.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00995 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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Black Women Lawyers' Association
Summit Committee, 2006-2007
Chicago Bar Association
Judicial Evaluation Committee, 1993-1995
Ad Hoc Committee to Reevaluate the Judicial Evaluation Committee, 1997
Chicago Coalition on Law-Related Education
Circuit Court of Cook County
Adult Probation Oversight Committee, 1998
Cook County Bar Association
Education Committee, 2005-2006
Illinois Judges Association
Director, 2000-2006
Illinois Judicial Council
Executive Board Member, 2004-2005 & 2008-Present
Illinois Pattern Jury Instructions Committee (Civil) of the Supreme Court of Illinois, 2003-2008
National Association of Women Judges
National Black Prosecutors Association
National Council of Juvenile and Family Court Judges
Women's Bar Association of Illinois

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.

Illinois, 1984

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 the United States, 1989
United States Court of Appeals for the Seventh Circuit, 1988
United States District Court for the Northern District of Illinois, 1984
Supreme Court of Illinois, 1984

There has been no lapse 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

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00996 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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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.

American Constitution Society, Chicago Chapter (2009-Present)
Board of Advisors (2009-Present)
Catholic Charities Adoption Guild (1989-Present)
Chicago Public Schools Principal for a Day (2004-2008)
Des Plaines Child Sexual Abuse Advisory Board (1987-1988)
Friends of Whitney Young High School (2005-2007)
JOURNAL OF URBAN AND CONTEMPORARY LAW (1982-1983)
Just the Beginning Foundation, Inc. (1995-2000)
Director (1995-2000)
Leadership Greater Chicago (1994-Present)
Fellows' Board Member (1995-1997)
Mayor's Advisory Council to the Chicago Dept. of Admin. Hearings (2000-2008)
Northern Illinois University Black Alumni (2009-Present)
Southside Little League Parents (1995-2002)
Truman Scholarship Foundation, Chicago Scholar Selection Panel (2009)
University of Chicago Laboratory School Parents' Association (2007-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 presently discriminates or has discriminated during the time I have been a member. I am not aware of any former discrimination by any of these organizations.

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.

"Focus on Our Future," ILLINOIS JUDICIAL COUNCIL NEWSLETTER (Aug./Sept. 2009)
"Tributes to Justice Pincham: Running the Bases," CHICAGO BAR ASSOCIATION RECORD (Apr. 2008)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00997 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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"The Red Flag Rule: 216," COOK COUNTY BAR ASSOCIATION NEWSLETTER (Spring 2005)

In addition to these listed publications, I authored and/or edited short statements that were published on Internet websites for my judicial campaigns, in a newsletter, and in pamphlet form. Following the ethics canons for Illinois judicial officers, I took down all web pages soliciting electoral support after the elections.

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 Ad Hoc Committee to Reevaluate the Judicial Evaluation Committee, Chicago Bar Association (1997) (contributor)

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.

C.F. Stradford Award Acceptance Speech, Cook County State's Attorney's Office, Chicago, IL (Feb. 18, 2010)

Esther Rothstein Award Acceptance Speech, Women's Bar Association of Illinois, Chicago, IL (Jan. 22, 2010)

Pledge of Professionalism Program, Commission of Professionalism of the Supreme Court of Illinois, John Marshall Law School, Chicago, Illinois (Jan. 14, 2010)

"Road to the Robe" Workshop Facilitator, Illinois Judicial Council (Oct. 17, 2009) (no notes)

Judicial Selection (Panelist), American Constitution Society Northwestern University Chapter (Sept. 11, 2009) (no notes)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00998 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Keynote Address, Daniel Murphy Scholarship Fund, Chicago, Illinois (May 14, 2009)
"Women Rising to the Bench" (panelist), Women's History Month Celebration of the Independent Voters of Illinois-Independent Precinct Organization, Chicago, Illinois (Mar. 28, 2009) (no notes)
"Women on the Move," Obama for America (Moms for Michelle), Garfield Park Conservatory, Chicago, Illinois (Aug. 24, 2008) (no notes)
Keynote Remarks, Seventh Annual Dr. Martin Luther King Jr. Breakfast, Village of Hillside, Illinois (Jan. 21, 2008) (no notes)

Throughout my service as a judge, I often have made presentations, particularly to students and young people, in our courthouses and in schools about careers and the role of the law. The presentations were often in conjunction with Women's History Month, African American History Month, and Take Your Child to Work Day. I estimate that I made twelve to fifteen such presentations during each year I have been on the bench. I also served as Principal-for-a-Day with the Chicago Public Schools on four occasions. I do not keep records of these presentations, which I make without text or notes.

In addition, I gave public remarks frequently during my three candidacies for elected judicial office (in 1996, 2002, and 2008). In each campaign, I spoke to a wide variety of organizations including school groups, neighborhood and community organizations, block club meetings, ward meetings, and candidate forums. I did not speak from notes and I have no transcripts or recordings from any of these presentations. In each presentation, I spoke about my background and experience and about the importance of electing qualified judges to the judiciary. For my election to the Appellate Court in 2008, I also explained the duties of appellate judges.

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.

Emily and Friends (WVON radio broadcast Feb. 21, 2009) (no transcript).
Cliff Kelly Show, "Retention of Judges Panel," (WVON radio broadcast fall 2008) (no transcript).
Moving On With Sheila Frazier (Cable Access Network television broadcast May 22, 2008) (no transcript).
Amy Wooten, "Election 2008: Sharon Johnson Coleman," WINDY CITY TIMES, Jan. 30, 2008 (web profile).
Gloria L. Materre, "Obstacles Abound for Women of Color in the Legal Field," *Women in Law 2008*, at 28 (Law Bulletin Pub. Co. 2008).
"Careers in the Law," *Illinois Judges Association Program* (Cable Access Network television broadcast Dec. 14, 2006) (no transcript).

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 00999 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Chicago Bar Association Program (Cable Access Network television broadcast Mar. 6, 2006) (no transcript).
John Flynn Rooney, "She Has 'Greatest Assignment' on Trial Court," CHICAGO DAILY LAW BULLETIN, Aug. 14, 2002, at 3.
"A Night We Can't Forget," Chicago Sun-Times, Apr. 15, 2002, at 31.
M.A. Stapleton, "She's on the Right Track, Judging From Her Record," CHICAGO DAILY LAW BULLETIN, Feb. 18, 1998, at 3.
Abdon M. Pallasch, "State's Attorney's Unit Targets Those Who Prey on Elderly," CHICAGO LAWYER, Nov. 1997, at 6.
Vladmire Herard, "Southside Lawyer Aims for County Judgeship," CHICAGO DEFENDER, Jan. 15, 1996, at 21.
"Profile: Sharon Johnson Coleman; Chief of the Public Interest Bureau; Serving the Legal Interest of the Public Since 1984," TRI-CITY JOURNAL, Dec. 21, 1995, at 9.
"Sharon Johnson Coleman, Chief of the Public Interest Bureau; Serving the Legal Interests of the Public Since 1984," Chicago Crusader, Dec. 9, 1995, at 7.
"Ex-Lawyer Indicted for Theft" (interviewed as prosecutor), CHICAGO DAILY LAW BULLETIN, Apr. 25, 1996, at 1.
"Elder Abuse Cases on Rise; 5,000 Expected This Year; 46% Jump Since '92," CHICAGO SUN-TIMES, Feb. 18, 1996, at 29.
Maurice Possley & Andrew Fegelman, "Neglect Law Protects the Ailing, Forgotten," CHICAGO TRIBUNE, Feb. 15, 1996, at 1.

This is a complete list of interviews that I have been able to identify with a search of my files and of publicly-available databases. I speak frequently about the importance of the judiciary and my own service on the bench, and it is possible I have given interviews along those lines that I have not found. In addition, during my time supervising the State's Attorney's Public Interest Bureau, I spoke with several reporters about our work. I recall speaking with Pam Zekman of CBS Channel 2 News, but I have neither dates for those conversations nor specific recollection of other similar interviews.

In addition, I provided various statements and candidate questionnaire responses during my campaigns for elected judicial office in 1995-1996 and 2007-2008. I have not retained all such statements in my files.

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.

From 1996 through 2008, I served as Judge of the Circuit Court of Cook County. The Circuit Court is a state trial court of general jurisdiction. From 1996-1997 and again in 2000-2001, I was assigned to the Child Protection Division. From 1997-2000 and again from 2002-2008, I was assigned to the Law Division, where I primarily presided over all aspects of civil cases, including case management, pre-trial motion practice, and jury trials.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01000 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Since December 1, 2008, I have served as a Justice of the Appellate Court of Illinois, First District. Our court hears appeals of right from the Circuit Court and from a handful of other sources, including the Illinois Commerce Commission.

Both judicial offices I have held are elected positions.

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

Approximately 600.

i. Of these, approximately what percent were:

jury trials:	35%
bench trials:	65%
civil proceedings:	100%
criminal proceedings:	0%

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

People v. Cowart, 907 N.E.2d 1 (Ill. App. Ct. 2009).
Hayes v. M&T Mortgage Corp., 906 N.E.2d 638 (Ill. App. Ct. 2009).
Rexnord Industries, Inc. v. RHI Holdings, Inc., 906 N.E.2d 682 (Ill. App. Ct. 2009).
Strutz v. Vicere, 906 N.E.2d 1261 (Ill. App. Ct. 2009).
Linhart v. Bridgeview Creek Development, Inc., 909 N.E.2d 865 (Ill. App. Ct. 2009).
Cordeck Sales, Inc. v. Construction Systems, Inc., 917 N.E.2d 536 (Ill. App. Ct. 2009).
Vo-land, LLC v. Village of Bartlett, 919 N.E.2d 1 (Ill. App. Ct. 2009).
Dienstag v. Margolies, 919 N.E.2d 17 (Ill. App. Ct. 2009).
Qureshi v. Ahmed, 916 N.E.2d 1153 (Ill. App. Ct. 2009).
Heupel v. Jenkins, No. 1-07-1338, 2009 Ill. App. LEXIS 1080 (Ill. App. Ct. Nov. 10, 2009).
People v. Esang, No. 1-07-2235, 2009 Ill. App. LEXIS 1216 (Ill. App. Ct. Dec. 9, 2009).
Dloogatch v. Brincat, No. 1-08-0168, 2009 Ill. App. LEXIS 1252 (Ill. App. Ct. Dec. 16, 2009)
Ill. Bell Telephone Co. v. Ill. Commerce Commission, No. 1-08-2859, 2009 Ill. App. LEXIS 1269 (Ill. App. Ct. Dec. 23, 2009).
Estate of Howard Agins, No. 1-08-3207, 2009 Ill. App. LEXIS 1271 (Ill. App. Ct. Dec. 23, 2009).

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Slomka v. Slomka, No. 1-08-3567, 2009 Ill. App. LEXIS 1270 (Ill. App. Ct. Dec. 23, 2009).
People v. Moore, No. 1-07-0410, 2009 Ill. App. LEXIS 1273 (Ill. App. Ct. Modified Dec. 23, 2009).
Pence v. Northeast Illinois Regional Commuter R.R., No. 1-08-3668, 2010 Ill. App. LEXIS 63 (Ill. App. Ct. Feb. 3, 2010).
People v. Ross, 917 N.E.2d 1111 (Ill. App. Ct. 2009) (special concurrence).
Brookbank v. Olson, 907 N.E.2d 426 (Ill. App. Ct. 2009) (dissent).
People v. Roosevelt Davis, No. 1-07-2012 (Dec.17, 2008) (unpublished).
People v. Jeremy Borders, No. 1-07-1168 (Dec. 24, 2008) (unpublished).
People v. Ladale Briggon, No. 1-06-3666 (Jan.14, 2009) (unpublished).
People v. Brian Elmore, No. 1-07-0065 (Jan. 14, 2009) (unpublished).
People v. Robert Lee Williford, No. 1-05-2071 (Jan. 21, 2009)(unpublished).
People v. Herman Mitchell, No. 1-05-2184 (Jan. 28, 2009) (unpublished).
Romano Novelli v. City of Chicago, No. 1-07-2362 (Jan. 28, 2009) (unpublished).
People v. Rabil A. Rahman, No. 1-07-2087 (Feb. 4, 2009) (unpublished).
In re G.P., a Minor, No. 1-08-2699 (Feb. 4, 2009) (unpublished).
People v. Nathaniel Dixon, No. 1-05-3665 (Feb. 25, 2009) (unpublished).
People v. Patrick McLaughlin, No. 1-07-1246 (Feb. 25, 2009) (unpublished).
People v. Jacob Ramos, No. 1-07-1482 (Feb. 25, 2009) (unpublished).
In re J.C. and Z.K., Minors, No. 1-08-2496 and No. 1-08-2497 (Consolidated) (Feb. 25, 2009) (unpublished).
Zachary A. McGraw, Jr. v. Ill Dept. of Employment Security, No. 1-08-0639 (Mar. 11, 2009) (unpublished).
Darlene Simon v. County of Cook, No. 1-07-2048 (Mar. 18, 2009) (unpublished).
In re K.W., S.W., Minors, No. 1-08-3231 (Mar. 18, 2009) (unpublished).
People v. Alvin Davila, No. 1-06-1507 (Mar. 31, 2009) (unpublished).
People v. Frank Williams, No. 1-06-3258 (Mar. 31, 2009) (unpublished).
People v. Andre Rushing, No. 1-07-1780 (Mar. 31, 2009) (unpublished).
Timothy Christian Schools v. IL Dept. of Revenue, No. 1-07-2549 (Mar. 31, 2009) (unpublished).
People v. Darlene White, No. 1-07-2973, No. 1-07-2974, No. 1-07-2975, and No. 1-07-2976 (Consolidated) (Mar. 31, 2009) (unpublished).
People v. John Hudson, No. 1-07-1396 (Apr. 22, 2009) (unpublished).
Continental Casualty Co. v. Simpson Construction Co., No. 1-07-2866 (Apr. 29, 2009) (unpublished).
People v. Kevin Smith, No. 1-06-0043 (May, 6, 2009) (unpublished).
People v. Michael Herrera, No. 1-07-1859 (May 13, 2009) (unpublished).
People v. Marvin Cherry, No. 1-07-2400 (May 13, 2009) (unpublished).
People v. Bobby White, No. 1-06-2665 (May 20, 2009) (unpublished).
People v. Kenneth Bouldin, No. 1-06-3727 (May 20, 2009) (unpublished).
People v. Ramon Hernandez, No. 1-07-1571 (May 20, 2009) (unpublished).
In re M.D., a Minor, No. 1-09-0303 (May 20, 2009) (unpublished).
People v. Carmen Perez, No. 1-07-0839 (June 3, 2009) (unpublished).
People v. Demingo Swift, No. 1-08-0491 (June 10, 2009) (unpublished).
People v. Karl Hanwood, No. 1-07-0179 (June 17, 2009) (unpublished).
People v. Dennis McGruder, No. 1-07-2569 (June 17, 2009) (unpublished).
Ronald Michalowicz v. Village of Bedford Park, No. 1-07-3414 (June 17, 2009) (unpublished).
Corretta Stone v. Oscar Aranda, No. 1-08-2322 and No. 1-08-2902) (Consolidated) (June 17, 2009) (unpublished).

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People v. Zachary Wright, No. 1-07-0593 (June 30, 2009) (unpublished).
People v. Bruce Snipe, No. 1-07-0838 (June 30, 2009) (unpublished).
People v. Albino Martinez, No. 1-07-1394 (June 30, 2009) (unpublished).
People v. Michael Nocco, No. 1-07-2778 (June 30, 2009) (unpublished).
Pinnacle Waster Services, Inc. v. North Star Trust Company, No. 1-07-3006 (June 30, 2009) (unpublished).
People v. Shawn Holdman, No. 1-08-0717 (June 30, 2009) (unpublished).
People v. Najmalaw Muhammad, No. 1-06-3241(Jul.15, 2009) (unpublished).
People v. Jesus Gomez, No. 1-06-3451 (Jul. 29, 2009) (unpublished).
People v. Artra Washington, No. 1-08-1524 (Jul. 29, 2009) (unpublished).
Rose Pernice-Dembosz v. County of Cook, No. 1-08-2509 (Jul. 29, 2009) (unpublished).
People v. Dorn Thornton, No. 1-07-3410 (Aug. 5, 2009) (unpublished).
People v. Timothy Satka, No. 1-08-1015 (Aug. 5, 2009) (unpublished).
Wanda Atterberry v. County of Cook, No. 1-08-2510 (Aug. 12, 2009) (unpublished).
People v. Patrick Edwards, No. 1-06-1108 (Aug. 26, 2009) (unpublished).
People v. Sammy Brown, No. 1-07-1363 (Aug. 26, 2009) (unpublished).
People v. James Gresh, No. 1-08-0974 (Aug. 26, 2009) (unpublished).
In re Marriage of Paul Carbonaro, No. 1-08-1477 (Aug. 26, 2009) (unpublished).
National Wrecking Company v. Sarang Corporation, No. 1-08-1604 (Aug. 26, 2009) (unpublished).
People v. Mohammed Hussain, No. 1-07-0898 (Sept. 2, 2009) (unpublished).
People v. Broderick Enge, No. 1-08-0350 (Sept. 9, 2009) (unpublished).
Terrence Durnin v. Ill Dept. of Financial and Professional Regulation, No. 1-08-1052 (Sept. 9, 2009) (unpublished).
Ford Motor Credit Co. v. Tereza Garza, No. 1-08-2933 (Sept. 16, 2009) (unpublished).
People v. Lawrence Rhoden, No. 1-07-2568 (Sept. 23, 2009) (unpublished).
People v. Mario Moncado, No. 1-07-1943 (Sept. 30, 2009) (unpublished).
People v. Patrick McLaughlin, No. 1-07-2000 (Sept. 30, 2009) (unpublished).
Terry Whisman v. City of Evanston, No. 1-08-1765 (Sept. 30, 2009) (unpublished).
People v. Jack Rein, No. 1-08-2965 (Sept. 30, 2009) (unpublished).
James A. Withers, Jr. v. James A. Withers III, No. 1-09-0321 (Sept. 30, 2009) (unpublished).
In re D.W., a Minor, No. 1-09-1594 (Sept. 30, 2009) (unpublished).
People v. Francisco Quezada, No. 1-07-3107 (Oct. 25, 2009) (unpublished).
People v. Michael Jones, No. 1-06-3198 (Dec. 4, 2009) (unpublished).
People v. Charles Golden, No. 1-08-2682 (Nov. 18, 2009) (unpublished).
Exz. Inc. v. Jarvis Tolefree, No. 1-08-2791 (Nov. 18, 2009) (unpublished).
People v. Andre Jones, No. 1-08-0866 (Nov. 25, 2009) (unpublished).
People v. Carl Gallo, Jr., No. 1-08-1793 (Nov. 25, 2009) (unpublished).
Carol Bolton El v. IL Dept of Employment Security, No. 1-08-2668 (Nov. 25, 2009) (unpublished).
People v. Fonatine Adams, No. 1-08-0357 (Dec. 30, 2009) (unpublished).
People v. Anthony Boyce, No. 1-07-0918 (Dec. 30, 2009) (unpublished).
Jeffrey Gniandek v. Nicholas Zagotta, No. 1-08-1913 (Dec. 30, 2009) (unpublished).
People v. Antoine Townsend, No. 1-07-3113 (Dec. 2, 2009) (unpublished).
American National Property v. Irena Glowacka, No. 1-08-1989 (Dec. 2, 2009) (unpublished).

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People v. Darrius D. Roberson, No. 1-07-2434 (Dec. 23, 2009) (unpublished).
People v. Dominick Aguero, No. 1-08-2181 (Dec. 16, 2009) (unpublished).
People v. Rayonous Burnett, No. 1-08-2176 (Dec. 30, 2009) (unpublished).
Ralph Whited v. Life Storage Centers, No. 1-08-3000 (Dec. 30, 2009) (unpublished).
People v. Marvin Davis, No. 1-06-2956 (Jan. 13, 2010) (unpublished) (dissent).
People v. Damarlin Johnson, No. 1-09-0364 (Jan. 20, 2010) (unpublished).
In re Marriage of Anne Carillo, No. 1-09-0611 (Jan. 27, 2010) (unpublished).
People v. Roland Black, No. 1-08-1586 (Feb. 3, 2010) (unpublished).
People v. Irwin Rosenson, No. 1-08-1741 (Feb. 3, 2010) (unpublished).
People v. William Lynch, No. 1-08-2814 (Feb. 3, 2010) (unpublished).

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. *In re Mark W.*, 862 N.E.2d 589 (Ill. App. Ct. 2006), *rev'd*, 888 N.E.2d 15 (Ill. 2008), *aff'd after remand*, 895 N.E.2d 925 (Ill. App. Ct. 2008). This was a proceeding to terminate the parental rights of a disabled adult woman over her minor son. The case was complicated in that the child's grandmother retained plenary guardianship over the adult disabled mother. I appointed a guardian ad litem to represent the mother's interests in the termination hearing as distinct from the grandmother. The grandmother, as plenary guardian of the mother, objected to the additional appointment. The Appellate Court held that I lacked authority to appoint a guardian ad litem for the disabled adult. The Illinois Supreme Court found that my disposition was appropriate, and reinstated my decision.

The appointed guardian was Raymond A. Morrissey, 7667 W. 95th St., Ste. 206, Hickory Hills, IL 60457, Tel: 708-233-9494.

2. *Ahmed v. Pickwick Place*, 896 N.E.2d 854 (Ill. App. Ct. 2008). The plaintiff's decedent, a seven-year-old girl, lost control of her bicycle while riding on the sidewalk at a residential complex, fell down an embankment into a retention pond, and drowned. The plaintiff's negligence claims proceeded to a two-week trial. I directed verdicts for the property owner and manager defendants on various claims of failure to maintain. On the remaining claims, the jury returned a $100,000 verdict for the plaintiff, who had sought several million dollars. The jury's answer to a special interrogatory, however, was inconsistent with its finding in the plaintiff's favor. I therefore entered judgment notwithstanding a verdict. The Appellate Court affirmed my judgment in all respects.

Counsel for plaintiff was Gregory Harris, 1701 S. First Ave., Ste. A07, Maywood, IL 60153, Tel: 708-343-7447. Counsel for defendant was David Flynn, Querrey & Harrow, Ltd., 175 W. Jackson, Ste. 1600, Chicago, IL 60604, Tel: 312-540-7000.

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3. *Jones v. Rallos,* 890 N.E.2d 1190 (Ill. Ct. App. 2008). (Cook County Cir. Ct. 2003). Plaintiff was misdiagnosed by defendant physician as HIV-positive at age 23 and, as a result, underwent drug treatment, lost his job, and suffered emotionally. I presided over a multi-week jury trial on medical negligence claims of false diagnosis of HIV, resulting in a six-figure verdict for plaintiff. The defendant appealed the judgment on several grounds and, on a second hearing, the Appellate Court affirmed my judgment.

Counsel for plaintiff was Michael Panter (now an associate judge of the Circuit Court of Cook County), 32 W. Randolph St., Rm. 1401, Chicago, IL 60601, Tel: 312-603-6000. Counsel for defendant was Brian Rocca, Pretzel & Stouffer, One S. Wacker Dr., Ste. 2500, Chicago, IL 60606, Tel: 312-346-1973.

4. *Bermudez v. Martinez Trucking*, 796 N.E.2d 1074 (Ill. App. Ct. 2003). The plaintiff, a trainee truck driver, regularly accompanied an experienced driver on his route and was allowed to drive the truck on a highway section of the route. On more than one occasion, the experienced driver moved to the back of the cab and slept while the plaintiff drove. During one such period, the plaintiff lost control of the truck and crashed. Plaintiff's leg was severed in the crash. He alleged that the trucking company was negligent in training him. I directed a verdict for the trucking company, holding that the lack of evidence of the cause of the crash prevented the plaintiff from proving that the trucking company's negligence was the proximate cause of the accident. The Appellate Court affirmed.

Counsel for plaintiff was Michael W. Rathsack, 111 W. Washington St., Ste. 962, Chicago, IL 60602, Tel: 312-726-5433. Counsel for defendant was Steven C. Wolf and Patrick Grady, Wolf & Wolfe, Ltd., 25 E. Washington St., Ste. 700, Chicago, IL 60602, Tel: 312-855-0500.

5. *Hallowell v. Univ. of Chicago*, 777 N.E.2d 435 (Ill. App. Ct. 2002). A nine-year-old girl collapsed as the result of an episode of heart arrhythmia, then died following another episode 22 months later. Her family sued several doctors, alleging that the defendants were negligent in failing to inform them of the possibility of giving the child a pacemaker. After a two-week trial, the jury returned an $8 million verdict against the hospital and one defendant doctor and a not-guilty verdict against the remaining doctor defendants. The Appellate Court affirmed the jury verdict and my judgment in all respects.

Counsel for plaintiff was Todd A. Smith, Power Rogers & Smith, 70 W. Madison St., Ste. 5500, Chicago, IL 60602, Tel: 312-236-9381. Counsel for defendant was Pamela L. Gellen, Lowis & Gellen LLC, 200 W. Adams St., Ste. 1900, Chicago IL 60606, Tel: 312-364-2500. Counsel for co-defendant was Brian Fetzer, Johnson & Bell, Ltd., 33 W. Monroe St., Ste. 2700, Chicago, IL 60603, Tel: 312-372-0770.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01005 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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6. *Edwards v. City of Chicago* (98 L 2250) (2003 Circuit Court of Cook County). I presided over this jury trial, which arose from the police shooting of a 19-year-old male in an abandoned house. The youth and his girlfriend were together in an upstairs room when officers responded to a "possible burglary" call. When the young man emerged from the room, naked from the waist down, a rookie officer shot the youth in the head. The youth's mother brought this wrongful death action alleging willful and wanton conduct against the City and the police officer. Following a multi-week trial, the jury returned a verdict for the defendant. Extensive post-trial motions were filed, which included a *Batson* argument based on the few African-Americans in venire and only one African-American juror hearing the case. The youth was African-American and the officer was white. Upon my written denial of the various motions, there was no appeal by plaintiff.

Counsel for plaintiff was Larry Rogers, Sr., Larry Rogers, Jr., and Sean Houlihan, Power Rogers & Smith, 70 W. Madison St., Ste. 5500, Chicago, IL 60602, Tel: 312-236-9381. Counsel for defendant was Thomas Platt, City of Chicago, Dept. of Law, 30 N. LaSalle St., Ste. 900, Chicago, IL 60602, Tel: 312-744-4833, and the City Corporation Counsel's Office, City Hall, 121 N. LaSalle St., Room 600, Chicago, IL 60602, Tel: 312-744-0220.

7. *Cangemi v. Advocate S. Suburban Hosp.*, 845 N.E.2d 792 (Ill. App. Ct. 2006). The plaintiff claimed that her doctors and her hospital's staff fraudulently concealed complications that occurred during the birth of her son, and that this concealment should allow her to maintain an action for medical negligence twenty years later. I dismissed the plaintiff's complaint, holding that she had not sufficiently pled negligence or fraudulent concealment. The Appellate Court affirmed.

Counsel for plaintiff was Robert Holstein, 19 S. LaSalle St., Ste. 1500, Chicago, IL 60603, Tel: 312-906-8000. Counsel for defendant was Brian Schroeder, Novoselsky Law Offices, 120 N. LaSalle St., Ste. 1400, Chicago, IL 60602, Tel: 312-346-8930. Counsel for co-defendant was Susan Condon (formerly of Clausen Miller P.C.), City of Chicago, Dept. of Law, 30 N. LaSalle St., Ste. 1400, Chicago, IL 60602, Tel: 312-744-0672.

8. *Jackson v. A.M. Insulation* (99 L 14822) (2003 Circuit Court of Cook County). I presided over this asbestos exposure jury trial, the first such trial heard in Cook County in more than five years despite the hundreds of pending asbestos cases. Approximately two decades before bringing suit, the plaintiff had worked in a warehouse as a general laborer for approximately six months, where his duties included moving boxes and sweeping-up debris. He claimed the boxes were owned by defendant and contained harmful asbestos with no warnings. Plaintiff, who was mentally challenged, claimed that this wrongful exposure during the six-month period had caused his asbestosis. After two days of deliberation, the jury returned a verdict for plaintiff. After I ruled on extensive post-trial motions, the case was settled prior to appeal.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01006 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Counsel for plaintiff was William Fahey, Cooney & Conway, 120 N. LaSalle St., 30th Floor, Chicago, IL 60602, Tel: 312-236-6166. Counsel for defendant was Edward J. Matushek, Matushek Nilles & Sinars LLC, 55 W. Monroe, Ste. 700, Chicago, IL 60603, Tel: 312-750-1215

9. *Green v. Miglin-Beitler* (2000 Circuit Court of Cook County). I presided over this negligence suit brought against the Chicago Bar Association (CBA) building management. Plaintiff, an employee of the Bar Association, was raped in a restroom on an unoccupied floor of the building by an intruder. Building security had allowed the intruder into the premises despite his out-of-place appearance and recent reports of rapes in downtown office buildings. The intruder, who pleaded guilty to criminal sexual assault, testified in plaintiff's case while still serving his prison sentence. The multi-week case resulted in a million-dollar verdict for plaintiff and received significant media attention. The case settled after post-trial motions.

Counsel for plaintiff was Kathleen Zellner, Kathleen T. Zellner & Associates, Drake Oak Brook Plaza, 2215 York Road, Ste. 504, Oak Brook, IL 60523, Tel: 630-955-1212. Counsel for defendant was D. Tim McVey, McVey & Parsky LLC, 30 N. LaSalle St., Ste. 2000, Chicago, IL 60602, Tel: 312-551-8764.

10. *Mullins v. City of Chicago* (04 L 10585). This was a wrongful death action in which a police officer had jumped on the driver's side door of decedent's moving vehicle and, when decedent failed to stop, clung on and shot the decedent multiple times causing his death. The police officer had decided that the decedent looked suspicious at a gas station and the decedent drove away as the officer approached. The jury returned a verdict of $3.9 million based on a finding of willful and wanton conduct against the police. I denied extensive post-trial motions.

Counsel for plaintiff was Stephen J. McMullen, 212 W. Washington, Ste. 909, Chicago, IL 60606, Tel: 312-357-0513, and Gary Laatsch (now deceased). Counsel for defendant was Tiffany M. Ferguson, Pugh Jones Johnson & Quandt PC, 180 N. LaSalle St., Ste. 3400, Chicago, IL 60601, Tel: 312-768-7800.

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. *People v. Cowart*, 907 N.E.2d 1 (Ill. App. Ct. 2009). Counsel for Appellant was Robert Hirschhorn, Assistant State Appellate Defender, Office of State Appellate Defender, 203 N. LaSalle St., 24th Floor, Chicago, IL 60602, (312) 814-5472. Counsel for Appellee were James E. Fitzgerald and Ramune Rita Kelecius, Assistant State's Attorneys, Office of State's Attorney, County of Cook, 309 Richard J. Daley Center, Chicago, IL 60602, (312) 443-5440.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01007 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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2. *Hayes v. M&T Mortgage Corp.*, 906 N.E.2d 638 (Ill. Ct. App. 2009). Counsel for Appellant was Lloyd J. Brooks, The Brooks Law Firm, 15008 Woodlawn Avenue, Dolton, IL 60419, (708) 841-8000. Counsel for Appellee Old Second Mortgage Company was Stephen M. Cooper, Law Offices of Cooper, Storm & Piscopo, 117 S. Second Street, P.O. Box 388, Geneva, IL 60134, (630) 232-6170. Counsel for Appellee Manufacturers & Traders Trust Company was Mitchell A. Lieberman, Law Offices of Noonan & Lieberman, Ltd., 105 W. Adams Street, Suite 3000, Chicago, IL 60603, (312) 431-1455.

3. *People v. Asuquo Esang*, No. 1-07-2235, 2009 Ill. App. LEXIS 1216 (Ill. App. Ct. Dec. 9, 2009). Counsel for Appellant was Patricia Unsinn, Deputy Defender, Office of State Appellate Defender, 203 N. LaSalle St., 24th Floor, Chicago, IL 60602, (312) 814-5472. Counsel for Appellee was James E. Fitzgerald, Assistant State's Attorney, 309 Richard J. Daley Center, Chicago, IL 60602, (312) 443-5440.

4. *Dloogatch v. Brincat*, No. 1-08-0168, 2009 Ill. App. LEXIS 1252 (Ill. App. Ct. Dec. 16, 2009). Counsel for Appellant Terra Foundation were Joel J. Bellows and Christopher L. Gallinari, Bellows and Bellows, P.C., 209 S. LaSalle Street, Suite 800, Chicago, IL 60604, (312) 332-3340. Counsel for Appellants were William J. Harte and Dana M. Pesha, of William J. Harte, Ltd., 111 W. Washington Street, Suite 1100, Chicago, IL 60602 (312) 726-5015; Lawrence Walner and Michael S. Hilicki, of Lawrence Walner & Assoc., Ltd., 150 N. Wacker Drive, Suite 2150, Chicago, IL 60606, (312) 201-1616; Ronald A. Brown, of Prickett, Jones & Elliot, 1310 King Street, Wilmington, DE; Stewart M. Weltman, of Weltman Law Firm, 77 W. Wacker Dr., Suite 4800, Chicago, IL 60601, (312) 606-8755; and Charles Watkins, of Futterman, Howard, Watkins, Wylie & Ashley Chtd, 122 S. Michigan Avenue, Suite 1850, Chicago, IL 60603, (312) 346-3466. Counsel for Appellee were Linton J. Childs, Hille R. Sheppard and Ian M. Ross, of Sidley Austin LLP, One S. Dearborn Street, Chicago, IL 60603 (312) 853-7000.

5. *Linhart v. Bridgeview Creek Development, Inc.*, 909 N.E.2d. 865 (Ill. App. Ct. 2009). Counsel for Appellant was Law Offices of Arthur L. Klein, Arnstein & Lehr, LLP, 120 S. Riverside Plaza, Suite 1200, Chicago, IL 60606, (312) 876-7100. Counsel for Appellee was William J. Sneckenberg, Law Offices of Sneckenberg, Thompson & Brody, LLP, 161 N. Clark Street, Suite 3575, Chicago, IL 60601, (312) 782-9320.

6. *People v. Moore*, No. 1-07-0410, 2009 Ill. App. LEXIS 1273 (Ill. App. Ct. Modified Dec. 23, 2009). Counsel for Appellant were Erin E. G. McFeron and Bryon M. Reina, Assistant State Appellate Defenders, Office of State Appellate Defender, 203 N. LaSalle St., 24th Floor, Chicago, IL 60602, (312) 814-5472. Counsel for Appellee were James E. Fitzgerald, Peter D. Fischer, and Marie Quinlivan Czech, Assistant State's Attorneys, Office of State's Attorney, County of Cook, 309 Richard J. Daley Center, Chicago, IL 60602, (312) 443-5440.

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7. *Cordeck Sales, Inc. v. Construction Systems, Inc.*, 917 N.E.2d 536 (Ill. App. Ct. 2009). Counsel for Appellant was Stephen P. Kikoler, Law Offices of Much Shelist Denenberg Ament & Rubenstein, P.C., 191 N. Wacker Drive, Suite 1800, Chicago, IL 60606, (312) 521-2000. Counsel for Appellee Construction Systems was Karen A. Berres, Law Offices of Fuller and Berres, 69 S. Barrington Road, South Barrington, IL 60010, (847) 381-5600. Counsel for Appellee Cordeck Sales was Stephen D. Richek, 20 N. Clark Street, Chicago, IL 60602, (312) 374-9444.

8. *Vo-land, LLC v. Village of Bartlett*, 919 N.E.2d 1 (Ill. App. Ct. 2009). Counsel for Appellant was Stewart H. Diamond, Law Offices of Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer, P.C., 140 S. Dearborn Street, Sixth Floor, Chicago, IL 50503 (312) 782-7606. Counsel for Appellee was Jack M. Siegel, Law Offices of Holland & Knight LLP.

9. *Dienstag v. Margolies*, 919 N.E.2d 17 (Ill. App. Ct. 2009). Counsel for Appellant was James R. Quinn, Law Offices of Ruff, Weidenaar & Reidy, Ltd., 222 N. LaSalle Street, Suite 700, Chicago, IL 60601, (312) 263-3890. Counsel for Appellee was Kenneth C. Chessick, Law Offices of Kenneth C. Chessick, M.D., 1870 N. Roselle Road, Suite 104, Schaumburg, IL 60195, (847) 843-8044 and David A. Novoselsky, Novoselsky Law Offices, 120 N. LaSalle Street, Suite 1400, Chicago, IL 60602, (312) 346-8930.

10. *Qureshi v. Ahmed*, 916 N.E.2d 1153 (Ill. App. Ct. 2009). Counsel for Appellant was Robert G. Black, Law Office of Robert G. Black, 300 E. Fifth Avenue, Suite 365, Naperville, IL 60563, (630) 527-1440. Counsel for Appellee was Gerald M. Dombrowski, Law Offices of Sanchez Daniels & Hoffman LLP, 333 W. Wacker Drive, Suite 500, Chicago, IL 60606, (312) 641-1555.

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

I am not aware of having presided over or ruled on any case in which certiorari was requested from or granted by the Supreme Court of the United States.

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.

Approximately 65 of my cases at the trial level were appealed. My rulings were affirmed, or the appeals were dismissed or withdrawn, except for the following ten cases:

Smith v. A.M. Cozzi Metals, No. 1-98-2454 (Ill. App. Ct. Dec. 30, 1999). The Appellate Court disagreed with my analysis of common ownership between the

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corporate defendant and plaintiff's employer and therefore reversed the jury verdict in this Illinois Structural Work Act case.

Doe v. Rush-Presbyterian-St. Luke's Medical Center, Nos. 1-99-0941 and 1-99-1016 (Ill. App. Ct. Dec. 19, 2000). The Appellate Court reversed the jury verdict in a trial over which I had presided, determining that its own prior instruction I had followed in the trial had been in error.

Osborne v. Stages Music Hall, 726 N.E.2d 728 (Ill. App. Ct. 2000). The Appellate Court found that plaintiff had set forth a prima facie case as to duty in this negligence action against a nightclub owner and reversed my directed verdict.

In re N.J. and J.B., Nos. 1-01-1285, 1-01-3280 and 1-01-3281 (consolidated) (Ill. App. Ct. Nov. 19, 2002). The Appellate Court reversed my determination that the State had failed to make the required showing of clear and convincing evidence of unfit parenting in a hearing on petition for termination of parental rights.

Petre v. Kucich, 771 N.E.2d 1084 (Ill. App. Ct. 2002). The Appellate Court held that I erred in relying on an asbestos case in refusing to give a jury instruction on sole proximate cause in this medical negligence action. The Illinois Supreme Court has since overruled the distinction.

WGN Cont'l Broad. Co. v. City of Chicago, No. 1-00-3209 (Ill. App. Ct., May 13, 2003). In this personal injury case asrising from a car accident, the Appellate Court held that the evidence did not support a jury verdict on a contribution claim against the City for intersection design.

Shelden v. Kimball Hill, Inc., No. 1-02-3693 (Ill. App. Ct., June 19, 2004). The Appellate Court found error in a jury instruction I had issued in this negligence action.

Onofre v. Westlake Comm. Hosp., No. 1-05-0253 (Ill. App. Ct. Dec. 30, 2005). The Appellate Court reversed my dismissal of an asserted claim based on allegations of willful and wanton interference with possession of decedent's remains.

Almeroth v. Rinella & Rinella, Ltd. (Doermer), No. 1-05-2158 (Ill. App. Ct. June 30, 2006). The Appellate Court reversed my dismissal of plaintiff's asserted claim for tortious interference against his ex-wife's attorneys in their contentious divorce.

White v. Chicago Transit Auth., 869 N.E.2d 287 (Ill. App. Ct. 2007). The Appellate Court reversed my finding that plaintiff had complied with a notice requirement.

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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.

As a Justice of the Appellate Court of Illinois, approximately three quarters of the approximately 100 opinions I have issued have been unpublished. Unpublished opinions are available from the Clerk of the Appellate Court.

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.

People v. Cowart, 907 N.E.2d 1 (Ill. App. Ct. 2009), confirmed that a defendant suffers a violation of the constitution protection against double jeopardy when a single criminal act, defined by a criminal statute as only one crime, results in a second conviction and prison sentence under that statute.

In re Z.K. and J.C., 1-08-2496 and 1-08-2497 (consolidated) (Feb. 25, 2009), recognized that a parent's constitutional privilege against self-incrimination prohibits a court from making her admission of a crime a precondition for a finding that she successfully completed a required social service program.

People v. Moore, 2009 Ill. App. LEXIS 1273 (Ill. App. Ct. Modified Dec. 23, 2009), confirmed that a conviction of murder by a general guilty verdict may be interpreted as a conviction of the offense incorporating the most culpable mental state and used to impose consecutive sentences without violation of due process if the defendant did not request separate verdict forms.

People v. Esang, 2009 Ill. App. LEXIS 1216 (Dec. 9, 2009), held that a criminal defendant's right to due process was violated by an inadequate hearing on his fitness to stand trial and by allowing him to represent himself despite doubt about his fitness.

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:

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01011 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.

The Illinois Code of Judicial Conduct, Rule 63, Canon 3C, governs when a judge must disqualify himself or herself in a proceeding. Although not an exclusive list, the Rule enumerates instances where a judge's impartiality might be questioned including proceedings where the judge has personal interest, bias or knowledge. The Rule also lists instances where members of the judge's family might have a personal or economic interest in the proceedings. Section 5/114-5 of the Illinois Code of Criminal Procedure and section 5/2-1001 of the Illinois Code of Civil Procedure direct when parties may request a substitution of judge.

The standard I employ in determining whether to recuse myself from a case, sua sponte, is whether my relationship with a party or one of its representatives, agents or employees is sufficiently close to create the appearance of a reasonable possibility of a conflict of interest or of a bias for or against that party.

That standard has resulted in my decision to recuse myself sua sponte from the following: two matters involving the company that employs my spouse as a vice-president, Blue Cross/Blue Shield of Illinois; a medical malpractice case involving a pediatrician who was both a caregiver for one of my children and a family friend; a juvenile custody matter involving a close friend; a juvenile custody matter involving a party whose case relied primarily upon the testimony of a caseworker who was a close friend; an appellate case involving parties and several key witnesses who I worked closely with as a colleague and a trial judge.

There have been cases where I have had a relationship with a party or its representative, but those relationships would not affect my ability to be fair nor did I believe there would be a question of my ability to be fair to all parties. In those cases, I have disclosed the nature of the relationship to all parties.

I recall only one instance in which my recusal was requested. In that case, an African-American pro se litigant made a verbal motion for substitution of judge where I was reviewing his previous motion for substitution of judge from another judge. The litigant's charge that I denied his motion because I was racist was summarily dismissed by the Presiding Judge of the Law Division.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01012 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.

I have not held public office other than judicial office. I have not had any 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.

I was the candidate in my own campaigns for state judicial office in 1996 (Circuit Court), 2002 (Circuit Court retention), and 2008 (Appellate Court and Circuit Court retention). I have not been a member of, held offices in, or rendered services to a political party or to an election committee other than my own.

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 have not served as clerk to a judge.

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.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01013 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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1993-96 & 1984-1989
Cook County State's Attorney's Office
28 North Clark Street, Third Floor
Chicago, Illinois 60602
Deputy State's Attorney &
Bureau Chief, Public Interest Bureau (1993-1996)
Assistant State's Attorney (1984-1989)

1989-93
Office of the United States Attorney for the Northern District of Illinois
219 South Dearborn Street
Chicago, Illinois 60604
Assistant United States Attorney

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.

During my 12 years in law practice, I worked in public service primarily as a county prosecutor, a civil litigator in defense of the federal government, and a litigation supervisor responsible for more than 75 attorneys.

From 1984 to 1989, I performed various duties as an Assistant State's Attorney for the Cook County State's Attorney's Office, one of the largest prosecutor's offices in the United States. I began in the criminal appeals division of the office, where I litigated appeals in defense of criminal convictions obtained by the office in the trial court. The crimes included residential burglary, criminal sexual assault, home invasion, armed violence and murder cases. I wrote, argued, or supervised preparation of more than 100 briefs and motions in various appellate courts, including the Supreme Court of the United States, the Illinois Supreme Court, and the Illinois Appellate Court.

In 1985, I was transferred to the trial division of the office. There, I prosecuted approximately 130 bench and jury trials of misdemeanor and felony cases. Based on my trial experience and record, I was promoted to first-chair prosecutor for felony trials in less than two years. In order to

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01014 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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diversify my litigation experience, I moved to the chancery division of the office in 1988, where I represented Cook County and its officials in civil litigation matters.

In 1989, I joined the office of the United States Attorney for the Northern District of Illinois. As an Assistant U.S. Attorney in the civil division of that office, I defended the United States in civil actions in a variety of legal areas, including medical negligence, construction negligence, labor and tort. I also pursued civil forfeitures and penalties against accused drug dealers, violators of FDA regulations and debtors who had defaulted on federal loans. During my three and a half years as a federal attorney I tried at least eight cases, negotiated numerous settlements, and successfully disposed of cases on written motions.

When one of my former federal colleagues became the First Assistant at the Cook County State's Attorney's Office, I was asked to return in 1993 as chief of its public interest bureau. I supervised 75 Assistant State's Attorneys in the litigation of matters including child support, consumer fraud, environmental law, mental health and utilities regulation. In 1994, I established a unit that prosecuted elder abuse.

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

As a Deputy State's Attorney and as an Assistant State's Attorney, I served the agencies and officials of Cook County, Illinois, as a civil litigator and the citizens of Cook County, Illinois, as a prosecutor. As an Assistant U.S. Attorney, my clients were the United States Government and its agencies and officials.

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: 35%
   2. state courts of record: 65%
   3. other courts:
   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

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01015 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried approximately 125 cases to verdict, judgment or final decision (40% as sole counsel, 40% as chief counsel, and 20% as associate counsel).

i. What percentage of these trials were:
   1. jury: 30%
   2. non-jury: 70%

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 1989, I was admitted to the bar of the Supreme Court of the United States. That same year I was primary author of the State's briefs in *James v. Illinois*, 493 U.S. 307 (1990). My appearance on the case ended prior to oral argument before the Supreme Court due to my appointment as an Assistant U.S. Attorney.

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. *People v. James*, 528 N.E.2d 723 (Ill. 1988), *rev'd*, 493 U.S. 307 (1990). Illinois Supreme Court, before Justices Howard Ryan, John Stamos, Daniel Ward, Thomas Moran, Benjamin Miller, Joseph Cunningham and William G. Clark.

I represented the State in this appeal involving the impeachment exception to the exclusionary rule. Defendant in this murder case had been found and arrested in a beauty shop under a hair dryer immediately after the shooting. On a pre-trial motion, the trial court suppressed defendant's statement after arrest that his hair was red and that he changed the color at his mother's beauty shop to alter his appearance. At trial, the witnesses to the crime identified the defendant as having been the shooter and described his unique straight red hair style (even though at

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01016 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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trial, defendant's hair was short and black). The defendant did not take the stand at trial but presented a witness who testified that defendant's hair always had been short and black. The trial court allowed the State to present evidence of defendant's statement of his hairstyle change as an exception to the exclusionary rule in order to rebut the witness. I handled the appeal, in which I argued that the exclusionary rule could not be used to protect the deliberately perjured testimony of a defense witness. I defended the conviction at the state appellate level (which reversed) and then prepared and presented the state's appeal to Illinois Supreme Court (which found for the State and reinstated the conviction). The case was appealed to the U.S. Supreme Court. *James v. Illinois,* 493 U.S. 307 (1990).

My co-counsel were Thomas V. Gainer, Jr., now a judge in the Circuit Court of Cook County, Criminal Division, 2600 S. California Ave., Room 302, Chicago, IL 60608, Tel: 773-869-7410, and Mary Ellen Dienes, now of the Research Department, Illinois Appellate Court, First District, 160 N. LaSalle St., Ste. N1422, Chicago, IL 60601, Tel: 312-793-7396. Counsel for defendant was Steven Clark, Office of the State Appellate Defender, 20 N. Clark St., Ste. 2800, Chicago, IL 60602, Tel: 312-814-5100, and Michael J. Pelletier, Office of the State Appellate Defender, 203 N. LaSalle St., 24th Floor, Chicago, IL 60601, Tel: 312-814-5472.

2. *People v. Shum*, 512 N.E.2d 1183 (Ill. 1987). Illinois Supreme Court, before Justices Howard Ryan, Seymour Simon, Daniel Ward, Joseph Goldenhersh, Thomas Moran, Benjamin Miller and William G. Clark.

As an Assistant State's Attorney, I represented the State in this appeal in a case of first impression in Illinois. Defendant was sentenced to death for raping and killing his pregnant ex-girlfriend and shooting her roommate in front of three minor children. Defendant was also convicted of feticide for the death of the nine-month-old fetus from asphyxiation upon the death of his mother. The Illinois Supreme Court affirmed defendant's convictions and death sentence after finding the feticide statute constitutional.

My supervisor was Joan S. Cherry, now of Johnson & Colmar, 300 S. Wacker Dr., Ste. 1000, Chicago, IL 60606, Tel: 312-922-1980. Counsel for appellant was Charles M. Schiedel, Deputy Defender of Springfield, Office of the State Appellate Defender, 4th Judicial District, 400 W. Monroe, Ste. 303, P.O. Box 5240, Springfield, IL 62704, Tel: 217-782-1989, and Lawrence J. Essig (formerly Assistant Appellate Defender), 23 Taft Drive, Rochester, IL 62563, Tel: 217-498-7940.

3. *People v. NL Industries, Inc.*, 673 N.E.2d 717 (Ill. App. Ct. 1996). Illinois Appellate Court, First District, before Justices John Tully, David Cerda and Alan Greiman.

As an Assistant State's Attorney, I represented the State in an appeal of an action

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01017 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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it brought to remove and clean up four decades of hazardous leakage on the southwest side of Chicago. The case was dismissed on procedural grounds. Following reversal and remand to the trial court, the case was again dismissed on procedural grounds. The Illinois Appellate Court, First District, reversed and remanded the case to the trial court a second time with instructions to allow the State to present a motion to reinstate the case.

My co-counsel were Robert Buckley, Jr., now the Coordinator Intergovernmental Affairs, Chicago Police Department, 3510 S. Michigan Ave., Ste. 5090, Chicago, IL 60653, Tel: 312-745-6115, and Jennifer Whitfield, now a senior attorney, Environmental Crimes Section, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 23985, Ste. 2120, Washington, D.C., Tel: 202-305-0348. Counsel for appellee was Robert J. Zaideman, Zaideman & Esrig, PC, 10 S. Riverside Plaza, Ste. 1020, Chicago, IL 60606, Tel: 312-207-0005.

4. *People v. Brim*, Circuit Court of Cook County, 6th District, (1987). Judge John Mannion, presiding.

As an Assistant State's Attorney, I represented the State at the trial of a serial date rapist, who previously had been acquitted of two date rapes. The defendant picked up the 18-year-old victim who was having car trouble and attacked her behind a warehouse. He claimed a defense of consent. The jury found him guilty of raping the victim after deliberating for less than 30 minutes.

My co-counsel was James M. Reilly, now General Counsel, City Colleges of Chicago, 226 W. Jackson Blvd., Ste. 1443, Chicago, IL 60606, Tel: 312-553-2540. Counsel for defendant was Nathaniel Howse, Sr., 5201 S. Cornell Ave., Chicago, IL 60615, Tel: 773-643-3133.

5. *People v. Eng*, 485 N.E.2d 1222 (Ill. App. Ct. 1985). Illinois Appellate Court, First District, before Justices David Linn, Glenn Johnson, and Mel Jiganti.

The defendant was charged with robbery, intimidation, and unlawful restraint in what appeared to be a gang-related incident. As an Assistant State's Attorney, I wrote the briefs and represented the State at oral argument in this complex criminal appeal involving three victims and multiple witnesses. The primary question on appeal was whether the gun and bullets found in plain view on a night stand next to where defendant slept were properly admitted as "details of arrest." The Illinois Appellate Court, First District, affirmed the conviction.

My co-counsel was Mary Ellen Dienes, now of the Research Department, Illinois Appellate Court, First District, 160 N. LaSalle St., Ste. N1422, Chicago, IL 60601, Tel: 312-793-7396. Counsel for appellant was Howard Schaffner, Hofeld & Schaffner, 30 N. LaSalle St., Ste. 3120, Chicago, IL 60602, Tel: 312-372-4250.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01018 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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6. *Comiskey v. United States*, No. 89 C 8195 (1992), U.S. District Court, Northern District of Illinois, before Judge Ann Claire Williams.

I was the Assistant U.S. Attorney representing the Government in this medical negligence action brought against a Veterans Administration Hospital for a post-operative "Staph Aureus" infection. I took numerous depositions of hospital staff members and medical experts. After I left the Office, the case went to trial and was resolved in favor of the United States.

My co-counsel was Assistant U.S. Attorney, Ann L. Wallace, U.S. Attorney's Office, 219 S. Dearborn St., Chicago, IL 60604, Tel: 312-886-9082. Counsel for plaintiff was John Skarpars, Hubbard Hubbard O'Brien & Hall, 9240 W. Belmont Ave, 2nd Floor, Franklin Park, IL 60131, Tel: 847-678-2700, and Steve C. Silvey, Athena Attorneys at Law, LLC, 688 Lee St., Des Plaines, IL 60016, Tel: 312-201-0343.

7. *United States v. $17,750.00*, 1989 U.S. Dist. LEXIS 9741 (N.D.IL 1989). U.S. District Court, Northern District of Illinois, before District Judge Ilana Diamond Rovner and Magistrate Judge Thomas Rosemond.

I was the Assistant U.S. Attorney in a jury trial to determine the right of police to seize currency that appeared to be connected with violation of federal drug laws. After almost two days of deliberation, the jury returned a verdict upholding the police seizure.

My co-counsel was Assistant U.S. Attorney, William T. Clabault, Senior Litigation Counsel, Criminal Division, Department of Justice, Bond Building, 10th and Constitution Ave NW, Ste. 4000, Washington, D.C. 20530, Tel: 202-616-0483. Counsel for claimant was Marc Martin, 53 W. Jackson Blvd., Ste. 1420, Chicago, IL 60604, Tel: 312-408-1111.

8. *Franson v. Micelli*, 666 N.E.2d 1188 (Ill. 1996). Illinois Supreme Court, before Justice Moses W. Harrison, Benjamin Miller, Charles Freeman, Michael Bilandic, James Heiple, Mary Ann McMorrow and John Nickels.

As an Deputy State's Attorney in charge of child support enforcement, I represented a mother seeking to establish paternity and recover child support from the putative father. I presented the oral argument on behalf of the mother, and argued that the trial court had properly considered evidence of DNA match possibilities in determining paternity. The Illinois Supreme Court upheld the paternity finding by dismissing the appeal on procedural grounds. It the subsequent case of *People v. Miller*, it held that the DNA testing we advocated was admissible. 670 N.E. 2d 721 (1996).

My co-counsel was Robert Lyons, Robert Lyons & Associates LLC, 1 Westbrook Corporate Center, Westchester, IL 60154, Tel: 708-449-7741. Counsel for

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01019 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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appellee was Marc Martin, 53 W. Jackson Blvd., Ste. 1420, Chicago, IL

9. *Smith v. Derwinski*, 1990 U.S. Dist. LEXIS 6118 (N.D.IL 1990). U.S. District Court, Northern District of Illinois, before Judge (now Chief Judge) James F. Holderman.

As an Assistant U.S. Attorney, I defended the Veterans Administration and the Secretary of Veterans Affairs in a bench trial on a charge that the VA improperly terminated the plaintiff's employment because of a disability. Plaintiff was a drug addict who refused treatment. The trial resulted in a judgment that the VA's action was proper.

My co-counsel was Assistant U.S. Attorney, Charles Ex, U.S. Attorney's Office, 219 S. Dearborn, 5th Floor, Chicago, IL 60604, Tel: 312-353-4305. Counsel for plaintiff was Arthur Ehrlich, Goldman & Ehrlich, 19 S. LaSalle St., Ste. 1500, Chicago, IL 60603, Tel: 312-332-6733.

10. *In re Alra Labs, Inc.*, No. 91C1648 (N.D.IL 1991). U.S. District Court, Northern District of Illinois, before Judge Milton Shadur.

As an Assistant U.S. Attorney assigned to the Civil Division, I was responsible for handling Food and Drug Administration seizures. In the case of Alra Labs, Inc., a large drug manufacturer, I assisted in the seizure of millions of dollars in drug products that were deemed "adulterated" in that they were not manufactured according to "good manufacturing practice regulations" (e.g., unsanitary conditions, improper maintenance of records). I worked with FDA Commissioner David Kessler, his staff, and counsel for Alra to forge an extensive consent decree that required some product destruction, while preserving other products and requiring strict adherence to regulations.

Counsel for Alra Labs, Inc. was George Burditt, Bell, Boyd, & Lloyd (now K & L Gates, LLP), 70 W. Madison St., Ste. 3100, Chicago, IL 60602, Tel: 312-807-4463 and Richard Wood, The Wood Burditt Group LLC, 10 E. Scranton Ave., Ste. 201, Lake Bluff, IL 60044, Tel: 847-234-7500.

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 spent most of my legal career in the courtroom, representing Cook County, the People of Illinois, and the Federal Government (1984-1996) and as a judge (1996-present).

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01020 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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My most important non-litigation activity with the State's Attorney's Office was my leadership in establishing a prosecutions division dedicated to addressing crimes and civil fraud against senior citizens. In 1994, as Chief of the Cook County State's Attorney's Public Interest Bureau, I conceived of and then implemented a comprehensive unit comprised of attorneys, investigators, a medical professional, and a social worker to address the increasing number of civil and criminal cases targeting elderly victims. Due to the special circumstances of the demographic, these cases were often tedious to prepare and sometimes abandoned by mainstream prosecutors or prepared in a manner that made success difficult. I approved the prosecution of consumer scams, theft, domestic abuse, and caretaker improprieties. The unit was eventually expanded to include all persons with disabilities.

From 2003 until 2008, I devoted substantial time to the Illinois Pattern Instruction (IPI) Civil Pattern Jury Instructions Committee, to which I was appointed by the Illinois Supreme Court. The Committee is charged with regularly drafting and revising the pattern jury instructions relied on by all legal practitioners in the state. The instructions provide a framework for approaching a legal issue from its earliest stages in litigation through jury deliberations. I was honored by this appointment and served for five years as a member with two years as a member of the publications subcommittee. As a member of the publications subcommittee, I edited and proofread final submissions for West publications.

From 1991 until 1997, I worked with the Chicago Bar Association's Judicial Evaluation Committee (JEC) to help ensure that qualified judges would occupy the Illinois bench. I initially worked as an investigator responsible for reviewing all references and practice history set forth by judicial candidates and rendering a comprehensive report to the committee regarding the candidate's qualifications. This assignment required extensive effort, including calling scores of judges and attorneys and reading many published opinions. After two years, I became a JEC evaluator and I participated in interviews of candidates seeking trial or appellate court positions. Upon my election to the bench, I served on a special committee to reevaluate JEC procedures. This panel reviewed the policies of JEC to ensure greater objectivity in the recommendation of candidates.

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.

Illinois Judicial Education Judicial Conference
Civil Evidentiary Issues, 2008
Judge and Jury Defining the Relationship, 2006

Illinois Judicial Education Judicial Conference, Regional Seminars
Cyber Issues, 2009
Civil Evidence, 2000 and 2001

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Administrative Office of the Illinois Courts/Illinois Supreme Court, New Judges' Training
Judicial Ethics, 2001-2006

Office of the Chief Judge, Cook County Circuit Court, New Judges' School
Ethics and Conduct, 1998-2008
Racial, Ethnic and Sexual Orientation Awareness in the Court, 2006-2008

National Institute of Trial Advocacy, Instructor, 1995, 1996

Chicago Bar Association
Civility in the Courtroom, 2007
Jury Trial Innovations—judge seminar panelist, 2006
Evidence & Objections – moderator, 2005, 2006
Motion Practice in the Law Division, panelist, 2005, 2006, 2007
Federal Trial Bar Course, instructor, 1993, 1994

Roosevelt University, Chicago, Illinois, Part-time instructor
Research and writing for paralegals, 1988-1990

I moderated or presided over a number of mock or clinical trials at the University of Chicago and John Marshall Law Schools over the past 10 years.

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 such plans, commitments, or agreements.

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).

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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 husband is a vice president of a major health insurance company. If confirmed, I would recuse myself from any case in which that company is a party. I also would recuse myself from any case or investigation that I supervised or in which I personally participated while an Assistant U.S. Attorney or an Assistant State's Attorney.

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 conflict of interest by following 28 U.S.C. §455, the Code of Conduct for United States Judges, and all applicable policies and procedures of the United States Courts.

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, and previously as a government attorney, I have had limited ability to take on traditional pro bono work throughout my legal career. I have made it a priority to mentor young lawyers and prospective law students. In particular, I have welcomed volunteer, study, and observer groups in my courtroom; I have judged mock trials at the high school, college, and law school levels; and I have made a point to accept invitations to speak about the law, the courts, and legal careers to a wide variety of groups when my schedule permits.

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

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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 April 2009, Senator Richard Durbin established a judicial selection commission for Illinois chaired by the Honorable Abner Mikva. I submitted an application to the commission and interviewed in Chicago with two of its members on June 1, 2009. I interviewed with Senator Durbin on June 12, 2009. I interviewed with the full commission on June 18, 2009. On August 7, 2009, Senator Durbin informed me by phone that he was submitting my name, among others, for consideration by President. In September 2009, I was contacted by the Office of Legal Policy at the Department of Justice and have since been in contact with pre-nomination officials. On November 10, 2009, I interviewed in Washington with attorneys from the Department of Justice and the White House Counsel's Office. On February 24, 2010, the President submitted my nomination to the Senate.

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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FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Coleman, Sharon J.	Northern District of Illinois	2/24/2010
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type** (check appropriate type)	**6. Reporting Period**
District Judge - Nominee	☑ Nomination, Date 2/24/2010 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2008 to 01/31/2010
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
219 S Dearborn Chicago, IL 60604	Reviewing Officer_____ Date_____	

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

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Justice	Illinois Appellate Court - First District
2.		
3.		
4.		
5.		

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

☐ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.	1996	State of Illinois Employee Pension Fund: Pension upon retirement age 59.5
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting Coleman, Sharon J.	Date of Report 2/24/2010

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2010	State of Illinois, Employment	$189,948.00
2.	2009	State of Illinois, Employment	$186,012.96
3.	2008	State of Illinois, Employment	$164,593.12
4.	2008	Cook County, Employment	$495.38

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

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

	DATE	SOURCE AND TYPE
1.	2010	Health Care Service Corporation, Employment
2.	2009	Health Care Service Corporation, Employment
3.		
4.		

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

☐ NONE *(No reportable reimbursements.)*

	SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.	Exempt				
2.					
3.					
4.					
5.					

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting Coleman, Sharon J.	Date of Report 2/24/2010

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

☐ NONE *(No reportable gifts.)*

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

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☐ NONE *(No reportable liabilities.)*

CREDITOR	DESCRIPTION	VALUE CODE
1. CitiMortgage, Inc	Mortgage on Primary Home	M
2. CitiMortgage, Inc	Mortgage on Second Home - Condo	N
3. CitiMortgage, Inc	Mortgage on Summer Cottage	L
4. Toyota Lender	Car Loan	K
5. HCSC 401K	Personal Loan	K
6. Rauner Family	Personal Loan	None
7.		

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting	Date of Report
Coleman, Sharon J.	2/24/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. Janus Twenty Fund	A	Int./Div.	J	T	Exempt				
2. State of Ill Defer Income- Ariel Fuind	A	Int./Div.	L	T					
3. Planites Credit Union - savings and checking	A	Int./Div.	J	T					
4. Oakmark Fund	A	Int./Div.	J	T					
5. Wells Fargo - IRA Common Stock Inv	A	Int./Div.	L	T					
6. Wells Fargo - IRA Opportunity Inv	A	Int./Div.	K	T					
7. Janus Worldwide - IRA	A	Int./Div.	J	T					
8. AIM Constellation Fund - IRA	A	Int./Div.	K	T					
9. Janus Worldwide - IRA#2	A	Int./Div.	L	T					
10. HCSC 401K	D	Int./Div.	N	T					
11. Seaway Bank Acct - ICBA.		None	J	T					
12. Citibank Savings & Checking	A	Interest	J	T					
13. Chase Bank - Savings and Checking		None	J	T					
14. Trinity Credit Union		None	J	T					
15. State of Illinois Retirement Fund		None	M	W					
16. HCSC Defer Income	A	Int./Div.	K	T					
17.									

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

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting Coleman, Sharon J.	Date of Report 2/24/2010

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

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Coleman, Sharon J.	Date of Report 2/24/2010

IX. CERTIFICATION.

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

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

Signature Sharon J. Coleman

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT Sharon Coleman

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		10	000	Notes payable to banks-secured		21	000
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		748	118	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful		66	746	Real estate mortgages payable-add schedule		503	907
Real estate owned-add schedule	1	185	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		46	000	401(k) loan		22	420
Cash value-life insurance		11	000				
Other assets itemize:							
Judges Retirement Fund		197	000				
				Total liabilities		547	327
				Net Worth	1	716	537
Total Assets	2	263	864	Total liabilities and net worth	2	263	864
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you a defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
AIMS Fund IRA	$ 19,211
Ariel Capitals Fund - Deferred Inc.	68,319
HCSC 401K	481,936
HCSC Officer Deferred Income	19,495
Janus Twenty Fund	4,811
Janus World Wide IRA #1	58,278
Janus World Wide IRA #2	3,794
Strong Common Stock IRA	67,486
Strong Opportunity Fund IRA	24,788
Total Listed Securities	$ 748,118
Real Estate Owned	
Primary residence	$ 385,000
Personal residence 2	550,000
Summer Cottage	250,000
Total Real Estate Owned	$ 1,185,000
Real Estate Mortgages Payable	
Primary residence	$ 127,655
Personal residence 2	292,275
Summer Cottage	83,977
Personal residence	$ 503,907

AFFIDAVIT

I, **SHARON JOHNSON COLEMAN**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

2/19/10
(DATE)

(NAME)

(NOTARY)

OFFICIAL SEAL
AUDREY WADE
Notary Public - State of Illinois
My Commission Expires Jul 31, 2012

STATEMENT OF GARY S. FEINERMAN, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS

Mr. FEINERMAN. Thank you, Mr. Chairman, Senator Sessions. I, too, would like to thank the President for the nomination. I would like to thank Senator Durbin for recommending me to the President, and it was a pleasure meeting Senator Burris this morning. And I would like to thank the Committee for convening this hearing.

If I can introduce my family members who are here: my wife, Beth Kohl; our three children, Sophia, Anna, and Lily. And I also have a cousin here who did not travel from far, he came from the Pentagon. He is a senior adviser for Net Assessment at the Department of Defense, Adam Lovinger, who is in the back. And anybody who happens to be watching on the webcast, I would like to acknowledge them as well.

[Laughter.]

Senator WHITEHOUSE. Good. Well, I particularly want to welcome your young daughters here and thank them for their patience with all of this ceremony and folderol.

And now Mr. Martinez.

[The biographical information of Gary S. Feinerman 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).

   Gary Scott Feinerman

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

   United States District Judge for the Northern District of Illinois

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: Sidley Austin LLP
   One South Dearborn Street
   Chicago, Illinois 60603

   Residence: Winnetka, Illinois

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

   1965; Skokie, 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.

   1988-1991, Stanford Law School; J.D., 1991

   1983-1987, Yale College; B.A., 1987

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.

2007-present & 1989
Sidley Austin LLP
One South Dearborn Street
Chicago, Illinois 60603
Partner (2007-present)
Summer Associate (1989)

2003-2007
Office of the Illinois Attorney General
100 West Randolph Street
Chicago, Illinois 60601
Solicitor General

1996-2003 & 1990-1993
Mayer, Brown, Rowe & Maw
71 South Wacker Drive
Chicago, Illinois 60606
Partner (2000-2003)
Associate (1992-1993, 1996-1999)
Summer Associate (1991)
Summer Associate (1990) (1999 K Street, NW, Washington, DC 20006)

1994-1996
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
Counsel, Office of Policy Development
Detail to the Office of the Counsel of the President (1995)

1993-1994
Supreme Court of the United States
Washington, D.C. 20543
Law Clerk to Justice Anthony M. Kennedy

1991-1992
United States Court of Appeals for the Seventh Circuit
219 South Dearborn Street
Chicago, Illinois 60604
Law Clerk to Circuit Judge Joel M. Flaum

1990
Williams & Connolly
725 12th Street, NW
Washington, D.C. 20005
Summer Associate

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1989-1990
Stanford Law School
Stanford, California 94305
Research Assistant to Professor Robert Rabin

1987-1988
ICF, Incorporated
9300 Lee Highway
Fairfax, Virginia 22031
Research Assistant, Waste and Water Management Group

Other Affiliations (uncompensated)

2008-present
National-Louis University
122 South Michigan Avenue
Chicago, Illinois 60603
Trustee

2008-present
Constitutional Rights Foundation Chicago
407 South Dearborn Street
Chicago, Illinois 60605
Vice Chair (2008-2010)
At-Large Member, Executive Committee (2010)

2005-present
Appellate Lawyers Association
c/o The Center for Association Resources
1901 North Roselle Road, #920
Schaumburg, Illinois 60195
President (2009-present)
Vice President (2008-2009)
Secretary (2007-2008)
Treasurer (2006-2007)
Director (2005-2006)

2003-2009
Umoja Student Development Corporation
2935 West Polk Avenue
Chicago, Illinois 60612
Director

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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 have not served in the military. I have registered 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.

   Chicago Inn of Court, Master of the Bench (2008-present)

   Best Brief Awards, National Association of Attorneys General (2004 (two), 2005, 2006, 2007)

   Leadership Greater Chicago, Fellow (2001-2002)

   "40 Under 40," Crain's Chicago Business (Nov. 2001)

   Urban A. Sontheimer Award, Stanford Law School (1991)

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.

   Appellate Lawyers Association of Illinois, 2003-present
   - Director, 2005-2006
   - Treasurer, 2006-2007
   - Secretary, 2007-2008
   - Vice President, 2008-2009
   - President, 2009-present

   American Constitution Society, 2009-present
   - Chicago Lawyers Chapter, Board of Advisors, 2009-present

   Chicago Inn of Court, 2008-present
   - Master of the Bench, 2008-present

   Constitutional Rights Foundation Chicago, 2007-present
   - Board, 2007-present
   - Vice Chair, 2008-2010
   - At-Large Member, Executive Committee, 2010

   Seventh Circuit Bar Association, 2006-present

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Earlier in my career, I was a member of the American Bar Association, the Illinois State Bar Association, and/or the Chicago Bar Association, but I cannot recall which one(s). I do know that I have not been a member for many years.

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.

Illinois, 1991

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 the United States, 1997
United States Court of Appeals for the D.C. Circuit, 1997
United States Court of Appeals for the Sixth Circuit, 1999
United States Court of Appeals for the Seventh Circuit, 1991
U.S. District Court for the Central District of Illinois, 2001
United States District Court for the Northern District of Illinois, 1992
(Trial bar, 2000)

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.

Stanford Law Society of Chicago, 1991-present

Anti-Defamation League, 1992-present
Board, Chicago/Upper Midwest Region, 1997-present
Co-Chair, Civil Rights Committee, Chicago/Upper Midwest Region, 2004-2009

New Trier Democratic Organization, 2005-present

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Lake Shore Country Club, 2005-present

Elizabethan Club, Yale University, 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 the organizations I have listed presently discriminates or has discriminated while I have been a member. Lake Shore Country Club was founded in 1908 by members of the Jewish faith at a time when Jews were not permitted to join most other clubs. In light of its history, Lake Shore today retains a predominantly Jewish membership, though there now are many non-Jewish members. The club for some of its history had rules that disfavored women generally and with respect to certain club facilities, but such practices have ended; the club's current president is female. The club's by-laws currently state: "Neither the Board nor any committee shall take into account, in reaching any decision, the race, sex, color, religion or national origin of any person." The club's informal policies are also non-discriminatory.

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.

Note, "Unconstitutional Conditions: The Crossroads of Substantive Rights and Equal Protection," 43 Stan. L. Rev. 1369 (1991)

"A View from the Petitioning States," scotusblog.com, Apr. 3, 2007

"Illinois Pay-to-Play Measures Impose Significant New Burdens on State Contractors and Bidders," Sidley Austin LLP, Dec. 24, 2008 (web posting)

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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I have not prepared or contributed to any report, memoranda or policy statement on behalf of any bar association, committee, conference, or organization.

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 January 24, 2005, and January 23, 2006, I testified before the Illinois Supreme Court Rules Committee on behalf of the Attorney General of Illinois regarding proposed amendments to the Illinois Supreme Court Rules. I did not retain copies of my notes.

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.

The following is a list of the speeches and panel discussions of which I have a record. I spoke from notes, outlines, or powerpoints at some of those events, and furnish copies of those that I retained.

October 9, 2009 – CLE presentation entitled "Attorney-Client Privilege and the Work Product Doctrine," Practicing Law Institute Managing Complex Federal Litigation 2009 Seminar, in Chicago.

July 29, 2009 – Presentation regarding the most recent U.S. Supreme Court term to the Anti-Defamation League, Chicago/Upper Midwest, Civil Rights Committee, in Chicago. I have no notes or transcript. The address of the organization is: 309 West Washington Street, #750, Chicago, IL 60606.

July 9, 2009 – Panel discussion entitled "Sixth Annual Supreme Court Term in Review," American Constitution Society, Chicago Lawyers Chapter, in Chicago. I have no notes or transcript. The address of the organization is: 1333 H Street, NW, Washington, DC 20005.

July 9, 2009 – Presentation regarding developments in the U.S. Supreme Court to Tenth District Dems University, in Highland Park, Illinois.

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June 30, 2009 – Remarks upon installation as President of the Appellate Lawyers Association of Illinois, in Chicago.

May 6, 2009 – Panel discussion entitled "Future of Appellate Practice," 2009 Wisconsin State Bar Annual Convention, in Milwaukee. I have no notes or transcript. The address of the organization is: 5302 Eastpark Blvd., Madison, WI 53718.

October 11, 2008 – Panel discussion regarding the U.S. Supreme Court at an event held by the Obama presidential campaign, in Chicago. I have no notes or transcript.

October 5, 2008 – Panel discussion regarding legal and technology topics at a fundraiser held by Silicon Valley Lawyers for Obama, in Atherton, California. I have no notes or transcript.

July 30, 2008 – CLE presentation entitled "Attorney-Client Privilege and the Work Product Doctrine: Review and Recent Developments," Practicing Law Institute Managing Complex Federal Litigation 2008 Seminar, in Chicago.

July 15, 2008 – Presentation regarding the most recent U.S. Supreme Court term to the Anti-Defamation League, Chicago/Upper Midwest, Civil Rights Committee, in Chicago.

September 18, 2007 – Presentation regarding the most recent U.S. Supreme Court term to the Anti-Defamation League, Chicago/Upper Midwest, Civil Rights Committee, in Chicago.

July 19, 2007 – Panel discussion entitled "Appellate Advocacy in Illinois: Best Practices," National Association of Women Lawyers, in Chicago. I have no notes or transcript. The address of the organization is: 321 North Clark Street, Chicago, IL 60654.

June 2, 2007 – Panel discussion entitled "The Intersection of Law, Politics & the Press in the 21st Century," Yale College 20th Reunion, in New Haven, Connecticut. I have no notes or transcript.

April 16, 2007 – Presentation entitled "Confessions of a Blue State Solicitor General," American Constitution Society, University of Chicago Chapter. I have no notes or transcript. The address of the organization is: 1333 H Street, NW, Washington, DC 20005.

February 2-3, 2007 – Participated in symposium entitled "The Supreme Court at Mid-Term," Stanford Law School, in Stanford, California. I have no notes or transcript.

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December 8, 2006 – Panel discussion entitled "Illinois Supreme Court Review: Recent Cases, Trends and Practice Before the Court," Illinois State Bar Association, in Chicago. I have no notes or transcript. The address of the organization is: 20 South Clark Street, Chicago, IL 60603.

October 24, 2006 – Presentation entitled "Reflections of a Blue State Solicitor General," Appellate Lawyers Association of Illinois, in Chicago.

August 22, 2006 – Presentation regarding the most recent U.S. Supreme Court term to the Anti-Defamation League, Chicago/Upper Midwest, Civil Rights Committee, in Chicago. I have no notes or transcript. The address of the organization is: 309 West Washington Street, #750, Chicago, IL 60606.

March 8, 2006 – Panel discussion entitled "Student Censorship: Real or Imagined Threat?", Oakton Community College, in Des Plaines, Illinois. I have no notes or transcript. The address of the organization is: 1600 East Golf Road, Des Plaines, IL 60016.

January 10, 2006 – Panel discussion entitled "Chief Justice Rehnquist and the Future of the United States Supreme Court," Federalist Society, Chicago Lawyers Chapter, in Chicago. I have no notes or transcript. The address of the organization is: 1015 18th Street, NW, Washington, DC 20036.

October 20, 2005 – Panel discussion entitled "Capital Punishment from Both Sides," American Constitution Society, University of Chicago Chapter. I have no notes or transcript. The address of the organization is: 1333 H Street, NW, Washington, DC 20005.

October 12, 2005 – Panel discussion entitled "Can Principled Federalism Be Progressive?", American Constitution Society, Chicago Lawyers Chapter, in Chicago. I have no notes or transcript. The address of the organization is: 1333 H Street, NW, Washington, DC 20005.

September 29, 2005 – Panel discussion entitled "Hidden Treasures of the Illinois Constitution," Appellate Lawyers Association of Illinois, in Chicago. I have no notes or transcript. The address of the organization is: c/o The Center for Association Resources, 1901 North Roselle Road, #920, Schaumburg, IL 60195.

August 8, 2005 – Panel discussion entitled "State Bank Preemption," American Bar Association, Preemption and Federalism Subcommittee, in Chicago. I have no notes or transcript. The address of the organization is: 321 North Clark Street, Chicago, IL 60654.

February 13, 2005 – Panel discussion entitled "Ten Commandments Cases Forum," KAM Isaiah Israel, in Chicago. I have no notes or transcript. The address of the organization is: 1100 East Hyde Park Blvd., Chicago, IL 60615.

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August 9, 2004 – Presentation regarding the U.S. Supreme Court to a group of high school teachers, sponsored by the Constitutional Rights Foundation Chicago, in Chicago. I have no notes or transcript. The address of the organization is: 407 South Dearborn Street, Chicago, IL 60605.

June 2, 2004 – Panel discussion entitled "Technology and the Appellate Courts," ABA Appellate Judges Conference/Council of Appellate Lawyers, in Chicago. I have no notes or transcript. The address of the organization is: 321 North Clark Street, Chicago, IL 60654.

December 12, 2003 – Panel discussion entitled "Equal Justice Under Law," Constitutional Rights Foundation Chicago, in Chicago. I have no notes or transcript. The address of the organization is: 407 South Dearborn Street, Chicago, IL 60605.

November 5, 2003 – Panel discussion entitled "Supreme Court Advocacy," National Association of Attorneys General, in Washington, DC. I have no notes or transcript. The address of the organization is: 2030 M Street, NW, Washington, DC 20036.

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.

"Feinerman to Lead Appellate Lawyers Group," Chicago Daily Law Bulletin (June 30, 2009)

"Supreme buzz around Chicago judge," Chicago Sun-Times (Feb. 9, 2009)

"Younger Attorneys Can Get on the Fast Track into Court with a Trend to Appoint State Solicitors General," Miami Daily Business Review (Aug. 20, 2008). Identical or nearly identical versions of this article appeared in many publications.

"State SGs Enter Exclusive High Court Club," Fulton County Daily Report (Apr. 15, 2008). Identical or nearly identical versions of this article appeared in many publications.

"Supreme Court Oral Arguments to Go Online," Chicago Daily Law Bulletin (Dec. 7, 2007)

"Feinerman to Enter Private Practice; Successor Named," Chicago Daily Law Bulletin (July 19, 2007)

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"As Justices Search for Legal Answers, States Offer Friendly Suggestions," Chicago Daily Law Bulletin (July 11, 2007)

"Justice Kennedy takes significant spot in the center," USA Today (May 11, 2007)

"Justices Rely on Rule Book in Defending State Laws," Chicago Daily Law Bulletin (Apr. 21, 2007)

"Madigan Charges Ahead, Leaving Inexperience in the Dust," Chicago Lawyer (July 2006)

"Ruling sides with death row inmates," St. Louis Post-Dispatch (June 13, 2006)

"Chicago Lawyer's 2005 Person of the Year: Joel M. Flaum," Chicago Lawyer (December 2005)

"He Hopes Appellate Lawyers Follow His Lead, Join Up," Chicago Daily Law Bulletin (June 3, 2005)

"Supreme Court widens out-of-state wine shipments," St. Louis Post-Dispatch (May 17, 2005)

"Thou shalt not," St. Louis Post-Dispatch (Feb. 27, 2005)

"Appellate Lawyers' Version of High Wire Act: Oral Argument," Chicago Daily Law Bulletin (Apr. 24, 2004)

"Deep in Suburbia," New York Times (Feb. 29, 2004)

"Big-Firm Vet Names State Appeals Chief," Chicago Daily Law Bulletin (Apr. 15, 2003)

"40 Under 40," Crain's Chicago Business (Nov. 19, 2001)

When I was Solicitor General of Illinois, I commented in dozens of interviews on behalf of the Attorney General of Illinois on pending and decided cases handled by the Attorney General's Office.

I appeared on "Legally Speaking," WGN Radio, on August 8, 2009.

In 1999 and 2000, I appeared twice on "Chicago Tonight," WTTW-TV, both on shows devoted to Supreme Court-related topics. I have no records indicating when precisely the shows aired, and have no tapes or transcripts.

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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.

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.

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.

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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 you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

From 2003-2007, I served as Solicitor General in the Office of the Illinois Attorney General. I was appointed by Illinois Attorney General Lisa Madigan.

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.

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From 2007-2008, I volunteered as Chair of the Law & Judiciary policy committee for then-Senator Obama's presidential campaign.

In 2004, my wife and I held a fundraiser at our home for then-State Senator Obama's campaign for the United States Senate.

In 1998, I wrote position papers as a volunteer for the campaign of John Schmidt, my then-colleague at Mayer Brown, for the Democratic nomination for Illinois Governor.

In 1992, Michael Kennedy, a friend from high school, ran as the Democratic candidate for United States Congress in the 10th District of Illinois. On a volunteer basis, I assisted in formulating policy positions.

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;

1993-1994; I served as a law clerk to Justice Anthony M. Kennedy, U.S. Supreme Court.

1991-1992; I served as a law clerk to Judge Joel M. Flaum, U.S. Court of Appeals for the Seventh Circuit.

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.

2007-present
Sidley Austin LLP
One South Dearborn Street
Chicago, Illinois 60603
Partner

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01047 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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2003-2007
Office of the Illinois Attorney General
100 West Randolph Street
Chicago, Illinois 60601
Solicitor General

1996-2003, 1992-1993
Mayer, Brown, Rowe & Maw
71 South Wacker Drive
Chicago, Illinois 60606
Partner (2000-2003)
Associate (1992-1993, 1996-1999)

1994-1996
United States Department of Justice
950 Pennsylvania Avenue
Washington, D.C. 20530
Counsel, Office of Policy Development
Detail to the Office of the Counsel of the President (1995)

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.

I served as a law clerk for two years, from 1991-1992 for Judge Flaum of the United States Court of Appeals for the Seventh Circuit, and from 1993-1994 for Justice Kennedy of the Supreme Court of the United States. As is typical, my role was to help Judge Flaum and Justice Kennedy prepare for oral arguments, draft opinions, and review opinions drafted by other chambers.

From 1994-1996, I served as counsel in the U.S. Department of Justice, Office of Policy Development. I was a member of the Working Group for Judicial Nominations, and also did traditional policy work involving, among other things, implementation of the Violent Crime Control and Law Enforcement Act of 1994 and the Violence Against Women Act.

As a young (1992-1993) and mid-level (1996-1997) associate at Mayer Brown, my practice was varied. In some cases, I served a supporting role,

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01048 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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drafting briefs and conducting written discovery. In other cases, I prepared witnesses and cross-examined the opposing party's witnesses at trial.

As a senior associate (1998-1999) and partner (2000-2003) at Mayer Brown, I served as lead counsel in some cases. In other cases, I handled the day-to-day operation of the litigation for a senior partner, or served in a lead brief writing capacity.

As Solicitor General in the Office of the Illinois Attorney General (2003-2007), I was responsible for the Civil Appeals and Criminal Appeals Divisions, which together had about 40 lawyers. Approximately half of my time was devoted to administration, policy matters, and reviewing draft briefs written by others. The other half was devoted to cases that I personally handled for the Office.

As a partner at Sidley Austin (2007-present), about half my time is spent on appeals in which I serve as lead appellate counsel; about a quarter is spent as a member of larger litigation teams, such as in multidistrict litigation matters pending in federal district court; and about a quarter is spent as lead counsel in other litigated trial court matters.

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

As Solicitor General of Illinois, my client was the State of Illinois and its agencies, officials and employees. Most of my work was in courts of review, although I occasionally handled matters in state and federal trial court. My work covered a broad range of subject matter areas: direct criminal appeals, federal habeas corpus actions, constitutional challenges to state statutes, section 1983 cases, and administrative review actions.

At Sidley and Mayer Brown, my clients have primarily been corporations and businesses, but also have included not-for-profit groups, school districts, and individuals. Most of my work has been in the areas of commercial litigation, tort, and tax.

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.

Over 90% of my practice has been litigation. I appeared in court relatively infrequently as a younger associate (1992-1993), with greater frequency as a mid-level and senior associate (1996-1999), and with even greater frequency as a partner (2000-2003, 2007-present). While Solicitor General of Illinois (2003-

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01049 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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2007), I appeared often in court, primarily in courts of review but occasionally in state or federal trial court.

i. Indicate the percentage of your practice in:
   1. federal courts: 50%
   2. state courts of record: 40%
   3. other courts:
   4. administrative agencies: 10%

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

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 to verdict or judgment six cases: one commercial litigation case in the U.S. District Court for the Northern District of Illinois; one commercial litigation case in the Circuit Court of Cook County; and four cases before state public utility commission administrative law judges under the Telecommunications Act of 1996. I was associate counsel in all such cases.

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 argued two cases before the Supreme Court of the United States: Illinois v. Lidster, 540 U.S. 419 (2004), and Forest Grove Sch. Dist. v. T.A., 129 S. Ct. 2484 (2009). I have written and/or appeared as counsel on many merits briefs, and many certiorari petitions and oppositions to certiorari.

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;

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01050 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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. Lebron v. Gottlieb Memorial Hospital, ___ N.E.2d ___, 2010 WL 375190 (Ill. Feb. 4, 2010) (2007-2010)

The plaintiffs in this medical malpractice case brought a constitutional challenge to Illinois Public Act 94-677, which enhanced regulation of the medical insurance industry and medical profession, and reformed components of the medical malpractice system. The state trial court, invoking the Illinois Constitution's separations of powers clause, invalidated the provision limiting the liability of hospitals and physicians for noneconomic damages (*e.g.*, pain and suffering) to $1 million and $500,000, respectively. A direct appeal was taken to the Supreme Court of Illinois, where I briefed and argued the matter on behalf of the defendant hospital. The Court affirmed the trial court's judgment.

Counsel for the co-appellant physician was Theodore Olson, Gibson Dunn & Crutcher LLP, 1050 Connecticut Ave., NW, Washington, DC 20036, Tel: 202-955-8500. Opposing counsel was Todd Smith, Power, Rogers & Smith, P.C., 70 West Madison Street, Chicago, IL 60602, Tel: 312-236-9381.

2. Mack v. McCann, 385 F. Supp. 2d 751 (N.D. Ill. 2005), vacated on reconsideration, 441 F. Supp. 2d 928 (N.D. Ill. 2006), aff'd, 530 F.3d 523 (7th Cir. 2008) (2005-2008)

This habeas case concerned an Apprendi challenge to the life sentence imposed on an inmate convicted in state court of murdering a bank security guard. The district court initially granted habeas relief, holding that the life sentence violated Apprendi. I became personally involved at that point and argued the motion for reconsideration before the district court, which granted reconsideration and denied habeas relief. I then briefed and argued the case before the Seventh Circuit, which affirmed.

District Judge Castillo (N.D. Ill.) and Circuit Judges Flaum, Ripple and Rovner (7th Cir.) heard the case. Opposing counsel was John Stainthorp, People's Law Office, 1180 North Milwaukee Avenue, Chicago, IL 60622, Tel: 773-235-0070.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01051 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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3. Thomas v. Page, 04-OK-013 (Circuit Court of Kane County, Illinois), 837 N.E.2d 483 (Ill. App. 2005) (2004-2007)
Shaw Suburban Media Group, Inc. v. Thomas, No. 07 C 3289 (N.D. Ill.) (2007)

In the state case, Robert Thomas (personally, not in his capacity as Justice of the Supreme Court of Illinois) sued the Kane County Chronicle and one of its columnists for libel. The media defendants issued subpoenas to the other six Justices of the Supreme Court of Illinois ("Non-Party Justices"), as the allegedly libelous statements concerned Thomas's alleged actions in connection with a case before the Court. The Non-Party Justices were represented by the Illinois Attorney General's Office. I briefed and argued an interlocutory appeal concerning the Non-Party Justices' invocation of the judicial deliberation privilege; the Appellate Court of Illinois ruled in our favor. On remand, I defended the oral depositions of two Non-Party Justices. I then prepared the Non-Party Justices for trial, and represented them at trial to protect the judicial deliberation privilege.

In the federal case, filed after Thomas prevailed at trial before the state trial court, the media defendants sued all seven Justices of the Supreme Court, the three Appellate Court Justices who heard the above-referenced appeal, and the state trial judge (all in their official capacities), seeking to enjoin the state court system from proceeding with the case because, at the time, Thomas was Chief Justice of the Supreme Court. I represented the defendants in their official capacity, briefing a motion to dismiss and a reply in support of the motion. Both cases then settled.

Circuit Judge Donald O'Brien and Appellate Court Justices Hoffman, Cahill and O'Brien heard the state case. District Judge Castillo and Magistrate Judge Schenkier heard the federal case. Counsel for Thomas (in his individual capacity) were Joe Power & Todd Smith, Power, Rogers & Smith, P.C., 70 West Madison Street, Chicago, IL 60602, Tel: 312-236-9381. Counsel for the media entities were Steven Mandell & Steven Baron, Mandel Menkes LLC, 333 West Wacker Drive, Chicago, IL 60606, Tel: 312-251-1000.

4. Crusius v. Illinois Gaming Board, 837 N.E.2d 88 (Ill. 2005) (2004-2005)

This case concerned Emerald Casino's efforts under Section 11.2 of the Illinois Riverboat Gambling Act to move its riverboat operation from East Dubuque to Rosemont. Plaintiff Crusius, a taxpayer, brought suit against the Illinois Gaming Board, its members, the Comptroller of Illinois, and the Treasurer of Illinois (collectively, the "State Defendants"), alleging that Section 11.2 was "special legislation" and thus invalid under Article IV, § 13 of the Illinois Constitution. The Village of Rosemont intervened as a defendant. The trial court upheld the constitutionality of Section 11.2, and the Appellate Court of Illinois affirmed. The Supreme Court of Illinois granted Plaintiff's petition for leave to appeal, and allowed Emerald Casino and the Official Committee of Unsecured Creditors of

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01052 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Emerald Casino, Inc. to intervene as appellees to defend the legislation. The Supreme Court then allowed the State Defendants to realign as appellants.

I served as lead counsel for the State Defendants, briefing and arguing the matter in the Supreme Court of Illinois. The Court rejected our position, holding that Section 11.2 was not special legislation.

Counsel for Crusius were Terence A. Norton, Sonnenschein Nath & Rosenthal, 8000 Sears Tower, Chicago, IL 60606, Tel: 312-876-7939, and Jay Stewart, Better Government Association, 111 East Adams Street, Chicago, IL 60603, Tel: 312-427-8330. Opposing counsel for Emerald Casino was Robert Gasaway, Kirkland & Ellis, 665 Fifteenth Street, NW, Washington, DC 20005, Tel: 202-879-5175. Opposing counsel for Village of Rosemont was William R. Quinlan, Quinlan & Carroll, 30 North LaSalle Street, Chicago, IL 60602, Tel: 312-263-0900.

5. Illinois v. Lidster, 540 U.S. 419 (2004) (2003-2004)

Following a bench trial, the Circuit Court of DuPage County convicted Robert Lidster of driving under the influence of alcohol. The Appellate Court of Illinois reversed the conviction. Relying upon City of Indianapolis v. Edmond, 531 U.S. 32 (2000), the court ruled that the informational checkpoint where Lidster was apprehended effected an unreasonable seizure under the Fourth Amendment. By a 4-3 vote, the Supreme Court of Illinois affirmed, agreeing with the appellate court that the checkpoint was per se unlawful under Edmond because it sought evidence related to a criminal investigation. The Supreme Court of the United States granted certiorari and reversed. I briefed and argued the case for the State. By a 9-0 vote, the Court held that informational checkpoints are not per se unlawful under Edmond. By a 6-3 vote, the Court held that the checkpoint used in this case satisfied the applicable balancing test.

Opposing counsel was Donald Ramsell, Ramsell & Armamentos LLC, 128-F County Farm Road, Wheaton, IL 60187, Tel: 630-665-8780.

6. OurHouse, Inc. v. United NewVentures, Inc., No. 01 CH 11170 (Circuit Court of Cook County, Illinois) (2001-2003)

United NewVentures, a subsidiary of UAL Corporation, acquired MyPoints.com. OurHouse, Inc. brought suit against NewVentures, alleging that NewVentures had agreed to provide OurHouse with certain e-mail marketing rights upon the acquisition of MyPoints.com. The trial court dismissed several of OurHouse's claims. The matter was stayed when UAL and its subsidiaries filed for bankruptcy; the stay was still in effect at the time I joined the Illinois Attorney General's office.

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I served as lead counsel for NewVentures. I drafted pleadings, motions, and responses to motions; argued contested motions before the trial judge; prepared and answered written discovery; and defended depositions.

Circuit Judge Richard Billik heard the case. Opposing counsel was Michael Weinberg, Novack and Macey, 303 West Madison Street, Suite 1500, Chicago, IL 60606, Tel: 312-419-6900.

7. Nicor Mercury Cases (Circuit Court of Cook County, Illinois) (2000-2003)

In 2000, mercury spills were discovered at homes served by Nicor Gas. A class action and several individual actions were filed against Nicor in the Circuit Court of Cook County. The class action settled, and most of the individual actions were still pending by the time I left for the Illinois Attorney General's office. The class action and some of the individual actions were styled:

In re Mercury Class Action Litigation, No. 00 CH 13226
Denver v. Nicor, Inc., No. 00 L 9875
Habetler v. Nicor, Inc., No. 00 L 10723
Mrugacz v. Nicor, Inc., No. 00 L 13348
Schmaedeke v. Northern Ill. Gas Co., No. 01 L 3211

I served as the lead brief writer for Nicor and argued dispositive motions.

Circuit Judge Paul Biebel, Jr., heard the case. Opposing counsel included William Harte, 111 West Washington Street, Suite 1100, Chicago, IL 60602, Tel: 312-726-5015, and Michael D. Hayes, Varga Berger Ledsky Hayes & Casey, 224 South Michigan Avenue, Chicago, IL 60604, Tel: 312-341-9400. Counsel for Nicor's co-defendant was James Morsch, Butler Rubin Saltarelli & Boyd, 70 West Madison Street, Suite 1800, Chicago, IL 60602, Tel: 312-444-9660.

8. Career Publishing Network, LLC v. Cass Communications, Inc., No. 99 C 1482 (N.D. Ill.) (1999-2001)

Career Publishing Network and Cass Communications both produced career handbooks for college students. They entered into a contract under which each sold advertisements into the other's handbooks. After a series of disputes, CPN brought suit, and Cass filed counterclaims. After a seven-day trial, the jury returned verdicts in favor of CPN on its most of its claims and on all of Cass's counterclaims. The case settled during the pendency of a post-trial motion for attorney fees and the appeal from the main judgment.

I served as counsel for CPN. I was responsible for the day-to-day conduct of the case, and drafted pleadings, drafted and argued motions, prepared and answered written discovery, took and defended depositions, drafted the pretrial order, and

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drafted and argued the jury instructions. I tried the case to verdict before a jury with a senior partner and an associate.

District Judge William Hibbler heard the case. Opposing counsel was Jerald Esrick, Wildman Harrold Allen & Dixon, 225 West Wacker Drive, Suite 3000, Chicago, IL 60606, Tel: 312-201-2508.

9. Mississippi Chem. Corp. v. Terra Int'l, Inc., Nos. 5:95-CV-127 and 5:98-CV-20 (S.D. Miss.) (1996-2000)
Terra Int'l, Inc. v. Mississippi Chem. Corp., 119 F.3d 688 (8th Cir. 1997)
In re Terra Int'l, Inc., 134 F.3d 302 (5th Cir. 1998)
Mississippi Chem. Corp. v. Terra Int'l, Inc., No. 97-60792 (5th Cir.)
In re Insurance Co. of N. Am., No. 98-60269 (5th Cir.)

In December 1994, a massive explosion leveled Terra International's fertilizer facility in Port Neal, Iowa. An investigation by Terra concluded that the explosion was caused by flaws in an ammonium nitrate neutralizer designed by Mississippi Chemical Company ("MCC"). In August 1995, Terra and MCC filed reciprocal actions against one another in federal district court in Iowa and Mississippi, respectively; Terra brought product claims against MCC, while MCC brought declaratory judgment and defamation claims against Terra.

I served on the legal team representing Terra. After the Iowa federal district court ordered the Iowa case transferred to Mississippi, I brief the matter before the Eighth Circuit, which affirmed the transfer. I drafted numerous discovery motions and motions *in limine*, supervised team members who drafted the other motions, argued motions, and defended depositions. I also briefed matters in the Fifth Circuit, including a successful mandamus action by Terra. The case settled in 2000, before trial.

District Judge Bramlette and Magistrate Judge Nicols presided in the Southern District of Mississippi. Opposing counsel was R. David Kaufman, Brunini, Grantham, Grower & Hewes, 1400 Trustmark Building, 248 East Capitol Street, Jackson, MS 39201. Counsel for Terra's co-party was George Zelcs, now at Korein Tillery, Three First National Plaza, Suite 6600, Chicago, IL 60602, Tel: 312-641-9760.

10. Representing Ameritech Corporation in Proceedings Under the Telecommunications Act of 1996 (1996-2003)

The Telecommunications Act of 1996 became law in February 1996. Along with a large team at Mayer Brown, I represented Ameritech Corporation (and SBC, after it acquired Ameritech) in matters arising out of the Act.

I helped to prepare and try four cases to judgment before state public utility commissions. These cases (called "arbitrations" under the Act) involved the

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terms and conditions of interconnection agreements between the incumbent local exchange carrier (Ameritech) and new local entrants (e.g., AT&T, MCI). In each case, I drafted pleadings, prepared written direct testimony, cross-examined witnesses, and drafted post-trial submissions. Those cases were:

AT&T Communications of Illinois, Inc. v. Ameritech Illinois, Nos. 96-AB-003 and 96-AB-004 (Illinois Commerce Commission)

Teleport Communications Group Inc. v. Ameritech Illinois, No. 96-AB-001 (Illinois Commerce Commission)

AT&T Communications of Ohio, Inc. v. Ameritech Ohio, No. 00-1188-TP-ARB (Public Utilities Commission of Ohio)

AT&T Communications of Wisconsin, Inc. v. Ameritech Wisconsin, No. 05-MA-120 (Public Service Commission of Wisconsin) (took place in 2000)

The arbitrations before the state public utility commissions, as well as the FCC rulemakings under the Act, were the subject of litigation in courts of review. I drafted Ameritech's briefs in several of those appeals, including:

AT&T Corp. v. Iowa Utilities Bd., 525 U.S. 366 (1998)

Michigan Bell Tel. Co. v. Strand, Nos. 99-1408 and 99-1674 (6th Cir.)

Southwestern Bell Tel. Co. v. FCC, 153 F.3d 597 (8th Cir. 1998), vacated sub nom., Ameritech Corp. v. FCC, 526 U.S. 1142 (1999)

MCI Telecommunications Corp. v. US WEST Communications, Inc., 204 F.3d 1262 (9th Cir. 2000) (amicus brief)

Ameritech Michigan v. Michigan Public Serv. Comm'n, No. 209828 (Mich. App.)

The forums for these cases included the Illinois Commerce Commission, the Public Service Commission of Wisconsin, the Public Utilities Commission of Ohio, the United States Courts of Appeals for the Sixth Circuit, Eighth Circuit, and Ninth Circuit, the Michigan Court of Appeals, and the Supreme Court of the United States. As a general rule, each side in these cases had a very large team of lawyers, and it is nearly certain that most if not all of the ALJs, judges, and opposing counsel would be unable to distinguish my contribution from those of my Mayer Brown colleagues.

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

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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 work as an attorney has been principally as a litigator, both in private practice and for the Office of the Illinois Attorney General. As Solicitor General in the Attorney General's Office, I also had significant management component over an appellate department with forty attorneys and about ten non-legal staff members. Putting aside the two years I served as a law clerk, my only other significant legal work was for the Office of Policy Development at the United States Department of Justice. My responsibilities at the Department included judicial nominations and traditional policy work, including implementation of the Violent Crime Control and Law Enforcement Act of 1994 and the Violence Against Women Act.

I have performed no 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.

From 2007 to the present, I taught several sessions of the "Supreme Court Practicum" course at Northwestern University School of Law. The course is team-taught by a Northwestern professor and attorneys at Sidley Austin.

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 currently am entitled to receive payments from deferred benefit plans at Mayer Brown and Sidley Austin, and from the Illinois State Employee Retirement System. If confirmed, and to the extent permitted by the terms of the plans, I plan to request that my interests be liquidated and distributed to me.

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, if I am confirmed, except that I would consider teaching at a law school in Chicago to the extent I could do so consistent with my judicial responsibilities.

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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.

       Parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during my initial service would include family members, relatives, close friends, former clients, former law partners, matters handled by Sidley Austin or Mayer Brown, or matters substantially related to matters I handled while employed by the Office of the Illinois Attorney General.

    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 handle all matters involving actual or potential conflicts-of-interest through the careful application of the Code of Conduct for United States Judges as well as other relevant canons and statutory provisions.

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 regularly performed legal services at no charge for financially disadvantaged people and those unable to retain a firm like Mayer Brown or Sidley Austin. My pro bono work was exclusively in litigated matters, and was performed in federal and state court and before the Immigration and Naturalization Service.

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A recent example is the representation of plaintiffs in a Fair Housing Act case. Prior to my involvement, the district court and a divided Seventh Circuit panel rejected the plaintiffs' religious discrimination claims against their condominium association and its president. The plaintiffs retained me to file an en banc petition, which the Seventh Circuit granted. I argued the case, and the court unanimously reversed the district court's judgment and remanded for trial. Bloch v. Frischholz, 587 F.3d 771 (7th Cir. 2009). The court held that the Fair Housing Act prohibits discrimination against those who have already taken possession of their dwellings, and also that the plaintiffs had presented sufficient evidence of intentional discrimination to warrant a trial.

Earlier in my career, I represented an individual in asylum proceedings before the Immigration and Naturalization Service. My client sought asylum on the ground that the separate government in the northern Somalia — called Somaliland — would persecute him based upon his clan identity and his father's political activities. The ALJ granted asylum.

Also earlier in my career, I drafted an amicus brief on behalf of the Anti-Defamation League, the Chicago Lawyers' Committee for Civil Rights Under Law, the Asian-American Institute, the Chicago Urban League, Horizons Community Services, the Illinois Ethnic Coalition, the Japanese American Citizens League, MALDEF, and others in In re B.C., 680 N.E.2d 1355 (Ill. 1997). The Appellate Court of Illinois interpreted the Illinois Hate Crime Law as applying only where the victim was a member of the racial or ethnic group targeted by the perpetrator. The ADL and its fellow amici argued that the law applies even where the victim is not a member of the group targeted by the perpetrator (*e.g.*, where a white defendant burns a cross on the lawn of the white member of an interracial couple). The Supreme Court of Illinois agreed with our interpretation of the statute and reversed the Appellate Court of Illinois.

The final example I will mention is an amicus brief prepared on behalf of the Anti-Defamation League, the Catholic Conference of Illinois, the Christian Legal Society, the Church of Jesus Christ of Latter-Day Saints, Concerned Christian Americans, the Greek Orthodox Diocese of Chicago, the Illinois Conference of Churches, the Illinois Family Institute, and other organizations in City of Chicago Heights v. Living Word Outreach Full Gospel Church, 749 N.E.2d 916 (Ill. 2001). The amici argued, in support of the defendant church, that the Illinois Religious Freedom Restoration Act was constitutional. The Supreme Court of Illinois disposed of the case without reaching the constitutional issue.

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

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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.

Senator Durbin appointed a selection commission to recommend candidates to fill vacancies on the United States District Court for the Northern District of Illinois. I submitted an application. I interviewed with two members of the commission and then with the entire commission. The commission's recommendations were not made public. I was interviewed by Senator Durbin and a staff member. In August 2009, Senator Durbin submitted seven names, including mine, to the White House. I subsequently was informed that my name had been forwarded to the Justice Department for vetting. On November 10, 2009, I was interviewed at the Justice Department by staff from the Department and from the Office of the Counsel to the President. I have had periodic conversations regarding paperwork and process. On February 24, 2010, the President submitted my nomination to the Senate.

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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FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Feinerman, Gary S.	Northern District of Illinois	02/24/2010
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type** (check appropriate type)	**6. Reporting Period**
District Judge - Nominee	☑ Nomination, Date 2/24/2010 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	1/1/2009 to 2/1/2010
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
Sidley Austin LLP One South Dearborn Street Chicago, IL 60603	Reviewing Officer_____ Date_____	

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

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

☐ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. President	Appellate Lawyers Association of Illinois
2. Partner	Sidley Austin LLP
3. Trustee	National-Louis University
4. Vice Chair	Constitutional Rights Foundation Chicago
5. Director	Umoja Student Development Corporation

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

☐ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1. 2009	Sidley Austin LLP Retirement Plan, no control
2. 2007	Illinois State Employee Retirement System, no control
3. 2003	Mayer Brown LLP Retirement Plan, no control

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting	Date of Report
	Feinerman, Gary S.	02/24/2010

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2010	Sidley Austin LLP, partnership income	$69,352.00
2.	2009	Sidley Austin LLP, partnership income	$1,321,228.00
3.	2008	Sidley Austin LLP, partnership income	$1,311,928.00
4.			

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

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

	DATE	SOURCE AND TYPE
1.		
2.		
3.		
4.		

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

☐ NONE *(No reportable reimbursements.)*

	SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.	Exempt				
2.					
3.					
4.					
5.					

FINANCIAL DISCLOSURE REPORT Page 3 of 7	Name of Person Reporting Feinerman, Gary S.	Date of Report 02/24/2010

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

☐ NONE *(No reportable gifts.)*

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

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☑ NONE *(No reportable liabilities.)*

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

FINANCIAL DISCLOSURE REPORT
Page 4 of 7

Name of Person Reporting	Date of Report
Feinerman, Gary S.	02/24/2010

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. Trust #1	G	Distribution	P2	T	Exempt				
2. Trust #2	F	Distribution	P1	T					
3. Trust #3	G	Distribution	P2	T					
4. Illinois State Retirement System		None	K	T					
5. State of Illinois Deferred Compensation Plan		None							
6. -- LM CM Value Trust CL FI		None	J	T					
7. -- Price New Income Fund		None	K	T					
8. -- Vanguard Inst Index Fund		None	K	T					
9. -- Vanguard Money Market Reserves		None	J	T					
10. -- Wellington Diversified Growth		None	J	T					
11. Mayer Brown LLP USA Savings Plan		None							
12. -- ABN AMRO Income Plus		None	K	T					
13. -- Dodge & Cox Stock		None	K	T					
14. -- DWS Equity 500 Index Fund		None	K	T					
15. -- Prudential Jennison Small Co Z		None	K	T					
16. -- EuroPacific Growth Fund R5		None	K	T					
17. -- Cavanal Hill Cash Mgmt 1		None	K	T					

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

FINANCIAL DISCLOSURE REPORT
Page 5 of 7

Name of Person Reporting	Date of Report
Feinerman, Gary S.	02/24/2010

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
18. Mayer Brown USA LLP Retirement Plan		None	L	U					
19. Merrill Lynch Medical Savings Account		None	J	T					
20. Sidley Austin LLP Retirement Plan		None	M	U					
21. Sidley Austin LLP Savings Plan		None							
22. -- Govt Short Term Inv Fund		None	K	T					
23. -- Vanguard Equity Income Fund		None	J	T					
24. -- Fidelity Contrafund		None	J	T					
25. -- Harbor Capital Appreciation		None	J	T					
26. -- Rainer Small/Mid Cap Equity		None	J	T					
27. -- Harbor Intl Fund		None	K	T					
28. -- PIMCO All Asset Fund		None	K	T					
29. -- Firm Directed Fund		None	J	T					
30. Citibank	A	Interest	N	T					
31. JPMorgan Chase		None	K	T					
32.									
33.									

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

FINANCIAL DISCLOSURE REPORT Page 6 of 7	Name of Person Reporting	Date of Report
	Feinerman, Gary S.	02/24/2010

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

Trust #1, Trust #2, and Trust #3 are trusts, of which my spouse is a beneficiary, over which neither she nor I has control or particular knowledge of the assets.

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting	Date of Report
	Feinerman, Gary S.	02/24/2010

IX. CERTIFICATION.

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

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

Signature _____

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		589	606	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule		601	604	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule	1	918	359
Real estate owned-add schedule	4	100	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		100	000				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities	2	018	359
				Net Worth	3	372	851
Total Assets	5	391	210	Total liabilities and net worth	5	391	210
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you a defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax		100	000				
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Unlisted Securities	
Illinois State Retirement Systems	$ 15,803
State of Illinois 401(k)	60,669
Mayer Brown 401(k)	153,405
Mayer Brown Cash Balance Plan	82,282
Merrill MSA	8,483
Sidley 401(k) and Other Retirement Accounts	141,374
Sidley Cash Balance Plan	139,588
Total Unlisted Securities	$601,604
Real Estate Owned	
Personal residence	$ 4,100,000
Real Estate Mortgages Payable	
Personal residence	$ 1,918,359

AFFIDAVIT

I, **GARY SCOTT FEINERMAN**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

Feb 23, 2010
(DATE)

(NAME)

"OFFICIAL SEAL"
Shari L. Emme
Notary Public, State of Illinois
My Commission Expires 7/14/12

(NOTARY)

STATEMENT OF WILLIAM J. MARTINEZ, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLORADO

Mr. MARTINEZ. Thank you, Mr. Chairman, Senator Sessions. I would like to begin by thanking President Barack Obama for having the trust and confidence to nominate me for this position. I have been and continue to be deeply humbled by what is truly the greatest honor of my lifetime.

I would also like to thank Senator Mark Udall for his very generous and heartfelt and kind words of introduction, as well as Senator Bennet for his kind comments.

I would like to thank you, Mr. Chairman, and Ranking Member Senator Sessions for convening this hearing today to allow us members of the nominee panel to have an opportunity to address any questions members of the Committee might have.

I would also, if I may, like to take a few moments to introduce my family.

Senator WHITEHOUSE. I wish you would.

Mr. MARTINEZ. OK. I would like to start with my wife, my loving wife, Judy Shlay. We have been married 25 years. She has been a great supporter and a loving companion for me for many years, and I could not have done this without her.

I would like to introduce my father, Guillermo Martinez, and my mother, Mary Martinez.

Mr. Chairman, it is literally true I would not be sitting here today at this table had not my parents several years ago left behind everything near and dear to them and, with their three young sons in tow, came to this country from Mexico to give us a better life. And I also would never be sitting here today if it was also not true that my parents never allowed me for a moment to ever doubt that I would 1 day grow up to be the first member of our family to attend college.

I would like to now introduce my beautiful daughters, beginning with my older daughter Erica—Erica is a sophomore at Macalester College in St. Paul, Minnesota—and my younger daughter Laura, who is a senior at Denver East High School. Their love for and devotion to their Daddy is one of the greatest treasures of my life.

Next I would like to introduce my brothers: my brother Salvador, who is a horse and dog breeder in western Pennsylvania; and my other brother, my youngest brother, Al, who is an owner of a small mortgage brokerage company in Chicago.

And, finally, I would like to introduce my sister-in-law, Susan Bertolino, who is on the faculty of Temple University, came down from Philadelphia to be here today with us.

Thank you.

Senator WHITEHOUSE. Thank you, Mr. Martinez. We are delighted by the presence of your family, and it must be very special for each of you to have your family around you on this day.

[The biographical information of William Joseph Martinez 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).

   William Joseph Martínez

   My given name at birth was José Guillermo Martínez Escalante. I formally changed my name to William Joseph Martínez in 1974.

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

   United States District Judge for the District of Colorado

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.

   1640 East 18th Avenue
   Denver, Colorado 80218

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

   1954; México City, México

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.

   1977 – 1980, University of Chicago Law School; J.D., 1980

   1973 – 1977, University of Illinois at Urbana-Champaign; B.Sc. & B.A., 1977

   1972 – 1973, University of Arizona (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.

2007 – Present
McNamara, Roseman, Martínez & Kazmierski LLP
1640 East 18th Avenue
Denver, Colorado 80218
Partner

2001 – 2007
McNamara & Martínez LLP
1640 East 18th Avenue
Denver, Colorado 80218
Partner

1997 – 2001
Law Office of William J. Martínez
1600 Broadway, Suite 2400
Denver, Colorado 80202
Sole Practitioner

1992 – 1998 (intermittent)
University of Denver College of Law
2199 South University Boulevard
Denver, Colorado 80208
Adjunct Faculty

1992 – 1996
United States Equal Employment Opportunity Commission
303 East 17th Avenue, Suite 510
Denver, Colorado 80203
Regional Attorney

1988 – 1992
Pendleton & Sabian, P.C., currently known as
Pendleton, Friedberg, Wilson & Hennessey, P.C.
303 East 17th Avenue, Suite 1000
Denver, Colorado 80203
Senior Litigation Associate

1984 – 1987
Legal Assistance Foundation of Chicago
343 South Dearborn Street, Suite 700
Chicago, Illinois 60604
Staff Attorney, Employment Law Project

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1980 – 1984
Legal Assistance Foundation of Chicago
1212 North Milwaukee Avenue
Chicago, Illinois 60622
Staff Attorney

1979
Office of the United States Attorney
Northern District of Illinois
219 South Dearborn Street, Fifth Floor
Chicago, Illinois 60604
Summer Law Intern, Special Prosecutions Unit

1978
University of Chicago Mandel Legal Aid Clinic/
Cook County Legal Aid & Defense Consortium
6020 South University Avenue
Chicago, Illinois 60637
Summer Law Intern, Criminal Defense Unit

Other Affiliations (uncompensated)

2009 – Present
Colorado Legal Services, Inc.
1905 Sherman St., Suite 400
Denver, Colorado 80203
Director

2008 – Present
Colorado Hispanic Bar Association
P.O. Box 8895
Denver, Colorado 80201
Director

2006 – 2008
Faculty of Federal Advocates
4277 Irving Street
Denver, Colorado 80211
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 registered for the Selective Service, but I have never 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.

National College of Labor and Employment Lawyers, Fellow (inducted 2006)
Best Lawyers in America, Listed Attorney for Employment and Labor Law (2007 – 2010)
Colorado *Super Lawyer*, Listed Attorney for Employment & Labor Law (2008 – 2010)
Colorado *Super Lawyer*, "Top 50" of all Colorado Lawyers (2008 & 2009)
Colorado Bar Foundation, Fellow (inducted 2000)
University of Chicago, Scholarship for 75% tuition (1977 – 1980)
University of Illinois, Illinois Scholar (1973 – 1977)
University of Illinois, Brunswick Foundation Scholarship (1973 – 1977)

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.

Chicago Council of Lawyers
Colorado Bar Association
    Member, Legal Fee Arbitration Committee, 1997 – 1998
Colorado Hispanic Bar Association
    Director, 2008 – Present
    Chair, Ethics Committee, 2008 – Present
    Mentor, Law Student Mentor Program, 1991 – 1994 and 2007 – Present
    Member, Public Policy Committee, mid 1990s
Colorado Plaintiff Employment Lawyers Association
Colorado Supreme Court
    Hearing Board, Office of the Presiding Disciplinary Judge (1998 – Present)
    Judicial Ethics Advisory Board (2009 – Present)
Denver Bar Association
    Volunteer, Thursday Night Bar/Metro Volunteer Lawyers Program, 1997 – 1999
    Member, Federal Decisions Committee, 1990 – 1992
Faculty of Federal Advocates
    Director, 2006 – 2008
    Treasurer, 2008
Hispanic National Bar Association
Illinois Bar Association
National Employment Lawyers Association
United States District Court for the District of Colorado
    Member, Committee on Conduct (2005 – 2009)
    Vice Chair, Committee on Conduct (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.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01074 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC
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Colorado, 1987
Illinois, 1980

At my request, I became an out-of-state, inactive member of the Illinois Bar in approximately 1990. In approximately 1999, I allowed my membership to lapse in full when I determined that I would not return to Illinois to practice law. There has been no other 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.

United States Court of Appeals for the Seventh Circuit, 1986
United States Court of Appeals for the Tenth Circuit, 1988
United States District Court for the District of Colorado, 1988
United States District Court for the Northern District of Illinois, 1980
(Trial bar, 1983)
Colorado Supreme Court, 1987
Illinois Supreme Court, 1980

At my request, I became an out-of-state, inactive member of the Illinois Bar in approximately 1990. In approximately 1999, I allowed my membership to lapse in full when I determined that I would not return to Illinois to practice law. There has been no other lapse 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.

Amnesty International USA, mid 1980s – Present
ACLU of Colorado, early 2000s – Present
Member, Legal Panel, 2006 – Present
Colorado Legal Services, Inc.
Member, Board of Directors, 2009 – Present
Colorado Public Radio, late 1990s – Present
Greenpeace USA, early 1990s – Present
Human Rights Watch, late 1990s – Present
International Rescue Committee, mid 2000s – Present
Mexican American Legal Defense & Education Fund, early 1980s – 1987
National Legal Aid and Defender Association, early 1980s – 1987

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National Resources Defense Council, late 1990s – Present
Rocky Mountain PBS, 2008 – Present
Sierra Club, early 2000s – Present
University of Chicago Alumni Association, 1980 – Present
University of Illinois Alumni Association, 1977 – 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 identified in my response to this question currently discriminate with respect to any of the stated bases. To the best of my knowledge and belief, if any of these organizations at some point in the past did so invidiously discriminate, it was well prior to the time I became a member.

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.

"The False Claims Act As An Employee Rights Statute: Asserting Retaliation Claims in *Qui Tam* Actions." *Trial Talk*, (Journal of the Colorado Trial Lawyers Association), June/July 2006; reprinted in *Journal of the Academy of Florida Trial Lawyers,* October 2006.

"Turning the Tables: Obtaining Your Opponent's Fee Records." *The Employee Advocate,* (Journal of the National Employment Lawyers Association), Summer 2005.

"Asserting Claims of Race or Sex Harassment in the Absence of Overtly Racist or Sexist Comments." *Trial Talk*, June/July 2004; reprinted in *Trial* (Journal of the Association of Trial Lawyers of America), November 2004.

"Damage Caps Under the Civil Rights Act of 1991." *The Colorado Lawyer*, March 1998 (with Kathleen M. Flynn, Esq.), selected for inclusion in *Westlaw Journals & Law Reviews* database.

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,

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01076 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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.

For approximately two years in the mid 1990s, I was a member of the Public Policy Committee of the Colorado Hispanic Bar Association. The Committee primarily served as a discussion forum for invited speakers. I have no recollection or record of any report the Committee issued during my membership but it is possible a report, memoranda, or policy statement was generated. If so, I was not directly involved in the preparation.

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 approximately 1985, I testified before a committee of the Illinois House of Representatives in Springfield, Illinois, in favor of an amendment to the Illinois Human Rights Act. As best as I can recall, the amendment (which passed) provided for enhanced judicial remedies for violations of that Act. I did not retain any copies of my testimony.

In April 2005, I testified before the Colorado House of Representatives Judiciary Committee in favor of a bill to provide employees with a statutory right to inspect the contents of their personnel files. Although the bill was passed by the state legislature, it was vetoed by then-Governor Bill Owens. I did not retain any copies of my testimony.

In April 2009, I testified before the Colorado House of Representatives Judiciary Committee in favor of a bill which would have amended the Colorado Anti-Discrimination Act to provide for enhanced remedies, attorney's fees and a right to a jury trial for persons alleged to have been aggrieved by a violation of that Act. This bill was not enacted into law.

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.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01077 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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"Recent Amendments & Implementing Regulations to the Family & Medical Leave Act of 1993;" Employment Law Conference, Colorado Bar Association Labor & Employment Law Section (21 May 2009)

"Cross-Examining the Adverse Deponent: Obtaining Admissions, and More;" Continuing Legal Education Seminar; sponsored by the National Employment Lawyers Association (21 March 2008)

"Discovery in Employment Cases: Things We've Learned Along the Way"; Presentation to the Colorado Plaintiff Employment Lawyers Association (23 September 2006)

"Evidence and Burden of Proof;" Presentation to the Investigators of the Denver District Office of the EEOC (25 May 2005) (no transcript or notes)

"Lessons Learned in *Antoine v. Yellow Freight Systems* Jury Trial;" Presentation to the Colorado Plaintiff Employment Lawyers Association (24 January 2003)

"Effective Practice Before the EEOC and CCRD: Administrative Prerequisites and Remedies;" Presentation at the Colorado Trial Lawyers Association Employment Law Seminar (18 May 2001)

"Risk-Free Management of Disabled Employees: Staying Within the ADA Without Compromising Performance;" Presentation at Seminar Sponsored by the Council on Education in Management (12 May 1999)

"Effective Representation Before the EEOC;" Presentation to the Colorado Plaintiff Employment Lawyers Association (29 May 1998)

"Identifying Sexual Harassment in the Workplace;" Presentation to the Management employees of Design Materials, Inc. (20 May 1997)

"Legal Recruiting - An Employer's Perspective;" Presentation at a Luncheon of the Career Services Office at the University of Denver College of Law (29 January 1997) (no transcript or notes)

"EEOC Enforcement Litigation Update;" Presentation at a Colorado Bar Association Labor Law Section Luncheon (13 June 1996) (no transcript or notes)

"Statutory Liability: The EEOC's Perspective;" Presentation to Human Resources Managers at 1995 Annual Seminar Sponsored by the Law Firm of Holme, Roberts and Owen (10 February 1995)

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01078 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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"Inside the Mind of the EEOC Decision Maker or Fact Finder;" Workshop Conducted at an EEOC Advanced Technical Assistance Programs Seminar (8 September 1994)

"EEOC's Racial & Ethnic Classification System and EEO-1 Reports;" Presentation at Public Hearing Conducted by the Office of Management and Budget in Denver, Colorado (11 July 1994)

"Some Suggested Strategies for Plaintiff's Attorneys in the Wake of *St. Mary's Honor Center v. Hicks*;" Presentation to the Colorado Hispanic Bar Association (*circa* 1994)

"Legal Update and Current Litigation Issues;" Presentation to the Directors of the Region VIII Fair Employment Practices Agencies (26 October 1993)

"Current Issues Confronting the Equal Employment Opportunity Commission;" Presentation at Denver Bar Association Labor Committee Luncheon (30 June 1993) (no transcript or notes)

"Avoiding a Million Dollar Discrimination Lawsuit;" Presentation at a Joint Continuing Education Program of the American Association for Affirmation Action and the Association of Higher Education Affirmative Action Directors (12 February 1993)

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.

John Accola, "*Aerospace Firm OKs Discrimination Pact; Hispanics at Plant in Mesa Co. Sued Over Racial Slurs,"* The Rocky Mountain News, 21 May 2005.

Tripp Baltz, *"Denver Jury Awards $3.3 Million to Black Trucker in Race Lawsuit,"* BNA's Employment Discrimination Report, 13 November 2002.

Tom McGhee, *"Trucker Awarded $3.3 Million; Denverite Wins Race Harassment Case,"* The Denver Post, 27 October 2002

John Accola, "*Jury Awards $3.3 Million in Discrimination Suit,"* The Rocky Mountain News, 26 October 2002.

Ginny McKibben, "*Trucking Firm Sued For Race Bias,"* The Denver Post, 28 December 1999.

"Truckers Claim Racial Discrimination in Lawsuit," The Associated Press, 28 December 1999

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John Accola, "*Deals in the Dark: Colorado Employers Rapidly Settling Lawsuits in Secret*," The Rocky Mountain News, 28 March 1999.

"*District to Pay Fired Secretary*," The Denver Post, 27 March 1996.

"*EEOC Files Age Discrimination Suit Against Martin Marietta,*" The Associated Press, 27 May 1994.

Jeffrey Leib, "*EEOC Slaps Martin with Age-Bias Suit,*" The Denver Post, 27 May 1994.

National Public Radio, Interview Regarding the Filing of *EEOC v. Martin Marietta Corp.*, May or June 1994 (no transcript).

John Accola, "*Trail Dust Faces Suit for Sex Bias in Hiring,*" The Rocky Mountain News, 29 January 1994.

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 never held 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.

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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.

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;

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 never held judicial office.

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.

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I have never held public office. In 2007, I was one of three nominees whose names were submitted to Governor Bill Ritter by the Second Judicial District Nominating Commission for a seat on the Denver District Court. Under the Colorado Constitution, the District Nominating Commission nominates three individuals from whom the Governor may select one for appointment. Governor Ritter selected one of the other nominees for the Court. I have had no other unsuccessful nominations for appointed office and no unsuccessful candidacies for elective 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.

I have been a member of the Democratic Party of Colorado for approximately the past ten years, but have never held any Party office or position. In the 1980s I was a member of the Democratic Party of Cook County, Illinois; I did not hold any Party office or position.

Obama/Biden Campaign for President & Vice President 2008
Volunteer Canvasser & Attorney Poll Watcher

Udall Campaign for United States Senate 2008
Volunteer Canvasser & Attorney Poll Watcher, 2008

Gore/Lieberman Campaign for President & Vice President 2000
Volunteer Canvasser

Washington Campaign for Mayor of Chicago 1983
Volunteer Canvasser

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 have not served as clerk to a judge.

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

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I was a sole practitioner from 1997 to 2001 at the following addresses:

1675 Broadway, Suite 1800, Denver, Colorado 80202 (1997 – 2000)
1600 Broadway, Suite 2400, Denver, Colorado 80202 (2000 – 2001)

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 – 1984
Legal Assistance Foundation of Chicago
1212 North Milwaukee Avenue
Chicago, Illinois 60622
Staff Attorney

1984 – 1987
Legal Assistance Foundation of Chicago
343 South Dearborn Street, Suite 700
Chicago, Illinois 60604
Staff Attorney, Employment Law Project

1988 – 1992
Pendleton & Sabian, P.C., currently known as
Pendleton, Friedberg, Wilson & Hennessey, P.C.
303 East 17th Avenue, Suite 1000
Denver, Colorado 80203
Senior Litigation Associate

1992 – 1996
United States Equal Employment Opportunity Commission
303 East 17th Avenue, Suite 510
Denver, Colorado 80203
Regional Attorney

2001 – 2007
McNamara & Martínez LLP
1640 East 18th Avenue
Denver, Colorado 80218
Partner

2007 – Present
McNamara, Roseman, Martínez & Kazmierski LLP
1640 East 18th Avenue
Denver, Colorado 80218
Partner

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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 was appointed an Arbitrator on the Rocky Mountain Commercial Law Panel of the American Arbitration Association in 2007. To date, I have served as an arbitrator in two cases:

1. I arbitrated the claims of a dental practice that a former dentist-partner was soliciting patients and employees of the firm, in contravention of partnership and employment agreements. The matter settled prior to hearing.

2. I arbitrated a matter instituted by an employee who claimed that her employer had violated the Fair Labor Standards Act by failing to pay her for overtime hours she claimed to have worked. The matter settled to prior to hearing.

In addition, I have conducted about 50 "desk" arbitrations in consumer collection matters. These arbitrations are decided in accordance with a streamlined procedure in which no hearings are held and a decision is made solely on the papers submitted.

b. Describe:

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

When I was with Legal Assistance Foundation of Chicago (LAFC), I was a legal aid staff attorney in a legal services program with over 100 attorneys. In the period of 1980 – 1984, most of my litigation was in state court and before administrative law judges. After I was promoted to LAFC's Employment Law Project in March 1984, I worked primarily on class actions in federal court.

At the Pendleton & Sabian law firm, from 1988-1992, my areas of legal focus broadened beyond employment law to include bankruptcy, commercial, contract, securities, lender liability and UCC litigation.

As Regional Attorney of the EEOC in Denver, I was the head of legal operations of a federal enforcement agency in a six-state Rocky Mountain jurisdiction. From 1992-1996, I was responsible for the Commission's federal court litigation in that office, in addition to other managerial responsibilities, including personnel, budget and operational matters.

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Since leaving the EEOC in 1996, my practice has consisted almost entirely of federal court litigation on behalf of individuals in the fields of employment, consumer and civil rights law.

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

While at LAFC I represented indigent and blue-collar, working-class individuals. I handled landlord-tenant disputes, consumer fraud and employment discrimination cases, social security disability hearings, emergency utility shutoff proceedings, unemployment benefits hearings and appeals, and domestic violence cases. My federal court work included major class action litigation.

At the Pendleton firm, I represented primarily corporate clients in litigation that included jury and bench trials, and arbitration hearings, as well as trials and hearings before administrative tribunals. My client base included large and small corporations and executive-level individuals.

Outside of my employment law specialty, I represented corporate clients in the following different areas:

(a) Bankruptcy Law: I represented both debtors and creditors in bankruptcy adversary proceedings;
(b) Securities Law: I litigated securities fraud cases;
(c) Commercial Law: I litigated lender liability and UCC cases; and
(d) Contract and Tort Law: I litigated breach of contract, unjust enrichment and civil fraud cases.

As EEOC Regional Attorney in Denver, I was responsible for the Commission's federal court enforcement litigation in six states.

In my private practice after leaving the government, I have represented a broad spectrum of individuals and class members in the fields of employment, civil rights and consumer fraud law, and I extensively have counseled corporate clients on litigation avoidance practices.

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.

Broadly speaking, throughout the course of my career approximately 95% of my practice has been in litigation. While I was with the Legal Assistance Foundation of Chicago (1980-87) and the EEOC (1992-1996) I appeared in court frequently. At all other times of my legal career, I appeared in court occasionally.

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i. Indicate the percentage of your practice in:

1. federal courts: 75%
2. state courts of record: 10%
3. other courts: 1%
4. administrative agencies: 14%

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.

I have tried twelve cases to verdict, judgment or final decision. Of these, I was sole counsel in six, chief or lead counsel in four, and associate counsel in two.

i. What percentage of these trials were:
1. jury: 58%
2. non-jury: 42%

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. *Wilkerson & EEOC v. Martin Marietta Corp.*, Civil Action No. 94-S-1247(OES), reported at 875 F.Supp. 1456 (D. Colo. 1995). Judge Daniel B. Sparr & Chief Judge Wiley Y. Daniel presided over this litigation.

This EEOC class enforcement action alleged that defendant violated the Age Discrimination in Employment Act (ADEA) when it terminated a disproportionate number of older employees because of their age in a series of reductions in force which occurred between January 1990 and October 1992. The class was comprised of more than 3,200 employees age 40 and over, most of whom were aeronautical engineers. I represented the EEOC from 1992-1996.

The investigation of this class action was completed while I was EEOC Regional Attorney, and the enforcement action, for which I had overall responsibility, was filed under me. I personally reviewed and approved all substantive written and oral work product in the case. I personally also drafted and presented several motions to the court, attended all hearings, and supervised closely the taking and defending of the several dozen depositions. This action is among the largest age discrimination class actions the federal government has ever litigated. The matter was resolved via entry of a public consent decree which provided for millions of dollars in monetary payments to the claimants, the re-hiring of about 450 class members into their former positions, as well as substantial service-credit enhancements which were allocated to the retirement plans of some of the claimants. The parties estimated that the relief afforded the claimants by the consent decree had an overall value of nearly $200 million.

My co-counsel were: Todd J. McNamara, now with McNamara, Roseman, Martínez & Kazmierski LLP, 1640 East 18th Avenue, Denver, Colorado 80218, 303/333-8700; and Darold W. Killmer, now with Killmer, Lane & Newman LLP, 1543 Champa Street, Suite 400, Denver, Colorado 80202, 303/571-1000.

The lead opposing counsel were: Daniel S. Hoffman, deceased; John R. Webb, now a judge on the Colorado Court of Appeals, 2 East 14th Avenue, 3rd Floor, Denver, Colorado 80202, 303/837-3730; and Katherine J. Peck, now with The Gill Foundation, 2215 Market Street, Denver, Colorado 80205, 303/292-4455.

2. *Cosby v. Ward*, No. 83-C-3116, reported at 625 F.Supp. 619 (N.D. Ill. 1985), *reversed in part and remanded*, 843 F.2d 967 (7th Cir. 1988). Judge Frank H. Easterbrook, sitting by designation, presided over this litigation.

This class action was brought pursuant to 42 U.S.C. § 1983 (Section 1983) against the Illinois Department of Employment Security (IDES). Plaintiffs alleged that IDES' administration of two separate unemployment benefits programs violated the "fair hearing" and "when due" provisions of the federal Social Security Act, as well as the class members' Fourteenth Amendment due process rights. Specifically, plaintiffs claimed that hundreds of class members were unlawfully denied extended unemployment insurance benefits for allegedly failing to engage in a sufficiently active work search,

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when IDES failed to give them notice of the standards by which their work searches were to be evaluated. I was attorney for the class representative and the putative class members from 1983 to 1987.

I was actively involved in all aspects of the litigation, from pre-suit work up of the evidence and law, drafting of pleadings and briefs, and taking and defending depositions. I was co-counsel in the bench trial held before Circuit Judge Frank H. Easterbrook, sitting by designation, and assisted in the preparation of appellant's briefs to the Seventh Circuit. At the close of plaintiffs' case during the bench trial, Judge Easterbrook granted defendant's Rule 41(b) motion for judgment. 625 F.Supp. 619 (N.D. Ill. 1985). On appeal, a panel of the Seventh Circuit in part reversed their colleague, and remanded the case for further proceedings. 843 F.2d 967 (7th Cir. 1988). The reviewing court determined that plaintiffs had shown by a preponderance of the evidence that IDES violated their due process rights by failing to provide them with adequate notice of the active work search requirements against which their self-reported work search information would be compared. This appeal had been fully briefed and argued prior to my departure from Illinois, but was not decided until after I relocated to Colorado. The litigation finally was settled in 1992 with the approval of a consent decree.

My co-counsel were: Jeffrey B. Gilbert, now with Johnson, Jones, Snelling, Gilbert & Davis, P.C., 36 South Wabash Street, Suite 1310, Chicago, Illinois 60603, 312/578-8100; and Steven Coursey, now at 1718 South Ashland Avenue, Second Floor, Chicago, Illinois 60608, 312/563-1001.

The lead opposing counsel was Assistant Illinois Attorney General Jerome J. Webb, now at Ganan & Shapiro P.C., 210 W. Illinois Street, Chicago, Illinois 60610, 312/822-0040.

3. *EEOC v. Albertson's LLC*, Civil Action No. 06-cv-01273-CMA-BNB, reported at 247 F.R.D. 638 (D. Colo. 2007) (*Albertson's I*). Chief Judge Wiley Daniel and Judge Christine M. Arguello presided over this litigation.

In this class enforcement case, the EEOC and private Intervenors alleged that defendant maintained a severe and pervasive hostile work environment based on race and national origin, and discriminated against employees with regard to their terms and conditions of employment based on race and/or national origin. I represented the private Intervenors, who were current and former employees of the Defendant, from 2006 to 2010.

I took a very active role in the litigation of this class action. I took and defended dozens of depositions, drafted pleadings and briefs, and made several court appearances (including oral arguments on motions), which significantly benefitted not only my five clients, but the entire class as a whole. This action, along with a companion class action that claimed a pattern or practice of retaliation against employees who opposed unlawful harassment and discrimination, (Civil Action No. 08-cv-00640-LTB-MJW) (*Albertson's II*), were resolved via entry by the district court of a public consent decree on 15 December 2009. This decree provided for monetary relief in the amount of $8.9 million

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to the approximately 160 class members in *Albertson's I* and *Albertson's II,* as well as significant equitable relief.

My co-counsel were: Rita Byrnes Kittle, EEOC, 303 East 17th Avenue, Suite 410 Denver, Colorado 80203, 303/866-1347; Andrew Winston, EEOC, 303 East 17th Avenue, Suite 410, Denver, Colorado 80203, 303/866-1361; and Elwyn F. Schaefer, 1801 Broadway, Suite 550, Denver, Colorado 80202, 303/825-1961.

The lead opposing counsel were: Lawrence J. Gartner, Ballard Spahr Andrews & Ingersoll LLP, 2029 Century Park East, Suite 800, Los Angeles, California 90067, 424/204-4334; and Richard S. Mandelson, Baker & Hostetler LLP, 303 East 17th Avenue, Suite 1100, Denver, Colorado 80203, 303/764-4022.

4. *Pennington v. Ward*, No. 85-C-6237, unpublished order conditionally certifying class action found at 1986 WL 8038 (N.D. Ill.). Judge Paul E. Plunkett presided over this litigation.

Plaintiffs were a class of hundreds of unemployment insurance claimants who brought suit under Section 1983 against the IDES. The plaintiff class challenged the "base period" scheme established under Illinois law as being in contravention of the "when due" clause of federal Social Security Act. Under Illinois law at the time, a claimant must have earned sufficient wages during his or her "base period," defined as the first four of the last five completed calendar quarters immediately preceding the benefit year. For purposes of determining eligibility for receipt of unemployment insurance benefits, Illinois law then excluded the wages a claimant earned in the calendar quarter immediately preceding the quarter in which the claim was filed. This "lag quarter" delayed receipt of benefits for some claimants for up to 90 days. I was attorney for the class representative and the putative class members from 1984 to 1987.

I actively was involved in all aspects of the litigation, including pre-suit work up of the evidence and law, drafting of pleadings and briefs, and taking and defending depositions. At the time of my relocation to Colorado, a class had been certified under Rule 23. After I was no longer on the case, the Seventh Circuit determined that Illinois' base period scheme for determining sufficient wage eligibility for unemployment benefits violated Federal law. Subsequently, however, the Social Security Act was amended, causing the appellate court to vacate its decision.

My co-counsel was Jeffrey B. Gilbert, Jones, Snelling, Gilbert & Davis, P.C., 36 South Wabash Street, Suite 1310, Chicago, Illinois 60603, 312/578-8100. I cannot recall the names of the Assistant Illinois Attorneys General who were opposing counsel during the period of time I was involved in this litigation. I also cannot locate any records with this information.

5. *EEOC v. Albertson's LLC*, Civil Action No. 08-cv-00640-LTB-MJW, reported at 579 F.Supp.2d 1342 (D. Colo. 2008) (*Albertson's II*). Judge Lewis T. Babcock presided over this litigation.

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In this EEOC class enforcement class action, the Commission and private Intervenors alleged that Defendant maintained a persistent pattern or practice of retaliating against racial and ethnic minority employees for opposing defendant's unlawful discriminatory employment practices. Plaintiffs alleged this unlawful retaliation took the form of retaliatory terms and conditions of employment, denials of transfers, harassment, disciplinary actions, demotions and discharges. I represented the private Intervenor employees and former employees from 2006 to 2010.

My co-counsel were: Rita Byrnes Kittle, EEOC, 303 East 17th Avenue, Suite 410 Denver, Colorado 80203, 303/866-1347; Andrew Winston, EEOC, 303 East 17th Avenue, Suite 410, Denver, Colorado 80203, 303/866-1361; and Elwyn F. Schaefer, 1801 Broadway, Suite 550, Denver, Colorado 80202, 303/825-1961.

The lead opposing counsel were: Lawrence J. Gartner, Ballard Spahr Andrews & Ingersoll LLP, 2029 Century Park East, Suite 800, Los Angeles, California 90067, 424/204-4334; and Richard S. Mandelson, Baker & Hostetler LLP, 303 East 17th Avenue, Suite 1100, Denver, Colorado 80203, 303/764-4022.

6. *Arellano v. Hamilton Sundstrand Corp.*, Civil Action No. 03-Z-0984 (PAC) (D. Colo.), *consolidated with EEOC v. Hamilton Sundstrand Corp.*, Civil Action No. 03-Z-1663 (PAC)(Colo.). Judge Zita L. Weinshienk presided over this litigation.

Plaintiff Arellano alleged he endured a pervasively severe hostile work environment at defendant's Grand Junction industrial facility because of his Mexican national origin. He also alleged he was discharged in retaliation for his opposition to such an environment. Arellano's claims were brought pursuant to 42 U.S.C. § 1981 (Section 1981) and Title VII of the Civil Rights Act of 1964 (Title VII). The EEOC subsequently filed a class enforcement action on behalf of an additional 10 Hispanic claimants, asserting essentially identical claims. The actions were consolidated for all pretrial purposes. I represented the individual Plaintiff from 2003 to 2005.

I took a very active role in the litigation of this class action. I took or defended about 90 of the 110 depositions taken in the consolidated litigation. I also drafted pleadings and briefs, and made court appearances (including oral arguments on motions), which significantly benefitted not only the named Plaintiff, but the entire class as a whole. These suits were settled by way of a public consent decree entered as an order of the court. The decree provided for payment to my client of $750,000, as well as $500,000 total payments to the ten claimants in the EEOC action. The consent decree also provided for significant non-monetary relief, including training of employees on federal EEO laws, the appointment of an EEO Coordinator to ensure compliance with the consent decree and oversee defendant's investigation of employee complaints of discrimination and retaliation, and establishing an effective complaint procedure for all employees.

My co-counsel were: Nancy A. Weeks, EEOC, 303 East 17th Avenue, Suite 410, Denver, Colorado 80203, 303/866-1947; Anjuli Kelotra, now with Qwest Legal

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01090 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Department, 1801 California Street, Tenth Floor, Denver, Colorado 80202, 303/383-6569; and Sean M. McCurdy & Kent E. Eichstadt, McCurdy & Eichstadt P.C., 9085 East Mineral Circle, Suite 380, Centennial, Colorado 80112, 303/832-8870.

The lead opposing counsel were: John M. Husband & Steven M. Gutierrez, Holland & Hart LLP, 555 17th Street, Suite 3200, Denver, Colorado 80202, respectively 303/295-8228 & 303/295-8531.

7. *Antoine v. Yellow Freight Systems, Inc.*, Civil Action No.99-CV-2441-WDM-BNB (D. Colo.). Judge Walker D. Miller presided over this litigation.

My client and two co-workers alleged severe racial harassment and discrimination at a trucking terminal and brought suit pursuant to Section 1981 and Title VII. One month prior to trial the court severed the claims of the three plaintiffs and ordered three separate jury trials. A two-week jury trial, on my client's claims alone, was held in October 2002. The jury returned a verdict in my client's favor on all claims, and awarded him $3.3 million in damages. I represented the plaintiff from 1999-2006.

Throughout the pretrial phase of this case, I was co-counsel along with two other Denver attorneys. During the actual jury trial, I was lead counsel. This case was the largest verdict I had ever obtained for a client. The trial court reduced the amount of the verdict on post-trial motion of defendant. Plaintiff appealed to the Tenth Circuit, after which time the matter was confidentially settled. The claims of Mr. Antoine's two co-plaintiffs were successfully mediated prior to their trials.

My co-counsel were: Joel W. Cantrick, now with Ducker, Montgomery, Aronstein & Bess, P.C., 1560 Broadway, Suite 1400, Denver, Colorado 80202, 303/861-2828; and Timothy M. Kratz, Pendleton, Friedberg, Wilson & Hennessey, P.C., 1875 Lawrence Street, Tenth Floor, Denver, Colorado 80202, 303/831-1204.

The lead opposing counsel were: William F. Schoeberlein, semi-retired; formerly with Littler Mendelson P.C., 26054 Centennial Trail, Golden, Colorado 80401, 303/526-0505; Judith H. Holmes, now at 991 Mt. Rose Way, Golden, Colorado 80419, 303/781-6858; and Darin L. Mackender, now with Fischer & Phillips LLP, 1999 Broadway, Suite 3300, Denver, Colorado 80202, 303/218-3650.

8. *Leal v. Sonic-Massey Pontiac Buick GMC, Inc.,* Civil Action No. 06-cv-00537-LTB-MJW, reported at 444 F.Supp.2d 1163 (D. Colo. 2006). Judge Lewis T. Babcock presided over this case.

My clients brought this class action on behalf of hundreds of Colorado consumers who had hidden finance charges included in their automobile credit transactions. We claimed defendants engaged in systematic deceptive practices in violation of federal and state consumer protection laws. We also alleged defendants' illegal tactics included charging consumers for non-existent auto add-ons, failing to properly disclose finance charges on

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01091 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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credit transaction documents, and selling prohibited credit insurance policies. I was attorney for the class representatives from 2005 to 2007.
I actively participated in all phases of this litigation, including the drafting of pleadings and briefs, and appearing at court for motion and other hearings. After about 16 months of pretrial litigation, the named class representatives were forced by their personal financial situation to file a voluntary Chapter 7 petition in the U.S. Bankruptcy Court for the District of Colorado. The Bankruptcy Trustee settled my client's individual claims, and class counsel were unable to locate other aggrieved individuals willing to be named representatives of the putative class. As a result, the action was dismissed.

My co-counsel were: David R. Angle, now with the Office of the Missouri Attorney General, 207 West High Street, Jefferson City, Missouri 65102, 573/751-3376; and Douglas S. Lyons, Lyons & Farrar P.A., 325 North Calhoun Street, Tallahassee, Florida 32301, 850/222-8811.

The lead opposing counsel were: Dennis M. Black & Stephen D. Andrews, Williams & Connelly LLP, 725 Twelfth Street, N.W., Washington, D.C. 20005, 202/434-5000.

9. *Martin v. AT&T Corp.,* 331 F.Supp.2d 1274 (D. Colo. 2004). Then Chief Judge Edward W. Nottingham presided over the litigation.

This case alleged claims arising under the Americans with Disabilities Act and the ADEA on behalf of a decorated Viet Nam combat veteran. Although a single-plaintiff action, this was a very complex case, both legally and factually. I represented Plaintiff from 2001 to 2004.

I was lead counsel in all phases and for all aspects of the litigation. After the bulk of plaintiff's claims survived a motion for summary judgment, this case was settled confidentially prior to trial.

My co-counsel was Andrea E. Faley, now with Colorado Legal Services, 1905 Sherman Street, Suite 400, Denver, Colorado 80203, 303/866-9352.

My opposing counsel was Paul M. McCue, of Sherman & Howard. He is deceased.

10. *Sostre and Green v. Vari-L Company, Inc.,* Case No. 89 CV 14943; Denver District Court. Judge R. Michael Mullins presided over this case.

Plaintiffs were engineers who relocated to Colorado to accept employment with defendant. Defendant manufactured electronic equipment used in weapons systems. Within a year of beginning work for defendant, plaintiffs were laid off due to reductions in Department of Defense funding. Plaintiffs claimed defendant fraudulently induced them to accept employment in Colorado, alleging the company was aware when it hired them of the upcoming downturn in business. Defendant claimed this downturn caught it by surprise, denied any fraud, and argued it made little sense for the company to incur the

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significant costs of recruiting these out-of-state engineers, only to lay them off a few months later. I represented the Defendant employer from about 1989 to 1991.

I was lead counsel for defendant throughout the district court phase of the case, including at the two-week jury trial held in February 1991. This case was very significant for my client, a small manufacturing company of less than 75 employees. Had plaintiffs prevailed, the company would have gone out of business, with the resulting loss of income for all of their employees and families. Although the jury returned a verdict for plaintiffs, I prevailed on a subsequent JNOV motion. The trial court's judgment notwithstanding the verdict was affirmed on appeal by the Colorado Court of Appeals. I did not handle the appeal.

My co-counsel was Joanne C. Morrow, now at 504 18th Street, Golden, Colorado 80401, 303/278-8208.

My opposing counsel was Jeffrey M. Menter. I have been unable to ascertain Mr. Menter's current contact 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) 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.)

Throughout my career, my legal practice has been almost exclusively devoted to litigation. Apart from litigation, my practice has included counseling and advising corporate clients on employment-related policies and practices. These counseling efforts have included presentations to management officials on current legal developments as well as on litigation-avoidance best practices. In addition, I have drafted written policies for companies, including portions of employee manuals, and prepared employment contracts and severance agreements for large and small companies. More recently, I have performed some arbitration work and I have served as an Arbitrator on the Rocky Mountain Commercial Law Arbitration Panel of the American Arbitration Association since 2007.

I also participated extensively in law-related activities focused on increasing the access of legal services to the public, improving the quality of legal representation before the courts, and upholding the highest standards of ethics and integrity for members of the Bar. As examples of these activities, I have been a director of the Faculty of Federal Advocates, of the Colorado Hispanic Bar Association (and Chair of its Ethics Committee), and of Colorado Legal Services, Inc., a Legal Services Corporation grantee program.

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In addition, I have served on the Colorado Supreme Court's Judicial Ethics Advisory Board, as well on Hearing Boards with its Presiding Disciplinary Judge, and for several years I have been a member of the Committee on Conduct of the United States District Court for the District of Colorado; I am currently the Vice Chair of that Committee. I have taken on pro bono cases, mentored Latino law students, and worked to strengthen the mentor/mentee program of the federal district court. I undertook all of these activities on a volunteer basis, and without compensation. Finally, for three years I taught a course as an Adjunct Faculty member at the University of Denver Law School.

I have not performed any 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.

During the 1990s I was an Adjunct Professor of Law at the University of Denver College of Law (DU Law School). During three academic years, I taught a section of a first-year course called "The Lawyering Process." At the time, the course consisted of lectures and supervision of mock practical sessions on my part. The students drafted internal legal memos, complaints, answers, written discovery and other legal pleadings. The students conducted mock interviews of clients, depositions, presentation of motions and oral advocacy. I taught this course three times (I cannot recall the exact years and the Law School was unable to provide me with relevant records), most recently during the 1997-1998 academic year. I have not retained any written course materials.

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.

The only such deferred income or future benefits I anticipate is possible future fee income from any successful outcome of contingent fee cases on which I am currently working, but that remain unresolved at the time I would leave law practice if confirmed. I have not entered into any agreement with respect to the handling of any future fee income. If confirmed, I would handle any such agreements and future benefits pursuant to the ethical advice of the Administrative Office of the United States Courts.

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.

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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.

    If confirmed, I initially would be conflicted from any case where my present law firm appears or where a current or former client is a litigant. I would follow the law, the ethical codes, and advice of colleagues in resigning all memberships or service positions inconsistent with holding judicial office. Again, I would follow the law, the ethical codes, and advice of colleagues in determining where disclosure and recusal are appropriate to maintain impartiality and to avoid any appearance of conflict in any matter over which I might preside.

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

    If confirmed, I would consult the federal recusal statutes, including 28 U.S.C. § 455, and the Code of Conduct for United States Judges to guide me in identifying and, where necessary, resolving or avoiding any conflicts, including through disclosure and recusal where appropriate. I also would seek the advice of my colleagues and of the Judicial Conference as needed.

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.

    During the first seven years of my legal career I represented, either individually or on a class-wide basis, indigent or working-class individuals of very limited financial means. From January through April 1988 I was a full-time, unpaid volunteer attorney

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01095 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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with the Legal Aid Society of Metropolitan Denver. In this *pro bono* capacity I worked on a successful class action on behalf of 1,500 individuals who were challenging the Denver Housing Authority's Section 8 and Low-Rent Public Housing admission requirements.

While at the Pendleton & Sabian law firm, through what was then known as the Denver Bar Association's Thursday Night Bar program, I accepted an unemployment compensation administrative appeal case, and I defended a consumer collection action in Denver County Court. When I was a sole practitioner, I accepted three *pro bono* consumer cases. Most recently, I provided 113 hours of free representation to Mexican immigrants who had been defrauded by a used car dealership. During my tenure on the Board of Directors of the Faculty of Federal Advocates, my primary interest was in promoting the Faculty's mentor/mentee program. I worked to help facilitate the placement of *pro bono* cases with attorneys through this 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.

In April 2009, I submitted an application to a bipartisan, ten-member Advisory Panel jointly established by United States Senators Mark Udall and Michael Bennet. The Panel selected me for additional consideration and its members interviewed me in May 2009. Upon referral from the Advisory Panel, I was interviewed by Senators Udall and Bennet in June 2009. Senators Udall and Bennet subsequently submitted to the White House my name, along with the names of five other individuals, for consideration as potential nominees to fill the two current vacancies on the United States District Court for the District of Colorado.

Since October 2009, I have communicated with attorneys atthe Office of Legal Policy in the Department of Justice. On November 20, 2009, I was interviewed in Washington, D.C., by officials from the White House Counsel's office, as well as the Department of Justice. On February 24, 2010, the President submitted my nomination to the Senate.

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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AO-10 (WP)
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT

Nomination Report

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

1. Person Reporting *(Last name, first, middle initial)*	2. Court or Organization	3. Date of Report
Martínez, William J.	U.S. District Court for the District of Colorado	2/24/2010
4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)*	**5. Report Type (check appropriate type)**	**6. Reporting Period**
District Judge - Nominee	✓ Nomination, Date: 2/24/2010 ___ Initial ___ Annual ___ Final	1/1/2009 to 2/15/2010
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
1640 East 18th Avenue Denver, CO 80218	**Reviewing Officer** _____ **Date** _____	

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

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

	POSITION	NAME OF ORGANIZATION/ENTITY
☐	**NONE** (No reportable positions.)	
1	Director	Colorado Hispanic Bar Association
2	Director	Colorado Legal Services, Inc.
3		

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

	DATE	PARTIES AND TERMS
✓	**NONE** (No reportable agreements.)	
1		
2		

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

A. Filer's Non-Investment Income

	DATE	SOURCE AND TYPE	GROSS INCOME
☐	**NONE** (No reportable non-investment income.)		
1	2008	Attorney fees from law practice	$ 123,364
2	2009	Attorney fees from law practice	$ 302,513
3	2010	YTD attorney fees from law practice	$ 1,130,060

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

☐	**NONE** (No reportable non-investment income.)		
1	2009	Salary from employment with Denver Health	
2	2010	Salary from employment with Denver Health	

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Martínez, William J.	2/24/2010

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

	SOURCE	DESCRIPTION
☐	**NONE** (No such reportable reimbursements.)	
1	Exempt	
2		
3		
4		
5		
6		
7		

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

	SOURCE	DESCRIPTION	VALUE
☐	**NONE** (No such reportable gifts.)		
1	Exempt		$
2			$
3			$
4			$

VI. LIABILITIES. *(Includes those of spouse and dependent children See pp. 32-33 of Instructions.)*

	CREDITOR	DESCRIPTION	VALUE CODE*
☐	**NONE** (No reportable liabilities.)		
1	Guild Mortgage Company	Mortgage on rental property in Greenwood Village, CO (Part VII, Line 1)	M
2	Chase Bank	Mortgage on 30% interest in commercial property in Denver, CO (Part VII, Line 2)	M
3			
4			
5			

*Value Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000
N=$250,001-$500,000 O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000
P2=$5,000,001-$25,000,000 P3=25,000,001-50,000,000 P4=50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Martínez, William J.	2/24/2010

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

	A. Description of Assets (including trust assets) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amt. Code1 (A-H)	B. (2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code2 (J-P)	C. (2) Value Method Code3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐	**NONE** (No reportable income,									
1	Rental property; Greenwood Village, CO (2008) ($740,000)	E	Rent	O	R	Exempt				
2	Commercial property/30% interest	D	Rent	M	W					
3	Denver, CO (2001) ($650,000)									
4	Brokerage Account									
5	-- Microsoft common stock	A	Dividend	L	T					
6	-- Intel common stock	A	None	M	T					
7	IRA Account # 1									
8	-- Powershares QQQ Exchange	A	Dividend	L	T					
9	Traded Fund Shares									
10	-- Vanguard Growth Index	A	Dividend	J	T					
11	Fund (VGIF)									
12	IRA Account # 2									
13	-- VGIF Shares	A	Dividend	K	T					
14	IRA Account # 3									
15	-- VGIF Shares	A	Dividend	K	T					
16	-- Vanguard Income Index	A	Dividend	K	T					
17	Fund (VIIF)									

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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Martínez, William J.	2/24/2010

VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

		B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
		(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
		Amt. Code1 (A-H)	Type (e.g., div., rent or int.)	Value Code2 (J-P)	Value Method Code (Q-W)	Type (e.g., buy, sell, merger, redemption)	(2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐	**NONE** (No reportable income, assets, or transactions)									
18	UGMA Account # 1					Exempt				
19	– VGIF Shares	A	Dividend	K	T					
20	– VIIF Shares	A	Dividend	K	T					
21	UGMA Account # 2									
22	– VGIF Shares	A	Dividend	K	T					
23	– VIIF Shares	A	Dividend	K	T					
24	25% partnership share in McNamara, Roseman,		None	J	W					
25	Martínez & Kazmierksi LLP									
26	Hartford Deferred Compensation									
27	Retirement Plan									
28	– SSgA EAFE Index Fund	A	Dividend	M	T					
29	– SSgA DJ Target 2045 Fund	A	Dividend	M	T					
30	Wells Fargo Checking Acct # 1	A	Interest	J	T					
31	Wells Fargo Checking Acct # 2	A	Interest	J	T					
32	Wells Fargo Checking Acct # 3	A	Interest	J	T					
33	Wells Fargo Checking Acct # 4	A	Interest	J	T					
34	Wells Fargo Savings Acct # 1	A	Interest	L	T	Exempt				

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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Martínez, William J.	2/24/2010

VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

		B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
		(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
		Amt. Code1 (A-H)	Type (e.g., div., rent or int.)	Value Code2 (J-P)	Value Method Code (Q-W)	Type (e.g., buy, sell, merger, redemption)	(2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐	**NONE** (No reportable income, assets, or transactions)									
35	Wells Fargo Savings Acct # 2	A	Interest	L	T					
36	Wells Fargo Colorado Tax-Free Bond Fund		None	K	T					
37	Wells Fargo Market-Linked Certificates of Deposit		None	M	T					
38	Investment Account									
39	– Vanguard Mid-Cap Index Fund		None	L	T					
40	– Vanguard Small-Cap Index Fund		None	L	T					
41	– Vanguard Long-Term Tax-Exempt Bond Fund		None	N	T					
42	– Vanguard Limited-Term Tax-Exempt Bond Fund		None	M	T					
43										
44										
45										
46										
47										
48										
49										
50										

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

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Martinez, William J.	2/24/2010

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

1. POSITIONS

	POSITION	NAME OF ORGANIZATION/ENTITY
4.	Partner	McNamara, Roseman, Martinez & Kazmierski LLP
5.	Custodian	Uniform Gift to Minors Act Account at Vanguard Funds
6.	Custodian	Uniform Gift to Minors Act Account at Vanguard Funds

IX. CERTIFICATION.

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

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

Signature _____ Date 24 Feb 2010

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

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

William Martinez

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		127	900	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		578	300	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		2	300
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		481	800
Real estate owned-add schedule	1	890	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		85	000	Margin debt -- brokerage account			
Cash value-life insurance							
Other assets itemize:							
Retirement Accounts		352	300				
Certificates of Deposit		175	000				
				Total liabilities		484	100
				Net Worth	2	724	400
Total Assets	3	208	500	Total liabilities and net worth	3	208	500
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor [Co-signers on mortgage securing parents' residence in Illinois]		225	000	Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you a defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

656881.002

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Intel Corporation	$ 162,900
Stock mutual funds	156,100
Bond mutual funds	181,100
College mutual funds for daughters	78,200
Total Listed Securities	$ 578,300
Retirement Accounts	
Personal Retirement Accounts	$ 98,700
Spouse Retirement Accounts	253,600
Total Retirement Accounts	$ 352,300
Real Estate Owned	
Personal residence	$ 950,000
Investment condominium	740,000
Law firm building (30% interest)	200,000
Total Real Estate Owned	$ 1,890,000
Real Estate Mortgages Payable	
Personal residence	$ 213,300
Investment condominium	135,000
Law firm building (30% interest)	133,500
Total Real Estate Mortgages Payable	$ 481,800

656881.003

AFFIDAVIT

I, William J. Martínez, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

20 Feb 2010
(DATE)

(NAME)

DONNA McCLOSKEY
NOTARY PUBLIC
STATE OF COLORADO

(NOTARY) Comm Exp: 3/30/11

I wish to ask a few questions that I think will come as no surprise to all of you. They are questions that I ask customarily when we are presented with candidates for a lifetime nomination to our United States courts. The first relates to comments that I made in my opening statement.

Judges must respect the role of Congress as the duly elected representatives of the American people. They must decide cases based on the law and the facts. They must not prejudge any case but listen to every party that comes before the court, popular or not. They must respect precedent. And they must limit themselves to the issues that the court is called upon to decide in that case. Can each of you satisfy that standard? Mr. Feinerman?

Mr. FEINERMAN. Yes, I can, Senator.

Senator WHITEHOUSE. Justice Coleman.

Justice COLEMAN. Yes, I can, Senator Whitehouse.

Senator WHITEHOUSE. Mr. Martinez.

Mr. MARTINEZ. I assure you, Chairman, that I can.

Senator WHITEHOUSE. Thank you.

In order to uphold the rule of law, judges must give every party their fair day in court. What assurances can you give that everybody coming into your courtroom will be treated fairly regardless of race, gender, religion, political beliefs, economic background, or any other consideration?

Mr. FEINERMAN. I have been representing clients in court for many years now, and I view as a role model the many judges I have appeared before who have done precisely, Mr. Chairman, what you have said a judge ought to do: make decisions based upon the law and the facts and not carry any predispositions into the case. And, in particular, I clerked for a judge right out of law school, Judge Flaum on the Seventh Circuit, and he in particular is a model in terms of treating litigants with the utmost respect and also ensuring that the case is decided on the facts and on the law.

Senator WHITEHOUSE. Justice Coleman.

Justice COLEMAN. Mr. Chairman, I would hope that for the past 12 years I have set a record which shows that I have adhered to the principles you have set forth. Treating litigants fairly and with respect is the hallmark of what I believe a good judge should—how they should comport themselves.

In addition to being a judge in several different sectors of Cook County, circuit court and now the appellate court, I also have taught all of the new judges in Cook County for over 10 years on judicial ethics, judicial conduct, in which I, again, set forth the same values that you have put forth. I assure you I will be able to do that.

Senator WHITEHOUSE. Mr. Martinez.

Mr. MARTINEZ. Mr. Chairman, I, too, can assure you that I will have no difficulty in fulfilling those goals, and I know that my track record, if one were to look at it, would show with deeds more than words that I have made decisions in my life and in my career that reflect those very goals.

I have represented working-class indigent individuals. I have represented executive vice presidents of Fortune 500 companies. I have represented plaintiffs and defendants in civil litigation. I have

represented debtors and creditors in bankruptcy proceedings. All across the board. And I am confident that, were you to ask any of the clients that I have represented, they would assure you that I would have no trouble in meeting those expectations.

Senator WHITEHOUSE. Thank you, Mr. Martinez.

Can each of you assure me that, if confirmed, you would respect precedent and act with judicial modesty and judicial restraint in discharging your duties as a United States district judge?

Mr. Feinerman.

Mr. FEINERMAN. Yes, I could, Mr. Chairman.

Justice COLEMAN. Yes, I will.

Mr. MARTINEZ. Mr. Chairman, I have full knowledge of the limited role that I would have a district trial judge, and I know that under the doctrine of stare decisis I am—and my oath of office, would be compelled to follow binding precedent.

Senator WHITEHOUSE. And, finally, history has shown that what is right and what is popular may from time to time diverge, and United States district judges have been called upon over time to make decisions that are unpopular, that may disrupt social expectations or economic expectations, but are, in fact, the right thing to do under the law.

Can you assure me that in such circumstances you will not hesitate to show the courage that is necessary to make the right decision?

Mr. FEINERMAN. I give you that assurance, Mr. Chairman.

Justice COLEMAN. Mr. Chairman, based on my record, which includes directed verdicts in very sensitive cases and post-trial rulings in very complex cases, I assure you that I would continue to uphold that.

Senator WHITEHOUSE. Mr. Martinez.

Mr. MARTINEZ. Mr. Chairman, I assure you that I can meet those expectations, and I commit myself fully to meeting those.

Senator WHITEHOUSE. Well, I thank all of you. My time has expired, and we turn now to the Ranking Member, Senator Sessions.

Senator SESSIONS. Well, thank you, Mr. Chairman. It is a pleasure to be with each of you, and I will ask a few questions.

Senator WHITEHOUSE. You did get that Justice Coleman is from Alabama?

Senator SESSIONS. I am excited about that. We are proud of our alums. And you have family there still?

Justice COLEMAN. My father just relocated. I have family and friends there. I graduated from Johnson High School.

Senator SESSIONS. And at UAH, University of Alabama-Huntsville, your sister was——

Justice COLEMAN. My mother was associate provost.

Senator SESSIONS. Your mother.

Justice COLEMAN. Right.

Senator SESSIONS. That is a great university, a big university.

Justice COLEMAN. Yes, it is.

Senator SESSIONS. Mr. Feinerman, in 2007, you participated in a roundtable discussion, "Confessions of a Blue State Solicitor," and I think those are good things to do. I think lawyers ought to be open and having discussions. And I do not want to suggest anything improper, but the website describing it called it an open dis-

cussion between attendees and Mr. Feinerman about shaping one's law career while maintaining progressive legal values.

As I understand the progressive movement in the early 1900s, it was a pretty elitist group that believed that there are expert answers to complex questions, and only a few people were really smart enough to know those answers, and it denigrated a bit popular democracy in terms of that kind of approach to government and policy.

So I guess my question is: Do you consider yourself a progressive? And how would you define a progressive if you do?

Mr. FEINERMAN. I do not consider myself a progressive in the sense that you described it in the early 20th century sense. I think what—I did not have a role in putting together that description——

Senator SESSIONS. You are right. It was not your choice of words.

Mr. FEINERMAN [continuing]. On the website. I think what—if I had to guess, I think that the author of that posting was using "progressive" in the more modern sense, and I think it was an American Constitution Society event, and I think it was meant the way it is meant in contemporary political discourse.

Senator SESSIONS. Well, in the contemporary political environment, what is progressive legal values? And how would that impact a judge's decisionmaking?

Mr. FEINERMAN. I do not think it would impact a judge's decisionmaking. I think progressive—just in contemporary discourse, there are people who consider themselves conservative, people who consider themselves progressive or liberal. But in terms of the job of a judge, those values do not determine how a statute is interpreted or how a fact is found. There are precedents that tell a judge how to go about doing judicial business, particularly district judges. And I would commit to you that I would follow those precedents and follow those legal tools.

Senator SESSIONS. Well, you have got an excellent and broad legal background and handled a lot of complex cases that oftentimes fall to the lot of a Federal judge to deal with, and I think that speaks well of your legal skills. And you have expressed caution, I guess I would say, but not opposition to the death penalty and indicated that you wrestle with that and are prepared—in a previous case, you made a speech about it and some notes about it. Do you feel—you referred to—the question you asked yourself is: Should somebody like me be a part of the machinery of death? That is Justice Blackmun's word. "From this day forward," he said, "I shall no longer tinker with the machinery of death."

So I guess, obviously, you have thought about it. I think your answer in your speech indicated that you feel like you are able to proceed and enforce the law as written, even though it might be difficult. Is that still your view? And are you committed to fairly following the law even when it calls for the death of the defendant?

Mr. FEINERMAN. Yes, absolutely, and the speech was part of that "Reflections of a Blue State Solicitor General." And what I was speaking about at that part of the speech was when you are in a position for a State Attorney General, as I was, or when you are any kind of prosecutor, you have to follow the law. And I spoke about the case *People* v. *Cecil Sutherland*, and I think any pros-

ecutor really should reflect in any case, particularly a case as grave as a capital case. And when I was Solicitor General of Illinois, I supervised a criminal appeals division, and our division handled numerous capital cases, and my name was on those briefs. I edited those briefs. I met with the families of the victims before the arguments before the Illinois Supreme Court, and I think at the end of the speech I said, yes, I was comfortable in that role. And because I was comfortable in the role as an advocate, I think I certainly would be comfortable in the role as a judge.

Senator SESSIONS. Well, I think you have well stated that. I firmly believe that persons can disagree with the death penalty as a matter of policy, but as for a lifetime appointment on the Federal bench, it is appropriate to ask are you prepared to follow the law faithfully like other laws and not treat it differently and undermine it, as I have seen certain judges do, just systematically, it seems, find one excuse after another not to allow the normal process to go forward.

I think we have made some changes over the years. We are more stable about our death penalty situation today.

Justice Coleman, you filled out a questionnaire when you ran for the appellate court or sought an appellate court seat to the independent voters of Illinois, and you talked about the mandatory sentencing requirements in Illinois and that they seek to provide for more uniform sentencing, and I think you affirmed that view is of value and it is something that is legitimate to enforce and follow.

Is that your view? And do you think that—and how would you see the Federal Sentencing Guidelines, which are more restrictive, I think, than Illinois'—how do approach that?

Justice COLEMAN. Well, first of all, yes, I agree, Senator Sessions, that the reasoning behind the mandatory Sentencing Guidelines, as I stated in that questionnaire, was appropriate. For so long, the sentencing could be disparate, markedly uneven, depending on what defendant showed up in what courtroom. And I think the goal of uniformity was a laudable one, and I think to some extent the mandatory sentencing addresses that.

I think the guidelines that are set forth in the Federal system, I have heard—I have not—when I was Assistant U.S. Attorney, I was a civil Assistant U.S. Attorney, and so I just came into the office about the time that the guidelines were beginning to take effect, so I do not have personal experience with them.

But even though they are somewhat advisatory or advisory at this point, I would say that there would probably be a unique situation or the rare situation where I would depart from those guidelines based on what I know of the Federal system.

Senator SESSIONS. Well, I think they are very helpful, and I think you answered that well. I have offered legislation for 10 years to modify the crack cocaine penalties that I think are too harsh and need to be—now all of a sudden, we have got a lot of people who want to do it, go further than I think we probably should go. But we will have a hearing on that tomorrow, and so we may well—but I think Congress, if we are going to step in and authorize and, in effect, create guidelines and sentences, we ought to monitor them. If they are not working effectively, Congress should change the law on them, and that is what we will be work-

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01109 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

ing on. And I think your experience is correct that if we have good guidelines, they generally are better off being followed because I have seen in my personal experience dramatically different sentences, depending on what judge you happen to appear before, and that is hard to justify.

Mr. Martinez, I appreciate your background and qualifications. I note that you have been a member of the Legal Panel of the ACLU in Colorado since 2006. That is a legitimate institution that participates in litigation. I do not always agree with their views. I do not think I would join them based on the positions they publicly take, but I would note, Mr. Chairman, that the ACLU supported the majority opinion in the *Citizens United* case that my liberal colleagues criticized vigorously this morning.

So what were your responsibilities in that position? And what did it call on you to do?

Mr. MARTINEZ. Senator, 4 years ago, I was requested to join the Legal Panel by the legal director of the Colorado chapter of the ACLU. The Legal Panel is a group of about 20 practitioners in Colorado who have an interest in civil rights and civil liberties.

The function of the committee—I am sorry, of the panel is to review proposed litigation memos prepared by the staff attorneys of the local ACLU chapter, and the Legal Panel discusses them, analyzes the potential litigation, and votes either to recommend or not to recommend to the board of the local chapter whether to seek redress from settlement negotiations through litigation.

Senator SESSIONS. Well, for example, on that website, the ACLU says that they believe the death penalty inherently violates the Constitution, the ban on cruel and unusual punishment; also it violates the guarantees of due process and equal product.

Do you agree with that?

Mr. MARTINEZ. Well, what I would agree with as a district judge is that the United States Supreme Court has ruled that capital punishment does not violate the Eighth Amendment except in narrow circumstances that have been carved out in recent years. So I think what is material and important is what is my view—what my view would be as a sitting Federal district judge, something that would be quite different from my views as a personal citizen or an advocate or litigant and member of the ACLU.

Senator SESSIONS. Well, as we are aware in this body of which we are a part as sort of a political institution, we have to make judgments. Do you personally think that the death penalty and have you ever expressed a view as to whether or not the death penalty violates the constitutional ban on cruel and unusual punishment?

Mr. MARTINEZ. I have never expressed such a view.

Senator SESSIONS. And would you share with us your view on it?

Mr. MARTINEZ. My view now today as a citizen as opposed to what I would do as a district judge. My view is that I think that with time, I think the long arc of history shows that there has been a progression in some nations, and I think in time in this Nation that that day may come. But whether it is 50 years or 100 years from now, that is, in my mind, irrelevant to the notion of what is the law today, what would I be bound to apply today, and that law today is that, with the exception of certain limited circumstances,

capital punishment does not violate the Eighth Amendment, and I would be——

Senator SESSIONS. Well, we have got to deal about the Constitution. So you think it is somehow the meaning of the words alters as time goes by based on——

Mr. MARTINEZ. The meaning of the Constitution?

Senator SESSIONS. Yes.

Mr. MARTINEZ. No. There are enduring terms and text in the Constitution that remain firm and fixed for all time unless amended pursuant to the provisions of the Constitution. What can change is the Supreme Court's interpretation or reading of certain terms. And unless and until the Supreme Court ever changes its interpretation of those relevant terms, then the current status would obtain.

Senator SESSIONS. Well, so you hold out the possibility that a Supreme Court might legitimately conclude the death penalty violates the Eighth Amendment prohibition on cruel and unusual punishment?

Mr. MARTINEZ. Senator, what I am saying is that that may occur in the future. It is a hypothetical, and it could happen in 50 years or 100 years. Again, I would stress that it would be irrelevant to my duties as a district judge. I would be duty-bound by my oath and by the doctrine of stare decisis to apply the law. I am fully prepared if a jury under the Federal statutes, applicable Federal statutes, if a jury recommends a death sentence, which is the way it works currently, and it was properly obtain, that jury verdict was proper in terms of procedural and substantive aspects, I would not have a problem with imposing that recommended penalty from the jury.

Senator SESSIONS. It is just a pretty big deal in the sense that—and I believe the Supreme Court, two members of the Supreme Court were deeply in error, in effect, by agreeing with the ACLU and dissenting in every death penalty case, contending that the death penalty case is unconstitutional as a violation of the Eighth Amendment. But you would not dispute, would you, that at the time the Constitution was adopted and the time of the 14th Amendment and other portions of the Constitution were adopted, it makes multiple references to capital crimes, that the possibility of taking life with due process but not without due process, and that it would seem pretty clear, would it not, that it would be an abuse of the interpretive power of a judge to say that that Constitution should be construed in a way that would eviscerate those provisions?

Mr. MARTINEZ. I agree with you, Senator. The text of the Constitution is clear. And until the last decade, the Supreme Court consistently interpreted the text as one as you are today discussing it. Now through the *Roper* case and the *Kennedy* case, the Supreme Court has chipped away at that view. And as a district court judge, for example, with respect to *Roper*, the Supreme Court newly interpreted the Eighth Amendment to prohibit capital punishment of individuals who committed the capital—the alleged capital crime when they were under 18.

Whether I agree with it, whether I was happy with that result or dismayed by the result is irrelevant. If I were ever faced with

that case with that situation, I would have to follow *Roper* unless and until it was reversed or changed by a subsequent Supreme Court ruling.

Senator SESSIONS. Well, I think that is well said in the sense which you are bound by superior authority and how those cases are interpreted. Just as a long-time prosecutor, I used to be flabbergasted that members of the court would take that view that the Eighth Amendment in general prohibits the death penalty when the Constitution clearly contemplates a death penalty in any number of different places.

Mr. Chairman, thank you for this opportunity to ask these questions. There may be some written questions we will submit. And we have got positive statements on these nominees also, and I appreciate the opportunity to ask you these questions.

Senator WHITEHOUSE. Before we conclude the hearing, I would like to add into the record of this proceeding the statement of our distinguished Chairman, Senator Patrick Leahy, in favor of these nominees, as well as letters of support for Mr. Martinez from the Colorado Hispanic Bar Association and the National Employment Lawyers Association, as well as a letter from the Anti-Defamation League in support of Mr. Feinerman. I ask unanimous consent that those may be added to the record.

[The prepared statement of Chairman Leahy appears as a submission for the record.

[The letters appear as a submission for the record.]

Senator WHITEHOUSE. And I would conclude with—one of the nice things about being able to hold these hearings is you get to make some observations in conclusion, and the observation that I would like to offer to each of you is that, in my view, there are powerful forces that are at work in this country to deprecate the value of the judicial forum and its role in the American system of government. We see it in attacks on practitioners, trial lawyers. We see it in efforts to put caps on damages. We see it in the description of juries as "runaway" juries. We see in the description of lawsuits as "frivolous," even when they have survived judicial determination that they are not frivolous under Rule 11, and there is a strong procedure for protecting against those lawsuits. We see juries mentioned not once but three times in the Constitution and Bill of Rights. And at least from this Senator's perspective, I have the concern that powerful forces look at our political institutions and see them as amenable to suggestion and control, whether it be elected officials in the executive branch or elected officials in our legislative branch of government. And as those institutions become more and more malleable to influence, in particular to monied influence, the jury box stands more and more starkly as an institution of American government that is beyond their reach. Indeed, efforts to tamper with a jury are illegal; whereas, efforts to tamper with Governors and Presidents and members of legislature are encouraged through organized systems of campaign contribution and support.

So in that sense, I hope that as each of you take your oath—and I hope you will, and I hope it will be soon—to support and defend the Constitution of the United States, you will bear in mind the importance of the courtrooms to which I hope, after our concurrence

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01112 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

here in the Senate, you will enter as important establishments in the constitutional system of our Government as in many cases the last refuge for people who are unpopular or against whom massive and powerful forces are arrayed and for whom justice cannot be obtained in executive forums or in legislative chambers. And you may turn out to be their last hope, and I think it was the Founding Fathers' intention that judges and juries should be that last hope. And I offer that as advice worth every penny that you paid for it in this hearing.

As the distinguished Ranking Member has said, the hearing will remain open for further questions, and, obviously, even if this hearing's period is closed, I would encourage you to answer any further questions that may come from any side so that we can move expeditiously toward considering your nominations in the Judiciary Committee, and from there I hope quickly to the floor, so that you can get about the work of performing the role of United States district court judges. And I appreciate very much your participation today and thank very much your families who took great trouble and traveled some distance to attend. I know particularly for the younger ones these are tedious, but I have to say young and old alike have been very well behaved, and I appreciate it.

The hearing is concluded.

[Whereupon, at 3:48 p.m., the Committee was adjourned.]

[Questions and answers and submission for the record follow.]

QUESTIONS AND ANSWERS

Responses of Sharon Johnson Coleman
Nominee to the United States District Court for the Northern District of Illinois
to the Written Questions of Senator Tom Coburn, M.D.

1. **As a candidate for the Appellate Court, you stated that you would bring "sensitivity and 'global' experience" to the court, something you felt it was lacking. You also stated that she would bring "empathy and fairness" to the bench. Can you please explain these comments?**

   Response: My comments as a candidate for the Appellate Court focused on my position that my "global" or "well-rounded" experience as a civil and criminal litigator and trial judge handling civil jury trials as well as child abuse and neglect cases would be a helpful addition to the court. No sitting justice had the variety of legal experience that I had at that time. As a judge who had to preside over parental termination cases, I believed I had a sensitivity to the proceedings that the current members of the court did not possess. My comments regarding empathy and fairness referred to how I treat the litigants and litigators who come before me in any situation. People who come before me are treated with respect no matter what their background. I apply the relevant law to the facts with fairness to every case. This is how I have attempted to comport myself as a state jurist for the last 13 years and how I will continue to judge if honored to be confirmed as a district court judge.

2. **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.

3. **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. **Do you believe *Lopez* and *Morrison* consistent with the Supreme Court's earlier Commerce Clause decisions?**

      Response: Yes

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b. Why or why not?

Response: In *Gonzales v. Raich*, 545 U.S. 1, 23-25 (2005), the Supreme Court held that *Lopez* and *Morrison* are consistent with the Supreme Court's earlier decisions on the Commerce Clause.

4. 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: Justice Kennedy's analysis in *Roper* is precedent that, if confirmed as a district court judge, I would be bound to follow.

a. How would you determine what the evolving standards of decency are?

Response: I believe that the Supreme Court has looked to the consensus among the states to determine those standards and, if confirmed as a district court judge, I would be bound to follow precedent in determining whether a specific punishment violated the Eighth Amendment.

b. Do you think that a judge could ever find that the "evolving standards of decency" dictated that the death penalty is unconstitutional in all cases?

Response: I cannot conceive of any circumstances that would make such a finding proper by any other federal court without prior direction from the Supreme Court.

c. What factors do you believe would be relevant to the judge's analysis?

Response: For a district court judge, the analysis would be controlled by precedents from the Supreme Court and Court of Appeals.

5. 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: No

a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: I know of no circumstances under which I would consider foreign law when interpreting the Constitution.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01115 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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b. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?

Response: No

c. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: No as to any of the Amendments.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01116 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Responses of Sharon Johnson Coleman
Nominee to the United States District Court for the Northern District of Illinois
to the Written Questions of Senator Jeff Sessions

1. **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. **I recognize that you do not know 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: I believe that President Obama's decision to nominate me to serve on the United States District Court indicates that I fit his criteria for selection of federal judges.

   b. **What role do you believe that empathy should play in a judge's consideration of a case?**

      Response: A judge should make a sincere effort to understand and respect the positions of all litigants and litigators, even if the applicable law does not permit them to receive the relief they seek.

   c. **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: None

      ii. **Please provide an example of a case in which you have done so.**

         Response: None

      iii. **Please provide an example of a case in which you had to set aside your own subjective sense of empathy and rule solely based on the law.**

         Response: In a case that I presided over in the trial court, a civil jury granted a six figure award to the parents of a 7 year old girl who had drowned in a retention pond. Despite my empathy for the family's grief

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and loss, I entered a judgment notwithstanding the verdict in favor of the defendant company where the jury's special interrogatory answer indicated that the case for negligence had not been made.

2. 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: None

b. Please provide an example of a case in which you have done so.

Response: None

c. Please provide an example of a case in which you had to set aside your own value and rule solely based on the law.

Response: I can recall no case in which the law was inconsistent with my values.

3. 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: None

b. Please provide an example of a case in which you have done so.

Response: None

c. Please provide an example of a case in which you had to set aside your own policy preferences and rule solely based on the law.

Response: I can recall no case in which the law was inconsistent with my policy preferences.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01118 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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4. Please describe with particularity the process by which these questions were answered.

Response: I received the Questions for the Record from Senators Sessions and Coburn on March 17, 2010, by electronic transmission from the Office of Legal Policy (OLP). I drafted my answers to those questions. I consulted with the OLP regarding my answers. I then transmitted the answers back to the Office of Legal Policy with the understanding that they would be forwarded to the Committee.

5. Do these answers reflect your true and personal views?

Response: Yes

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01119 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Responses of Gary Scott Feinerman
Nominee to the United States District Court for the Northern District of Illinois
to the Written Questions of Senator Tom Coburn, M.D.

1. **On April 16, 2007, you participated in a panel discussion entitled, "Confessions from a Blue State Solicitor General" for the American Constitution Society. The ACS's web site described the program as "an open discussion between the attendees and Mr. Feinerman about shaping one's law career while maintaining a commitment to progressive legal values." You were asked about this panel discussion at your hearing. In particular, you were asked how you defined "progressive" to which you responded "I think that the author of that posting was using 'progressive' in the more modern sense, and I think it was an American Constitution Society event, and I think it was meant the way it is meant in contemporary political discourse. ... there are people who consider themselves conservative, people who consider themselves progressive or liberal."**

   a. **While I appreciate your answer at your hearing that you commit to "follow those precedents and follow those legal tools" and that "in terms of the job of a judge, those [progressive] values do not determine how a statute is interpreted or how a fact is found." Notwithstanding your answer, do you consider yourself to be a "progressive" under ACS's definition?**

      Response: The word "progressive," like the word "conservative," is a subjective term that means different things to different people. I do not understand the ACS to have promulgated a definition of "progressive," and thus respectfully am unable to answer the question. I can assure the Committee, however, that if confirmed as a district judge, I would not allow personal policy preferences to intrude on the proper judicial role.

   b. **Have you used your career to maintain a commitment to progressive legal values? Please explain.**

      i. **If so, please provide examples.**

      Response: The term "progressive legal values" was not my term, and I do not know what the term meant to the University of Chicago law student who drafted the post on the website. Over the course of my career, I have provided public service to the state and federal governments, and in public and private practice have represented a broad range of clients – including the State in criminal cases, wardens in federal habeas cases, criminal defendants, large corporations, small corporations, taxpayers, non-profit entities, school districts, and individuals – and have undertaken pro bono representations.

   c. **What advice did you give the attendees about shaping their law careers while maintaining a commitment to progressive legal values?**

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Response: The term "progressive legal values" was not my term, and I do not know what the term meant to the law student who drafted the post on the website. My remarks at the University of Chicago were similar to remarks I delivered to the Appellate Lawyers Association of Illinois on October 24, 2006, an outline of which I retained and provided to the Committee. As the outline reflects, my message was that lawyers who enter public service should be prepared to discharge the responsibilities that come with those positions.

2. **On June 30, 2009, you were installed as the president of the Appellate Lawyers Association of Illinois. In your speech, you stated: "It's the appellate judges, of course, whose opinions develop, shape and change the law." That statement is very similar to Justice Sotomayor's statement that "Court of Appeals is where policy is made." Can you please explain how judges "change the law?"**

Response: In the quoted portion of my remarks, I had in mind the role of reviewing courts in applying constitutional provisions to new circumstances (developing and shaping the law) and in overturning their own precedent (changing the law). By "change the law," I meant that judges on reviewing courts occasionally overturn their own precedents by adopting a different interpretation of the constitutional and statutory provision at issue. I did not intend in any way to suggest, and I do not believe, that federal judges should be engaged in making policy.

   a. **Do you disagree that judges changing the law could be a recipe for judicial activism?**

      I do not disagree with the statement; courts should not overturn precedent (and thus change the law) in a manner inconsistent with principles of *stare decisis*.

3. **In the case of *Reyes-Hernandez v. I.N.S.*, you worked with an ACLU attorney in representing an alien who petitioned for review of a decision by the Board of Immigration Appeals denying his application for discretionary waiver of deportation. The alien had two cocaine possession convictions and the Seventh Circuit denied his petition for review.**

   a. **Did you represent the alien *pro bono*?**

      Response: Yes.

   b. **Why did you feel your representation was necessary when the alien already had at least one other lawyer?**

      Response: As I recall, *Reyes-Hernandez* was a case where the ACLU – as public interest organizations often do – asked a private law firm to "carry the laboring oar" as co-counsel in briefing and arguing the case. A lawyer senior to me assumed the representation and asked me to assist, and I accepted the request.

4. **In *In re B.C.*, you drafted an amicus brief on behalf of the Anti-Defamation League, the Chicago Lawyers' Committee for Civil Rights Under Law, the Asian-American**

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01121 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Institute, the Chicago Urban League, Horizons Community Services, the Illinois Ethnic Coalition, the Japanese American Citizens League, MALDEF, and others. In this brief, you argued that the Illinois Hate Crimes Law applies even where the victim is not a member of the group targeted by the perpetrator. The Appellate Court of Illinois previously had interpreted the law as applying only where the victim was a member of the racial or ethnic group targeted by the perpetrator. I understand that the Supreme Court of Illinois agreed with your interpretation of the statute and reversed, but I continue to have concerns about Hate Crimes legislation, in particular federal hate crimes legislation.

a. The 14th Amendment guarantees "equal protection under the law" for all citizens. Can you explain why federal Hate Crimes legislation does not prioritize the protection of certain individuals over others contrary to the 14th Amendment?

Response: I understand the question to refer to 18 U.S.C. § 245(b)(2), which makes it a crime to willfully injure, intimidate, or interfere with, by force or threat of force, "any person because of his race, color, religion or national origin and because he is or has been" engaged in certain activities. I have no experience with the statute. However, if the quoted text is interpreted the way comparable text in Title VII has been interpreted, then § 245(b)(2) would protect persons from injury, intimidation and interference regardless of their race, color, religion, or national origin, and thus would not prioritize the protection of certain individuals over others. If confirmed as a district judge, my consideration of these issues would be governed by Supreme Court and Seventh Circuit precedent.

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: No, I do not believe that the Constitution is constantly evolving as society interprets it.

6. 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. Do you believe *Lopez* and *Morrison* consistent with the Supreme Court's earlier Commerce Clause decisions?

Response: Yes.

b. Why or why not?

Response: I believe that *Lopez* and *Morrison* are consistent with the Supreme Court's earlier Commerce Clause decisions for the reasons expressed by the Court in *Lopez* and *Morrison* and later in *Gonzales v. Raich*, 545 U.S. 1 (2005).

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01122 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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: Having been expressed in an opinion for the Court, the analysis is binding precedent. If confirmed as a district judge, I would be bound by that precedent.

   a. **How would you determine what the evolving standards of decency are?**

      Response: I first would determine whether the Supreme Court or the Seventh Circuit had decided whether the punishment in question violated the Eighth Amendment. Any such precedent would be dispositive. In the absence of such precedent, I would consult Supreme Court case law to determine which factors govern the Eighth Amendment analysis and how to implement those factors.

   b. **Do you think that a judge could ever find that the "evolving standards of decency" dictated that the death penalty is unconstitutional in all cases?**

      Response: Under Supreme Court precedent, which expressly rejects the proposition that the death penalty is unconstitutional in all cases, a district judge could not so find.

   c. **What factors do you believe would be relevant to the judge's analysis?**

      Response: In accord with the analysis set forth in the response to Question #7(a), because the Supreme Court has held that the death penalty is not unconstitutional in all cases, a district judge would not have occasion to apply the "evolving standards of decency" factors if presented with that issue.

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: No, the meaning of a constitutional provision is determined by its text and history and by interpretations handed down by the Supreme Court.

   a. **If so, under what circumstances would you consider foreign law when interpreting the Constitution?**

      Response: Under no circumstances would I use contemporary foreign decisions or laws to determine the meaning of the Constitution.

   b. **Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?**

      Response: This is a different and broader question than Questions #8 and #8(a). In *Medellin v. Texas*, 552 U.S. 491 (2008), the Supreme Court recognized that international treaties are among our laws, *id.* at 504-505, and reiterated the

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01123 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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principle that "[b]ecause a treaty ratified by the United States is an agreement among sovereign powers, we have also considered as aids to its interpretation the negotiation and drafting history of the treaty as well as the postratification understanding of signatory nations," *id.* at 507 (citing cases) (internal quotation marks omitted). If confirmed as a district judge, I would be bound by *Medellin* and other Supreme Court precedents that articulate when and under what circumstances foreign laws or decisions bear or do not bear on the proper interpretation of our laws. My understanding is that the instances are rare where, under Supreme Court precedent, courts are to consider such foreign materials.

c. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: Please see the responses to Questions #8 and #8(a).

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01124 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Responses of Gary Scott Feinerman
Nominee to the United States District Court for the Northern District of Illinois
to the Written Questions of Senator Jeff Sessions

1. **At your hearing, I asked you about your involvement as Illinois Solicitor General in the case *People v. Sutherland*, an Illinois capital case where a man was convicted and sentenced to death for murdering a 12 year old girl. Your notes indicate that you recalled asking yourself before the case, "Am I OK with this, with my role in the case? . . . I am a blue state kind of guy. Should somebody like me be part of the machinery of death?" Your notes also stated that you concluded that you were "OK" with your role because it was an essential part of the job and "whatever qualms I have about the death penalty's administration were not implicated in the case."**

   a. **What qualms do you have with the administration of the death penalty?**

      Response: My qualms concern particular cases, not capital punishment in general. When delivering the quoted remarks, I had in mind several instances in Illinois where it was determined that innocent persons had been convicted of capital crimes and sentenced to death. As an advocate for the State of Illinois, and based upon the materials then before me, I did not have any such qualms in *People v. Sutherland* – where in my view the defendant was guilty, the trial fair, and the sentence just – or in any other capital case my office briefed and argued in the Supreme Court of Illinois during my tenure as Illinois Solicitor General.

   b. **Do you have a personal objection to the death penalty?**

      Response: No.

   c. **Do you personally believe that the death penalty should be unconstitutional?**

      Response: No; if confirmed as a district judge, I would be bound by the precedents of the Supreme Court, which expressly hold that the death penalty is constitutional. Supreme Court precedent, not my personal beliefs, would guide my work as a district judge.

   d. **If confirmed, do you have any reservations about imposing the death penalty where appropriate?**

      Response: No.

2. **You were Solicitor General of Illinois when Illinois joined 12 other states and some localities in *Massachusetts v. EPA*, in an attempt to force the EPA to regulate carbon dioxide emissions.**

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a. As Solicitor General, did you participate in the decision to join this litigation?

Response: Although the decision to join the *Massachusetts v. EPA* litigation is the kind of decision that typically would have been discussed among senior staff, I have no recollection of participating in any such discussions. Therefore, I cannot say with certainty whether or not I participated in the decision.

b. Did you have input into the litigation strategy? If so, please explain.

Response: No.

c. As you know, the Supreme Court's 5-4 decision was sharply split on the question of standing to sue. Traditionally, standing requires a showing of an actual or imminent injury, caused by conduct of the defendant, which is likely to be redressed by the Court ruling for the plaintiff. In this case, the majority found standing for Massachusetts even though the supposed injury – coastal erosion due to global warming – was highly speculative, as was the supposed redress.

i. What are your views of the standing requirement, particularly for states, after this decision?

Response: As the Supreme Court held, States must satisfy the traditional three-part standing test established by precedent. *Massachusetts v. EPA*, 549 U.S. 479, 517-526 (2007). If confirmed as a district judge, my views of the standing requirement – for States, individuals, corporations, and other non-State entities – would be governed by Supreme Court and Seventh Circuit precedent.

ii. Are there any limits to state standing?

Response: Yes, to have standing, States must satisfy the test set forth in *Massachusetts* and other governing precedent.

d. When the decision was announced, you were quoted in the media as saying that it "could portend a more active role for states in attempting to drive the regulatory agenda at the national level."

i. What did you mean by that statement?

Response: I made that statement in my capacity as Illinois Solicitor General. In that capacity, I meant that the law allows States to challenge a federal regulatory agency when, in the States' view, the agency is not properly administering a statute enacted by Congress – as in, for example,

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Alaska Dep't of Environmental Conservation v. EPA, 540 U.S. 461 (2004), and *Verizon Communications Inc. v. FCC*, 535 U.S. 467 (2002).

ii. **Do you think it would be a good thing for states to try and "drive the regulatory agenda" at the federal level through litigation? Please explain your answer.**

Response: In my capacity as Illinois Solicitor General, my answer would have been that it generally would not be a good thing for States to "drive the regulatory agenda" at the federal level, that the federal regulatory agenda ideally should be driven by federal regulatory agencies, but that the law allows States to challenge a federal agency when, in the States' view, the agency is not properly administering a statute enacted by Congress. If confirmed as a district judge, my consideration of these issues would be governed by Supreme Court and Seventh Circuit precedent.

iii. **Do you think courts are equipped to handle these types of scientific questions? Please explain why or why not.**

Response: In my capacity as Illinois Solicitor General, my point was not to opine whether courts are or are not equipped to handle these types of scientific questions; rather, my point was that the law allows States to challenge a federal regulatory agency when, in the States' view, the agency is not properly administering a statute enacted by Congress. If confirmed as a district judge, my consideration of these issues would be governed by Supreme Court and Seventh Circuit precedent.

e. **As you are aware, Congress has thus far declined to enact caps on greenhouse gas emissions. Do you agree that this litigation is an example of advocates trying to obtain from courts what they cannot obtain in the democratic process?**

Response: As Illinois Solicitor General, in which capacity I commented on the *Massachusetts v. EPA* litigation, I would not have agreed with the statement, and would have said that the litigation was an example of the States successfully seeking redress for what they viewed as a federal regulatory agency's failure to properly administer a statute enacted through the democratic process by Congress. If confirmed as a district judge, my consideration of these issues would be governed by Supreme Court and Seventh Circuit precedent.

f. **If confirmed, what assurances can you provide to the Committee that you will resist the urge to legislate from the bench, even on matters about which you have strongly held views?**

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Response: I assure the Committee that I do not believe federal judges should legislate from the bench, that I understand that a federal judge's proper role is to faithfully interpret the laws enacted by others, and that, if confirmed as a district judge, I would fully abide by these principles.

3. **In June 2009, you were installed as the president of the Appellate Lawyers Association of Illinois. In your remarks at the installation ceremony, you commented that "It's the appellate judges, of course, whose opinions develop, shape, and change the law."**

   a. How do you define the role of a trial court judge?

   Response: The role of a trial court judge is to follow the precedents of higher courts, to faithfully interpret statutes and the Constitution, and to find facts in those instances where a trial judge has a duty to find facts.

   b. If confirmed, would you interpret the law as written, or try to develop, shape, and change the law?

   Response: If confirmed, I would interpret the law as written. In the remarks quoted in Question #3, I had in mind the role of reviewing courts in applying constitutional provisions to new circumstances ("develop, shape") and in overturning their own precedent ("change").

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. I recognize that you do not know 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: Yes, with respect to that criterion, I believe I have empathy for other persons.

   b. What role do you believe that empathy should play in a judge's consideration of a case?

   Response: I believe a judge should treat litigants and lawyers with dignity and respect, that empathy is not an analytical tool, and that cases should be decided based on the governing law and the relevant facts.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01128 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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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? If so, under what circumstances?

Response: No.

5. 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?

Response: No.

6. 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: No.

7. Please describe with particularity the process by which these questions were answered.

Response: I received a copy of these questions via email from Department of Justice staff on March 17, 2010. I prepared a draft of the answers, emailed the draft to Department of Justice staff on March 18, 2010, and discussed the draft with staff on March 19, 2010. I then provided a final version of my answers to Department of Justice staff for transmission to the Committee.

8. Do these answers reflect your true and personal views?

Response: Yes.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01129 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Responses of William Joseph Martínez
Nominee to the United States District Court for the District of Colorado
To the Written Questions of Senator Tom Coburn, M.D.

1. **At your hearing, you were asked whether you "personally think that the death penalty ... violates the constitutional ban on cruel and unusual punishment?" You responded that "[m]y view is that I think that with time, I think the long arc of history shows that there has been a progression in some nations, and I think in time in this Nation that that day may come. ... What can change is the Supreme Court's interpretation or reading of certain terms"**

   a. **Do you believe judges should look to the original intent of those who wrote the Constitution when determining the meaning of words and phrases?**

      Response: U.S. District Judges are obligated to examine the text of the Constitution applicable to the dispute before them, and to follow and apply those decisions of the U.S. Supreme Court and their respective U.S. Court of Appeals which have interpreted and applied the relevant constitutional text.

      i. **Should they be limited to only looking to the text and the original intent of the founders? If not, why?**

         Response: Please see my response to Question 1(a).

      ii. **If judges are limited to only considering whether the founders considered the death penalty "cruel and unusual punishment," then how can the Supreme Court's interpretation of those terms change?**

         Response: Please see my response to Question 1(a).

   b. **You testified that you agreed that "[t]he text of the Constitution is clear. And until the last decade, the Supreme Court consistently interpreted the text as one as you are today discussing it. Now through the *Roper* case and the *Kennedy* case, the Supreme Court has chipped away at that view." How is the Supreme Court justified in "chip[ing] away at that view" if the "text of the Constitution is clear?"**

      Response: The Supreme Court is the final arbiter of the content and meaning of the text of the Constitution. If confirmed, as a U.S. District Judge I would be obligated by my oath of office and the doctrine of *stare decisis* to follow and apply the construction and interpretation of the Constitution's text as determined by the Supreme Court.

      i. **Do you disagree with those that call this an example of judicial activism?**

         Response: I believe it would not be my role as a U.S. District Judge to interject my view as to whether any Supreme Court

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01130 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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decision is or is not an example of judicial activism. This is particularly the case given the imprecision of the term, one which often means different things to different people. If confirmed, I would be obligated by my oath of office and the doctrine of *stare decisis* to follow and apply the *Roper* and *Kennedy* decisions.

c. 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 as a U.S. District Judge, I would be bound by Justice Kennedy's analysis of the Eighth Amendment issue presented in the *Roper* decision.

i. Do you believe the evolving standards of decency are relevant to Constitutional interpretation of other phrases?

Response: I believe evolving standards of decency are relevant to the interpretation of the Constitution's text only if, and to the extent and in the manner in which, the Supreme Court has determined such standards are relevant to any particular issue of constitutional construction.

ii. What factors do you believe would be relevant to the judge's analysis that the "evolving standards of decency" dictated that the death penalty is unconstitutional in all cases?

Response: Under current Eighth Amendment jurisprudence, any determination by a lower court judicial officer that the death penalty is unconstitutional in all cases would be manifestly erroneous and would certainly be reversed. In these circumstances, evolving standards of decency would be wholly irrelevant to the legal analysis undertaken by a U.S. District Judge presented with this issue.

iii. If presented with a case of first impression, where there was no directly applicable precedent, how would you determine what the evolving standards of decency were?

Response: While I cannot now know for certain, I expect that in the overwhelming number of cases which might be assigned to me if I am confirmed as a U.S. District Judge, evolving standards of decency will play no role. If, however, a case comes before me in which the closest applicable higher court precedent required consideration of such standards, I would follow the analytical framework established by that court. Cognizant my decision was

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01131 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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one of first impression, I would strive to limit the reach and scope of the decision as narrowly as possible to the specific parties and the actual issues presented to me for resolution. If appropriate, I would consider staying my decision to afford the party aggrieved by the decision an opportunity to seek resolution of the dispute by a reviewing court.

2. **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, I do not. The Constitution is not constantly evolving as society interprets it. What does change and develop over time is the Supreme Court's interpretation of the text of the Constitution. For example, in *Scott v. Sanford*, 60 U.S. 393 (1856), our federal Constitution was interpreted by the Supreme Court to exclude individuals of African ancestry from the status of "person" or "citizen," as those terms are used in the Constitution. The Supreme Court has since construed the terms "person" and "citizen" in a very different manner, and in the process has repudiated its earlier holding in *Scott*.

3. **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. **Do you believe *Lopez* and *Morrison* consistent with the Supreme Court's earlier Commerce Clause decisions?**

Response: Yes.

   b. **Why or why not?**

Response: In *Gonzáles v. Raich*, 545 U.S. 1 (2005), the Supreme Court rejected the argument that the *López* and *Morrison* cases had departed from prior Commerce Clause precedent. If confirmed as a U.S. District Judge, I would be bound by the Court's ruling in *Gonzáles*.

4. **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: I do not believe there is any federal court precedent which would permit a U.S. District Judge to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution.

   a. **If so, under what circumstances would you consider foreign law when interpreting the Constitution?**

Response: Please see my response to Question 4.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01132 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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b. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?

Response: I believe that, if confirmed as a U.S. District Judge, I would be obligated by the oath of my office and the doctrine of *stare decisis* to consider, let alone rely upon, foreign laws, ideas or solutions only if, and to the extent and in the manner in which, Supreme Court precedent permits U.S. District Judges to do so.

c. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: I would consider foreign law when interpreting the Eighth Amendment or any other amendment only if, and to the extent and in the manner in which, Supreme Court or Tenth Circuit precedent permits U.S. District Judges to do so.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01133 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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Responses of William Joseph Martínez
Nominee to the United States District Court for the District of Colorado
To the Written Questions of Senator Jeff Sessions

1. **According to your questionnaire, you have served on the Legal Panel of the ACLU of Colorado since 2006. At your hearing, I asked you what your responsibilities are in this position. You answered:**

> **"The function of the . . . panel is to review proposed litigation memos prepared by the staff attorneys of the local ACLU chapter, and the Legal Panel discusses them, analyzes the potential litigation, and votes either to recommend or not to recommend to the board of the local chapter whether to seek redress from settlement negotiations through litigation."**

a. **As a member of the Legal Panel, did you review proposed memos prepared by the ACLU staff attorneys and vote whether to recommend pursuing litigation?**

Response: Yes.

i. **Please provide the Committee with a description of every matter that you considered while a member of the Legal Panel, including a citation for the case, if available, the minutes of the meetings, if available, a description of your participation in the matter, any memoranda or papers you or the Panel produced, and your reasons for recommending or not recommending that the chapter pursue litigation in each case.**

Response: During the time (October 2006 to the present) I've been a member of the ACLU of Colorado Legal Panel (Legal Panel), the group has not prepared or kept any minutes of its meetings. In addition, during this time period no memoranda or any other papers have been produced by any member of the Legal Panel, including me.

1. Description and Citation of Matters Accepted For Representation and Possible Litigation by the ACLU of Colorado

Prefatory comment: The ACLU of Colorado has taken the position that some of the information sought by sub-question 1(a)(i)(1) is protected by the attorney-client privilege. The organization informs me the privilege is being asserted to prevent disclosure of the internal legal deliberations of the Legal Panel, including but not limited to the legal advice it has provided. I have included in my response to this sub-question a discussion of

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information as to which no attorney-client privilege has been asserted.

Since the Fall of 2006 the Legal Panel has met approximately 6 to 7 times per year. I estimate I have attended less than half of these meetings. Summarized below are those disputes presented at Legal Panel meetings I attended and which were ultimately acted upon by the ACLU of Colorado. The organization also accepted for representation matters which were presented at Legal Panel meetings I did not attend or which were presented directly to the Board of Directors of the ALCU of Colorado by the Legal Director, due to their time-sensitive nature.

a. *In re Search of Amalia's Translation and Tax Service*, 09-cv-100 (19th Judicial District Court)

In October of 2008 Weld County, Colo. Sheriff Deputies searched the offices of a tax preparation and translation service company. The Deputies took a voluminous amount of electronic and hard copy tax records owned by thousands of the company's primarily Latino clients. After reviewing nearly 5,000 such files, the Weld County District Attorney announced he would be investigating several hundred of these clients for criminal impersonation and identity theft. The case brought by the ACLU of Colorado challenged the validity of the search warrant obtained by the Weld County District Attorney, as well as the reasonableness of the subsequent search and seizure of these confidential tax records.

b. *Benson v. Jefferson County, Colo. School District, et al.*

On the day before election day in November 2008, Michelle Obama appeared at a campaign rally held at Dakota Ridge High School in metropolitan Denver. Blake Benson, a junior at the high school, was standing at the entrance where event attendees were entering the school. Benson was wearing a t-shirt with the phrase "NOBAMA" across his chest. Benson was ordered by school officials to leave school grounds, and when he refused, he was arrested by the Jefferson County Sheriff's Department. Students with similar but pro-Obama clothing were not told to leave school property.

The ACLU settled this matter with Jefferson County officials prior to the filing of litigation.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01135 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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c. *Reina v. City of Craig*, 09-CV-65 (Moffat County, Colo. District Court)

The Craig, Colorado City Charter prohibits candidates for city offices from spending more than $500 in an election campaign. The violation of this provision is a misdemeanor, punishable by a fine and up to 180 days in jail. Francisco Reina was an unsuccessful candidate for city council who spent $1,500 of his own money on his campaign. He was prosecuted for violating this provision of the Craig City Charter.

d. *Curious Theater Company v. Colo. Dep't of Public Health,* 08-SC-351 (Colo. Sp. Ct.)

Several non-profit theater companies challenged the Colorado ban on indoor smoking as it applies to theater productions in which the script requires a character to smoke. Other states have exceptions to their indoor smoking bans for such plays. At issue in the litigation was whether the Colorado constitution protected such theatrical indoor smoking on the basis of freedom of expression.

e. *ACLU v. City and County of Denver*, 08-cv-910 (D. Colo.)

This suit was filed prior to the Democratic Party National Convention held in Denver in August 2008. On behalf of several organizations, the ACLU sought to protect the First Amendment rights of individuals and organizations that wished to express their views on matters of public concern during the convention. Specifically, the suit sought a court order requiring Denver to promptly process pending requests for permits for parades and demonstrations which were to take place on city streets.

f. *ACLU v. LaCabe*, 08-cv-4231 (Denver District Court)

This suit was filed to seek disclosure of the Denver Police Department's (DPD) newly-revised policy and procedure manual for the downtown Denver city jail. The DPD had earlier refused to voluntarily produce the manual on the grounds that such disclosure would allegedly be "contrary to the public interest." The ACLU sought a copy of this manual given the importance of the police arrest and detention procedures the DPD had adopted for use during the upcoming Democratic Party National Convention.

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01136 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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g. *Four Horn v. City and County of Denver*, 08-cv-1693 (D. Colo.)

This lawsuit was filed on behalf of five individuals who had been arrested and incarcerated for up to 26 days as a result of mistaken identities. The suit alleged that in each one of these cases the DPD had ignored facts which demonstrated the DPD was arresting the wrong person. The suit challenged the DPD's refusal to adopt and enforce supervision and training policies which could significantly reduce the risk that officers were arresting the wrong individuals.

h. *People v. Cordaro et al.*, 07-M-12531 (Colo. Springs, Colo. Municipal Court)

The City of Colorado Springs prosecuted seven persons who marched in the St. Patrick's Day parade in that city in March 2007. These individuals wore t-shirts with peace signs and carried banners with peace messages. Although these persons had a permit to march in the privately-organized parade, they were instructed by city officials to leave the parade because parade organizers had banned messages relating to "social issues." The seven were then arrested and charged with failure to disperse. The ACLU successfully represented these individuals in their criminal trials. Parade organizers later abandoned their ban on "social issue" signs for the 2008 parade.

i. *Search of students' text messages* (Non-litigation advocacy)

Administrators of Louisville High School in Louisville, Colo. were routinely seizing students' mobile phones, reading text messages, and transcribing messages the administrators deemed to be objectionable. Responding to requests from students and their parents, the ACLU sought an agreement from the local Board of Education to voluntarily cease these practices. After extensive pre-suit negotiations, the Board decided to terminate these phone seizures other than in the case of a true emergency.

j. *Mahaney v. City of Englewood*, Colo., 07-cv-1373 (Arapahoe County District Court)

Mr. Mahaney owns a pipe and smoking accessories store in Englewood, Colo. Mr. Mahaney painted two murals on the side of the building in which his store is located. He was

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01137 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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subsequently charged by the City of Englewood with a violation of its sign code. In addition to defending Mr. Mahaney in the ordinance violation prosecution, the ACLU filed suit in state district court seeking a declaration that Englewood's sign code violated the First Amendment's guarantee of freedom of expression, both on its face and as applied to Mr. Mahaney and his business.

2. Description of Matters Not Accepted for Representation and Possible Litigation by the ACLU of Colorado

The ACLU of Colorado has taken the position that information sought by sub-question 1(a)(i)(2) is protected by the attorney-client privilege. The organization informs me the privilege is being asserted to prevent disclosure of the internal legal deliberations of the Legal Panel, including but not limited to the legal advice it has provided. In addition, I have no independent personal recollection of the information sought in this sub-question, and I have not retained any written materials which refer or relate to the matters sought herein. Respectfully, therefore, I will not be able to provide the information sought by this sub-question.

b. Have you ever acted as counsel in a matter on behalf of the ACLU? If so, please provide the Committee with a citation for each case, a description of the matter, and a description of your participation in that matter.

Response: No.

2. According to the ACLU Capital Punishment Project, "[t]he ACLU believes that, in all circumstances, the death penalty is unconstitutional under the Eighth Amendment," and that the "death penalty continues to be applied in an arbitrary and discriminatory manner in violation of the Fourteenth Amendment." The ACLU also takes the position that "capital punishment ought to be abolished now." At your hearing, I asked you whether you agreed with the ACLU's position. You responded:

"Well, what I would agree with as a district judge is that the United States Supreme Court has ruled that capital punishment does not violate the Eighth Amendment except in narrow circumstances that have been carved out in recent years. So I think what is material and important is what is my view--what my view would be as a sitting Federal district judge, something that would be quite different from my views as a personal citizen or an advocate or litigant and member of the ACLU."

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01138 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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When I asked you whether you personally think that the death penalty violates the Constitution and whether you have ever expressed such a view, you answered only that you had never expressed such a view. I am still unclear as to whether you personally believe that the death penalty violates the Constitution.

a. Please answer whether you personally believe that the death penalty violates the Constitution.

Response: It is clear under current Supreme Court jurisprudence that, with very limited exceptions, the death penalty does not violate the Eighth Amendment to the U.S. Constitution. *Gregg v. Georgia,* 428 U.S. 153 (1976); *Roper v. Simmons,* 543 U.S. 551 (2005); *Kennedy v. Louisiana,* 129 S.Ct. 1 (2008). Consistent with this precedent, I do not believe the death penalty is unconstitutional.

b. The ACLU Capital Punishment Project filed an *amicus* brief in the Supreme Court case *Kennedy v. Louisiana*, arguing that the Eighth Amendment's prohibition against cruel and unusual punishment mandated against the application of the death penalty for child rapists under "evolving standards of decency." The Supreme Court held that the death penalty for the crime of child rape always violates the Eighth Amendment. Writing for a five-justice majority, Justice Kennedy based his opinion partly on the fact that 37 jurisdictions – 36 states and the federal government – did not allow for capital punishment in child rape cases.

i. Given the heinousness of the crime, do you personally believe *Kennedy v. Louisiana* was wrongly decided? If not, why?

Response: The Supreme Court in *Kennedy v. Louisiana* carefully considered the heinousness of the crime of child rape. As the father of two daughters, it is difficult for me to imagine a crime that is more heinous. Nonetheless, if confirmed as a U.S. District Judge, I would be bound by my oath of office and by the doctrine of *stare decisis* to follow and apply the majority opinion in *Kennedy*.

ii. Following the Supreme Court's decision, President Obama announced at a press conference: "I think that the death penalty should be applied in very narrow circumstances for the most egregious of crimes. I think that the rape of a small child, 6 or 8 years old, is a heinous crime." Do you personally agree with that statement?

Response: I agree with both of the President's statements. Nonetheless, if confirmed as a U.S. District Judge, I would be bound by the decision in *Kennedy*.

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4. According to the ACLU, all legal protections limiting the distribution of obscene material are unconstitutional.[1]

a. Do you personally agree with that position? Please explain your answer.

Response: In *Ashcroft v. ACLU*, 542 U.S. 656 (2004) and *U.S. v. American Library Ass'n,* 539 U.S. 194 (2003), the Supreme Court sought to clarify the extent of First Amendment protections for obscene materials. If confirmed as a U.S. District Judge, I would be bound by Supreme Court and Tenth Circuit precedent on this issue, including the decisions in *Ashcroft* and *American Library Ass'n.*

b. If you do not agree with the ACLU's position, did you ever express your concern or opposition to their position? Please explain.

Response: As previously noted, the ACLU of Colorado has asserted the attorney-client privilege with respect to the internal deliberations of the Legal Panel. Outside the context of these deliberations, I have not had the opportunity to raise my personal views on the issue of the constitutionality of restrictions on the distribution of obscene materials.

5. The ACLU has argued that the First Amendment "protects" child pornography and there should be no governmental restriction on its distribution, reproduction, sale, or use, even when some of the producers of those materials are punishable under criminal law.[2]

a. Do you personally agree with that position? Please explain your answer.

Response: If confirmed as a U.S. District Judge, I would be bound by controlling Supreme Court and Tenth Circuit precedent on the issue of the legality of distribution of child pornography, including *U.S. v. Williams,* 553 U.S. 285 (2008) and *New York v. Ferber,* 458 U.S. 747 (1982).

b. If you do not agree with the ACLU's position, did you ever express your concern or opposition to their position? Please explain.

Response: As previously noted, the ACLU of Colorado has asserted the attorney-client privilege with respect to the internal deliberations of the Legal Panel. Outside the context of these deliberations, I have not had the opportunity to raise my personal views on the issue of First Amendment protection for the distribution of child pornography.

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[1] 1992 Policy Guide of the ACLU: 4d, 4g.
[2] *New York v. Ferber*, 458 U.S. 747 (1982).

VerDate Nov 24 2008 10:55 May 27, 2011 Jkt 065688 PO 00000 Frm 01140 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\65688.TXT SJUD1 PsN: CMORC

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6. **According to the ACLU, the Pledge of Allegiance is unconstitutional and should not be recited in schools because it includes the words "under God."[3]**

   a. **Do you personally agree with that position? Please explain your answer.**

   Response: This is an issue presently being litigated in the federal courts. The Supreme Court in *Elk Grove Unified School Dist. v. Newdow*, 542 U.S. 1 (2004) and the Tenth Circuit in *Habecker v. Town of Estes Park,* 518 F.3d 1217 (10th Cir. 2008) have both declined to reach the issue based on standing issues. If I am confirmed as a U.S. District Judge, I would carefully examine all relevant federal appellate rulings, and I would be bound to follow and apply all binding Supreme Court and Tenth Circuit precedent on this issue.

   b. **If you do not agree with the ACLU's position, did you ever express your concern or opposition to their position? Please explain.**

   Response: As previously noted, the ACLU of Colorado has asserted the attorney-client privilege with respect to the internal deliberations of the Legal Panel. Outside the context of these deliberations, I have not had the opportunity to raise my personal views on the issue of the constitutionality of the Pledge of Allegiance.

7. **As a result of several lawsuits brought by the ACLU, communities must remove all vestiges of America's history and heritage that include religious symbols on public lands or on city or county seals. This includes Ten Commandments monuments and crosses – even when those symbols honor those who died in service to their country.[4]**

   a. **Do you agree with that position? Please explain your answer.**

   Response: The case law on Establishment Clause challenges to the use of religious symbols on government or public property and signage is heavily dependent on the specific facts of each case. Examples of the fact-specific nature of the legal analysis to be applied to these cases can be seen in the differing results which obtained in *Van Orden v. Perry*, 545 U.S. 677 (2005) (display of the Ten Commandments at the Texas State Capitol did not violate the Establishment Clause) and *McCreary County v. ACLU*, 545 U.S. 844 (2005) (ordering the removal of the Ten Commandments from Kentucky courthouse walls). If confirmed as U.S. District Judge, I would be bound by the applicable Supreme Court and Tenth Circuit cases on this issue, and I would carefully and impartially apply that precedent to the facts of the dispute before me.

[3] ACLU Amicus Brief, *Elk Grove Unified School District v. Newdow*, 542 U.S. 1 (2004).
[4] *See, e.g.*, ACLU Website: The Mt. Soledad Cross.

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b. If you do not agree with the ACLU's position, did you ever express your concern or opposition to their position? Please explain.

Response: As previously noted, the ACLU of Colorado has asserted the attorney-client privilege with respect to the internal deliberations of the Legal Panel. Outside the context of these deliberations, I have not had the opportunity to raise my personal views on Establishment Clause issues.

8. In 2008, the ACLU of Northern California joined an amicus brief that argued that doctors could not refuse to give infertility treatment to gay or lesbian patients on the basis of the doctors' personal religious beliefs.[5]

a. Do you agree with that position? Please explain your answer.

Response: If confirmed as U.S. District Judge, I would be bound by applicable Supreme Court and Tenth Circuit precedent with regard to the denial of medical procedures as a result of a physician's religious beliefs.

b. If you do not agree with the ACLU's position, did you ever express your concern or opposition to their position? Please explain.

Response: As previously noted, the ACLU of Colorado has asserted the attorney-client privilege with respect to the internal deliberations of the Legal Panel. Outside the context of these deliberations, I have not had the opportunity to raise my personal views on the issue of the denial of medical procedures as a result of a physician's religious beliefs.

**** Please note: No Question # 9 was received from Senator Sessions. ****

10. The ACLU has opposed tax exemptions for churches. For example, in 2008, the Alaskan arm of the ACLU argued that it was unconstitutional for the state Legislature to restrict taxing homes owned by a church.[6]

a. Do you personally agree with that position? Please explain your answer.

Response: If confirmed as U.S. District Judge, I would be bound by applicable Supreme Court and Tenth Circuit precedent with regard to tax exemptions for churches, including *Walz v. Tax Comm'n,* 397 U.S. 664 (1970) (upholding as Constitutional tax exemptions for religious organizations).

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[5] "Court Rules Religion Can't Excuse Doctors Who Denied Treatment to Lesbian," ACLU of Northern California, Aug. 18, 2008.

[6] "ACLU wants religious tax break thrown out," Anchorage Daily News, Feb. 29, 2008.

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b. If you do not agree with the ACLU's position, did you ever express your concern or opposition to their position? Please explain.

Response: As previously noted, the ACLU of Colorado has asserted the attorney-client privilege with respect to the internal deliberations of the Legal Panel. Outside the context of these deliberations, I have not had the opportunity to raise my personal views on the issue of tax exemptions for churches.

11. According to the ACLU's website,[7] "[t]he ACLU interprets the Second Amendment as a collective right. Therefore, we disagree with the Supreme Court's decision in *D.C. v. Heller*."

a. Do you personally agree with that position? Please explain your answer.

Response: If confirmed as U.S. District Judge, I would be bound by applicable Supreme Court and Tenth Circuit precedent with regard to the scope and reach of the Second Amendment, including *District of Columbia v. Heller*, 554 U.S. ___; 128 S. Ct. 2783 (2008), and the upcoming decision of the Court in *McDonald v. Chicago,* No. 08-1521 (U.S., Argued Mar. 2, 2010).

b. If you do not agree with the ACLU's position, did you ever express your concern or opposition to their position? Please explain.

Response: As previously noted, the ACLU of Colorado has asserted the attorney-client privilege with respect to the internal deliberations of the Legal Panel. Outside the context of these deliberations, I have not had the opportunity to raise my personal views on the issue the scope and reach of the Second Amendment.

12. According to your questionnaire, you are a member of the following organizations: Amnesty International, Greenpeace, the Natural Resources Defense Council, and the Sierra Club.

a. What is your level of involvement with Amnesty International?

Response: I have been a dues-paying member of Amnesty International USA for several years, and frequently make additional donations to that organization to support its activities. In addition, over the past 20-some years, on a handful of occasions and at the request of Amnesty International USA, I have written letters to political leaders of foreign countries seeking the release of individuals imprisoned as a result of their non-violent political speech.

[7] http://www.aclu.org/2008/07/01/heller-decision-and-the-second-amendment.

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i. **Do you personally agree with the positions taken by that organization? Please explain your answer.**

Response: I am not aware of all positions ever taken or supported by Amnesty International USA, and thus I cannot state whether I agree or disagree with the organization on all issues. What I can do, however, is assure you my membership in Amnesty International USA will not affect or influence my decisions as a U.S. District Judge.

b. **What is your level of involvement with Greenpeace?**

Response: I have been a dues-paying member of Greenpeace USA for many years, and frequently make additional donations to that organization to support its activities. In addition, while I do not recall the specific topics or issues involved, I have on infrequent occasions signed Greenpeace USA petitions or letters which have been delivered to federal and state officials in regards to matters affecting our environment.

i. **Do you personally agree with the positions taken by that organization? Please explain your answer.**

Response: I am not aware of all positions ever taken or supported by Greenpeace USA, and thus I cannot state whether I agree or disagree with the organization on all issues. What I can do, however, is assure you my membership in Greenpeace USA will not affect or influence my decisions as a U.S. District Judge.

c. **What is your level of involvement with the Natural Resources Defense Council?**

Response: I have been a dues-paying member of the Natural Resources Defense Council (NRDC) for many years, and frequently make additional donations to that organization to support its activities. In addition, while I do not recall the specific topics or issues involved, I have on infrequent occasions signed NRDC petitions or letters which have been delivered to federal and state officials in regards to matters affecting our environment.

i. **Do you personally agree with the positions taken by that organization? Please explain your answer.**

Response: I am not aware of all positions ever taken or supported by the NRDC, and thus I cannot state whether I agree or disagree with the organization on all issues. What I can do, however, is assure you my membership in the NRDC will not affect or influence my decisions as a U.S. District Judge.

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d. What is your level of involvement with the Sierra Club?

Response: I have been a dues-paying member of the Sierra Club for many years, and frequently make additional donations to that organization to support its activities. In addition, while I do not recall the specific topics or issues involved, I have on infrequent occasions signed Sierra Club petitions or letters which have been delivered to federal and state officials in regards to matters affecting our environment.

i. Do you personally agree with the positions taken by that organization? Please explain your answer.

Response: I am not aware of all positions ever taken or supported by the Sierra Club, and thus I cannot state whether I agree or disagree with the organization on all issues. What I can do, however, is assure you my membership in the Sierra Club will not affect or influence my decisions as a U.S. District Judge.

13. 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. I recognize that you do not know 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: Given the fact I was nominated by the President to be a U.S. District Judge, I have to assume I fit the criteria President Obama and his staff have established for the position.

b. What role do you believe that empathy should play in a judge's consideration of a case?

Response: Empathy should never be the basis upon which a judge makes his or her decisions. Empathy can, however, provide a judge with additional insight and perspective into the intent and motivations of the parties appearing before the court.

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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?

Response: See above.

14. 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?

Response: No.

15. 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: No.

16. Please describe with particularity the process by which these questions were answered.

Response: I drafted the responses to these questions, and finalized them after obtaining input from attorneys with the Department of Justice.

17. Do these answers reflect your true and personal views?

Response: Yes.

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SUBMISSIONS FOR THE RECORD

March 9, 2010

The Honorable Patrick J. Leahy
Chair
Senate Judiciary Committee
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Senate Judiciary Committee
Washington, DC 20510

Re: Gary Scott Feinerman/Nominee to the United States District Court for the Northern District of Illinois

Dear Chairman Leahy and Ranking Member Sessions:

On behalf of the Anti-Defamation League, I am writing to strongly support President Obama's nomination of Gary Scott Feinerman to serve as a United States District Judge for the Northern District of Illinois.

I have known Gary for many years – and his contributions to the Anti-Defamation League (ADL) have been extensive. He has served on the League's Greater Chicago/Upper Midwest Regional Board since January 1997 and co-chaired Chicago's Civil Rights Committee from 2003 to 2009.

Gary has always embraced his role as an ADL leader and has actively participated in a variety of programs. Every summer Gary leads a Civil Rights Committee meeting composed of Board members and other supporters at which recent Supreme Court decisions are reviewed with regard to ADL-oriented subjects. His ability to articulate complex legal issues for both attorneys and non-attorneys has earned him a great deal of respect and admiration.

For a number of years Gary has co-chaired Chicago's Summer Associate Research Project. This project enlists young attorneys to provide cutting-edge legal research on contemporary civil rights issues and helps them to recognize the importance of *pro bono* work. Gary has served as a member of ADL's National Civil Rights Committee and as an Associate National Commissioner. He has been generous with his time and has often provided wise counsel to staff and lay leaders – regionally and nationally.

He has been an outspoken supporter of religious liberty, an appropriate balance between national security concerns and individual rights, and equal treatment for all. In recognition of his many contributions to ADL, Gary was honored as Chicago's Lay Leader of the Year in 2007.

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In addition to his work for the ADL, Gary has extensive litigation and courtroom experience, having served as a clerk for Judge Joel M. Flaum of the Seventh Circuit, for Justice Anthony M. Kennedy of the Supreme Court, and as the Solicitor General of Illinois from 2003 to 2007. He has argued a number of cases before the U.S. Supreme Court, the U.S. Court of Appeals for the 7th Circuit, and the Illinois Supreme Court.

I know Gary to have an excellent temperament and sound judgment. I strongly believe that, if given the privilege of serving as a member of the federal judiciary, Gary would conduct himself as he has in his long service to ADL, in his law practice, and in his public service – conscientiously, with distinction, commitment, and honor.

Sincerely,

Abraham H. Foxman
National Director

cc: Jess N. Hordes, ADL Washington Director

656881.039

Senator Michael Bennet
Introduction of Bill Martinez, Nominee to the United States District Court for the District of Colorado
Senate Judiciary Committee, March 10, 2010

I would like to open by thanking the Judiciary Committee for holding this nomination hearing for Bill Martinez to serve on the United States District Court for the District of Colorado. I would also like to welcome Bill and his family and wish them the best of luck through this confirmation process.

I am proud to come before the Committee this morning and introduce Bill. Having recommended his candidacy to the President, I strongly support Bill's nomination and urge the quick confirmation of this eminently qualified candidate to the federal bench.

The breadth of his experience and expertise make Bill more than qualified to serve on the court. His work spans the scope of the legal profession, which will make him an asset to the United States District Court.

Bill embodies the American dream and is an immigrant success story. He was born in Mexico and immigrated with his family to the United States at a young age. He was the first in his family to attend college and law school. As an undergraduate at the University of Illinois, Bill received a B.S. in Environmental Engineering and B.A. in Political Science and earned the distinction of Illinois Scholar. He received his law degree from the University of Chicago.

Bill's success is truly an American story that will serve as an example to others across Colorado. His rise through the legal profession is a great example of minority lawyers and law students in my state.

Bill's legal career spans the public and private sector, where he has distinguished himself as a leading expert in employment and labor law. He has experience representing employers and

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employees in a wide range of civil areas, which will be a tremendous asset to the United States District Court given its large civil docket and significant number of employment cases.

Bill is currently a partner at McNamara, Roseman, Martinez & Kazmierski, where he specializes in employment law and civil rights. His clients are primarily plaintiffs in federal and state court. Bill also represents clients before arbitrators and administrative agencies and is certified as an AAA arbitrator in employment disputes.

Prior to starting his own firm, Bill served as Regional Attorney of the U.S. Equal Employment Opportunity Commission in its Denver District Office. As Regional Attorney, Bill had responsibility for the Commission's legal operations and federal court enforcement litigation throughout the regional office's six-state jurisdiction. Before joining the EEOC, Bill worked in private practice at the law firm of Pendleton & Sabian where he practiced employment, securities and commercial litigation on behalf of corporations and individuals. He began his career at the Legal Assistance Foundation of Chicago, where he represented indigent and working class clients.

Throughout his career, Bill has served the Colorado legal community in a number of positions. This includes an appointment to the Office of the Presiding Disciplinary Judge by the Colorado Supreme Court, service as Vice Chairman of the Committee on Conduct of the United States District Court and membership on Colorado Judicial Ethics Advisory Board. During the 1990's, he served as an Adjunct Law Professor at the University of Denver Law School. Bill has also been active with the Colorado Hispanic Bar Association as a member of the organization's Board of Directors and Chair of the CHBA's Ethics Committee. He has also served as a mentor to minority law students in Denver.

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Bill has earned a number of distinguished honors, including induction as a Fellow in the College of Labor and Employment Lawyers in Washington, DC, listing in Best Lawyers of America in the field of employment law and recognition as a Colorado Super Lawyer in the field of Employment & Labor Law.

I am proud to come before this Committee and highlight the experience and accomplishments of this superbly qualified nominee. Bill Martinez will be an asset to the federal bench. He brings not only an expertise in employment and labor law, but also a breadth of skills based on his work as a litigator and advocate in the public and private sectors. We cannot discount the importance of this experience in practicing and applying the law in a variety of settings for a broad base of clients. This experience provides the necessary skills and perspective to deal with the diverse docket that comes before United States District Court judges. Bill is a model nominee for the federal district court. He has the expertise, experience and strong sense of civic responsibility that we need on the federal bench.

I would like to again thank the Committee for holding this hearing today and look forward to supporting Bill Martinez's nomination when it reaches the floor.

Thank you.

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Serving Colorado, Promoting Justice

March 9, 2010

VIA FACSIMILE TO 202-224-9516 and 202-224-9102

Senator Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: The Nomination of William J. Martinez for the United States District Court for the District of Colorado

Dear Chairman Leahy and Esteemed Committee Members:

I am president of the Colorado Hispanic Bar Association ("CHBA"). The CHBA represents hundreds of Hispanic attorneys in Colorado and is actively involved in both the Hispanic and legal communities. The CHBA's primary function is to serve the public interest by furthering the fair administration of justice, advancing the standing of its members in the legal profession, and promoting a high-quality and diverse judiciary.

With the full support of the CHBA, I write to endorse wholeheartedly the President's nomination of William J. Martinez for a position on the United States District Court for the District of Colorado. The CHBA respectfully urges the Committee to advance his nomination to the full Senate as expeditiously as possible.

Mr. Martinez is eminently qualified to serve as one of our next federal judges. He was born in Mexico and immigrated with his family to the United States as a young boy. He was the first in his family to attend college, where he gained distinction as an Illinois Scholar during his time at the University of Illinois. He then attended the University of Chicago, where he earned his law degree. Thereafter, he went into private practice where he gained extensive trial experience, particularly in the area of employment law – qualifications which will serve the District Court well during Mr. Martinez' tenure.

Mr. Martinez uniformly is regarded as an extremely well-qualified candidate for this post. He is an accomplished trial attorney and has practiced in a wide variety of civil areas. Along these same lines, the CHBA believes that his experience as an American Arbitration Association arbitrator will likewise serve the District Court well. He has a strong command of the Court's procedures and practice standards. This breadth of experience will be a tremendous asset to the U.S. District Court for the District of Colorado.

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According to counsel who have worked with Mr. Martinez as co-counsel and opposing counsel alike, Mr. Martinez has superior analytical and writing skills, has served as a strong advocate for his clients, and has handled himself and his cases with a high-degree of professionalism. Further, he is extremely hard-working, and employs a practical approach to his practice. Undoubtedly, Mr. Martinez will follow the rule of law and apply it with the same measured temperament and demeanor he is known for by his colleagues.

Since his days at the University of Chicago Law School, Mr. Martinez has emerged as a leader in the Denver legal community. From his time at the respected firm of Pendleton & Sabian, to his tenure as U.S. Equal Opportunity Commission's Regional Attorney and his present role as a partner in the highly-regarded firm of McNamara, Roseman, Martinez & Kazmierski LLP, Mr. Martinez has demonstrated the ability to master an array of complex legal matters and achieve outstanding results for his clients. He has served as an adjunct professor at the University of Denver College of Law, and has mentored students and attorneys throughout his career. His public service also includes appointment to the Office of the Presiding Disciplinary Judge, an appointment by the Colorado Supreme Court, and membership on the U.S. District Court's Committee on Conduct. Mr. Martinez' strong sense of civic responsibility makes him an outstanding candidate for the U.S. District Court. We are also fortunate to count him as one of our CHBA members.

Finally, the CHBA recognizes the paramount need to increase diversity in the federal courts. However, we do not endorse Mr. Martinez because he is diverse, but because he represents the epitome of what diversity can bring to the bench: excellence and commitment to serving the needs of the District's diverse communities.

The CHBA respectfully urges this Committee to do all it can to quickly advance Mr. Martinez' nomination. Please feel free to contact me at (303) 892-7411 if you have questions or comments on this matter.

Sincerely,

Damian J. Arguello
President, Colorado Hispanic Bar Association

cc: Senator Mark Udall
Senator Michael Bennet
William J. Martinez

03/09/2010 12:16PM

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ROMÁN D. HERNÁNDEZ
NATIONAL PRESIDENT

March 19, 2010

Via Electronic Mail

The Honorable Patrick Leahy
Chairman, U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510-6275

The Honorable Jeff Sessions
Ranking Member, U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510-6275

The Honorable Harry Reid
Majority Leader, U.S. Senate
522 Hart Senate Office Building
Washington, DC 20410-6275

Re: HNBA Endorsement of William J. Martinez for Appointment as Judge in the United States District Court for the District of Colorado

Dear Senators Leahy, Sessions, and Reid:

On behalf of the Hispanic National Bar Association (HNBA), I write to urge the expeditious confirmation of William "Bill" Martinez for the existing vacancy on the U.S. District Court for the District of Colorado. The HNBA is a non-profit, non-partisan, national membership organization that represents the interests of the more than 100,000 Hispanic attorneys, judges, law professors, law students, and legal professionals in the United States and Puerto Rico. As required by its *Policies and Procedures Governing Judicial Endorsements* (2008), prior to and in conjunction with this endorsement, the HNBA conducted appropriate due diligence. We have considered Mr. Martinez's background and qualifications carefully and in the context of the requirements for the federal trial and appellate courts. Based on our peer review, we agree with President Barack H. Obama's conclusion that Mr. Martinez is exceptionally qualified to become Colorado's next federal jurist for the U.S. District Court for the District of Colorado.

As demonstrated during his testimony before the Senate Judiciary Committee, Mr. Martinez combines a broad range of public and private sector experience with sound judicial and legal temperament. Among members of the legal community, our due diligence revealed a unanimous, unqualified opinion that Mr. Martinez is an excellent choice for the federal bench. He has earned a reputation for his superior intellect and exceptional analytical and writing skills.

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Several colleagues commented that Mr. Martinez is an extraordinarily diligent lawyer who motivates subordinates, superiors and colleagues.

References also uniformly commented on his well-rounded legal resume. After graduating from the University of Chicago Law School, Mr. Martinez emerged as a leader in the Denver legal community. First, he practiced at Pendleton & Sabian and then moved to the Equal Employment Opportunity Commission as a Regional Attorney. At present, he is a named-partner at the highly-regarded law firm of McNamara & Martinez. He has also served as an adjunct professor at the University of Denver College of Law and has mentored students and attorneys throughout his career. Finally, his public service also includes appointment to the Office of Presiding Disciplinary Judge, an appointment by the Colorado Supreme Court, and membership on the United States District Court's Committee on Conduct.

His peers described Mr. Martinez as competent, well-prepared, hard-working and ethical. Mr. Martinez is an asset to the bench, bar and diverse communities in Colorado because he is fair, has great character and remarkable integrity. His extensive legal experience, coupled with his commitment to public service and impeccable character, make him an outstanding candidate for appointment to the federal bench.

Accordingly, the HNBA recommends the expeditious confirmation of Mr. Martinez as a judge in the United States District Court for the District of Colorado. I stand ready to assist in your deliberations should there be any questions. Please feel free to contact me through our national office at (202) 223-4777 or directly at (503) 222-9981. Thank you for your consideration.

Sincerely,

Román D. Hernández
HNBA National President

cc: William J. Martinez, Esq.
Diana Sen, Esq., HNBA President-Elect
Robert Raben, Esq., Chair, HNBA Committee on Judicial Endorsements
Ramona E. Romero, Esq., HNBA White House Liaison
Meshach Rhoades, Esq., HNBA Region XIII President
HNBA Executive Committee
Zuraya Tapia, Esq., HNBA Executive Director

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
March 10, 2010

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Nominations Hearing
March 10, 2010

Today, we will hear from three of President Obama's well-qualified judicial nominees, all of whom have the support of their home-state Senators, who know them best. The nominations of Gary Feinerman and Justice Sharon Coleman to fill vacancies in the Northern District of Illinois have the support of Senator Durbin, a senior member of this Committee, and Senator Burris. And the nomination of William Martinez to the District of Colorado has the support of Colorado's Senators, Senator Udall and Senator Bennet.

In addition to the three district court nominees we have before us today, this Committee planned to hear from a circuit court nominee, Judge Robert Chatigny, who is nominated to the Second Circuit. Earlier this week, Senator Sessions asked me to postpone Judge Chatigny's hearing, and I accommodated his request. I hope that Republican Senators will respond to this accommodation by treating Judge Chatigny fairly and moving his nomination expeditiously once he comes before us.

I hope the nominations of all of the candidates before the Committee today move expeditiously. It is time to increase the pace of our consideration of the President's nominees. This Committee has favorably reported 34 of President Obama's Federal circuit and district court nominees to the Senate for final consideration and confirmation. An additional five judicial nominees appeared before the Committee on February 24 and are on our agenda tomorrow, along with Judge Jane Magnus-Stinson, a nominee to the U.S. District Court for the Southern District of Indiana, whose nomination was held over last week. When those outstanding nominees are reported, the number of Federal circuit and district court nominees waiting for a vote by the full Senate will total 23.

By this date during President Bush's first term, the Senate had confirmed 39 Federal circuit and district court nominations. That was a tumultuous period in which Senate Democrats worked hard to make progress with a staunchly partisan Republican President. It included the period of the 9/11 attacks and the anthrax attacks upon the Senate.

Although a comparable number of President Obama's judicial nominees have been available for Senate consideration and confirmation, the Senate has confirmed only 17 Federal circuit and district court nominees so far during President Obama's time in office. That is less than half as many. Exactly the same

number of judicial nominations are now pending on the Executive Calendar—17—as have been confirmed so far this Congress.

The Senate moved quickly to confirm 17 of President Bush's judicial nominees by November 8, 2001. Despite the fact that President Obama began sending judicial nominations to the Senate two months earlier than President Bush, after President Obama's 13 months in office the Senate is already four months behind where we were during the Bush administration.

Meanwhile, judicial vacancies have skyrocketed to more than 100, undoing years of hard work.

When I chaired this Committee 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. When President Bush left office, we had reduced vacancies in nine of the 13 Federal circuits. As matters stand today, judicial vacancies have spiked and are being left unfilled. We started 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.

More than 30 of the vacancies on our Federal courts today are classified as "emergencies." This is a sad reality. During the Bush administration, we worked hard and reduced judicial emergencies by more than half. Those vacancies have now increased dramatically, encumbering judges across the country with too-heavy dockets and preventing ordinary Americans from seeking justice in our overburdened Federal courts. This is wrong.

President Obama deserves praise for working closely with home state Senators, whether Democratic or Republican, to identify and select well-qualified nominees to fill vacancies on the Federal bench. Yet Senate Republicans delay and obstruct even nominees chosen after consultation with Republican home state Senators. President Obama has worked closely with Senate Republicans, but they have still chosen to treat his nominees badly. Last year, President Obama sent 33 Federal circuit and district court nominations to the Senate, but the Senate confirmed only 12 of them, the fewest judicial nominees confirmed in the first year of a Presidency in more than 50 years.

Senate Republicans unsuccessfully filibustered the nomination of Judge David Hamilton of Indiana to the Seventh Circuit, despite support for his nomination from the senior Republican in the Senate, Dick Lugar of Indiana. Republicans delayed for months Senate consideration of Judge Beverly Martin of Georgia to the Eleventh Circuit despite the endorsement of both her Republican home state Senators. When Republicans finally agreed to consider her nomination on January 20, she was confirmed unanimously. Whether Jeffrey Viken or Roberto Lange of South Dakota, who were supported by Senator Thune, or Charlene Edwards Honeywell of Florida, who was supported by Senators Martinez and LeMieux, virtually all of President Obama's nominees have been denied prompt Senate action by Republican objections.

I noted when the Senate considered the nominations of Judge Christina Reiss of Vermont and Mr. Abdul Kallon of Alabama relatively promptly that they should serve as the model for Senate action. Sadly, they are the exception rather than the model. They show what the Senate could do, but does not. Time and again, noncontroversial nominees are delayed. When the Senate does finally consider them, they are confirmed overwhelmingly.

Of the 17 Federal circuit and district court judges confirmed, 14 have been confirmed unanimously. That

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is right. There have been only a handful of votes cast against just three of President Obama's nominees to the Federal circuit and district courts. One of those, Judge Gerry Lynch of the Second Circuit, garnered only three negative votes, and 94 votes in favor. Judge Andre Davis of Maryland was stalled for months and then confirmed with 72 votes in favor. Judge David Hamilton was filibustered in a failed effort to prevent an up or down vote.

So why all the obstruction and delays? It is part of a partisan pattern. Even when they cannot say "no," Republicans nonetheless demand that the Senate go slow. The practice is continuing. There have already been 17 filibusters of President Obama's nominees. That is the same number of Federal circuit and district nominees the Senate has confirmed during the entirety of the Obama administration. And that comparison does not include the many other nominees who were delayed or who are being denied up or down votes by Senate Republicans refusing to agree to time agreements to consider even noncontroversial nominees.

I urge Senate Republicans to reconsider their strategy. I hope Republicans on the Committee will allow prompt consideration of the three well-qualified nominees before us today as well as the six judicial nominees on the Committee's agenda this week. I urge Senate Republicans to work with us to provide final consideration without further delay to the 17 judicial nominees on the Senate Executive Calendar awaiting final action. We can make progress if we work together.

Although I am frustrated with the Republican obstructionism and delay we see on the Senate floor, I am pleased that we are able to consider three highly qualified nominees today on a timely basis.

Gary Feinerman is nominated to serve on the Federal district court in the Northern District of Illinois. Currently a partner in the Chicago office of Sidley Austin, Mr. Feinerman previously was the Solicitor General of Illinois, and he also was a partner at Chicago law firm Mayer, Brown, Rowe & Maw. He worked in the Justice Department's Office of Policy Development, and he served as a law clerk to Supreme Court Justice Anthony Kennedy and to Seventh Circuit Judge Joel Flaum. Mr. Feinerman received his B.A., summa cum laude, from Yale College, and he earned his J.D., Order of the Coif, from Stanford Law School.

President Obama nominated Justice Sharon Johnson Coleman to serve on the U.S. District Court for the Northern District of Illinois. She currently sits on the Illinois Appellate Court in Chicago, and she previously was a judge on the Circuit Court of Cook County, Illinois. Justice Coleman also served as Deputy State's Attorney and Bureau Chief for the Public Interest Bureau of the Cook County State's Attorney's Office, as an Assistant U.S. Attorney in the Northern District of Illinois, and as an Assistant State's Attorney in Cook County. She earned her B.A. with honors from Northern Illinois University and her J.D. from Washington University School of Law.

William Martínez is nominated serve as a district court judge in the District of Colorado. A partner in Denver's McNamara, Roseman, Martínez and Kazmierski, Mr. Martinez previously was the Regional Attorney in the Denver District Office of the U.S. Equal Opportunity Commission, an associate with

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Pendleton and Sabian in Denver, and a staff attorney for the Legal Assistance Foundation in Chicago. The first in his family to attend college, Mr. Martinez received his B.S. and his B.A. from the University of Illinois and his J.D. from the University of Chicago Law School.

I welcome all of the nominees and their families to the Committee today.

# # # #

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March 12, 2010

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

Re: Judicial Nomination of William "Bill" Martinez

Dear Chairman Leahy and Ranking Member Sessions:

On behalf of the Mexican American Legal Defense and Educational Fund (MALDEF), I write to endorse William "Bill" Martinez's nomination as a federal district judge to the U.S. District Court for the District of Colorado.

Mr. Martinez has had a distinguished career as an attorney in private practice and in public service. Throughout his career, he has demonstrated a strong commitment to serving his clients and his community. He has done so while a lawyer with the Legal Assistance Foundation of Chicago, a private practitioner, an employment dispute arbitrator with the American Arbitration Association, and a University of Denver College of Law professor who placed a premium on mentoring minority law students.

Mr. Martinez has also shown a long-standing desire to serve in the public interest. He has served on numerous hearing boards within the Office of the Presiding Disciplinary Judge and on the Committee on Conduct of the U.S. District Court for the District of Colorado. Prior to becoming a partner in McNamara, Roseman, Martinez & Kazmierski, LLP, he served as Regional Attorney of the U.S. Equal Employment Opportunity Commission. Throughout his career, he has litigated numerous cases in both state and federal courts, has testified on employment matters before the Colorado and Illinois legislatures, and has published several articles on employment law.

A native of Mexico, Mr. Martinez immigrated to the United States as a child. He became the first in his family to graduate from college and then law school. Mr. Martinez has utilized his education, experience, and talent to zealously advocate on behalf of his clients and to uplift the legal community in Colorado. He will bring to the federal bench the richness of his diverse professional background, a judicial temperament, and a deep respect for the rule of law.

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For these reasons, MALDEF proudly supports William "Bill" Martinez's nomination and urges the members of the Senate Judiciary Committee to report his nomination to the full Senate without delay.

Sincerely,

Claudine Karasik
Legislative Staff Attorney

NELA
Advocates for Employee Rights
National Employment Lawyers Association

March 9, 2010

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Jeffrey Sessions
Ranking Minority Member, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

RE: *Support for the Nomination of William J. Martinez to the United States District Court for the District of Colorado*

Dear Chairman Leahy and Senator Sessions:

We write on behalf of the National Employment Lawyers Association (NELA) and our Colorado affiliate (Colorado PELA) to urge that the Senate Judiciary Committee favorably recommend the appointment of William (Bill) J. Martínez to the United States District Court for the District of Colorado. NELA advances employee rights and serves lawyers who advocate for equality and justice in the American workplace. It is the country's largest professional organization that is comprised exclusively of lawyers who represent employees in employment discrimination and other employment-related matters. NELA and its 68 state and local affiliates have more than 3,000 members around the country. Colorado PELA is a non-profit organization that was created to promote and increase public awareness of the rights of individual employees and to provide educational opportunities, information and assistance to attorneys who represent employees.

Bill Martínez was born in México and immigrated with his family to the U.S. as a young boy. He was the first member of his family to go to college. For most of his 29 years in legal practice, Mr. Martínez has specialized in employment and civil rights law. He is currently in private practice and is a founding partner of his firm, McNamara, Roseman, Martínez & Kazmierski, LLP, a well-respected employment and civil rights law firm in Denver, CO. Prior to entering private practice, Mr. Martínez served as Regional Attorney for the Denver District Office of the U.S. Equal Employment Opportunity Commission, where he had overall responsibility for the Commission's legal operations and federal court enforcement litigation covering a six-state jurisdiction. Significantly, while at the EEOC, he was in charge of one of the largest age discrimination class actions the federal government has ever litigated.

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Mr. Martínez began his legal career with the Legal Assistance Foundation of Chicago. Prior to the EEOC, he was with the firm now known as Pendleton, Friedberg, Wilson & Hennessey in Denver, CO. There, he litigated employment, securities, and commercial law cases on behalf of corporate and individual clients. Mr. Martinez's varied legal experience has strengthened his ability to negotiate and communicate well with opposing counsel and attorneys practicing in all areas of the law.

Because of his extensive experience, Mr. Martínez has been invited to serve on numerous organizations and boards, and currently holds several leadership positions. He presently serves on the Committee on Conduct of the U.S. District Court for the District of Colorado, having been appointed to that position by the court's Article III judges. He is the Treasurer of the Board of Directors of the Faculty of Federal Advocates and Chair of the Ethics Committee for the Board of Directors of the Colorado Hispanic Bar Association. Mr. Martínez has also served on numerous Hearing Boards within the Office of the Presiding Disciplinary Judge, having been appointed to that attorney regulation panel by the Colorado Supreme Court. He is also a Fellow of the College of Labor and Employment Lawyers and serves as an arbitrator for the American Arbitration Association.

Mr. Martínez has published several articles about employment law, including in such publications as *The Colorado Lawyer*, *The Employee Advocate*, *Journal of the Academy of Florida Trial Lawyers*, *Trial* and *Trial Talk*. He has been called on to testify on employment law matters before the Colorado and Illinois legislatures and has been very involved in helping to shape and formulate policy in the employment law field in Colorado. Mr. Martínez previously taught employment law as an Adjunct Professor at the University of Denver College of Law, and continues to lecture to Bar and employer groups on employment law topics. He has mentored many new lawyers throughout his almost 30-year legal career.

Mr. Martínez is very well-respected by both plaintiff and defense attorneys of the employment bar. Indeed, he has a stellar reputation for his temperament and ability to work professionally with opposing counsel. Based on his legal expertise and experience, he has been a valuable asset to the employment bar in Colorado, and would be an equally valuable asset to the U.S. District Court for the District of Colorado.

Very truly yours,

Bruce A. Fredrickson
President, NELA

Sara J. Rich
President, Colorado PELA